Town of
Port Hedland

Enquiries: Michael Cuvalo, Manager Environmental Health and Community Safety
Direct Line: 9158 9316
Email mcuvalo@porthedland.wa.gov.au

Manager
Strategy Policy - Environmental Protection Act 1986 amendments Department of Water Environmental Regulation
Locked Bag 10
JOONDALUP DC WA 6919

Email: EPActamendments@dwer.wa.gov.au

Dear Manager

ENVIRONMENTAL PROTECTION ACT 1986 AMENDMENTS CONSULTATION

The Town of Port Hedland ('the Town') thanks you for the opportunity to comment on the proposed amendments to the *Environmental Protection Act 1986* and for the briefing held on 9 December 2019. The Town provides the following commentary applying the logical format of the *Modernising the Environmental Protection Act: Discussion Paper, October 2019.*

The Town's comments on the proposed amendments are highlighted in ***bold italics*** below. The Town supports other relevant amendments in the discussion paper.

Key areas for reform in the *Environmental Protection Act 1986*

Bilateral Agreements with the Commonwealth (page 312) – recoup fees charged under Part IV for processing referrals, conducting assessments and approving management plans prepared as a condition of approval.

Local government receives referrals from the Environmental Protection Authority (EPA) or the Department of Water and Environmental Regulation (DWER). The review constitutes a significant process for local government incorporating a review of documents, assessment of impact at the local level and provision of a report back to the state. Local Government Authorities should also be reimbursed for costs incurred.

Environmental monitoring programs (page 292) - Head of Power to enable cost recovery from industry and key state environmental monitoring programs that assess cumulative impacts on health and the environment – specifically references government dust monitoring in Port Hedland. Accords with 'polluter pays' principle under Section 4A of the EP Act.

The Town views that proponent payment for these programs will raise the standard of environmental monitoring within the mining sector to maximise community health outcomes. 'Polluter pays' should also extend to any expansion of those monitoring programs.

Head of power for certified environmental practitioners (page 341) – accreditation of environmental practitioners to certify documents prior to submission to ensure standards are achieved regarding the quality of documentation and accuracy of predictions.

The Department of Fire and Emergency Services (DFES) currently provides funding for training for accreditation through its training pathways free-of-charge. Most of the environmental assessments for remote towns like Port Hedland are undertaken in-house. Training for remotely located local government authorities is extremely costly due to staff turnover and a very limited

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rate base. External technical expertise is also cost prohibitive when applied on a regular basis. Training should be provided through DWER for accreditation in line with the DFES model.

Part One - Preliminary

Sustainable development – principles of the Act do not cover sustainable development (economic and social considerations beyond the life of the Act)

Embedding these principles within the Act, subsidiary legislation and relevant policies is important. Within mining regions some proponents with temporary tenure view that once the project is complete then they are clear of any environmental responsibility. Sustainability principles should ensure that responsibility extends beyond tenure.

Part IV – Environmental Impact Assessment

Referral of proposals (page 52) - The EPA Act does not currently allow for a proposal to be withdrawn – exposure Bill allows the EPA to:

- declare a referral to be withdrawn if no response is received within the specified period from the proponent – or if referred by someone other than the proponent.
- amend a proposal or withdraw a proposal. The amendment is good where a third party has submitted an assessment on behalf of a proponent.

Also looking at the EPA deciding not to progress a proposal where the impact on a key environmental factor can be more adequately regulated under other parts pf the EPA or other written laws.

Supported. The Town has experienced wasted resources in having to respond to proposed conditions of an EPA referral on multiple occasions over a number of years, after the proponent elected not to progress a proposal.

Strategic assessments (page 62) - Strategic assessments allow the EPA to consider assessments strategically rather than on a case-by-case basis. This gives the EPA the capacity to consider cumulative environmental impacts on a sub-regional and regional basis, rather than on a proposal-by-proposal basis. Planning to modernise the act to expressly define strategic assessments and improve the definition of strategic proposals. Brings the Act into line with other jurisdictions.

From a State processing perspective this appears to provide the capacity to undertake a number of environmental assessments at the one time. The Town understands the approach but questions whether this would 'water-down' the scrutiny applied.

The approach should also ensure alignment with proposed reforms to the Planning and Development Act. A green paper on Modernising Western Australia's Planning System was released in May 2018 and a White Paper is being developed consequential to submissions and responses to the paper. A strategically-led planning system is one pillar of five key reform areas.

Conditions (page 744) - Provisions similar to Section 51I and 62A are proposed to specify the type of implementation conditions that may be imposed including, the power to enter into covenants and impose offsets (including making monetary contributions to counterbalance the impact of a proposal), etc. Currently the act doesn't allow the minister to change conditions (other than minor conditions) until after the EPA has undertaken an inquiry.

