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Review of the Environmental Protection and Biodiversity Conservation Act

The Property Council welcomes the opportunity to comment on the operation and effectiveness of the Environmental Protection and Biodiversity Conservation Act (EPBC Act).

The EPBC Act has significant implications for the construction sector in general, and the residential development industry in particular.

Members have several examples of situations where decisions made by the Federal Government under the EPBC Act has delayed developments, added massive costs to projects, or prevented construction altogether.

The Property Council respects members' right to confidentiality and we have decided not to provide case studies in this submission.

We would be willing, however, to arrange meetings for the Inquiry panel where affected members could provide specific case examples for the Review to consider.

If you would like to discuss the issues in this submission further, or to take advantage of our offer to meet with members, please don't hesitate to contact me on (02) 9033-1956.

Yours sincerely,

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Response to the Discussion Paper Questions

Scope of the Act

Q1. What are your views on the following aspects of the Act:

(a) Are the objects of the Act appropriate to the Commonwealth's role in environment protection and management?

The objects of the Act – *to promote and protect the biodiversity of Australia's landscape and wildlife* – are admirable and appropriate goals for the legislation.

However, this only covers one part of the triple bottom line principles of sustainability.

Unlike other regulations, the *Environmental Protection and Biodiversity Conservation Act* gives no consideration to economic or social factors in decision-making.

Sustainability is the balance between economic, social, and environmental factors.

These should be reviewed together in any decision to ensure an holistic approach for the best overall outcomes, but the risk with the EPBC Act is that decisions are made which only focus on the environmental considerations.

The experience with the Act has shown a lack of clear definitions, rules, and tests which has resulted in broad interpretations over the last ten years, giving little consistency or certainty for stakeholders.

These have often occurred in ways that either contradicted the objects or were in direct conflict with state and territory policies based on a triple bottom line decision-making process.

Clear guidelines are urgently needed to help the bureaucracy to interpret the requirements and intent of the Act and prevent decisions being made on an ad hoc basis.

Specifically, the challenge for the Commonwealth Government will be to support integrated, triple bottom line-focused thinking across the Department, rather than operating in silos where the only dimension of importance is that of the environment.

We urge the Government to develop a coordinated approach with state and local governments which recognises economic, environmental, and social considerations in any application.

(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?

The broad principles of ecologically sustainable development, defined under Section 3A, create a framework that does not offer significant guidance for decision-makers.

For example, while the Act states that:

decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations

these are not covered in the objects of the Act and little guidance is given as to how to weigh up each of these considerations.

It is essential that the principles include the integration of the triple bottom line in their decision-making.

Similarly, without clear rules in place, the principles of intergenerational equity outlined under the Act could potentially create a significant impost for any applicant.

Under this principle, the view that present generations should not only 'maintain' but also 'enhance' the environment for the benefit of future generations opens up great potential for selective interpretation by agencies.

The increased use of bilateral agreements between the Commonwealth and the states and territories could be an effective tool for resolving many of these problems.

The EPBC Act should also be amended to ensure that the Minister must have regard for state and local planning rules and not merely impose an additional, but unconnected, layer of regulation on applicants.

(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?

The Property Council believes that further expansion of the list of matters of national environmental significance is unnecessary at this stage.

The current list of matters of national environmental significance already cuts dramatically across state and territory responsibilities.

In our view several inclusions on the list do not have sufficient evidentiary support to justify their retention.

The Federal Government should seek to streamline and consolidate listed matters of national environmental significance to cover matters not currently protected on state registers and ensure that all protected areas can be found in the one database.

At a minimum, justification for inclusion under the Act should be based on rigorous scientific evidence, not anecdotal evidence.

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

The definition of 'action' is too broad and could be used to capture many activities that would not normally be considered to be subject to the EPBC Act.

For example, an extension or refurbishment of a property near a Ramsar wetland could arguably trigger the need for a Ministerial approval, even if it did not expand the footprint of the building.

The discussion paper and the issues covered in section 523 of the Act demonstrate that this legislation is largely a planning statute.

