

Memorandum of Understanding for Collaborative Arrangements

between

The Office of the Environmental Protection Authority

and

The Department of Environment and Conservation

Purpose

This is a Memorandum of Understanding (MoU) between the Office of the Environmental Protection Authority (OEPA) and the Department of Environment and Conservation (DEC).

This MoU confirms the principles of a valued and constructive working relationship between the organisations and establishes working arrangements for effective and efficient co-operation between the agencies.

The practical intent is to describe the processes the organisations use to plan and agree the provision of resourcing, services and advice to enable both agencies to perform their respective statutory functions within the *Environmental Protection Act 1986* (the Act). The MoU also contains schedules of delegations and details administrative arrangements, communication protocols and related matters as agreed from time to time.

Objectives

The broad objectives of the MoU are to:

- clearly define the respective roles of the OEPA and DEC;
- ensure relevant strategies and programmes of the OEPA and DEC are integrated and complementary;
- optimise the use of resources;
- describe how the OEPA and DEC will work together; and
- optimise information sharing and knowledge management.

Background

On 29 September 2009 Cabinet approved the establishment of the OEPA. Establishment of the OEPA is consistent with a Government election commitment to improve approvals processes and also strengthens the provision of independent environmental advice. The OEPA will support the Environmental Protection Authority (EPA) and replace the EPA Service Unit which was formerly part of DEC.

Both the OEPA and DEC are departments of State established under the provisions of the *Public Sector Management Act 1994*. Both departments fall within the responsibility of the Minister for Environment and both have responsibilities under the *Environmental Protection Act 1986*. As a result of the Cabinet decision, the OEPA will be responsible for Part III of the Act – Environmental Protection Policies, and Part IV – Environmental Impact Assessment. Part V – Environmental Regulation, will continue to be the responsibility of DEC.

Both departments share many common objectives. Sharing of resources, information and knowledge optimises the efficiency and quality of advice provided to the Minister and of service delivery by the respective departments.

The OEPA services the EPA, an independent, statutory authority which provides advice to Government. DEC provides specialist knowledge and advice to the OEPA based on its recognised expertise in many areas of environmental management. The OEPA also provides specialist knowledge and advice to DEC based on its special expertise in other areas relevant to environmental management.

The State Solicitor's Office has advised that until the Act is amended, it can only be administered through one Department and the Chief Executive Officer of that Department is the CEO under the Act for all purposes. Therefore, to enable the OEPA to carry out its functions, the CEO of DEC has delegated relevant authorities to the CEO, or appropriate officers, of the OEPA.

Shared Vision and Partnership

This MoU confirms (within annual budget parameters established by Government from the consolidated fund and any other sources of funding legitimately secured by each agency) that:

- DEC has agreed to provide a bureau service to the OEPA subject to a Service Level Agreement;
- DEC and OEPA will share information, knowledge and advice from a wide range of resources on matters where each agency has specialist expertise; and
- OEPA and DEC will collaborate on matters of mutual interest for the protection of the environment and promotion of conservation values in Western Australia.

Partnership Principles

The basis of this MoU is a commitment to foster and continue to improve cooperation between the OEPA and DEC through consultation, open communication and collaboration at strategic and operational levels for the mutual benefit of the protection and conservation of the environment.

The intent of this agreement is to support the roles and functions of the parties as set out in relevant legislation.

Three key principles are agreed as follows:

- respect for roles;
- planning and working co-operatively; and
- effective consultation and communication.

Respect for Roles

DEC and the OEPA acknowledge the statutory roles and accountabilities of their respective organisations and will use best endeavours towards the intent of this agreement and any subsequent working arrangements. The key considerations are:

- separate existence of the two agencies;
- independence of the EPA;
- role of the Minister;
- responsibilities of OEPA and DEC as separate departments of State in the provision of advice, each in its own right, to the Minister;
- arrangements under which each agency may access information, advice and services from the other and more generally from other government agencies and outside sources; and
- delegations agreed between the Director General of DEC and the General Manager of OEPA from time to time to assist in the efficient and effective operation of responsibilities assigned to the OEPA.

Planning and Working Cooperatively

DEC will provide informal and formal advice to the OEPA.