Expands the scope of the minor changes that the minister may make to conditions without an EPA inquiry i.e. the Minister may make changes to the proposal at the request of the proponent 'if the

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Minister considers that the implementation of the proposal under the amended conditions will not have a significant detrimental effect on the environment in addition to, or different from, the effect of the proposal under the existing conditions.' (means it is equivalent to the test used in Section 45C for changes to proposals and ensures that they remain current and effective). Will also be applied to revised proposals to determine the changes to existing conditions that can be made without a section 46 inquiry when issuing a new combined ministerial statement.

Supported, provided the protection of the environment is not eroded in favour of payment of a cash sum.

Schemes (page 91) - Section 48A(1) – when a scheme is referred to the EPA, the EPA must decide whether or not to assess the scheme or determine whether it is incapable of being made environmentally acceptable. It must inform the responsible authority within 28 days after the referral. The Bill provides for an extension of time if the EPA needs more information.

The EP act does not currently provide for an agreement or decision that a Scheme cannot be implemented. The Bill brings the assessment of planning schemes in line with those that exist for the assessment of proposals whereby the EPA's assessment report in regards to a scheme must set out the Authority's recommendations as to whether or not the scheme may be implemented and the conditions for implementation (if any); and the Minister for Environment and Minister for planning can reach an agreement that the scheme may not be implemented. If it cannot be implemented, then it cannot be approved under the *Planning and Development Act 2005*.

In circumstances where the Town Planning Scheme is to be assessed by the EPA, that there be:

- ***a reasonable timeframe available to the local government authority to respond to the EPA's assessment of the scheme, the current 28-day period being insufficient***
- ***clear timeframes need be imposed on the EPA's assessment of the scheme***

Environmental assessment of schemes should include a sustainability assessment, as opposed to being limited to an environmental assessment.

Cost recovery (page 91) - A head of power to allow a fee, charge or levy to be imposed on a proponent for a Part IV environmental impact assessment to enable cost recovery via regulation. DWER to consult when developing the regulations.

The Town would appreciate being included in the consultations for development of the regulations.

Part V – Environmental Regulation

Referral process for clearing permits (page 115) – Section 51C requires that all native vegetation must be authorised by a clearing permit or be subject to an exemption. This is administratively burdensome for trivial clearances without significant effect on the environment. New system will allow referral to CEO for non-exempt clearings to determine whether a clearing permit is required having regard to specific criteria in the Act. This will streamline administration and ensure resources are focused on significant clearing. Decision of the CEO will be published. Schedule 5 clearing principles for permit will continue to apply.

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Supported provided an appropriate level of assessment is undertaken to ensure that sensitive areas do not escape protection through bypassing the more rigorous assessment pathway.

Licenses (page 140) - Part V, Division 3 of the Act creates a system where the occupier is not expressly required to hold a licence, which creates ambiguity about what a license authorises, specifically:

- whether it authorises an activity of a different category to those listed in the license
- any activity that falls within the category listed
- consequences of carrying out additional activities where they are not included in the license
- whether authorised emissions are restricted to those arising from the activities that make the premises a prescribed premises, or every potential emission

The Town does not support provisions for sites to undertake activities which typically require works approvals, without the appropriate license. This approach has the potential to create complexity for regulators, including sites claiming that they were unaware of the negative impacts of undertaking those activities. The provision requires further detailed consideration regarding impacts for regulators and emissions.

Regulation of prescribed activities (pages 140/142) – Issues relevant to licenses are addressed through proposed regulation of prescribed activities rather than prescribed premises (Schedule 1 of EP regulations will prescribe both an activity and a threshold level. If this threshold is met it will trigger the requirement to hold a license). Will be a new offence of carrying out a prescribed activity without a license (in other words, prescribed premises will not apply). Works approvals (currently separate) will be included in license. The ability to define a license area will remain but with flexibility to determine the appropriate area over which a licence and conditions may extend in each case. There will be provision for licenses to overlap even where there are independent operators carrying out activities.

Can grant licenses to others than the occupier of the land. Where there are multiple parties carrying out the activity, there is scope for nominating who will hold the license – will allow responsibility to be granted to someone who has the day-to-day control of the area.

Supported; however, the Town would like to comment on the proposed prescribed thresholds.

Revocation or suspension (page 148) - Allows suspension or revocation of a license for non-payment of prescribed fees. Currently non-payment terminates the license. Bill includes a closure notice while a license is suspended allowing requirements to be imposed while a license is suspended and investigations take place. Grounds under which a CEO can revoke a licence include, that a planning approval required to carry out the works or prescribed activity is no longer in force.

