ntepa Northern Territory Environment Protection Authority

ROADMAP FOR A MODERN ENVIRONMENTAL REGULATORY FRAMEWORK FOR THE NORTHERN TERRITORY

January 2017

Northern Territory Environment Protection Authority
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1 Summary

The Northern Territory Environment Protection Authority (NT EPA) is pleased to have been invited to contribute to reform of the Northern Territory's environmental regulatory and management framework. It has prepared this *Roadmap for a Modern Environmental Regulatory Framework for the Northern Territory* in accordance with part 3 of the *Northern Territory Environment Protection Authority Act*.

The NT EPA released draft advice about the environmental assessment and approval framework for public comment in August 2016. It received 18 submissions from government agencies, industry (including industry organisations), environmental groups and the public. The NT EPA has carefully considered the information received during the public comment period and has revised the draft advice to develop this roadmap.

The NT EPA looks forward to continuing to work with the Northern Territory Government to implement its reform program.

The NT EPA makes the following recommendations to reform the framework:

Recommendation 1:

Government should adopt a framework for a single, whole-of-government environmental approval issued by the Minister for the Environment on the basis of an environmental impact assessment by the NT EPA.

Recommendation 2:

The *Environmental Assessment Act* should be revised and updated to give effect to Recommendation 1.

Recommendation 3:

The revised *Environmental Assessment Act* should allow the NT EPA to conduct strategic environmental assessments and provide strategic environmental advice.

Recommendation 4:

The *Waste Management and Pollution Control Act* should be revised and updated to provide for the NT EPA to issue all licences and approvals to discharge or emit wastes to land, water, sea or air environments.

Recommendation 5:

The *Environmental Assessment Act* and the *Waste Management and Pollution Control Act* should be revised and updated as described above. In addition, some other waste management and pollution control legislation should be consolidated into a new Environmental Protection Act to be administered by the NT EPA.

Recommendation 6:

The NT EPA responsibilities should continue to involve conducting environmental impact assessments for proposals that may have a significant impact on the environment, the regulation of activities that may have significant impacts or risks to the environment, and the provision of strategic advice on matters of environmental importance.

Recommendation 7:

The NT EPA should be an independent authority comprising a board of experts appointed on the basis of their experience, knowledge and ability to meet the objectives and responsibilities of the NT EPA.

2 Introduction

In 2015 the Northern Territory Government undertook a review of the Northern Territory's environmental impact assessment and project approvals system. The review, prepared by Dr Allan Hawke AC, was released by the Government in November 2015.

On 4 December 2015, the then Minister for the Environment, the Hon Gary Higgins, wrote to the Northern Territory Environment Protection Authority (NT EPA) in accordance with section 25 of the *Northern Territory Environment Protection Authority Act* seeking its advice on the review and specifically a framework for a single environmental approval that is appropriate for the Northern Territory.

Prior to the NT election in August 2016, the Labor Party released its *Healthy Environment, Strong Economy* policy position paper containing a number of commitments for reforms to the NT's environmental management and regulatory framework.

On 30 August 2016 the NT EPA released its *Draft Advice Regarding Dr Allan Hawke's Review of the Northern Territory's Environmental Assessment and Approval Processes* (the draft advice) for public comment. This comprehensive document described the issues with the existing environmental management framework, outlined alternatives to the current framework and models proposed in the review, and provided draft recommendations for improvements to the framework. The NT EPA received 18 submissions[1] from government agencies, industry (including industry organisations), environmental groups and the public.

The NT EPA has carefully considered the information received during the public comment period and thanks those groups and individuals that took the time to provide feedback. That feedback has shaped the NT EPA's final recommendations for developing a modern environmental regulatory framework for the Northern Territory.

The NT EPA looks forward to continuing to work with the NT Government, community and business to reform and strengthen the environmental management and regulatory framework.

3 The NT EPA's draft advice

The public consultation version of the NT EPA's draft advice will remain available on the NT EPA's website; however it is superseded by this document.

