



**Memorandum of Understanding**  
between the  
**Department of Mines and Petroleum**  
and the  
**Environmental Protection Authority**  
in relation to the referral of  
**Mineral and Petroleum (Onshore and Offshore) and  
Geothermal Proposals**

**Endorsement**

The purpose of this Memorandum of Understanding is to establish an efficient and transparent administrative process for the Department of Mines and Petroleum to refer environmentally significant mineral, petroleum and geothermal proposals to the Environmental Protection Authority, pursuant to Part IV of the Western Australian *Environmental Protection Act 1986*.

The Environmental Protection Authority does not abrogate its responsibilities in regard to environmental assessment. The Authority can, under the *Environmental Protection Act 1986*, call in for assessment any proposal that is likely to have a significant effect on the environment.

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Richard Sellers  
Director General  
Department of Mines and Petroleum

Date:

26/6/09

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Dr Paul Vogel  
Chairman  
Environmental Protection Authority

Date:

29.6.09

## 1 Purpose

This document outlines the administrative arrangements between the Environmental Protection Authority (the Authority) and the Department of Mines and Petroleum (the Department) in the referral of proposals under section 38 of the *Environmental Protection Act 1986*. It establishes an agreed process for the Department to refer to the Authority for assessment those mineral, petroleum and geothermal proposals likely to have a significant impact on the environment.

The Authority and the Department commit to working cooperatively to ensure that:

- the objectives of the *Environmental Protection Act 1986* are met
- applications are considered efficiently and effectively, and
- the process is clear, consistent and transparent

A proposal may also require approvals under other legislation and it is the proponent's responsibility to ensure that all necessary State and Commonwealth regulatory requirements are met.

## 2 Relevant Legislation and Scope

The MoU facilitates the administration of the following legislation:

- *Environmental Protection Act 1986* and Regulations - section 38 requires the Department and any other Decision Making Authority to refer to the Authority any proposal that is likely, if implemented, to have a significant effect on the environment. This includes any proposal that is environmentally significant for reasons other than the factors listed in this MoU
- *Mining Act 1978* and Regulations - that relates to mining on land undertaken in accordance with the *Mining Act 1978*, and on freehold land subdivided before 1899 where most minerals are not 'owned' by the State, and
- *Petroleum and Geothermal Energy Resources Act 1967*, *Petroleum Pipelines Act 1969*, *Petroleum (Submerged Lands) Act 1982* and the relevant Schedules and Regulations, that relate to petroleum exploration and production within Western Australian coastal waters and onshore, and covers seismic and other ground disturbing surveys, drilling, facility (construction, installation, operation, modification and decommissioning), pipeline (construction, installation, operation, modification and decommissioning), and geothermal energy activities onshore

This MoU does not apply to proposals on Commonwealth lands or in Commonwealth waters but recognises that the Department is a lead agency for administration of petroleum legislation for Commonwealth Offshore Areas.

The MoU does not prejudice the provisions of any other written law or the statutory responsibilities of other Government agencies or their respective Ministers. However, to the extent that an inconsistency may arise then the provisions of the *Environmental Protection Act 1986* or approved policy prevails, in accordance with section 5 of the Act.



Matters relating to pre-1899 Crown grant lands and consequently not subject to the *Mining Act 1978*, are managed under the *Environmental Protection Act 1986*.

### **3 Roles and responsibilities**

The following roles apply:

- The Authority has lead responsibility for providing advice to the Minister for Environment regarding environmental protection in the State
- The Authority is responsible for conducting the environmental impact assessment process as required under the *Environmental Protection Act 198*
- The Department has lead responsibility for the regulation of mineral, petroleum and geothermal exploration and development in the State, and
- The Department is a Decision-Making Authority under the *Environmental Protection Act 1986*

### **4 Agreement**

In respect to the purpose of this MoU, the Authority and the Department agree to:

- be effective, timely, transparent and accountable;
- share information, including spatial data, to assist with decision-making under this MoU
- ensure that when referrals occur, the exchange of information and documentation occurs in a timely manner
- consult and pursue collaboration on new and proposed changes to relevant policies, guidelines and standards
- consult and pursue collaboration on new and emerging issues not adequately addressed by the MoU
- communicate decisions through the Authority's Director EPA Service Unit and the Department's Director Environment Division,
- publicly advise on the assessment status of proposals on each website ([www.epa.wa.gov.au](http://www.epa.wa.gov.au) and [www.dmp.wa.gov.au](http://www.dmp.wa.gov.au) respectively), and
- meet as agreed to discuss specific proposals likely to be referred to the Authority and the general effectiveness of this MoU

