

Submission to the draft Northern Territory Environment Protection Authority guidelines

Prepared by

The Environment Centre NT

& the

Arid Lands Environment Centre

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1. General comments on the guidelines

The Environment Centre NT and the Arid Lands Environment Centre welcome the opportunity to comment on the draft NT EPA guidelines. We have addressed our concerns with each of the separate guidelines within this document under different headings. Overall, we consider that the guidelines do not currently promote the substantive goal of the EIA process; to avoid and or minimise environmental harm from development activities. In addition, they do not reflect ESD principles or reflect the EPA's own recommendations in the 2010 report 'Final advice on improving environmental assessment in the Northern Territory'¹. Please consider the following points of concern on behalf of the Environment Centre NT and the Arid Lands Environment Centre.

There is a lot of political rhetoric nationally and in the Northern Territory that current environmental regulations are an unnecessary regulatory burden that is hampering economic development. From our perspective this is simply not true, environmental regulation in the NT is arguably already weaker than other jurisdictions. The EIA process is critical to ensure development in the NT minimises environmental harm, maximises social and economic benefits and should be seen as a valuable planning tool for development proposals.

The basis for improving the efficiency of the environmental assessment process should be clearly explained to the community. A recent article in The Conversation shows that claims of cumbersome delays in the environmental approval process are highly over exaggerated². Conversely, the environmental approval process should be expected to take time and resources if it is to achieve its overall objective of achieving sustainable development. However, there are efficiency gains to be made at different stages in the process without reducing its efficacy. Our concern with these guidelines is that instead of increasing efficiency the guidelines seem to focus on reducing the number of projects being referred to the EPA for consideration. It is critical that the EPA retains the responsibility for determining whether a project requires assessment under the EAA.

We understand the need for clear guidelines that allow a proponent, government agency and the community to have some insight into what is considered by the EPA during the screening process. However, reviewing these draft guidelines it is not clear why some guidelines have utilised an assessment criterion approach and scant in detail, whilst other guidelines are developed more like generic information on how to prepare an EIS. It is also unclear why certain guidelines were developed and on what basis. The background of the development of the guidelines was not made clear to the public.

Half of the guidelines seem to focus on the 'screening' stage of the EIA process, which is helping proponents determine whether a project might have significant environmental impacts. The other half seem to be more orientated to the 'scoping' stage which focus more on the potential impacts and the significant issues that are likely to be important in decision making. It is unclear why this inconsistency is there.

Four of the guidelines utilise an assessment criterion approach that acts as a list of triggers for determining whether or not a proposal will need to be referred to the EPA.

¹ <http://www.territorystories.nt.gov.au/handle/10070/243123>

² <http://theconversation.com/factcheck-does-it-take-three-years-to-get-approval-for-a-mine-15702>

This severely compromises the integrity of the EAA, and the powers and function of the EPA if decisions on referral are placed back on the proponent or the relevant government department. It is clear within the act that “the NT EPA determines which proposals should be subject to assessment under the Act and also decides on the appropriate level of assessment in each case”.

This approach requires pre-emptive decisions to be made about the possibility of significant impacts at a stage when the available evidence is unlikely to be there. The process of identifying potential significant impacts on the environment is discretionary at the early stages of the EIA process. The guidelines do not appear to make any clearer what constitutes a ‘significant impact’, or offer examples of types of projects where an EIA might be required. Such an approach does not appear to improve implementation of the EAA, and focuses too much on avoiding assessment. It is important that this assessment is based on the best available science and clearly outlined by the proponent in a notice of intent. There should be more of a focus on the likelihood of impact and a risk based assessment rather than a simple yes/no checklist. These guidelines appear to reduce the responsibility of the EPA to assess projects requirements for assessment.

Efficiency gains can be made in the environmental referral process, but this should not be through a watering down of assessment requirements. Referral of projects could be more objectively triggered using a spatial database that combines regional plans, biophysical information and environmental values, social and economic considerations. Each region could have different thresholds for different activities. This would provide greater clarity and more rigour to referring projects and would reflect the EPA’s own recommendations:

“The determination of the need for referral of a “proposed action” for assessment under the Environmental Assessment Act should be supported by a series of triggers for assessment established in schedules under the Act. The schedules should serve the purpose of specifying classes of activities, or types of projects, that by their nature, scale, or location could have a significant impact on the environment; identifying localities of environmental or cultural value; identifying concerning cumulative environmental issues.”

