



Australian Government

Department of Infrastructure and Transport



## Major Development Plan Assessment Guidelines





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## Glossary

ACRONYM	DEFINITION
AAT	Administrative Appeals Tribunal
ABC	airport building controller
ADJR Act	<i>Administrative Decisions (Judicial Review) Act 1977</i>
AEO	airport environment officer
AES	airport environment strategy
ALC	airport lessee company
ANEF	Australian Noise Exposure Forecast
Airservices	Airservices Australia
BITRE	Bureau of Infrastructure, Transport and Regional Economics
CASA	Civil Aviation Safety Authority
DLO	departmental liaison officer
dMDP	draft MDP
edMDP	exposure draft MDP
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
MDP	major development plan
pdMDP	preliminary draft MDP
the Act	<i>Airports Act 1996</i>

## Introduction

This document is for use by Airports Branch staff in the assessment of dMDPs. It provides an overview of the process involved in assessing a dMDP and briefing the Minister. It is intended as a guide only for the purposes of consistent regulation and administration across the Airports Branch. It is acknowledged that each MDP process is unique, and therefore administrative process within the Branch may vary between MDPs.

Exposure dMDP and preliminary dMDP are terms used in this document to identify early versions of dMDPs. These terms are not used or defined in the Act.

If a dMDP relates to a “sensitive development” as defined under Section 71A of the Act, it is assumed for the purposes of these guidelines that before an edMDP is prepared, the ALC has obtained ministerial agreement to undertake a dMDP.

## A proposal that attracts an MDP

**s.89 & s.89A** A dMDP may be triggered in a number of ways. Refer to s.89 and s.89A of the Act for a list of proposed developments which attract an MDP.

**s.71A** s.71A provides a list of sensitive developments. As a general rule, sensitive developments are prohibited. However, the Minister may approve the preparation of a dMDP if the Minister is satisfied that there are exceptional circumstances to support the preparation of a dMDP.

### Minor variation

**s.95** If there is an approved MDP and the ALC wishes to vary the plan in a minor way, the ALC must seek the Minister’s approval for a minor variation to the MDP.

## Exposure draft MDP

Exposure dMDP is the term the Branch uses for the version of the dMDP provided to the Department in the first instance. Although not a formal requirement, it is customarily provided to the Department before the ALC undertakes the formal consultation process. It is provided to meet the requirements of the EPBC Act and to enable early comment from the Department on the ALC’s early draft proposal.

## Referral to the Department of Environment

**s.160 & s.161 EPBC** edMDPs are not required under the Act, however ALC’s provide this early version of the dMDP to the Branch for it to be referred to the Department for the Environment so the Minister for the Environment may determine their assessment methodology.

s.160 and s.161 of the EPBC Act require that the Environment Minister’s advice be sought on the adoption or implementation of a major development plan.

Once an ALC provides the Branch with an edMDP, it is then referred by DOIT to the Department of the Environment for their comment.

It is important an ALC factors in the Department of the Environment's consideration before exhibiting the edMDP formally, otherwise they risk having to recommence the public consultation period if the version released for public comment is changed due to Department of the Environment's comments.

**s.161A EPBC** The Minister for the Environment may determine that further advice is not required, for the purposes of the EPBC Act, on environmental aspects of the edMDP.

Otherwise, the Department of the Environment have a range of assessment methodologies they may adopt under the EPBC Act including:

- accrediting the Airports Act in the assessment of any environmental impacts;
- requesting an environmental impact statement be prepared separate to the MDP process; or
- requesting a public inquiry into the environmental impact of the proposed development.

After the Department receives advice from the Department of the Environment, the ALC should be notified of the Department of the Environment's decision and comments.

Further information about the Department of the Environment's processes can be found at Appendix A.

### Early advice to the ALC

Coordinate early comment for the ALC on the edMDP against the requirements of the Airports Act. This assists both the ALC and the Branch in early consideration of the proposal.