In respect to the purpose of this MoU, the Department will:

- require proponents to submit adequate information with their application

- refer to the Authority those proposals it considers likely to have a significant effect on the environment if implemented
- use the best available information to promote industry leading practice
- require proponents to identify and minimise environmental risks associated with their proposals
- seek advice from appropriate agencies, research institutions and independent specialists to minimise the environmental risk of a proposal and determine whether a proposal is likely to have a significant effect on the environment, and
- review each proposal against relevant legislation, policies, guidelines and standards

This agreement between the Authority and the Department recognises that it is the proponent's responsibility to undertake environmental investigations in accordance with relevant guidelines and standards and demonstrate that all practicable measures will be taken, and that any residual risks or impacts are acceptable.

## **5 Factors to consider in determining whether a proposal is likely to have a significant effect on the environment if implemented**

The Department's determination of whether a proposal is likely to have a significant effect on the environment if implemented, and therefore require referral to the Authority, will occur through the consideration of;

- those matters set out in Schedules 1,2 and 3, and
- the capacity of the Department's regulatory processes to deliver an agreed outcome where there would be no residual effects that would be environmentally significant

The following are general factors for determining the environmental significance of a proposal:

- character of the receiving environment
- magnitude, extent and duration of anticipated change
- resilience of the environment and its ability to cope with change
- confidence of prediction of change
- existence of environmental values, policies, guidelines and standards against which a proposal can be assessed, and
- degree of public interest in environmental issues likely to be associated with the proposal

Environmental impact assessment principles will be applied in decision making, including consideration of:

- risk-based assessment of impacts, to include a systematic assessment to identify and characterise the significant potential impacts, so that decisions made are informed by the significance of the environmental risks posed by the environmental aspects of a proposal
- cumulative impacts, so that all decisions will consider the short and long term and cumulative impacts of a proposal or a number of proposals in an area on the environment
- outcome or performance based conditions that set a specific outcome to be met, and are clear and auditable, and
- the strategic context for a proposal is considered early and with stakeholder involvement, including the outcome of previous strategic assessments undertaken by the Authority.

## **6 Duration and Review**

The MoU will commence from the date of signing and continue in its terms until reviewed or terminated by written notice by either party. It will be reviewed if there is a change of legislation or State Government policy affecting the subject of the MoU, or one of the parties determines that a review is required. The review will be undertaken jointly by the parties.

## **7 Audit**

Administrative processes and decision-making under this MoU may be audited every 12 months and the results of the audit will be publicly available.





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**Schedules**

**Endorsement**

The following schedules attached to the Memorandum of Understanding between the Department of Mines and Petroleum and the Environmental Protection Authority:

1. Criteria for referral of onshore mineral proposals
2. Criteria for referral of onshore petroleum activities
3. Criteria for referral of offshore petroleum activities

valid as of 19 May 2010 are endorsed.

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Richard Sellers  
Director General  
Department of Mines and Petroleum

Date:

17/6/10

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Dr Paul Vogel  
Chairman  
Environmental Protection Authority

Date:

21.5.10

## CRITERIA FOR REFERRAL OF ONSHORE MINERAL PROPOSALS

This schedule should be read in conjunction with parts 4 and 5 of this MoU

**Significance Test:** DMP will consult with the Office of the EPA on any proposal considered likely to have a significant impact using the following test of significance:

- Character of the receiving environment;
- Magnitude, extent and duration of anticipated change;
- Resilience of the environment and its ability to cope with change;
- Confidence of prediction of change;
- Existence of environmental values, policies, guidelines and standards against which a proposal can be assessed; and
- Degree of public interest in environmental issues likely to be associated with the proposal.

Irrespective of the outcomes of the **Significance Test**, DMP will take the actions as described in criteria 1-8 contained in the table below for Proposals that meet those circumstances.

