

## Attachment C

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**Draft Terms of Reference for Strategic Assessment of a Plan for a Common-User Liquefied Natural Gas Hub Precinct to service the Browse Basin Gas field**

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The following Terms of Reference (ToR) provide for a report, referred to in clause 6.1 of the Agreement, assessing the environmental, heritage and socio-economic impacts of actions under a Plan for a Browse Basin common-user liquefied natural gas (LNG) hub, as defined in the Agreement. It is intended that this assessment report will satisfy the requirements of both the EPBC Act and the WA EP Act. A process diagram outlining the respective assessment processes is attached to these ToR.

**1. Project Purpose**

The Report must include a general description of the purpose that a Common-User LNG Hub (the Precinct) will serve, including the resources the Precinct will need to function, the actions or classes of actions likely to be undertaken, the scope of related activities, the estimated life of the Precinct, and the regional context in which the Precinct will operate.

**2. Description of the Plan**

The Report must include a detailed description of the Plan to which the agreement relates, including (but not limited to):

- how the plan has been developed and its legal standing;
- identifying the person(s) or authority responsible for its adoption or implementation, and their jurisdiction;
- the legal structure under which owners, managers and users of the Precinct will participate in the Precinct;
- the basis of land/asset tenure;
- a description of the management arrangements required to ensure the Plan is implemented successfully; and
- identifying the actions or classes of actions that are a subject of the Plan, including the short, medium and long term aspects of the actions or classes of actions at or associated with the Precinct. These could include relevant construction, operational and decommissioning aspects as well as a comprehensive description of each development or facility comprising the Precinct.

**3. Project Justification and Need**

The Report must provide a justification for the need to develop the Precinct. The Report must include an analysis of the impacts as they relate to the bio-physical, social and economic aspects of the development proposal associated with the development of the Precinct. Consideration must also be given to the environmental, social and economic impacts of not developing the Precinct.

#### 4. Short-Listing Process

The Report must include a copy of the finalised site selection criteria, and a comprehensive description of how the proposed site(s) for the Precinct were identified including (but not limited to) consideration of:

- EPBC Act matters of National Environmental Significance (NES) (both current and identified as prospective, including potential national heritage values);
- land tenure;
- stakeholder and public consultation;
- how the site selection criteria were used in the shortlisting;
- the independent verification of feasibility and technical constraints as identified by the oil and gas industry;
- regional environmental and social context and other relevant socio-economic matters inclusive of site security issues;
- an assessment of technically and economically viable gas processing options outside the Kimberley focussing on locations that already have substantial industrial infrastructure inclusive of floating LNG; and
- cultural heritage, Indigenous knowledge, and Indigenous aspirations.

#### 5. The Environment Likely to be Affected

The Report must provide a detailed description of the environment likely to be affected by the Plan, the actions or classes of actions taken under the Plan including any associated infrastructure and construction and operational activities. This description must identify the environmental assets and characteristics, including biophysical processes associated with the site(s) selected in the Plan and the terrestrial and marine environments likely to be directly or indirectly impacted, for example:

- a) components of biodiversity including maintenance of important ecological processes recognising the potential importance of large intact areas in protecting and maintaining ecological processes;
- b) listed threatened species, other protected and significant species (EPBC Act or WA listed), and unknown species;
- c) a description of ecological communities, with reference to Threatened Ecological Communities (EPBC Act or WA listed) or other significant ecological communities;
- d) a description given about how uncertainties will be treated in relation to the environment that will be affected;
- e) potential national heritage values;
- f) any physical environmental drivers influencing the environmental characteristics of the site or surrounds, or influencing the potential impacts on the site or surrounds, including tidal regime, cyclonic and other severe weather conditions, coastal processes;
- g) any other environmental factors required to be described in the environmental impact assessment scoping document developed for the assessment under the EPBC Act and EP Act; and
- h) Indigenous environmental values and Indigenous cultural heritage, including all values held by traditional owners in the area likely to be affected and

including broader biological communities, habitats and environments in which species with Indigenous environmental/conservation values might live\*.

