



NORTHERN
TERRITORY
DIVISION

15 August 2015

Dr Bill Freeland, Chair
Northern Territory Environment Protection Authority
GPO Box 3675
DARWIN NT 0801

Via email: nTEPA.consult@nt.gov.au

Dear Dr Freeland

Feedback on the Draft *Guideline for Identification of significant effects on the environment*

The Minerals Council of Australia Northern Territory Division (MCA NT) appreciates the opportunity to provide comment on the Northern Territory Environment Protection Authority (NT EPA) – *Draft Guideline for Identification of significant effects on the environment*.

The MCA is the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, and environmentally and socially responsible, attuned to its communities' needs and expectations.

The Australian minerals industry is a strong advocate for efficient and effective environmental regulation. Accordingly, the MCA supports the periodic review and improvement of environmental impact assessment policies and procedures to achieve this. The drafting and public review of the NT EPA's *Guideline for the Identification of significant effects on the environment* demonstrates the government's commitment to continual improvement of its policy settings and is to be commended for this latest review.

The draft *Guideline* provides a range of definitions of the term 'significant environmental effect,' in addition to identifying diverse matters that the NT EPA can or should consider in its assessment of a project proposal with potentially significant adverse impacts on the environment. If this is the case, then the project must be formally assessed under the *NT Environment Assessment Act*.

Overview of MCA NT comments

The MCA NT has completed its review of the *Draft Guideline* and included its detailed feedback in the NT EPA's Submission Form (completed form plus Appendix A). On the whole, the document is of an appropriate length, easy-to-read and well-organised. The majority of suggested criteria to assess the potential significance of possible environmental impacts from a project are appropriate. Where they are not appropriate or complete, we have recommended solutions.

We have suggested that the NT EPA consider criteria used by other jurisdictions in revising the current draft, where these criteria are useful, clear and comprise a good model for use in the NT, e.g. the Significant Impact Guidelines for the Commonwealth EPBC Act and WA EPA Environmental

Assessment Guidelines (Appendix A). We believe that jurisdictions should regularly review each other's policies to adopt the best options and seek harmonisation of policies and approaches when jurisdictions agree on which options comprise 'best practice.'

We have also suggested that the final guideline include diagrams and boxed in-text examples or case studies that illustrate how to use the criteria for identifying potentially significant impacts as well as demonstrating how mitigation measures and/or offsets can be used to reduce these potential impacts to a level at which the NT EPA might consider them below thresholds that otherwise might require formal assessment (Appendix A).

Once again, the MCA commends the NT EPA on preparation of the draft *Guideline for Identification of significant effects on the environment* and appreciates the opportunity to provide feedback. Should you have any questions regarding this submission, please do not hesitate to contact me directly on 08 8981 4486.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Drew Wagner', is written over a faint, circular watermark or stamp.

Drew Wagner
Executive Director

Draft Guideline for Identification of significant effects on the environment

Submissions close: **Monday 15 August 2016, 5pm**

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<p>Your comments will be publicly available.</p> <p>Mark the box here <input type="checkbox"/> if you do not want your comments to be made publicly available.</p> <p>Mark the box here <input type="checkbox"/> if you do not want your identity to be made publicly available.</p>			
Section	Comment		
3.2 Relevant considerations about a potentially significant effect [p 4]	Paragraph 2 Although the EPA might 'have regard to' a number of matters in its determination of whether or not a proposal requires formal environmental impact assessment (EIA), these matters should be considered complementary to a definition of or criteria for assessing the significant of potential environmental impacts, e.g. public concern, and the purpose of the draft guideline is to identify criteria.		
	Dot point 1	<p>Values, sensitivity and quality of the environment likely to be impacted.</p> <ul style="list-style-type: none"> • Values. It is not clear what is meant by 'values.' Values could be the quantitative, threshold values included in international or national environmental standards, e.g. maximum counts of <i>E. coli</i> acceptable for primary contact with recreational waters. Alternatively, 'values' could mean the human, subjective values that communities and stakeholders place on particular aspects or components of the environment. Defining 'values' may be problematic if they are primarily determined subjectively, because opinion might vary greatly. <ul style="list-style-type: none"> ➤ Environmental 'values' should be defined to provide confidence to both proponents and government in applying the guideline. Key considerations in identifying a significant effect for each of these clearly identified values should be included in an appendix. Generalised examples would be useful to illustrate what may or may not constitute a significant (detrimental) effect for each of these values. Context should also be included (for example, the scale/prevalence of an environmental value) in the landscape. ➤ Where specific matters are legally protected (e.g. NT threatened species, this should also be included. ➤ Web links and references to more information on these values should be included in the guideline (noting the waste-pollution guidelines have been referenced). Proponents should be directed to any relevant searchable databases where they can identify those values that may be in the project area. 	

