

Annexure 3 – Optimised Environmental Approvals Process (One-stop shop and risk based approach)

Introduction

This submission to the Senate Enquiry on Red Tape Reduction builds on our previous submissions, and provides detail on a suggested optimised approvals pathway. Our approach aims to achieve more effective environmental assessment and management throughout the mining project life cycle, from pre-feasibility, detailed feasibility, construction and operation, and finally, closure and relinquishment. It seeks to reduce 'green tape' as defined by the House of Representatives Standing Committee on the Environment (2014): 'excessive regulation or rigid conformity to rules, which delays decision-making or results in unnecessary administrative or other burdens on businesses and communities, with no associated improvement to the protection of the environment'.

The approach as shown in the accompanying flow chart illustrates a generic process for project environmental assessment and approvals delivery while identifying the roles and responsibilities of the proponent and government.

1.1 Previous reviews and inquiries.

Numerous reviews and inquiries have examined environmental impact assessment and approval processes in Western Australia and nationally (refer **Attachment A**). The findings of these reviews and other good practice documents indicate the following principles for environmental assessment of mining projects appear to have broad support:

- Governments should set clear, consistent and coherent objectives for the mining assessment process that apply across the whole of government. Government agency positions should be aligned with these overarching objectives.
- There should be strong cooperative arrangements between regulatory agencies along with clear roles and responsibilities to minimise unnecessary duplication and to avoid confusion.
- There should be a move to a greater reliance on State/Territory processes for assessments under the *Environment Protection and Biodiversity Conservation Act 1999*, irrespective of whether this occurs through an approvals bilateral agreement. The Australia Government focus should move to working through the Council of Australian Governments in setting national standards through harmonisation of environmental regulation across jurisdictions and ensuring a strong assurance framework.
- Government should use accredited consultants, certified assessors and establish expert panels to assist agencies in the approval process.
- Governments should establish a major projects coordination office or similar arrangement to assist proponents and ensure the assessment process proceeds in a cooperative, coordinated and timely manner. Some parties, such as the Industry Working Group (2009) have recommended a single decision making authority for all mining proposals which would have in place an integrated assessment process to ensure key social, economic and environmental issues are considered.
- Governments should provide clear, upfront information and guidance on the assessment and approval pathways for mining projects, including details about the processes, the generic information required

from proponents, the assessment criteria, the standard and model conditions and the statutory timelines that apply under a given pathway.

- Government agencies should set timeframes for each step of the assessment process and be required to report on their performance against the timeframes.
- Scoping of environmental impact assessments should be risk based and:
 - Focus on the potentially significant impacts of an action with the depth and scope of the assessment proportionate to the values that are potentially impacted and the scale, intensity and duration of potential impacts.
 - Restrict impact assessment to the matters that will be considered by the decision maker when determining whether or not to approve a project and which conditions to apply. It should not include matters that will not influence the decision.
 - Avoid duplication by taking account of other regulatory processes, including the extent to which they will mitigate potential impacts of the proposed project.
 - Based on credible science not speculation.
- Governments should establish a central, easily accessible repository of environmental data held by government and non-government agencies, including information gathered through the environmental assessment process.
- Regulatory agencies should only set conditions that:
 - are consistent with relevant regulatory objectives and broader environmental and natural resources management policies.
 - are outcome-based wherever possible.
 - are warranted by, and tailored to, the level of risk to an environmental value.
 - deliver outcomes that are not assured by other legislation.
 - are cognisant of, and do not duplicate, the conditions imposed by other regulatory agencies.
- Governments should avoid the need for reporting on similar matters to two levels of government or multiple government agencies. Reporting should be risk based taking into account the likelihood and consequence of a breach in a condition.
- Mining companies should have effective environmental management systems in place to ensure compliance with regulatory requirements and high standards of environmental protection. For example, this is a requirement of the WA 2016 Mining Proposal Guideline – section 3.11.

2. Objectives and Guiding Principles

Roy Hill recommends that the Senate Inquiry consider the following four objectives and guiding principles for reform of environmental approvals process for mining projects.

2.1 Establishment of an Office of Major Projects

Objective: Appoint an Office of Major Projects (OMP) to manage, coordinate and streamline government and proponent involvement with the environmental assessment and approvals process.

Principles: An OMP will have the primary function of being a single point of entry for a proponent into the environmental approvals process.

The OMP will have authority to assess and grant primary approvals but will draw on advice from specialist agencies. Where practicable, the OMP will have delegated authority to grant secondary approvals or, if not, to coordinate these approvals, including using joint or substitutable assessments.

The OMP will establish working arrangements with other agencies to ensure clear and non-overlapping roles, responsibilities and information requirements, along with clear timeframes and predictable processes. The arrangements will include a mechanism to elevate issues within agencies if OMP disagrees with the position taken by junior or mid-level staff.

The OMP will work towards a principle of one set of information from the proponent being used for multiple approval purposes, avoiding the need for the proponent to provide similar information in different formats.

The OMP will assess, review and report on performance of government departments involved in mining approvals against agreed Key Performance Indicators covering quality and relevance of input and performance against timeframes.

The OMP will ensure that assessments, government inputs and approvals are completed with a technical focus and a clear understanding of the commercial impacts of delays, duplication of assessments and delays to completion of site works.