The draft advice can be summarised as addressing the following themes:

- adoption of a single environmental approval
- improvements to the NT's environmental impact assessment legislation
- other legislative reforms
- roles, functions and governance of the NT EPA.

[1] Public submissions are available on the NT EPA's website: http://www.ntepa.nt.gov.au/about-ntepa/for-your-comment/comments-closed/draft-advice-response-hawke-review

4 Key findings and themes

Respondents to the NT EPA highlighted the increasingly urgent need to reform the Territory's environmental management and regulatory framework. This viewpoint is consistent with the NT EPA's comments in its draft advice.

Regardless of representative group, respondents consistently identified issues with the existing framework including: **certainty** (when environmental impact assessment is required); **timeliness** of the assessment and approvals process; **consistency** (lack of a 'level playing field' between industry types); **transparency** in decision making and gaps in the system which increase the risk to the Territory's environment; and a general lack of Government led and agreed strategic policy and **objectives** for protecting the environment.

In summary, respondents, and the NT EPA, agree the Territory needs a simplified, independent, robust and publicly accountable system for environmental impact assessment, approvals and compliance/enforcement.

4.1 Adoption of a single environmental approval

The concept of a single environmental approval framework was supported by the majority of respondents to the draft advice.

A single environmental approval framework involves the Minister responsible for the environment portfolio ('Environment Minister'; currently the Minister for Environment and Natural Resources) issuing (or refusing as may be the case) an environmental approval for each proposal (including projects, policies, programs or actions) having potentially significant environmental impacts and/or risks. The Minister's decision would be informed by an Assessment Report prepared by the NT EPA.

The NT EPA's proposed assessment and single environmental approval framework includes:

1. Proponents to refer proposals that could have a potentially significant effect on the environment to the NT EPA.
2. The NT EPA to determine whether referred proposals require environmental impact assessment, and if so, what level of assessment is appropriate.
3. The NT EPA to assess the potentially significant environmental impacts of the proposal based on information provided by the proponent and others during the assessment process; e.g. community and agency comments on a draft environmental review document, and expert advice obtained by the NT EPA.
4. The NT EPA to prepare an Assessment Report for submission to the Environment Minister, including recommendations for conditions to be included in an environmental approval.
5. The Environment Minister to decide to issue, or refuse, an environmental approval and conditions for implementing the proposal.

Further detail on how the NT EPA's assessment and approvals process would operate is in Attachment A.

Collectively, environmental groups support an environmental approval issued by the Environment Minister and supported the environmental impact assessment process being conducted by the independent NT EPA.

The Minerals Council of Australia (NT Division; MCA) supported the Territory's existing sectoral approval model over the introduction of a single environmental approval.

Another industry respondent specifically identified that the structural approval model is most appropriately a matter determined by government and did not advocate for a particular model. Industry may be more supportive of a sectoral environmental approval framework, where the approval is issued by a development Minister or central agency Minister.

Industry was also more likely to question whether the environmental impact assessment process is more appropriately conducted by the NT EPA or a government agency, and to seek assurances that the NT EPA would be given appropriate support in conducting its role, regardless of where the relevant skills and experience may be located within government agencies.

The NT EPA considers that it should, and it does, seek and be given any expert advice necessary to complete the impact assessment of a significant proposal, whether the relevant public servants are physically located in the Department of Environment and Natural Resources (which provides services to the NT EPA) or another department. It also seeks external expert advice as necessary. These arrangements will necessarily form part of any revised environmental management and regulatory framework.

Reviews of environmental impact assessment processes in Australia conducted by the Victorian Parliament (in 2011) and the Australian Government (in 2008), identified the independent environmental impact assessment model, as exists in the Northern Territory and Western Australia , as the leading approach to environmental impact assessment. The reviews identified that the clear separation between the environmental impact assessment of proposals (by an independent EPA) from proposal approvals (issued by the Environment Minister) as a particular strength of the Western Australian model. Both reviews recommended that assessments of environmental impacts should be separated from Ministerial decisions to grant approvals.