Furthermore, it is our recommendation that referrals for projects be open to any person as is the case in the broad referral powers of Western Australia and Victoria³. This would give strength to the EPA’s own recommendation that the *Environmental Assessment Act* should facilitate and encourage the realisation of the opportunity that comes with public involvement and engagement at every stage in the EIA process.

Evaluating alternatives is an important step in the EIA process that is not mentioned in the guidelines. Each proposal needs to assess in the development of an EIS the consideration of alternative locations, operations and processes as well as the scale of the proposal. It should also include a ‘do nothing’ option. The guidelines should also make clear to the proponent the stages in the EIA, including the post approval stages of monitoring and auditing. This stage in the EIA process is traditionally the weakest and it should be given more strength in the guidelines.

Strategic Environmental Assessments are an area of environmental policy that has been seriously lacking in the Northern Territory, despite its potential to offer efficiency gains,

³ http://www.oup.com.au/titles/higher_ed/geography/9780195576887

address cumulative impacts and address key community concerns. We recommend that this could be undertaken on areas likely to have a large cumulative impact such as shale gas and the development of the Darwin harbour. This reflects the EPA's own "final advice on improving environmental assessment in the NT" where it states as a key recommendation:

The Environmental Assessment Act should be revised to support strategic assessment, specifically in respect to:

- a. assessing broader scale development opportunities and environmental impacts (at the regional or catchment level);*
- b. assessing cumulative impacts; and*
- c. considering a range of potential alternatives (at project planning and design phase).*

It is also unclear through the guidelines how bilateral agreements will operate and what the proponent needs to know about these approaches. Reference is made to the EPBC Act in most guidelines, however it is not made clear how a bilateral process may affect the EIA process for the proponent. We also wonder whether these current guidelines are considered satisfactory under the accredited bilateral agreement between the Commonwealth and the Northern Territory Government.

Overall, more informative background to the community on the purpose of the EPA guidelines and the scope of what they aim to achieve in the EIA process would have been useful. The lack of a consistent format and approach in the guidelines creates only further confusion. Similarly, it is unclear why certain guidelines have been developed and others have not. For example, clarity on why a decision was made to develop terrestrial biodiversity guidelines, rather than broader guidelines that capture marine biodiversity also. Guidelines should also have been developed for greenhouse gases, as is the case in the set of EPA guidelines issued by the WA EPA⁴. Most of the guidelines are seriously lacking in this area and this needs to be addressed.

2. Guidelines for land clearing proposals submitted under the Pastoral Lands Act

From our perspective, environmental regulation around land clearing remains highly inadequate. Despite years of campaigning alongside Indigenous groups, fisherman and other groups, the Northern Territory still does not have a Native Vegetation Management Act (NVMA). In the absence of a specific NVMA, we must rely on the weak environmental protection offered under the NT Land Clearing Guidelines and on the potential for assessment under the EAA.

Strong land clearing regulation is critical in the face of development pressures from expanding agricultural production, expanding urban and regional population centres, mining and increased gas and oil exploration activities. With all of this in mind, we would like to highlight the importance of these guidelines in strengthening the potential of the

⁴ http://www.epa.wa.gov.au/EPADocLib/1016_GS1202.pdf

EAA to deal with land clearing and provide for integration between the EAA and the Pastoral Lands Act.

Land clearing regulation is not about unnecessary green tape that is hampering economic development. It is about ensuring that proper regional land use planning occurs and areas of conservation significance are retained in a changing landscape. It is about protecting the largest intact tropical savanna ecosystems in the world and associated habitats, rivers and waterways, carbon stocks and biodiversity values.

To date, large-scale land clearing has rarely invoked the EIA process under the EAA. For example, a recent large scale application for clearing 18, 000 hectares of native vegetation in the Daly catchment was carried out under the Pastoral Lands Act and was not referred to the EPA for proper assessment.

