PLANNING SYSTEM REFORM PROJECT

Technical paper 4

Review of environmental impact assessment in the ACT

ACT Government

ACT Planning & Land Authority

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Overview of proposed reforms

Environmental impact assessment in the ACT was designed to be a two-stage process—a preliminary assessment that identifies potential environmental impacts, followed by a further (comprehensive) assessment of what can be done to mitigate impacts, if the relevant Minister considers it to be necessary.

In practice, this two-stage process is rarely seen. Preliminary assessments have expanded to take the role of both stages, with the result that they are long, complex and expensive. They are also poorly suited to the task of identifying and managing environmental impacts.

This view is supported by an examination of a number of recent preliminary assessments.

Current legislation identifies six activities, called 'defined decisions', that may trigger an environmental impact assessment. It is proposed that the procedure for assessing environmental impacts of those activities be reformed to be more efficient and to more closely reflect the scale (and likely impact) of the activity.

Under the proposed reforms, preliminary assessments and further assessments are replaced with either environmental impact statements or planning studies depending on which defined decision is involved. Each will be carefully scoped according to the characteristics of the proposal and public comment will be invited.

Mandatory environmental impact statements will be triggered by reference to a schedule that is likely to include major industrial, institutional, commercial, transport and infrastructure related proposals along with significant non-urban activities such as dams and mines. It is proposed that the relevant Minister retain the discretionary power to trigger an environmental impact statement for other proposals that have the potential for significant environmental impact.

The powers of the various Ministers in the environmental impact assessment process are also reviewed, and this paper proposes that these powers should reside primarily with the Planning and Land Authority and the Minister for Planning. The Minister for the Environment and the Minister for Health should retain their powers in relation to environmental authorisations and development applications with public health implications. Whilst a preference for ministerial responsibility is expressed, their allocation is ultimately determined through Administrative Arrangements notified by the Chief Minister from time to time. Furthermore, agreements may be reached between the Minister for Planning and other Ministers concerning triggers for environmental impact assessment of proposals that raise concerns particular to those Ministers.

The key reforms are as follows:

- abandon preliminary assessments as a screening tool
- require mandatory environmental impact statements for listed types of development proposals
- adopt a three-tiered approach to development applications (more detail below)
- allow for the public notification of draft environmental impact statements
- abandon public environment reports as a form of environmental impact assessment
- instead of environmental impact assessment under Part 4 of the *Land (Planning and Environment) Act 1991* the assessment of environmental impact in relation to the intention to grant crown leases be undertaken through a planning study
- instead of environmental impact assessment under Part 4 of the Land Act the assessment of environmental impact in relation to significant draft variations to the Territory Plan be undertaken through a planning study
- ministerial discretion to initiate environmental impact assessment be retained in relation to the following defined decisions:
  - the preparation of draft plans of management for public land (Land Act, Part 5, s.199)
  - development applications (Land Act, Part 6, s.236)
  - development applications under Part 6 of the Land Act that the Minister for Health or the Environment Minister (currently the Minister for Planning) considers 'would be likely to have a significant effect on public health' (Public Health Act, s.134)
  - applications for environmental authorisations where the Minister for the Environment or the Environment Minister has reasonable grounds for believing that the activity (that is not a development application) 'has potential to cause serious or material environmental harm' (Environment Protection Act, s.94)
- ministerial discretion to initiate environmental impact assessment in relation to development applications be exercised only where the Minister has determined on reasonable grounds that a proposal poses a significant risk of environmental impact (under a revised definition).

Proposed reforms to development applications

A three-tiered approach to development applications is proposed:

- **level one** relates to minor development (eg small additions and houses in new estates). Minimal impact assessment is warranted
- **level two** requires impact assessment as part of the development application assessment process, chiefly in the form of an enhanced design response report to be lodged with the application. This will be required for development generally covered by the *DA Process Books* Nos. 2 and 3 (i.e. successors to the High Quality Sustainable Design document)
- **level three** proposals require a comprehensive environmental impact statement, with the oversight of the Development and Environmental Policy section of the Authority. Ordinarily an environmental impact statement will be prepared in parallel with the preparation of a development application. For some proposals, particularly where a site selection process is involved, an environmental impact statement will be prepared in advance of a development application.

Proposed reforms to
– preparation of draft plans of management for public land
– development applications with potential public health implications
– other activities with potential for significant environmental impact

Environmental impact assessment for these activities may be triggered by the relevant Minister. Under current administrative arrangements the relevant Ministers are:

- preparation of draft plans of management for public land – Minister for Planning
- development applications with potential public health implications – Minister for Health
- other activities with potential for significant environmental impact – Minister for the Environment

Proposed reforms to variations to the Territory Plan and proposals to grant Crown leases

It is proposed to abandon preliminary assessments and further assessments in favour of planning studies, triggered by the Minister for Planning and scoped by the Planning and Land Authority. Legislative arrangements will be introduced to ensure that these studies will fully address physical, ecological, social and economic impacts with the appropriate public consultation. These studies will inform draft plan variations, and the preparation of what are currently known as lease and development conditions, where appropriate.

List of recommendations

RECOMMENDATIONS ABOUT WHEN AN EIS IS REQUIRED

- *Undertake environmental impact assessment of development applications at three levels:*
  1. level one—minimal for minor development
  2. level two—an expanded design response report for applications falling under DA Process Books numbers 2 and 3
  3. .level three—EIS for listed activities or when the Minister for Planning directs an assessment.
- *That developments for which an EIS to accompany a development application is mandatory be listed in a schedule devised in recognition of the environmental goals of the ACT.*
- *Abandon preliminary assessments in favour of environmental impact statements for high impact activities.*
- *Environmental impact statements should become the sole mechanism for high level (level 3) environmental impact assessment (i.e. public environment reports be abandoned).*
- *That environmental impact assessment associated with proposals to grant Crown leases be triggered only on a discretionary basis by the Minister for Planning, and take the form of a planning study, scoped by the Authority and prepared by the proponent.*
- *That environmental impact assessment associated with draft variations to the Territory Plan be triggered only on a discretionary basis by the Minister for Planning, and take the form of a planning study, scoped by the Authority and prepared by the proponent.*

RECOMMENDATIONS ABOUT ADMINISTRATIVE RESPONSIBILITIES

- *Subject to administrative arrangements, the discretionary power to direct that an EIS be prepared should be vested in the Minister for Planning.*
- *The Minister for the Environment and the Minister for Health retain their powers in relation to environmental authorisations and development applications with public health implications.*
- *Give the Minister for Planning the power, subject to administrative arrangements, to establish a panel to conduct an inquiry only after the finalisation of an EIS, but before the relevant development application is decided.*
- *The Minister for Planning should retain the power to direct that an EIS be lodged with a particular development application where, in the Minister's opinion, the proposed development will have potential for significant environmental impact.*
- *That the practice of tabling finalised environmental impact statements in the Legislative Assembly be at the discretion of the relevant Minister.*

RECOMMENDATIONS ABOUT COMMUNITY CONSULTATION

- *That guidelines be prepared by the Authority for the appointment of a panel and include the minimum qualifications of members.*
- *Give the Planning and Land Authority discretion to initiate round-table conferences (currently under s.128 of the Land Act).*
- *Environmental impact statements are to be lodged with the Authority in a draft form, and the public is to be invited to comment on the draft.*

RECOMMENDATIONS ABOUT THE SCOPE AND CONTENT OF AN EIS

- *That environmental impact statements be scoped by the Planning and Land Authority, with advice from relevant government agencies.*
- *Specify the minimum content of an environmental impact statement in a document approved by the Authority and publicly notified as an approved form.*
- *Require the proponent to engage a consultant for the preparation of an EIS from a list of pre-qualified consultants.*
- *Give the Authority the responsibility to endorse environmental impact statements before they are submitted to the relevant Minister.*

Acknowledgements

Victorian Department of Sustainability and Environment

NSW Department of Infrastructure, Planning and Natural Resources

Planning SA

Department of Environment and Heritage

1. Introduction

A review of environmental impact assessment is part of a wider planning system reform project launched by the Minister for Planning in December 2004. The project's aim is:

> *to create a contemporary planning and land administration system, processes and practices that will provide greater certainty, clarity and consistency, and which is flexible, timely, less repetitious and administratively manageable.*

This current review builds on *Review of Environmental Impact Assessment Legislation and Procedures in the ACT – Discussion Paper, Urban Services, September 1998*. It seeks to create an efficient and effective assessment process reflecting current national leading practice and intergovernmental agreements to which the Territory is a signatory.

Fundamentally, the current approach for environmental impact assessment in the ACT assumes that the procedure under Part 4 of the *Land (Planning and Environment) Act 1991* (the Land Act) is equally well suited to many different activities, such as a development application for a commercial building in Civic, a major urban estate development, a development proposal associated with a perceived threat to public health, or a variation to the Territory Plan. This may not necessarily be the case, as discussed in this paper.

The evolution of preliminary assessments into proxy environmental impact statements has caused confusion in the community and may have resulted in unnecessary additional costs for proponents.

Much of the proposed reform aims to address these issues.

2. What is environmental impact assessment?

Environment impact assessment is the way potential environmental impacts of an action are identified before the action is approved by the relevant authority. Environment impact assessment is a generic term and in the ACT it can include preliminary assessments (PA), public environmental reports (PER), and environmental impact statements (EIS) as well as the routine assessment of development applications

The definition of environmental impact is broad in the ACT. Under the Land Act (s.111) it includes social, cultural and economic dimensions in addition to the physical and biological (Appendix A).

Specifically, environmental impact assessment has three functions:

1. informing the design process, by giving early prominence to environmental factors
2. providing a sound basis for determining whether a particular proposal should be approved and what conditions of approval should be imposed
3. establishing a system for monitoring the proposal during implementation and operation, and where necessary, managing any adverse impacts.

BASIC STEPS IN THE EIA PROCESS

Reference in this paper will be made to the following basic steps in the environmental impact assessment process. These tend to be common to all environmental impact assessments including those followed in the ACT.

- **Step 1—Formulating the proposal**—this is usually, but not always, a proposal for development and is ordinarily initiated by the proponent.
- **Step 2—Screening—**identifying proposals that require a formal EIS on the basis of an assessment of the level of environmental risk; currently the principal screening device in the ACT is intended to be the PA.
- **Step 3—Scoping**—identifying the issues to be considered in the EIS; it is ordinarily undertaken by a government authority or the person or body responsible for deciding whether the proposal should be approved.
- **Step 4—Preparing the EIS**—almost always the responsibility of the proponent; it must address the matters identified in the scoping phase.
- **Step 5—Assessment**—assessment of the adequacy of the EIS is normally the responsibility of the same person or body involved in scoping at Step 3.
- **Step 6—Application**—the findings of the EIS are taken into account by the decision-maker.

3. Current procedures for environmental impact assessment

In the ACT, environmental impact assessment is initiated in relation to one of six *defined decisions*, rather than being confined to development proposals, as it tends to be in other jurisdictions. It is always a two-stage process (see s.121(2) of the Land Act):

- firstly, a PA is prepared by the proponent and subjected to public scrutiny
- secondly a further assessment is prepared in the form of either a public environment report (PER) or environmental impact statement (EIS), but only if directed to do so by the Minister. In deciding whether to make such a direction the Minister is required to consider the PA, among other things.

Environmental impact assessment can also be directed by the relevant Minister under the Land Act (s.113), the *Public Health Act 1997* or the *Environment Protection Act 1997*.

It is sometimes the case that a PA is required because it foreshadows future development—such as a draft variation to the Territory Plan to allow new urban estates, well before the land is subdivided.

The Environment Minister (currently the Minister for Planning) is responsible for the oversight of environmental impact assessment for each defined decision, taking the objectives of ecologically sustainable development into account (see Appendix D). This responsibility is currently delegated to particular officers in the Planning and Land Authority (the Authority).

An exemption from preparing a mandatory PA can be granted by the Planning and Land Authority (not the Minister) if the Authority considers that the proposal will not result in a significant change to the existing activity, the proposal has already been adequately assessed for environmental impact, or will be the subject of adequate assessment by another jurisdiction (Territory Plan, Appendix II, clause II.1).

DEFINED DECISIONS

The six defined decisions are defined in Part 4 of the Land Act:

> ***defined decision*** *means a decision of the Territory, the Executive, a Minister or a Territory authority about a proposal, being a proposal in relation to which a Minister is empowered under Part 2, Part 5 or Part 6, an Act other than this Act or a subordinate law—*
> *(a) to direct that an assessment be made; or*
> *(b) to establish a panel to conduct an inquiry.*

Defined decisions and the Minister currently empowered to make such decisions are summarised in Table 1. Ministerial responsibility is allocated though Administrative Arrangements that are authorised and notified by the Chief Minister from time to time.

Table 1: Defined decisions and the relevant legislation and Minister (under current administrative arrangements)

Defined decision	Legislative provision	Relevant Minister(s) under notified administrative arrangements
Development applications	Land Act, s.236	Minister for Planning Environment Minister
Variations to the Territory Plan	Land Act, s.18	Minister for Planning Environment Minister
Proposals to grant Crown leases	Land Act, s.166	Minister for Planning Environment Minister
Preparation of draft plans of management for public land	Land Act, s.199	Minister for Planning Environment Minister
Development applications under Part 6 of the Land Act that the relevant Minister considers 'would be likely to have a significant effect on public health'	*Public Health Act 1997*, s.134	Minister for Health Environment Minister
Activities for environmental authorisations (other than development applications) where the relevant Minister has reasonable grounds for believing that the activity 'has potential to cause serious or material environmental harm'	*Environment Protection Act 1997*, s.94	Minister for the Environment Environment Minister

The Environment Minister is a term peculiar to Part 4 of the Land Act. Under this Act

> ***Environment Minister*** *means the Minister administering part 4 (Environmental assessments and inquiries).*

Under current administrative arrangements the Minister for Planning is responsible for Part 4 of the Land Act and is therefore the Environment Minister.

In all cases environmental impact assessment is undertaken in accordance with Part 4 of the Land Act.

Part A3 of the Territory Plan requires that environmental issues be considered in all development applications. This means that a wide range of issues—such as ecological, cultural, and residential amenity—are taken into account for all applications, whether or not they are subject to a formal impact assessment.

Ordinarily the relevant Minister (as determined by the Administrative Arrangements) designates the person seeking to undertake the development as the *proponent* for the purposes of the Land Act (s.112). Australian and international leading practice assumes that the actual proponent (the person proposing to undertake the activity) is normally

best placed to assume this role and to modify the proposal to take account of environmental impacts (after the 1998 discussion paper).

3.1 Preliminary assessments (stage one)

PAs were initially intended to be the screening step (Step 2) in the assessment of environmental impacts for defined decisions. The question that PAs should answer is:

> *Does the proposal have potential for environmental impact?*

The prescribed content of a PA is limited. The provisions of the Land Act require the proponent (Division 4.2) to assess only the potential impact of the project on the environment (s.115 and Schedule 3). Significantly, the Act stops short of requiring a description of proposed measures to ameliorate such impacts. This further level of assessment, and the identification of ameliorating measures, is reserved for a PER or an EIS.

PAs are not specifically listed as a matter for consideration in the assessment of development applications under Section 9, Part A3 of the Territory Plan. In contrast, further environmental assessments are listed for particular consideration here (clause 9.2(f)).

Section 231 of the Land Act requires the Planning and Land Authority to consider a PA when determining a development application, but this was possibly added to legitimise the application of PAs in this way as they evolved into large and complex documents.

