

## **Environmental Impact Assessment Processes Review**

### **Stakeholder Reference Group Meeting held at 2pm on 19 March 2008**

#### **Notes and Responses to Matters and Issues raised**

**Present: Paul Vogel, (Chair); Gordon Baird (Woodside) representing APPEA; Mark Batty, WALGA; Greg Kaeding, CCI; Graham Cobby, DOIR; Paul Gamblin, WWF; Cam Kneen, ODAC; Ian Loftus, AMEC; Ian Le Provost, ECA; Angus Morrison-Saunders, University Sector; Mike Mouritz, DPI; Gavin Price (BHP/Billiton) representing CME; Steve Rolls, UDIA; Chris Tallentire, CCWA; Kim Taylor, DEC.**

**Review Team: Christine Shervington; Charlie Welker.**

#### **1. ROLE AND TERMS OF REFERENCE OF THE STAKEHOLDER REFERENCE GROUP**

The terms of reference and role of the group were explained and were supported by those members present.

#### **2. REVIEW PROCESS**

It was noted that the Appeals and Ministerial processes were not part of the Review. A work program for the conduct of the EIA review is being prepared and will be made available to SRG members.

Action: A copy of the work program will be provided to the SRG at its next meeting.

##### **2.1 SRG MEETING DATES**

The dates and venue for future meetings were advised:

- 9am – 11am Wed 16 April – EPA Boardroom, 8<sup>th</sup> Floor, 168 St George's Tce
- 9am – 11am Tues 13 May – as above
- 9am – 11am Wed 11 June – as above

##### **2.2 REVIEW OF POLICIES**

The list and process for review of priority policies was supported with the addition of the offsets position statement and guidance to the list. A new hierarchy for EPA policies will be developed and will include both operational and environmental policies.

Action: Include offsets on the policy review priority list. Prepare a paper on the development, scope and hierarchy of EPA policies.

## 2.3 CONSULTATION STRATEGY

The consultation strategy including the Forum for the EIA review was discussed and suggestions made for the addition of names to the list of attendees:

Members were informed of the "Provide Your Views" facility available on the webpage.

Members were informed of the Review Forum scheduled for 9 April, and the request for presentations from key groups. Organisations were requested to nominate persons who might attend. The venue is capable of holding in excess of 150 persons.

Action: Nominations for speakers and attendance at the forum to be forwarded to Christine Shervington.

## 3. TOPICS TO BE ADDRESSED BY SRG

### 3.1 FORMATION OF SUB-GROUPS OF THE STAKEHOLDER REFERENCE GROUP

It was agreed that sub-groups may be formed as required meet to discuss issues arising from the assessment process. In the first instance, groups would be formed to address alignment issues between planning and environment and issues arising from the minerals and petroleum proposals. These matters would eventually be addressed formally through revision of MOUs and schedules between the EPA and DPI/WA Planning Commission and DoIR.

Action: A sub-group will be formed, composed of Mike Mouritz, DPI, Cam Kneen, ODAC, an EIA Review team member and an EPASU senior officer to address planning issues. Similarly a sub-group would be formed involving DoIR to address issues in more detail issues associated with the EIA process.

### 3.2 STRATEGIC ASSESSMENT

1. *Strategic assessment should receive more emphasis in the list of topics – a view that strategic assessments can deliver sustainability.*

Response: Strategic assessment will be given greater attention and discussed with SRG. The list of topics to be considered by SRG will be amended to include strategic assessment and a specific paper and Administrative Procedure under the EP Act for strategic assessment will be an output of the review.

Action: Prepare paper on strategic assessment and draft an Administrative Procedure under the EP Act.

### 3.3 RESOURCING OF EPA AND OTHERS

2. *Will resourcing be addressed by the SRG?*

Response: Resources for the EIA process will be addressed and a paper on this topic will be prepared and presented for comment to the SRG following discussion with Department of Treasury and Finance.

Action: Discussions with Department of Treasury and Finance. Prepare resourcing paper.

3. *Resourcing of NGOs is required to participate fully in the EIA process, particularly at the front end.*

Response: This issue will be addressed and options will be developed. The list of topics to be considered by SRG will be amended to make this clear and a paper will be presented on this issue at a subsequent meeting.

Action: As for 6 above.