Section		Comment
<p>3.2 Relevant considerations about a potentially significant effect [p 4] (Cont'd)</p>	<p>Dot point 1 (cont'd)</p>	<ul style="list-style-type: none"> • Sensitivity and quality. These terms may also be problematic if, again, they are primarily determined subjectively; however, sensitivity and quality can be more easily quantified than 'value, in terms of resilience, robustness, degree of change and other physical criteria.'
	<p>Dot points 2-4</p>	<p>All are appropriate.</p>
	<p>Dot point 5</p>	<p>Cumulative impact. Consideration of cumulative impact with other actions provides no boundary around what should or should not be considered. Only those 'other actions' that are already underway or for which there is sufficient publicly available data should be considered. Potential future actions where information is not publicly available or are uncertain to proceed should be out of scope. This should be clarified in the guideline.</p>
	<p>Dot point 6</p>	<p>Level of confidence in the prediction of impacts. Although it would be reasonable for the EPA to consider the level of confidence in predicted environmental impacts in determining if a proposal requires formal EIA, this should not be used as a criterion to determine the significance of potential impacts. Levels of confidence in predicted impacts might be used by the EPA and consent authority to set conditions that are more rigorous for projects with predicted impacts with lower levels of confidence, e.g. more intensive monitoring, analysis and reporting at the commencement of a project; however, whatever impacts occur will be independent of the level of confidence in predictions.</p>
	<p>Dot point 7</p>	<p>Objects of the EA Act, NT EPA policies, guidelines and procedures, or other NT environmental acts.</p> <ul style="list-style-type: none"> • As above, these should be considered by the NT EPA, consent authorities and relevant government agencies; however, they cannot be used to assess the potential significance of predicted environmental impacts. These provide guidance about process but do not comprise criteria for assessing levels of environmental impact. • This requirement provides little guidance to proponents on what actually needs to be considered. Accordingly, the guideline should explicitly reference those objects, policies or procedures that should be accounted for and their fit with the identification of significant effects.
	<p>Dot point 8</p>	<p>Public concern about the likely effect of the proposed action on the environment.</p> <ul style="list-style-type: none"> • Other than its possible use to assess potential impacts on society and the 'social environment,' this cannot be used to assess potential impacts on the physical, biological, or economic environment and possibly not on most aspects of the cultural environment. A good example is the current widespread public concern about hydraulic fracturing: the level of concern neither reflects the actual risk of significant environmental impact nor the potential significance of environmental impacts. From a social licence perspective, the proposal for any major project should address the likely community response and approaches to minimise public concern. Within the context of the NT EPA having to determine whether or not a project needs to be formally assessed, however, public concern is irrelevant to determining the potential significance of environmental effects. • Furthermore, it is unclear how 'public concern' would be assessed making certain developments making the process susceptible to campaigns by interest groups that do not represent broader public opinion. NT EPA processes should remain independent, objective and science based. The assessment process should not be allowed to be influenced by contrived controversy created by third parties or public misunderstanding. • Furthermore, it is unclear how 'public concern' would be assessed, making the process susceptible to campaigns by interest groups that do not represent broader public opinion. NT EPA processes should remain independent, objective and science based. The assessment process should not be allowed to be influenced by controversy created by third parties or public misunderstanding. • For these reasons, the MCA NT recommends that this dot point be removed from the guidelines.

