



Proposed procedure for declining and refusing environmental applications

Department of Mines and Petroleum

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia funded by its member companies, which generate 95 per cent of the value of all mineral and energy production and employ 80 per cent of the resources sector workforce in the state.

The Western Australian resources sector is diverse and complex, covering exploration, processing, downstream value adding and refining of over 50 different types of mineral and energy resources.

In 2014-15, the value of Western Australia's mineral and petroleum production was \$99.5 billion. Iron ore accounted for approximately \$54 billion of production value to be the state's most valuable commodity. Petroleum products (including LNG, crude oil and condensate) followed at \$24 billion, with gold third at \$9 billion.¹

Notwithstanding the recent decline in the price of several export commodities, the estimated value of royalty receipts the state received from the resources sector still composed over 16 per cent of estimated total state revenue in 2015-16, or around \$4.4 billion.²

As at September 2015, there was approximately \$171 billion in resources sector projects committed or under construction in Western Australia and a further \$110 billion in proposed or possible projects.³

Recommendations

CME recommends:

General Comments

- The reference to "assessment fees" on Page 6 of the Procedure is updated to clarify it applies to native vegetation clearing permit applications only.
- The Department of Mines and Petroleum (DMP) clarify the timeframes for Programme of Work (PoW) applications which require Excess Tonnage approvals and ministerial consent.

Procedure Relating to Declining and Refusing Environmental Applications – Draft for Comment

- The objective of the Procedure is updated to include a point on 'timeliness' for declining or refusing an environmental application.

Issues with the approach used to date

- The statement "*one impact of remaining on hold for an extended period of time is that it creates uncertainty in the assessment process for DMP officers who are considering the potential cumulative impacts of activities within a certain area*" be deleted from the Procedure.

¹ Department of Mines and Petroleum (DMP), 2015, *Mineral and Petroleum Industry 2014-15 Review*, www.dmp.wa.gov.au/1525.aspx, p. 1

² Government of Western Australia, 2015, *2015-16 Budget, Budget Paper No. 2 Volume 2*, www.ourstatebudget.wa.gov.au/Budget-Papers, pp. 541 & 593

³ DMP, 2015, *loc. cit.*

Declining to assess applications

- Section “*Declining to assess applications*” is updated to ensure all decisions to decline an environmental application is reviewed and signed off at Manager level.

Section: Refusing (to approve) an environmental application

- The Procedure is updated to specify the DMP’s responsibilities when requesting further information from the proponent during the assessment to ensure it is reasonable and relevant to the assessment. The request should be a consolidation of queries and advice from other decision-making authorities (DMAs) which has been reviewed by the DMP officer and determined to be reasonable and relevant.
- The Procedure is updated to state “*The time period of time nominated by the applicant must not be longer than three month, unless an extended timeframe has been agreed between the proponent and DMP.*”

Notification of assessment decisions

- The Procedure is updated to state proponents will be notified in writing if the environmental application has been declined.
- The Procedure is updated to specify the timeframes (from the date an application is received) for DMP to notify the proponent an environmental application has been declined or refused.

Stakeholder Response Form

General Comments

CME welcomes the opportunity to review and provide comment on the Department of Mines and Petroleum (DMP) *Proposed procedure for declining and refusing environmental applications* (the Procedure).

Overall, CME considers the Procedure is a useful document which will improve the consistency and transparency of DMP's decision making. CME supports the Procedure, however, recommend consideration of several matters outlined below.

The Procedure refers to "assessment fees" throughout the document and details how the fees will be dealt with if an environmental application is declined or refused.

On 26 June 2015, the Minister for Mines and Petroleum, Hon. Bill Marmion MLA announced the assessment fees for Mining Proposals and Programme of Work (PoW) applications would be on hold until passage of the Mining Legislation Amendment Bill 2015 which is currently before State Parliament. Given a decision to introduce these assessment fees will not be made until the passage of the Amendment Bill CME considers the Procedure should be updated to clarify assessment fees only apply to native vegetation clearing permit applications.

CME recommends the reference to "assessment fees" on Page 6 of the Procedure is updated to clarify it applies to native vegetation clearing permit applications only.

There are circumstances where PoW applications trigger Excess Tonnage approvals which require ministerial consent. For these approvals, the Minister requires Native Title consent and this cannot be initiated until the PoW has been submitted. The Procedure does not make mention of these Excess Tonnage approvals which can be a lengthy process and may exceed the prescribed timeframes.

CME recommends the DMP clarify the timeframes for PoW applications which require Excess Tonnage approvals and ministerial consent.

Section: Procedure Relating to Declining and Refusing Environmental Applications – Draft for Comment

CME supports the objective of the Procedure to ensure decisions made by DMP are Accountable, Consistent, Proportionate, Targeted and Transparent.

Given the response timeframes have been identified as an issue (refer to Section: *Issues with the approach used to date*), CME considers this section could be further strengthened if it is updated to include a point on 'timeliness' to ensure environmental applications as processed in an efficient manner.