PUBLIC CONSULTATION

After the PA is lodged with the Authority, a notice is placed in *The Canberra Times* and a notifiable instrument published in the *Legislation Register*. While the public have at least 15 days to respond, the statute makes no particular provision for the public to make submissions on a PA, so the purpose of the notification appears to be for advice only. This is in contrast to other public consultation procedures under the Land Act. For example, consultation on development applications under Part 6 goes beyond advice to include an express invitation to the public to make submissions, and a requirement for the Authority to take those submissions into account.

ROUND-TABLE CONFERENCE

Under s.128 of the Land Act, the Environment Minister (currently the Minister for Planning) may call a meeting of the proponent and other relevant parties for the purposes of:

- clarifying the proposal or concerns relating to the proposal
- clarifying the report of any inquiry into the proposal
- discussing ways that the environmental impact of the proposal could be reduced.

This form of consultation is often referred to as a round-table conference and it can occur at various stages of the environmental assessment process. At the PA stage, a meeting can be called and the report of its outcomes used to inform the relevant Minister's decision on whether a further assessment is warranted.

EVALUATION

No specific provision is made in the Land Act for the evaluation of a PA, other than the requirement for the relevant Minister to take it into account when deciding whether to direct further assessment. A PA must, however, be considered in the determination of a development application (s.231 of the Land Act).

3.2 Further assessment (stage two)

For the sake of clarity, the term *further assessment* will be used in this paper to describe an assessment following a PA as described in division 4.3 of the Land Act.

Section 121 of the Land Act gives the Minister (currently the Environment Minister who is also the Minister for Planning) discretion to direct a proponent to prepare an assessment in the form of either a PER or an EIS. Such a direction can only be made where the Minister, based on reasonable grounds, forms the view that the environmental impact of the proposal would be of sufficient significance to warrant further assessment. As discussed above, this stage is rarely undertaken because PAs have expanded to fill this role.

In forming an opinion about the significance of the proposal's environmental impact, the relevant Minister is obliged to consider:

- the PA
- the report of any consultation meeting (round table conference) (s.128)
- whether the proposal is or could be the subject of some other form of environmental assessment.

In practice, the PA is the key determinant and, as such, points to its original role—to identify the potential for environmental impact of a particular proposal.

Following a decision to proceed to further assessment, the Environment Minister (currently the Minister for Planning) must, under s.123 of the Land Act, direct the proponent on:

- the type and form of the assessment (either a PER or EIS)
- the matters to be included in it
- the relative emphasis to be given to each matter.

The relevant Minister also has the power to direct which consultants will be used to prepare the further assessment (s.123). So far the relevant Minister has exercised this power by indicating that consultants should be chosen from a particular list rather than by directing that a particular consultant be used, and by directing that a consultant other

than the one who prepared the PA be engaged to prepare the further assessment. Any such directions must be published in the *Legislation Register* and a daily newspaper.

FORM AND CONTENT OF FURTHER ASSESSMENT

The form and content of PERs and EISs are specified in s.5 of the *Land (Planning and Environment) Regulation 1992*. There is a broad and consistent view that these provisions should be simplified and clarified, regardless of how many of the proposed reforms are adopted.

A number of similar documents from other jurisdictions, notably NSW, may provide some assistance (see Appendices D and G). For instance, the NSW approach gives prominence to the justification of a particular proposal against the principles of ecologically sustainable development. It also clearly requires the analysis of alternatives and the consequences of not carrying out the proposed activity.

PUBLIC CONSULTATION

Section 124 of the Land Act gives discretion to the Minister to require public consultation on PERs. To date this discretion has not been exercised. Instead, proponents have been directed to consult with particular interest groups.

By contrast, s.125 mandates public consultation on draft EISs, except where they form part of the explanatory material related to draft variations to the Territory Plan, or are notified with draft plans of management for public land. The public is made aware of the draft EIS through a notice in *The Canberra Times* and a notifiable instrument as published in the *Legislation Register*. Members of the public may inspect the document or purchase copies of the draft EIS from the Authority.

ROUND-TABLE CONFERENCE

A round-table conference, as described in the previous section, can also be called as part of the further assessment.

REPORT ON CONSULTATION

Where a PER or an EIS is released for public consultation, the proponent must submit a report on the consultation to the Environment Minister (currently the Minister for Planning). The Environment Minister can then direct that further information or a revision of the document be provided within 42 days. If the Environment Minister does not seek revision or new information, he or she must prepare a report evaluating the document within 56 days of the date it was originally lodged.

According to s.131 the Environment Minister's evaluation report must include:

- a statement by the Environment Minister as to whether the document has been prepared in accordance with the Land Act and the regulation
- any comment that the Environment Minister wishes to make about the environmental impact of the proposal
- a report on any meeting convened under s.128 (a round-table conference)
- any recommendations that the Environment Minister has about conditions which should be attached to any approval.

All this—the PER, the final EIS and any reports and evaluations—are tabled in the Legislative Assembly. Whilst it might debate the matter, the Assembly currently has no explicit power to endorse, reject or modify the EIS.

STATISTICS

As at the end of March 2005, 186 preliminary assessments were completed. Of these, five projects required further assessment in the form of public environment reports. No projects were subject to an EIS and no inquiries were initiated.

It could be argued that an average of around 15 PAs per year is not worthy of significant reform of the system. However, as the introduction to this report argues, the relatively small number of PAs does not diminish the concern that reform is necessary, not least because it will result in improved environmental outcomes.

4. Ministerial powers

4.1 Discretionary powers

Recommendations:

- *Subject to administrative arrangements, the discretionary power to direct that an EIS be prepared should be vested in the Minister for Planning.*
- *The Minister for the Environment and the Minister for Health retain their powers in relation to environmental authorisations and development applications with public health implications.*

There are four Ministers who can initiate an environmental impact assessment under current administrative arrangements, or under s.122 of the Land Act in the case of the Environment Minister:

1. Minister for Planning—Land Act s.18, s.166, s.199, s.236
2. Minister for the Environment—Environment Protection Act s.94,
3. Minister for Health—Public Health Act s.134
4. Environment Minister—the same powers as the other Ministers, except for the power to initiate an inquiry

Part 4 of the Land Act refers to the Environment Minister whose function is to administer the assessment process. As outlined in Chapter 3, currently the Environment Minister is the Minister for Planning, and this is not the same person as the Minister for the Environment. The powers of the Environment Minister are currently delegated to the Authority.

The Land Act (including part 4) refers to the relevant Minister, a term defined in s.111 as follows:

> ***relevant Minister****, means the Minister responsible for the administration of the Act or subordinate law under which—*
> *(a) in relation to an assessment or inquiry—that assessment or inquiry is authorised to be made or conducted; or*
> *(b) in relation to a defined decision—the relevant decision is authorised to be made.*

Administrative arrangements are issued by the Chief Minister from time to time and publicly notified with the purpose of allocating responsibility for a particular legislative power, as reflected in the list above.

In addition, s.122 of the Land Act gives the Environment Minister (currently the Minister for Planning) the same powers as any other relevant Minister to require that an assessment be made, but this power does not extend to the initiation of an inquiry.

Under s.134 wide powers are given to the Environment Minister to exempt a particular proposal or type of proposal from assessment (including PA) or compliance with any

provision in Division 4.3 (assessments). Such exemptions are subject to disallowance by the Legislative Assembly.

In practice, the administration of environmental impact assessment has been the exclusive province of Planning and Land Management and its successor from 1 July 2003, the ACT Planning and Land Authority. This power is exercised through delegation from the Environment Minister (currently the Minister for Planning).

Ministerial discretion, at least for defined decisions associated with the Land Act, is not limited to proposals determined to have an environmental impact as defined in s.111. The notion of environmental impact is invoked only when the Minister decides whether or not to direct further assessment. In this case the Minister must be satisfied, on reasonable grounds (presumably informed by the PA) that the proposal has the potential for significant environmental impact. Decisions to direct environmental assessment under the *Public Health Act 1997* and the *Environment Protection Act 1997* have different criteria.

PROPOSED REFORMS

Given the independent nature of the ACT Planning and Land Authority, it should be given a significant role in the administration of environmental impact assessment, including key roles such as the scoping of environmental impact statements. Where it is appropriate for ministerial power to be exercised, that power should be vested in the Minister for Planning subject to administrative arrangements. The Minister for the Environment and the Minister for Health should retain their powers in relation to environmental authorisations and development applications with public health implications, as outlined above. It is open to the Chief Minister, however, to allocate ministerial responsibilities from time to time under the administrative arrangements. Furthermore, agreements may be reached between the Minister for Planning and other Ministers concerning triggers for environmental impact assessment of proposals that raise concerns particular to those Ministers.

It is also proposed that the currently unfettered power of ministerial discretion to direct an environmental impact assessment (including further assessment) in relation to development applications be limited to proposals that, in the opinion of the relevant Minister, will have potential for significant environmental impact.

Following the 1998 discussion paper an alternative definition of environmental impact was devised, with the objective of removing duplications and ambiguities, increasing clarity and incorporating greenhouse gas emissions as agreed under the National Greenhouse Strategy.

The definition suggested at the time was:

> ***environmental impact****, in relation to a proposal which is the subject of a defined decision, includes the following potential effects of the proposal (if carried out), either by itself or in combination with the effects of existing development:*
> *(a) the effect on the physical, biological or cultural qualities or elements of an area;*
> *(b) the endangering or further endangering of a native species of flora or fauna or its habitat;*
> *(c) the endangering or further endangering of a native ecological community;*
> *(d) the long-term changes to the amenity of an area, its character or its identity;*
> *(e) the effect on human health;*
> *(f) the long-term effects on the social system, including effects with potential to affect the capacity or viability of, or the community access to, services or facilities;*
> *(g) increased demands on natural resources that are, or are likely to be, in short supply;*
> *(h) the socio-economic effects on any group or people;*
> *(i) the production of greenhouse gases or ozone-depleting gases;*
> *(j) the specific effect of any land or premises, or the surroundings of any land or premises, that have heritage significance.*

This is not a particularly onerous limitation on ministerial discretion because the question of what is significant in the context of environmental impact is always imprecise.

The nature, extent and application of these powers are discussed further in relation to the proposed models for environmental impact assessment of development applications. A recommendation is made in Chapter 6 that the ministerial discretion to direct that a EIS be prepared be subject to the Minister being satisfied that there is likely to be significant environmental impact, as defined above.

The current definition of environmental impact is in Appendix A.

4.2 Inquiries

Recommendations:

- *Give the Minister for Planning the power, subject to administrative arrangements, to establish a panel to conduct an inquiry only after the finalisation of an EIS, but before the relevant development application is decided.*
- *That guidelines be prepared by the Authority for the appointment of a panel and include the minimum qualifications of members.*

Section 236 of the Land Act gives discretionary powers to the Minister for Planning to initiate an inquiry about any aspect of a development application. For each of the six

defined decisions, the relevant Minister can establish an inquiry instead of, or in addition to, an environmental assessment. There is nothing to prevent an inquiry being established after or in parallel with an environmental assessment.

Clause 9.2 (f) of Part A to the Territory Plan requires that the relevant authority (that is, the decision-maker for a development application) carefully consider the results of any inquiry.

Under Division 4.4 of the Land Act, the Environment Minister (who is currently the Minister for Planning) appoints a panel of at least one person to conduct an inquiry. There are no minimum qualifications for panel members.

TERMS OF REFERENCE OF AN INQUIRY

Under s.138(2) the main focus of an inquiry, through its terms of reference, is the potential costs and benefits of the proposal to the community. Whilst this may well include environmental factors, it is not an overtly environmental impact assessment in the same way as PAs, PERs and EISs.

The Environment Minister must determine the terms of reference for an inquiry and notify them in the Legislation Register. In addition to the matters specified in s.138(2), the Minister may require the panel to investigate specified aspects of the proposal, or to consider any specified report.

A power to vary the terms of reference, presumably after they are originally notified, is conferred on the Environment Minister under s.138(3). Such variations to the terms of reference must be notified in the Legislation Register.

After an inquiry reports its findings and recommendations to the Environment Minister, he or she has six sitting days to table the report in the Legislative Assembly and advertise its availability to the public in *The Canberra Times* and the Legislation Register.

The panel is generally able to determine its own procedures. Inquiries are not bound by the rules of evidence, although they may take evidence on oath or affirmation and may prohibit or regulate cross-examination. Submissions to the inquiry may be made either orally or in writing. While inquiries are generally public, the panel has the power, bound by its consideration of certain principles, to hold its proceedings in private and to restrict presentation of information and evidence. A panel of inquiry can compel witnesses to appear, enter places, and search and inspect books and other documents.

The Environment Minister has the power to initiate an inquiry whether or not assessment has been initiated.

OPTIONS FOR PROPOSED REFORMS

Two options are presented.

Option 1—Maintain status quo

Under this option, the relevant Minister retains the discretion to establish a panel to hold an inquiry on any aspect of a defined decision, including development applications whether or not it has triggered assessment.

The report of such a hearing must be carefully considered by the decision-maker when determining the subject development application.

Option 2 (preferred)—
(a) Inquiry by a panel established by the Minister after finalisation of an EIS, but before the relevant development application is decided.
(b) Establish guidelines for the appointment of a panel including qualifications of members.

Under this option the relevant Minister has the discretion to establish a panel to conduct an inquiry following the referral of the accepted EIS by the Authority. The panel would decide whether or not to hold a public hearing as part of its investigations.

The panel's report will be used by the Authority to decide on a development application, or it is used by the relevant Minister if the application is 'called-in' under s.229B of the Land Act.

Proposed guidelines would outline the range of qualifications of panel members applicable to various categories of assessment. For example members with community welfare experience would be useful in the assessment of a new hospital, while a botanist might well be required in the assessment of a major water storage proposal.

4.3 Round-table conferences

Recommendation:

- *Give the Planning and Land Authority discretion to initiate round-table conferences (currently under s.128 of the Land Act).*

A round-table conference gives opportunity for interested parties to discuss the environmental implications of a proposal in a relatively informal manner.

If a conference is called it should be held immediately after the first opportunity for public participation, depending on which of the above options is favoured. Public participation will effectively reveal those parties that have taken an interest in the proposal. Invitations to a round table conference can be made accordingly.

Currently, the power to call a round-table conference is held by the Environment Minister (currently the Minister for Planning) only. It is proposed to transfer this power to the Authority, at least in relation to environmental impact statements associated with

development applications. It is appropriate for the Authority to assume this responsibility because this form of consultation occurs while the proponent is preparing an EIS—a process that is supervised and administered by the Authority.

5. Proposals by government agencies

Proposals by government agencies sometimes require environmental impact assessment. For example, a PA and subsequent PER were required for a proposal by the Chief Minister’s Department for the redevelopment of the Uriarra Settlement after the fires in January 2003. In this and most other comparable cases the administration of the process by the Authority (under delegation from the Environment Minister) is not controversial, essentially because the proponent agency is not directly related to the Authority, despite them both being within the ACT Government.

A potential concern may arise when the proponent agency is closer to the Authority, particularly when the agency and the Authority fall under the responsibility of the same Minister. While the Authority is rarely, if ever, a proponent, it regularly deals with proposals from the Land Development Agency, some of which trigger PAs. The Land Development Agency is responsible for land sales and land development on behalf of the ACT Government. It is run by a board of up to seven expert members and is commercially independent within the constraints imposed by the Government.

Currently, the Minister for Planning has ministerial oversight over both the Land Development Agency and the Authority and so the perception of potential conflict of interest may arise. It is important to note that if there is a potential conflict of interest, it has been the case for a number of years.

