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Strategy Policy
Environmental Protection Act 1986 amendments
Department of Water and Environmental Regulation
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To Whom It May Concern,

City of Gosnells Environmental Management team's submission on proposed *Environmental Protection Act 1986* amendments

Thank you for providing the City of Gosnells with the opportunity to provide a submission on the proposed amendments to the *Environmental Protection Act 1986* (EP Act). The City's submission has been structured by the headings within the Department of Water and Environmental Regulation (DWER) Discussion Paper. The City is generally supportive of the proposed EP Act amendments which will greatly modernise the outdated Act, however it has some concerns it would like to be addressed to ensure the new amendments result in improved efficiencies and certainty for proponents while ensuring environmental outcomes are not compromised.

New areas of environmental reform

Bilateral Agreements with the Commonwealth

The City supports bilateral agreements with the Commonwealth being incorporated into the amended Environmental Protection Act (EP Act) as it will likely improve efficiency in the environmental approvals process by removing duplication of State and Commonwealth environmental assessments and approvals.

The City anticipates that by amending the Act to incorporate bilateral agreements, the environmental approvals process will be simplified for proponents, by means of only having to lodge one application with one agency, rather than submitting two applications to two separate agencies that take a different approach to undertaking assessments and determining offset requirements.

The City strongly recommends that statutory timeframes be introduced for the bilateral agreement process. There are currently reliable statutory timeframes for the EPBC Act environmental assessment and approvals process, whereas the existing State environmental assessment process can be lengthy with proponents having great uncertainty over timing to obtain approvals, particularly for clearing permits. Statutory timeframes are therefore essential for the bilateral agreement process to be relied upon by proponents to function efficiently, effectively and in a timely manner.

Environmental Protection Covenants

The City supports the inclusion of Environmental Protection Covenants under the EP Act as this will allow for greater enforceability of covenants, as they are currently dealt with under other legislation. In saying this, the City queries the benefit of time restricted environmental protection covenants. For example, if a portion of land is required to be revegetated with a covenant placed over it for ten years through a condition of approval or an offset, then the protection over the restored area is lost after that timeframe. To ensure true long term protection of environmental values, it is recommended that environmental protection covenants only be placed on land that is truly sought to be protected in perpetuity.

Environmental Monitoring Programs

The City supports cost recovery from industry for environmental monitoring programs to assess cumulative industry impacts on health and the environment, which is consistent with the "polluter pays" principle.

Provide a head power for certified environmental practitioners

The City supports the introduction of an accreditation and certification scheme for environmental practitioners. In the City's experience assessing environmental documentation to support the planning process, it has witnessed a huge variability in the quality and content of documentation prepared by environmental practitioners. Consequently, the City agrees there is a need for an improved standard of work and greater consistency in documentation submitted by environmental practitioners. The City supports the introduction of an accreditation and certification scheme for environmental practitioners to set a minimum standard for environmental documentation. A Bushfire Planning and Design (BPAD) Accreditation Scheme exists for bushfire practitioners undertaking bushfire attack level assessments and preparing bushfire management plans, therefore the same quality control requirement should exist for environmental practitioners.

Although the accreditation and certification scheme will not apply for environmental reports assessed by Local Government under the *Planning and Development Act 2005*, i.e structure plans, subdivisions and development applications, it is likely that certifying environmental practitioners for the EP Act will improve the standard of environmental documentation across the industry. For example if certified environmental practitioners prepare documents at Scheme Amendment stage that are assessed by the Environmental Protection Authority under the EP Act, it is likely that better quality documentation will be filtered down through the later planning stages. The City encourages DWER to introduce an accreditation and certification scheme in conjunction with the release of the amended EP Act.

Injunction to apply to a broader range of matters

The City supports the introduction of injunction powers into the EP Act to give the State Government powers to intervene in the rare instance that there is an urgency to prevent pollution or environmental harm from occurring.

Part IV – Environmental Impact Assessment

The proposed amendments to Part IV of the EP Act are supported by the City as they will allow for greater regulatory efficiencies and flexibility for proponents compared to the current rigid environmental impact assessment process, without compromising on environmental outcomes. The EP Act amendments will also improve the powers of the Minister to allow greater enforcement and compliance action such as: allowing implementation agreements or decisions to expire or be revoked if works have not substantially commenced by a specified date; or issuing notices requiring implementation of proposals to cease for up to 28 days compared to the current period of 24 hours for non-compliance with conditions.

Schemes

The City supports the proposed amendments to the Act to allow the EPA to extend its assessment timeframe where insufficient information has been provided and it is not able to make a well informed decision in the 28 day timeframe. However in saying this, there should be statutory timeframes included in the Act that requires the EPA to assess the documentation and request additional information within a reasonable timeframe (i.e. 14 days), which functions as a stop the clock until sufficient information is provided to the EPA's satisfaction, and the 28 timeframe to make a decision commences.