The EPBC Act should therefore be managed in a similar way to other pieces of development assessment regulation, whether an applicant is from the private or public sector.

Government activities should not be exempt from review, particularly as doing so would seem to contradict the definition of 'protected matters', such as environmental issues on Commonwealth land.

To ensure that all stakeholders are clear of their rights and obligations under the EPBC Act, and to streamline the referral process, the Government should seek to comply with the principles of the *Development Assessment Forum's Leading Practice model*.

This would see the Department declaring its interest in a location upfront, preferable at the re-zoning stage, rather than becoming involved when an application is already being processed.

The economic and social impacts in cases where the Commonwealth has only intervened after re-zoning have been detrimental on applicants and local communities.

If DEWHA does not participate at that stage, it should have no right to call in applications on land that has already been re-zoned through a recognised state or local planning authority.

The EPBC Act should also recognise state offset schemes, so that applicants who have qualified for state-based offsets are not unduly disadvantaged by the Commonwealth legislation.

(e) *What kind of impacts should be considered under the Act? Does the Act adequately encompass not just direct but also indirect impacts?*

The Property Council believes the term 'impact' used in the discussion paper is too broad.

Without clear restrictions on the definition, the Act could allow a Minister to act in almost any situation, particularly because of the coverage of 'indirect' actions.

The definition needs to be refined and made less ambiguous to give greater certainty to all stakeholders.

(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?*

There needs to be a clearer definition of 'significant impact' under the Act to ensure appropriate interpretation by the Minister and DEWHA.

Under the current legislation, there is no indication of how 'significant impact' should be measured or the baseline by which impact should be assessed.

This lack of policy certainty around the definition has led to a history of decision-making which has been largely subjective in nature.

The Commonwealth Government, as a priority, must develop and release policies which provide a certainty to those actions likely to be deemed 'significant'.

The creation of a 'broad ministerial discretion' would create significant uncertainty for all stakeholders and potentially put many applications in jeopardy.

Ministerial discretion should be strictly limited to reviewing direct impacts of a significant nature.

Assessment and Approvals

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

It is unlikely that the public understands its current responsibilities under the EPBC Act.

The development assessment process is complicated enough for the average applicant without the additional layer of Commonwealth Government environmental regulation.

Rather than a proponent having to determine whether to submit a referral under the EPBC Act, any obligations or restrictions created by that legislation should be specified in local planning rules and regulations.

These local rules should also identify clear triggers that require referrals under the EPBC Act, matched with limits being placed upon the Minister's call-in powers.

This would ensure that environmental concerns are appropriately considered in the initial assessment of an application, but remove the need for the Minister to call in applications already approved by a relevant state or territory authority.

It would also remove the potential for environmental activists unfairly to delay applications that comply with their requirements under the EPBC Act.

DEWHA must clarify its position and publicly communicate it to the industry through its policies and stakeholder forums to provide greater transparency on both the triggers and the processes being applied under the Act.

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

The Property Council notes the historical trend that a quarter of all referrals become subject to a controlled action, where the Federal Government chooses to intervene.

We also note that a quarter of all referrals come from the development industry.

Under the current rules, the Minister is subject to no more transparency than local councillors and can call in any application he or she considers may have an impact on an area covered by the Act.

Thus, the Minister can completely place significant restrictions on, or reverse, an application that has already been approved by local and state authorities.

The Government should move to ensure that the EPBC Act does not unnecessarily add to existing planning red tape.

Notification and consultation should be conducted within those existing systems at the level where the application has been made.

Once an application has been approved at one level of government, the proponent should not be subjected to further reviews, based on the whim of a Minister or the Department.

The Property Council recommends that the Federal Government engage with its state and local counterparts to ensure that the obligations and responsibilities of the Act are reflected in local plans.

These should be outlined and publicly distributed in guidelines developed by the Commonwealth.

Q4. Do you think that the Act contains an effective hierarchy of environmental assessment approaches, ranging from assessment on referral information to assessment by public inquiry? Are the methods of assessment providing the required information for informed approval decisions?

The EPBC Act provides the Government with too many different ways to assess applications, which leads to uncertainty, red tape, and inconsistent decision-making.