It is acceptable for the agencies to consult directly through individual branches or officers regarding informal advice (such as drafting Ministerial conditions and providing comments on monitoring reports etc).

Requests for formal advice from DEC are to be made in writing. The process for obtaining formal advice and what constitutes formal advice is articulated in an exchange of letters between the agencies.

Senior officers of the DEC and OEPA will meet quarterly to review working arrangements.

Environment Protection and Heritage Council of Australia and New Zealand

The *National Environment Protection Council (Western Australia) Act 1996* requires that the Council member (currently the Minister for Environment) nominate a Standing Committee member. The Director General of DEC is the member.

DEC is responsible for briefing the Minister for Environment prior to meetings of the Council. DEC will provide copies of all meeting agendas and papers for both the Council and Standing Committee to OEPA who will provide relevant advice to the Minister and the Director General.

Transitional Arrangements

As a result of establishing the OEPA, there are a number of 'transition' projects that require attention to clarify roles, responsibilities and resourcing. In particular:

- **Oil spill response**
DEC will represent the OEPA and the Department of Fisheries on the Western Australian (National Plan) State Committee established under the Western Australian Marine Oil Pollution Emergency Management Plan (WestPlan MOP).

The role of Environmental and Scientific Coordinator, established under WestPlan MOP, will continue to be undertaken by the Manager of the Marine Ecosystems Branch of the OEPA, or his alternate.

The specific responsibilities relating to oil spill response are detailed in Schedule 1.

- **Gorgon gas development undertakings**
The roles and responsibilities of DEC and the OEPA in relation to Ministerial statements 748 and 800 (Gorgon LNG proposal) are articulated in an exchange of letters between the agencies.
- **Pluto project undertakings**
The roles and responsibilities of DEC and the OEPA in relation to Ministerial statement 757 (Pluto LNG proposal) are articulated in an exchange of letters between the agencies.

Effective Consultation and Communication

Effective consultation and communication is recognised as essential to the achievement of the objectives of this MoU. Communication will be based on the following principles:

- the parties value a working relationship based on straight talk and good consultative processes with each other and the community;
- the OEPA and DEC will endeavour to ensure that all major public announcements material to the themes of this agreement and the role of the two agencies are the subject of prior consultation; and
- the parties recognise the importance of confidentiality to good corporate governance and commit to ensuring the integrity of processes where commercial or other sensitive material is exchanged or discussed.

Contentious Issues Management

The agencies will undertake to co-ordinate advice on contentious issues to the Minister and media.

Where both agencies are involved in an issue, agreement will be made on which agency will have the lead and respond with advice from both agencies. Final sign-off and transmittal will be from the lead agency following agreement (CEO or CEO's delegate sign-off) by the other agency, with a copy of the final version to be sent to the non-lead agency.

Agreement in Good Faith

This MoU is an agreement made in good faith based on the commitment of the parties to an effective and sustainable partnership. It does not seek to establish a legal relationship between the parties. The parties may periodically choose to review the commitments and understandings set out in this MoU.

This MoU can be amended by mutual agreement.

Dispute Resolution

Disputes between the parties arising from the operation of this MoU where unresolved quality, performance or resourcing matters arise can only be resolved by the OEPA and DEC, represented by their nominees.

Term


The agreement will date from 11 June 2010 and is to be reviewed annually.

Signed:



Kim Taylor
General Manager
Office of the Environmental
Protection Authority

Date 18 November 2010



Keiran McNamara
Director General
Department of Environment
and Conservation

Date 15 November 2010

SCHEDULE 1

Oil Spill Response Arrangements

Responsibility for implementing the Oiled Wildlife Response Plan, which is a sub-plan of WestPLan MOP, will remain with the Nature Protection Branch of the Department of Environment and Conservation.

The role of the Environmental and Scientific Coordinator is to provide the Incident Controller with timely 'whole of government' advice on priorities for environmental protection and on the appropriateness of proposed response strategies. The advice is developed through consultation with representatives of DEC and the Department of Fisheries.

DEC and the OEPA agree that Dr Ray Masini (OEPA) is the most suitably qualified person to undertake the role of Environmental and Scientific Coordinator. Although the position sits more appropriately within DEC, it is currently fulfilled by Dr Masini on the basis of his personal credentials.

