

19th December 2008

Secretariat
Independent review of the EPBC Act 1999
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Australia

By email: epbcreview@environment.gov.au

The Urban Development Institute of Australia (UDIA) is pleased to make this submission to the independent review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). UDIA is the peak body representing the urban land development industry in Australia. UDIA is a membership organisation with members drawn from the land development, planning, valuation, engineering, environmental, market research and urban design professions. Nationally, UDIA represents the interests of thousands of members and includes all the major land development companies, both public and private, and specialist consultancy firms.

Key Issues

The need for:

- Environmental assessment to occur at strategic level, prior to urban zoning, to provide a cohesive plan for human habitation whilst recognising the need for preservation. While s.146 of the EPBC Act provides for 'strategic assessments', the capacity for strategic assessment is poorly utilised;
- Government agencies to have an integrated policy framework which, through bilateral agreements, enables single assessment to take place rather than a multi-layer approach involving the Federal, State and local governments;
- A clear focus on matters of national environmental significance, with scientific and logical trigger thresholds from a national perspective;
- Development of policies which can be applied to all matters of national environmental significance, and which integrate the triple bottom line into the decision making process;
- Industry and departmental officers' professional development regarding ongoing scientific research outcomes;
- A whole of government approach to sustainability which balances economic, social and environmental sustainability;
- The need for due process and a clear and transparent appeals process.

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Key Australian Policy Objectives

This response should be read within the context of key Australian Government policy objectives which includes *"promoting the sustainability of Australia's economic development to enhance individual and community well-being while protecting biological diversity and maintaining essential ecological processes and systems."*

The EPBC Act is currently failing to provide surety for the development industry and ultimately the consumer, dramatically increasing risk and threatening capital investment through uncertainty of timelines and outcomes. Research conducted by UDIA demonstrates that a delay of six months can increase the cost of a lot by over \$17,000 through additional holding costs and taxes.

The development industry is committed to sustainability and, to achieve this outcome without increasing investment risk, the focus of the EPBC Act should be for assessment at the strategic level and precede rezoning applications. When the requirements are known and understood by the development industry they can be incorporated into concept planning and accommodate a range of requirements (recognising that this does occur during the State environmental assessment process now). Changes at the subdivision approval level are expensive, difficult and result in considerable delays that exacerbate the housing affordability crisis facing Australia. Further, it is often considered that these changes do not represent solutions in a national context.

In some states there is a narrow focus of current DEWHA policies and requirements and in others there is a **lack** of policy which increases the uncertainty of ultimate outcomes, even on land legally zoned for purpose and approved by State environmental authorities. This leaves developers limited capacity to plan appropriately. The EPBC Act works within the silo of DEWHA decision making and does not take into account broader environmental issues and certainly does not take into consideration the triple bottom line of sustainability. It can be focussed on small sites of doubtful national importance. Whilst the Act is focused on matters of national environmental significance the fact that it has supremacy over all other sustainability policy and legislation is leading to a piecemeal outcome that is not addressing the overall sustainability of the country and the communities that the Australian government serves.

The urban development industry is not seeking to diminish environmental outcomes but to have environmental assessment conducted at the appropriate time within the development cycle to provide surety to developers and the community whilst allowing appropriate flexibility based on clear and transparent, scientifically based policies. It is also essential that a whole-of-government process supports the sometimes competing interests of economic, social and environmental sustainability.

This submission addresses the questions of highest priority for the development industry and provides qualifying comments where appropriate.

HIGH PRIORITY ISSUES FOR UDIA

1. Scope of the Act

Q1 (b) Are the principles of Ecological Sustainable Development (ESD) appropriate to the Commonwealth's role in environment protection and management? Does the legislation provide an adequate framework to guide ESD decisions made under the Act?

Comment:

Under the current operation of the Act the principles of ESD cannot be adequately addressed as it is only targeted to matters of National Environmental Significance.