Section		Comment
<p>3.2 Relevant considerations about a potentially significant effect [p 4] (Cont'd)</p>	<p>Additional dot point 9</p>	<p>Proposed mitigation measures. This is another matter that the EPA must consider when determining if a proposal has the potential for significant adverse environmental impact: as illustrated in Appendix A figures from the WA EPA (attached), proposed mitigation measures will reduce the potential for, occurrence of and/or the extent of adverse impacts, which would reduce the significance of the potential impact.</p>
<p>3.2 Relevant considerations about a potentially significant effect [p 5]</p>	<p>Paragraph 2</p>	<p>Determination... can be additionally informed through reference to performance, criteria, triggers or risk criteria. Performance criteria are used to determine how well a project is being managed in relation to approval conditions (requirements) and can also be used to determine if and to what extent impacts are remaining within acceptable limits. Because they apply only once a project is underway, the criteria <i>per se</i> cannot be used to assess the potential significance of environmental impacts predicted in a project proposal, which is the basis for the NT EPA's decision on whether or not formal EIA is required. The same applies to triggers. Regarding risk criteria, EIA documentation for a proposed project should complete a risk assessment for all activities that can have potentially significant environmental impacts and for all sensitive receptors (e.g. biota, waterways, communities, etc.), and this will involve identifying and applying relevant risk criteria to the assessment.</p>

General comments

1. The draft guideline provides a number of reasonable criteria for assessing the significance of particular environmental impacts, including values and quality or the environmental factor at risk (e.g. water quality, biota, landforms, etc.); the resilience of those factors; the extent of potential impacts (intensity, duration, magnitude); cumulative impacts, etc. Some terms need clarification (e.g. 'values'). Some of the suggested criteria are not reasonable, e.g. public concern about the likely effect of a project on the environment, because public concern does not necessarily reflect a sound consideration of risks.
2. The draft guideline is confusing, because it is attempting to both (a) define what a significant effect on the environment is in addition to (b) listing a number of "matters to which the EPA may have regard" in deciding whether or not a project might have significant environmental impacts.
3. The current draft of the guideline does not adequately define the relevance of the following terms in relation to a definition of 'significant effect on the environment':
 - The **probability** that a significant impact will occur;
 - The **level of concern** of the community and stakeholders that significant deleterious impacts will occur; and
 - The likely **nature and extent** of potentially significant impacts.
4. We recommend that the revised guideline also address potential significance of environmental effects in the context of agreed land use at the end of a project. For example, the subsequent land use might involve the previous operator leaving in place infrastructure such as power, water, roads, etc. If compared to a return to natural habitat (e.g. grasslands, forests) the infrastructure left in place could be considered a significant undesirable environmental effect. If, however, the agreed land use is for a new land owner to utilise this infrastructure for the agreed subsequent use, then the infrastructure would not be a significant undesirable environmental impact.
5. Consistency of language is important. For example, the introductory section (4th para) provides that the NT EPA will determine the potential environmental significance of the proposed action, including whether it is capable of a significant environmental effect. 'Capable' should be replaced by 'likely' to avoid confusion as these words have different meanings. Effects and impacts are also used interchangeably. The MCA-NT recommends the term 'significant impact' be used, consistent with the prevalence of this term in other NT EPA documentation (e.g. Guidelines for preparation of a Notice of Intent) and the Commonwealth EPBC Act.
6. We also recommend that the draft guideline be revised and extended to include useful criteria/approaches used by other jurisdictions, and again be circulated for further review and consideration (see Appendix A). The ultimate objective should be provision of a significance framework, tool, checklist or similar to allow proponents, the NT Government and NT EPA to use a consistent set of criteria to determine the likely significance of environmental impacts from a proposed project or development.