The guidelines should be more explicit about thresholds that automatically trigger referral of land clearing applications to the NTEPA. Such a large area of land to be cleared in one application mentioned in the above example should have triggered a proper environmental assessment process. Furthermore, as per the EPA's own recommendations in the final advice for improving environmental assessment report, land-clearing applications could also be triggered by the use of regional plans and locality schedules. This would ensure that even small applications have the potential to be referred to the EAA if they are likely to have a significant environmental impact.

We also want to highlight the absence of a criterion relating to significant greenhouse gas emissions from land clearing, and believe this should be a basis for referral. Land clearing native woodlands for improved pasture and crops is a significant reduction in the carbon capacity of the landscape, and major greenhouse gas pollution occurs even when small areas of native vegetation are cleared. For example, clearing 200 hectares of woodland would create approximately 34,000 tonnes of greenhouse gas pollution⁵. This should be viewed as a significant environmental impact that needs to be listed in the criterion.

Overall, the approach in the guidelines of providing a criterion to determine environmental impacts and need for referral is of serious concern. Such an approach does not provide for an independent assessment of environmental impacts if it is to be assessed by the proponent and/or the pastoral lands boards, nor does it offer the public trust in the process of transparent referrals. It is important that each application can be referred to the EPA by any person, and not just confined to the proponent, the pastoral lands board and the EPA. Much of the criterion will be judged in the absence of good baseline data, thus it is critical that this judgement is undertaken in an unbiased way.

At the moment the guidelines do not strengthen the role of the EPA to minimise environmental harm from land clearing.

⁵ Law, R, and Blanch, S, 2009. Estimated greenhouse gas emissions from land clearing in the Daly River Catchment, Northern Territory, Australia. Simulated emissions using the National Carbon Accounting System, and imputed carbon pollution costs. Report prepared by WWF-Australia and the Environment Centre NT, Sydney, 20pp

3. Guidelines for development proposals submitted under the Planning Act

These guidelines contain much of the same content as the Land Clearing guidelines and so many of our concerns regarding the use of the assessment criterion remain here. Supporting evidence needs to be submitted when determining the response to the triggers in these guidelines and this should be made clear in the guidelines. Otherwise from a community perspective, there is the perception that a proponent may simply interpret subjectively the criterion to suit its needs, thus severely compromising the EIA process. Again it is important that the EPA retains the decision on whether a proposal needs referral.

Furthermore, this checklist provides requirements of decisions made by other government agencies such as the development consent authority. Such an approach is unlikely to improve the efficiency of the EIA process if a project is not referred for environmental assessment at the outset. The criterion refers to plans which would have already been developed prior to a notice of intent stage for approval by a different agency. This is likely to frustrate proponents who would then have to duplicate and or adjust these plans and processes in line with the EIS or PER guidelines subsequently issued from the EPA. Instead the proposal should be referred to the EPA at the outset for assessment of whether or not it should undergo the EIA/PER process.

If an assessment criterion approach is to be maintained, then reference should at least be made to existing area plans and zoning provisions under the NT Planning Scheme. For instance, a specific reference could be added to the section that “a proposed development site is not located within or in close proximity to a ...conservation zone or open space zone under the NT Planning Scheme.”

Also it should be made explicit that all types of development applications that are likely to have an environmental impact are potentially subject to the EAA. This is in light of the fact that there have been a number of recent “Exceptional development permits” under the planning scheme that should have triggered the EAA but did not.

4. Guidelines for mining exploration or production proposals submitted under the Mining Management Act

It is of great concern that the mining exploration and production proposals guidelines are essentially the same as the guidelines for land clearing and development proposals. For an area as complex as mining, a sector with enormous potential for environmental impacts and a focus of community concern these guidelines are irresponsibly scant in detail. Firstly, there should be separate guidelines for exploration activities compared to production activities, as these activities will differ greatly in scale, impacts and environmental considerations.

Similar concerns exist with the use of the assessment criterion method for referral. This promotes pre-emptive decisions being made about significant impacts without adequate information and does not promote the use of the precautionary principle.