OMP staff should be drawn from existing agencies or externally with a preference being given to those individuals that have significant operating experience of mines.

The OMP will ensure fees required for approvals are staged and cognisant of where a project is at in the project development cycle.

The OMP will develop and implement a quality management system providing for ongoing improvement. This will include ongoing and regular review of international best practice with regard to improving general assessment and approval efficiencies and risk-based approaches.

The OMP will develop a whole of government policy that sets out social performance expectations for the proponent and government agencies.

2.2 Risk Based Assessment Approach

Objective: Environmental assessment and approval processes for mining projects are firmly risk based, ensuring proponent, community and government resources are focused on the matters that will materially affect decision making.

Principles Scoping of environmental assessments, condition-setting and compliance for mining approvals utilise a science/ evidence based risk assessment against a risk matrix such as that outlined by the Australian Standard AS/NZS ISO 31000: 2009 *Risk Management Principles and Guidelines*.

The risk based approach should identify the important (significant) environmental issues to allow appropriate allocation of resources by regulators and proponents, and to ensure a focus on significant environmental risks. It should avoid time and resources being spent on matters that are low environmental risks and/or can be readily addressed through standard industry management practice.

A risk based approach should prevent a 'blanket approach' to scoping and condition setting where all matters are given the same weighting, such as through the inappropriate use of generic terms of reference or model conditions.

A risk based approach should also ensure that, during the primary approval process, OMP does not require a proponent to address matters that are more appropriately considered during secondary approvals.

2.3 Compliance Reporting by Exception

Objective: Compliance monitoring and reporting is risk based and rewards companies demonstrating good environmental performance and robust internal processes to ensure compliance.

Principles: Compliance reporting ensures effort is risk based, considering both the likelihood that a company will breach a condition and the consequence of a breach.

A risk based approach should mean that reporting requirements are less onerous for companies that can demonstrate robust environmental management systems, plans and processes to ensure compliance and respond quickly and effectively to non-compliances. As companies demonstrate good environmental performance through the life of a project, reporting should evolve to an approach of reporting only by exception.

Online compliance reporting will be encouraged as a way of increasing efficiencies for both the proponent and regulator.

2.4 Adherence to Statutory Approval Timeframes – Commercial Imperative

Objective: Assessments and approvals are completed in accordance with documented regulatory timeframes to enable project development to achieve commercial objectives.

Principles: Establish statutory timeframes for assessments that are currently open-ended, for example *Environmental Protection Act 1986 (WA)* Section 45C and Section 46 assessments.

OMP will establish an agreed schedule for assessment and approval of each project, based on the statutory timeframes but also including intermediate milestones.

OMP will provide adequate resources (staff, time, facilities) to enable all assessments to be completed in accordance with all documented timelines.

As detailed in 2.1, OMP will assess, review and report on performance of government departments against timeframes.

Working arrangements within OMP and with other agencies will establish processes to progressively elevate matters within the agency if the timeframe for a project assessment is not met and continues not to be met.

ATTACHMENT A: PAST PROCESS REVIEWS

- Auditor General for Western Australia 2008, *Auditor General's Report: Improving Resource Project Approvals*, Report 5, October 2008. Accessed 1 September 2017 at: https://audit.wa.gov.au/wp-content/uploads/2013/05/report2008_05.pdf
- Government of Western Australia Industry Working Group Report 2009, *Review of the Approval Processes in Western Australia*, Prepared for the Minister of Mines and Petroleum. Accessed 1 September 2017 at: http://www.dmp.wa.gov.au/Documents/Investors/INV-ReviewofApprovalProcesses_April06.pdf
- Hawke, A 2009, *The Australian Environment Act – Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, October 2009 Final Report, Australian Government Department of the Environment, Water, Heritage and the Arts. Accessed 1 September 2017 at: <http://www.environment.gov.au/resource/australian-environment-act-report-independent-review-environment-protection-and>
- Ministerial Advisory Panel 2012, *Reforming environmental regulation in the WA resources industry*, prepared for the Minister for Mines and Petroleum, December 2012, Government of Western Australia. Accessed 31 August 2017 at: http://www.dmp.wa.gov.au/Documents/Environment/Reforming_Environmental_Regulation_in_the_WA_Resources_Industry.pdf
- Senate Environment and Communications Legislation Committee 2013, *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*, March 2013, Commonwealth of Australia. Accessed 1 September 2017 at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Completed_inquiries/2010-13/epbcfederalpowers/report/index
- House of Representatives Standing Committee on the Environment 2014, *Inquiry into streamlining environmental regulation, 'green tape', and one stop shops*, December 2014. Accessed 31 August 2017 at: <http://www.aph.gov.au/greentapereport>
- Productivity Commission 2013, *Major Project Development Assessment Processes*, Research Report, Canberra. Accessed 31 August 2017 at: <https://www.pc.gov.au/inquiries/completed/major-projects/report>

Principles for good practice are also set out in:

- Department of Prime Minister and Cabinet 2014, *The Australian Government Guide to Regulation*, Commonwealth of Australia. Accessed 1 September 2017 at: <https://www.cuttingredtape.gov.au/handbook/australian-government-guide-regulation>
- Environment Institute of Australia and New Zealand 2015, *Good practice scoping in impact assessment*. Accessed 1 September 2017 at: <https://www.eianz.org/document/item/3302>

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