**Begin to develop a view on the right outcome by considering the proposal in light of the requirements of the Act.**

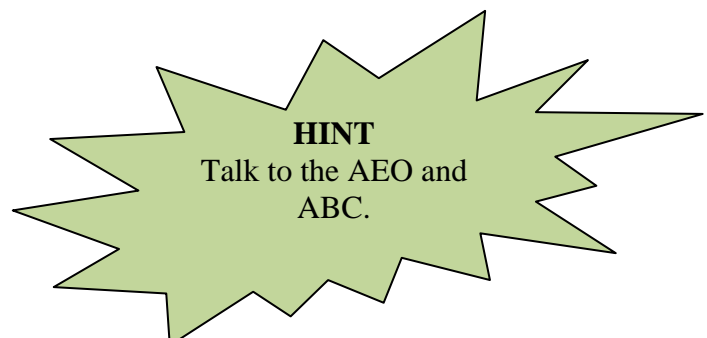
### Preliminary draft MDP

The pdMDP is the term the Branch uses for the version of the dMDP released for public consultation. ALCs ordinarily provide a copy of the preliminary dMDP to the Branch for information however the Branch and the Department of the Environment do not provide comment on this document. In any case, the ALC is required to publish the pdMDP on its web site. Check that issues raised with the ALC during the edMDP stage have been addressed in the pdMDP.

Email an electronic copy of pdMDP to CASA, Airservices and the relevant areas within the Department for information.

### Monitoring public comments

During the pdMDP stage the action officer should monitor public comments, ministerials,



and media coverage to anticipate issues to be addressed in the assessment.

## Draft MDP

The assessment stage commences after an ALC has publicly exhibited a plan and lodges a dMDP for Ministerial consideration.

- s.94(1)** An ALC must lodge its dMDP with the Minister. Ask the ALC to provide as many copies as are needed (normally five copies) to the Department for assessment and briefing purposes.
- s.94(3)(e)** Once received, the action officer should move quickly to send a copy of the dMDP to Airservices and CASA, as the Minister must consider the views of these agencies. Contact details for these agencies can be found at Appendix B.
- s.94(4)** The dMDP should also be sent to Infrastructure Investment, OTS, Infrastructure Australia, Major Cities Unit and BITRE for these areas to raise any issues they may have with the proposal. Any issues they raise may be considered by the Minister in making his/her decision.

If Department of the Environment accredited the Act for environmental assessment, arrange for the Branch's environment team to assess the dMDP. The action officer should then send the Department's environmental assessment to Department of the Environment for review and comment.

## Assessment



**Assessment clock starts the day after the dMDP is received by the Minister.**

### Day 1

- s.94(6)** The Minister has 50 business days (or a longer period of not more than an extra 10 business days for those pdMDPs that were released for public comment on or after 18 December 2010) to consider and make a decision on the dMDP. After this time if no decision has been made the dMDP is deemed to have been approved. Action officers must confer with their section head in regard to the due date for the Minister's decision.

Calculate the 50 business days very carefully, document your calculation and ask 2 other officers to check it for accuracy. Do not factor in the likelihood of a longer assessment period. Work to the 50 business days.

## Environmental assessment timeline implications

- s.94(6A)** If Department for the Environment accredited the Act for environmental assessment, the 50 business day assessment period Department for the Environments not commence until the day after Department for the Environment verifies the Department's environmental assessment of the dMDP.

**s.160 EPBC** If Department for the Environment requested an Environment Impact Statement or that a public enquiry process be undertaken, the Department's assessment process and timeline may be impacted by these processes. Refer to Appendix A.

### Requirements of the Act

**s.91 & s.94** A dMDP is assessed against both s.91 and s.94 of the Act. S.91 deals with the prescribed contents of a major development plan and s.94 deals with the matters to which the Minister must have regard in deciding upon the dMDP. Action officers must ensure the dMDP is considered against each requirement listed in s.91 and s.94.

**s.94(3)(f)** Note that for a dMDP relating to a sensitive development, the 2010 amendments to the Act provide for additional criteria for approval.



**Assess the dMDP against the requirements of the Act using the templates provided.**

pdMDPs released for public comment prior to 18 December 2010 are to be assessed using the old assessment templates. The new assessment templates are to be used for pdMDPs released for public comment post 18 December 2010.



**Day 7**

**Action officer and section head to brief the General Manager on key issues.**

### Other procedural mechanisms

Aside from undertaking the assessment, there are other mechanisms which can be used throughout assessment of the dMDP.

#### Stop the clock

**s.93A** The Minister may stop the assessment clock to seek more material from the ALC where enough material to make a proper decision has not been provided.