There should instead be one consistent approach to assessment, preferably conducted at a local, state, or territory level.

This can only be done with the establishment of a clear pathway, one with identified milestones and a defined statutory timeframe.

Applicants should be informed up front how their application may be affected by assessment under the EPBC Act, so that they can clearly understand:

- the triggers that may be applied for a referral to occur;
- the process for subsequent decision-making; and
- the timeframe within which a response will be given.

This transparency will better equip both proponents and state planning agencies to engage in a cooperative process with the Commonwealth and ensure any review is both strategic and holistic in its assessment.

The Property Council believes that assessment by public environment report or public inquiry will add significant time and cost to an application and is unnecessary.

Existing notification and appeal processes should be sufficient for the operation of the EPBC Act, so public inquiries should be removed as an assessment option.

The fact that no such inquiries had been held as at 30 June, 2008, suggests that the Government recognises this process is far too complicated and costly.

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

Public participation and subsequent transparency should be managed by each state and territory under existing notification and appeal rights.

The Australian Government should only be involved in this process for decisions affecting land which is directly under Commonwealth control.

For other areas, the Government should develop guidelines to show how each of the assessment considerations should be weighted in any decision, to inform proponents about how their applications will be handled.

This process needs to be integrated with existing planning schemes, rather than being applied as an additional layer of regulation and consultation.

The provision of public education materials, such as guides, and stakeholder workshops would be a couple of ways to improve understanding within the broader community of their rights and responsibilities under the Act.

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?*

Currently proponents are required to determine whether they need to submit their applications to the Federal Government for review against the EPBC Act.

This suggests that the Act is not effectively integrated with state and territory planning systems and that the current bilateral agreements are clearly not achieving the objective of avoiding duplication.

To date the Commonwealth has tended unilaterally to override planning assessments undertaken in other jurisdictions rather than identifying its own needs, even if the environmental or heritage nature of the case has already been considered.

This creates duplication, which imposes significant costs and delays on an applicant without providing the benefit of a clearer line of determination.

A further complication is that Commonwealth staff making determinations generally do not have specialist expertise on all relevant NES or planning matters, and little appreciation of economic realities.

A better, more integrated, system would factor the Federal Government's concerns into local environment plans so that applicants can be aware of their responsibilities from the outset.

This would provide a more comprehensive consideration of triple bottom line principles.

In our view, part of this integrated system is the revision of bilateral agreements to make them more effective for the land use planning, land development, and/or property sectors.

Timeframes for the negotiation of bilateral agreements with all states and territories should be inserted into the EPBC Act to improve the efficiency of the assessment process.

Additional value would be gained from the alignment of Commonwealth and State policy approaches to ensure that State policies and programs continue to operate without disruption by Commonwealth rulings.

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

Yes. The Commonwealth and the states and territories should ensure that jurisdiction over an application changes only in situations where a clear set of triggers already exists.

The first preference should always be for the provisions of the EPBC Act to be assessed by local or, if necessary, state authorities.

It should be a priority for local authorities to consider and factor in the needs of the Act into their local environmental plans.

In return, the Commonwealth should outline its requirements for environmental assessment to state planning authorities at an early stage so they may be included in any state review.

The Commonwealth may then have the power of veto on plans that do not adequately meet the objects of the Act.

Other than that, the Federal Government should assume an auditing role and only call in applications:

- where a clear breach has occurred; or
- in cases where it is agreed by both governments that a joint assessment would be the most suitable and efficient review mechanism.

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?

Yes. Strategic assessments and bioregional plans should be used more often as part of local plan-making.

The Federal Government should aim to provide an environmental impact map for all locations so that applicants can know up front what they can do and where they can do it.

The most important factors are time and certainty. As such, early engagement with the Government should be the key.

However, the current system of voluntary interaction has stymied the willingness of participants as engagement has continually led to significant time delays and burdens on development.

Often, agreements negotiated at one level of government have been used merely as a baseline for negotiations with the Commonwealth.

This has led to an increase in the burdens and responsibilities borne by the applicant with each new government that is involved in the review process.