The EPBC Act can in some cases be counter productive with regards to ESD. For example, where a bilateral agreement does not exist, the state government will generally undertake an assessment which incorporates a holistic assessment of the environment and works with other government agencies to also take social and economic issues into account. If the project is then 'referred' to the Commonwealth for assessment, the EPBC Act requires the assessment to account only for specific environmental considerations. Therefore, decisions which may have been made under the state assessment which provide overall sustainability outcomes may be over-ruled.

Better employment of bilateral agreements could be an effective tool in solving this problem. The EPBC Act should also be amended to provide that the Minister has regard for State and local planning and environment legislation and policies/schemes in the context of the proposed action.

The Act needs to balance specific management issues and consider ESD against the other aspects of the development. A whole-of-government approach is then needed to balance out those needs against a full sustainability assessment to achieve outcomes that are in the best interests of future generations.

Further diminishing the effectiveness of the Act, the framework is not effective as plans are used as a statutory tick off requirement and do not include adaptive management, monitoring the clearing effect on the environment, degradation or retained bushland. Far greater awareness of these aspects must be brought into the assessment process.

Q1(c) Are the existing matters of national environmental significance (NES) appropriate? Do you think that there should be any additional matters of NES, and if so, how should such matters be framed?

Comment:

The key issue with matters of national environmental significance is the lack of supporting data for some areas. In Western Australia there is conflicting evidence provided about the number of Carnaby's Cockatoos and indeed a lack of understanding of their breeding habits, the range of young birds and the scope of their feeding habits. Further, there is no scientific information supporting the contention that if vegetation is conserved, the species decline will be reversed i.e there is no post assessment and development analysis. In New South Wales there are some migratory species, such as the Masked Lapwing, which are listed as NES which are common to abundant, sedentary, and occur on many sites including disturbed sites that have to be assessed pursuant to the Act. For existing and future matters of national significance a rigorous scientific basis must be applied for them to be listed under the Act.

Q1(d) Is the definition of an 'action' in the Act appropriate?

Comment:

The EPBC definition of an 'action' does not facilitate early engagement of DEWHA with a proponent, so that in some instances there is no certainty regarding the outcomes that will be achieved. For example, rezoning and subdivision applications (not involving physical works) are not 'actions' pursuant to the Act. Whilst the approval of such applications may involve a rigorous analysis at the state level, their approval may be effectively over-ruled by the Commonwealth at a later development stage. There should be greater ability to engage officially with DEWHA much earlier in the process, for example prior to rezoning.

Developers have far greater capacity to respond to requirements early in the planning phase. The further a project has progressed the more difficult, expensive and time consuming adaptation becomes, and in some cases it is impossible to achieve the outcome required.

Q1 (f) Does the test of significance, in the context of actions having a 'significant' impact on a matter of NES, operate effectively in practice? If you think that there should be another test, what should it be?

Comment:

The test of significance under Policy Statement 1.1 is rarely used by the Commonwealth as a basis for justifying decisions made under EPBC Act (either referral decisions or approvals). Reliance is often made on other **draft** policies that have no clear connection to Policy Statement 1.1.

The lack of policies means that 'significant impact' is not defined and assessment of the level of impact is therefore subjective. There is no indication of how 'significant impact' is measured or what the pre-impact baseline was against which impact is assessed. This means that developers and government agencies at local and state levels are left guessing as to whether there is 'significant impact'. Increasingly the industry is seeing a lack of decision making at state and local level due to uncertainty as to whether the EPBC Act applies to a particular development.

To address this issue we suggest insertion of a definition of 'significant impact' into the EPBC Act.

The Commonwealth Government, as a priority, must develop and release policies which define 'significant impact'. These should be subject to robust peer review and draw on up to date scientific research. Where key information is lacking, robust scientific research should be financially supported by the Commonwealth, and policy documentation updated as further scientific knowledge becomes available.

2. Assessments and Approvals

Q2 Does the public understand their responsibilities under the Act to refer proposed actions to the Minister?