Most importantly the guidelines are far too generic and vague for a proponent to properly assess whether a project is likely to require environmental assessment. Mining activities are highly varied and it is assumed that these guidelines will capture most activities that fall under the Mining Management Act such as sea bed mining, mineral sands mining, gold mining, iron ore mining etc. The potential environmental impacts and considerations will differ significantly depending on the type of mining and its landscape context. Sea bed mining for instance, although currently under a moratorium, is likely to be covered by this guideline in the absence of any other, and would require a different set of criterion to the ones currently in this draft.

If the assessment criterion approach is to be retained then it needs to be broadened to capture the full extent of mining impacts. There needs to be reference to at the least: the potential for marine impacts, beyond that captured by the EPBC act; the potential for significant greenhouse gas emissions; the potential impacts from land clearing; the potential impacts from mining waste products. It is unclear for example why land clearing is a criterion for the petroleum guidelines but not the mining guidelines. It is strongly recommended that these guidelines be redrafted and considerably more extensive in their scope to capture the full range of activities and likely impacts.

5. Guidelines for onshore petroleum exploration or production proposals submitted under the Petroleum Act

These guidelines are essentially the same as the mining exploration and production guidelines, so the concerns raised above apply here also.

Current environmental regulations under the Petroleum Act around oil and gas exploration permits are highly inadequate. These sets of guidelines are critical to strengthen interaction with the Petroleum Act, and offer stronger protection for the environment from oil and gas exploration and development. In particular, the growth of unconventional shale gas developments in the NT will pose significant environmental impacts. Unconventional shale gas and fracking have caused great concern amongst farmers and the wider community in eastern states, and other countries. These practices may threaten landscapes, water resources, sites of cultural significance to Indigenous people, pastoral lands, as well as the climate due to the substantial carbon pollution generated by the industry.

The EIA process and the integrity of the EAA will be severely compromised if environmental concerns from shale gas are not addressed. It is imperative that these guidelines clearly detail the likely impacts from these types of activities, and allow for consideration of cumulative impacts of exploration.

Although outside the scope of these guidelines, it is critical that a Strategic Environmental Assessment be carried out on petroleum and gas exploration in the Northern Territory, with a particular focus on shale gas. Conducting an SEA would

address the high level of community concern, consider the cumulative impacts of exploration, and lead to efficiency gains in future oil and gas development proposals.

In the absence of an SEA, these current guidelines are again highly inadequate and weaken the objectives of the EAA and the EPA. It is critical that all applications for exploration and production under the Petroleum Act are referred to the EPA for consideration under the EAA. It is unacceptable to leave this to the proponent and the Department of Mines and Energy for determining the need for a referral.

6. Guidelines for acid and metalliferous drainage

We welcome the separate guidelines for acid and metalliferous drainage, given that it is one of the largest environmental issues facing the mining industry, and the history of serious environmental impacts that have occurred in the Northern Territory from AMD. It is important from a proponent's perspective also that AMD is factored in early on in the planning stages of a project, as major costs may arise if proper waste management strategies are not in place from the beginning of operations. Similarly, it is important that the EPA ensures that all environmental risks and financial liabilities are recognised during the EIS and that these risks and liabilities remain with the proponent and not transferred to the government or the community.

Given the significance of AMD these guidelines are far too limited in detail. The guidelines currently do not achieve the stated aims of defining the information requirements of an Environmental Impact Assessment (EIS), and to help the proponent 'provide sufficient characterisation' of whether AMD will occur and to detail how they will 'prevent, mitigate or manage' these risks throughout the stages of the mine. These guidelines should be considerably reworked to contain much more detail.

To date, risks of AMD have not been properly assessed by many companies operating in the Northern Territory, leading to groundwater and surface water contamination. There are numerous cases of historical management failures such as the Mount Todd Gold mine, Redbank copper mine, and Rum Jungle to name a few. There should be explicit reference to the requirement of a risk management framework to be provided by the proponent during the EIS stage.

The guidelines focus more on acid drainage than on metalliferous drainage. The definition of AMD used in the guidelines could be updated to reflect these differences, as metalliferous drainage can occur in alkaline conditions. It is important that the distinction is clear for the integrity of geochemical testing and risk assessment for both acid drainage and metalliferous drainage (given that metalliferous drainage can occur in the absence of acid drainage)⁶.