In our view, and consistent with these reviews, the NT EPA is best placed to provide independent advice about the potential environmental impacts and risks of significant proposals through the environmental impact assessment process. The independence of the NT EPA from government processes ensures that its advice is not limited by, or subject to, political considerations which is a criticism which may, often unfairly, be made of departmental processes.

The NT EPA considers that the most appropriate Minister to issue the single environmental approval, on behalf of Government, is the Minister responsible for the Environment portfolio. The Environment Minister is not open to criticism of a potential conflict of interest for their role in considering environmental impacts of proposals as well as attracting and supporting industry development. Unlike other Ministers, the Environment Minister does not have a concurrent role to attract and support industry and development. An Environment Minister is also more likely to have a holistic view of the state of the Territory's environment, and the potential cumulative impacts of particular proposals on the environment, than development or central agency Ministers.

NT EPA recommendation 1

Government should adopt a framework for a single, whole-of-government environmental approval issued by the Minister for the Environment on the basis of an environmental impact assessment by the NT EPA.

4.2 Improvements to the NT's environmental impact assessment legislation

There are a number of weaknesses with the NT's existing environmental impact assessment legislation. These are comprehensively documented in the former EPA's 2010 report, *The Environment Protection Authority's Final Advice on Improving Environmental Assessment in the Northern Territory*, as are recommendations for addressing these weaknesses. The NT EPA has also highlighted weaknesses and options for improvement of the environmental impact assessment system in its reports on the Redbank Copper Mine and the preservation of the threatened biodiversity of the Howard sand plains site of conservation significance.

Ongoing weaknesses of the framework that are of particular concern to the NT EPA and that also were highlighted by respondents include:

- Not all proposals with potentially significant environmental impacts and/or risks are referred to the NT EPA for assessment. There is no mechanism to refer a proposal when there is no 'responsible Minister', i.e. a Minister able to provide a project approval through sectoral legislation (e.g. no referral of Port Melville).
- There is no mechanism for conducting an environmental assessment or providing an approval when there is no responsible Minister.
- Ecologically Sustainable Development (ESD) is not included as an objective in the environmental impact assessment legislation, and there is no overarching government policy or guidance for the achievement of ESD in the NT.
- Assessment processes are focused on new proposals or expansions of existing projects. The legislation does not allow strategic assessments of mining, infrastructure, petroleum or industrial proposals that consist of multiple projects or large-scale industrial, residential or commercial precincts to ensure long-term ecologically sustainable development.
- Assessment options are limited. The NT EPA may require a public environmental report (PER) or an EIS. There is no mechanism for the NT EPA to make recommendations about conditions to be placed on a project or for the management of a proposal, through environmental management plans (EMPs) based on a review of the referral information (commonly referred to as the 'notice of intent'; NOI). The lack of appropriate tiers of assessment limits the efficacy of the NT EPA in fulfilling its function and responsibilities.
- There is no mechanism to require conditions of approval to be reflected in the sectoral approvals issued by the responsible Minister and other relevant Ministers and authorities.
- There is no mechanism to ensure that conditions of approval are complied with and reported on.

The clear theme amongst all respondents was that the assessment system, and the legislation that supports it, requires significant improvement. Respondents generally consider that the legislation needs to be clear (i.e. provide certainty), ensure transparency, consider the cumulative impacts of development, consider health and social impacts, and contain timeframes that allow for appropriate consultation while not causing undue project delay. Of particular importance to industry groups was consistency with the Australian Government's *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) in order to streamline processes and minimise duplication and delays.

Most respondents identified that the NT should make better use of strategic environmental assessment processes. The Northern Territory Planning Commission cautioned balance in the use of strategic assessment processes; "taking into account that if too detailed a level of assessment is required, this could prove cost prohibitive and effectively prohibit necessary strategic land use planning from taking place"[2].