The authority to seek more material has been delegated to the Secretary, Deputy Secretary and Executive Director level but the Minister's office must be informed if the delegate has used this provision. The delegation is usually exercised at the Executive Director level.

Initially, it is useful to meet with the Executive Director to discuss requesting further material.

Then in drafting a brief to the Executive Director recommending the use of s.93A, include:

- a draft letter to the ALC requesting further information;
- a copy of the authorisation for the Executive Director to act on behalf of the Minister; and
- advice that the Minister's office will be advised that further information is being sought.



**TRANSPARENT  
Regulation**

### **Ensure reasonable grounds exist when requesting more material.**

Contact the ALC to notify them before the letter is sent, keeping a record of any email or telephone discussion.

**s.93A(3)** The decision making period stops the day before the Minister (or delegate) requests more material and resumes the day after the Minister receives the last of the material.

### **Example**

A stop-the-clock letter is signed at any time on 20 January.

- 20 January, the day the letter is signed, is not counted as a business/assessment day.
- 21 January, the day after the letter is signed, is not counted as a business day.

The assessment clock stops while awaiting the information required.

The Department reviews the ALC's response at any time on 20 March and the material provided is satisfactory.

- 19 March, day before receipt of material, not counted as a business day.
  - 20 March, day of receipt of material, is not counted as a business day.
  - 21 March, day after day of receipt, is counted as a business day.
- 

For information, brief the Deputy Secretary and Minister's Office on the request for more material shortly after the request has been made.

Once the last of the material is received and it is deemed satisfactory, notify the ALC of the date the assessment period recommenced and the date the assessment period is due to finish.

### **Conditional approval**

**s.94(7) & s.94A** The Act allows the Minister to impose conditions on approval of an MDP. Guidance on the wording of draft conditions should be sought from the Department's legal team as early as practicable in the process in order to allow for thorough and comprehensive advice.

Many MDPs deal with staged development. If conditions need to be met before development can continue to the next stage, make this clear in the conditions and identify who will be responsible for assessing if a condition has been satisfied (eg ABC, AEO, independent expert, the Department). The AEO and ABC should be consulted on conditions relevant to their role. Further guidance on the development of conditions for MDPs is at Appendix C.

## Refusal to approve

**s.94(9)** Should the Minister refuse to approve the dMDP, the Minister must advise the ALC in writing of his/her decision and provide the ALC with reasons for the refusal.

If recommending the Minister refuse to approve a dMDP (s.94(2)(b)), seek legal advice on the grounds for refusal, as well as input on the letter to the ALC and reasons for the decision.

**s.242** Applications may be made to the AAT for review of a decision by the Minister to refuse to approve a dMDP.



**ACCOUNTABLE**  
Regulation

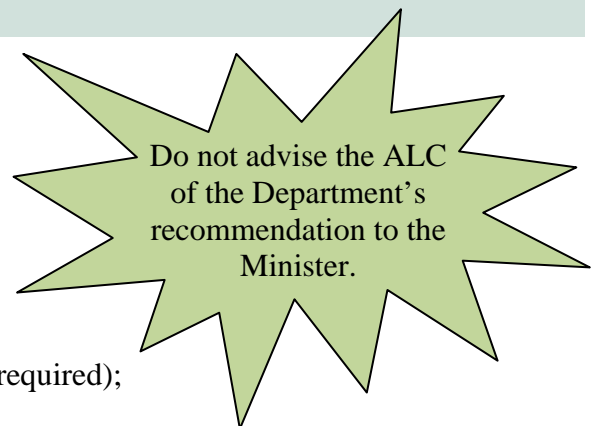
**Should the Department recommend the Minister refuse to approve a dMDP, the action officer should prepare a ‘statement of reasons’ in consultation with legal counsel detailing why the decision was made.**

Further information on how to prepare a statement of reasons can be found on the Administrative Review Council’s [website](#).

## Finalising assessment

Draft the briefing package for the Minister including:

- a covering brief;
- the s.91 and s.94 assessment tables;
- draft conditions (if any);
- a draft letter to the ALC;
- draft letters to other stakeholders (e.g. state premier, state ministers, local federal members, mayors, CASA, AsA);
- a draft letter to the Minister for Environment (if required);
- a draft media release;
- the comments from AsA, CASA and the Department for the Environment; and
- the dMDP



Once cleared through a section head, the package should be submitted to the General Manager for clearance.