## 6. Environmental Impacts

The Report must include an assessment of the potential impacts of the Plan and the actions or classes of actions taken under the Plan (including any associated infrastructure, construction and operational activities) on the environment, including matters of NES.

In particular, the assessment must include:

- a) a description of the potential impacts of the Plan on the environment (including to the extent possible, information on the degree of confidence with which impacts can be predicted and quantified and any indirect impacts as defined by Section 527E of the EPBC Act);
- b) an assessment of the nature and extent of the likely impacts on the environment, including whether the impacts will be short or long term, at the local and/or regional scale, and cumulative impacts;
- c) an assessment of the extent to which impacts on the environment are likely to be unknown, unpredictable or irreversible;
- d) an analysis of the significance of potential impacts on known (or prospective) matters of NES – with reference to the *EPBC Act Policy Statement 1.1 Significant Impact Guidelines* and other relevant guidelines or policy advice;
- e) reference to the technical data (including traditional/Indigenous knowledge) and other information relied upon in assessing the environmental impacts of the Plan, including information collected and compiled to be consistent with the expectations of the Western Australian Environmental Protection Authority, including, but not limited to, that outlined in relevant position and guidance statements.

## 7. Indigenous Impacts

The Report must include a comprehensive analysis of the potential impacts of the Plan on Indigenous people and culture (including matters of NES and those prescribed under the *WA Aboriginal Heritage Act 1972* and the *WA EP Act*) who are likely to be directly or indirectly affected by the Plan.

In particular, the analysis must include:

- a) a description of the potential impacts, including socio-economic, of the Plan on Indigenous people (including to the extent possible, information on the degree of confidence with which impacts and indirect impacts can be predicted and quantified).
- b) an assessment of whether any impacts on Indigenous people (including Indigenous heritage) are likely to be unknown, unpredictable or irreversible;
- c) an analysis of the significance of potential impacts on known listed and unlisted Aboriginal heritage sites, objects or landscapes and values of cultural significance with reference to the *Aboriginal Heritage Act 1972-section 5,6* and Indigenous heritage values under the EPBC Act.

\* Certain indigenous information and knowledge provided as part of the assessment and consideration of approval for a common-user LNG hub will may be made available to the public.

- d) reference to the technical data and other information relied upon in assessing the Indigenous Heritage impacts of the Plan; and
- e) whether the traditional owners have given informed consent, in a culturally appropriate manner to the implementation of the Plan.

#### **8. Proposed Management Arrangements for the LNG Precinct and associated activities**

The Report must include a description of legislation, policies and performance measures that are relevant to the implementation of the Plan, the actions and classes of actions undertaken under the Plan, and the associated environmental and Indigenous impacts.

The Report must include information on any other requirements for approval that apply, or are likely to apply, in relation to the Plan including details of any Local or State Government planning scheme, or plan or policy under any Local or State Government planning system, or State or Commonwealth legislation, such as:

- a) what environmental assessment of the proposed project has been, or is being, carried out under the scheme, plan or policy;
- b) how the scheme provides for the prevention, minimisation and management of any relevant impacts;
- c) explicit clarification as to who is responsible for the proposed management arrangements; and
- d) how the scheme will ensure that obligations contained in the *Aboriginal Heritage Act 1972 (WA)* and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* are met.

The Report must set out specific management arrangements, including the possible role of traditional owners in those arrangements, that will be in place under or associated with the Plan that are intended to ensure the Precinct and associated actions and classes of actions are undertaken in an ecologically sustainable manner and their likely effectiveness.

The report must also provide a description of how and to what extent these management arrangements will meet endorsement criteria at Attachment C.

#### **9. Proposed Safeguards and Mitigation Measures**

The Report must identify and describe the specific measures intended to prevent, minimise and compensate for the potential environmental impacts of the Plan, and any measures to rehabilitate damage to the environment. The Report must recognise and detail the role that traditional owners will play in these matters.

The Report should include an analysis of the expected or predicted effectiveness of these measures. The assessment should identify the basis (e.g. statutory or policy) for implementation of each measure and the agency or authority responsible for ensuring implementation. The assessment must also identify how the relevant agency or authority will ensure compliance with these measures, and what steps will be taken in the event that environmental performance is other than anticipated.