The role of Oiled Wildlife Coordinator, established under WestPLan MOP, will continue to be undertaken by the Supervising Wildlife Officer, Marine, in the Nature Protection Branch of the Department of Environment and Conservation, or his alternate.

Pollution response and waste management will remain the responsibility of the Pollution Response Unit of the Department of Environment and Conservation.

Department of Environment and Conservation regional offices will remain responsible for on-scene response and provide personnel to participate in the Incident Management team.

The operational response role for oiled wildlife will remain with the Department of Environment and Conservation Nature Protection Branch.

The parties recognise that these roles and responsibilities will be the subject of further discussion and review.

**COMMUNICATION PROTOCOL FOR ADVICE
ON THE ASSESSMENT OF PROPOSALS BETWEEN
THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION AND
THE OFFICE OF THE ENVIRONMENTAL PROTECTION AUTHORITY**

It is recognised by both agencies that close interaction is necessary – both formal and informal – for Department of Environment and Conservation (DEC) advice to be considered in the assessment of proposals under Part IV of the *Environmental Protection Act 1986* (EP Act).

While informal cooperation between individual officers and individual branches is assumed and expected, formal consultation procedures are detailed below.

The Office of the Environmental Protection Authority (OEPA) will encourage proponents to discuss issues directly with DEC throughout the environmental impact assessment process. The extent to which DEC engages in those discussions is a matter for DEC to determine on a case by case basis.

The OEPA (or proponents as suggested by OEPA) may seek informal comment at DEC Branch Manager level (copy to the DEC Advice Coordinator) on draft documents (including study reports and their findings) on a case by case basis. DEC will determine the level of response based on potential environmental impacts and risks and available capacity.

To meet target times for formal advice requests referred to in this document, good communication between OEPA and DEC staff during the assessment process on the progress of assessments and upcoming advice requests will be necessary.

Document distribution protocol

The OEPA project officer should contact the DEC Advice Coordinator to determine who and where in DEC hard or electronic copies are to be sent on a case by case basis. DEC's Advice Coordinator will consult with the relevant DEC officers and advise the OEPA project officer of document distribution.

1. Referral Documents

The OEPA will consult with relevant areas in DEC, consistent with the document distribution protocol, in cases where the EPA is considering a recommendation to not assess on the basis that the proposal can be managed under Part V of the EP Act.

2. Environmental Scoping Document (ESD)

a) Draft prepared by proponent (Public Review)

The OEPA will request formal advice from DEC on the draft ESD at the time of public comment.

The request for formal advice will be made in writing by the General Manager, OEPA to the Manager, Environmental Management Branch (EMB), with a copy to the DEC Advice Coordinator. The OEPA will distribute the documents as per the above document distribution protocol.

Consolidated DEC comments will be provided to the OEPA within 15 business days (3 weeks).

b) Draft prepared by OEPA (no public review)

The request for formal advice will be made in writing by the General Manager, OEPA to the Manager EMB, with a copy to the DEC Advice Coordinator, plus hard copies and electronic copies to identified areas in DEC as determined by the document distribution protocol.

Consolidated DEC advice will be provided to the General Manager, OEPA within 10 business days (2 weeks).

These steps will still apply for a “no comment” response from DEC.

3. Formal Environmental Review Advice

a) Assessment on Proponent Information (API)

The OEPA expects proponents to engage in consultation with State and local government agencies and stakeholders who are interested in, or affected by their proposals, including DEC, to address any outstanding matters of concern prior to formal document submission to OEPA. The proponent should provide a copy of DEC’s written advice to the proponent, at time of submission to OEPA.

The OEPA may request formal advice from DEC on the API document before the EPA completes its assessment. The request for formal advice will be made in writing by the General Manager, OEPA to the Manager EMB, with a copy to the DEC Advice Coordinator, plus provision of hard and electronic copies to identified areas in DEC as determined by the document distribution protocol.

Consolidated DEC advice will be provided to the General Manager, OEPA within 15 business days (3 weeks).

These steps will still apply for a “no comment” response from DEC.

b) Public Environmental Review (PER).