		Action Taken	
		Exploration proposals that result in ground disturbance	Development, productive mining, excess tonnage applications and construction proposals
1	Wholly or partly within pre-1899 Crown Grant and consequently not subject to the <i>Mining Act 1978</i>	DMP will liaise with the Office of the EPA on the Proposal	DMP will refer the Proposal to the EPA in accordance with S38(5) of the EP Act 1986
2	Wholly or partly within areas identified or protected under statute; <ul style="list-style-type: none"> <li>• National Park</li> <li>• Nature Reserve</li> <li>• Conservation Park</li> <li>• State Forest and Timber Reserves</li> <li>• Threatened Ecological Communities</li> </ul>		
3	Wholly or partly within the following areas: <ul style="list-style-type: none"> <li>• World Heritage Property;</li> <li>• Biosphere Reserve,</li> <li>• Soil reference site,</li> <li>• Ramsar wetlands;</li> <li>• ANCA wetlands,</li> <li>• Sites visited by species listed under JAMBA or CAMBA.</li> </ul>		
4	Having a direct or indirect effect upon environmentally significant lakes and wetlands including: <ul style="list-style-type: none"> <li>• EPP lakes and wetlands; and</li> <li>• Conservation category wetlands.</li> </ul>	DMP will liaise with the Office of the EPA on the Proposal	DMP will liaise with the Office of the EPA on the Proposal
5	Wholly or partly within 2km of the coastline		
6	Likely to impact on a water resource area, including a water reserve, a declared or proposed water supply catchment area or groundwater protection area.		
7	Area currently subject to formal assessment by the EPA.		
8	Wholly or partly within 2km of a declared occupied townsite	DMP will liaise with the Office of the EPA on the Proposal	DMP will refer the Proposal to the EPA in accordance with S38(5) of the EP Act 1986

### Notes

- i. Proposals that are wholly or partly within existing *Conservation and Land Management Act 1984* reserves are forwarded by DMP to DEC under separate administrative arrangements.
- ii. Proposals that require native vegetation clearing will be assessed in accordance with the *Environmental Protection Act 1986* and *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* which are covered by separate administrative arrangements between DMP and DEC.
- iii. DMP will not refer a Proposal to the EPA if the Proposal is part of a Proposal that has already been assessed by the EPA, and is consistent with the conditions of the relevant Ministerial Statement.



**CRITERIA FOR REFERRAL OF ONSHORE PETROLEUM ACTIVITIES**

This schedule should be read in conjunction with parts 4 and 5 of this MoU

**Significance Test:** DMP will consult with the Office of the EPA on any proposal considered likely to have a significant impact using the following test of significance:

- Character of the receiving environment;
- Magnitude, extent and duration of anticipated change;
- Resilience of the environment and its ability to cope with change;
- Confidence of prediction of change;
- Existence of environmental values, policies, guidelines and standards against which a proposal can be assessed; and
- Degree of public interest in environmental issues likely to be associated with the proposal.

Irrespective of the outcomes of the **Significance Test**, DMP will take the actions as described in criteria 1-7 contained in the table below for Proposals that meet those circumstances.

		Action Taken
1	Wholly or partly within 500m of areas identified or protected under statute; <ul style="list-style-type: none"> <li>• National Park</li> <li>• Nature Reserve</li> <li>• Conservation Park</li> <li>• State Forest and Timber Reserves</li> <li>• Threatened Ecological Communities</li> </ul>	DMP will refer the Proposal to the EPA in accordance with S38(5) of the EP Act 1986
2	Wholly or partly within 500m of the following areas: <ul style="list-style-type: none"> <li>• World Heritage Property;</li> <li>• Biosphere Reserve,</li> <li>• Soil reference site,</li> <li>• Ramsar wetlands,</li> <li>• ANCA wetlands,</li> <li>• Sites visited by species listed under JAMBA or CAMBA.</li> </ul>	
3	Likely to have a direct or indirect effect upon environmentally significant lakes and wetlands including: <ul style="list-style-type: none"> <li>• EPP lakes and wetlands; and</li> <li>• Conservation category wetlands.</li> </ul>	DMP will liaise with the Office of the EPA <u>on</u> the Proposal
4	Wholly or partly within 2km of the coastline	
5	Likely to impact to a water resource area, including a water reserve, a declared or proposed water supply catchment area or groundwater protection area	
6	Area currently subject to formal assessment by the EPA	
7	Wholly or partly within 2 kilometres of a declared occupied town site	DMP will refer the Proposal to the EPA in accordance with S38(5) of the EP Act 1986

**Notes**

- i. Proposals that are wholly or partly within specified reserves are forwarded by DMP to DEC in accordance with S15A of the *PGERA 1967*.
- ii. Proposals that require native vegetation clearing will be assessed in accordance with the *Environmental Protection Act 1986* and *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* which are covered by separate administrative arrangements between DMP and DEC.
- iii. DMP will not refer a Proposal to the EPA if the Proposal is part of a Proposal that has already been assessed by the EPA, and is consistent with the conditions of the relevant Ministerial Statement.