The report must also provide a description of how and to what extent these proposed safeguards and mitigation measures will meet endorsement criteria at Attachment C.

The Report must identify and describe the specific measures intended to prevent, minimise and compensate for the potential Indigenous impacts of the Plan, and any measures to rehabilitate damage to the environment or impacts on Indigenous peoples' live, values, or culture.

## **10. Information Sources**

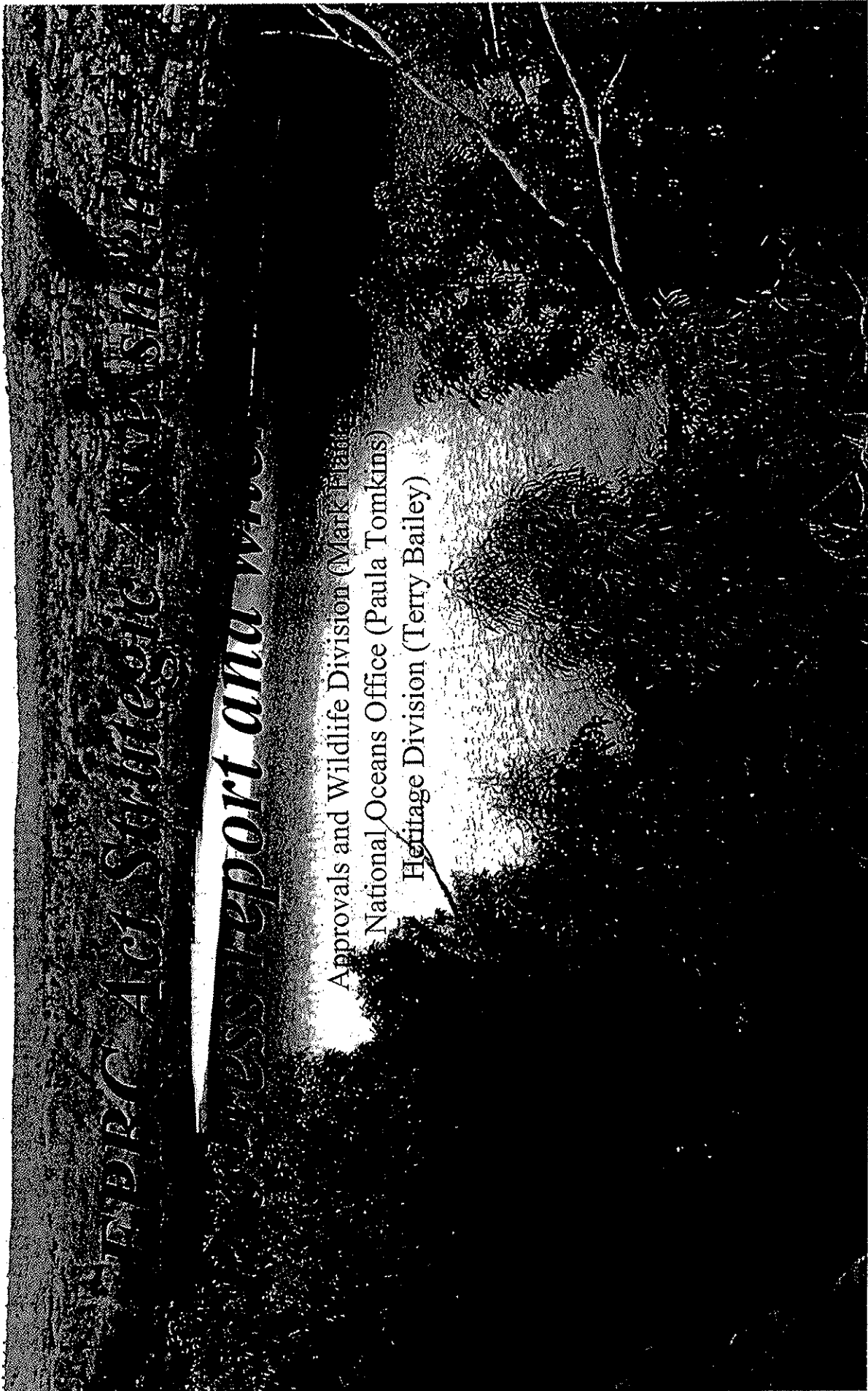
For information used in the assessment, the Report must state:

- a) the source of the information used in the assessment;
- b) how recent the information is;
- c) how the reliability of the information was tested; and
- d) what uncertainties (if any) are in the information.