In section 4 on information sources, reference could be made to the supervising scientist report 125 on 'Acid Mine Drainage in Australia: its extent and potential future liability'⁷.

⁶ <http://www.epa.wa.gov.au/EPADocLib/Guidelines-for-preparing-mine-closure-plans-210611.pdf>

⁷ <http://www.environment.gov.au/ssd/publications/ssr/125.html>

Also the Western Australian Government's "Guidelines for preparing mine closure plans" has a detailed section on managing AMD⁸.

There is very limited mention of the requirements of the proponent to provide a detailed assessment of the existing local environment and how AMD will be managed in this context. The risks posed by AMD will be dependent upon the siting of a mining activity, such as its proximity to waterways, occurrence of threatened species, the level of annual rainfall, the likelihood of storm events. The guidelines should be updated to include these details and cross reference other guidelines. Climate change is also a key consideration for AMD management that needs to be mentioned, as increased likelihood of extreme weather and increased rainfall are risks that need to be built in to a project at the outset.

The guidelines should also set out what is expected of a proponent in terms of detailing the different stages of the mine and the associated risk and management of AMD at each stage. For example, the process of mine dewatering can produce AMD and how this will be managed needs to be set out by the proponent clearly.

The monitoring requirements should be made clearer that impacts from AMD are not restricted to the local ecosystem, but can have impacts for groundwater, downstream riparian communities, aquatic and terrestrial organisms as well as agricultural and recreational based activities. Auditing requirements that a company may face in regards to the management of AMD should also be outlined.

More detail should be given on sustainable closure planning and rehabilitation requirements of mine rock waste dumps, tailings facilities and mine pit lakes. The detail in section 10 is currently too scant in detail. The mine rehabilitation handbook is referenced in section 12 and should be expanded upon within these guidelines. The WA government "Guidelines for preparing mine closure plans" also provide useful information on AMD and provide a checklist (page 57) that could be included here:

- Has the risk of AMD and other contaminated mine drainage been determined through suitable geochemical testing for all materials to be mined?
- If kinetic testing is warranted has it been carried out over an adequate period of time?
- Is there risk of AMD and/or other contaminated mine drainage?
- Has watershed characterisation been carried out that identifies contaminant pathways and potential receptors?
- Have management measures been proposed to prevent environmental harm or pollution?
- Are suitable engineering measures available to manage or contain these materials during operations and closure?

Overall, the guidelines could be strengthened by making clear that a mine closure plan and an AMD management plan be mandatory in the assessment process if AMD is likely

⁸ <http://www.epa.wa.gov.au/EPADocLib/Guidelines-for-preparing-mine-closure-plans-210611.pdf>

to occur. More detail is needed in the guidelines beyond referring to other guidelines, so a proponent properly understands what is required of them in proposing a mine with AMD risk.

7. Guidelines on conceptual site models

It is unclear from the information provided by the EPA why there is a guideline for conceptual site models, and how this fits into the EIA process. It is understood that CSM's are an important planning tool in EIA, but we are currently unsure about the purpose of these guidelines. It is recommended that it is made clearer in the guidelines when a CSM will be required by a proponent and at what stage in the EIA process. More reference to the requirements of providing CSM's could also be given in the other relevant guidelines.

8. Guidelines for assessment of impacts on terrestrial biodiversity

The importance of considering biodiversity for development projects is given weight by the provision of separate guidelines. Whilst we welcome this it is not clear why this is limited to terrestrial biodiversity and does not extend to marine and aquatic. It also is not clear whether this is a guidance document for when a project will trigger the EAA or whether it is more of a guide to the type of information required in an EIS. As it stands the draft guidelines for TB do not provide enough detail and do not reflect the principles of ESD and should be redrafted to be best practice. In particular, the guidelines could more closely reflect the principles laid out in the document "Biodiversity in Impact Assessment" by the Convention on Biological Diversity⁹.

Firstly, there should be a clear definition of biodiversity in the guidelines. This should reflect the definition used by the convention on biological diversity:

"The variability among living organisms from all sources including inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems."

