

ENVIRONMENTAL ASSESSMENT GUIDELINES

When a Notice of Intent is not required for development proposals submitted under the *Planning Act*

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1	Introduction.....	3
1.1	Purpose.....	3
1.2	Background.....	3
1.2.1	Environmental Impact Assessment	3
1.2.2	Notice of Intent	4
2	Legislative Requirements.....	4
2.1	Northern Territory Legislation	4
2.1.1	Cultural & Heritage	4
2.1.2	Land Use.....	4
2.1.3	Industry	4
2.1.4	Water Quality & Biodiversity Conservation	4
2.1.5	Air Quality, Noise and Waste Management	5
2.1.6	Safety and Navigational	5
2.2	Commonwealth Legislation	5
2.2.1	Environment Protection and Biodiversity Conservation Act	5
3	Limitations	5
4	When to refer a proposal.....	6
5	When not to refer a proposal	6
6	Further information.....	7

1 Introduction

1.1 Purpose

The objective of these guidelines is to assist proponents of development projects, Development Consent Authorities and the Planning Commission in determining when development proposals submitted under the *Planning Act* **will not** require referral and assessment under the *Environmental Assessment Act* (EA Act). The aim is to provide greater clarity and certainty around the environmental assessment process, and to streamline the roles and responsibilities of government and development proponents. Only some development projects require environmental impact assessment.

These Guidelines are provided in keeping with the Northern Territory Environment Protection Authority's (NT EPA) obligations under the *Northern Territory Environment Protection Authority Act* to:

- encourage community involvement and engagement;
- ensure transparent processes and provide certainty to business; and
- make guidelines about its administrative practices and procedures.

1.2 Background

1.2.1 Environmental Impact Assessment

The Northern Territory's *Environmental Assessment Act* and *Environmental Assessment Administrative Procedures* form the basis of the environmental assessment process and are administered by the NT Environment Protection Authority.

Environmental Impact Assessment (EIA) is a predictive tool for identifying and characterising the environmental impacts and risks associated with a proposed development. EIA is ideally applied at the early planning and design stages to increase the likelihood of both ecologically sustainable development and the protection of environmental values. The Environmental Impact Assessment Process (<https://ntepa.nt.gov.au/environmental-assessments/guide-to-the-eia-process-in-the-northern-territory>) provides the NT EPA with the information needed to assist consideration of and decisions on matters that could significantly affect the environment. It enables environmental issues to be considered in a balanced way with other aspects involved in determining the acceptability of a proposal and it ensures that unnecessary and unacceptable harm to the environment can be avoided.

For these reasons it is important that any potential environmental impacts and constraints are identified early in the planning and design of any major project. Early identification ensures that environmental assessment is integrated with engineering and economic feasibility studies in the project formulation so as to produce the best and most appropriate project design, including monitoring and management options.

If a project requires assessment under the EA Act, it is undertaken in a systematic and transparent manner with opportunities for public review and input. The proponent is required to prepare and submit documentation describing the proposal, the risks and potential environmental impacts and how the risks would be controlled and impacts managed. Concerns raised by Government and the public during the assessment need to be addressed by the proponent.

1.2.2 Notice of Intent

The first step in the Northern Territory's EIA process is submission of a Notice of Intent (NOI) to the NT EPA. These guidelines provide advice on when preparation and submission of a NOI is not required.

2 Legislative Requirements

EIA may involve assessments and approvals in relation to matters regulated under a range of Northern Territory and Commonwealth legislation. Relevant legislation includes that listed below. The list is indicative of matters that may require assessment. It is not exhaustive.

Proponents and assessors should carefully review projects to determine legislated requirements relevant to particular projects.

The legislation listed has been used in developing these Guidelines.