## **11. Consultation**

The Report must include any details of consultation. In addition to the statutory consultation, about the Plan, including:

- a) details of the consultation process for site selection including the public process and directed engagement with stakeholders, and the outcome of these consultations;
- b) any consultation that has already taken place, including with Indigenous communities;
- c) proposed consultation about relevant impacts of the action, including with Indigenous communities; and
- d) if there has been consultation about the proposed development, any documented response to, or result of, the consultation (including how the assessment and Report have addressed issues raised by the consultation).



**FEDERAL STRATEGIC AND ENVIRONMENTAL  
IMPACT STATEMENT  
Access Report and**

Approvals and Wildlife Division (Mark Hain)  
National Oceans Office (Paula Tomkins)  
Heritage Division (Terry Bailey)

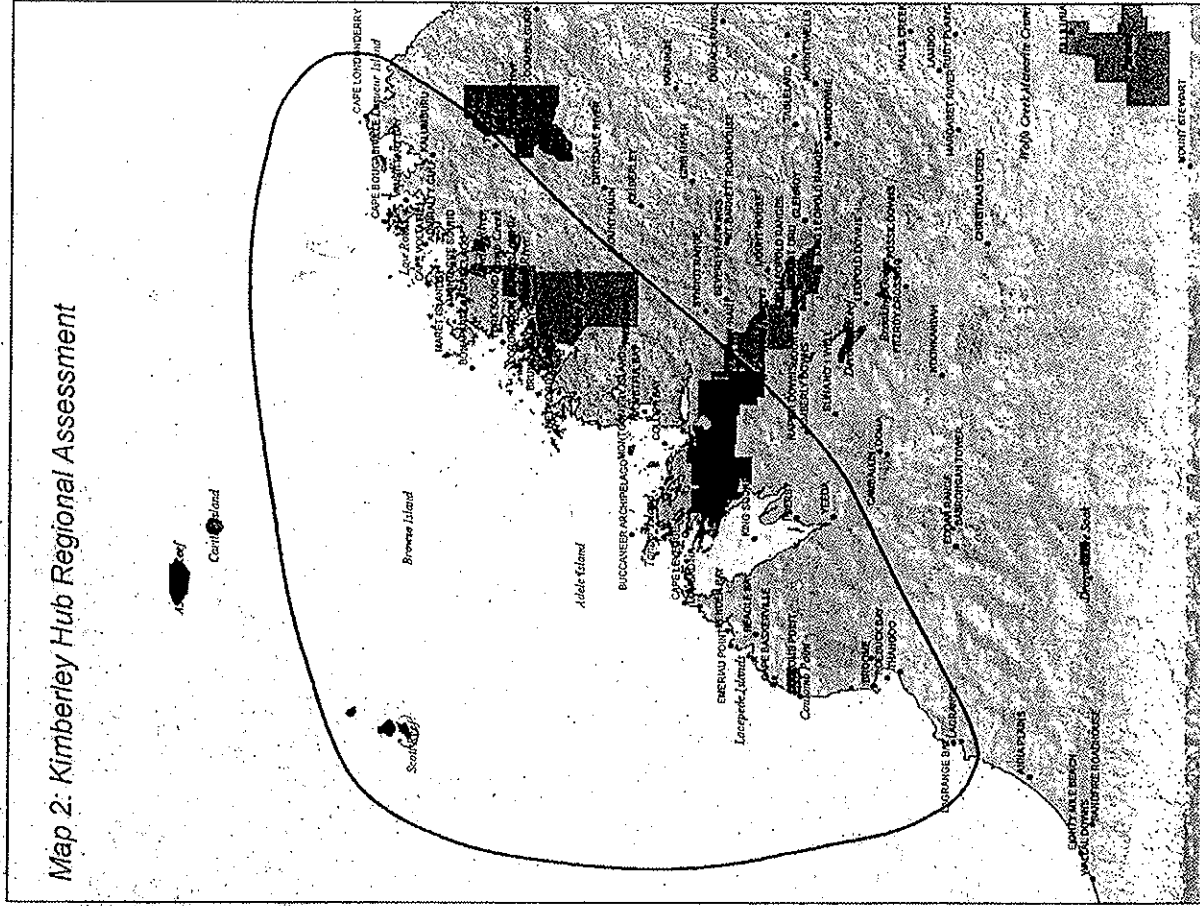
# The Agreement: Summary

Agreement between the WA and  
Australian Governments in Feb  
2008

Provides a means for :

1. Proactively addressing what would otherwise be negative cumulative impacts and economic inefficiencies associated with piecemeal LNG-related developments to service the Browse Basin Gas Reserves; and
2. Assessing the broader natural, indigenous and historic heritage values in the Kimberley region.

NB: consideration will also be given to feasible alternatives outside the Kimberley region



# The Agreement: An Ecologically Sustainable Development Solution

- Concentrate impacts to an appropriate and defined area
- Address the cumulative impacts associated with piecemeal LNG development to service the Browse Basin Gas Reserves
- Provide region wide conservation and heritage protection
- Provide greater certainty to industry, government and the community over future LNG related development in Northern WA.

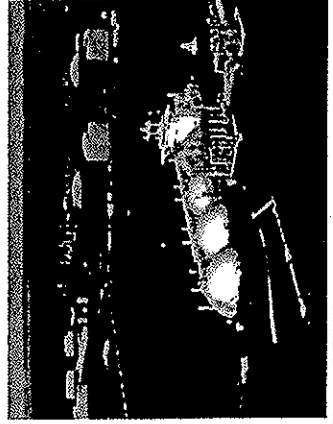


Photo: DEWHA



Photo: Kevin Crane (CALM)