And cover all levels of biodiversity:

- *Ecosystems containing rich biodiversity, large numbers of threatened or endemic species, with social, economic, cultural or scientific significance, or relevant for key processes such evolutionary processes, and ecosystems of relevance to migrating species*
- *Species and communities of species that are threatened in their existence, related to domesticated or cultivated species, and species with medicinal, agricultural, or other economic, social, cultural or scientific significance, and indicator species.*
- *Genotypes with social, scientific or economic significance*

⁹ <http://www.cbd.int/doc/publications/cbd-ts-26-en.pdf>

It is important that there is greater reference to ecosystem processes and functions, beyond looking at the species level of biodiversity. One of the key threats to biodiversity is the cumulative impact of a fragmented landscape, and this is often difficult to assess at a project level EIS. As such it needs to be a consideration outlined in the guidelines that the project will be assessed in the landscape context and take account of impacts beyond the local footprint of a development.

The following table extracted from the report outlines how these three levels can be assessed in the screening stages to determine if a project should undergo assessment:

Table 1: Questions pertinent to screening of biodiversity impacts (extracted from CBD report page 24)

Level of diversity	Conservation of biodiversity	Sustainable use of biodiversity
Ecosystem diversity ¹³	Would the intended activity lead, either directly or indirectly, to serious damage or total loss of (an) ecosystem(s), or land-use type(s), thus leading to a loss of ecosystem services of scientific/ecological value, or of cultural value?	Does the intended activity affect the sustainable human exploitation of (an) ecosystem(s) or land-use type(s) in such manner that the exploitation becomes destructive or non-sustainable (i.e. the loss of ecosystem services of social and/or economic value)?
Species diversity ¹³	Would the intended activity cause a direct or indirect loss of a population of a species?	Would the intended activity affect sustainable use of a population of a species?
Genetic diversity	Would the intended activity result in extinction of a population of a localised endemic species of scientific, ecological, or cultural value?	Does the intended activity cause a local loss of varieties/cultivars/breeds of cultivated plants and/or domesticated animals and their relatives, genes or genomes of social, scientific and economic importance?

By redrafting the guidelines to take more of an ecosystem based approach to biodiversity conservation it will allow greater protection of ecosystem services that support the different aspects of biodiversity and deliver better landscape outcomes. An ecosystem-based approach is outlined in the CBD document on Biodiversity in Impact Assessment and should be reflected by the EPA in these guidelines.

Furthermore, these guidelines should reflect the principles of biodiversity in impact assessment laid out by the International Association for Impact Assessment¹⁰:

- *Aim for Conservation and “No Net Loss” of Biodiversity*
- *Take an Ecosystem Approach*
- *Seek Sustainable Use of Biodiversity Resources*
- *Ensure Equitable Sharing*
- *Apply the Precautionary Principle*
- *Take a Participatory Approach*

The guidelines should also set out what is considered during the screening of a project to determine its likelihood of assessment under the EAA. Generally it would assess whether the project could have:

¹⁰ <https://www.iaia.org/publicdocuments/special-publications/SP3.pdf?AspxAutoDetectCookieSupport=1>

- *Potential impacts on protected areas and areas supporting protected species.*
- *Impacts on other areas that are not protected but are important for biodiversity*
- *Activities posing a particular threat to biodiversity (in terms of their type, magnitude, location, duration, timing, reversibility).*
- *Areas that provide important biodiversity services including extractive reserves, indigenous people's territories, wetlands, fish breeding grounds, soils prone to erosion, relatively undisturbed or characteristic habitat, flood storage areas, groundwater recharge areas, etc)¹¹*

It is important the guidelines reflect the principles for biodiversity protection under the EPBC and it is more clearly outlined how a proposal may enact the EPBC and the associated bilateral agreement.

Lack of data is often a limiting factor in the NT, and often datasets are too high a resolution and lack adequate sample sizes for project level decisions using desktop analysis. Thus it is welcome that detail is provided on the requirement to perform more thorough field based vegetation and flora and fauna surveys.

It is recommended that these guidelines be considerably reworked and expanded. It is important that the guidelines give clarity on the screening process of a project proposal, and not just a generic set of guidelines similar to that which would be issued at a later stage during an EIA process.