Before the Land Development Agency came into being on 1 July 2003, similar responsibilities were discharged by the Land Group, the Gungahlin Development Authority, and the Kingston Foreshore Development Authority, with similar (though not identical) ministerial arrangements. Numerous proposals that triggered PAs, typically involving proposals to grant Crown leases, or draft variations to the Territory Plan, were initiated by these agencies and administered by the Authority or its predecessor (PALM), without known claims of conflict of interest. This is possibly because the responsibility for administration of environmental impact assessment is delegated to the Authority, and there is no sustainable perception of conflict of interest between the Authority and the Land Development Agency at this level.

Based on previous experience, there is no reason why the proposed reforms will increase the potential for conflict of interest in relation to the Authority and the Land Development Agency over the administration of environmental impact assessment.

6. Development applications

Under s.236 of the Land Act the Minister for Planning may direct that an assessment be made or an inquiry established about any aspect of a development application. Alternatively, and far more commonly, a mandatory PA is triggered because the proposed development is listed in Schedule II.1 of Appendix II of the Territory Plan.

The threshold for this trigger is set at a low level compared with other jurisdictions. The result is that many proposals have been drawn into the environmental impact assessment net that do not warrant the level of impact assessment provided—such as a proposal to build a shed in a river corridor (see Appendix B). Furthermore, as discussed earlier, proponents often prepare complex and expensive PAs in an effort to avoid an even longer and more expensive further assessment (as a PER or an EIS). In both situations, the resulting PAs are no longer meeting their intended purpose of providing the screening step in the environmental impact assessment process.

Section 230(3)(c) of the Land Act extends the deadline for the determination of an application from six to twelve months when a further assessment (as distinct from a PA) is initiated.

6.1 Proposed model

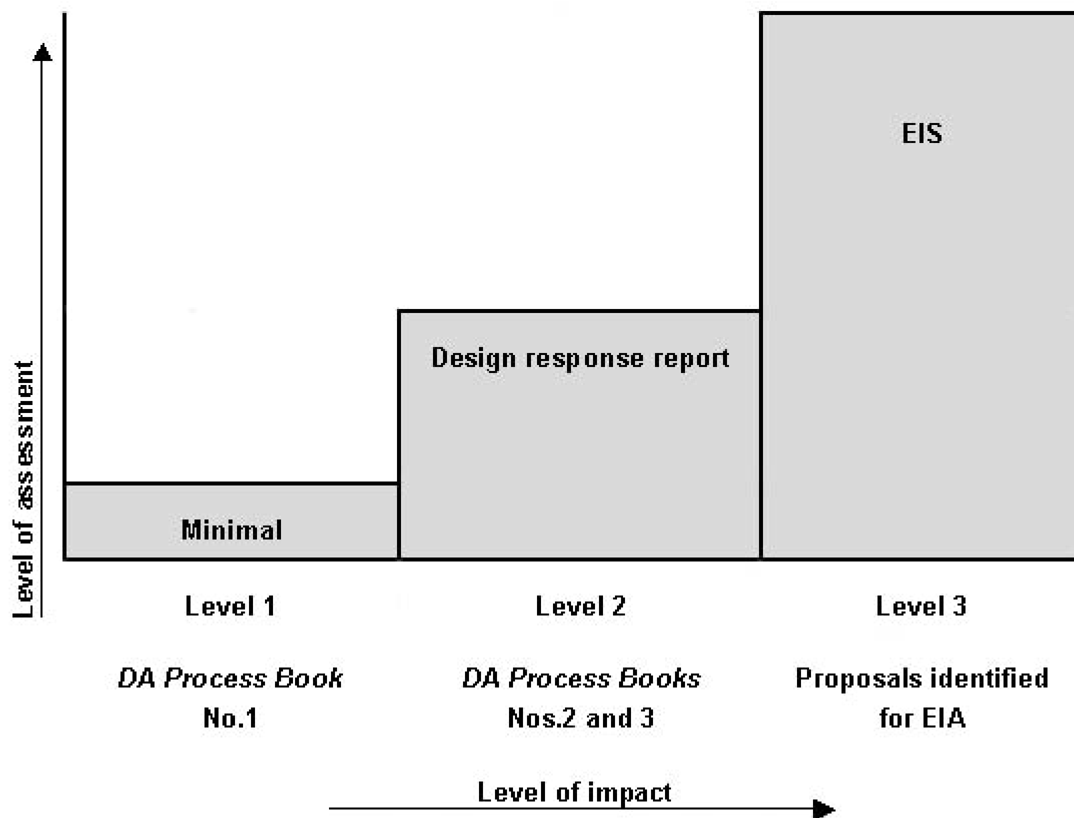
Recommendation:

- *Undertake environmental impact assessment of development applications at three levels:*
  1. level one—minimal for minor development
  2. level two—an expanded design response report for applications falling under DA Process Books numbers 2 and 3
  3. .level three—EIS for listed activities or when the Minister for Planning directs an assessment.

Environmental impact is always a matter for consideration in the assessment of development applications. The complexity of assessment generally increases with the anticipated level of environmental risk. For example, the environmental risk associated with a concrete batching plant is likely to be higher than an apartment building, and much higher than a minor residential extension. This paper proposes that the level of environmental assessment should be tailored accordingly.

Figure 1 shows three distinct levels of assessment that are proposed, with an explanation of each level immediately below it.

Figure 1: Levels of environmental assessment—the proposed model for development applications



6.1.1 Assessment level 1—minimal

Development applications for less complex proposals are ordinarily covered by *DA Process Book No.1*, including single houses in new estates, small-scale building alterations and additions, outbuildings and swimming pools. No specific environmental impact information beyond that normally indicated in the drawings and development application form is normally required. Environmental impact is considered as part of the assessment of such proposals against the Territory Plan.

6.1.2 Assessment level 2—expanded design response report

Development applications falling under *DA Process Books* No. 2 and No.3 require a higher level of environmental impact assessment, but do not necessarily warrant a full environmental impact assessment process. Identification of potential environmental risk and intended response can be addressed in an expanded design response report.

A design response report is a minimum requirement for moderately complex development applications (such as commercial proposals with a gross floor area greater than $1000m^2$) and is required to address:

- location and area of the block
- description of the proposal
- site and context study
- statement against the requirements of the Territory Plan, including:
  - a local area context analysis
  - a neighbourhood development context analysis
  - site features and context analysis
  - a streetscape character study (only for significant streetscapes)
- opportunities and constraints study
- design concept documentation used during consultation
- statement relating the design to the above
- statement of design intent
- consultation summary, including:
  - a record of consultation with neighbours and the community
  - a record of consultation with government agencies and utility providers
  - a summary of issues raised in consultation
  - a summary of responses to the issues raised
- residential sustainability report.

Environmental issues are implicit in these minimum requirements. The list can be readily expanded to more explicitly nominate such matters for consideration by adding, for example, social impact, the impact on flora, the impact on fauna, soil and water management, emissions, and economic impact.

6.1.3 Assessment level 3—EIS and inquiry

Whether by reference to a list or through the exercise of ministerial discretion (under s.236 of the Land Act), formal environmental impact assessment will be required for certain proposals. The process of determining which proposals should be so treated is referred to as screening and it is outlined in the next few pages.

Currently the Legislative Assembly may refer a development application that has been the subject of an EIS to an assembly committee. The committee may hold a public inquiry, before tabling its report in the Legislative Assembly. It is not intended that this power be retained.

SCREENING

Recommendations:

- *Abandon preliminary assessments in favour of environmental impact statements for high impact activities.*
- *That developments for which an EIS to accompany a development application is mandatory be listed in a schedule devised in recognition of the environmental goals of the ACT.*
- *The Minister for Planning should retain the power to direct that an EIS be lodged with a particular development application where, in the Minister's opinion, the proposed development will have potential for significant environmental impact.*

Screening is the identification of proposals that require a formal EIS on the basis of an assessment of the level of environmental risk.

Discussion of options

Two options for the screening step are identified.

Option 1 (preferred)—Abandon PAs in favour of EISs for high impact activities

The main argument for abandoning PAs as a means of screening proposals is that PAs have evolved into a form of environmental assessment that is almost indistinguishable from an EIS. Proponents are likely to keep preparing PAs that are as complex as an EIS as long as there is a prospect of avoiding further assessment. This is likely to continue even if the Authority tries to discourage complex PAs.

The proposed three-level assessment approach also means that fewer proposals will attract environmental assessment and, even if an EIS is required, only one such assessment will be required. This is likely to be favourably regarded by proponents of development applications. On the other hand, some may be concerned over the delays that could result if a final EISs must be tabled in the Legislative Assembly, in contrast to a PA, which does not.

It is acknowledged that there was strong support for the retention of PAs in response to the 1998 discussion paper (see Appendix C). Many submissions argued that the solution lies in recasting PAs to better meet their original intention, rather than abandoning them altogether. One of the key concerns underpinning these comments appeared to be the potential decrease in public involvement in the early stages of environmental impact assessment. In this regard the proposed reforms will introduce additional public scrutiny at the draft EIS stage. Public scrutiny of the draft EIS allows for more effective and directed submissions that can be readily accommodated into a final public document. On balance this approach allows for more effective public involvement than the current arrangements, which are effectively confined to the final PA and there is doubt over the influence that public comments can have.

Public participation in development applications that do not trigger an EIS will be retained, with the exception of those proposals currently exempt from notification (for example, most housing in new residential estates, small alterations and additions). As is

currently the case, the public will have the opportunity to comment on development proposals and associated environmental issues addressed in the expanded design response report.

Ministerial discretion to trigger environmental assessment on any development application is to be retained, irrespective of whether it is listed for mandatory assessment. Such an assessment will follow the same path as that applying to mandatory assessments.

In summary, abandoning PAs in favour of directly triggering EISs at a higher threshold level will provide greater clarity and certainty of process, more efficient administration, better focussed and more timely public involvement, and a level of environmental impact assessment that is appropriate to the risk of environmental impact for a given proposal.

Option 2—retain PAs but reduce their size and complexity to reflect their original role

The key to the successful adoption of this model is convincing proponents that there will be no significant advantage in submitting a long and complex PA. They need to understand that there is only one question to be answered by the PA, namely whether or not the proposal has the potential for environmental impact.

The proponent also needs to be aware that, if the PA addresses additional matters, this will not influence the decision about whether further assessment is required.

A similar problem affects the operation of the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (Appendix E). Proponents providing preliminary information about possible environmental impacts are advised that such information does not have to include:

> *...information of a kind that could only reasonably be obtained by preparing an environmental impact statement.*

In relation to PAs, similar advice could be given, but in a more prescriptive form. To be effective the advice could be:

> *A PA will not be accepted if it contains information of a kind that could reasonably be obtained only by preparing an environmental impact statement.*

Public consultation on a PA appears to be a significant factor. The time taken to decide whether further assessment is required is considerably extended by public consultation. If PAs are retained in a simplified form, public consultation should take place only after further assessment is triggered and in accordance with the adopted model for EIS preparation as outlined below.

Exceptions

As is presently the case, the Authority should have the ability to exempt a proposal from an EIS if, in its opinion, sufficient assessment has already taken place.

A schedule of high impact development

In keeping with the current prescriptive approach to identifying proposals that require PAs, it will be recommended that a table of development for which an EIS is mandatory should be devised and implemented, generally following the approach employed in NSW (see Appendix G). Unlike NSW, however, ministerial powers to direct that an EIS be prepared for unlisted proposals are to be retained.

Appendix I contains an extract from the schedule currently applicable to NSW. In its full form it is a lengthy and relatively complex document that will not meet the needs of the ACT. Instead it should be regarded as a possible basis for a new schedule suited to local circumstances and environmental goals. Locational matters are a key feature of the NSW list that may be included in the ACT list. This acknowledges that identical activities can have different potential for impact according to their location. For example a piggery on the banks of a watercourse will have a higher potential for environmental impact than the same facility remote from any water.

SCOPING

Recommendations:

- *That environmental impact statements be scoped by the Planning and Land Authority, with advice from relevant government agencies.*
- *Specify the minimum content of an environmental impact statement in a document approved by the Authority and publicly notified as an approved form.*
- *Environmental impact statements should become the sole mechanism for high level (level 3) environmental impact assessment (i.e. public environment reports be abandoned).*

Scoping is the identification of matters to be addressed in an EIS. Because every EIS will be scoped there is no need to distinguish between PERs and EISs. Furthermore, the term environmental impact statement is more commonly used and understood than public environment report.

Two options for scoping are discussed.

Option 1—Scoping by the Authority with public participation

Under this option, scoping of EISs is to be the responsibility of the Authority after public and government agency comment. To provide a consistent starting point and layout for the document, it is proposed to specify the minimum content of an EIS in a document approved by the Authority and publicly notified (possibly as an approved form). This could be similar to the current list found in regulation 5, but with significant changes for the sake of clarity. A suggested list is in Appendix I.

In addition to a description of the proposal, its environmental setting, the potential impacts and measures to mitigate those impacts, the suggested list requires the identification and analysis of any feasible alternatives to the proposal and the justification of the proposal against principles of ecologically sustainable development (Appendix D). This approach is consistent with the Intergovernmental Agreement on the Environment (Appendix E).

Scoping will be based on a description of the proposal provided by the proponent. It must contain sufficient detail for all parties to understand the proposal and the associated environmental risks.

Public comment will be invited on a draft content list prepared by the Authority in consultation with relevant government agencies, and accompanied by a description (prepared by the proponent) of the proposal and the environment it will impact. This approach has the advantage of identifying parties that would add value to a round-table conference, if it is held.

The scoping process—including referrals, public participation, and responses from government agencies—should be time-limited. If the process is not completed within the specified time the proponent should be able to prepare an EIS that meets the requirements of the relevant schedule.

Option 2 (preferred)—Scoping of an EIS by the Authority

This option is essentially the same as option 1, but with public participation at the draft EIS stage. Scoping will be the responsibility of the Authority with advice from government agencies.

Public participation will be invited on the draft EIS. This is the preferred approach because it still gives the public opportunity to identify issues that may not have been considered, with the added benefit of being able to comment on the actual content of the document at the draft stage.

PREPARATION OF A DRAFT EIS

Recommendations:

- *Environmental impact statements are to be lodged with the Authority in a draft form, and the public is to be invited to comment on the draft.*
- *Require the proponent to engage a consultant for the preparation of an EIS from a list of pre-qualified consultants.*

To be valid and acceptable a draft EIS must addresses the matters identified in the scoping phase. When the draft EIS is completed by the proponent, the Authority will have the power to call a round-table conference.

Option 1—Optional submission of draft EIS to the Authority

This option allows for the possibility of an EIS being lodged with a development application without the document being scrutinised by the Authority after scoping. This option is available only in conjunction with scoping option 1 which allows for public participation at the scoping stage rather than when a draft EIS is formally submitted to the Authority under scoping option 2.

Under this option a draft EIS may be submitted to the Authority for review and, possibly, circulation to the relevant agencies. From the proponent's perspective this will give early warning of any deficiencies in the document and/or the solutions to environmental impacts offered in the related development application. The resource implications of this approach for government need to be critically examined and quantified. There is also the question of whether the relevant agencies need to be consulted at this stage, particularly if each had been involved in the initial scoping process.

Option 2 (preferred)—Mandatory submission of draft EIS to the Authority for public scrutiny

If scoping option 2 (the preferred option) is adopted, the mandatory lodgement of a draft EIS with the Authority for the purpose of inviting public comment provides an opportunity for a review by the Authority and, possibly, relevant government agencies.