Comment:

No. Currently government agencies and developers are seeking legal advice as to whether they have an obligation to refer projects, based on the characteristics of the project. With a lack of

clarity within government, a culture of "draft" or non-existent policies leading to poorly defined thresholds and a lack of scientific supporting data, it is little wonder that the public does not understand their responsibilities under the Act. The issues of 'may impact' can cause similar confusion.

The reliance on draft policies that have no clear connection to Policy Statement 1.1 is problematic and it must be a priority of Government to release policies on all key areas covered by the Act. The lack of clarity from the Commonwealth is exacerbated by the differences of opinion amongst specialist consultants as to the likelihood of a 'significant impact' and the need (or otherwise) for a Referral. DEWHA must clarify its position and communicate that position to the industry through forums and other professional development activities, and be willing to change position based on the outcomes of negotiation and review.

Q3 Are appropriate projects being referred for approval? Does the referral process meet the objects of the Act?

Comment:

No. Due to the lack of certainty about what is required, the lack of defined thresholds and the legal uncertainty of other government agencies, many developments are being referred that are not significant under the Act. Indeed, some government agencies will not process approvals prior to Federal Government approval as they do not want to duplicate the approvals process should the assessment require significant change to the plans submitted. This is creating enormous uncertainty and delays which is having a dramatic impact on housing affordability.

Draft policies require a much wider suite of proposals to be referred than what could be inferred from Policy Statement 1.1 alone. There is a need for clearer Guidelines on when a development project needs to be (or is recommended to be) referred. Examples where there is a lack of understanding of thresholds includes areas containing Cumberland Plain Woodland and Carnaby's Cockatoo habitat.

Further, there is perception that projects referred may result in a Controlled Action where the specific project's significant impact on matters of national significance are dubious.

There should also be opportunities for consultation on any policies which support the Act.

Q5 Does the Act provide appropriate scope for public participation and transparency in the assessment and approval process under the Act?

Comment:

Public consultation on matters of national significance is not only useful but is fundamental to a sustainable future however this should be undertaken in a consolidated manner.

In NSW, for example, prior to the Bilateral Agreement, it was possible for two rounds of public consultation to occur: one during the state assessment process, and then another during the Commonwealth assessment process (under the EPBC Act). Experience has shown that this consultation targeted the same community and stakeholder groups and effectively gave them two opportunities to comment on the same proposal, sometimes resulting in two rounds of amendments.

If the Bilateral Agreement is not applied for at the initial stage of a development, this duplication of public participation may still occur.

It is essential that State and Commonwealth Governments streamline their systems to ensure that duplication of consultation does not occur and that community concerns are part of an overall sustainability assessment.

In Western Australia, there is currently the requirement for two rounds of advertising – one when the referral information is presented, then again when the proponent responds (each generally being 20 days). It is UDIA's view that the second round could be deleted and DEWHA/Minister could make the decision on the proponent's response, or there could be a discretion to readvertise only in circumstances where, in the Minister's view, the proponent has not met the public's concerns.

Q6 Does the Act operate effectively in conjunction with State and Territory planning and environmental impact legislation? Are existing bilateral agreements achieving the objects of the Act?

Comment:

No.

The Act appears to operate variably from state to state. In Western Australia bilateral agreements do not cover the majority of the projects in the land use planning, land development and/or property sectors. The screening processes for referral and formal assessment are quite different under both systems and communication between departments and the tiers of government is poor.

The EPBC Act includes a mechanism to ensure that duplication does not occur. Under this mechanism, the Federal Government may enter into an agreement with a State Government, where the State may approve the actions that may impact on matters of NES. Bilateral agreements are clearly not achieving the objective of avoiding duplication and should be revised to be more effective for the land use planning, land development and/or property sectors. This is an imperative as the existing need for referral impacts on the designated future urban growth areas of Australia's major cities. In Melbourne, the Western Plain Grasslands is prevalent in the western part of Melbourne's urban growth area and in Perth referrals are required for the foraging areas of Carnaby's Cockatoo, common in the city's North West growth corridor. The duplication of process results in long delays with concomitant costs and a severe negative impact on housing affordability.

