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Strategy Policy - Environmental Protection Act 1986 Amendments
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To whom it may concern

Modernising the Environmental Protection Act – Discussion Paper

Thank you for the opportunity to provide a submission on the Modernising the Environmental Protection Act Discussion Paper and the *Environmental Protection Amendment Bill 2019* (Exposure Draft). The Department of Communities supports the Department of Water and Environmental Regulation's efforts to streamline and clarify legislation, ensuring its application responds to contemporary practice and delivers environmental protection and conservation outcomes.

The Department of Communities plays an integral role in establishing affordable, liveable, connected communities in Western Australia through its land and built form development activities. Within this context, commentary is provided below on a number of aspects which might benefit or impact Communities' activities, for your consideration.

Communities explicitly supports the following proposals:

- Amendments to address administrative inflexibility and inefficiencies;
- Ability to withdraw a referral proposal;
- Flexibility for proponent to amend a proposal before a decision on assessment is made; and
- Clarification of EPA's role and terminology in reviewing 'strategic proposals'.

More detailed commentary on certain elements is provided below:

- The amendments secure the charging of fees for the purposes of discharging any additional obligations of the CEO as part of bilateral agreements in connection with clearing permit processes; along with the processing of referrals, undertaking and approving management plans prepared as a condition of approval and environmental impact assessments. Communities understands the intent to create a sustainable business model through cost recovery but notes the potential impacts on the affordability of land and housing proposals that may be subject to the environmental assessment process. If

progressed, it is necessary that recouping of costs are reasonable, clearly structured and are met with appropriate levels of service and timeliness.

- The introduction of environmental protection covenants (in lieu of existing problematic conservation covenants or agreements to reserve) is noted, along with the intention that they will be more flexible; can be used in perpetuity or for a specified period; may contain positive or negative obligations and may be amended. Further clarification of the interface with Bush Forever Negotiated Planning Solutions is required. The discussion paper also suggests that the environmental protection covenant may require a person to enter into, or arrange for another person to enter into, an environmental covenant. It is queried whether it is legally possible for the covenant to bind a third party into an action or process that may not be the landowner, proponent or the environmental decision-maker. If not considered ultra vires then it could nonetheless be problematic for implementation.
- The Bill provides that the EPA may take into account the role of other statutory decision-making bodies in regulating the environmental impacts of the proposal to reduce duplication of assessments and approvals. This is supported, particularly as it relates to the interface with the Planning and Development Act 2005. This is of particular relevance to strategic planning instruments which identify future urban expansion or investigation areas and have been through appropriate levels of Government engagement and governance prior to coming into effect. It is also important that the primacy of the decision-maker is established, communicated and reinforced where multiple approvals across disciplines/legislation exists.
- The proposed provisions of the Bill allow the Minister for the Environment to direct the EPA to assess or further assess a proposal even where an appeal has been upheld by the EPA. This measure has the potential to further politicise environmental decision-making and create additional layers, timeframes and uncertainty to the process.
- The Exposure draft Bill provides for a decision to be revoked or expire where it is granted for a finite period; where a condition requires that substantial commencement must occur before a specified date or in any other case with the agreement of the proponent. A clear and unambiguous definition of what substantial commencement means in the context of each proposal must be established and reiterated in the conditions of the proposal to avoid confusion and mis-interpretation.
- The scope of minor changes that the Minister may make to conditions without an EPA inquiry have been expanded where the proposal will not have a significant detrimental environmental effect different or in addition to the proposal under previous conditions. Streamlining of this process is supported where initiated by the proponent. Revision of conditions at the instigation of the decision-maker will create uncertainty and risk in the implementation of proposals. It should also be clarified that the scope of the condition review should not extend beyond that initiated by the proponent (i.e. it should not

create an open reconsideration of the obligations or wording of other conditions), unless by agreement and/or for the purposes of consequential amendment to align the revised set of conditions.

- Clarification of conditions allowing for the staged implementation of a proposal, with evidence of pre-conditions being met before proceeding is supported. This will allow greater flexibility for proponents to undertake early works and the staged management of timing and/or cost risks and is therefore supported.
- The introduction of a referral system to determine permit requirements for the clearing of native vegetation that is not subject to an exemption and does not have a significant effect on the environment is supported. The requirement for the CEO to determine and publish applications of this nature may still, however, result in unnecessary administrative actions. It is recommended that thresholds with clear criteria should be established for low impact clearing that does not require any degree of referral.

Thank you again for the opportunity to provide feedback on the proposed amendments to the environmental legislation. Should you have any queries on the comments above, please do not hesitate to contact the undersigned on 9222 4832 or lauren.aitken@communities.wa.gov.au.

Yours sincerely



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