At this stage, public comment on the draft EIS will be invited over a specified period and any submissions received forwarded to the proponent. The proponent will be expected to address all issues raised and either amend or extend the draft EIS accordingly, or provide the Authority with written reasons for not further investigating or assessing a particular issue.

The round table conference is to be retained as an optional part of the consultation process. It may be initiated by the Authority as part of the normal pre-application phase of the preparation of development application and EIS (see Figure 2) or, when an EIS precedes a development application, at the draft EIS stage (see Figure 3).

SELECTING A CONSULTANT

Whilst current leading practice maintains that the proponent should be responsible for the preparation of an EIS, the relevant Minister or the Authority could have some influence over the choice of consultant to prepare the document on behalf of the proponent. This power is already provided through s.123 of the Land Act.

Four options are identified for the preparation of environmental impact statements:

1. prepared by the proponent with the assistance of a consultant chosen by the relevant Minister or the Authority
2. prepared by a consultant engaged by the proponent from a list of pre-qualified consultants
3. prepared by the proponent or a consultant engaged by the proponent
4. prepared by a consultant engaged by the Authority at the proponent's cost.

Option 2 is preferred. This approach gives the relevant Minister, the Authority, and the public comfort that the consultant engaged by the proponent is appropriately qualified. At the same time it gives the proponent some flexibility, particularly, but not exclusively, in the negotiation of fees.

FINALISING THE EIS

Recommendations:

- *Give the Authority the responsibility to endorse environmental impact statements before they are submitted to the relevant Minister.*
- *That the practice of tabling finalised environmental impact statements in the Legislative Assembly be at the discretion of the relevant Minister.*

Under current provisions the Environment Minister is required to table a final EIS or PER in the Legislative Assembly, and provide notification through the Legislation Register and *The Canberra Times*. Also required for tabling are:

- any directions given by the Environment Minister to the proponent requiring additional information or revisions to the assessment report
- reports on consultation or further information provided by the proponent.

Material may be excluded from these documents on the grounds of confidentiality.

The main purpose appears to be to allow the Legislative Assembly access to a completed EIS and related documents, although no express power is given to the Assembly to endorse, reject or modify the document. Given this lack of power, the value of tabling a finalised EIS in the Legislative Assembly is questioned. The preferred option is to give discretion to the relevant Minister to table finalised EISs where the Minister is of the view that consequential decisions must be made by government.

Tabling is currently associated with advice to the public (through a notifiable instrument) that the EIS or PER has been tabled and that the document may be viewed at a specified location. Proposed reforms adequately provide for public involvement at both the draft and final stages of an EIS, so additional advice associated with tabling in the Legislative Assembly is not considered to be necessary.

Under the preferred model for environmental impact assessment, the proponent will make any changes to the draft EIS prompted by public submissions, or provide a written explanation of why such changes were not warranted. The document and any related material will then be submitted to the Authority for endorsement. Before endorsement is given the Authority may seek further amendments to the document.

Endorsement will signal that the EIS can be applied to the assessment of the relevant development application, but not before the Minister for Planning or the Environment Minister (currently the Minister for Planning) decides whether to hold an inquiry.

6.3 Role of an EIS in the design phase

Ordinarily the preparation of an EIS does not commence until a proposal is well-defined, that is, at least to the point of a preliminary design being available. The challenge for any environmental impact assessment model is to introduce environmental impact assessment as early as possible in the design phase of a proposal so that various design alternatives can be properly explored and evaluated against environmental outcomes. In this regard the Territory is relatively well placed because it is common practice for proponents to make contact with the Authority at an early stage in the design process.

Under the preferred models depicted in Figures 2 and 3, an EIS is required to contain a statement of how the design has responded to environmental issues.

EIS IN PARALLEL WITH DEVELOPMENT APPLICATIONS

Figure 2 shows how a development application can be prepared at the same time as an EIS. This would occur only for development applications where a site has been selected and no evaluation of alternative sites is warranted. Experience suggests that this approach will be applicable to the vast majority of development proposals that trigger environmental impact assessment.

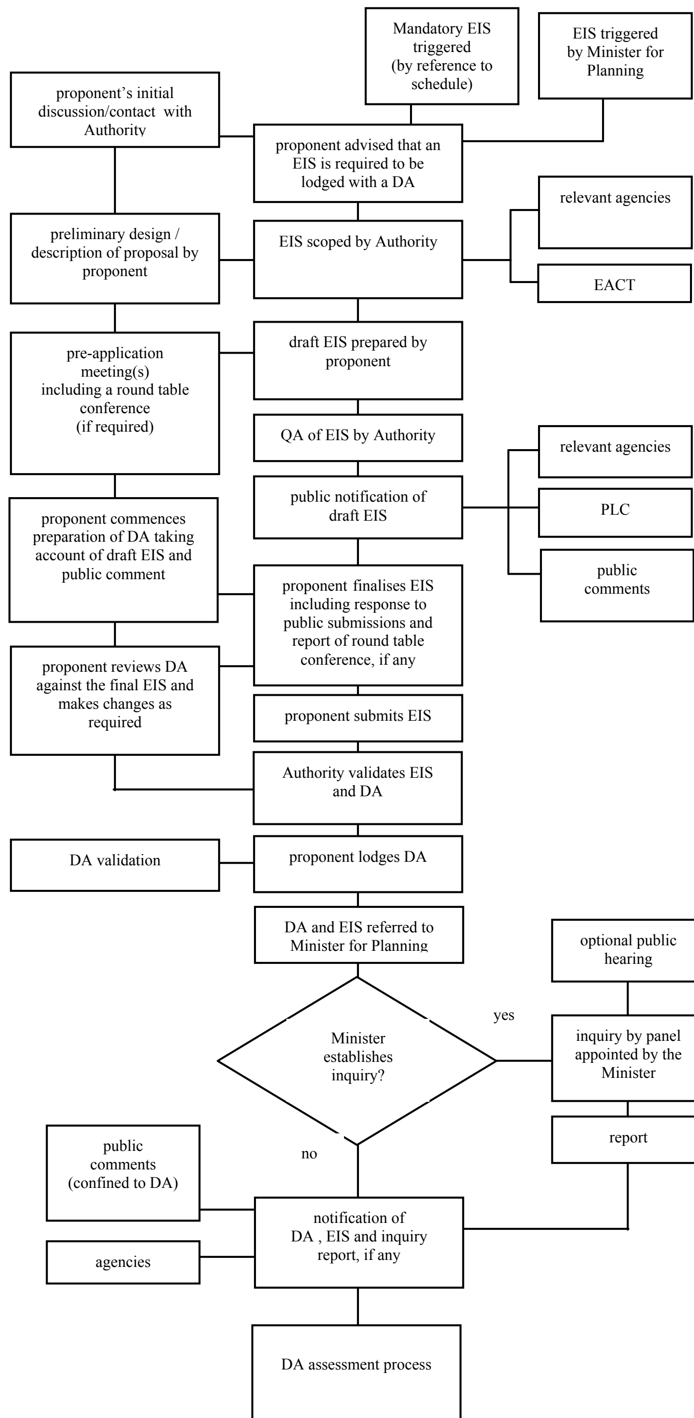
As the diagram in Figure 2 shows, information from the EIS is expected to be used when preparing the development application, and *vice versa*. This aims to ensure that the development application responds well to the environmental issues identified during the preparation of the EIS.

EIS BEFORE DEVELOPMENT APPLICATIONS

Figure 3 shows the proposed model for preparing an EIS before a development application. This would be required for proposals where site selection is a major issue, or where alternatives to one or more key components of the proposal need to be evaluated. This model is also the preferred model for the preparation of EISs related to plans of management for public lands, and for assessments under the relevant sections of the Public Health Act and Environment Protection Act, as discussed in later chapters.

Figure 2: EIS prepared in parallel with development application

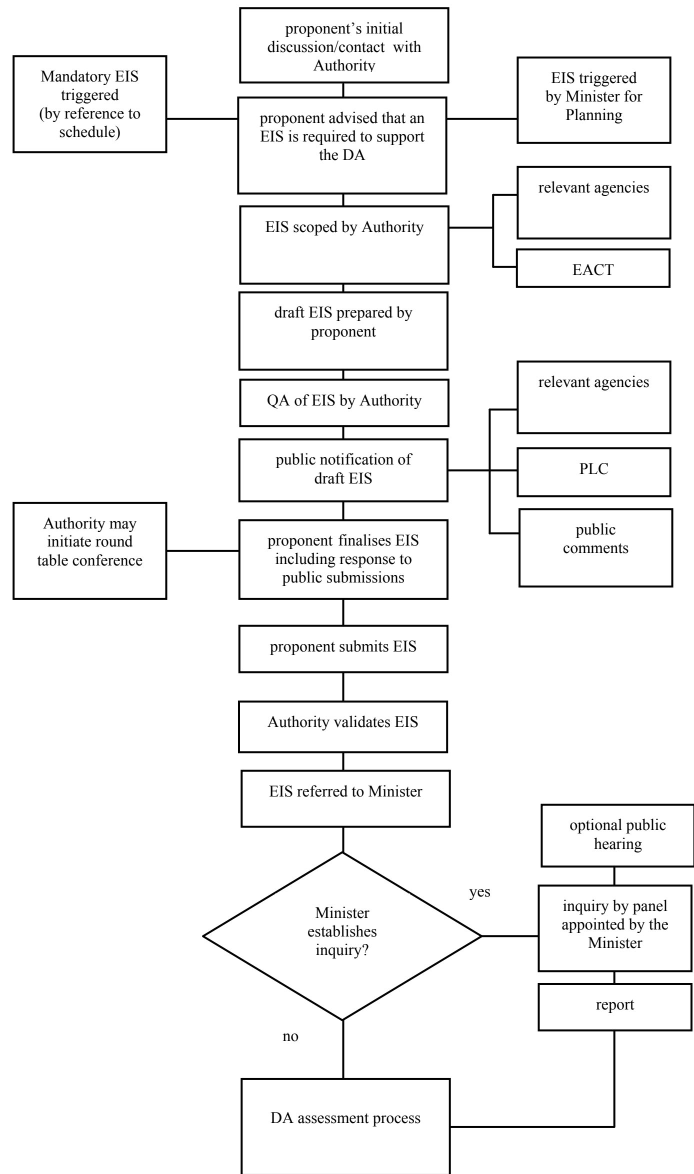
(Note: Ministerial responsibilities are indicative only as they are subject to administrative arrangements)



DA development application
EACT Environment ACT
EIS environmental impact statement
PLC Planning and Land Council
QA quality assurance

Figure 3: EIS prepared before development applications

(Note: Ministerial responsibilities are indicative only as they are subject to administrative arrangements)



DA development application
EACT Environment ACT
EIS environmental impact statement
PLC Planning and Land Council
QA quality assurance

7. Crown leases

Recommendation:

- *That environmental impact assessment associated with proposals to grant Crown leases be triggered only on a discretionary basis by the Minister for Planning, and take the form of a planning study, scoped by the Authority and prepared by the proponent.*

Under s.166 of the Land Act, the Minister for Planning may direct that an assessment be made or an inquiry established if it is proposed that a lease of Territory land be granted. The difficulty with this provision is the definition of a proposal. A proposal could be anything from a general intention to a firm undertaking to prepare a draft form of lease, but it would not extend to the actual granting of a lease. This means it is difficult to determine with any consistency the precise stage in the process when an assessment can be triggered.

If the Minister for Planning exercises this discretionary power, the Authority may grant a lease only in accordance with a ministerial direction. This may be a direction to grant the lease or grant the lease subject to changes. Alternatively the Minister may direct that the lease not be granted.

Without further assessment or an inquiry the Authority has the power under s.161 of the Land Act to grant a lease by auction, tender, ballot or direct grant, without ministerial direction.

Mandatory PA

Schedule II.1 of Appendix II to the Territory Plan makes no reference to the granting of leases as a trigger for mandatory PA.

In practice, mandatory PAs for proposals to grant Crown leases have been triggered because the lease proposed to be granted has the potential to trigger a mandatory PA under another item in Schedule II.1. For example, *Development control plan for blocks 2 to 7, 9 to 13 section 61 City*, Land Development Agency, November 2003, is a mandatory preliminary assessment triggered before the lease was granted on the basis that the parcel has the potential for the development of one or more buildings with a gross floor area of greater than 7000m^2. As part of its marketing arrangements, the Land Development Agency sought to secure an undertaking from the Environment Minister (currently the Minister for Planning) that, in consideration of the PA, no further assessment on the parcel would be required. The ultimate buyer could then prepare a development application for a building or buildings, secure in the knowledge that the previous PA would be regarded by the Authority as sufficient, and that no further mandatory PA would be required (clause II.1 of Appendix II to the Territory Plan).

If there is an advantage in triggering PAs in this way it is in the early consideration of environmental impact—well before the granting of Crown leases or the physical development of the land. The lease can then be offered for sale with the promise that further environmental assessment is not likely to be required, assuming that the original

PA was satisfactory. On the other hand, this approach adds little in the way of certainty or precision to the process. Using the above example, the potential environmental impact of a future building will be difficult to identify with any certainty without knowing its location, intended use or design.

Discretionary PA

Under s.166 of the Land Act, the Minister for Planning may initiate a further assessment without reference to Schedule II.1. This discretion is not limited, except in relation to the items in Schedule II.1 (that is, the Minister does not have the discretion to ignore Schedule II.1.) Any further assessment, whether triggered under Schedule II.1 or directed by a Minister, must commence with a PA.

Application of the findings of an assessment or an inquiry

Under s.166A of the Land Act the Minister for Planning is obliged to take an assessment report (but not a PA) or the report of an inquiry into account when formulating a direction to the Authority about the granting of a particular lease.

PROPOSED REFORMS

It is proposed that environmental impact assessment associated with the granting of Crown leases be triggered only on a discretionary basis by the Minister for Planning, and take the form of a planning study that is scoped by the Authority and prepared by the proponent, instead of a PA or an EIS.

The term *planning study* is used to suggest the broad role of such studies compared with EISs, which generally address impacts of a specific proposal. In addition to addressing environmental impacts—ecological, social and economic—a planning study will examine the implications of the proposal on settlement patterns, the provision of service infrastructure, transport and community facilities among other planning-related issues. An examination of PAs related to proposals to grant Crown leases indicates that these kinds of infrastructure issues predominate, possibly because many of the sites in question are in established areas where nature conservation issues are not quite as prominent as in undeveloped areas. Scoping of planning studies by the Authority in consultation with relevant agencies will ensure that all pertinent issues are addressed.