To address this issue we suggest the EPBC Act provide that the Minister should enter into a bilateral agreement to give effect to the object contained in s44(c) of the EPBC Act (efficient, timely and effective process) in certain circumstances. Timeframes for the negotiation of bilateral agreements should also be inserted into the EPBC Act to assist efficiency in the assessment process.

In New South Wales, it is reported that the bilateral agreements seem to have streamlined the process to some degree and removed some of the duplication of Commonwealth and State assessment processes. However, the limited nature of the NSW bilateral agreement means that it only applies for larger, more complex actions. The need to submit to DEWHA for approval conditions prior to receiving State approval conditions is problematic.

There may be some cases where the bilateral agreement does not apply when EPBC Act referral has not occurred until after the assessment process has commenced under the (NSW) EP&A Act (particularly if the public exhibition period has commenced or finished).

It is unclear from the EPBC Act why and when the bilateral agreement will/will not apply in these cases. It would seem to be more efficient to withdraw the proposal from exhibition, make any amendments or undertake any additional assessments required under the EPBC Act and then re-submit the proposal for public exhibition, rather than having to undertake the entire assessment and exhibition process again under the EPBC Act (i.e. as well as under the EP&A Act).

In Western Australia, whilst there have been attempts to correlate state and federal environmental policy, this has not yet been made public. UDIA has been requesting policy documentation from DEWHA for 18 months on the Western Ring Tail Possum and assurance that the State and Commonwealth requirements are in accord. Whilst we have heard that this work is completed the industry is still working with draft policies. In the case of Carnaby's Cockatoo there is no accord between State and Commonwealth and no policies have been released even though UDIA WA has been calling for action for considerable time.

At the time of listing the Minister should cause to be prepared guidelines or policies (which can be amended from time to time) to ensure developers are clear in how to deal with listed species and other matters of NES.

The overriding concern in Western Australia is that the State planning system has been totally ignored in this process. Land is earmarked and legally zoned for urban development twenty years or more in advance of development. The planning process, at least in theory, guides the funding and installation of public transport and infrastructure and industry investment. A single project can take 16 years or more to bring to the point of lot sales and the full range of factors are taken into consideration before the land is zoned urban. The tragedy in Western Australia is that new sustainable communities with low carbon footprints are being threatened by the presence of Banksia Woodland which provides foraging for Carnaby's Cockatoos. Whilst developers are happy to work with DEWHA to achieve quality outcomes, the overall sustainability goals of government, including meeting the Federal Government's emission targets, must be taken into consideration.

In Victoria, various overlays and Clause 52.16 and Clause 52.17 of the Victorian Planning Provisions govern when a planning permit is required for the removal of native vegetation and when a Native Vegetation Precinct Plan is required. The preparation of a Native Vegetation Precinct Plan requires extensive expert research at high costs and can take several months to complete. When a Precinct Plan is signed off by the Department of Sustainability and Environment (DSE) and Council, it then becomes an incorporated document in the relevant planning scheme (through a Planning Scheme Amendment). Regardless of whether a Precinct Plan exists, a planning permit to remove native vegetation may still be required through an overlay.

The Victorian statutory requirements are rigorous and onerous and should be sufficient for an optimum outcome. However, the EPBC Act also requires referral to DEWHA for listed threatened species and ecological communities which duplicates already rigorous assessment processes and associated costs.

Bilateral agreement ought to play an increased role in addressing this issue.

A further inefficiency is that Commonwealth staff do not have specialist expertise on all relevant NES matters, and little appreciation of economic reality. Development proposals that require understanding of local and regional issues often become stalled due to the Commonwealth not having the knowledge about local environments.

It is essential that significantly more effort is put into working with state planning agencies and achieving a triple bottom line sustainability outcome that achieves the best outcomes for all Australians, rather than focussing on unaudited outcomes for single species.