9. Guidelines for the environmental assessment of marine dredging in the northern territory

We welcome that the dredging guidelines maintain and make clear that all dredging proposals are required to submit a Notice of Intent (NOI) to the EPA, unlike the assessment criterion approach used in other guidelines. The guidelines outline the likely length of time for environmental assessment and approvals and encourage early engagement with the process. We also welcome the level of detail in these guidelines compared to that for other guidelines such as the mining exploration and production proposals.

We note that these guidelines do not relate to the mining of extractive mineral processes, however many of the impacts will be similar to these guidelines. The only guidelines that relate to extractive sea bed mining are the mining exploration and production proposals which we would like to reiterate is highly inadequate by comparison. The statement on page 6 in the dredging guidelines that “dredging for marine mining operations that target mineral resources is yet to be proposed for NT waters” is misleading. There have been highly controversial proposals for sea bed mining off the coast of Groote Eylandt. Similarly, a proposal for a recent mineral sands project on the coastline of the Tiwi Islands would have similar impacts as dredging as would involve the excavation of solid matter from dune systems which impact upon estuarine and coastal waters.

¹¹ <https://www.iaia.org/publicdocuments/special-publications/SP3.pdf?AspxAutoDetectCookieSupport=1>

The environmental impacts of dredging cannot be viewed at simply a project level and needs to factor in the cumulative impacts of dredging on the harbour. A Strategic Environmental Assessment of developments within Darwin harbour and other parts of the NT coastline and marine waters would help to increase efficiency with project level assessments.

Under the proposed impacts listed on page 11 there should also be reference to the potential for public health risks as a result of increased heavy metals in fish stocks, particularly shellfish. There could also be reference to potential impacts on marine mammals such as migratory and federally protected species such as dugongs. There could at least be a clearer explanation of the high likelihood of invoking the EPBC Act in dredging activities, and how the bilateral agreement process works.

There is no mention in these guidelines of the need in an EIA to evaluate alternatives to dredging. EIS require a proponent to investigate alternatives to the project including a do nothing scenario. There is reference to evaluating alternatives under section 5, however this is limited to dredge spoil.

Section 5 offers little detail to the assessment and treatment of dredge spoil disposal and refers to the Commonwealth guidelines. These guidelines apply more to the disposal of spoil offshore and do not detail the requirements needed for onshore disposal. There is more information detailed in section 6.7 however it does not address the potential environmental impacts of onshore spoil such as land suitability and the need for land clearing and associated habitat impacts.

The section on best practice on page 20 should include the potential need for collection of biophysical data and habitat mapping. There is often very little available information on marine and coastal habitats prior to a dredging operation and it is important that the proponent is aware that they would need to fill this information gap prior to approval.

The concluding remarks in section 7 also do not make clear that it is possible for a dredging project to be deemed unacceptable and not gain approval by the EPA if the environmental risks are too high. It is important that the guidelines make clear that EIA is not just a tick the box process for a proponent to gain approval, though it can also be an important planning tool for a proponent if used correctly.

10. Guidelines on environmental offsets and associated approval conditions

These guidelines do give some clarity to the proponent on the potential requirement for offsets during the EIA/PER process. However, more guidance could be given to the proponent on determining when it is appropriate to apply offsets, some examples of the types of offsets that may apply, and generic guidance on how to formulate an offsets package. More detail could be given on the NT Offsets policy and the principles and objectives of this policy.

The Western Australian Government's EPA guidelines on offsets¹² provide more clarity and detail that could be brought into the NT Guidelines. In particular, more detail could be provided in relation to:

- *the EPA's expectation for the appropriate use of environmental offsets;*
- *application of offset principles in relation to significant adverse impacts to biodiversity assets – in particular the 'like for like or better' principle;*
- *situations where the application of offset principles are extremely difficult or challenging to implement;*
- *timing of offset considerations during the EIA process; and*
- *transparency and auditing effectiveness of offsets packages.*

It may also be necessary to split the guidelines into offsets relating to the environment, and offsets relating to community benefits packages and social licence to operate.

11. Guidelines for the preparation of an economic and social impact assessment

We welcome the guidelines for economic and social impact assessment, noting that historically this has been a neglected aspect of the EIA process. This area however is largely outside our area of expertise, so only a few points will be made on these guidelines.

