



18 December 2008

Independent Review of the EPBC Act
GPO Box 787
Canberra ACT 2601
Australia

Dear Sir/Madam

Independent review of the EPBC Act

Introduction

Landcom welcomes the opportunity to contribute to the independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (the Act).

Landcom is a NSW Government owned corporation. Our role is to facilitate strategic and complex urban development projects for the NSW Government and lead by example in environmental, social, and economic sustainability. We facilitate the delivery of a variety of new land release and renewal projects for residential, commercial and industrial purposes in NSW, either on our own or in partnership with Government land holders and commercial development corporations.

As a property developer Landcom is familiar with the EPBC Act and has extensive experience managing projects that have required Referral, Assessment and Approval under Chapter 4 of the Act. Since 2001, we have referred eight actions and prepared a number of referrals in partnership with other State agencies.

Our submission is primarily focussed on the impact assessment and approval aspects of the legislation and how these provisions relate to biodiversity conservation and protection of matters of National Environmental Significance (NES). While our operations are entirely within NSW, we believe many of our observations and suggestions will have relevance nationally.

If there are aspects of this submission that you would like to have further explained or clarified please contact Matt Napper on (02) 9841 8676 or 0408 489 644.



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Overall Comment

Landcom supports the broad objectives of the Act. We are of the view that Commonwealth level involvement in the protection of the environment, particularly matters of NES is appropriate and necessary. The Act's objective of protecting the environment within the context of ecologically sustainable development is important and strongly supported. Such an approach aligns with Landcom's own philosophies and vision to deliver a sustainable quality of life for communities, conserve resources, protect biodiversity and minimise pollution.

While Landcom is supportive of the Act and its objectives, we believe there are a number of areas that can be improved that will lead to both better environmental outcomes as well as providing a more efficient approvals framework for urban land release. These are:

1. increasing strategic engagement in land use planning;
2. improving current legislative provisions and approaches; and
3. improving administration of the Act.

Where Problems Arise

Before discussing the areas for possible improvement it will be beneficial to briefly outline the issues and context of why Landcom believes improvements are needed to the Act, particularly from a land development perspective.

Environmental impact assessment (EIA) under the Act is primarily focused on an individual action by action process. While this form of EIA works well for large infrastructure projects such as mines or ports, the Act in Landcom's experience is less effective when it comes to property development, land release, urban growth projects and urban planning. This is primarily because action by action EIA under the Act does not:

- facilitate a broader planning and environmental view across a landscape;
- deal well with the interconnectedness of urban development with other associated projects (infrastructure and services);
- align with the broader planning and biodiversity objectives at the State and local level which occur over a longer period of time with multiple stakeholders; or
- promote the protection of biodiversity at a landscape scale because of the narrow focus on small scale sites.

As a result, assessment of urban development proposals is often complicated, highly contentious and protracted.





CASE STUDY: Edmondson Park Land Release, South West Sydney

Edmondson Park is the first major urban release area for the South West Growth Centre in Western Sydney. The environmental approval processes relating to the area provides a useful case study in the disjunct between planning outcomes at the State level and the application of the EPBC Act.

Planning for the design and release of Edmondson Park has been underway at the State level since 2000. This has involved multiple government and private stakeholders and a lengthy process to arrive at a planning outcome that delivers appropriate environmental, social and economic benefits under NSW legislation.

Stakeholders involved (among others) the NSW Department of Planning, the NSW Department of Environment and Climate Change, Commonwealth Department of Defence, developers, local councils, and the community. The Commonwealth Environment Department (DEWHA) was approached early in the release area's conception but did not actively engage in the subsequent urban and conservation planning as a rezoning was not considered to be a 'referable action'.

DEWHA has been directly involved since 2007 when the Department of Defence referred the sale of land (the Ingleburn Army site). The Ingleburn Army site comprises approximately one third of the Edmondson park land release precinct and is a crucial component in providing areas for urban development, transport infrastructure, regional parkland, schools and services.