Supported; however, the Town views that the suspension process must clearly establish the obligation to temporarily cease works.

Defences (page 199) – There is currently no defence to prevent clearing to prevent danger to human health where the clearing takes place in an environmentally sensitive area. The Bill intends that Section 74 defences will apply to offences under 51C.

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The Town supports Section 74 defences being applied to Section 51C. Allowances should be made for activities to be conducted that demonstrate a clear interest in protecting health and life.

Part VI – enforcement

Power to require production of books and other sources of information (page 236) – Section 90(1)(b) does not extend to environmental harm, native clearing, or other potential breaches of the Act which do not involve emission.

It is assumed from reading the Exposure Bill that proposed amendment to 90(1B) will enable extension of production and examination requirements to non-emission breaches.

Schedule 6

Exemption for clearing that is a requirement under another written law (page 357) - Clause 1 of Schedule 6 of the EP Act provides an exemption for clearing done as a requirement of another written law. The extent to which this applies to local laws is not clear. Bill proposes to amend clause 1 so that it refers instead to clearing that is done to give effect to a requirement to clear under a prescribed written law, and specifically lists the legislation to which the exemption applies in a new Schedule to the EP Regulations 1987. Schedule 6 also includes new items for known requirements under written laws.

Clause 1 references 'prescribed enactment', not a prescribed 'written law'. Are these one and the same or this an inadvertent mistake?

The Town of Port Hedland supports the changes provided an exemption for clearing dictated by the Bushfires Act 1954 exists for firebreaks. Clause 1 of Schedule 6 should meet this requirement.

General feedback

New ideas -

Include new provisions under the EP Act to ban certain products or product classes.

Supported and the Town would be interested in seeing the proposed banned products and product classes.

Resources provided for third party and community participation in environmental impact assessment and environmental regulation.

Important and positive resourcing recommendation.

DWER administers funds in some areas as a result of approvals under the EP Act but there are no specific head powers or hypothecation of the funds specifically provided for under the EP Act.

The Town would be interested in seeing the use to which withheld funds will be put.

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Assessment - A review of section 48A of the EP Act be undertaken, together with an amendment of the regulations requiring the EPA to seek public comment on the content of its assessment of planning schemes.

The current separation applied to planning schemes in the EP Act should be removed, and these should be subject to Part IV in the same way as other significant proposals.

The Town Planning Scheme forms part of the Western Australian Planning system and should be addressed under a reformed Planning and Development Act, not embedded within the Environmental Protection Act. As noted, assessment should include an environmental and sustainability assessment.

Clearing of native vegetation - The clearing provisions should be moved to a standalone part of the Act to ensure that the specific protection of native vegetation and biodiversity conservation is the focus of regulation (rather than pollution and environmental harm).

Alternatively, a purpose-specific native vegetation Act could be developed to regulate the clearing of native vegetation and to provide for arrangements relating to carbon farming.

Reform of the clearing provisions in Part V and in supporting regulations is necessary to avert continued degradation of native vegetation across the State, particularly in highly cleared areas such as the Wheatbelt and the Perth and Bunbury metropolitan areas.

Areas of reform should include exemptions, principles and definitions applying to clearing.

The Town supports a native vegetation Act being developed to regulate clearing activities administered by DWER. The clearing of native vegetation must be supported by detailed arrangements which can be effectively provided for within a dedicated Act.

Appeals - The current structure of Part VII is currently not optimal in terms of clarity and logic, which is in large part due to the initial drafting of this Part and also due to numerous sets of Part VII amendments made from 1994 to 2010. It is recommended that it be restructured to streamline and modernise the format, reduce duplication, and clarify intent.

Third party appeals should be allowed against decisions to not assess proposals; decisions not to assess schemes; decisions on whether to implement proposals (not only conditions); and decisions on works approvals and licences (not only conditions).

The Town does not believe third-party appeals should be allowed as they will introduce unnecessary red tape into the planning. If introduced, they should be limited to certain authorities or groups and prescribed criteria should be applied regarding what can be appealed.

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Should the Committee require further information, then please contact Michael Cuvalo, Manager Environmental Health and Community Safety on (08) 9158 9316.

Yours sincerely

Anthea Bird
Acting Chief Executive Officer

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Town of Port Hedland Office
Civic Centre, McGregor Street, Port Hedland, WA 6721
PO Box 41, Port Hedland
T: (08) 9158 9300 | F: (08) 9158 9399
E: council@porthedland.wa.gov.au
www.porthedland.wa.gov.au