## 4. OTHER GENERAL ISSUES RAISED

### 4.1 SUCCESS OF PART IV EIA

4. *It is difficult to judge the success or outcomes of the present EIA system under Part IV.*

Response: Currently there is very little specific information on the usefulness and achievements of the EIA process under the EP Act. A combined risk and outcome-based approach will enable the success or otherwise of the EIA process to be tracked and will focus on environmental outcomes rather than prescriptive management measures.

Action: Focus on risk-based approach in the EIA process and develop performance measures for the EIA process.

### 4.2 ROLE AND APPLICATION OF SUSTAINABILITY PRINCIPLES IN EIA

5. *What is the role or contribution of EIA in sustainability? What principles should underpin EIA in WA - transparency, accountability, public involvement, evidence-based decision making, predictability and proportionality?*

Response: EIA does and will address environmental sustainability. The EP Act requires that regard is to be given to number of environmental principles which are consistent with the Foundation and Process Principles of the State Sustainability Strategy (SSS):

- precautionary principle
- principle of intergenerational equity
- principle of the conservation of biological diversity and ecological integrity,
- principles relating to improved valuation, pricing and incentive mechanisms
- principle of waste minimisation

The consideration and integration of social and economic factors is the responsibility of other parts of Government with the responsibility for final decisions at cabinet level.

The EPA will change the processes for the development of policies and MOU schedules with agencies to be more consultative and transparent before drafts are finalised or released for public comment.

Options being considered include:

- retention of the Stakeholder Reference Group to provide comment or being used as a round table for the development of operational and environmental policies and MOU schedules.
- formation of specific stakeholder group according to the policy or MOU being developed (could be subset of the Stakeholder Reference Group).

Action: Any changes to the EIA process will have regard to the environmental principles under the EP Act, the SSS Process Principle of “accountability, transparency and engagement” and the additional matters of “proportionality” and “predictability” of process. Prepare a paper on the process for the development of policies and MOUs.

6. *How are concepts of precautionary principle or adaptive management applied?*

Response: The application of the precautionary principle will be enhanced by a risk-based approach to regulation and assessment. Focussing on the achievement of outcomes rather than prescribing management will encourage greater application of adaptive management. A risk-based approach should make clear the mitigation or management that is required for best practice.

Action: Build in risk and outcome-based approach into EIA process. Prepare paper on risk-based approach to impact assessment.

7. *Governance of the EIA process including advising agencies input needs to be improved.*

Response: The EIA review will address governance of the process and more rigour will be imposed on the process and inputs to the process through a risk-based approach.

Action: Implement risk and outcome based approach in conjunction with updated MOUs and associated schedules.

#### 4.3 RELATIONSHIP BETWEEN PLANNING AND ENVIRONMENTAL ASSESSMENT PROCESSES

8. *Relationship between planning and Part IV environmental approval processes needs improvement. Environmental resources available within DPI are limited and more limited in local authorities to make assessments of environmental significance of schemes and scheme amendments.*

Response: Better relationships need to be established (refer also below to comments under referrals) and the intention is to review the way the s.48A process operates as it is not fulfilling its original intentions of addressing strategic assessment of planning and environment issues at an early stage. A specific Administrative Procedure will address s.48A assessments and will include consideration of the process and content of s.48A strategic assessments.

Action: Develop MOU with DPI/WA Planning Commission on the general arrangements for working together (referrals, conduct of the assessment process and providing advice). Schedules to this MOU will be developed over time to address more detailed operational procedures. Prepare an Administrative Procedure under the EP Act for the assessment of schemes by the EPA (Note it is recognised that legislative amendment is a necessary pre-requisite to MoU development).

## 5. SPECIFIC ISSUES RAISED ON TOPICS

### 5.1 RISK-BASED APPROACH TO EIA AND REGULATION

There was general support for the application of a risk-based approach in the WA EIA process. Understanding how the concept will apply in practice was seen as a critical to the acceptance of this approach. Care needs to be taken not to create another process. CSIRO has used a risk-based approach when considering the management of fisheries – this maybe useful experience to draw on.

Response: Risked-based approach will be applied to not only assessment of impacts by the EPA but also to the provision of advice by advising agencies, referrals, scoping of proposals and proposed environmental conditions. Risk considerations will be integrated into the impact assessment process to provide a systematic means of determining significance of impact. The review team would welcome any input on experience with a risk-based approach in environmental impact assessment.

Action: Prepare risk-based assessment paper with examples of how risk assessment may apply in the EIA process including how the approach will apply to advice from agencies and independent experts.

