

January 2020

DRAFT SUBMISSION

DISCUSSION PAPER - MODERNISING THE ENVIRONMENTAL PROTECTION ACT & EXPOSURE DRAFT BILL

CITY OF KWINANA SUBMISSION

SUBMISSIONS CLOSE 28 JANUARY 2020

Introduction

The City of Kwinana (the City) welcomes the opportunity to respond to the Department of Water and Environmental Regulations (DWER) Discussion Paper, *Modernising the Environmental Protection Act* (the Discussion Paper) and *Exposure Draft Bill* (Draft Bill). In making this submission the City notes that other environmental legislation is currently under review including, the *Native Vegetation in Western Australia Issues Paper*, and the Federal *Environmental Protection and Biodiversity Conservation Act, 1999 (EPBC Act)*. The review of this legislation has implications for the management of Western Australian natural resources and as such should be considered as part of the discussion of *Modernising the Environmental Protection Act* and the *Exposure Draft Bill*.

This submission covers some background information, and then details support, issues and concerns in relation to the Discussion Paper and the Draft Bill.

For clarification on any matters in this submission, please contact the City's Senior Environmental Planner, Christine Burtenshaw, on (08) 9439 0200 or by email: customer@kwinana.wa.gov.au

Background

The City of Kwinana community's sense of place is intrinsically connected to its many natural areas, including Banksia Woodlands, Tuart Woodlands and wetlands. Much of the City's remaining bushland affords protection under the *Environmental Protection Act, 1986 (EP Act)* and the *Environmental Protection and Biodiversity Conservation Act, 1999 (EPBC Act)*. Following extensive community consultation, it has been identified within the City's *Strategic Community Plan 2019 – 2029*, that the retention of the native vegetation is an important consideration for the City.

As a rapidly urbanizing Local Government, the City faces increasing pressure to ensure that development is sustainable. In particular residential development and resource mining land-uses present major challenges. To address the former, the City of Kwinana *Local Planning Policy No.1 Landscape Feature and Tree Retention (2016)* was developed to ensure that native vegetation is conserved in each new development area in alignment with its *Strategic Community Plan 2019 -2029*.

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General Comment

The City of Kwinana is generally supportive of the proposed reforms to modernise the EP Act set out in the Discussion Paper. The drive for regulatory efficiency however should not come at the expense of best practice environmental management. While the City supports the proposed amendments to incorporate changes to other environmental legislation, technological advances, clarification of terminology and the removal of inconsistencies, there is also an opportunity to consider biodiversity conservation and protection principles and incorporate these as key drivers. Consideration of the following should be fundamental to reform:

- The Precautionary Principle;
- The Principle of intergenerational equity; and
- Sustainable development.

Comment on Proposed Amendments Bilateral Agreements

Whilst the City provides in principle support for amendments proposed within the Discussion Paper in regards to the function of bilateral agreements between State and Federal Governments, clarification is required where there are differences in these legislations. For example, a Tumulus Mound Spring Threatened Ecological Community is listed as Critically Endangered in the EP Act and Endangered in the EPBC Act. Which status will be considered as part of an assessment? The Federal Draft Guidelines for Three Species of Black Cockatoos has no equivalent, specific State legislation, how will this impact assessment under a bilateral agreement?

Any increase to current assessment practices would require additional resourcing within the Environmental Protection Authority to increase the agency's capacity to undertake comprehensive and thorough assessments of proposals. Any increase in assessments by the State should not equate to a reduction in standard of assessment of Matters of National Environmental Significance.

Certification of Practitioners

Clarification is sought in regards to the proposal for certified accreditation for environmental practitioners. It is acknowledged that documents submitted for assessment can be highly variable in quality, however, how will this impact on Local Government Environmental Practitioners? Who would manage such a scheme? The onus for independent scrutiny of a scheme should be the responsibility of the Environment Protection Authority (EPA) and/or the Department of Water and Environmental Regulation (DWER) and not the responsibility of an industry led group.

Environmental Protection Authority EPA Chair to be Either Full-time or Part-time

The City considers that the nature and importance of the position of Chair of the Environmental Protection Authority is such that it demands a full-time role.