## CRITERIA FOR REFERRAL OF OFFSHORE PETROLEUM ACTIVITIES

This schedule should be read in conjunction with parts 4 and 5 of this MoU

**Significance Test:** DMP will consult with the Office of the EPA on any proposal considered likely to have a significant impact using the following test of significance:

- Character of the receiving environment;
- Magnitude, extent and duration of anticipated change;
- Resilience of the environment and its ability to cope with change;
- Confidence of prediction of change;
- Existence of environmental values, policies, guidelines and standards against which a proposal can be assessed; and
- Degree of public interest in environmental issues likely to be associated with the proposal.

Irrespective of the outcomes of the **Significance Test**, DMP will take actions as described in criteria 1-8 contained in the table below for Proposals that meet those circumstances.

		Action Taken
1	Surveys, drilling, pipelines and production development wholly or partly within a State Marine Park.	DMP will refer the Proposal to the EPA in accordance with S38(5) of the EP Act 1986
2	Surveys, drilling, pipelines and production development wholly or partly within the following areas of State Marine Management Areas: <ul style="list-style-type: none"> <li>• Special Protection Zones.</li> </ul>	
3	Surveys, drilling, pipelines and production development wholly or partly within a Marine Nature Reserve.	
4	Surveys, drilling, pipelines and production development wholly or partly within a Marine Protection Area other than those managed under the CALM Act, including: <ul style="list-style-type: none"> <li>• Areas protected under the Fish Resources Management Act 1994,</li> <li>• Areas protected under the Rottnest Island Authority Act 1987,</li> <li>• Historic wreck sites</li> <li>• World Heritage Areas.</li> </ul>	
5	Seismic activity wholly or partly within intertidal zones or shallow waters (<15m) in turtle breeding areas during turtle breeding.	
6	Seismic activity wholly or partly located in whale mating/calving areas in the breeding season, or in locations that may affect migrating whales.	
7	Exploration or appraisal drilling wholly or partly within 3nm of coast, islands or intertidal reefs.	
8	Production development and/or pipeline development in State Waters	

### Notes

- i. Activities in State or Commonwealth waters may also require referral to DEWHA under the *Environment Protection and Biodiversity Conservation Act 1999*.
- ii. DMP seeks advice from DEC as to whether the proposal is consistent with the Marine Park or Reserve Management Plan, or is otherwise environmentally significant (for example because of potential for impacts on breeding turtles from artificial lighting), when considering whether referral to the EPA is required.
- iii. Proposals that require native vegetation clearing will be assessed in accordance with the *Environmental Protection Act 1986* and *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*. The native vegetation clearing process is covered by a separate administrative arrangement between DMP and DEC.
- iv. DMP will seek advice from DEC for proposals in unzoned areas of State Marine Management Areas.
- v. DMP will not refer a Proposal to the EPA if the Proposal is part of a Proposal that has already been assessed by the EPA, and is consistent with the conditions of the relevant Ministerial Statement.
- vi. DMP will not refer a Proposal to the EPA for construction of a well for an existing approved activity.

## Appendix A Acronyms, Short Titles and Interpretation

For the purpose of this document, the following acronyms and short titles will be used:

DEC	Department of Environment and Conservation
DEWHA	Department of Environment, Water, Heritage and the Arts
DMP	Department of Mines and Petroleum (the 'Department')
EPA	Environmental Protection Authority (the 'Authority')
MoU	Memorandum of Understanding

### Definitions

The terminology used in this document is defined below:

ANCA wetlands	Wetlands of national significance as listed by the Australian Nature Conservation Agency.
Biosphere Reserve	An area of terrestrial and coastal/marine ecosystem that is internationally recognised under UNESCO's 'Man and the Biosphere' program.
Conservation category wetlands	Wetlands categorised in the Geomorphic Wetlands Swan Coastal Plain dataset as 'conservation'.
Decision-Making Authority	Has the meaning as defined under section 3 of the <i>Environmental Protection Act 1986</i> ('the Act') and means a public authority, including a Minister, that is notified in writing by the EPA that they must await authorisation by the Minister administering the Act before making a decision.
Decommissioning	The process that begins near or at the cessation of resource development and ends with the removal of all infrastructure and final rehabilitation of the operation.
Geothermal [activities]	Has the meaning under the <i>Petroleum and Geothermal Energy Resources Act 1967</i> .
Land	Under the <i>Mining Act 1978</i> includes water, and also includes the foreshore and sea bed within the meaning of section 25.
Leading practice	Means the best way of doing things at a given site. Leading practice is flexible and innovative in developing solutions that match site-specific requirements and is as much about approach as it is about a fixed set of practices or a particular technology (DITR 2006)
Minerals	Means naturally occurring substances obtained or obtainable from any land by mining operations carried out on or under the surface of the land, but does not include (a) soil; or (b) a substance the recovery of which is governed by the <i>Petroleum and Geothermal Energy Resources Act 1967</i> or the <i>Petroleum (Submerged Lands) Act 1982</i> ; or (ba) without limiting paragraph (b), geothermal energy resources as defined in the <i>Petroleum and Geothermal Energy Resource Act 1967</i> section 5(1); or (c) a meteorite as defined in the <i>Museum Act 1969</i> ; or (d) any of the following substances if it occurs on private land (i) limestone, rock or gravel; or (ii) shale, other than oil shale; or (iii) sand, other than mineral sand, silica sand or garnet sand; or (iv) clay, other than kaolin, bentonite, attapulgite or montmorillonite.
Mining	Includes fossicking, prospecting and exploring for minerals, and mining operations (s8 of <i>Mining Act 1978</i> ).
Mining operations	Means any mode or method of working whereby the earth or any rock structure stone fluid or mineral bearing substance may be disturbed removed washed sifted crushed leached roasted distilled evaporated smelted or refined or dealt with for the purpose of obtaining any mineral therefrom whether it has been previously disturbed or not and includes (a) the removal of overburden by mechanical or other means and the stacking, deposit, storage and treatment of any substance considered to contain any mineral; (b) operations by means of which salt or other evaporites may be harvested; (c) operations by means of which mineral is recovered from the sea or a natural water supply; and (d) the doing of all



Mining operations	Means any mode or method of working whereby the earth or any rock structure stone fluid or mineral bearing substance may be disturbed removed washed sifted crushed leached roasted distilled evaporated smelted or refined or dealt with for the purpose of obtaining any mineral therefrom whether it has been previously disturbed or not and includes (a) the removal of overburden by mechanical or other means and the stacking, deposit, storage and treatment of any substance considered to contain any mineral; (b) operations by means of which salt or other evaporites may be harvested; (c) operations by means of which mineral is recovered from the sea or a natural water supply; and (d) the doing of all lawful acts incident or conducive to any such operation or purposes.
National park	Has the meaning assigned to it under the <i>Conservation and Land Management Act 1984</i> .
Nature reserve	Has the meaning assigned to it under the <i>Conservation and Land Management Act 1984</i> .
Offshore/ Offshore Area	Means an offshore area of a State or Territory within the meaning of section 7 of the <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> .
Onshore	Any locality on the mainland or islands (including Barrow Island) under Western Australian jurisdiction that lies above the mean low water mark.
Petroleum	Petroleum includes: (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state; (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following, hydrogen-sulphide, nitrogen, helium and carbon dioxide, and includes any petroleum as defined by (a), (b) or (c) that has been returned to a natural reservoir, but excludes oil shale.
Petroleum activities	Operations carried out under authority or consent of the <i>Petroleum and Geothermal Energy Resources Act 1967</i> , <i>Petroleum Pipelines Act 1969</i> and <i>Petroleum (Submerged Land) Act 1982</i> and includes the following: seismic and other ground disturbing surveys; drilling; facility (construction, installation, operation, modification and decommissioning); pipeline (construction, installation, operation, modification and decommissioning) and any other upstream petroleum operations; and geothermal energy activities onshore.
Practicable	Capable of being put into practice, done, or effected, especially with the available means or with reason or prudence.
Proposal	An application to the Department for a proposed exploration, mineral or petroleum activity. It includes measures to protect the environment and to rehabilitate disturbed ground. Under the <i>Environmental Protection Act 1986</i> , a proposal can be a project, plan, programme, policy, operation, undertaking or development of change in land use, or amendment of any of these (section 3).
Red Book areas	Proposed conservation reserves for WA recommended by the EPA including the Forest Management Plan and the Department of Environment and Conservation's Regional Management Plans where they formally supercede Red Book areas where such plans have been endorsed).
Refer/Referral	Referral means a proposal that is referred to the EPA for consideration under Part IV (section 38) of the <i>Environmental Protection Act 1986</i> .
Risk	Means the chance of something happening that will have an effect on objectives (i.e. a component of the environment) in accordance with AS / NZS 4360:2004.
State	The State of Western Australia.
Systematic assessment	Clear processes that describe the decisions and decision making criteria, as amended from time to time, are appropriately documented and available to the other party.
Water Resource Management Area	An area where legislation administered by the Department of Water applies.