Examples of where the NT EPA considers strategic assessments would benefit environmental outcomes for the Northern Territory include:

- large new re-zoning proposals (e.g. Noonamah Ridge)
- multiple mine developments within a region and over time whether located on a single site (e.g. McArthur River Mine) or adjoining sites (e.g. the Western Desert Resources and Sherwin Iron proposals)
- infrastructure development, e.g. water distribution networks, that are staged over many years
- cumulative effects of maintenance dredging in Darwin Harbour
- cumulative effects of fishing or seabed mining.

In addition, the NT EPA has identified that proponents will sometimes seek to 'stage' their projects. Staging may include expanding a proposal over time or may include separating elements of what is an integrated proposal (e.g. separating consideration of the development of a waste rock dump for a mining activity from the development of its associated work camp facilities).

While the use of 'staging' (commonly referred to as 'salami slicing' in Europe) may be an appropriate commercial response in some circumstances, this practice has the potential to underestimate the potential environmental impacts and risks associated with a proposal, particularly cumulative impacts.

The MCA raised concerns about the NT EPA requiring multiple assessments for different component parts of a single proposal. The NT EPA agrees with the MCA that all the components of a single proposal should be assessed together. Decisions resulting in the NT EPA separately assessing different component parts of a single proposal are frequently a consequence of the staging of proposals and the current legislative regime which fails to appropriately regulate this issue. It is the NT EPA's clear preference that to the maximum extent practicable, all proposal elements should be referred to the NT EPA for a decision on whether the proposal should be subject to impact assessment.

The NT EPA considers the following particular features should be included in new environmental impact assessment legislation:

- The proponent to have responsibility for notifying the NT EPA of any proposal that has the potential to have a significant environmental impact and/or risk on the environment. This notification would take the form of an NOI containing information specified by the NT EPA through guidance material. This responsibility should be supported by appropriate penalties for non-compliance and powers for the NT EPA to require a proponent to submit an NOI when appropriate (i.e. 'call in' powers).

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[2] NT Planning Commission, *Environmental Regulatory Reform – NT EPA Draft Advice to Minister for Environment and Natural Resources*, 31 October 2016, p.2.

- In addition, the Environment Minister and other Ministers should be able to refer proposals to the NT EPA for consideration under the environmental impact assessment process where a proponent has not made a referral.

- To assist proponents to meet their responsibility, the NT EPA should be empowered to publish a list of exemptions from submitting an NOI (i.e. those small proposals that are unlikely to have potentially significant effects on the environment) and guidelines on when an NOI is or is not likely to be required (based on tests of environmental significance).

- There should be clear, publicly transparent guidelines for the NT EPA to make decisions about what level of assessment a proposal may require, based on an understanding of the proposal's potential environmental impacts and risks.

- The legislation should facilitate both single proposal assessments and strategic assessments. It should provide the NT EPA with the flexibility to determine the level of assessment based on, *inter alia*, the potential environmental impacts and/or risks of the proposal. Relevant considerations in determining the level of assessment may include: the number, type and complexity of environmental issues; the level of public interest in the environmental effects of the proposal; the usefulness and accuracy of information that has been provided to the NT EPA; the extent to which there is existing information regarding proposals of a similar nature; and the degree of confidence with which the impacts of the proposal are understood and the level of confidence in measures for mitigating those impacts. The NT EPA should be empowered to prepare guidelines identifying the different levels of assessment and the processes and procedures that are to be followed.

- The NT EPA should have authority to require a proponent, where practicable, to submit an entire proposal, i.e. all known proposal elements, for assessment.

- The NT EPA should be empowered to recommend conditions of approval. This should include requiring an EMP to be prepared to the satisfaction of the NT EPA or the requirements of other government agencies, and conditions to monitor, review, audit and report on an EMP.