If the Commonwealth's involvement were to increase in the early stages of land use planning (prior to re-zoning) and through clearer bilateral agreements, the impost upon applicants would be greatly reduced.

Bilateral agreements should include a clear pathway that highlights the key triggers, timeframes, and processes under which strategic assessments will occur.

As such, the Federal Government should immediately negotiate and/or renegotiate bilateral assessment and approval agreements with all state and territory governments.

Biodiversity

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

No, it doesn't. There is too much scope for vested interests to push their agendas within the process, regardless of the science.

The Federal Government should be more strategic and develop clear rules for applicants rather than calling in projects on a case-by-case basis.

Currently the Act has created a situation where potential effects on individual communities of species have been the focus of ministerial intervention, rather than the Government following a strategic plan for protecting the species across Australia.

The Government would achieve better outcomes if threatened communities and species were identified and factored into local environment plans, as this would deliver greater certainty to stakeholders.

The requirements of the EPBC Act should then be promoted through better communication, site visits, workshops, and partnerships with key stakeholders.

This approach would also allow the Federal Government to consider the economic and social impacts of its decisions.

In some cases compensation may need to be awarded to lessen the impacts of increased land management costs or reduced utility due to a change in zoning. This should be highlighted in the Act.

Q10. What are your views on the process for nominating threatened species, ecological communities and key threatening processes?

Experience with the legislation has shown that there is no consistency in the nomination process for threatened species, which has been highly subjective to date.

The nomination process seems to lack scientific rigour, apparently giving preference to stakeholders that make the most representations, rather than the strongest case.

The public nomination process does not seem to be entirely objective for identifying species at risk, and members have concerns that it is instead being used unfairly as a tactic to delay applications.

It would be better if the TSSC were expanded and given responsibility for mapping areas of particular significance.

These could then be reflected in local environment plans.

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?

No. The potential for emergency listing of threatened species and ecological communities creates uncertainty for all stakeholders.

The benefits would most certainly not outweigh the costs of such a decision upon individuals.

Scientific evidence and rigor in the decision-making process must be upheld and as such all nominations should be subject to rigorous scientific assessment.

If the EPBC Act has been operating effectively to date, there should be sufficient data available on threatened species and ecological communities to plan ahead, removing the need for emergency listings.

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

The Minister should consider both the economic and social impacts of listing a threatened species or ecological community on businesses and towns, as well as the environmental concerns.

He or she should also consider whether the ecological community in question is unique in the Australian ecosystem, rather than one example of a number of locations.

Often biodiversity in peri-urban areas offers a multitude of examples where small, isolated ecological communities are protected, when the relocation or protection of a larger community would be a both a preferable and more viable option.

The Minister should consider whether in some cases the relocation of an ecological community is not preferable to preventing a development which has strong potential local economic and social benefits.

In all cases, scientific evidence should be a significant determinant in decision-making.

Q13. Are the categories of threat appropriate?

The trigger for species to be considered under the EPBC Act should be the same as used for ecological communities, limiting action only to endangered or critically endangered examples.

Definitions, such as that provided for 'vulnerable' species, are vague, which results in large numbers being listed without sufficient review. According to the discussion paper, there are currently, 1700 species are listed as 'vulnerable'.

The Property Council recommends that a review be undertaken to determine whether those species currently on the list should still be included.

The category of 'extinct in the wild' for species raises additional concerns, as it suggests that locations where the species may once have existed need to be protected on the off-chance that they may experience resurgence.

This would appear to provide a 'catch-all' category to allow additional government intervention and it needs to be more closely defined.

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?

There should only be one list nationally for threatened species or ecological communities.

This would allow all governments to harmonise their definitions and listing processes for each species and community.

Overlaps between separately maintained state and territory lists currently compound the regulatory burden on stakeholders and increase the risk of adverse impacts occurring.

State specific indications could be noted in a national list to allow matters of particular local significance to be recorded and protected.

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

The degree to which Government funding is available to give effect to a recovery plan should be considered in setting priorities especially for the private sector.

It is a primary responsibility of the Government to establish a clear assessment process and conservation for each species.

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

At the moment, no.

