

RESPONSE TO THE REGULATORY IMPACT ASSESSMENT REPORT ON THE REVISED DRAFT ENVIRONMENTAL PROTECTION (SWAN COASTAL PLAIN WETLANDS) POLICY 2004 AND REVISED DRAFT ENVIRONMENTAL PROTECTION (SWAN COASTAL PLAIN WETLANDS) REGULATIONS 2004

BACKGROUND

The Environmental Protection Authority (EPA) released a *Draft Environmental Protection (Swan Coastal Plain Lakes) Policy 2004* (the EPP) and *Revised Draft Environmental Protection (Swan Coastal Plain Wetlands) Regulations 2004* (the Regulations) for public consultation in July 2004.

A subsequent revised policy was transmitted to the Minister for the Environment in November 2004. The Minister undertook to consult with all persons that provided a submission to the EPA on the draft policy and subsequently appointed a Regulatory Impact Assessment Panel (the Panel) to address a number of issues. These issues include the extent to which the purposes of the policy would be likely to be achieved; the social, economic and environmental benefits and costs of the policy; input by the community and the effectiveness of the policy.

The Panel reported to the Minister on 30 June 2005 (*Regulatory Impact Assessment, Revised Draft Swan Coastal Plain Wetlands Environmental Protection Policy (2004): Report to the Minister for the Environment prepared by the Regulatory Impact Assessment Panel for the Swan Coastal Plain Wetlands EPP, June 2005*). The Minister has considered the recommendations in the Panel's report and provides the following response.

SUMMARY OF GOVERNMENT RESPONSE

The EPP will be retained and gazetted as soon as possible. Only Conservation category wetlands (CCWs) on Crown land and those advised by the EPA as clearly fulfilling the definition of CCWs will be placed immediately on the Wetlands Register.

CCWs nominated by the EPA as reasonably doubtful will be set aside from immediate listing and screened against the reviewed criteria before being rejected or entered onto the Register.

The criteria and methodology for evaluating CCWs will be reviewed and their veracity tested in a pilot ground-truthing program as soon as possible. All CCWs that are found to meet the revised criteria will be placed on the Register after the EPP is gazetted.

A clear process for appealing against the listing of any CCW will provide landowners with natural justice to ensure only genuine CCWs are listed on the Register.

The Government will not seek to place a Notice on the title of land containing CCWs in line with the recommendation of the Panel.

A range of financial and management assistance programs are currently available for private landowners to help manage their conservation category wetlands. The Government will provide additional assistance for the preparation of wetland management plans for private landowners who have CCWs listed on the Register. The management plans will provide an assurance about existing practices that do not harm the environment.

DISCUSSION OF PANEL RECOMMENDATIONS

Panel Recommendation 1: That, subject to amendments as recommended elsewhere in this report, the Draft Wetland EPP and associated Regulations be retained.

The recommendation to retain the EPP is fundamental in protecting valuable wetlands on the Swan Coastal Plain. It is agreed that other mechanisms are required to support the EPP, however these other mechanisms necessitate additional time and resources to develop and implement.

Government Response 1: The Draft Wetland EPP and associated Regulations, subject to any approved amendments, should be finalised and gazetted as soon as practicable.

Panel Recommendation 2: That the activities listed in Clause 7 of the Regulations, which prescribe environmental harm to wetlands, be amended to remove those already controlled under other legislation, and those where the risk to the wetland is low.

The purpose of Clause 8 of the Regulations (not Clause 7 as in the RIA Panel's report) was to:

- provide certainty for landowners regarding environmental harm;
- consolidate and educate stakeholders about activities which could degrade valuable wetlands; and
- provide for reasonable penalties for breaches of the EPP through the link to environmental harm and to provide a basis for any future enforcement actions.

The two arguments put forward in the Panel's report for narrowing the scope of Clause 8 are:

- there are high and low risk activities listed together (for example using a power motor vehicle or boat poses a low risk to a wetland and provokes derision from some landowners) and only high risk activities should be listed; and
- other laws cover some activities (e.g. *Wildlife Conservation Act 1950*, *Clearing Regulations*) and hence these should be removed from the EPP.