- The NT EPA should be responsible for enforcing compliance with the conditions of the approval issued by the Environment Minister.

- Subsequent approvals from other sectoral agencies (e.g. under the *Mining Management Act* or the *Waste Management and Pollution Control Act* or the *Planning Act*) should be required to be consistent with the Environment Minister's primary, whole-of-government approval and conditions. Sectoral agencies would remain responsible for enforcing compliance with the conditions of their respective sectoral approvals.

- The system should be designed to maximise transparency and public participation in environmental decision making and management. It should promote transparency on behalf of the NT EPA, Ministers and proponents, and provide appropriate opportunities for public comment prior to decisions being made. The NT EPA and Ministers should publish Statements of Reasons for decisions.

- Proponents should provide annual compliance reports on the implementation of environmental approval conditions. These reports would be signed by the relevant CEO or their delegate and made public.

The draft advice included comprehensive recommendations for drafting new environmental impact assessment and approvals legislation. The Environmental Defenders Office (EDO) and the MCA provided detailed responses to those

recommendations. The NT EPA encourages Government to consider the views and issues raised by respondents to the NT EPA, and in particular the submissions by the EDO and MCA, when designing its new legislation.

NT EPA recommendation 2

The *Environmental Assessment Act* should be revised and updated to give effect to Recommendation 1.

NT EPA recommendation 3

The revised *Environmental Assessment Act* should allow the NT EPA to conduct strategic environmental assessments and provide strategic environmental advice.

4.3 Other legislative reforms

Measures to manage the environmental impacts of wastes and pollution, and the impacts of developments on the environment, are found in a range of NT legislation, including the *Mining Management Act*, *Petroleum Act*, *Planning Act*, *Waste Management and Pollution Control Act*, *Litter Act*, *Marine Pollution Act* and *Water Act*. Regulatory responsibilities are similarly divided between a range of regulators, including various Government departments, the Controller of Water Resources, the Chief Health Officer and the NT EPA.

Having multiple pieces of legislation targeted at managing the same, or very similar, issues can result in duplication and inconsistencies and may undermine the achievement of desired environmental outcomes.

Multiple environmental regulators cause community confusion. The public views the NT EPA as the primary environmental regulator responsible for regulating activities that may have an impact or present a risk to the environment and for preventing pollution and managing waste. The public does not generally distinguish between the NT EPA and other regulators, and a failure to act is considered the NT EPA's failure – regardless of whether the NT EPA has regulatory authority in relation to the particular issue.

The NT EPA is concerned about inconsistent treatment of different industry groups through the use of exemptions, such as the exemption for mining and petroleum activities under the *Water Act*. The NT EPA supports Government's proposals to remove this exemption.

The NT EPA considers that the issue and enforcement of licences to discharge or emit wastes to land, water, sea or air environments is a key function of the NT EPA and that the various legislative provisions authorising discharges and emissions to the environment should be consolidated into a single piece of legislation; nominally an Environmental Protection Act. This legislation should establish a general duty of care for all persons to protect the environment and avoid environmental harm. It should provide a 'level playing field' across industry types, and be based on the potential for environmental risk and/or impact rather than types of industry.

The NT EPA suggests that, operationally, powers to issue licences and ensure compliance with the new legislation could be delegated to those NT public servants with the appropriate training, skills and experience. For example, powers to issue licences related to the regulation of discharges to water as a consequence of a mining activity could be delegated to staff within the mining division of the Department of Primary Industry and Resources. Activities associated with ensuring compliance with licences would generally be performed by staff supporting the NT EPA, with significant compliance actions (e.g. prosecutions) needing to be approved by the NT EPA.

Under this framework, the NT EPA would be established as the single environmental regulator. It would prepare policies and other guidance material establishing its

expectations and requirements in relation to the management of the environment and the exercise of its powers and functions.