Photo: Ian Morris

# The Agreement and NW Marine Bioregional Plan

## LNG Hub Location and Management Plan, *three stages*:

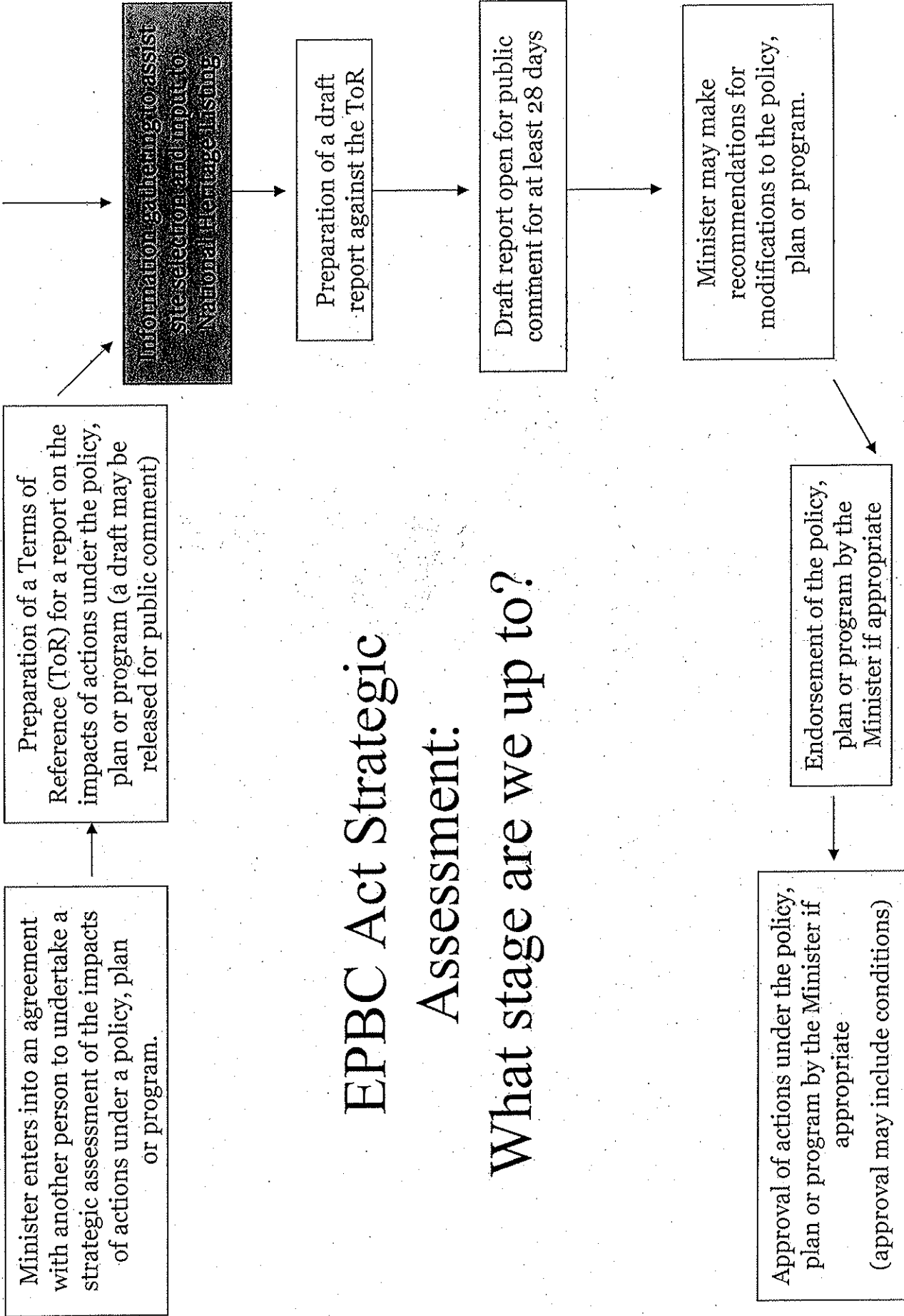
- environment and heritage (in particular matters of NES) will be considered during the short-listing and final selection of a Hub location to service the Browse Basin Gas Reserves;
- the impacts of actions associated with the development and functioning of the Hub will be identified, assessed and mitigated; and