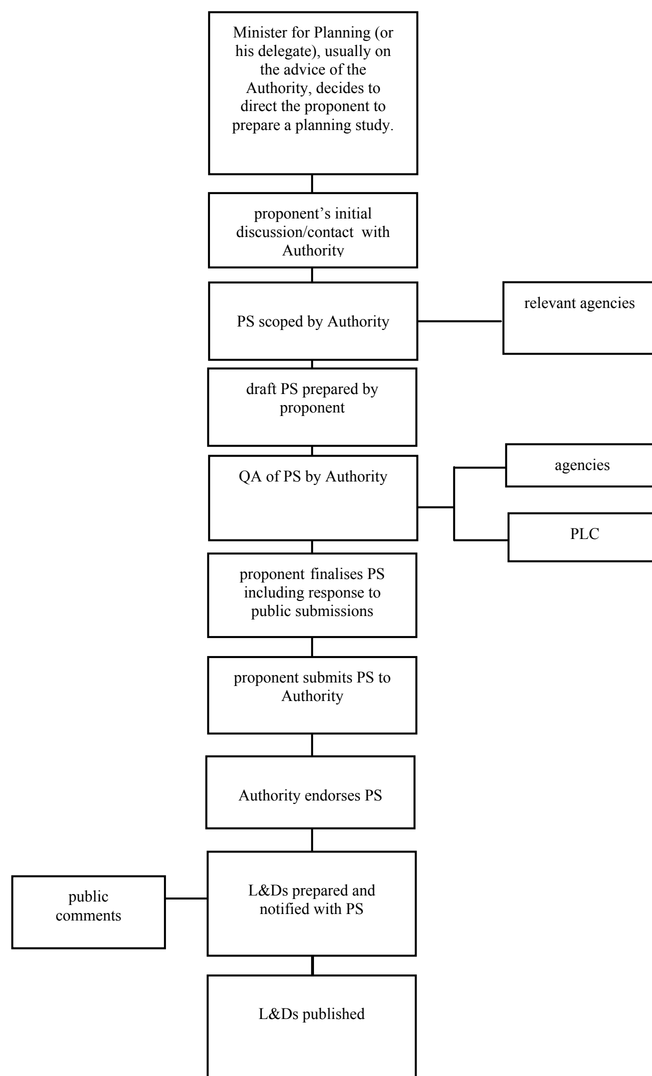
The key role of a planning study is to form the basis of guidelines on lease and development issues that are published before a parcel of land is offered for sale (currently known as lease and development conditions). It may also form the basis for directions given to the Authority by the relevant Minister should the provisions of s.166 of the Land Act be retained. Under these provisions the Authority may grant a lease only in accordance with a ministerial direction. This may be a direction to grant the lease or grant the lease subject to changes. Alternatively the relevant Minister may direct that the lease not be granted.

Impact assessment of this sort is ordinarily associated with the release—by the Territory—of vacant parcels in established areas for purchase (through the acquisition of a Crown lease) and subsequent development. The release of Section 61 City is an example.

The recommended approach to environmental impact assessment associated with proposals to grant Crown leases is depicted in Figure 4.

Figure 4: Planning studies associated with a proposal to grant a Crown lease

(Note: Ministerial responsibilities are indicative only as they are subject to administrative arrangements)



L&Ds lease and development conditions
PLC Planning and Land Council
PS planning study
QA quality assurance

8. Plans of management for public lands

Under s.199 of the Land Act, the relevant Minister (currently the Minister for Planning) may direct that an assessment be made or an inquiry established about any aspect of a draft plan of management for public land, whether or not a request for such action is made by the Conservator of Flora and Fauna. Plans of management are prepared by the conservator and are designed to show how the relevant management objectives, as defined under the Land Act and specified by the conservator, are to be implemented or promoted.

The current process of environmental assessment for these plans is described in section 5.1.3 of this paper (in relation to development applications), commencing with the preparation of a PA.

Under s.199 of the Land Act, the Conservator of Flora and Fauna is obliged to consider any relevant assessment or the report of any relevant inquiry when preparing or revising a draft plan of management. This provision applies when the Minister for Planning has directed an assessment or established an inquiry in relation to a particular plan of management.

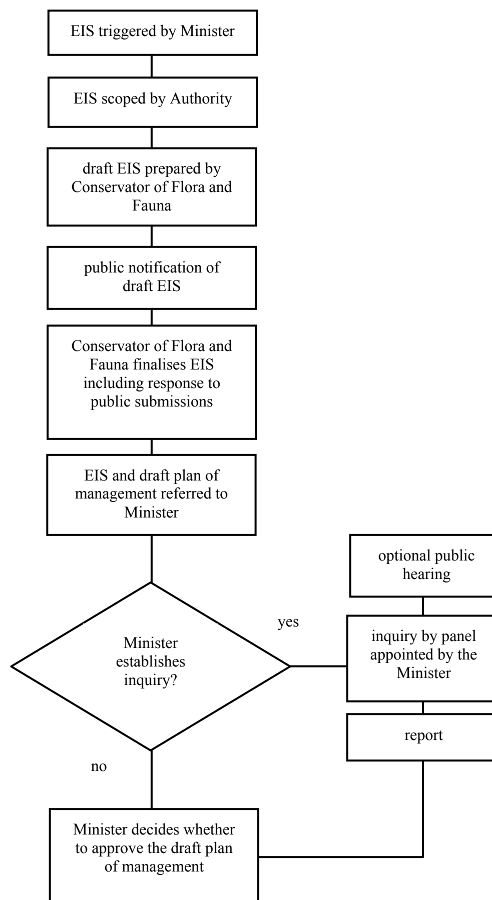
PROPOSED REFORMS

It is proposed that environmental impact assessment associated with draft plans of management for public lands continue to be triggered only on a discretionary basis by the Minister (currently the Minister for Planning). Once triggered such an assessment will take the form of an EIS, scoped by the Authority and prepared by the Conservator of Flora and Fauna. The major changes to the current approach are firstly, that the assessment will be by EIS only—there will be no PA. Secondly, the Minister will no longer have the power to trigger an inquiry at the outset. Instead, the Minister may establish an inquiry but only after the relevant EIS is complete.

The recommended process is depicted in Figure 5.

Figure 5: Environmental impact assessment of plans of management for public lands

(Note: Ministerial responsibilities are indicative only as they are subject to administrative arrangements)



EIS environmental impact statement

9. Draft variations to the Territory plan

Recommendation:

- *That environmental impact assessment associated with draft variations to the Territory Plan be triggered only on a discretionary basis by the Minister for Planning, and take the form of a planning study, scoped by the Authority and prepared by the proponent.*

Under s.18 of the Land Act, the Authority is obliged to consider any relevant environmental report and the report of any relevant inquiry when preparing a draft variation to the Territory Plan. The effect of this provision is that environmental assessment needs to be completed before the draft variation is released for public comment.

An environmental assessment is currently mandatory for any draft variation or proposed draft variation that is of a type listed in Schedule II.1 of Appendix II to the Territory Plan. This means that proposals to change land use policy from community facility, urban open space, hills and ridges and buffers, mountains and bushlands, river corridors, or plantation forestry will trigger a mandatory PA. Additionally, under s.18 of the Land Act, the Minister for Planning may direct that an assessment be made or an inquiry established about any aspect of a draft Plan variation or a proposed draft Pan variation.

Some proposed draft variations do not in themselves trigger PAs, but a PA is nonetheless required because the proposed change of land use policy has the potential to trigger a mandatory PA under another item in Schedule II.1. For example, a proposal to vary the Territory Plan from broadacre land use policies to commercial land use policies would not of itself trigger a mandatory PA. However, because the proposed variation may allow one or more buildings with a gross floor area greater than 7000m^2, a mandatory PA is triggered under the threshold in Schedule II.1 related to 'building', despite there being no specific proposal of this kind.

Since April 2003 the Authority has required proponents to justify proposed variations to the Territory Plan through a planning study, whether or not a PA is also required.

PROPOSED REFORMS

It is proposed that environmental impact assessment associated with draft variations to the Territory Plan should be triggered only on a discretionary basis by the relevant Minister, and should take the form of a planning study, scoped by the Authority and prepared by the proponent.

The nature of planning studies is outlined in Chapter 8 of this paper.

The role of such studies is determined by the nature of the draft variation, which fall into one of the following categories:

- variations that result in the designation of defined land
- variations initiated by entities (including government agencies) other than the Authority.

Defined land

This type of Plan variation ordinarily applies only to green field or new estate areas, which are typically on the urban fringe. An accompanying paper, Technical paper 2 – *Review of the Territory Plan,* proposes that these areas be called future urban zones.

For variations to the Territory Plan leading to the designation of defined land, the role of a planning study is to inform the content of the variation and, more particularly, the associated principles and policies for defined land. These principles and policies are vital planning tools because they ultimately determine the final pattern of zones (land use policies) following the subdivision of each new area. They also provide the public with a picture of future development in a particular area, usually well before development commences.

The proposed approach to plan making and associated environmental impact assessment will not jeopardise the various forms of public consultation currently associated with the planning of new estates. A variety of plans are produced for new estates, including structure plans and concept plans and at various stages in the design process informal public consultation is undertaken which might involve public meetings and walks around the site. This consultation invariably provides valuable contributions to the statutory plan making process, and the development of high quality estates.

The recommended approach is depicted in Figure 6.

Variations initiated by entities other than the Authority

The second type of plan variation that would ordinarily attract a planning study is any variation initiated by an entity other than the Authority. In these cases the planning study is used firstly to inform the Authority's decision about whether a Territory Plan variation should be initiated. If the Authority decides to proceed, its second role is to guide the preparation of the draft variation itself.

Planning studies are already required for these variations, but are not always notified when a draft variation is publicly released.

The recommended approach is depicted in Figure 7.

Figure 6: Planning studies associated with draft variations to the Territory Plan designating defined land

(Note: Ministerial responsibilities are indicative only as they are subject to administrative arrangements)

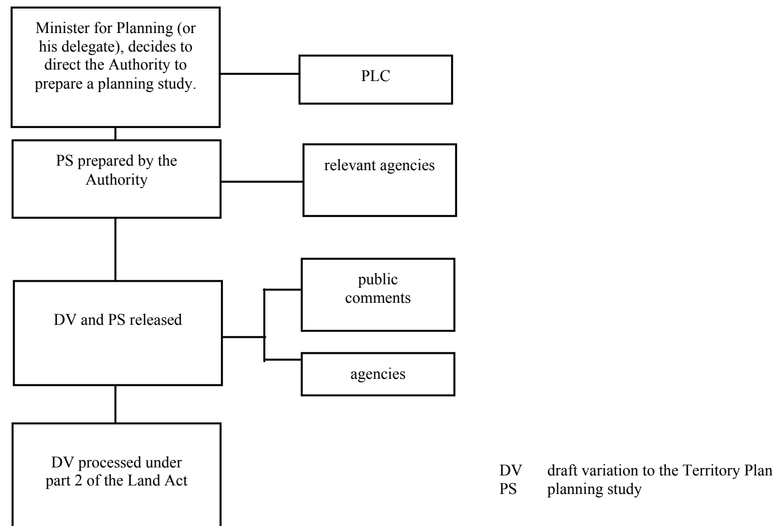
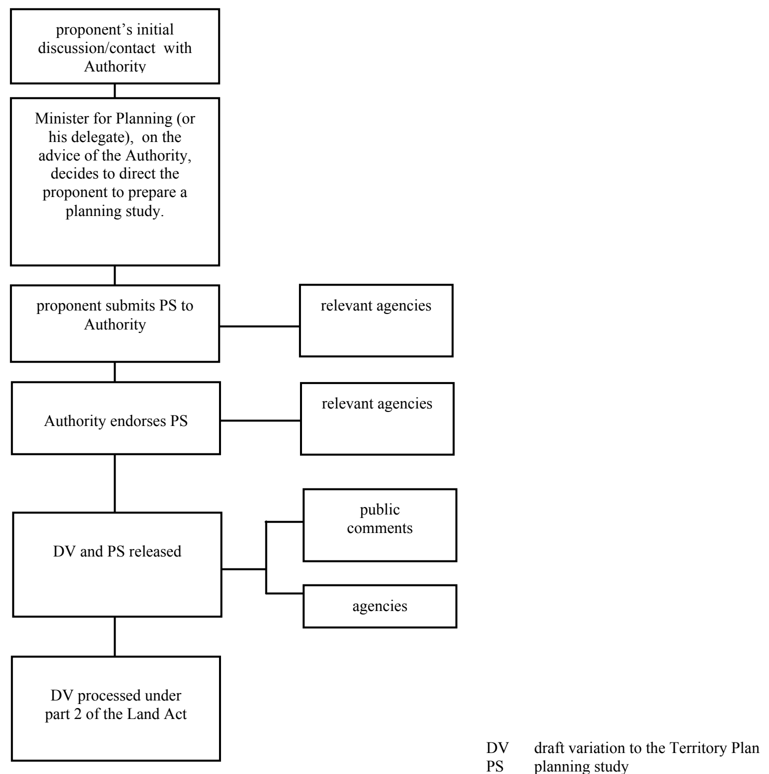


Figure 7: Planning studies associated with draft variations to the Territory Plan other than for defined land

(Note: Ministerial responsibilities are indicative only as they are subject to administrative arrangements)



10. EIA under the Public Health Act

Under s.134 of the *Public Health Act 1997* (Public Health Act), the Minister for Health has the power to direct that an assessment be made or to establish an inquiry under the Land Act if, in the opinion of the Minister for Health, the proposed development would be likely to have a significant effect on public health. Under this Act:

> ***public health*** *means –*
> *(a) the health of individuals in the context of the wider health of the community; or*
> *(b) the organised response by society to protect and promote health and prevent illness, injury and disability.*

By referring to s.231 of the Land Act, s.134 of the Public Health Act requires the Authority to consider any PA, assessment report or report of an inquiry initiated by the Minister under the Public Health Act, when determining a development application.

In contrast to other categories of proposals with a potential for significant impact, there is currently no mandatory referral of development applications under s. 229 of the Land Act.

PROPOSED REFORMS

It is proposed that environmental impact assessment associated with development applications with possible public health implications continue to be triggered on a discretionary basis by the relevant Minister. Once triggered such an assessment should take the form of an EIS, scoped by the Authority and prepared by the proponent, and generally follow the same process for any other application that is the subject of environmental impact assessment. This assumes that the proponent makes contact with the Authority before lodging a development application, and the public health implications of the proposal are apparent. This will allow for an initial approach to the Department of Health to establish the parameters of any required assessment, in advance of a formal referral when the development application and EIS are lodged.

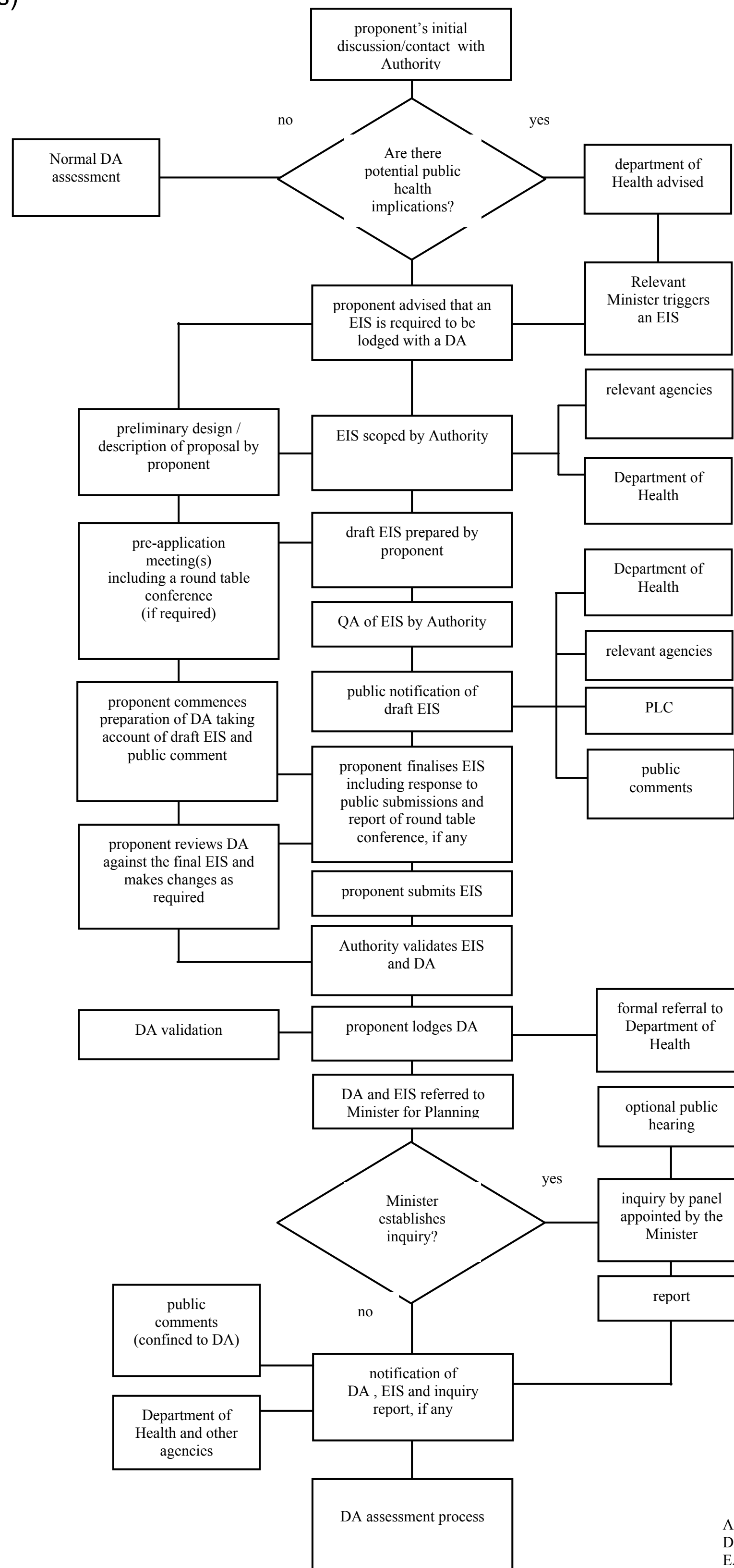
The major changes to the current approach are firstly, that an assessment will be by EIS only—there will be no PA. Secondly, the Minister will no longer have the power to trigger an inquiry at the outset. Instead, the Minister responsible for environmental impact assessment may establish an inquiry only after the relevant EIS is complete.