With respect to the first point, this was included in the EPP because noise can impact on fauna especially during breeding times, and spillage of petroleum products can also cause adverse impacts.

With respect to the second point, Clause 8(1) does not apply if the activity is authorised under Parts IV or V of the *Environmental Protection Act 1986* (the Act), or is authorised under the Land Clearing provisions of the Act. There are also other exemptions for the *Bush Fires Act 1954* and the *Energy Operators (Power) Act 1979*.

Government will provide greater levels of certainty for landowners who wish to continue current management practices where the environment is not being harmed through assistance with a range of Conservation category wetland management plans. This practical focus on preparing wetland management plans will provide landowners clear guidance on using their wetlands.

Government Response 2: Sub clause 8(1)(j) should be deleted from the Regulations but the balance of Clause 8 should stand.

Panel Recommendation 3: That the EPP provide greater clarity and certainty about ongoing permitted land uses through the use of appropriate exemptions in the Policy.

Provision of clarity to land owners regarding allowed land use practices is generally supported.

Specifying that existing land use practices are exempt in wetland areas is inconsistent with the clearing Regulations *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*. The clearing regulations exempt grazing if it has been conducted within 10 years prior to the gazettal of the regulations and if the intensity of the grazing has not changed. However, section 51C(c) of the Act specifies that this exemption does not apply in environmentally sensitive areas. The 1992 Lakes areas and Conservation category wetlands are both proposed for protection under the EPP and are identified as environmentally sensitive areas.

It is recognised that an explanatory document is needed to accompany the EPP to provide greater clarity about ongoing permitted uses.

In addition to the use of explanatory documents to provide greater clarity and certainty, Government will assist landowners with management plans where there are any doubts over compatible uses.

Government Response 3: Greater clarity and certainty about permitted land uses will be provided by both new explanatory documents and the assistance in preparation of landowner management plans.

Panel Recommendation 4: That the Geomorphic Dataset be the peak custodial data set to identify CCWs, and that the Wetland Register be a subset of this dataset so that consistency is retained.

The Department of Environment's (DoE) *Geomorphic Wetlands Swan Coastal Plain* dataset (the dataset) is the peak custodial wetland dataset used to identify wetland resources on the Swan Coastal Plain. This dataset provided the basis for the EPP

Wetlands Register, in recognition of its endorsement by the (State) Wetlands Coordinating Committee, the Environmental Protection Authority and the Department for Planning and Infrastructure (then the Ministry for Planning) as the most comprehensive wetland mapping, classification and evaluation work on the Swan Coastal Plain.

The Wetlands Register was created by amalgamating and editing the Conservation category wetland layer of the dataset and all of the lakes in the *Environmental Protection (Swan Coastal Plain Lakes) Policy 1992*. The amalgamated wetland boundaries were compared to aerial photography in order to identify and either remove or alter the linework of wetlands, or portions of wetlands, that had been subject to development impacts (i.e. roads, buildings, soaks). Many wetlands severely degraded by other means were also removed from the Wetlands Register.

However, the Wetlands Register is largely equivalent to the CCW layer within the dataset, notwithstanding the inclusion of EPP lakes. It is considered that the use of the Wetlands Register would therefore meet the panel's intent to create a register that is initially as closely aligned with the current dataset as possible.

It is likely that the two datasets would diverge over time, despite the DoE's intent to keep the two map sets aligned. The Wetlands Register can only be changed through the legal process contained in the EPP and consequently may be less flexible and dynamic than the dataset, ultimately causing the map sets to diverge.

Following gazettal of the EPP, decisions on wetland protection will be primarily governed by their inclusion on the Wetlands Register.

Government Response 4: The Geomorphic Dataset should be the peak, science-based custodial dataset and the EPP Wetlands Register be the legal instrument; and that the two map sets align to the extent possible given legal constraints.