The NT EPA would maintain oversight and responsibility for the implementation of the legislation through performance appraisals and audits designed to ensure actions taken under delegated authority are in accordance with the NT EPA's expectations and requirements. This approach would ensure consistency in the treatment of different industries that may be licenced by different groups of NT public servants; i.e. consistency in the treatment of industries discharging to water whether a licence is issued to a mining operator by staff in the Department of Primary Industry and Resources or to a sewage treatment plant by staff in the Department of Environment and Natural Resources.

Few respondents addressed this issue specifically, although the overarching theme of 'simple but effective' legislation would apply. Environmental groups generally gave 'in principle' support to the NT EPA's proposal for consolidating legislation, while noting that this issue should be addressed in more detail as Government pursues its reform program.

The MCA cautioned that "risks regarding enactment of unsuitable legislation would be the same whether individual acts were amended or single acts were consolidated into a single comprehensive act…"[3]. The NT EPA agrees with the MCA in this regard, although considers that the risks of unsuitable, and potentially conflicting or duplicative legislation and inconsistencies in approaches between regulators, is reduced through consolidation of appropriate environmental management matters into a single act with a single regulator.

Respondents also reiterated the need for the legislative regime to be outcome-focussed, rather than prescriptive; and for approval conditions and requirements for monitoring and reporting to be risk-based.

NT EPA recommendation 4

The *Waste Management and Pollution Control Act* should be revised and updated to provide for the NT EPA to issue all licences and approvals to discharge or emit wastes to land, water, sea or air environments.

NT EPA recommendation 5

The *Environmental Assessment Act* and the *Waste Management and Pollution Control Act* should be revised and updated as described above. In addition, some other waste management and pollution control legislation should be consolidated into a new Environmental Protection Act to be administered by the NT EPA.

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[3] Minerals Council of Australia (NT Division), *Submission on Draft Advice: Response to Dr Allan Hawke's Review of NT Assessment and Approval Processes*, 6 October 2016, p.9.

4.4 NT EPA role, functions and governance

The credibility and value of the NT EPA derives from it being respected and independent. The independence of the NT EPA derives from three key elements:

1. the NT EPA cannot be directed by the Minister for Environment and Natural Resources
2. NT EPA members are not public servants
3. transparency in the NT EPA's requirements and decisions.

The NT EPA's board members must have the necessary experience and expertise to make, and take full responsibility for, decisions and recommendations on environmental impact assessments, environmental approval decisions, approval conditions and enforcement actions.

The staff who support the NT EPA are public servants under the management of the CEO of the Department of Environment and Natural Resources. Some respondents raised concerns that the NT EPA is supported by public servants and questioned whether this reduces the NT EPA's independence. The NT EPA's view is that, provided the CEO of DENR continues to provide appropriate staff and resources to support the NT EPA's statutory obligations, this arrangement can function well and does not undermine the NT EPA's independence. While recognising the limitations of a small jurisdiction like the NT, the NT EPA considers it is preferable for the staff that provide services to the NT EPA not to be required to concurrently undertake activities on behalf of other NT Government regulators (such as the Controller of Water Resources) and that they are physically separated from other areas of the Department (and preferably in a separate building).

Other respondents were concerned that the NT EPA is insufficiently accountable to government and the community. In this regard, there are a number of 'checks and balances' in the management system to ensure the NT EPA is accountable for its actions. The NT EPA currently publishes a statement of reasons for its decisions to require a PER or EIS as part of the environmental impact assessment process. This acts to ensure that the NT EPA's advice is based on best scientific knowledge available, is well reasoned and considered and defensible.

Although the Minister for Environment and Natural Resources cannot direct the NT EPA, the Minister has the legislative responsibility to consider the NT EPA's advice and recommendations but can make a different decision. If the Minister makes a different decision, the Minister then provides a separate Statement of Reasons, applying appropriate judgement as an elected official in a transparent way.