**Day 20**

**The draft final package should be submitted to the General Manager of Airports Branch at around day 20 of the assessment period for their consideration and signature. A meeting with the Executive Director may also be required to liaise on the proposal.**



**Day 30**

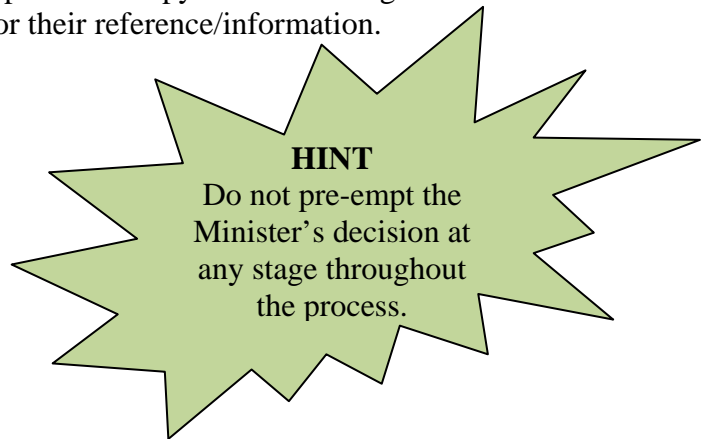
**Send the cleared package to the Minister and anticipate requests for further advice from the Minister's office before the Minister makes a decision.**

When the cleared package is sent to the Minister, provide a copy of the covering brief and ALC letter to the Executive Director and Deputy Secretary for their reference/information.



**Day 50**

**Minister makes decision.**



**HINT**

Do not pre-empt the Minister's decision at any stage throughout the process.

**s.94(8)**

As soon as practicable after making a decision to approve the dMDP, the Minister must advise the ALC in writing of the decision.

After the signed package is returned to the Department, place it on file in chronological order with other documents relevant to the MDP.

**s.90**

Notify the ABC and AEO about the decision, along with any conditions of approval. This supports the ABC and AEO's role in ensuring the development is carried out as approved.

Also, advise Department for the Environment about the decision and if Department for the Environment accredited the EPBC Act, draft a letter to the Commonwealth Minister for the Environment notifying of the decision.


## **Post Decision**

**s.96(2)**

Check the ALC has advertised the final MDP and made copies available to the public.