There is no consistent response under the current legislation, with the Commonwealth showing a preference for ad hoc call-in and review for individual projects.

Certainty will only be delivered with the development of clear policy principles and a strategic framework which outlines the Department's goals and intentions for a recovery processes.

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

Yes. The coordination of all Commonwealth, State and Regional plans would greatly improve the coordination of a harmonised recovery regime.

Q19. Does the Act provide an appropriate legislative framework for addressing climate change and other emerging pressures in the context of environmental protection and biodiversity conservation? If not, how can such matters be considered when making decisions under the Act?

It would be inappropriate and premature to include additional provisions in the EPBC Act in relation to climate change.

Significant regulatory work is already being undertaken by all levels of government to define these impacts more appropriately.

The inclusion of climate change in the list of considerations under the EPBC Act would add yet another unnecessary and burdensome layer of regulation on industry and the community.

The Act should not be used as an additional tool to force further restrictions on applicants because of the assumed, but unconfirmed, potential impacts a development may have on climate change.

Otherwise it could be used to stop all applications, regardless of their perceived impact, based on political pressure, rather than scientific certainty.

Protected Areas

Q25. What factors should the Minister have regard to when making a decision on heritage listing?

The Minister should engage with the owners of a property over whether to list and how to ameliorate the effects of a listing.

The impost which is created when giving a building a 'heritage' listing is substantial.

A heritage building carries a much higher maintenance and refurbishment cost than a non-listed building.

As such, consultations should be undertaken with key stakeholders over whether to list, but weighting should be strongly in favour of the needs and situation of the owner of the property.

The level of heritage protection and the responsibilities that ensue should be on a sliding scale based on the level of significance of the site.

Furthermore, some effort should be made to compensate an owner for loss of flexibility if a building is to be listed.

Q26. What are your views on the process for nominating and listing Commonwealth Heritage and National Heritage places?

Properties leased by the Commonwealth that may become listed should only be declared a heritage site in full consultation with the owners.

If a building is listed at the Commonwealth's instigation, the Government should assume some of the costs of listing the building and funding its ongoing maintenance.

Attempts should be made to agree over how the preservation of the heritage nature of the building is to be carried out and funded.

Q28. Given that the protection and conservation of Australia's heritage is shared between the different levels of government, are there any improvements in the current legislative arrangements that would be of benefit?

There is significant benefit in harmonising the approach to heritage listing.

Of these, the most vital is the process for determination and available appeal rights at each level of Government.

The vast majority of heritage listed buildings are owned and operated by private entities.

While governments may choose to list them, it should be recognised that the owners are left with the ongoing costs of running and maintaining these properties.

Clear principles should be developed to determine which sites are to be listed, in consultation with the private sector.

Existing frameworks should be streamlined and harmonised at a national level and provide building owners with a clear process for appeal against heritage decisions made by local, state, or federal jurisdictions.

Above all, significant weight should be given to the views of an owner about whether their building should be listed.

When a property meets the appropriate thresholds for listing, then provisions should be made by the Federal Government to assist owners with the maintenance and operation of the property.

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?

The operation of the provisions for Ramsar wetlands requires greater clarity with regard to the goals and management plans covering these areas.

Management of such sites would be greatly improved with significantly increased interaction between all levels of government and key stakeholders.

This will help them to develop a streamlined and transparent approach.

Indigenous Involvement

Q31. Are there opportunities to harmonise legislative provisions for the protection of indigenous heritage values? If so, how?

Most indigenous heritage concerns are handled under the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 and the Protection of Movable Cultural Heritage Act 1986.

The EPBC Act is not the right mechanism to deal with these matters, which have largely been managed directly by the States, as is appropriate.

Although it is not part of this review, the Federal Government should work with its state and territory counterparts to harmonise the interaction of Commonwealth, state, and territory indigenous heritage legislation.

Clear pathways and triggers would be needed, if the Commonwealth intends to shift into this area.

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?

Clear actions, responsibilities, and timeframes for responses should be provided as part of any ruling.

Monitoring, evaluation, and auditing of actions should be devolved to the local or state government with jurisdiction over the area.