Q7 Are there further opportunities to harmonise the Act with other State and Territory legislation, planning and approval processes?

Comment:

Yes, especially the opportunity to conduct joint assessments. In addition the ability to consider or acknowledge environmental offsets up front would increase harmony with State processes, rather than consideration of offsets only once a proposal has been deemed to be a "*controlled action*". The apparent distrust by DEWHA of State agencies is a major barrier that must be resolved if progress is to be made in this area.

The application of bilateral agreements should be increased in the assessment process by introducing measures where these agreements should be entered into.

Q8 Does the use of strategic approaches, such as strategic assessments and bioregional plans, provide opportunities for streamlining Commonwealth involvement in environmental issues? Do such approaches provide an appropriate means for dealing with cumulative impacts?

Comment:

Under the current system early/voluntary engagement of developers is perceived to have no merit where there are no policies on which to base the discussions and potential outcomes cannot even be guessed. Early engagement is perceived to generate more problems and issues than are resolved. The lack of policies means that individual officers, rather than the Department, are perceived to do the negotiation. Should that officer leave during the period of development, which can take over a decade, that early engagement has not achieved the objectives of the Act. Worse, it may open a developer to scrutiny which may not be required under the Act contingent upon the definition of 'significant impact'.

The industry strongly supports early strategic involvement, and definitely prior to rezoning, to ensure certainty into the development process. It is not in Australia's best interests to have capital tied up in projects that are high risk of not achieving approval. In an ideal situation, the three tiers of government will have mapped out in advance where development can occur, general requirements for development in particular areas, the land that needs to be reserved for environmental sustainability and the infrastructure, including public transport, which will achieve overall sustainability for the development.

3. Biodiversity

Q9 Does the Act provide an effective regulatory framework for the conservation of Australia's biodiversity? If not, what improvements could be made?

Comment:

The framework is not effective as it appears to be driven on a project by project basis without sufficient understanding of the broader status of the listed species. It focuses on habitat retention at all costs rather than looking at the current and future needs of the species in question. Improvements could be made by better communication, site visits, workshops, and partnerships. There need to be case studies, sharing of knowledge and sound science/research which informs and contributes to, the development and updating of relevant policies.

Preservation of the species rather than preservation of the status quo should be the priority.

The matter of equity and compensation for landholders who have managed their land to maintain good environmental quality should also be addressed; it is not reasonable for private land to be added to the National conservation estate, for the apparent benefit of the nation, free of cost.

The EPBC Act should contain a mechanism by which the Minister must acquire private land that it requires for the National conservation estate, on just terms in accordance with s51xxxi of the Commonwealth Constitution.

Q11 Given the length of time required for the assessment of nominations, should the Act allow for the emergency listing of species and ecological communities which may be threatened (similar to the provisions for the emergency listing of National Heritage places)? Would the advantages of this be outweighed by the financial and administrative costs?

Comment:

No. All nominations must be subject to rigorous scientific assessment and peer review. Without that data it is unlikely that the Commonwealth Government's Key Policy Objective number one "to promote the sustainability of Australia's economic development to enhance individual and community well being while protecting biological diversity and maintaining essential ecological processes and systems" will be achieved.

Q12 What matters should the Minister consider when deciding whether to list a threatened species or ecological community?

Comment:

Currently there does not seem to be enough scientific research supporting the decision making. Information provided to DEWHA regarding the changing status of species/communities appears to be limited and there appears to be insufficient information to fully understand whether the species is simply exhibiting a reduced range to previous studies or whether the species is in a continual state of decline. Matters in question should be referred back to the TSSC (Threatened Species Scientific Committee).

Q14 Are there opportunities to reduce duplication between the Commonwealth and State and Territory listing regimes or do overlaps between the regimes provide significant protection for threatened species and ecological communities?