In association with these reforms the mandatory referral of applications to government agencies in the Land Act (s. 229) should be expanded to include referrals to the Department of Health of proposals that in the opinion of the Authority have significant implications for public health.

The recommended process is depicted in Figure 8.

Figure 8: Environmental impact assessment of DAs with public health implications

(Note: Ministerial responsibilities are indicative only as they are subject to administrative arrangements)



11. EIA under the Environment Protection Act

Under s.94 of the *Environment Protection Act 1997* (the Environment Protection Act), the Minister for the Environment (currently this is not the same person as the Environment Minister) has the power to direct that an assessment be made or to establish an inquiry under the Land Act in relation to any application for an environmental authorisation. This is the case unless the activity is the subject of a development application under the Land Act.

The Environment Protection Authority may ask the Minister to exercise these powers, but only if:

> *the authority has reasonable grounds for believing the activity has the potential to cause serious or material environmental harm.*

In contrast, the Minister for the Environment is not similarly constrained and can trigger an assessment on any grounds.

An environmental authorisation is required if the proposed activity is either a class A or class B activity listed in Schedule 1 to the Environment Protection Act. Examples of a class A activity are:

- the extraction of material (other than water) from a waterway
- the sterilisation of clinical waste
- the operation of a commercial landfill facility that receives, or is intended by the operator to receive, more than 5 000 tonnes of waste per year
- the preservation of wood for commercial purposes using chemicals (including copper, chromium, arsenic and creosote) at a facility designed to process 10,000m^3 or more of wood per year.

Examples of a class B activity are:

- the preservation of wood for commercial purposes using chemicals (including copper, chromium, arsenic and creosote) at a facility designed to process less than 10,000m^3 of wood per year
- the commercial collection of waste from commercial premises.

Serious environmental harm is defined in the Environment Protection Act.

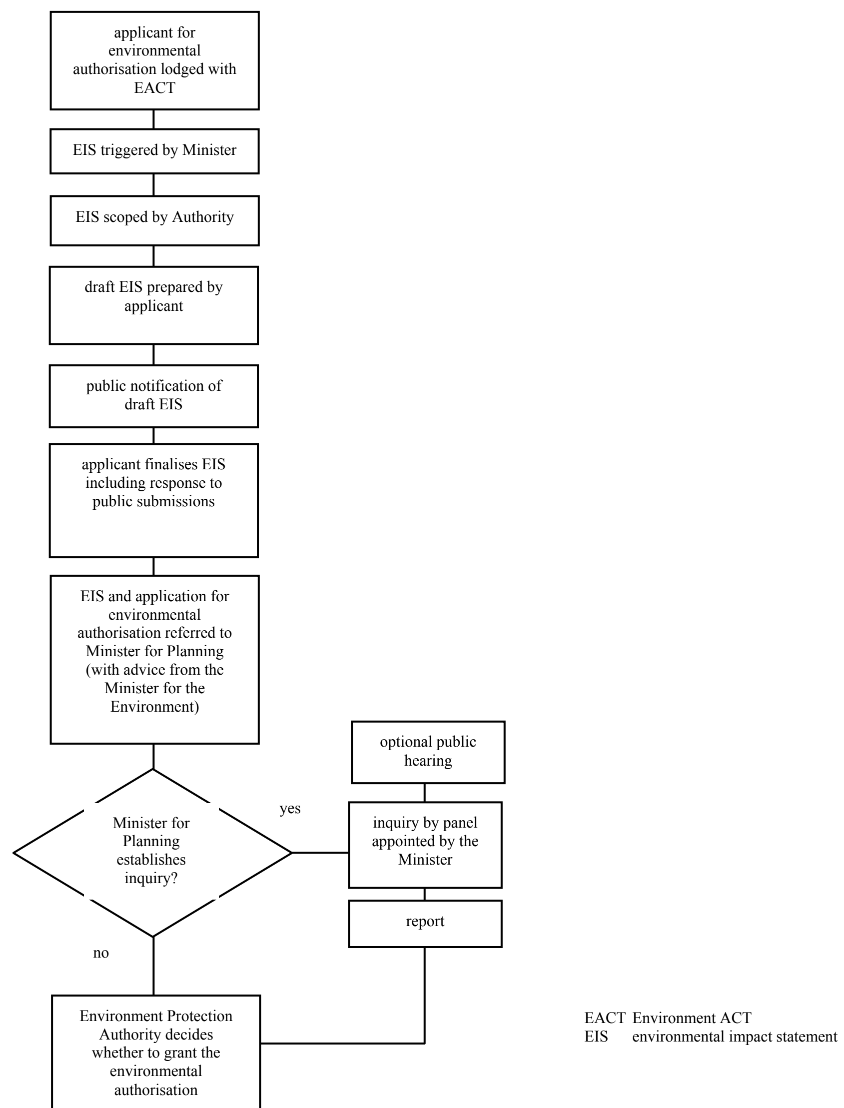
It is unclear how the findings of an assessment or inquiry are to be used in the granting of an environmental authorisation under the Environment Protection Act. Whilst s.94(4) requires the Minister for the Environment to furnish the Environment Protection Authority with a copy of any assessment or the report of any inquiry, these documents are not expressly mentioned in s.61. That section lists matters that Environment Protection Authority must take into account before granting an environmental authorisation. Presumably the Environment Protection Authority will nonetheless take such findings into account in its determination.

PROPOSED REFORMS

It is proposed that environmental impact assessment associated with the granting of environmental authorisations under the Environment Protection Act continue to be triggered at the discretion of the relevant Minister (currently the Minister for the Environment). Once triggered such an assessment and should take the form of an EIS, scoped by the Authority and prepared by the applicant. The major changes to the current approach are firstly, that an assessment will be by EIS only—there will be no PA. Secondly, the Minister will no longer have the power to trigger an inquiry at the outset. Instead, the Minister with responsibility for administering assessments under the Land Act (currently the Minister for Planning) may establish an inquiry but only after the relevant EIS is complete. In considering whether to establish an inquiry the Minister for Planning is expected to have regard to any advice received from the Minister for the Environment concerning the EIS. The recommended process is depicted in Figure 9.

Figure 9: Environmental impact assessment of plans of management for public lands

(Note: Ministerial responsibilities are indicative only as they are subject to administrative arrangements)



12. Assessment of proposed reforms

INTERGOVERNMENTAL AGREEMENT ON THE ENVIRONMENT

The proposed reforms are not inconsistent with the Intergovernmental Agreement on the Environment, as outlined in Appendix E. In particular, the recommendation to abandon PAs and initiate mandatory environmental impact statements on the basis of a list is consistent with item (2)vii of Schedule 3, namely:

> *levels of assessment will be appropriate to the degree of environmental significance and potential public interest*

ASSESSMENT OF REFORMS AGAINST ANZECC GUIDELINES AND CRITERIA

Since the ANZECC Guidelines and Criteria (see Appendix F) are essentially concerned with the thresholds for triggering environmental impact assessment, compliance cannot be determined until the triggering mechanism for mandatory environmental impact statements for development proposals is determined. If, as recommended, the mandatory list is based on the one currently employed in NSW, and adapted for use in the ACT, it is most likely that compliance will be achieved. Clearly the ANZECC Guidelines and Criteria will be used as benchmark to assess any draft list.

AGREEMENT BETWEEN THE COMMONWEALTH AND THE ACT UNDER THE *ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999*

As outlined in Appendix E, the Commonwealth and individual States and Territories may agree that the processes of environmental impact assessment in the respective State or Territory meet the requirements of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).* Such an agreement allows the State or Territory processes to be used in assessing development proposals subject to the EPBC Act. It may be possible, after the implementation of these reforms, for a bilateral agreement to be negotiated between the ACT and the Commonwealth

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Report into the administration of the ACT Leasehold, Stein P, Troy P, Yeomans, R, ACT Government Printer, Canberra, 1995.

Guidelines for EIA in Victoria, Department of Planning and Development, Victoria, 1995.

Glossary

AAT	ACT Administrative Appeals Tribunal
ANZECC	Australian and New Zealand Environment and Conservation Council Guidelines and Criteria for Determining the Need for and Level of Environmental Impact in Australia (1996)
DA	development application
EACT	Environment ACT
EIA	environmental impact assessment
EIS	environmental impact statement
Environment Protection Act	*Environment Protection Act 1997*
EPA	Environment Protection Authority
EPBC Act	*Environment Protection and Biodiversity Conservation Act 1999*
IGAE	*Intergovernmental Agreement on the Environment*, 1992
Land Act	*Land (Planning and Environment) Act 1991*
PA	preliminary assessment
PER	public environment report
PLC	ACT Planning and Land Council
Public Health Act	*Public Health Act 1997*
QA	quality assurance
Relevant Minister	The Minister allocated responsibility for a particular legislative power under the Administrative Arrangements endorsed and notified by the Chief Minister from time to time
Scoping	The process of identifying the issues to be considered in the EIS
Screening	The process of identifying proposals that require a formal EIS on the basis of an assessment of the level of environmental risk

Appendix A—Environmental impact defined

Environmental impact is currently defined in s.111 of the Land Act, as follows:

> *environmental impact, in relation to a proposal that is the subject of a defined decision, includes the following potential effects of the proposal (if carried out), either by itself or in combination with the potential effects of another such proposal:*
>
> *(a) environmental effect on a community;*
>
> *(b) physical, biological or cultural transformation of an area;*
>
> *(c) environmental effect on the social system or the ecosystems of an area;*
>
> *(d) change to the aesthetic, recreational, scientific or other environmental qualities, or values, of an area;*
>
> *(e) environmental effect on any premises or land or the surroundings of any premises or land, that has heritage significance;*
>
> *(f) the endangering, or further endangering, of a community or an area;*
>
> *(g) the endangering, or further endangering, of any species of fauna or flora;*
>
> *(h) long-term environmental effects including those with potential to place demands on the social system;*
>
> *(i) curtailing of the range of beneficial uses of the environment;*
>
> *(j) pollution;*
>
> *(k) problems associated with the disposal of waste;*
>
> *(l) increased demands on natural resources that are, or are likely to be, in short supply;*
>
> *(m) change to the values or lifestyles of particular groups and communities or to existing social relationships;*
>
> *(n) socioeconomic effect.*

Appendix B—Executive summary for the 1998 EIA review

Executive summary - *Review of Environmental Impact Assessment Legislation and Procedures in the ACT – Discussion Paper*, Urban Services, September 1998.

EXECUTIVE SUMMARY

The Government has made a commitment to review and improve Part IV of the *Land (Planning and Environment) Act 1991* (the "Land Act"). Part IV sets out conditions and processes for environmental impact assessment (EIA) in the Australian Capital Territory (ACT). The review acknowledges the need for environmental impact assessment to evolve to reflect changing environmental imperatives and community and industry expectations. The objective of the review is to maximise the effectiveness and efficiency of the ACT's environmental impact assessment system.

This Discussion Paper is part of that review process. It looks at the experiences of administering Part IV of the Land Act since its gazettal in 1991 and discusses a range of ways to improve the system. It raises options for consideration—none of the options should be seen as the preferred or only option. They are included to initiate discussion.

This discussion paper looks at how the ACT's EIA processes and systems could be improved, using the principles of the Inter-Governmental Agreement on the Environment (IGAE). It is presented in three main sections:

1. current situation—a description of the legislation
2. application in practice, including issues and problems
3. options for change.

NEED FOR REVIEW

Part IV of the Land Act has not undergone any major revisions since its enactment in 1991. During this period, major changes have occurred in national EIA procedures. The principal change has been the ratification of the IGAE by State and Territory Governments in 1992. The IGAE establishes an agreed national framework under which EIA is to operate, and provides criteria with which to assess the performance of EIA in the individual States and Territories.

The operation of the ACT's impact assessment legislation over the past six years has also revealed a number of technical problems, and areas of community concern. Given these circumstances, it is an appropriate time to conduct a review of EIA practice in the ACT.

PROCESS OF REVIEW

The first stage of this review has involved a series of discussions of the issues and problems in relation to EIA by Department of Urban Services agencies with land management responsibilities. The results of these investigations have been condensed

into this discussion paper. The discussion paper presents matters for consideration and options, rather than recommendations.

The second stage of the review is this public consultation process in which comment is sought on the discussion paper. These comments, together with advice from relevant agencies in the Government, will be used to identify specific improvements to the EIA legislation and procedures.

The third stage of the review will entail amending the legislation to implement the improvements identified in the second stage. As part of this process, a draft exposure Bill will be developed for public consultation.

KEY ISSUES

ISSUE 1: DO WE NEED PAs?

The ACT legislation is unusual in the reliance it places on the PA (PA) stage (Figure 1, page 9). This is partly because the interaction between the wording of Appendix II of the Territory Plan and the wording of the Land Act makes it virtually impossible for the Minister to proceed directly to a full assessment of a proposal. Additionally, it is thought that some proponents lodge very detailed PAs because they hope to avoid the need for further assessment.

In some States the problem of excessively detailed PAs is avoided by the ability to go directly to a major EIS. Table 1 (page 14) summarises Commonwealth, State and Territory processes for EIA initiation, assessment and consultation. It shows different approaches for different possible levels of assessment and scoping.

The history of PA public consultation in the ACT shows that, for the majority, very few public submissions are received. One reason for the low level of public response may be that generally in the ACT, impact assessment is required for much smaller projects than anywhere else in Australia. For example, construction of a shed in a river corridor.