Q36. Are the offence and civil penalty provisions appropriately framed to encourage compliance with the Act?

The civil penalty provisions under the Act are more appropriate than criminal charges.

These provide a better framework to facilitate negotiation of necessary controlled actions.

However, there is some anecdotal evidence which suggests that the application of civil penalties occurs at quite a low threshold level.

Penalties are often applied quite broadly to include a significant range of stakeholders that do not have direct responsibility for the project or for the actions in question.

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?

Experience with the Act to date has shown that the Minister has far too much flexibility to make rulings on projects.

There are no clear, location-specific guidelines to steer these decisions, which compounds the uncertainty for stakeholders and demonstrates a need for prudence.

The Minister should generally leave decision-making to those at a local government level and only call in applications for review where clear breaches of the Act have occurred.

Ultimately, the Minister should be the arbitrator of last resort – in other words, only ruling on cases of extreme risk to biodiversity.

Any guidelines that are developed should be made publicly available to help provide a policy framework for Ministerial decision-making.

Q39. Are the roles of the various Committees established under the Act appropriate for meeting the objects of the Act?

No. The approach to making decisions under the Act appears to be bureaucratic and open to inappropriate influence by those with a vested interest.

To date the role of Committees has not demonstrated additional value to the process.

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?

At present there is too much willingness on the part of governments to use the precautionary principle as a reason to intervene in projects.

Even more disconcerting, has been the growing trend of development assessors responding to political pressure and make populist decisions that are not supported by solid science.

The ability to call projects in on the grounds of uncertainty should be significantly restricted in the face of limited scientific evidence or where clear predetermined thresholds have not yet been reached.

If governments are concerned about making decisions in the face of a lack of 'full scientific certainty', more effort should be made to obtain complete data sets on threatened species or ecological communities.

Where scientific certainty does not exist, it is inappropriate to use anecdotal or other non-scientific data to justify decisions.

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?

Yes. Much of this could be managed through the use of objective rules and tests, and the establishment of clear, plain English planning policies.

This will allow proponents to know what is required of them before making an application.

Public notification of, and consultation on, applications should only occur through existing state and territory development assessment mechanisms.

However, decision-makers should not be swayed by community activism in the absence of scientific evidence.

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?

The more reliance there is placed on merit reviews of applications, the greater the potential uncertainty for stakeholders.

Merit reviews are also likely to blow out assessment timeframes, which would cost proponents significant amounts of money, both directly and through opportunity costs.

The more potential there is for additional review, the more likely it will be that vested interests could unreasonably obstruct and delay a project.

This counteracts the Government's own policy of supporting development that is both sustainable and affordable.

Q43. Should a separate body be established to make certain decisions under the Act? If so, what kind of body should be established and what decisions should be entrusted to it?

No. The Federal Government should apply the principle of subsidiarity to decisions under the EPBC Act.

As often as possible, decision-making should be devolved to state, territory, or local jurisdictions as appropriate, with clear direction on what is required given beforehand by the Commonwealth.

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?

The Government should adopt the leading practice principles for development assessment created by the Development Assessment Forum and move to simplify this significant additional layer of regulation.

It is imperative that a policy framework be established which creates clear pathways, responsibilities, and timeframes for decision-making.

This will assure all stakeholders that applications under the EPBC Act are considered in an appropriately transparent and accountable way.

The Department should also introduce benchmarks to enable it to monitor the efficiency and effectiveness of the decision-making process.

The Property Council of Australia

The Property Council of Australia comprises the leading developers, financiers, owners and managers of investment property in Australia. Our members currently own more than \$300 billion of domestic assets.

In addition, the Property Council's members include all the major construction, professional, and trade services suppliers working within the property sector.

The Residential Development Council is a national policy division of the Property Council of Australia, representing the most senior management of Australia's leading residential housing development companies.

As at least a quarter of all applications called in for review by the Minister under the *Environmental Protection and Biodiversity Conservation Act* are for construction or development projects, the Property Council and its members have a significant stake in the outcomes of this review.

For more information, or to discuss this submission further, please don't hesitate to contact:

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