Comment:

Yes, there are opportunities to reduce duplication as the current system is cumbersome and lengthy and there is no mechanism to align the processes especially in situations where State and Commonwealth expectations differ. In Western Australia, for example, developers were being told concurrently by different levels of government to implement a relocation strategy and onsite mitigation strategies. This obviously causes confusion and delay in the process whilst this is resolved. This negotiation between agencies should not be the role of the developer, it must be the role of government agencies to work cooperatively together.

The Federal and State governments should have one list with agreed species and systems for each state and threatened species and ecological communities must have the same definition across jurisdictions. For example, the New South Wales government defines 'endangered ecological communities' differently to the Federal government which results in unnecessary complexity.

The essential question is that if government cannot agree on definitions and listings how can the development industry apply or negotiate in the policy environment? We all agree that quality environmental outcomes are required so it should be the duty of government agencies to provide clear and consistent guidance to industry on the requirements.

Q15 What factors should be considered in setting priorities for recovery planning?

Comment:

It is UDIA's view that there is insufficient information available to fully understand the status of the species/community in question. Data that form the basis of policy should be available for review and interrogation. It is not good enough to just rely on the precautionary principle in the long term but rather there is a need to contribute to the existing body of knowledge and scientific research. Assessment of the Key Threatening Process for each species should be undertaken along with a description of how the action will be undertaken. This should be consistent with any State Recovery Plan.

Q16 Does the planning regime support the effective recovery of threatened species and ecological communities?

Comment:

No, this is still approached on a project-by-project basis and there is no clear overarching policy or framework to show how the Act is planning to support the effective recovery of threatened species or ecological communities. Recovery Plans are often prepared with many management actions reliant on government funding. This money is rarely available and the management actions are therefore not able to be implemented.

It is essential that the focus goes to strategic planning and precedes rezoning applications. This is the only way to achieve an effective strategy for species recovery.

However, it is worthy to note that the comprehensive and expansive system of National Parks, conservation reserves, Bush Forever sites, wetlands, rivers, estuaries and coastline in Western

Australia were formed to protect biodiversity at State and national scale. The outcomes of the application of the EPBC Act are in addition to these initiatives.

Q17 Are there opportunities to improve the co-ordination between the Commonwealth and State and Territory recovery regimes? If so, what might these be?

Comment:

Yes. Recovery regimes are currently quite disparate and the Commonwealth recovery regime is not clearly known in most cases other than the basic strategy of retaining all remaining habitat. Opportunities exist through increased funding and acknowledgement of State and regional strategies to ensure a co-ordinated approach to the release of land and protection of biodiversity.

Q18 Are the provisions of the Act for the protection and recovery of threatened species and ecological communities, migratory species, listed marine species and cetaceans effective? What alternative approaches might be available?

Comment:

No, they are not effective as different definitions of 'endangered ecological communities' (EEC's) at State and Federal levels are an issue. An example of this is the Turpentine-Ironbark Forest in the Sydney Basin Bioregion EEC.

5. Protected Areas

Q29 What are your views on the effectiveness of the operation of the provisions for Ramsar wetlands and the utility of management plans for those wetlands?

Comment:

This is not communicated effectively and requires greater cooperation between industry, State and Commonwealth governments.

Further, wetlands of conservation significance are protected at State levels whether or not they are Ramsar listed.

7. Compliance and Enforcement

Q35 Does the Act provide for the appropriate follow-up of environmental assessment and approval decisions, including the monitoring, evaluation and auditing of actions? If not, what other actions could be taken?

Whilst assessment approvals require some form of monitoring and reporting, DEWHA generally does not undertake inspection of small sites. This responsibility could be handed down to the State or Council officers who have local experience. Of course this is contingent upon clear, agreed, comprehensive policies to guide all parties.

This problem could be addressed by incorporating into the EPBC Act appropriate arrangements between the Commonwealth and the States/Territories.

8. Decision Making Under the Act

Q38 As the primary decision maker under the Act, is the level of discretion provided to the Minister for the Environment, Heritage and Arts appropriate?