Options for Change

Option	Description	Process
Option 1	Retain status quo	Stage 1 – mandatory PA Stage 2 – potential PER or EIS Stage 3 – potential inquiry
Option 2	Two stage process	Stage 1 – mandatory PER or EIS Stage 2 – potential inquiry
Option 3	Alternative two stage system	Stage 1 – either mandatory PA or mandatory PER or EIS (PA cannot proceed to further assessment) Stage 2 – potential inquiry

An option that could be considered for the ACT is that the single stage could be a minor EIS (a PA type of assessment) or a major EIS, depending on the size of the proposal. In

this scheme it would be appropriate to prescribe those cases in which a PA alone would be sufficient, or where full impact assessment (PER or EIS) would be required.

ISSUE 2: FULL ASSESSMENT.

DO WE NEED BOTH PUBLIC ENVIRONMENT REPORTS (PER) AND ENVIRONMENTAL IMPACT STATEMENTS (EIS)?

Where a proposal goes to further assessment (figure 2, page 11) the Minister must direct the proponent on the type and form of the assessment (either a PER or EIS); the matters to be included and, the relative emphasis to be given to each matter.

There has been concern expressed by the community that, with the three PERs completed to date, there had been inadequate public consultation. The nature of the legislation meant none of the PERs were required to undergo public inspection while they were being prepared. However, there was extensive consultation on the scoping of the assessment required. The first requirement for PER documents to be publicly available is when they are tabled in the Assembly. On the other hand, an EIS must be available for public inspection as a draft document, and the proponent must submit to the Minister a report on the outcomes of the consultation process. All other Australian jurisdictions require public exhibition of PERs or their equivalent.

Additionally, if there is public input into the scoping of further assessment there would seem to be little need to release the document for public inspection during the draft stage. Indeed, to do so might be seen as unduly onerous as the document would then be subject to public inspection three times—at scoping, draft document and final document stages.

Options for Change

Option	Description	Process
Option 1	Retain status quo	Both EIS and PER
Option 2	Retain only EIS	To be made available for public inspection during the scoping, draft and final stages.
Option 3	Retain only EIS	To be made available for public inspection during the scoping and final stages only.

ISSUE 3: APPENDIX II OF THE TERRITORY PLAN

There are two issues with Appendix II of the Territory Plan (Attachment B, page 28).

- the appropriateness of the current thresholds for initiating PAs in Appendix II; and
- whether the list of prescribed classes of activities should comprise part of the Territory Plan or become part of the Land Act Regulation.

A critical decision for initiating impact assessment in all jurisdictions across Australia is the potential environmental impact and the size of the projects which require impact assessment. If only very large projects are subject to EIA, the impacts of smaller projects may be overlooked. Conversely, if quite small projects are subject to EIA, the benefit

from the assessment may be minimal because the impacts of such projects may also be small.

From an environmental perspective, there are also potential anomalies in Appendix II. As an example, all proposals in the Territory involving construction of a large building (more than 7000 square metres gross floor area) are subject to a mandatory PA whether they are in an environmentally sensitive area or the middle of a town centre.

A suggested revision of Appendix II is given at Attachment D (page 36).

Another issue is where mandatory PAs should be listed: currently they are detailed in Appendix II of the Territory Plan. However, since 1997 the *Environment Protection Act 1997* and the *Public Health Act 1997* have had the power to initiate environmental impact assessment. Given these circumstances, it might be more appropriate for the Land Act Regulation to contain the list of mandatory PAs rather than the Territory Plan.

Options for Change

Option	Description	Process
Option 1	Status quo retained	Appendix II of the Territory Plan utilised in its current form
Option 2	Appendix II modified	Appendix II contents modified based on detailed review of current mandatory PAs based on performance to date, and practices in other jurisdictions
Option 3	Appendix II modified and split	Appendix II contents modified and split into two lists; criteria for PAs and criteria for EISs. (Note: this option would be required for a system in which assessment was either a PA or an EIS)
Option 4	Appendix II removed from the Territory Plan	Appendix II contents moved to the Land Act Regulation
Option 5	Appendix II modified, split and moved	Appendix II contents modified, split into two lists and moved to the Land Act Regulation

ISSUE 4: CONSULTATION

An issue of major concern to the community has been the adequacy of arrangements for public notification for assessments. The legislation requires that each PA be notified in a daily newspaper and in the Gazette, but a number of practical problems have come to light over the six years of operation of the legislation.

Firstly, there is no requirement that a PA be available with the other development application documents, where these are relevant, in the PALM Shopfront. Thus, it has been possible for someone to inspect the plans and associated documents for a particular development without knowing that a PA exists. This problem has now been rectified by internal PALM procedures. PAs are now available for inspection at the PALM Shopfront, and if there is a publicly notifiable development application, these documents are also available.

Secondly, there has been concern that the advertising for PAs is inadequate. In line with recent amendments to the Land Act, PALM now advertise PAs in the ACT Government's

public notices section of *The Canberra Times* and in the *ACT Government Gazette*. Follow up advertisements are placed in *The Canberra Times*. Details of current impact assessments are provided on the internet at the ACT Government's homepage, together with downloadable copies of documents where possible.

Thirdly, there has been concern over the length and timing of the public notification period. The date the PA is formally lodged is not the date the PA will be publicly notified. The practise is that the PA is publicly notified on the first Saturday after it has been lodged with the Minister. This means the Minister effectively has less than three weeks in which to determine whether further impact assessment is required from the end of the public notification period. Where there is significant public comment on a proposal there are practical difficulties with this timeframe.

Where the consultation period extends over the Christmas period, perhaps the Minister should have the power to delay or lengthen the public notification period. Currently he/she does not have this power. Additionally, where a PA also requires public notification as a Draft Plan Variation to the Territory Plan (DVP) it appears sensible to align the public notification periods where this is possible. Currently a DVP is usually publicly notified for 6 weeks, double the time of a PA. This would allow community comments to reflect a full range of issues on a particular project or variation.

Experience has highlighted that the different notification periods for PAs, Development Applications and Draft Variations to the Territory Plan are confusing to the general public. These notification times are illustrated in Table 2 (page 21).

Fourthly, while the Land Act (Part IV) requires PAs to be made available for public inspection, it makes no specific reference to the submissions that may arise. Submissions are not specifically required to be made available to the proponent, to the public, or to be considered by the Minister, though the Minister must make his/her decision taking into account all reasonable matters (Section 121 [1]). In order to implement an open, consultative process, the Land Act needs to be explicit about how submissions on PAs are accommodated. All public comments obtained in relation to PAs are received directly by PALM. Current practice is to place all submissions received on PAs on a public register. The public register is available for inspection at the PALM Shopfront on request.

Options for Change

Option	Decription
Option 1	Retain status quo.
Option 2	Advertise PAs in a free weekly paper as well as a daily paper, and continue to advertise the PA on a weekly basis in a daily paper until the consultation period is closed.
Option 3	Length of consultation period should be flexible to allow it to be aligned with that of Draft Variations to the Territory Plan. Submissions on PAs should be addressed explicitly in the Land Act.

ISSUE 5: NEED FOR AN EIA PROCESS

It has been argued that there is no need for a separate EIA process as all the issues raised are already required by the Territory Plan to be considered as part of a normal planning assessment. This argument may be ignoring the fact that currently not all decisions subject to impact assessment are decisions taken under the Land Act, so they are not necessarily addressed by the planning process. For example, the *Environment Protection Act 1997* and the *Public Health Act 1997* provide for impact assessment under Part IV of the Land Act. It should, however, be noted that any changes to the current mechanisms and administrative arrangements for EIA will need to recognise that ACT is committed to an EIA process, both as Government policy and through its commitment to the IGAE.

ISSUE 6: WHO SHOULD ADMINISTER THE EIA PROCESS?

Currently the EIA process in the ACT is administered by the Environmental and Social Planning Unit in PALM. This Unit comprises officers with particular expertise in environmental and social planning and policy, and has officers with ministerial delegation on matters relating to impact assessment. This arrangement is reliant on a core group of specialists, separate from the planning decision makers, to advise the Environment Minister (currently the Minister for Planning).

An alternative arrangement is for environmental impact assessment for proposals to be administered by the development approval arm of PALM. This arrangement has been suggested as a means of improving efficiency by streamlining the development approval process. Under this scenario, both the environmental impact assessment process and the planning assessment process would be administered by the area in PALM responsible for assessing development applications. When a proposal requiring impact assessment is lodged, the planning officers within the Development Management Branch of PALM would be responsible for both the EIA assessment and the planning assessment under ministerial delegation. It is believed that combining the planning and environmental functions will advance the Government's commitment to affordable and best value for money services by improving both the cost efficiency and organisational effectiveness.

Appendix C—Public submissions on the 1998 review

Public submissions on: *Executive summary – Review of Environmental Impact Assessment Legislation and Procedures in the ACT – Discussion Paper, Urban Services, September 199*8.

During September and October 1998, submissions were received from:

- Health Protection Services
- David Hogg Pty Ltd
- Environmental Defender's Office (ACT)
- ACT Office of Asset Management
- Office of Business Development and Tourism
- Conservation Council of the South-East Region and Canberra
- Turner Residents Association, Inc.
- Environment ACT
- Housing Industry Association (ACT/Southern NSW)
- Environment Institute of Australia
- National Capital Authority
- Ginninderra Catchment Group
- Royal Australian Planning Institute
- Environment Assessment Branch, Environment Australia

A summary of the comments received on each issue follows. A table specifying the options related to each issue in the options paper is also included.

ISSUE 1: DO WE NEED PAS?

Options for Change

Option	Description	Process
Option 1	Retain status quo	Stage 1 – mandatory PA Stage 2 – potential PER or EIS Stage 3 – potential inquiry
Option 2	Two stage process	Stage 1 – mandatory PER or EIS Stage 2 – potential inquiry
Option 3	Alternative two stage system	Stage 1 – either mandatory PA or mandatory PER or EIS (PA cannot proceed to further assessment) Stage 2 – potential inquiry

Most submissions that addressed this issue argued for the retention of the status quo i.e. the retention of PAs as a first step in the EIA process. Some submissions noted the current size and complexity of PAs, and suggested that this should be addressed in some way other than abandoning PAs.

ISSUE 2: FULL ASSESSMENT.

Do we need both Public Environment Reports (PER) and Environmental Impact Statements (EIS)?

Options for Change

Option	Description	Process
Option 1	Retain status quo	Both EIS and PER
Option 2	Retain only EIS	To be made available for public inspection during the scoping, draft and final stages.
Option 3	Retain only EIS	To be made available for public inspection during the scoping and final stages only.

Four submissions supported the retention of PERs (option 1), while three submissions preferred option 3.

ISSUE 3: APPENDIX II OF THE TERRITORY PLAN

Options for Change

Option	Description	Process
Option 1	Status quo retained	Appendix II of the Territory Plan utilised in its current form
Option 2	Appendix II modified	Appendix II contents modified based on detailed review of current mandatory PAs based on performance to date, and practices in other jurisdictions
Option 3	Appendix II modified and split	Appendix II contents modified and split into two lists; criteria for PAs and criteria for EISs. (Note: this option would be required for a system in which assessment was either a PA or an EIS)
Option 4	Appendix II removed from the Territory Plan	Appendix II contents moved to the Land Act Regulation
Option 5	Appendix II modified, split and moved	Appendix II contents modified, split into two lists and moved to the Land Act Regulation

Of the nine submissions that addressed this issue, three supported option 5 and one supported option 1. Most supported a review of the Schedule, and its retention in the Territory Plan.

ISSUE 4: CONSULTATION

Options for Change

Option	Decription
Option 1	Retain status quo.
Option 2	Advertise PAs in a free weekly paper as well as a daily paper, and continue to advertise the PA on a weekly basis in a daily paper until the consultation period is closed.
Option 3	Length of consultation period should be flexible to allow it to be aligned with that of Draft Variations to the Territory Plan. Submissions on PAs should be addressed explicitly in the Land Act.

Of the ten submissions that addressed this issue, six supported options 2 and 3 or an amalgamation of the two. Most submissions supported an enhancement of current consultation processes. Suggestions were also made that the consultation period should be adjusted to account for public holidays, that submissions received should be made public, and that there should be a statutory requirement for PAs associated with development applications to be placed on the public register.

Two submissions supported the public scoping of environmental impact assessment.

ISSUE 5: NEED FOR AN EIA PROCESS

No submission questioned the need for environmental impact assessment.

ISSUE 6: WHO SHOULD ADMINISTER THE EIA PROCESS?

Most submissions supported the current arrangements whereby the administration of PAs is separate from the assessment of development applications. Two submissions suggested that the responsibility for environmental impact assessment (including PAs) should reside outside the Authority, either with the Commissioner for the Environment or Environment ACT.

Appendix D—Planning and Land Act

Planning and Land Act 2002 established the Planning and Land Authority and gives broad guidance to its role and functions, in accordance with its object (s.6):

> *The object of this Act is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT:*
>
> *(a) consistently with the social, environmental and economic aspirations of the people of the ACT; and*
>
> *(b) in accordance with sound financial principles.*

In relation to the functions of the Authority, s.9(3) provides:

> *The authority must exercise its functions:*
>
> *(a) in a way that has regard to sustainable development; and*
>
> *(b) taking into consideration the statement of planning intent.*

Sustainable development is defined in s.74, as follows:

> *Sustainable development means the effective integration of social, economic and environmental considerations in decision-making processes, achievable through implementation of the following principles:*
>
> *(a) the precautionary principle;*
>
> *(b) the inter-generational equity principle;*
>
> *(c) conservation of biological diversity and ecological integrity;*
>
> *(d) appropriate valuation and pricing of environmental resources.*
>
> *The inter-generational equity principle means that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.*
>
> *The precautionary principle means that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

Appendix E—Commonwealth legislation and agreements

AUSTRALIAN CAPITAL TERRITORY (PLANNING AND LAND MANAGEMENT) ACT

Australian Capital Territory (Planning and Land Management) Act 1998 (Cwlth) requires that development within designated areas and declared National Land cannot proceed without works approval from the National Capital Authority.

Environmental impact assessment associated with works approval is required for proposals affected by the *Environment Protection and Biodiversity Conservation Act 1999* or at the discretion of the National Capital Authority.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT

The *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) is significant not only because it sets out a process of environmental impact assessment at the national level, but because it shares some features with the current environmental impact assessment system in the ACT.

Under the EPBC Act, actions that are likely to have a significant impact on a matter of national environmental significance are subject to rigorous referral, assessment, and approval processes. In this context, an action includes a project, development, undertaking, activity, or series of activities.

The Act currently identifies seven matters of national environmental significance:
- World Heritage properties
- National Heritage places (from 1 January 2004)
- Ramsar wetlands of international significance
- listed threatened species and ecological communities
- listed migratory species
- Commonwealth marine area
- nuclear actions (including uranium mining).

The Act's assessment and approval provisions also apply to actions that are likely to have a significant impact on the environment of Australia's Commonwealth territories (even if taken outside Commonwealth territory) and actions taken by the Commonwealth that will have a significant impact on the environment anywhere in the world.

Referrals

If a proponent believes that approval under the EPBC Act may be required, he or she must refer the proposal to the Commonwealth Minister for the Environment. A referral is the first step in the Australian Government environmental assessment and approval process. The purpose of the referral is to determine whether a proposal requires approval under the EPBC Act. A proposal will require approval if it will have or is likely to have a significant impact on any matter of national environmental significance, or other matter

protected under the Act such as the environment of Commonwealth land. A referral contains information about a proposed action, including a description of the proposal, its location and potential impacts on matters of national environmental significance.

A referral is a set of information that includes contact details and brief descriptions of the proposal, its location and potential impacts on matters of national environmental significance. The EPBC Regulation set out what information must be included in the referral.