2.1 Northern Territory Legislation

2.1.1 Cultural & Heritage

- *Northern Territory Aboriginal Sacred Sites Act*
- *Heritage Act*

2.1.2 Land Use

- *Planning Act*
- *Aboriginal Land Act*
- *Crown Lands Act*
- *Soil Conservation and Land Utilisation Act*
- *Bushfires Act*
- *Pastoral Land Act*

2.1.3 Industry

- *Fisheries Act*
- *Petroleum (Submerged Lands) Act*
- *Petroleum Act*
- *Energy Pipelines Act*
- *Mining Management Act*

2.1.4 Water Quality & Biodiversity Conservation

- *Water Act*
- *Biological Control Act*
- *Territory Parks and Wildlife Conservation Act*
- *Fisheries Act*
- *Weeds Management Act 2001*

- *Marine Pollution Act*
- *Public and Environmental Health Act*

2.1.5 Air Quality, Noise and Waste Management

- *Waste Management and Pollution Control Act*
- *Public and Environmental Health Act*
- *Marine Pollution Act*

2.1.6 Safety and Navigational

- *Marine Act*
- *Darwin Port Corporation Act*
- *Work Health and Safety (National Uniform Legislation) Act*

2.2 Commonwealth Legislation

Some proposals may need consideration under Commonwealth legislation. Those Acts include the *Aboriginal Land Rights (Northern Territory) Act 1976*, *Native Title Act 1993*, *Environment Protection (Sea Dumping) Act 1981*, *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and *Historic Shipwrecks Act 1976*.

2.2.1 Environment Protection and Biodiversity Conservation Act

The Commonwealth's EPBC Act provides protection for matters of national environmental significance (NES). The Commonwealth agency determines whether a proposal could potentially affect a NES matter and whether it requires assessment and approval under the EPBC Act. The NES matters are:

- World Heritage properties;
- National Heritage places;
- Ramsar wetlands of international importance;
- Nationally threatened animal and plant species and ecological communities;
- Internationally protected migratory species;
- Commonwealth marine areas;
- Great Barrier Reef Marine Park;
- Nuclear actions (including uranium mines); and
- a water resource, in relation to coal seam gas development and large coal mining development.

The EPBC Act webpage has a search tool that helps determine whether NES matters occur in the area of proposed activity. To generate a map and environmental report on the area refer to:

<http://www.environment.gov.au/erin/ert/epbc/index.html>

3 Limitations

This Guidance is:

- confined to generic matters relating to when a NOI is not required and does not address more proposal-specific issues that may be of significance;
- not an instrument for predicting outcomes of deliberations by the NT EPA;
- designed to promote a more certain and consistent approach to assessments;
- intended to apply to proposals prior to the proponent submitting the proposal to NT EPA for environmental assessment; and
- a guide only. Proponents are responsible for complying with all laws that relate to the proposed activity.

The Northern Territory Environment Protection Authority (NT EPA) has prepared this document in good faith, exercising all due care and attention, but no representation or warranty, express or implied, is made as to the relevance, completeness or fitness for purpose of this document in respect of any particular user's circumstances. Users of this document should satisfy themselves concerning its application to their situation and, where necessary, seek expert advice.

4 When to refer a proposal

Development applications submitted under the *Planning Act*, such as for rezoning, residential, transport infrastructure, public utility and industrial projects, may require assessment under the EA Act if they are likely to have a significant effect on the environment. Section 46(3)(c) of the *Planning Act* provides that a development application must contain a copy of any EIS or PER required under the EA Act and the results of any assessment of the EIS or PER under that Act. In addition, s 51(g) of the *Planning Act* states that the consent authority must take into account those factors in considering a development application.

Where there is the potential for significant risks to the environment a referral or NOI for assessment under the EA Act is required, before approval can be granted under the *Planning Act*. A NOI may be directly provided to the NT EPA by a development proponent. Alternatively, a project can be referred to the NT EPA for assessment on behalf of a proponent, by the Department of Lands, Planning and the Environment (DLPE) through Development Assessment Services, a Development Consent Authority or the Planning Commission.

Developments **will not** require referral under the EA Act providing certain criteria have been met, as outlined below.

5 When not to refer a proposal

Development applications made under the *Planning Act* **will not** generally require referral and assessment under the EA Act when all criteria, where applicable, in Attachment A **are fulfilled** i.e. the answer to all questions is either "YES" or "N/A". Proposals will require a NOI when any of the criteria **are not fulfilled** i.e. the answer to one or more questions is "NO". Advice can be sought from the NT EPA in cases of uncertainty. Alternatively a proposal could be submitted to a Development Consent Authority for determination as to whether a proposal would be referred to the NT EPA for consideration.

