

Our Ref: EVM/94

Your Ref:

Enquiries to: Mr Rory Garven 9528 0446



16th January 2020

Strategy Policy – Environmental Protection Act 1986 amendments
Department of Water Environmental Regulations
Locked Bag 10
JOONDALUP DC WA 6916

By Email to: EPActamendments@dwer.wa.gov.au

Dear Sir/Madam

Re: Proposed Amendments to the *Environmental Protection Act 1986*

I refer to the recently proposed changes to the *Environmental Protection Act 1986* ('the EP Act'). For the most part, the City of Rockingham ('the City') is supportive of the updates which are aimed towards improving regulatory efficiency and addressing outstanding inconsistencies. With respect to the proposed amendments and the associated Discussion Paper, the following comments are provided.

City of Rockingham Context

The City has an extensive history of interactions with the EP Act throughout the course of undertaking its operational responsibilities as a Local Government. A brief summary of these interactions is provided below.

The City's Town Planning Scheme No. 2 and other strategic development proposals within the municipal area have been subject to assessment by the Environmental Protection Authority (EPA) under Part IV of the EP Act. Following EPA Assessment, the City has a regulatory responsibility in ensuring that the implementation conditions imposed by the EPA are achieved and that optimal environmental outcomes are realised.

The City also possesses a license to operate a Prescribed Premise at the Millar Road Landfill Facility (MRLF) in Baldivis. The MRLF is classified as a Class III Putrescible Landfill Site under the *Environmental Protection Regulations 1987* ('the regulations') and is licensed to accept 450,000 tonnes of waste per annum. Together with the consideration of planning applications, the City also plays a role in advising other entities of their obligations to obtain licenses to operate Prescribed Premises.

The City supports the retention of natural areas wherever reasonably possible, however, must occasionally apply for Permits to Clear Native Vegetation under Section 51E of the EP Act. Clearing Permits are typically required to enable the provision of essential community facilities and infrastructure.

Under the EP Act, City Officers are authorised to enforce the *Unauthorised Discharge Regulations 2004* and the *Environmental Protection (Noise Regulations 1997)* to prevent inappropriate materials or sound from entering the environment.



Comments on Proposed Amendments

Bilateral Agreements with the Commonwealth

The City is supportive of DWER and the EPA undertaking bilateral environmental impact assessment of matters controlled by Federal environmental legislation in order to improve regulatory efficiency.

Environmental Protection Covenants

The City is supportive of environmental protection covenants being imposed as conditions of approval under the revised EP Act.

Environmental Monitoring Programs

The City is supportive of the proposed amendments relating to environmental monitoring programs.

Provide a Head Power for Certification of Environmental Practitioners

The City is strongly supportive of the revised EP Act providing for an accreditation scheme for environmental practitioners. In support of planning applications, the City receives environmental assessment reports that vary significantly in quality and detail. Reports submitted with insufficient detail can slow down the regulatory approvals process as documents often require multiple revisions in order to reach a standard suitable for assessment.

It is considered that any measures aimed at raising the standard of environmental approval documentation at a state level will have a beneficial flow-on-effect across industry. The proposed amendment will increase the number of professionals with the skillset necessary to submit application reports for state approval by providing training as well as setting the expectation for document quality. It is considered that this skillset will be readily transferrable to applications at the local and federal level. As such, it is considered that this amendment will benefit Local Government.

It is the City's expectation that the design of the proposed accreditation scheme will be subject to a period of stakeholder consultation. The City would welcome any opportunity for the Local Government sector to provide input.

Recommendation: That DWER commit to a period of stakeholder consultation during the development of the proposed accreditation scheme. It is expected that the Local Government sector will be consulted as part of the consultation.

Injunction to Apply to a Broader Range of Matters

The City is supportive of this proposed amendment whereby the CEO of DWER is given authority to apply for court injunctions in relation to a broader range of offences under the EP Act.

Part II – Environmental Protection Authority

EPA Chairman to be either Full-Time or Part-Time

The terms of employment for the EPA Chairman is not of concern to the City so long as the EPA continues to meet its statutory timeframes for environmental impact assessment.

Part III – Environmental Protection Policies

The City would welcome a review of Environmental Protection Policies (EPPs) under Part III of the EP Act. A review of the Peel Inlet – Harvey Estuary EPP would be of particular interest to the City as the existing policy has failed to meet its nutrient reduction targets at a number of the monitoring locations. The City would appreciate the opportunity to be involved in prospective policy reviews.

Recommendation: That relevant Local Government authorities are involved in any prospective EPP reviews undertaken by DWER.