Part IV- Environmental Impact Assessments

Referral and Assessment of Proposals

The City does not support the proposal that, “*Provides the Environmental Protection Authority (EPA) with discretion to determine which decision-making authorities it will notify of its decision to assess a proposal (and are therefore constrained from making a decision which allows its implementation) rather than having to notify every government body connected to the proposal no matter how minor*”.

This amendment will result in a lack of transparency with decision-making authorities. The “*discretion to determine which decision-making authorities to notify*”, based on the degree of impact, i.e. “*minor*” or major, can be a somewhat subjective evaluation dependent on perspective.

Proposals and activities that have impacts within the Local Government jurisdiction, no matter what the perceived degree of that impact by another government agency, should be a part of routine notification to all decision-making authorities. The decision to assess a proposal may have implications for Local Government. There should be an opportunity for these implications to be considered by Local Government agencies, having due regard to the wider context of issues and factors within their municipality

The City does not support proposed amendments to the EP Act that would allow the EPA to decide not to assess where a proposal can be regulated under other parts of the Act or other legislation. The role of the Environmental Protection Authority and the EP Act in regards to environmental impact assessment should be to assess not only significant impacts of a proposal but the accumulative impacts in a strategic context. This cannot be demonstrated to be adequately addressed under other parts of the EP Act nor other regulation.

Strategic Assessment

The City seeks clarification from DWER for the process by which strategic assessments are applied and investigation of these processes needs to be additions to Part 3 of the *EP Act*. Strategic assessment of land uses or industries that have the potential for cumulative environmental impacts on a region is more effective, than assessments on a case-by-case basis. Proposals considered to require strategic assessment, for example, the development of an industrial precinct, a structure plan for urban development of land, or a plan for extensive infrastructure over a broad area can be specifically addressed in the new Act as a separate category of proposal.

Strategic assessments and management of cumulative environmental impacts likely to be associated with “strategic proposals” requires far more comprehensive environmental modelling and monitoring than dealing with a single proposal. The conditions of approval that result from a strategic assessment and subsequent commitments for the proponent will be far more extensive than a non-strategic proposal. Clarification of when and why the Minister for Environment will consider applying strategic assessment and management of a region or type of industry will provide a greater degree of certainty for applicants and industry.

It is suggested that the criteria proposed be more detailed to enable the Minister for Environment to determine whether a “strategic” level of assessment for proposals is needed for inclusion to Part IV of the draft *EP Act*. Provisions in Part VI of the draft *EP Act* need to define the range of proposals and types of proposals that would be assessed as a strategic proposal.

Part V Environmental Regulation Legal Proceedings

The use of modified penalties for offences categorized as Tier 1 offences is a positive change that will simplify the EPA's and DWER's prosecution procedures. The use of modified penalties versus legal prosecution in the courts will streamline compliance and allow for prompt action against offenders. The use of modified penalties can be effective as a deterrent. However, to safeguard the environment the penalties must be relevant to contemporary cost of doing business and be subject to annual review.

The City suggests Part V of the draft *EP Act* (b) include provisions enabling the Minister for Environment review and authorize indexed increases to modified penalties (including Tiers 1, 2 & 3), to ensure modified penalties to a CPI index are applied. Indexing will ensure that Tier 1 modified penalty provisions of the *EP Act* continue to act as a deterrent.

Licences New Landfills and Waste Infrastructure

The City recommends that the *EP Act* be amended to ensure the CEO can refuse a license application if a proposed facility proposes to undermine the outcomes and targets of the Waste Avoidance and Resource Recovery Strategy. The proposed amendment would fit with section 54 of the *EP Act* under the clause that relates to, "matters the CEO must have regard to."

Conclusion

The City of Kwinana, whilst welcoming the opportunity to comment on *Modernising the Environmental Protection Act* and associated *Exposure Draft Bill*, considers that the current proposals do not go far enough in addressing the holistic management of Western Australia's unique biodiversity. The proposed amendments appear to be fundamentally driven by process and efficiency improvement. A more comprehensive approach to holistic biodiversity protection and conservation should equally drive amendments to the *EP Act*.

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