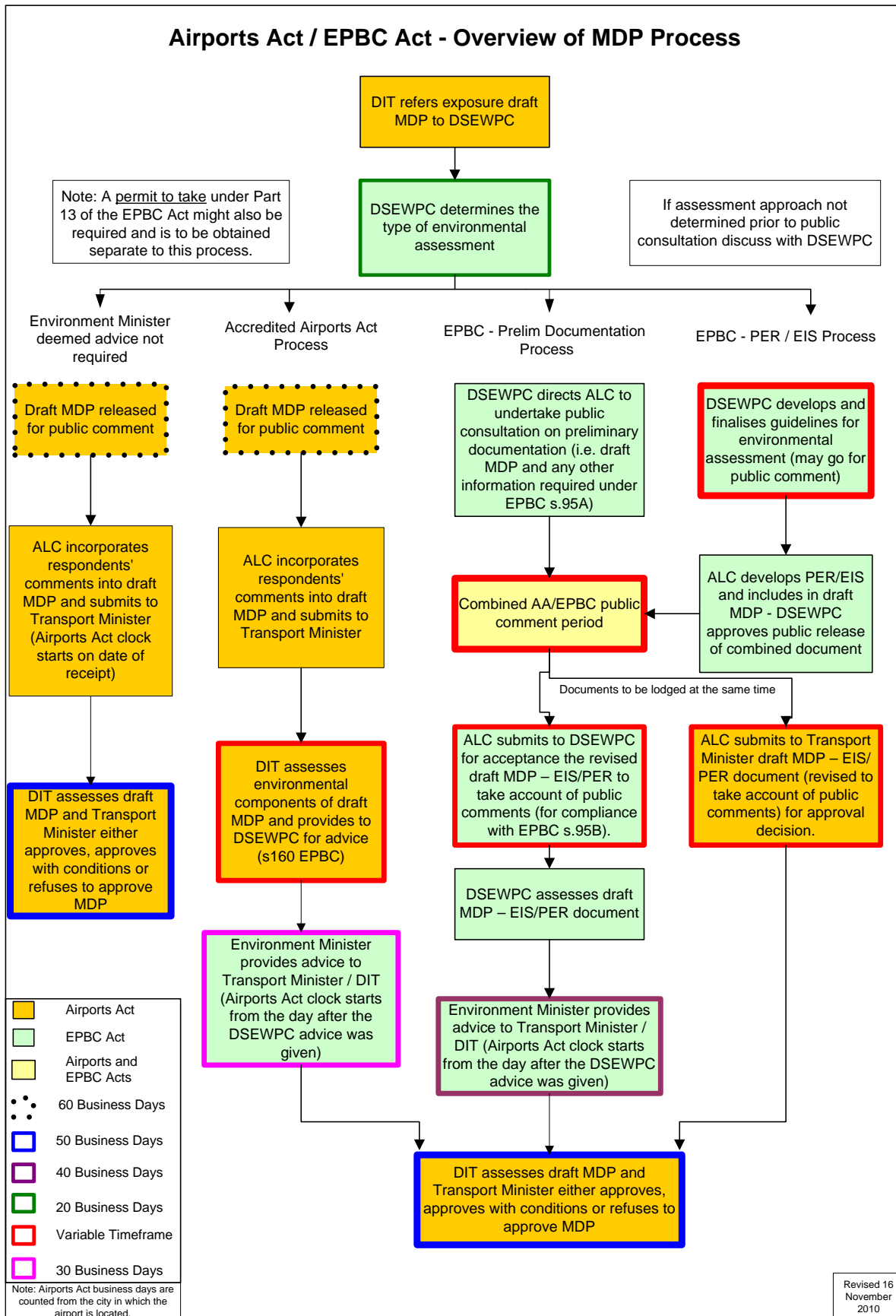
**s.94(7A) &  
s.94(7B)**

Check the ALC complies with the development limit of five years or whatever period specified by the Minister.



If conditions have been imposed on the approval, establish a project plan for the monitoring of compliance with conditions and ensure it is saved and stored in a place where future Branch staff can readily access it.

# Appendix A: EPBC Act Environment Process



## Appendix B: Contacts

### **Dept. Infrastructure and Transport:**

Airport Infrastructure Regulation Section  
Airports Branch

(Contact in regard to the environment and building control)

Airservices Policy and Governance  
Section

Air Traffic Policy Branch

Safety Policy and Coordination Section

Air Traffic Policy Branch

Aircraft Noise Management Section

Aviation Environment Branch

Transport Communications Section

Corporate Services Branch

### **Department for the Environment**

Commonwealth and Territories Section

Environment Assessment Branch

### **CASA**

Government and Industry Relations  
Section

Corporate Relations Strategy

### **AsA**

Airport Relations

## Appendix C: Preparation of Conditions

### Matters to Consider

- Did stakeholders, such as CASA and Airservices Australia, raise issues that can be mitigated by the imposition of a condition(s)?
- Were there environmental issues the AEO and Airport Infrastructure Regulation Section believe can be mitigated by the imposition of a condition(s)?
- Were there issues raised by state governments, local councils and members of the public that the imposition of a condition(s) could address?
- Did the Minister's office/senior executive raise particular concerns?

### Guiding Principles for MDP Conditions

- A condition must be reasonably related to the matter under assessment.
- A condition must be certain, final and contain no discretion.
- A condition must not be inconsistent with the Act or associated regulations.
- If the Act or the regulations provide for the specific activity or circumstance, there may be no scope to apply a condition as it could be construed as being inconsistent.
- Fines or levies are not able to be imposed through a condition.
- Significant, onerous or numerous conditions are at risk of being invalid as they may 'change' the nature of the development and the basis on which public consultation was undertaken.
- A condition that has ongoing effect should be treated with caution.
- A condition must be substantiated and evidence based to withstand merits review.
- There is danger in attaching a large quantity of conditions that may create hurdles to the commencement of the development.

Source: Hilary Manson, AGS, 2006.