- the Plan for the Hub and associated activities will provide for the conservation and protection of matters of NES

## Simultaneous Process

- National Heritage Listing (to assist identification, listing and ultimately protection of the environment/heritage of the Kimberley more broadly)
- Northwest Marine Bioregional Plan

*Each of these initiatives are expected to be completed mid 2010*

Here now!



## EPBC Act Strategic

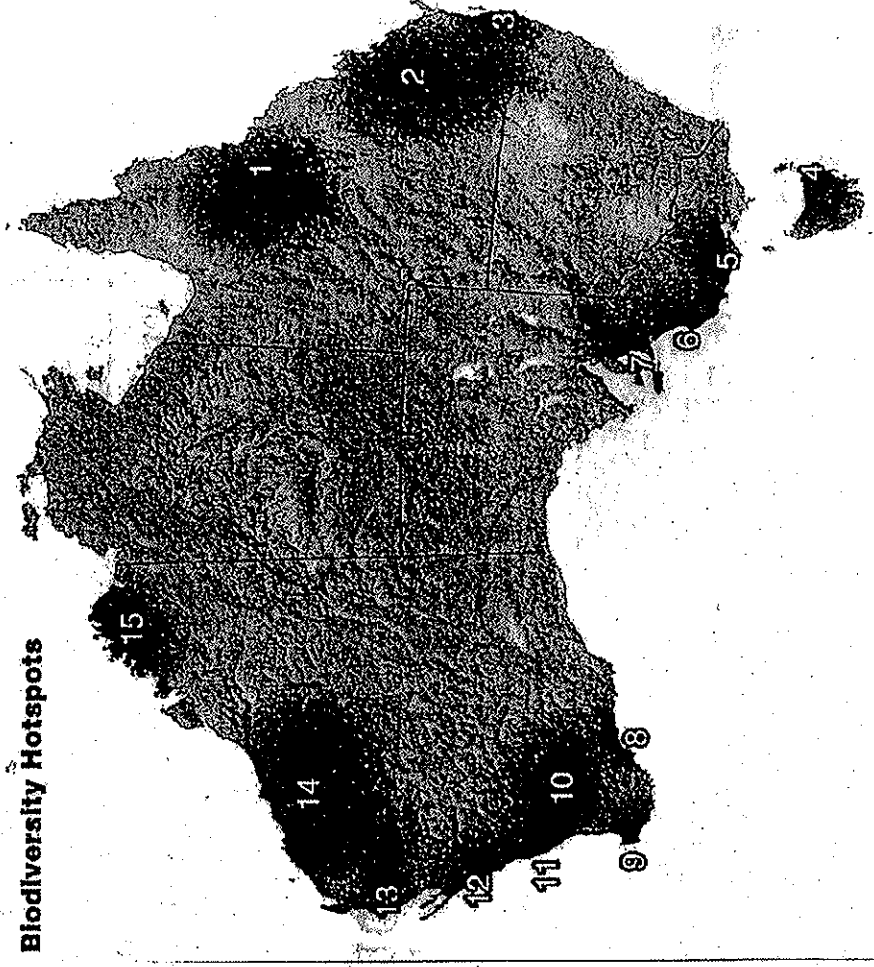
## Assessment:

What stage are we up to?

*The Kimberley:  
Significant Environmental and Heritage Values and  
one of Australia's biodiversity hotspots*

Matters of NES in the Region of  
Assessment

- Listed Threatened Species and Ecological Communities
- Listed Migratory Species
- RAMSAR Wetlands
- Commonwealth Marine Environment
- National Heritage Values
- Prospective Matters of NES



- s22 – Out of Scope

- s22 – Out of Scope

- s22 – Out of Scope



Australian Government

# Australia's heritage system

**This presentation covers**

**Background to Australia's Heritage  
system**

**National Heritage listing process**

**Kimberley heritage assessments**

**Questions**



# Background to Australia's heritage system

In 1975 **Fraser Island** sanding mining stopped by Fraser Government using Australian Constitution - **export powers**.

**Fraser Island** subsequently first place on the Register of the National Estate and was included on the World Heritage List.

In 1983 damming of **SW Tasmania (Franklin Dam)** stopped by Hawke Government using Australian Constitution - **external affairs powers**.

**Tasmanian Wilderness** subsequently included on the World Heritage List.

Both included in **National Heritage List** in 2007.

*Heritage*



# Background to Australia's heritage system

In 1997 the **Council of Australian Governments** agreed roles and responsibilities for environment and heritage.

This included a commitment to rationalise heritage protection.

The *Environment Protection and Biodiversity Act 1999* (EPBC Act) defined the Australian Government's **World Heritage** role.

**Heritage** amendments to the EPBC Act in 2003 defined the Australian Government's **National Heritage** role.

*Heritage*



# Background to Australia's heritage system

The Australian Heritage Council Act 2003:

- established the **Australian Heritage Council (AHC)**, as an independent expert body which advises the Minister on heritage listing, protection and management.

The EPBC Act 2003 amendments:

- created the **National Heritage List** to recognise, celebrate and conserve places of 'outstanding heritage value to the nation'.

The EPBC Act was further amended in 2007 to allow **greater transparency** in the assessment process.

*Heritage*



# National Heritage List criteria

A place has **National Heritage value** if it meets one or more of the statutory criteria for the NHL.

A criterion may relate to one or more of the following:

- **natural** heritage values of places
- **Indigenous** heritage values of places
- **historic** heritage values of places
- **other** heritage values.

The nine **criteria** (a to i) cover events, process, rarity, research potential, aesthetics, significant people, social value and places that are 'important as part of Indigenous tradition'.

The **threshold** for the NHL is very high.

*Heritage*

# National Heritage List threshold

How is the very high **threshold** for the National Heritage List determined?

Through **comparative analysis**. That is:

- do other places have similar characteristics?
- if so, how do they compare with the nominated place?
- where is the best representation?
- what is the integrity?
- what is the authenticity?