Part V – Environmental Regulation

Clearing of Native Vegetation

It is unclear what Section 51C(c) of the amended EP Act is specifically referring to “the clearing is of a kind prescribed for the purposes of this paragraph and is not done in an environmentally sensitive area”. It is assumed that this Clause refers to the exemptions under the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* (the Regulations), however this is not clear. It is recommended the wording in this Clause be revised to be made clearer by referring to Regulations.

The City is pleased that Schedule 6 will include an exemption for clearing in order to comply with a notice under Section 33(1) of the Bushfires Act. The City has regularly sought clarification on whether environmental protection or bushfire risk mitigation has precedence and the proposed provision goes some way to resolving this issue.

Declaration of Environmentally Sensitive Areas (ESAs)

The City strongly supports prescribing ESAs in regulations as this will allow ESAs to be more easily updated to ensure they are current and relevant. There are currently extensive mapping errors with DWER's ESAs mapping layer requiring updates, which will be made possible with the new EP Act amendments. Mapping errors include:

- Unclear definition of Directory of Important Wetlands in Australia (DoIWA) boundaries. The State and Federal Government have inconsistent mapping of DoIWA, however advice from DWER advised that both State and Federal DoIWA mapping are prescribed ESAs, regardless of the inaccuracies and inconsistencies. Extensive areas of DoIWA mapping covers existing developed areas that are not mapped as geomorphic wetlands.
- Threatened Ecological Community (TEC) buffers are mapped as ESAs, however they are not prescribed ESAs. This leads to confusion over what areas are actually ESAs and what areas are exempt under the Regulations.
- Threatened flora locations over cleared/developed areas.

Referral process for clearing permits

The City has concerns surrounding the current clearing permit process which involves the provision of inconsistent advice and decision making, unclear regulatory requirements, unclear exemptions and long timeframes for gaining approvals. The issues with the clearing permit process are unlikely to be addressed solely through the proposed initiatives in DWER's *Native Vegetation in Western Australia issues paper* or the proposed EP Act amendments. The City believes there is a requirement for a comprehensive review of and inquiry into the clearing permit process.

The City supports the introduction of a new referral process for clearing permits, as it is a step towards improving efficiencies and aims to focus efforts on significant clearing proposals. In saying this, there are concerns that there are no statutory timeframes for the clearing permit process, including the new referral system and as a result proponents may be subject to the same inefficient, timely process that currently exists. The new referral system could result in a longer process for proponents if they lodge an application for what they believe to be low impact clearing through the referral system and it is decided they need to apply for a clearing permit. For the referral system to be effective and efficient DWER must develop clear guidelines (including criteria and trigger values) on the type of clearing appropriate to be submitted through the referral system and introduce statutory timeframes for a decision to be reached by the Chief Executive Officer (CEO) on whether a clearing permit is required. The City recommends statutory timeframes be considered for the entire clearing permit process, including appeals and the referral system, to provide certainty for proponents when planning project timelines.

Regulation of Prescribed Premises

The City supports activity-based licencing under the EP Act amendments as it will allow flexibility in determining the appropriate area for a licence and its conditions and allow licences to overlap on premises shared by more than one operator undertaking independent operations. In addition businesses can have multiple premises under one licence which allows for: efficiencies in the assessment and approval process; consistency in regulatory requirements across sites owned and/or operated by the same business, likely to result in improved compliance; and efficiencies in monitoring and reporting associated with conditions. Clarification is required on whether site specific conditions and requirements can be incorporated into the licences for specific sites, where multiple sites sit under one licence, for example one site could border an environmentally sensitive area, which requires specific management controls and conditions whereas all other site sit in a brownfield industrial area.

An issue that does not appear to have been addressed is the gap that currently exists between licensing and enforcement. There are some activities where it is almost impossible to determine whether or not a premises should be a prescribed premise. For example, a metal coating business must use over 1,000 litres of paint or powder per annum to be considered a prescribed premises. It is impossible to determine whether a business is using more than the prescribed amount, allowing these premises to avoid licensing, effectively exempting such premises from complying with the Environmental Protection (Metal Coating) Regulations. As such, it would be preferable for thresholds for prescribed premises to be determined in a different way.

Controlled works regulated within licence

The City supports combining works approvals and licences, to regulate both the construction and operation stages into one instrument as it will simplify the process for proponents and will improve efficiencies.

Conclusion

The City appreciates the opportunity to provide a submission of the proposed EP Act amendments. It hopes DWER will consider the City's comments prior to finalising the amendments to the EP Act.

Should you have any enquiries with respect to the above, please do not hesitate to contact Miss Rachel Halton, Environmental Officer on 08 9397 3204 or shalton@gosnells.wa.gov.au.

Yours faithfully



Martyn Glover
DIRECTOR INFRASTRUCTURE