In considering the sale of Commonwealth land the Department/Minister considered that the sale would or may significantly impact on the listed Cumberland Plain Woodland ecological community and subsequently sought protection of a substantially increased area of land in a release area that had been extensively masterplanned and rezoned in 2006. DEWHA's draft sale conditions defined in January 2008 would have necessitated a total redesign of this major urban release area, which was gazetted in 2006. Since January 2008, there has been conflict between the objectives of DEWHA and the planning outcome that was gazetted by NSW. These difficulties have primarily stemmed from:

- the narrow focus of the Commonwealth on matters of NES when compared with the broader biodiversity focus of the State;
- misalignment of environmental objectives between government agencies; and
- the participation of DEWHA late in the planning process





At the time of writing this submission, there is still no resolution to the EPBC Act issues and there is no certainty for Landcom, Local Government or other stakeholders in moving forward. DEWHA's engagement early in the planning process and an ability to work in a complementary way with the State would have enabled consideration of Commonwealth environmental objectives jointly with state environmental planning objectives and may have resulted in certainty of outcomes for all stakeholders and avoided extensive delays, reducing costs for all involved (including the Commonwealth).

Increasing Strategic Engagement in Land Use Planning

Recommendations

- ✓ Commonwealth Government involvement in the early stages of land use planning.
- ✓ Increased use and promotion of strategic assessments.
- ✓ Amend the Act to include triggers, timeframes and a clearly defined process for strategic assessments.

In order to address the types of issues and problems that arise in individual action based assessments (as outlined above) Landcom believes there needs to be a shift in focus and intent of the EPBC Act when it comes to urban development and land use planning.

To achieve better environmental outcomes and reduce the time and cost in obtaining approvals, the Act should be structured and implemented in a manner that results in the Commonwealth engaging pro-actively in strategic land use planning at its early stages.

Governments at all levels should work in partnership to develop planning outcomes that strive to:

- address economic growth demands;
- deliver land release and housing affordability targets;
- promote environmental conservation broadly; and
- incorporate positive outcomes for matters of NES.

This could be achieved through better use, promotion and minor amendment of the strategic assessment (Section 146) provisions currently existing in the Act.





Strategic assessments, particularly in critical urban growth areas, should be promoted and undertaken in partnership with State agencies, local councils and land developers. Many areas in NSW, such as western Sydney and the Central Coast/Hunter region, and in other States are currently experiencing high growth. These areas of growth are currently and will continue to result in a large number of projects requiring assessment and approval under the Act. The Commonwealth Government should engage with State agencies in the planning of these growth areas to achieve desired environmental outcomes and alleviate the need for subdivision referral under the Act.

To successfully promote strategic assessments, however, there is a need to improve the certainty and rigor of the existing process. With a clear pathway, identified milestones, and a defined statutory timeframe, proponents and State planning agencies are more likely to be willing participants in the process.

Landcom is aware that a small number (approximately 3) of strategic assessments are underway or are in the early stages of negotiation, however, to our knowledge there has not been a single strategic assessment completed under the Act. This is a critical failure of this aspect of the EPBC Act and its administration, particularly given the upfront benefits and certainty that strategic assessment could provide to the environment, industry and the Australian community.

To increase use of the strategic assessment provisions, 'triggers' to enable the Minister to require strategic assessment of significant planning areas and documents should also be included. Inclusion of such a trigger during the landscape planning stages of critical urban growth development projects would ensure the Commonwealth has involvement early on and would enable better environmental outcomes.

Improving current legislative provisions and approaches

Recommendations

- ✓ Better alignment of Federal and State environmental assessment processes.
- ✓ Review and update the Bilateral agreements to include the full range of assessment types undertaken in a State.
- ✓ A more comprehensive consideration of issues at the referral stage including social and economic impacts, environmental benefits (offsets) and impacts of the development at a regional scale.
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- ✓ Better jurisdictional alignment of threatened species and ecological community listings.
- ✓ Consistent and better defined impact threshold tests for listed species and ecological communities.

In addition to a more widely encompassing and strategic approach to urban development as explained above, changes to the current legislative context will further improve the operation of the Act and enhance its ability to protect the environment and facilitate Ecologically Sustainable Development.

Better alignment of the environmental assessment provisions within the Act with state legislation will enable a broader, efficient and more co-operative approach to identifying environmental outcomes. The NSW bilateral agreement needs to align more effectively with the State *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)*. The agreement should enable a bilateral assessment approach early on in the planning stages of a major development. Additionally, Bilateral agreements should be revised and updated to:

- encompass any recent changes to planning laws;
- include the full range of assessment and approval mechanism within a State (not just the major projects/State significant projects);
- be flexible and adaptable to facilitate timely and outcome focussed approaches; and
- align State and Commonwealth policy approaches to issues such as significant impact thresholds, offsets and Biobanking arrangements.