The NT EPA is also subject to a high level of transparency, with each piece of legislation under which the NT EPA has responsibilities including requirements for the NT EPA to act transparently; e.g. by publishing guidelines, licences and other material issued under the *Waste Management and Pollution Control Act* and assessment related documentation including draft terms of reference for EISs and reasons for decisions. This ensures that the NT EPA is acting in an accountable and consistent manner, and provides opportunities for the Government and community to question the NT EPA when it is not.

The NT EPA's website provides guidelines and other information documents to assist proponents and the public to understand the NT EPA activities. This includes guidelines and other material explaining the NT EPA's requirements in assessing proposals and licence applications; information about the progress and outcome of environmental impact assessments; licences, and reports and management plans submitted in

accordance with licence conditions; and information about strategic advice provided to the Minister for Environment and Natural Resources.

The NT EPA has always published a Statement of Reasons for all proposals where an environmental impact assessment is required. To further improve the level of transparency of its decision making the NT EPA has decided to also publish Statements of Reasons for its decisions that environmental impact assessment is not required for certain proposals, even though there is no legislated requirement to do so.

Most respondents were supportive of the NT EPA retaining the three existing elements of its role, i.e. its roles as government's independent:

- environmental impact assessor
- environmental regulator for waste and pollution matters
- advisor on matters of significance to the Territory's environment.

As noted previously, respondents highlighted the need for the NT EPA to seek and obtain expert advice from a range of government agencies to fully inform its decision-making. The NT EPA currently consults with sectoral agencies throughout the environmental impact assessment process, and consults with sectoral agencies when considering licence applications under the WMPC Act where relevant and appropriate.

The NT EPA strongly agrees that continued access to the expertise of sectoral agencies is essential to support the NT EPA's functions and ensure that its advice to Government is based on the best available information while avoiding unnecessary duplication across government.

NT EPA recommendation 6

The NT EPA responsibilities should continue to involve conducting environmental impact assessments for proposals that may have a significant impact on the environment, the regulation of activities that may have significant impacts or risks to the environment, and the provision of strategic advice on matters of environmental importance.

NT EPA recommendation 7

The NT EPA should be an independent authority comprising a board of experts appointed on the basis of their experience, knowledge and ability to meet the objectives and responsibilities of the NT EPA.

Attachment A: Proposed assessment and approvals process

Process step	Proposed Requirement	Comment
Proposals to be referred to the NT EPA	• Proposals that could have a potentially significant effect on the environment must be referred (notified) to the NT EPA via a Notice of Intent (NOI). • Proponents should be responsible for making referrals. Other decision-making/ responsible authorities or the Minister should have the power to make a referral in the event a proponent fails to refer the proposal. • The NT EPA should be able to require a proponent to submit an NOI.	• The NT EPA has prepared Guidelines that explain when an NOI is required to be submitted, how to prepare an NOI and the contents of an NOI. • The Guidelines also contain checklists that enable proponents to identify proposals that are most likely to be exempted from the environmental assessment process. For those cases, environmental protection is achieved via regulations and approvals from other statutory agencies, and the general duty of environmental care.
NT EPA to determine whether environmental impact assessment is required	• The NT EPA determines whether environmental impact assessment is required and, if so, the level of assessment. • The NT EPA will be required to prepare and publish a Statement of Reasons for its decisions. Where the NT EPA determines that assessment is not required, the Statement of Reasons will include information outlining how and by whom the potential environmental impacts and risks will be regulated and managed. • If a proposal is considered by the NT EPA to involve potentially significant environmental impacts and risks, then a detailed, public process of environmental impact assessment will be required.	• The NT EPA will base its decision on whether to assess a proposal on the information submitted with the proposal, information provided in any further requests for information, advice from departmental officers servicing the NT EPA, advice from experts as required, investigation and inquiries conducted by the NT EPA, the NT EPA's consideration of the significance of the proposal and the accumulated experience and judgement of the NT EPA Board. • If the proposal is not considered by the NT EPA to involve potentially significant environmental impacts and risks, and the NT EPA considers that the risks can be managed by an Environmental Management Plan (EMP) and additional conditions recommended by other responsible agencies (e.g. planning, health, transport, heritage, parks or Worksafe NT) then assessment will generally not be required.