Please complete the form and send it via one of the following by no later than Monday 15 August 5pm:

Email: NTEPA.Consult@nt.gov.au


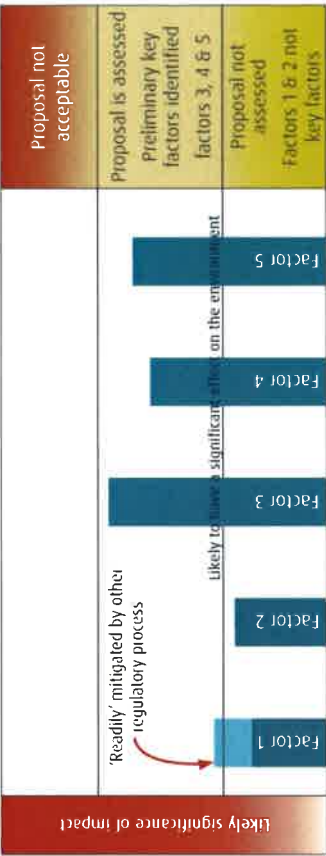
Post: NT EPA, GPO Box 3675, Darwin NT, 0801

Privacy: Your personal information will be used for the purpose of collecting and collating comments received on the Issues Paper. The NT EPA is subject to the *Information Act* and its Regulations. Information will not be disclosed to a third party, unless required by law or otherwise stated.

USEFUL CRITERIA USED BY OTHER JURISDICTIONS TO DETERMINE WHEN ENVIRONMENTAL IMPACTS FROM PROPOSED PROJECTS ARE LIKELY TO BE SIGNIFICANT

JURISDICTION	GUIDANCE DOCUMENT	USEFUL CRITERIA TO IDENTIFY SIGNIFICANT ENVIRONMENTAL IMPACT	COMMENT
Commonwealth	DoE – 2013 Matters of National Environmental Significance; Significant Impact Guidelines 1.1; EPBC Act 1999	<ul style="list-style-type: none"> • All Significant Impact Criteria would be relevant to the NT, except those relating to the Great Barrier Reef. • Use terminology: 'Environmental effects are likely to be significant if there is a real possibility of adverse impact on....' for each vulnerable component of the environment, e.g. <ul style="list-style-type: none"> ➢ Threatened or endangered species or communities; ➢ Listed migratory species ➢ Wetlands of international significance ➢ World Heritage Properties (Kakadu) ➢ Areas in the NT registered or declared to be areas of cultural or conservation significance, national parks, sacred sites ➢ Nuclear actions. • Within each of the categories above, the EPBC criteria indicate that impacts are likely to be significant "if there is a real possibility that action will...." <ul style="list-style-type: none"> ➢ For threatened or endangered species, lead to a long-term decrease in the population size or reduce area or adversely affect habitat critical to the survival of the species; ➢ For listed migratory species, result in an invasive species that is harmful to the migratory species becoming established in an area of important habitat for the migratory species; ➢ For wetlands of international or NT significance, result in areas of the wetland being destroyed or substantially modified. 	For application in the NT, guidelines and criteria would apply to species, communities, wetlands, areas of conservation significance, and other environmental factors relevant to the NT.
Commonwealth	DoE 2013 Matters of National Environmental Significance; Significant Impact Guidelines 1.1; EPBC Act 1999 – Appendix: Information for industry sectors – Mineral Exploration Activity	<ul style="list-style-type: none"> • This appendix includes explicit statements regarding which activities are likely to have significant environmental impacts and are therefore likely to require formal assessment. These could also be integrated into the NT guideline, e.g. <ul style="list-style-type: none"> ➢ Seismic surveys would not normally be expected to have significant environmental impacts unless using methods such as shot hole or vibroseis in a known habitat of endangered species, if, these methods are likely to damage habitat critical to their survival or disrupt the breeding cycle of such species; and ➢ Examining rock outcrops, for surface geological mapping, is unlikely to have a significant environmental impact. 	These guidance statements could also be integrated into the NT EPA guideline