This applies to DEC review of the environmental review document (the formal proposal) during the public review (PER). When the proponent’s document is available for public and agency comment, the General Manager, OEPA will notify the Director General of DEC in writing, with copies to the Manager EMB and the DEC Advice Coordinator plus

forward hard copies to identified areas in DEC as determined by the document distribution protocol.

Consolidated DEC advice will be provided to the General Manager OEPA within the public comment period.

Proponent's Response to Submissions

In cases where DEC is an identified DMA or involved agency, the proponent's response to the OEPA on DEC's advice will be sent to the DEC Advice Coordinator for information to inform future input at the EPA meeting and at the recommended conditions stage.

4. Draft Recommended Conditions

It is standard practice during assessments for the OEPA to consult informally at DEC Manager level during the development of draft environmental conditions.

In cases where DEC is a Decision Making Authority (DMA), the OEPA will formally consult with DEC on draft recommended conditions prior to the release of the EPA report. Consistent with EPA Bulletin number 11, the consultation at this stage will be limited to matters of fact, and technical or implementation issues. Wherever possible, the OEPA will endeavour to provide prior advice of its intention to seek advice on a particular condition set.

A request for comment will be made by the General Manager, OEPA to the Manager EMB, with a copy to the DEC Advice Coordinator, plus identified areas in DEC as determined by the document distribution protocol.

Consolidated DEC advice will be provided to the General Manager, OEPA within 5 business days (1 week).

5. Post Implementation

a) Section 45C - Post Assessment Approvals

Where an application has been made under section 45C for amendment of a proposal, the OEPA will seek written advice from DEC prior to completing the relevant process, where DEC is a DMA.

A request for comment will be made by the General Manager, OEPA to the Manager EMB, with a copy to the Advice Coordinator, plus hard and electronic copies to identified areas in DEC as determined by the document distribution protocol.

Consolidated DEC advice will be provided to the General Manager, OEPA within 10 business days (2 weeks) with best endeavours to provide a response within 5 business days (1 week).

b) Section 46 – Amendment of Conditions

Where an application has been made under section 46 for amendment of conditions, the OEPA will seek written advice from DEC prior to completing the relevant process, where DEC is a DMA. The OEPA may also seek advice where DEC is an involved agency.

A request for comment will be made by the General Manager, OEPA to the Manager EMB, with a copy to the Advice Coordinator, plus hard and electronic copies to identified areas in DEC as determined by the document distribution protocol.

Consolidated DEC advice will be provided to the General Manager, OEPA within 10 business days (2 weeks) with best endeavours to provide a response within 5 business days (1 week).

6. Environmental Management Plans

Many Ministerial Statements contain Conditions that require the preparation and implementation of Environmental Management Plans (EMP). The OEPA will encourage direct proponent communication and consultation with DEC, in order to address any outstanding matters of concern to DEC prior to submission of management plans. DEC will determine the level of response based on potential environmental risk and available capacity. The OEPA will seek written advice from DEC prior to completing the relevant process.

A request for comment will be made by the General Manager, OEPA to the Manager EMB, with a copy to the DEC Advice Coordinator, plus hard and electronic copies provided to identified areas in DEC as determined by the document distribution protocol.

Consolidated DEC advice will be provided to the General Manager OEPA within 15 business days (3 weeks).

Timelines

DEC will use its best endeavours to meet the timelines for advice outlined in this protocol. Both parties recognise that this may not always be achievable. In these circumstances the OEPA will accommodate reasonable delays in the provision of DEC advice.

DEC Contact

The Director General of DEC may nominate a particular DEC officer, other than the Manager of EMB or the DEC Advice Coordinator, as the point of contact in respect of any specific proposal.

Problem Solving/Escalation of issues

It is desirable for officers of the OEPA and DEC to meet to clarify and resolve issues of a technical or policy nature, or matters of interpretation, that arise from time to time.

If issues remain unresolved, Managers of the relevant Branches of DEC and OEPA will meet to discuss the matter. If necessary, these issues will be escalated to the relevant Directors to resolve.

Where necessary, matters will be referred to the General Manager, OEPA and the Director General, DEC.

Review

These procedures are to be reviewed six months after implementation and annually thereafter.