Process step	Proposed Requirement	Comment
		Conditions for managing the proposal will be set by other agencies as part of the various sectoral approvals for the proposal.
NT EPA to conduct an assessment of the proposal	• The NT EPA will conduct the assessment process. • The level of assessment required will be determined on the basis of the potential impacts/risks to the environment. A range of assessment options should be available. • Proponents should be required to consult with the community and government agencies. Draft documents should be prepared and published by the proponent and made available for community and government agency review for a reasonable period. • Documents will be assessed by officers of the department supporting the NT EPA, taking into account the submissions from the community, non-Government organisations, industry and relevant government agencies. Expert advice, including peer review, will be obtained where required to assist in the assessment.	• The NT EPA supports a tiered-based assessment system that, at a minimum, supports: - assessment on proponent information (NOI and any additional information) - assessment by environmental review - strategic environmental assessment - assessment by inquiry. • Existing requirements relating to the preparation of Terms of Reference (TOR), such as releasing draft TOR for public comment, should be retained for any environmental review process and will be required for strategic assessments.
NT EPA Assessment Report	• Staff will prepare a draft Assessment Report for consideration by the NT EPA Board. • The NT EPA Board undertakes an independent review of the draft Assessment Report, and takes full responsibility for the final Assessment Report, including recommending whether the proposal should be approved for implementation together with any conditions of approval.	• The NT EPA has published its Policy on Recommendations made in Assessment Reports. • The NT EPA will prepare additional guidance as required, e.g. to explain when a Statement of Unacceptability may be prepared.

Process step	Proposed Requirement	Comment
	• The final Assessment Report is then submitted to the Minister for the Environment. • If the NT EPA considers that a proposal is environmentally unacceptable, then it will recommend that the project not be approved. In these circumstances, the NT EPA will prepare and submit to the Minister a 'Statement of Unacceptability'. The Statement will be prepared in consultation with the proponent. • Assessment Reports and Statements of Unacceptability will be published. • A copy of the Assessment Report and Minister's decision and Statement of Reasons, and approval (if issued) will be published.	
Minister's decision and approval	• The Minister will make a decision to approve, or not approve, the proposal. The Minister consults with her/his Ministerial colleagues on whether the proposal should be approved and the final conditions of approval before making the decision. • If the Minister decides to approve the proposal with conditions in accordance with the NT EPA's recommendations, the Minister's reasons may simply reference the NT EPA's recommendations. • If the Minister for the Environment determines that the proposal is environmentally unacceptable, the proposal cannot proceed. • If the Minister chooses to issue an approval following the NT EPA's submission of a Statement of	• The NT EPA recommends that appropriate guidance be developed to assist the Minister fulfil his/her responsibilities under the legislation.

Process step	Proposed Requirement	Comment
	Unacceptability, the Minister may direct the NT EPA to provide approval conditions. • If the Minister decides to reject the NT EPA's recommendations, or substantially changes the draft conditions of approval, the Minister should be required to provide a Statement of Reasons to the NT Parliament within six sitting days of making the decision to reject or change. • Any sectoral or other subsequent approvals necessary for the proposal to be implemented must be consistent with the primary conditions of environmental approval determined by the Minister. • Changes to the approved proposal and approval conditions should be clarified through legislation and delegated to the NT EPA by the Minister, as long as the environmental effects of the changes are not significantly different from, or in addition to, the effects of the original proposal.	
Implementation of the proposal	• The proponent may implement the proposal consistent with the Minister's environmental approval and any sectoral approvals. • The NT EPA would be responsible for compliance and enforcement activities associated with ensuring the conditions of the approval are met.	• The NT EPA has published its Compliance and Enforcement Policy and prepares annual compliance activity plans.