JURISDICTION	GUIDANCE DOCUMENT	USEFUL CRITERIA TO IDENTIFY SIGNIFICANT ENVIRONMENTAL IMPACT	COMMENT
<p>Western Australia</p>	<p>EPA WA Environmental Assessment Guideline 9 (EAG 9) Environmental Assessment Guideline for Application of a significance framework in the EIA process: <i>Focusing on the key environmental factors</i> (January 2015); and Environmental Assessment Guideline 8 (EAG 8) Environmental Assessment Guideline for Environmental factors and objectives (June 2013)</p>	<ul style="list-style-type: none"> • The significance of a proposal's impact on the environment is based on the extent to which it meets the EPA's environmental objectives associated with each environmental factor. <ul style="list-style-type: none"> ➢ 'Environmental factors' include flora and fauna; landforms, hydrological processes, water and soil quality, etc. The WA EPA defines 15 such factors. ➢ 'Environmental objectives' are statements that the essential qualities of each environmental factor will be maintained or not adversely affected, e.g. <ul style="list-style-type: none"> ○ For the environmental factor 'flora and fauna,' the objective is 'to maintain representation, diversity, viability and ecological function at the species, population and community level'; and ○ For inland waters, the objective is 'to maintain the quality of groundwater and surface water, sediment and biota so that the essential environmental qualities (both ecological and social) are protected.' • The onus is on proponents to demonstrate (through their EIA documentation) that the proposal, if implemented, can meet the EPA's objective for each key environmental factor. <ul style="list-style-type: none"> ➢ 'Key environmental factors' are those where the EPA's objectives <u>may be met</u> but the proponent must provide adequate information on the factor, activities, risks, proposed mitigations and their likely effectiveness, offsets, etc. (e.g. through an EIS) and project approvals are likely to involve mandatory conditions. • If initial documentation (e.g. Notice of Intent) can present an adequately compelling case that none of the environmental factors are 'key environmental factors,' the proposal will not be subject to formal assessment by the EPA, and none of the anticipated environmental impacts would be considered 'significant.' • If the EPA believes that a project will involve one or more key environmental factors (i.e. ones that might be significantly impacted by the project), then only those key environmental factors will require further studies (e.g. risk assessment, evaluation of expected effectiveness of mitigation measures, and proposed offsets for residual impacts) in EIA documentation and formal assessment. • If the project proposal is approved, proponents will have to report only on these key environmental factors (e.g. in annual performance reports), and the EPA will recommend conditions only for the key environmental factors. 	<p>The 2013 WA EPA document indicates that</p> <p>'The related environmental objective for each factor is the desired goal, that if met, will indicate that the proposal is not expected to have a significant impact on the environment.'</p>

JURISDICTION	GUIDANCE DOCUMENT	USEFUL CRITERIA TO IDENTIFY SIGNIFICANT ENVIRONMENTAL IMPACT	COMMENT
Western Australia (Cont'd)	<p>EPA WA Environmental Assessment Guideline 9 (EAG 9) Environmental Assessment Guideline for Application of a significance framework in the EIA process: Focusing on the key environmental factors (January 2015)(Cont'd)</p>	<ul style="list-style-type: none"> The Guideline has a number of simple diagrams that demonstrate visually when a proposal is likely to have significant environmental impacts (i.e. have one or more 'key factors'), when formal assessment would be required for these key factors and how key factors can be reduced to non-key environmental factors through proposed mitigation, conditions or controls associated with other regulatory processes, e.g. 	<p>Flowcharts and diagrams can be very effective in communicating complex concepts and should be considered for the NT EPA guideline.</p>
<p>Figure 3. Framework for decision on whether to assess a proposal</p>		 <p>Figure 9. Proposal is assessed at the PER level (where it has one or more key environmental factors, and/or where the proposal meets other criteria in the Administrative Procedures. In the example above, Key Factor 1 can be reduced to an Environmental factor' through other regulatory processes; Factor 2 is not a key factor; and Factors 3, 4 and 5 will have to be addressed in a PER and assessed by the NT EPA.)</p>	<p>Note: these figures and text have been reproduced with permission from the WA EPA (8 August 2016, via phone and email confirmation from the WA EPA to the Minerals Council of Australia – NT Division)</p>