Note:

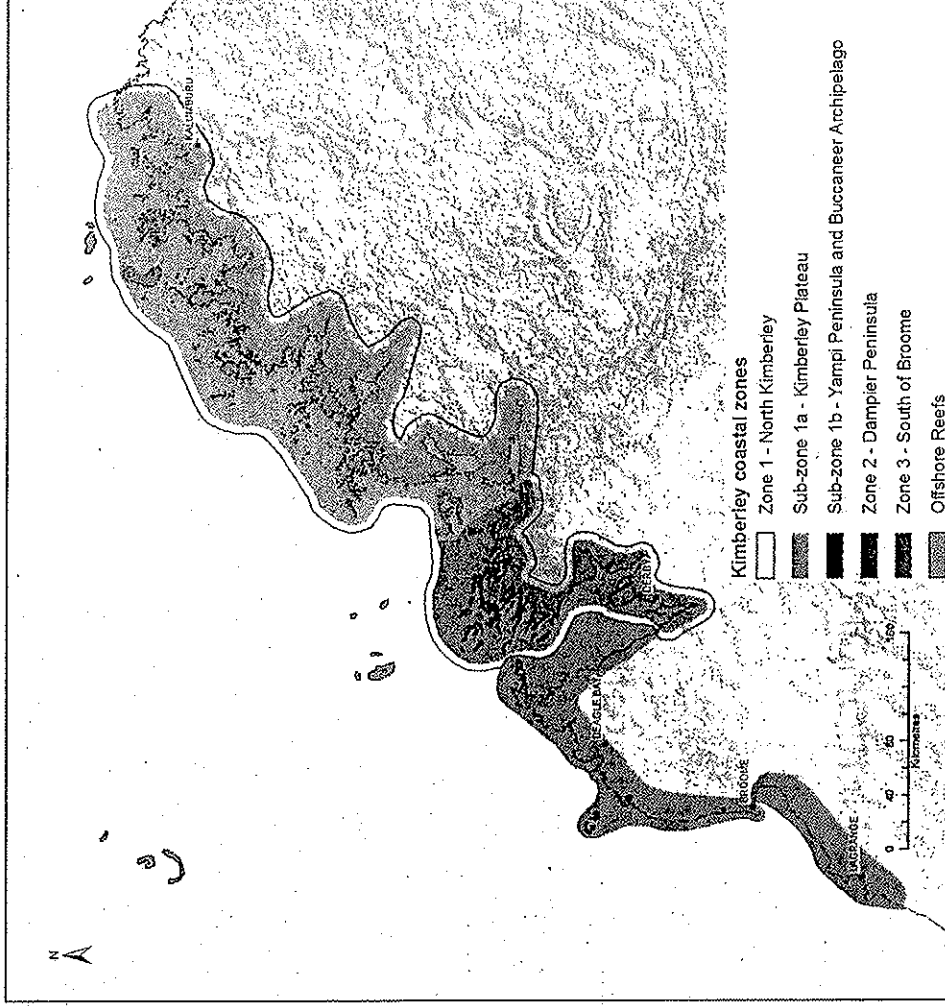
- **comparative analysis** is across the entire continent
- comparison may not always be appropriate for places of **Indigenous heritage** significance

*Heritage*

# Kimberley Strategic Assessment

Input to **strategic assessment**:

- Australian Heritage Council is considering where **National Heritage** values are **likely** and **unlikely** to occur in relation to the Kimberley coast.
- this is for the **natural, Indigenous** and **historic** environments.



*Heritage*

# Kimberley National Heritage assessment

February's Ministerial agreement included an examination of **national** and **international** heritage values.

Study area is larger than **strategic assessment**.

The Australian Heritage Council's assessment work is due by **30 June 2010**.



# Kimberley National Heritage assessment

## National Heritage List challenges and opportunities:

- **size** and scale of the region.
- harnessing **best available** information, managing information gaps.
- **great transparency\*** by working closely with Kimberley Land Council and NDT.
- providing opportunity for input by the **local, regional and national** communities.
- Working with **Dept of Environment and Conservation** and DEC's Conservation and National Heritage Values Group.
- Working with DIA and Heritage Office WA

\* Note:

- Protection of Indigenous knowledge and other values may be required.

*Heritage*