Section 5 should include reference to potential economic impacts from the end of a project. For example, what will be the economic impacts of a mine closing in ten years time after growing a regional centre based on its employment opportunities and how will this be managed.

It is also important that the alternatives of a project are explored in a social and economic impact assessment. For example, what are the benefits to the community from the project not proceeding? These will more often than not be of an ecological nature, for instance retained biodiversity, ecosystem services of carbon sequestration and enhanced water quality. This is often a neglected aspect of SEIA and should be mentioned in the guidelines.

In addition, there is no reference to social and economic impacts in other guidelines such as for mining, land clearing, development proposals. This should be highlighted in the other guidelines to ensure greater awareness of the requirements for economic and social impact assessment for approval of projects under the EAA.

¹² http://epa.wa.gov.au/EPADocLib/2783_GS19OffsetsBiodiv18808.pdf

12. Guidelines for disposal of waste by incineration

It is understood that the need for these guidelines stems from the recent closure of the East Arm Port Quarantine Incinerator, found to be producing emissions of dioxins and furans up to 31 times over the national and international standards. These guidelines are highly technical in nature, and their overall purpose is again not entirely clear. These guidelines are outside the expertise of the Environment Centre so limited comment will be made here. However it should be made clearer in the final guidelines what these guidelines are setting out to achieve.

13. Concluding remarks

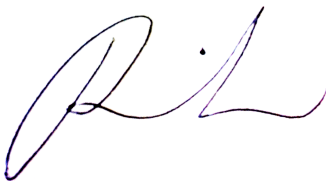
We welcome the development of guidelines to provide clearer guidance to proponents, government agencies and the community on the environmental requirements of projects under the EAA and the WMPCA. We recognise that the EPA is facing increasing scrutiny over the EIA process delivering timely, high quality advice. However, efficiency gains in the process should not be at the expense of the substantive goals of the EIA process. Currently we consider these draft EPA guidelines to be in most instances inadequate and seriously lacking in detail, and their rationale and scope needs to be readdressed. In particular we recommend the following in the final guidelines:

- Guidelines should better reflect best practice and ESD principles, particularly the precautionary principle, and recommendations in the “final advice of the EPA on improving environmental assessment in the NT” report
- The EPA should make clearer the purpose and scope of the guidelines to the community
- Clarify why some guidelines appear to focus on the screening stages of the EIA process whilst others on the scoping stages
- Make clear that the assessment criterion approach is a guide only and that decisions on ‘significant impacts’ of projects remain the responsibility of the EPA.
- A risk based assessment approach could instead be utilised rather than a yes/no assessment criterion approach.
- Guidelines should provide an indication of the matters that the EPA takes into consideration when assessing impacts on environmental factors. They are meant to assist proponents and the public generally, to understand the minimum requirements, for protection of elements of the environment that the EPA expects to be met. The current guidelines focus too much on when projects will not require assessment under the EAA
- The guidelines should in general be more explicit as to what information is mandatory for a proponent to provide to the EPA in the referral stage, and give clearer indications of what constitutes significant impacts to the environment

- The guidelines should provide clearer thresholds, locality, activity and project schedules to allow for more objective referrals to the EPA
- The guidelines are currently far too limited in detail, particularly the mining exploration and production, petroleum and oil exploration and production, land clearing, and development proposals and should be considerably reworked
- 'Evaluation of alternatives' needs to be consistently referred to in the guidelines
- Strategic Environmental Assessments should be more of a focus for the EPA to increase efficiency of project level EIA, and address community concerns of cumulative impacts
- The issue of greenhouse gas emissions is largely omitted from these guidelines and is a significant issue that warrants specific guidelines be developed
- Greater integration and cross referencing should occur between the guidelines, such as referencing the AMD guidelines within the mining guidelines, and referring to SEIA in other guidelines
- More clarity should be given on the bilateral agreements and how this will affect the EIA process

Thank you for the opportunity to make comment on these guidelines. We look forward to further input and consultation as the guidelines are finalised.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'R. Law', with a stylized flourish at the end.

Rob Law

Environment Centre NT Policy Officer