Comment:

There needs to be a clearer and better defined policy framework articulating what the Minister's expectations are so that there is transparency and consistency in the decisions made. The release of relevant policies is an obvious first step.

UDIA recommends decision making be made by a Committee or Board including the Minister that alleviates to some extent political pressures.

Q40 Does the Act provide sufficient guidance for decision makers in their consideration of uncertainty when making decision under the Act? If not, how should the Act deal with uncertainty?

Comment:

Uncertainty generally relates to scientific information about the matters of NES. The lack of scientific data continues to plague the application of the Act, but not decisions by DEWHA. In situations where the issues are inherently regional (for example, Carnaby's Cockatoo, the Western Ringtail Possum) DEWHA should be identifying ways to add to the existing body of knowledge and make this freely available. The Act must focus on the availability of scientific data for any matters of NES. Anecdotal or non-scientific data must not be permitted to cloud decision-making.

Q41 Does the Act provide the appropriate opportunity for external input and scrutiny of decisions made under the Act? Is there sufficient transparency? Are the periods for public consultation adequate?

Comment:

No. Whilst there is ample opportunity for feedback the lack of clear and public policies means that the policy framework is insufficient for external parties (including proponents) to understand decisions and provide comment in a meaningful way. Consultation in those circumstances becomes very subjective and does not value add to the process. Due to the emotive nature of the issues covered by the Act, consultation must never be the "loudest voice" approach, it must be scientifically based and the views of all parties tracked.

Q42 Should there be more scope for merits review under the Act? Would the disadvantages of this process – in terms of costs and delays - be outweighed by the advantages?

Comment:

Yes.

Merit reviews provide for a wider assessment of a project and input from a variety of sources of information and opinion. The decision making process regarding ecosystems is inherently uncertain and different individuals (including Ministers) will make different decisions based on the same data.

The EPBC Act could create a statutory right of review to the Administrative Appeals Tribunal (AAT). If the AAT could appoint independent experts to examine earlier expert evidence and provide further reports, this would assist the AAT in making a decision.

The incorporation of triggers for merit appeals into the EPBC Act would also facilitate the quick and just disposal of matters, and provide proponents with more certainty as to project timeframes.

Q44 What is an appropriate framework for assessing the performance of the Act? Do you have particular issues that should be considered during the review?

Comment:

Any framework for assessing the Act must be based on achieving agreed policy outcomes and timeframes. To achieve that there must be a focus on releasing policies that have been through peer review which are communicated effectively to all decision makers.

Additional Comments:

The timing of the assessment and approval process is too long, specifically with provisions where the statutory process can be stopped for an indefinite period (that is, when requests for further information are made). The processes should become more streamlined. All listings should be subject to a review and critique process on a regular (5 -yearly) basis.

Further, it is important that the difference between the legislative and administrative functioning of the Act is understood. The Act appears to work from a legislative point of view but administratively improvements must be made.

No appeal process is provided for in the EPBC Act itself. A person dissatisfied with the Minister's decision must pursue the usual avenues of judicial review available under the common law or the *Administrative Decisions (Judicial Review) Act 1977* and assert that there has been an administrative law error.

If proceedings are brought, there is no opportunity for the AAT to revisit the matter on a merit basis and, for instance, appoint independent experts to examine earlier expert evidence and provide reports to assist the AAT in its decision.

Please refer to our comments to Q42 above.

UDIA trusts that this response will be given due consideration in the independent review. It cannot be said too strongly that under current management, the EPBC Act is having and will continue to have, a detrimental impact on the future of urban development in Australia's major cities. It is imperative that the social, economic and environmental factors of development proposals are given equal consideration if Australia is to enjoy a sustainable future. It is also imperative that DEWHA release clear and transparent policies that provide surety to industry and the community at large.

Yours sincerely

A handwritten signature in black ink that reads "Stephen Holmes". The signature is written in a cursive, flowing style with a large initial 'S'.

Stephen Holmes
President, UDIA National