The NT EPA retains the right to call in projects for assessment under the EA Act if relevant steps cannot or are unlikely to be taken to minimise and/or mitigate the environmental effects of development proposals.

Specific conditions or notations may need to be listed on development permits issued under the *Planning Act*, to ensure matters listed in Attachment A, are adequately dealt with by proponents.

6 Further information

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ATTACHMENT A

Assessment Criterion	Response (Yes, No, N/A)
<p>The proposed development is unlikely to have potential to:</p> <ul style="list-style-type: none"> • cause pollution of freshwater/marine waterways, groundwater, soils and/or air; • cause detrimental impacts on aquatic fauna consumed as food; • significantly obstruct or alter existing waterways or groundwater flows; and/or • involve significant ground or surface water extraction. 	
<p>Proposed stormwater management is compliant with and sufficient to meet Department of Land Resource Management requirements and will be implemented to the satisfaction of the Development Consent Authority (DCA).</p>	
<p>Site suitability assessments submitted to the DCA have shown that significant soil erosion, soil salinity, flooding or disturbance of acid sulphate soils is unlikely.</p>	
<p>If required an Erosion and Sediment Control Plan has been prepared consistent with Department of Land Resource Management (DLRM) guidelines, and will be implemented to the satisfaction of the DCA.</p>	
<p>Land use history indicates low potential for mobilisation of contaminants, or a site contamination auditor’s report accepted by the NT EPA and submitted to the DCA has shown the land is suitable for the proposed use.</p>	
<p>Noise, Dust and/or emissions to air Management Plans, where required by the DCA, are registered with the NT EPA.</p>	
<p>Flora and fauna assessments including review of proximity to Sites of Conservation Significance, to the satisfaction of the DCA, indicate that no:</p> <ul style="list-style-type: none"> • threatened species listed under the <i>Territory Parks and Wildlife Conservation Act</i>; or • habitat of potential significance to the above; <p>are within, or in proximity to, the proposed development site; or</p> <ul style="list-style-type: none"> • there is little potential for significant impact to biodiversity and a Biodiversity Management Plan provides for the adequate protection or relocation of threatened flora or fauna and is endorsed by the DLRM. 	
<p>The proposed development site is not located within, or in close proximity to, a National Park, Conservation Reserve or Marine Park or Reserve.</p>	
<p>Land clearing will be managed in accordance with the NT Land Clearing Guidelines, to the satisfaction of the DCA.</p>	
<p>A Weed Management Plan has been prepared consistent with DLRM guidelines and will be implemented to the satisfaction of the DCA.</p>	

Environmental Assessment Guidelines – Planning

<p>An Authority Certificate application has been submitted to the Aboriginal Areas Protection Authority and once issued, the Certificate conditions will be complied with. Authority Certificate Requests can be made from the form on the AAPA website: www.aapant.org.au.</p>	
<p>A cultural heritage survey has been done and any identified heritage values will be managed, in consultation with the Heritage Branch of the DLPE and to the satisfaction of the DCA.</p>	
<p>Environmental health and health impact assessments have been done and any identified issues will be addressed, in consultation with the Department of Health and to the satisfaction of the DCA.</p>	
<p>Work health and safety assessments have been done and any identified issues will be addressed, in consultation with NT WorkSafe and to the satisfaction of the DCA.</p>	
<p>The proposed development will not require land reclamation, dredging or mangrove clearing.</p>	
<p>Impacts on transport and infrastructure have been addressed to the satisfaction of the relevant NT Government agencies, and where appropriate local government.</p>	
<p>The proposed development site is:</p> <ul style="list-style-type: none"> • greater than 1 kilometre from the NT coastline; or • less than 1 kilometre from the NT coastline and will involve redevelopment of a previously used site, without mobilisation of contaminants from a past land use. 	
<p>The requirement to refer the proposed development under the EPBC Act has been considered, and it has been determined that a referral is not required or the proposal has been referred and the Australian Government Minister has determined that further assessment is not required (i.e: not a controlled action or not a controlled action – particular manner).”</p>	
<p>There is little potential for the proposed development to cause significant social or economic impacts, or significant impacts on surrounding land users.</p>	