Part IV – Environmental Impact Assessment

Referral and Assessment of Proposals

The City is supportive of the proposed amendments to:

- Allow for a referred proposal to be withdrawn where a proponents does not wish to proceed;
- Allow for amendment of a proposal after referral but before the level of assessment has been determined;
- Clarify that the Minister may direct the EPA to assess or further assess a proposal more comprehensively (based on new information, or failure to consider something in the original decision) or after the EPA has decided not to assess the proposal and the Minister, having determined an appeal has upheld the EPA decision;

The City also supports the proposed amendment to provide the EPA with discretion to determine which decision-making authorities it will notify of its decision to assess a proposal rather than having to notify every government body connected to the proposal no matter how minor. It is however noted that this amendment contains no explicit requirement to refer the proposal to the relevant Local Government authority. As Local Governments are major decision makers in relation to land-use approvals, the following recommendation is provided:

Recommendation: Section 39A of the Exposure draft Bill is amended to include a requirement for the EPA to give written notice of its decision to assess a proposal to the relevant Local Government authority.

The City also recommends the following regarding the proposed amendment which allows the EPA to not assess a proposal when a key environmental factor can be adequately regulated under other parts of the EP Act or under other legislation:

Recommendation: The Exposure draft Bill is amended to include a requirement for the EPA to provide a written report to the Minister justifying its decision to not assess a proposal on the basis of the environmental impact being adequately addressed by other sections of the EP Act or by other legislation.

Strategic Assessments

The City is supportive of the proposed amendments in relation to strategic assessments.

Surrender or Revocation of Implementation Agreement

The City is supportive of the proposed amendment giving the Minister authority to revoke or suspend approvals.

Conditions

The City is supportive of the proposed amendments relating to conditions of approval.

Changed Proposals and Revised Proposals

The City is supportive of the proposed amendments relating to changed proposals and revised proposals.

Compliance and Enforcement

It is noted that the Exposure Draft Bill provides the Minister authority to issue a notice requiring the implementation of a proposal to cease for up to 28 days. The City questions why a 28 day cessation period was decided upon. The preference is that the cessation period continue until the proponent can demonstrate that the proposal can continue in the way it was originally intended, to the satisfaction of the Minister.

Recommendation: It is recommended that the Exposure Draft Bill is amended so that the Minister is able to stop the implementation of a proposal until such a time as when the proponent can demonstrate that the proposal can continue in the way it was originally intended, to the satisfaction of the Minister. It is considered that this is a more effective means of ensuring compliance with an approval when compared to a blanket 28 day cessation period.

Schemes

The City is supportive of the proposed amendments relating to the assessment of schemes.

Cost Recovery

Given that the primary role of the EPA is to provide environmental advice to Government, the City's view is that no public entities should be subject to the proposed cost recovery scheme for undertaking works for public benefit.

Recommendation: That the Exposure Draft Bill is amended to exclude Local Governments and other public entities from the proposed cost recovery scheme.

Part V – Environmental Regulation

Clarifying when Decisions on Applications for Clearing Permits or Licenses are constrained

The City is supportive of the proposed changes relating to applications that are constrained by proposals being assessed by the EPA.

Clearing of Native Vegetation

The City is supportive of the proposed amendments relating to the clearing of native vegetation, however, the City recognises that there is an urgent requirement to address the decline of native vegetation within Western Australia. In this context, the City encourages DWER to progress a review of conditions placed on clearing permit approvals and to provide further clarity on clearing permit exemptions.

Declaration of Environmentally Sensitive Areas

The City is supportive of the proposed changes to Environmentally Sensitive Areas. The following is however recommended:

Recommendation: The Exposure Draft Bill is amended to require the Minister to consult with the relevant Local Government authority when significant changes to ESAs are proposed.

Referral Process for Clearing Permits

The City is supportive of the introduction of a referral process for clearing for which an exemption does not apply. It is assumed that this amendment will result in DWER releasing guidance on its assessment measures for determining which clearing activities should be subject to obtaining a permit.

Recommendation: DWER is advised that the City of Rockingham expects a period of consultation if the Department should release guidance material on assessment measures for determining which clearing activities should be subject to obtaining a permit.

Licenses

The City is supportive of the proposed amendments in relation to licensing.

Defences

The City is supportive of the proposed amendments relating to defences to proceedings for offences under the EP Act.

Part VI – Enforcement

The City is supportive of the proposed amendments to Part VI of the EP Act.

Part VII – Appeals

The City is supportive of the proposed amendments relating to appeals.

Schedule 6

The City is supportive of the proposed changes to Schedule 6.

Further Recommendations for Modernisation of the EP Act

The City has no further recommendations for the modernisation of the EP Act.

The City is appreciative of the opportunity to provide comments on the proposed amendments to the EP Act. Should you have any queries with respect to the above, please do not hesitate to contact Mr Rory Garven, Environmental Planning Officer on 9528 0446.

Yours faithfully

A handwritten signature in black ink, appearing to read 'B D Ashby', with a stylized, flowing script.

B D ASHBY
MANAGER, STRATEGIC
PLANNING AND ENVIRONMENT