

FINAL

UDIA

UDIA is the peak body representing the development industry in Western Australia with membership across developers, consultants, State and Local Government agencies as well as Universities. The role of UDIA is to provide leadership for the urban development industry which is facilitated through the various policy committees which include: Sustainability, Urban Water, Infrastructure and Planning.

UDIA has a long and collaborative relationship with the State Government, including the Minister for the Environment and the Environmental Protection Authority, and it is this collaborative spirit that we enter into the review of the environmental impact assessment process.

BACKGROUND TO THE REVIEW

UDIA undertook an extensive review of the environmental approvals process in 2005/2006 with the subsequent final report endorsed by the then Minister for Environment. **The outcomes are largely based on the experiences of UDIA members within the environmental approvals process.** A steering committee consisting of UDIA and government representatives then worked toward implementing the recommendations of the final report. These recommendations will hopefully inform the current review.

The UDIA review covered a number of issues including:

- The need for a strategic approach to assessment
- Complexity and duplication of process
- Legislative Changes
- Wetlands
- Urban Water
- Threatened Ecological Communities
- Acid Sulphate Soils.
- Staffing, Resources and Culture

STRATEGIC APPROACH TO ASSESSMENT

The need for a more strategic approach to the environmental assessment of development projects has been identified by industry as an issue for consideration by the EPA to improve the approvals process. UDIA agrees that the process should move to a risk-based approach, targeting significant environmental issues.

It is concerning to industry members that issues that are currently the subject of conditions of subdivision should have been considered and resolved (at least from a strategic perspective) prior to the subdivision stage of the process. This particularly refers to major issues or 'show stoppers' such as contamination, wetland and water source protection and rare and endangered flora and fauna.

A process is required to manage the workload generated by all developments being considered by EPA when less than 2% go on to formal assessment. At present, the Town Planning and Development Act requires all planning proposals to be referred to the EPA for assessment, totalling over 200 with planning origin, or half the total referrals to the EPA, per year.

Recommendation

Develop a formal procedure for the referral of major development projects to the EPA at outline development plan/structure planning phase of the planning and development process. This would enable consideration and resolution of major/strategic issues early in the development process with detailed design issues considered at subdivision phase.

A second recommendation would be to consider a review the relevant sections of Town Planning and Development Act, to allow Responsible Authorities delegated authority as to whether referral is required (for example small lot subdivisions).

COMPLEXITY AND DUPLICATION OF PROCES

Over-regulation, particularly in regards to conservation, has resulted in an overly-complex approval system. There is duplication between different agencies, adding to the complexity of the approvals process and leading to a general lack of clarity in regards to which agency is responsible for particular aspects of the process and how different agencies interact. A decision making authority needs to be clearly identified.

The nomination of more than one agency (and often multiple agencies) as a clearing authority for an individual condition of subdivision leads to serious delays and problems for proponents where the policy requirements of the agencies differ and are not reconcilable.

In relation to urban water issues, the Department of Water should take the lead role in decision-making, particularly where local government is concerned. Requirements for urban water management plans should be set by DoW to ensure consistency between jurisdictions

Policy preparation and implementation is ad hoc and lacks transparency and there appears to be a large number of draft and incomplete policies being implemented as if final. There also appears to be different interpretations in different regional offices due to the decentralised nature of decision making.

There is also a lack of understanding regarding the process environmental agencies use to deal with correspondence/referrals from WAPC/DPI in relation to a planning approval.

Underpinning the complexity are time delays that add to the cost for the end purchaser in the form of the increased price of subdivided land and unit development. This factor needs to be recognised by EPA as part of the review. A statutory time frame would be extremely helpful as the “stop clock” approach fails to give certainty to the industry.

Recommendation

1. Exclude draft policies from the decision making process until reviewed and finalised.
2. Publish and implement procedural guidelines for policy preparation incorporating process for industry and community consultation and feedback and for the assessment of the social, economic and environmental impacts of all new policies which introduce new requirements into the approval process.
3. Establish administrative arrangements such as Memoranda of Understanding (MOU's) between different agencies involved in the approvals process clarifying the roles and responsibilities of each agency. Specific agencies which industry believes could benefit from this type of arrangement include DEC and EPA, DPI, SRT and the Water Corporation.
4. No more than one agency should be nominated as the clearing authority for an individual condition of subdivision.
5. Agencies should ensure that conditions of approvals are appropriately worded to avoid any potential conflict between the policies of clearing agencies. To achieve this increased emphasis should be placed on communication between different agencies to achieve consensus prior to conditions being placed on an approval. The practice of issuing of draft conditions to applicants should continue.