### 5.2 PRE-REFERRAL PHASE OF THE EIA PROCESS

9. *The level of interaction with EPASU before referral is insufficient. The emphasis under the Keating review was to ensure sufficient scoping of proposals took place before entering the formal assessment process. De-mystifying the process through the release of assessment tools or checklists was seen as important.*

Response: The importance of pre-referral interaction between the EPASU and proponents is recognised and has been limited because of workload considerations. The availability of guidelines or information on how EPA assesses referrals has been limited and is acknowledged. The review will be addressing both operational policies as well as review of existing environmental policies to assist proponents and stakeholders.

Action: Develop an operational policy structure which would inform stakeholders and proponents on the how the EPA administers, applies protocols and interprets legislative requirements in the EIA process.

### 5.3 REFERRAL OF PROPOSALS AND SCHEMES

10. *Too many scheme referrals to EPA. Guidance on referrals*

Response: Planning legislation requires all schemes and scheme amendments to be sent to EPA for consideration. Nonetheless, the current situation is not satisfactory and avenues will be explored including amendment to legislation to enable a risk-based approach to be taken.

Action: Discussions with DPI/WA Planning Commission to develop a way forward. Review MOU and develop schedules with DPI/WA Planning Commission which addresses referrals, in conjunction with any required legislative amendment.

11. *There is a lack of information on what is a potential significant detrimental environmental effect. Does this mean that only impacts on critical assets should be considered as potentially significant?*

Response: A risk-based approach will provide a systematic and transparent method to determine significance of impacts and assist with making decisions on what is to be referred to EPA.

Action: As for 10 above. Formation of sub-groups with DPI/WA Planning Commission and DoIR to examine issues and prepare schedules for MOUs.

#### 5.4 DECISION TO ASSESS AND SETTING LEVEL OF ASSESSMENT

12. *Lack of proportionality in the requirements for the various levels of assessment makes them almost indistinguishable. There are too many levels of assessment. Assessment on referral of information is almost never done.*

Response: The review will be examining the current levels of assessment as some of them (especially the expedited levels) are not achieving their original intention (quick yes or no). A risk-based approach will be applied in determining whether a proposal should be assessed and if so at what level.

Action: Review current levels of assessment and prepare paper including the consideration of risk. Amend current Administrative Procedure.

13. *The clock is stopped too readily and often near the end of the 28 day statutory period.*

Response: The review will be taking on board the “timeline” and “stop the clock” proposals adopted for the implementation of the Keating Review.

Action: Prepare a paper on the application of “stop the clock mechanism” in the EIA assessment process and amend current Administrative Procedure as required.

14. *Section 41 is believed to be causing problems with geotechnical investigations etc as these activities have been interpreted by some agencies as implementing the proposal and therefore they cannot issue permits for such activities until the Part IV process is completed.*

Response: The EPA will be writing to agencies indicating that the implementation of investigations is not considered by the EPA as implementing the proposal. A review of s.41 and its application will be conducted.

Action: EPA letter to agencies. Review s.41.

#### 5.5 SCOPING AND SCOPING DOCUMENTS FOR PROPOSALS

15. *Scoping documents are too long and detailed. Scoping documents often require a number of minor environmental factors to be investigated and then addressed in the subsequent assessment document. Scoping should identify the key issues to be addressed.*

Response: A risk-based approach will be applied in the scoping process to identify significant issues/risks. The extent to which investigations have to be conducted will depend on the need to reduce the level of uncertainty through the acquisition of environmental information on line. For instance, conservative assumptions (instead of further data collection) may be made about the uncertainty of information which then raises the risk level or potential impact and in turn potentially the level of mitigation required. An assessment of the proposal could proceed on this basis at the discretion of the proponent.

Action: Prepare guidance (operational policy) on the application of a transparent risk-based approach in the scoping process to identify key issues and the extent to which further information maybe required.

*16. It takes too long to complete a scoping document to EPA's satisfaction. Application of "stop the clock" to the assessment of a scoping document is a concern.*

Response: The application of a risk-based approach should speed up the process of assessment of scoping document. The review will be taking on board the "timeline" and "stop the clock" proposals adopted for the implementation of the Keating Review.

Action: Prepare a paper on the application of "stop the clock mechanism" in the EIA assessment process and amend current Administrative Procedure as required.