Panel Recommendation 5: That the methodology and criteria for evaluating CCWs be reviewed and agreed across Government as soon as possible, and that these revised criteria apply within the EPP. This process should be guided by the Wetlands Coordinating Committee in the context of the evaluation framework which is currently being developed.

The use of common evaluation criteria for Conservation category wetlands to be protected by the EPP is supported. It is agreed that it can be confusing to have two sets of criteria, and it is recognised that the application of different criteria to each map set will cause further divergence of the two map sets over time.

The Department of Environment Wetlands Program will finalise the preparation of the wetland evaluation guideline as soon as possible to consolidate and supersede all previous evaluation methods for the Swan Coastal Plain, including the EPA Bulletin 686 (EPA, 1993), Hill *et al.* (1996) and V & C Semeniuk Research Group (1998).

The wetland evaluation guideline will address this recommendation by including criteria for Conservation category status agreed by the EPA and the Wetlands

Coordinating Committee. The criteria will be contained in a non-statutory supporting document.

Once this process has been completed, there will be a peer review of the criteria and methodology used to define and evaluate CCWs.

Government Response 5: The methodology and criteria for evaluating CCWs will be reviewed, including peer review, and agreed across Government as soon as possible.

All private CCWs nominated by the EPA as having a reasonable level of doubt will not be entered onto the EPP register until the review has been completed and then ground-truthed through a regional pilot verification process. These will then be screened against the revised criteria before listing on the Register.

Landowners will then be able to appeal against their wetlands being placed on the register and where there is any remaining doubt, they will have the opportunity for site specific ground-truthing.

Panel Recommendation 6: That the criteria for classifying damplands are further developed and specified to give greater scientific clarity to identifying damplands, and that this information is properly communicated to the broader community.

Further development of criteria for classifying damplands is supported. It is recognised that waterlogged wetlands that rarely display surface water (including palusplain and damplands) are not well recognised by the general community as being wetlands. The boundary, values and management category of these wetland types are often the subject of debate when land is under development pressure.

It is considered that, in addressing all wetland types the method for identifying, delineating and classifying dampland wetlands will be more clearly presented. The wetland delineation and classification guideline will be developed in consultation with the Wetland Status Working Group, the Wetlands Coordinating Committee and the EPA. This guideline will also be subject to peer review.

Government Response 6: The criteria for classifying damplands will be further developed and peer reviewed after the gazettal of the EPP.

Panel Recommendation 7: That the Policy incorporate provisions for a provisional listing on the Register and a permanent listing on the Register, where wetlands would be automatically listed as provisional on the Register, followed by scientific (field) verification prior to permanent listing.

Government Response 7: The provisional listing on the Register is not supported. There will only be the single listing on the Register to avoid confusion.

Panel Recommendation 8: That all Crown land CCWs, and those private land CCWs that are undisputed, be automatically placed permanently on the Register. All other CCWs would be placed on the Register on a provisional basis.

All crown land CCWs and private CCWs advised by the EPA to be clearly fulfilling the definition of a CCW will be placed on the Wetlands Register when the EPP is gazetted, in addition to existing lakes under the 1992 Lakes EPP. Private CCWs advised by the EPA to be reasonably doubtful will be placed on the Register only after completion of the peer review and pilot groundtruthing of CCW criteria and methodology confirms their status.

All EPA nominated CCWs set aside from the Register for further review will retain the presumption of high conservation value until rejected from the EPP register through the decision making process, including appeals. Proposals to develop or alter these wetlands will need to be referred to the EPA for assessment.

Government Response 8: All Crown land CCWs, and those private CCWs advised by the EPA to be clearly fulfilling the definition of a CCW will be automatically placed on the Register. The Register will include the already gazetted 1992 Lakes EPP. Private CCWs set aside by the EPA will only be placed on the register after the review of CCW criteria and methodology and pilot regional groundtruthing confirms their status.

Panel Recommendation 9: That an accreditation process for environmental consultants to evaluate wetlands be established, to enable reliable field evaluation commissioned by the EPA or landholders without the need for verification by the Department of Environment.