LEGISLATIVE CHANGE

UDIA members have identified a number of fundamental issues associated with the Environmental Protection Act (1986) which industry believes underpin many of the flaws and problems exhibited by the approvals process.

There is a deep-seated industry view that the EP Act is out of date and no longer reflects modern community and industry views, culture or aspirations. In this regard industry has expressed concern that the Act provides very wide administrative and Ministerial discretions with very little accountability.

This concern relates in part to the statutory injunction provided under Section 41.2 of the EP Act which gives the environmental assessment process precedence over all others. This means that other authorities, including the State Administrative Tribunal, cannot make decisions on other aspects of a proposal until an environmental assessment has been completed, causing unnecessary delays for both proponents and other approval and appeal bodies.

Industry concern also relates to both the Part IV and Part V Appeals process which industry members believe lack procedural fairness. Key issues identified by industry members in this regard include:

- Insufficient/incomplete natural justice/procedural fairness in the approval process due to the lack of a merits based appeals system.
- Appeals are dealt with through an ad hoc process facilitated by the Appeals Convenor (do not follow principles of natural justice).
- Lack of transparency and perception of bias in the appeals process (*for example: advisors to the Minister are perceived to be too closely associated with the department from which the appeal originated; the office of the Appeals Convenor lacks independence; proponents are often unaware of who another party to an appeal is; and the Appeals Convenor meets with parties privately and separately and there is no ability for all of the parties to understand how the process has operated and what has influenced final decision making*).
- Referrals being treated as correspondence rather than formal referrals (at the discretion of the EPA).
- “Stopping the Clock” during the 28 day setting level of assessment (to seek further information), without restart, can allow timelines to extend dramatically.

- No process or path through which issues which have reached impasse at officer level can be escalated for internal review within the Department using fair process (industry is currently escalating issues on an ad hoc and case by case basis directly to the Chairman).
- No procedural fairness guidelines for decision making (meaning that industry members are not aware of the criteria and processes used by officers to make decisions and, as a result, decisions lack transparency).

Whilst outside the scope of this review, an overall industry is concerned that the environment remains in balance with other aspects of sustainability. To this end the EPA should be involved as part of the development approvals process rather than a veto agency.

Recommendation

1. Procedural fairness guidelines should be published by the Environment Protection Authority in regards to the environmental assessment process.
2. Procedural fairness guidelines should be published by the Appeals Convenor on behalf of the Minister for Environment in relation to the decision making process for appeals.
3. Timeframes for “Stop the Clock” during the setting of the level of assessment should be developed.
4. Part IV and Part V Appeals should be transferred to the State Administrative Tribunal.
5. An internal review process/pathway should be established for the internal review of decisions by senior members where problems/issues cannot be resolved at officer level (for this to be effective procedural guidelines for assessment and decision making would need to be in place).
6. Develop an agreed procedure for the handling of formal referrals to the EPA.

WETLANDS

Wetland management appears to be a primary source of conflict between industry and environmental agencies and UDIA therefore believes that priority should be given to resolving these problems by the DEC. However we all agree that wetland conservation is important.

Lack of transparent process or scientifically repeatable criteria for the assessment of development relating to wetlands, and buffers – as a result industry does not know how decisions are made and this leads to conflict between applicants and assessment officers. Industry is experiencing out of date criteria, inconsistent and inaccurate advice from officers, time delays in processing and determinations.

Feedback is that wetlands classification is carried out by officers who may not have sufficient experience to achieve off-sets or balance issues. There is no procedure or process available to industry to get issues resolved (issues are currently being escalated directly to the senior regulators, which is time and resource consuming). The classification of wetlands needs the appeals rights normally associated with land use planning – they should go to SAT.

UDIA understands that the DEC has given consideration to the issue of wetland buffers and has advised that the Department considers wetland buffers to be a planning issue and that the current process will be amended to a process whereby DEC will provide advice to WAPC/DPI in regard to wetland buffers however WAPC will be the final decision making body.