CME recommends the objective of the Procedure is updated to include a point on 'timeliness' for declining or refusing an environmental application.

Section: Issues with the approach used to date

The Procedure states "*one impact of remaining on hold for an extended period of time is that it creates uncertainty in the assessment process for DMP officers who are considering the potential cumulative impacts of activities within a certain area*". While outside of the scope of this Procedure, CME is concerned DMP is considering cumulative impacts as part of the assessment process.

A number of different agencies have regulatory authority in assessing impacts of environmental, social/cultural and economic assets, however, there is currently no clear

guidance or policy in accounting for cumulative impacts.

Until such time as a transparent approach to considering cumulative impacts of project development is developed, **CME recommends the statement “one impact of remaining on hold for an extended period of time is that it creates uncertainty in the assessment process for DMP officers who are considering the potential cumulative impacts of activities within a certain area” be deleted from the Procedure.**

Section: Declining to assess applications

For environmental applications which are declined, the Procedure states, “*DMP officers with appropriate authority will be involved in the decision to decline an application. In most circumstances, the decision will be made at officer level and review by management will not be required, particularly in cases where the application is incomplete or is clearly not in the form required by legislation.*”

For environmental applications which are refused, the Procedure states “*to ensure that assessment decisions are fair, justified and consistently applied, the recommendation to refuse an application will be reviewed by a decision-maker at least at Team Leader level.*”

CME supports the review by a decision-maker for the refusal of an environmental application. It is unclear why declining an environmental application does not warrant the same level of review to ensure the decision made is fair, justified and consistent. At the very least, CME considers the decision to decline an environmental application should be reviewed and signed off at Manager level.

CME recommends Section “Declining to assess applications” is updated to ensure all decisions to decline an environmental application is reviewed and signed off at Manager level.

Section: Refusing (to approve) an environmental application

The Procedure states “*Applications will be refused where two amended applications have been provided by the applicant (i.e. three separate versions of the application) and the assessing officer considers that the application remains materially deficient.*”

While these measures will improve the efficiency of assessing environmental applications, CME is concerned proponents are currently required to address repeated requests for further information by DMP officers. These repeated requests may result the number of amended applications exceeding three separate versions.

Given only two opportunities will be provided for applicants to resubmit, CME considers requests for further information should be a consolidation of queries and advice received which addresses all areas of concern (including queries and advice from other decision-making authorities (DMAs)). In preparing the request for further information, DMP officers should use discretion to ensure any specialist agency query or advice which is forwarded to the proponent is reasonable and relevant to the assessment of the proposal.

CME recommends the Procedure is updated to specify the DMP’s responsibilities when requesting further information from the proponent during the assessment to ensure it is reasonable and relevant to the assessment. The request should be a consolidation of queries and advice from other DMAs which has been reviewed by the DMP officer and determined to be reasonable and relevant.

In circumstances where applicants are requested to submit further information or amend their application, the Procedure specifies the period of time nominated by the applicant must not be longer than three months. This time period may be inappropriate for instances where the request for additional information requires seasonal environmental surveys (for example,

spring botanical surveys). CME considers the Procedure should be updated to allow for time periods to be agreed between the proponent and DMP in these circumstances.

CME recommends the Procedure is updated to state “The time period of time nominated by the applicant must not be longer than three month, unless an extended timeframe has been agreed between the proponent and DMP.”

Section: Notification of assessment decisions

The Procedure states “the proponent will be notified that an assessment of their application could not be undertaken and their application has been declined” and “DMP will notify the proponent in writing that their application has been refused and the reasons for the decisions will be outlined in the letter.”

The Procedure is unclear in outlining how the proponent will be notified (for example, verbal or in writing) if an application has been declined.

Further, the Procedure does not specify the timeframes for this notification. CME considers the declining and refusing of an environmental application warrants a formal notification in writing from a Manager (for declining) or Team Leader (for refusing). The Procedure should specify the timeframe for these notifications to ensure the efficient processing of applications. The timeframe should align with the DMP’s and DER’s standard targets from the date an application is received:

- 30 business days for PoWs and Mining Proposals;
- 30 calendar days for Environmental Plans and Oil Spill Contingency Plan; and
- 60 calendar days for Native Vegetation Clearing Permits.


CME recommends the Procedure is updated to state proponents will be notified in writing if the environmental application has been declined.

CME recommends the Procedure is updated to specify the timeframes (from the date an application is received) for DMP to notify the proponent an environmental application has been declined or refused.

Conclusion

CME welcomes the opportunity to review and provide comment on the *Proposed procedure for declining and refusing environmental applications*. We look forward to working with the DMP on ensuring fairness, consistency and transparency in DMP’s decision making.

If you have any further queries regarding the above matters, please contact Kirrillie Caldwell, Policy Adviser - Environment, on (08) 9220 8507 or k.caldwell@cmewa.com.

Authorised by	Position	Date	Signed
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