It is considered that accreditation of environmental consultants in undertaking wetland evaluation and assigning a management category would be useful. However, the accreditation process would be complex and time consuming to establish and detract from the time available to assess wetlands against the agreed evaluation criteria. Accreditation for wetland evaluation would require the development of guidelines, procedures, and training and associated competency assessments.

Accreditation systems will be considered after the EPP is gazetted.

Government Response 9: The feasibility of establishing an accreditation process for environmental consultants to evaluate wetlands will be investigated after the EPP is gazetted.

Panel Recommendation 10: That an independent appeals process be incorporated into the EPP for appeals against permanent listing in the Register, and decisions not to list permanently in the Register. Such appeals would be open to both land holders and third parties.

It is agreed that an independent appeal process should be incorporated into the Regulations and developed further.

It is not agreed that appeals should be open to third parties.

Appeals will be heard by a panel that includes independent wetland experts and will provide advice to the Minister for the Environment; Science for final determination. Appeals will be determined according to their conformity or otherwise with the final CCW criteria and methodology.

Government Response 10: An independent appeal process will be developed for incorporation into the Regulations for appeals against permanent listing in the Register, and decisions not to list permanently on the Register. Such appeals will only be open to land holders with CCWs.

Panel Recommendation 11: That the requirement for a Registered wetland to be recorded as a Notice on Title be removed from the EPP, but that alternative mechanisms are put in place to ensure that the Register is promoted, and easily and fully accessible to the public.

The Register should be fully accessible and promoted to the general public and stakeholders.

With respect to other pieces of legislation that do not have a requirement to place a Notice on Title, such as the *Aboriginal Heritage Act 1972* and the *Wildlife Conservation Act 1950*, the legal position on notification may have changed since the development of these statutes, particularly in these times of greater transparency and accountability.

It is understood that the Department of Land Information is currently developing a possible internet-based alternative mechanism, a Register of Interest for individuals to determine information related to a parcel of land. The Minister considers this is a better method of notifying landowners of a Registered wetland on their property.

Government Response 11: That a Register of Interest methodology, when developed, be used instead of a Notice on Title in that part of the EPP.

Panel Recommendation 12: That appropriate planning instruments be put in place to ensure that Registered wetlands are incorporated into Planning Strategies, and Region and Local Town Planning Schemes.

The need for wetland protection and planning instruments to be aligned is supported. Since 2001, the Western Australian Planning Commission (WAPC) have recognised the *Geomorphic Wetlands Swan Coastal Plain* dataset, and wetlands are currently recognised in Statement of Planning Policies (SPPs).

SPP No 2 Environment and Natural Resources (2003) recognises the *Wetlands Conservation Policy for WA (1997)*, and states that planning strategies, schemes and

decision making should consider mechanisms to protect, manage, conserve and enhance: wetlands of importance, Ramsar wetlands and wetlands recognised as habitat for migratory species; wetlands identified in any relevant Environmental Protection Policy such as the Swan Coastal Plain Lakes EPP and the South-West Agricultural Zone EPP; and nationally significant wetlands listed in the Directory of Important Wetlands in Australia.

The *Draft SPP No 2.9 Water Resources (2004)* also specifies that planning decisions and instruments should protect, manage, conserve and enhance the environmental attributes, functions and values of wetlands of importance, such as Ramsar wetlands, Conservation category wetlands and wetlands identified in any relevant Environmental Protection Policy. The DoE has developed standard subdivision conditions to assist in wetland protection and considers that it would also be useful to develop standard provisions for incorporation into local town planning schemes.

It is considered that these matters can be implemented after the EPP is gazetted.

Government Response 12: That appropriate planning instruments be put in place to ensure that Registered Wetlands are incorporated into Planning Strategies and Region and Local Town Planning Schemes, and will be progressed after the EPP is gazetted.

Panel Recommendation 13: That a wetlands financial support package, similar to the Bush Forever financial support package, is established. An indicative sum of \$20 m over a five year period is proposed.

The differences and similarities between the EPP and *Bush Forever* as policy instruments should be noted.