Industry recognises the value in wetland buffer decisions being made by a planning agency and is currently actively involved in the DPI Wetlands Buffer Working Group. There remains a need to ensure that the advice provided by DEC to DPI Officers is accurate and based on up to date criteria and transparent decision making processes. The Wetlands database on the DEC website is not intuitive and difficult to follow.

Further, the Environmental Protection (Swan Coastal Plain Lakes) Policy 1992 is outdated and incorrectly mapped (skewed). The 2000 review failed to be implemented. This Policy creates red tape through the requirement to refer projects to the EPA where the EPP wetland may be no more than a paddock. Wetland conservation is adequately achieved through the management category and buffers definitions, and no additional value is achieved through the policy. .

In addition industry retains a fundamental view that the environmental and planning processes should be complementary with due recognition of the reservation and compensation issues that apply: i.e. if a wetland needs to be protected it should be reserved for protection – ensuring that the landowner is provided appropriate avenues for compensation, rather than penalty for adding to the State (community's) conservation estate.

Recommendation

1. Publish updated procedural guidelines for assessment and decision making procedures relating to wetlands.
2. Criteria for determining buffers to wetlands, based on sound scientific and local evidence, should be revised as soon as possible in consultation with industry.
3. Undertake a forum involving industry, the Wetlands Branch and DPI officers to identify issues associated with wetlands management, assessment and approvals with a view to gaining an understanding of the issues facing each group and identifying a consensus view on steps to improve the process in the future.
4. Review of Environmental Protection Policy regarding wetlands to give consideration to industry concerns identified in this report.

THREATENED ECOLOGICAL COMMUNITIES

Industry has expressed concern that the process for identification and criteria for classification of vegetation communities as TECs is not clear or transparent. It is therefore extremely difficult to obtain consensus in the scientific community as well as between industry and government representatives on what is a TEC, leading to conflict during the approvals process. There is also increasing concern in relation to conflicts between State, Federal and Local Governments in environmental management and assessments.

Recommendations

1. Undertake a full, open review of the scientific criteria for TEC's with the view to developing an agreed, standard set of criteria.
2. Prepare guidelines for the assessment and decision making process in relation to TECs.

ACID SULFATE SOILS

There have been a number of problems for both industry and government relating to Acid sulfate soils (ASS), including:

- Limited existing knowledge base on ASS in WA and, as a result an overly cautious approach to management being applied by regulatory authorities.
- Limited education and training about ASS management within both government and industry.
- Inadequate resources within DEC (industry has recognised that the officers responsible for ASS management within DEC are doing an excellent job within the limited resources available).

More recently there have been issues relating to the monitoring regime, in particular the availability of auditors and the scope of the audits required.

Recommendation

1. Increase officer and industry training on ASS.
2. Increase resource allocation for ASS within the DEC.

RESOURCES AND CULTURE

UDIA recognises that, in the current market conditions, there is an extreme shortage of qualified and experienced staff across industry including DEC. The current high staff turnover in DEC is leading to a lack of continuity in case file management and officer attitude is often anti-development and staff do not perceive their role as being to facilitate development (while ensuring the protection of the environment).

UDIA is keen to ensure that officers gain a better understanding of the urban development and planning process and there is a need for increased leadership from senior staff members to promote a more customer focused and transparent decision making process. Ideally the industry would like case management of an application by a single staff member.

Recommendations

1. Environmental agencies should be allocated with adequate funding to ensure that they are able to recruit and retain appropriately qualified and experienced staff. Increase internal focus and resources available for staff training and

professional development including training on the planning and development process.

2. Employ an Industry Liaison Officer within the Department of Environment and Conservation to act as a “troubleshooter” or mediator between industry issues and internal decision making (similar to the model currently used by the Water Corporation).
3. Increased on ensuring transparent decision making based on policy and to promote a greater customer service focus within environmental agencies.
4. Instigate regular (annual or half-yearly) forums between industry and environmental agency staff (providing officers with greater understanding of the industry and vice versa).
5. Introduce a case management system where an individual staff member (overseen by their manager or team leader) is responsible for the management of an application from receipt to final decision.

CONCLUSION

Key take away messages

- **Timing** (the earlier the better)
- Improve **transparency** and **clarity** of process and assessment criteria
- Remove **duplication** by agencies
- Improve escalation and **appeals** process