The Act should enable a more comprehensive consideration of all relevant issues, including the environmental benefits of an action, at the Referral stage. In Landcom's experience, urban development requires consideration of factors that enable developments to achieve the principles of Ecologically Sustainable Development (ESD) early in the planning phases of projects. This includes identification of social and economic impacts, environmental benefits (offsets) and impacts of the development at a regional scale. The Act should provide the Minister with an ability to consider these factors at the referral.

Better alignment of threatened species and ecological community listings between the EPBC Act and States is a critical issue. Better alignment will reduce complexity for developers and will also enable a more co-operative approach to achieving conservation goals for the conservation of biodiversity. Inconsistencies between Commonwealth and State definitions of Threatened Ecological Communities in particular has led to significant confusion and





delays for projects due to the lengthy negotiations needed to agree on conservation objectives for areas of value.

Landcom encounters this issue regularly with projects in Western Sydney. In this region the Commonwealth is almost entirely focused on the protection of the Cumberland Plain Woodland (CPW) ecological community. However, the State is focused on a larger number of threatened ecological communities that are listed under the NSW *Threatened Species Conservation Act 1995*. These differences cause confusion and delays for agencies and proponents when negotiating management and mitigation measures to protect woodland areas, with both jurisdictions having differing (and sometime conflicting) objectives and expectations.

The above issue is also encountered when proponents are required to undertake impact threshold tests for listed species and ecological communities. Alignment of Commonwealth significant impact criteria with State impact threshold tests, such as the 7 Part significance test under Part 5A of the *EP&A Act 1979* would lead to less confusion for proponents and a more simplified approach to protection of individual species and communities.

Improving Administration of the Act

Recommendations

- ✓ Increase resources to conduct assessments and approvals (including Strategic Assessments) under Chapter 4 of the Act.
- ✓ Locate Departmental staff in State capital cities.
- ✓ Increased training, capacity building and awareness for Departmental staff and the public.

The broad national scale, complexity and sometimes contentious nature of projects which the Department deals with on a daily basis requires a large amount of resources to maintain continual effectiveness of the Act to ensure it is able to achieve its objectives.

Landcom's experiences with the Department reveal that staff have high workloads and are dealing with multiple issues and assessment at the same time under tight timeframes. It can be extremely difficult to arrange a time for a meeting or site visit with the Department. Departmental staff generally do not have the time to research and adequately consider complex issues and be active in managing assessments with proponents. Much of the work is therefore reactive and hurried.





More resources are needed to enable the Department to conduct assessments and approvals (including Strategic Assessments) under Chapter 4 of the Act.

The Government should also strongly consider locating Departmental staff in State capital cities. This will have the following benefits:

- enable personnel to increase their effectiveness when working with State agencies;
- provide a greater ability to visit and become familiar with locations first hand;
- lead to more opportunities for partnerships to be developed between State and Commonwealth governments, better communication; and
- increase the ability of the Department to recruit skilled staff from a broader job market with knowledge of local environments, planning regimes and professional networks.

Departmental staff should be provided with training to further increase their knowledge and skills in environmental planning, impact assessment and State environmental and planning laws.

Improved public awareness would also benefit the ability of the Department to administer the Act. More importantly, however, greater awareness amongst industry, local council and state agency personnel of the EPBC Act is needed. Specifically in relation to the Act's intent and how it relates to State laws and planning process. The Commonwealth Government should provide practical guides, seminars and participate at industry conferences to further awareness of the Act, significant impact thresholds and bilateral arrangements.

Conclusion

A more strategic engagement and focus for the EPBC Act will greatly improve the efficiency of assessment and approval process and enable the Commonwealth government to work cooperatively with all stakeholders and other governments to achieve environmental outcomes.

Landcom strongly urges the Review Panel to consider and make recommendations to improve the EPBC Act in ways that will result in improved strategic engagement of the Commonwealth Government in urban development areas and land use planning. Changes that align State and Federal approval processes are essential if the approval process is to work effectively and promote Ecologically Sustainable Development.





We hope that this submission will provide the Review with useful information and practical and achievable solutions to improve the EPBC Act and its administration. Thank you for the opportunity to contribute to the Review.

Yours sincerely

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