Significantly, the EPBCRegulation discourages overly long or complicated referrals, advising proponents that information that could only be reasonably obtained by preparing an EIS does not need to be included. The emphasis is on identifying potential environmental impacts rather than offering solutions to those impacts.

Further information

If, on the basis of a referral, the Australian Government decides that approval is required, the proposal is then subjected to a formal assessment and approval process, with the first step being the provision of preliminary information. This form of assessment is comparable to a PA in the ACT setting. In common with the referral mentioned above, overly long or complicated referrals are discouraged.

INTERGOVERNMENTAL AGREEMENT ON THE ENVIRONMENT

Any review of environmental impact assessment in the ACT should take account of the Intergovernmental Agreement on the Environment (IGAE) in 1992 to which the ACT Government is a signatory. All States and Territories, the Commonwealth Government and the Australian Local Government Association, agreed to certain minimum and consistent approaches to environmental matters. Schedule 3 of the IGAE sets out the principles that should guide environmental impact assessment. In essence they establish a regulatory and administrative framework to ensure that environmental impact assessment procedures provide a high level of clarity, certainty, efficiency and transparency.

Schedule 3 of the IGAE is below:

1. *The parties agree that it is desirable to establish certainty about the application, procedures and function of the environmental impact assessment process, to improve the consistency of the approach applied by all levels of Government, to avoid duplication of process where more than one Government or level of Government is involved and interested in the subject matter of an assessment and to avoid delays in the process.*
2. *The parties agree that impact assessment in relation to a project, program or policy should include, where appropriate, assessment of environmental, cultural, economic, social and health factors.*
3. *The parties agree that all levels of Government will ensure that their environmental impact assessment processes are based on the following:*

i. the environmental impact assessment process will be applied to proposals from both the public and private sectors;

ii. assessing authorities will provide information to give clear guidance on the types of proposals likely to attract environmental impact assessment and on the level of assessment required;

iii. assessing authorities will provide all participants in the process with guidance on the criteria for environmental acceptability of potential impacts including the concept of ecologically sustainable development, maintenance of human health, relevant local and national standards and guidelines, protocols, codes of practice and regulations;

iv. assessing authorities will provide proposal specific guidelines or a procedure for their generation focussed on key issues and incorporating public concern together with a clear outline of the process;

v. following the establishment of specific assessment guidelines, any amendments to those guidelines will be based only on significant issues that have arisen following the adoption of those guidelines;

vi. time schedules for all stages of the assessment process will be set early on a proposal specific basis, in consultations between the assessing authorities and the proponent;

vii. levels of assessment will be appropriate to the degree of environmental significance and potential public interest;

viii. proponents will take responsibility for preparing the case required for assessment of a proposal and for elaborating environmental issues which must be taken into account in decisions, and for protection of the environment;

ix. there will be full public disclosure of all information related to a proposal and its environmental impacts, except where there are legitimate reasons for confidentiality including national security interests;

x. opportunities will be provided for appropriate and adequate public consultation on environmental aspects of proposals before the assessment process is complete;

xi. mechanisms will be developed to seek to resolve conflicts and disputes over issues which arise for consideration during the course of the assessment process;

xii. the environmental impact assessment process will provide a basis for setting environmental conditions, and establishing environmental monitoring and management programs (including arrangements for review) and developing industry guidelines for application in specific cases.

4. A general framework agreement between the Commonwealth and the States on the administration of the environmental impact assessment process will be negotiated to avoid duplication and to ensure that

proposals affecting more than one of them are assessed in accordance with agreed arrangements.

5. *The Commonwealth and the States may approve or accredit their respective environmental impact assessment processes either generally or for specific purposes. Where such approval or accreditation has been given, the Commonwealth and the States agree that they will give full faith and credit to the results of such processes when exercising their responsibilities.*

BILATERAL AGREEMENTS

A bilateral agreement is an agreement between the Commonwealth and a State or Territory for the purpose of protecting the environment, promoting conservation and ecologically sustainable use of natural resources, increasing the efficiency of environmental assessments and approvals, reducing duplication in environmental assessment and approval, or some combination of these.

Bilateral agreements must be consistent with the objectives of the EPBC Act and the processes they accredit must meet certain standards. For example, they must ensure adequate public consultation.

A bilateral agreement allows the Commonwealth Minister for the Environment to recognise the assessment processes of a State or self-governing Territory, for a certain class of proposals. This means a proposal that would otherwise require assessment under the EPBC Act can be assessed using a State or Territory assessment process, and does not need to be duplicated by the Commonwealth.

As at 13 August 2004 bilateral agreements had been signed with the Northern Territory, Tasmania, Western Australia, and Queensland.

Appendix F—international agreements

ANZECC GUIDELINES AND CRITERIA, 1996

Australian and New Zealand Environment and Conservation Council Guidelines and Criteria for Determining the Need for and Level of Environmental Impact in Australia (1996) developed under the intergovernmental agreement on the environment (IGAE) provides the basis for decisions involving environmental impact assessment. It also presents agreed national guidelines and criteria against which environmental impact assessment processes can be tested. It proposes a series of criteria that can determine whether a particular proposal warrants environmental impact assessment or to test the efficacy of schedules designed to trigger mandatory environmental impact assessment. These criteria are:

(1) The character of the receiving environment
(2) The potential impacts of the proposal
(3) Resilience of the environment to cope with change
(4) Confidence of prediction of impacts
(5) Presence of planning or policy framework or other procedures which provide mechanisms for managing potential environmental impacts
(6) Other statutory decision making processes which may provide a forum to address the relevant issues of concern
(7) Degree of public interest

AGENDA 21

From 1990 to 1992 the United Nations was developing its own global action plan for sustainable development. This plan, Agenda 21, was adopted at a Heads of Government Conference—The United Nations Conference on Environment and Development, also called the Earth Summit—in Rio de Janeiro in June 1992. The Conference also saw the signing of two new global Conventions, on Climate Change and Conservation of Biological Diversity and the adoption of a Declaration on the principles of sustainable development (the Rio Declaration).

Agenda 21 sets out actions that nations, communities and international organisations can all take to contribute the goal of global sustainability in the twenty-first century. The Conference also led to the establishment of a new United Nations organisation, the Commission on Sustainable Development, which meets annually to review progress in the implementation of Agenda 21.

The links between Australia’s National Strategy for Ecologically Sustainable Development and Agenda 21 are clear. Each seeks to provide a framework for the development of environmentally sound and ecologically sustainable decision-making at all levels.

While Agenda 21 takes a global perspective, it is also very much focussed on the actions that individual governments need to take in order to ensure that development is sustainable. The two plans are seen as entirely compatible and complementary, and Australia's commitment to, and implementation of, its own National Strategy fulfils the obligation it entered into in Rio De Janeiro to implement Agenda 21.

(Commonwealth Department of Environment and Heritage website)

Appendix G—EIA in Other Jurisdictions

Basic aspects of environmental impact assessment in other Australian jurisdictions is summarised in the following Table.

Table: Summary of environmental impact assessment processes in various jurisdictions

Jurisdiction	Screening	Public participation in scoping?	Levels of assessment
Commonwealth	Ministerial discretion on the basis of a referral by the proponent under the EPBC Act.	No	Preliminary information potentially proceeding to EIS
NSW	Mandatory – from list of activities (designated development). Discretion for development proposals by a public authority or for state significant development	No	EIS for designated development. Statement of environmental effects (SEE) required for all DAs
Victoria	Discretion	Yes (for some EIA)	Environmental effects statement (EES)
Queensland	Mandatory—for activities listed in a local planning scheme, and ministerial discretion	No	EIS
Western Australia	Discretion	Yes (for some EIA)	EIS
South Australia	Discretion	Yes (for some EIA)	EIS
Tasmania	Mandatory—from list of activities, and ministerial discretion	Yes (for some EIA)	EIS
Northern Territory	Ministerial discretion on the basis of a Notification of Intent (NoI) by the proponent	Yes	EIS or PER

The table above shows two basic approaches to the triggering of environmental impact assessment in the jurisdictions listed:

1. by reference to a list
2. on a case by case basis.

NSW exemplifies the first approach, and Victoria the second.

SCREENING—NSW

In NSW a development application for designated development must be accompanied by an EIS. Designated developments are listed in either local environmental plans or, more commonly, in Schedule 2 to the Environmental Planning and Assessment Regulation 2000. Typically these are proposals with significant potential for environmental harm, particularly air or water pollution. For example, cement works, coalmines, extractive industries and piggeries are included, each with various output thresholds depending on location and other circumstances. Piggeries accommodating more than 2000 pigs or 200

breeding sows are always designated, but this threshold lowers to 200 pigs and 20 breeding sows where the site is, among other things, within 100 metres of a natural waterbody or wetland.

If an EIS is required, the proponent is obliged to obtain a list of minimum requirements from the Director General of the Department of Infrastructure, Planning and Natural Resources. When completed the EIS is publicly exhibited with the associated development application, before being assessed by the appropriate authority, ordinarily a local council. This assessment will take account of any advice provided by the department, public comment and the findings of any commission of inquiry.

SCREENING—VICTORIA

Environmental impact assessment in Victoria is triggered at the discretion of the Minister for Planning on the basis of a referral made to the Minister for Planning by the proponent, a government authority or a member of the public. If so triggered, the proponent is obliged to prepare an environmental effects statement addressing the issues identified in a scoping exercise on which the public is ordinarily invited to comment.

The main opportunity for public comment is through submissions on the completed environmental effects statement. After a review of public submissions (usually by an independent panel), the Minister for Planning prepares an assessment of the environmental effects statement, which is subsequently considered by the relevant decision-maker.

SCOPING—NSW

Under regulation 72 of the NSW Environmental Planning and Assessment Regulation 2000, EIS content may be specified in a guideline prepared by the Director-General of the Department of Infrastructure, Planning and Natural Resources or, if there is no relevant guideline, content is specified in Schedule 2 of the regulation (Appendix I).

The Director-General may specify additional matters for consideration in an EIS following a mandatory referral from the applicant (regulation 73).

SCOPING—VICTORIA

In Victoria the proponent draws up a list of matters to be considered in liaison with the Department of Sustainability and the Environment and a consultative committee established by the Minister for Planning. A summary of the proposal and the proposed contents of the environmental effects statement (known as a draft scope) are then publicly advertised by the proponent for not fewer than 28 days. The draft scope may be revised in light of public comments to the satisfaction of the department (*Guidelines for EIA in Victoria*, 1995).

Appendix H—Schedule I: Designated development (NSW)

Extract from the *NSW Environmental Planning and Assessment Regulation 2000* (Clause 4).

Part 1 What is designated development?

1 Agricultural produce industries

Agricultural produce industries (being industries that process agricultural produce, including dairy products, seeds, fruit, vegetables or other plant material):

(a) that crush, juice, grind, mill, gin, mix or separate more than 30,000 tonnes of agricultural produce per year, or

(b) that release effluent, sludge or other waste:

(i) in or within 100 metres of a natural waterbody or wetland, or

(ii) in an area of high watertable, highly permeable soils or acid sulphate, sodic or saline soils.

2 Aircraft facilities

Aircraft facilities (including terminals, buildings for the parking, servicing or maintenance of aircraft, installations or movement areas) for the landing, taking-off or parking of aeroplanes, seaplanes or helicopters:

(a) in the case of seaplane or aeroplane facilities:

(i) that cause a significant environmental impact or significantly increase the environmental impacts as a result of the number of flight movements (including taking-off or landing) or the maximum take-off weight of aircraft capable of using the facilities, and

(ii) that are located so that the whole or part of a residential zone, a school or hospital is within the 20 ANEF contour map approved by the Civil Aviation Authority of Australia, or within 5 kilometres of the facilities if no ANEF contour map has been approved, or

(b) in the case of helicopter facilities (other than facilities used exclusively for emergency aeromedical evacuation, retrieval or rescue):

(i) that have an intended use of more than 7 helicopter flight movements per week (including taking-off or landing), and

(ii) that are located within 1 kilometre of a dwelling not associated with the facilities, or

(c) in any case, that are located:

(i) so as to disturb more than 20 hectares of native vegetation by clearing, or

(ii) within 40 metres of an environmentally sensitive area, or

(iii) within 40 metres of a natural waterbody (if other than seaplane or helicopter facilities).

21 Livestock intensive industries

(1) Feedlots that accommodate in a confinement area and rear or fatten (wholly or substantially) on prepared or manufactured feed, more than 1,000 head of cattle, 4,000 sheep or 400 horses (excluding facilities for drought or similar emergency relief).

(2) Dairies that accommodate more than 800 head of cattle for the purposes of milk production.

(3) Piggeries:
(a) that accommodate more than 200 pigs or 20 breeding sows and are located:
(i) within 100 metres of a natural waterbody or wetland, or
(ii) in an area of high watertable, highly permeable soils or acid sulphate, sodic or saline soils, or
(iii) on land that slopes at more than 6 degrees to the horizontal, or
(iv) within a drinking water catchment, or
(v) on a floodplain, or
(vi) within 5 kilometres of a residential zone and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, traffic or waste, or
(b) that accommodate more than 2,000 pigs or 200 breeding sows.

(4) Poultry farms for the commercial production of birds (such as domestic fowls, turkeys, ducks, geese, game birds and emus), whether as meat birds, layers or breeders and whether as free range or shedded birds:
(a) that accommodate more than 250,000 birds, or
(b) that are located:
(i) within 100 metres of a natural waterbody or wetland, or
(ii) within a drinking water catchment, or
(iii) within 500 metres of another poultry farm, or
(iv) within 500 metres of a residential zone or 150 metres of a dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, lights, traffic or waste.

(5) Saleyards having an annual throughput of:
(a) more than 50,000 head of cattle, or
(b) more than 200,000 animals of any type (including cattle), for the purposes of sale, auction or exchange or transportation by road, rail or ship.

Appendix I—Model table of contents for an EIS

An extract from *NSW Environmental Planning and Assessment Regulation 2000,* Schedule 2 Environmental impact statements (Clauses 72 and 230).

1 SUMMARY

A summary of the environmental impact statement.

2 STATEMENT OF OBJECTIVES

A statement of the objectives of the development or activity.

3 ANALYSIS OF ALTERNATIVES

An analysis of any feasible alternatives to the carrying out of the development or activity, having regard to its objectives, including the consequences of not carrying out the development or activity.

4 ENVIRONMENTAL ASSESSMENT

An analysis of the development or activity, including:

1. a full description of the development or activity, and (b) a general description of the environment likely to be affected by the development or activity, together with a detailed description of those aspects of the environment that are likely to be significantly affected, and
2. the likely impact on the environment of the development or activity, and
3. a full description of the measures proposed to mitigate any adverse effects of the development or activity on the environment, and
4. a list of any approvals that must be obtained under any other Act or law before the development or activity may lawfully be carried out.

5 COMPILATION OF MEASURES TO MITIGATE ADVERSE EFFECTS

A compilation (in a single section of the environmental impact statement) of the measures referred to in item 4 (d).

6 JUSTIFICATION OF DEVELOPMENT

The reasons justifying the carrying out of the development or activity in the manner proposed, having regard to biophysical, economic and social considerations, including the following principles of ecologically sustainable development:

1. the precautionary principle , namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private

decisions should be guided by:
(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment
(ii) an assessment of the risk-weighted consequences of various options

2. inter-generational equity , namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations
3. conservation of biological diversity and ecological integrity , namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration
4. improved valuation, pricing and incentive mechanisms, namely, that environmental factors should be included in the valuation of assets and services, such as:
   (i) polluter pays, that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement
   (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste
   (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.