Bush Forever is a non-statutory program with the intent of securing areas of high conservation value land in the planning system, while the EPP is a statutory instrument with the intent of protecting high conservation value wetlands. *Bush Forever* has the capacity to acquire land, recommend rezoning for reservation and protect land. However, through the development and finalisation of *MRS Amendment No 1082/33 Amendment Report* (August 2004) and *Bushland Policy for the Perth Metropolitan Region Statement of Planning Policy 2.8 Draft for public comment* (July 2004) *Bush Forever* sites will also have statutory protection. In the case of implementation of the EPP, purchase of land may be considered under certain circumstances as outlined in the Panel's report.

A range of financial and management assistance programs are currently available for private landowners to help manage their conservation category wetlands. Details of these programs are available at www.naturebase.net or from the Government of WA publication *Biodiversity Incentive Programs in Western Australia*. Additional funding for incentive programs will be sought through budget processes based on the successful Bushland Benefits program which included payments to a number of landowners with CCWs. Funds remaining from the Bushland Benefits program will be dedicated to providing landowner assistance with management plans for CCWs.

Government Response 13: A range of financial and management assistance programs are currently available to help landowners manage their CCWs. Assistance will be available to help landowners prepare management plans for their CCWs. Additional funding for landowner assistance will be sought through the budget process.

Panel Recommendation 14: That officers of the Department of Environment negotiate to ensure that incentives for wetland protection are incorporated into regional strategies and regional investment plans, and into projects for funding under the 20% strategic reserves for the National Action Plan.

The importance of integrating the EPP as a statutory instrument for protection of wetlands with cooperative natural resource management (NRM) mechanisms is recognised. A number of projects have been put forward to the Commonwealth Government to access the funding in strategic reserves. For example, the Department of Conservation and Land Management have put forward the biodiversity incentives package. This package covers the entire State and includes a range of biodiversity protection mechanisms including native vegetation and wetlands.

The funding from the strategic reserve has not yet been fully allocated, however at present a resource condition monitoring project has been identified as a priority for funding. The allocation of funding to other projects is on hold until the funding requirements of the monitoring project have been fully determined. Wetland management is currently recognised in regional NRM strategies and associated regional investment plans and generally takes the form of funding for restoration work and mapping.

The EPP area covers two NRM regions; the Swan Region and South West Region. In addition to exploring opportunities to propose specific projects related to the EPP for NAP and NHT funding, the DoE officers would work with those implementing other projects and programs to achieve positive outcomes for wetland protection and management.

For example, the DoE together with the Geographe and Leschenault Catchment Councils are implementing a new wetlands project in the Lower Swan Coastal Plain. The project provides technical advice and matching incentives for farmers, land managers and community to implement best management practices on priority wetlands in the Geographe and Leschenault catchments.

Government Response 14: Funding from the Strategic Reserve should be investigated immediately for the Swan and South-West Regions after the EPP is gazetted.

Panel Recommendation 15: That the Department of Environment establishes a wetland education and awareness program to complement the EPP, working in close liaison with Regional NRM Groups and appropriate non-government organisations.

The need for a wetland education program to increase community awareness, support

and involvement in wetland protection and management is supported.

There is currently a range of government and non-government wetland education programs, supported in a number of ways, being implemented on the Swan Coastal Plain. In addition to the existing incentive programs outlined in the *Biodiversity Incentive Programs in Western Australia* publication (WA Government, 2004), several other wetland programs contribute to raising awareness and understanding and developing skills of private landowners.

Before a wetland education program is developed, opportunities should be explored to link existing wetland programs and projects, and identify ways such that they can complement the EPP. The focus of delivering current wetland initiatives through joint partnerships should be maintained.

The protection of wetlands requires the ongoing development and dissemination of wetland information that consistently and clearly communicates scientific and legal boundaries. The Wetlands Coordinating Committee should review the methods for information development.

Government Response 15: The State Wetlands Coordinating Committee should identify opportunities for all existing programs and projects with a wetlands focus to complement the EPP.

16 December 2005