

19 June 2018

Agricultural Review (Aither)
Level 2, 45 Exhibition Street
Melbourne VIC 3000

Dear Sir/Madam

Independent Review of Interactions between the EPBC Act and the agriculture sector

Thank-you for offering Tasmanian Irrigation (TI) the opportunity to provide comment into the independent review of the interactions between the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the agriculture sector. Further to TI's discussions with the Directors of Aither on Monday 28 May 2018, please find below statements relating to the questions posed in the Briefing Paper.

TI is a state-owned company that develops, owns and operates irrigation schemes in Tasmania. We are responsible for the operation of 15 irrigation schemes with the capacity to deliver over 120,000 ML of water annually, and are currently constructing a further three schemes to deliver an additional 18,500ML. Currently TI provides irrigation water to 810 entitlement holders, with an additional 189 purchase contracts underway. Our aim is to provide reliable, cost effective water to facilitate diverse agricultural activities, growing the Tasmanian economy while protecting our natural assets.

Interactions with the EPBC Act

TI's two core business areas have had extensive interactions with the Department of Environment and Energy (DoEE) in relation to the EPBC Act. They include:

- Build Section preparing and referring proposed actions (in consultation with DoEE's pre-referral section) for assessment to obtain approval and to support funding applications.
- Build Section implementing, monitoring, providing status updates and closing out EPBC Act construction approval conditions and commissioning requirements.
- Operation Section managing on-going EPBC Act compliance activities including reporting on monitoring programs, providing status updates on the implementation of operation approval conditions and consulting with DoEE's post approvals, compliance monitoring and audit sections.

One of the limiting factors in the development of TI's irrigation schemes is the time and the financial costs associated with delays caused through funding approval and environmental assessment processes.

As such TI's philosophy to date has been to refer all 'actions' to the Australian Government Minister for the Environment for assessment and a determination. This is irrespective of the results of TI's EPBC Act significance tests. TI has received 15 EPBC Act approvals which include 1 *Controlled Action*, 1 *Strategic Assessment*, 6 *Not a Controlled Action provided undertaken in a particular manner (NCA PM)* and 6 *Not Controlled Actions*. All referred actions have been approved. TI also inherited one scheme with on-going EPBC Act approval conditions.

Experience gained has proved it is also beneficial that TI furnish all EPBC applications with comprehensive and extensive detail (eg scientific surveys and studies, details of proposed mitigation measures, construction and operation environmental management documents).

The above undertakings (ie refer all actions, furnish with extensive detail) provide TI with a greater level of assurance in the outcome of relevant approval processes, assist in understanding the resourcing requirements of environmental obligations likely during the construction and operational phases and are believed to provide substantial time and cost savings. Adoption of these approaches reduces the possibility that the action be referred by another party despite a TI significance test determining otherwise, and reduce the possibility of a 'stop the clock' being enacted pending additional information being supplied.

Understanding of the EPBC Act and obligations

It is considered that relevant TI staff have an adequate understanding of the obligations under the EPBC Act. Advice on the obligations and requirements of the EPBC Act is generally sought from officers of the relevant section of the DoEE, and at times obtained from Policy Conservation Assessment Branch (PCAB) (Department of Primary Industries, Parks, Water and Environment (DPIPWE)) particularly when conditions of EPBC Act approval have been delegated to State approval instruments and where they are joint approval holders with TI (eg Strategic Assessment). As all TI applications are referred under the EPBC Act, and comprehensively address both State and Federal Government environmental requirements, confusion has occurred at times as to who the responsible regulator is to oversee their implementation and to gain approval for any changes. For example, conditions on various EPBC Act NCA PMs have over time been transposed to Environmental Protection Notices issued by the Tasmanian Environmental Protection Agency and conditions of permits, approvals and licences administered by DPIPWE. Conflicting advice has been received at times from both the DoEE and the relevant state regulator as to who is ultimately responsible for the requirement, and who to apply to, to vary conditions.

In general, dealings with the DoEE both pre- and post-referral have been fruitful and useful. At times however, it has been found to be difficult and confusing to know which DoEE section (eg post approvals, compliance monitoring, audit) to contact to discuss specific requirements of conditions. This can be frustrating, for example not knowing whether requests are being processed and/or progressed or not.

TI always consult with PCAB (DPIPWE) when preparing a referral document with regards to any potential impacts of the proposal on both State and Federally listed threatened species and communities. This is to ensure that the required permits can be obtained, that the proposed management strategies (including construction and operation monitoring programs) address matters of their concern and to assist in determining and meeting the likely DoEE requirements. PCAB (DPIPWE) have always been of great assistance in this matter.

TI are joint holders of one Strategic Assessment with DPIPWE; for the Lower South Esk and Midlands Irrigation Schemes. Similar to all TI applications, the entire irrigable area (in the irrigation districts) was considered under the original application, and no additional 'actions' are to be assessed under the Strategic Assessment. The assessment pathway chosen for these two irrigation districts is not believed to be consistent with similar activities, potential impacts and mitigation measures assessed and approved under the EPBC Act. TI follows principles of good governance including consistency,

transparency and efficiency of operation. The fact that two schemes of similar nature are being managed under a separate governance arrangement from the other 14 EPBC Act approved schemes administered by TI causes administrative and governance difficulties.

EPBC Act cost implications

The costs involved in complying with the EPBC Act both in the Build and Operational phases are great. They are incorporated by Build Section into the project development and operational costs and have at times influenced decisions on the viability of schemes.

Dependent on the size, location and complexity of the proposed actions referral costs for TI Schemes have generally ranged between \$50,000 to \$200,000. Environmental safeguards and management strategies incorporated during construction generally cost contractors and TI between \$30,000 and \$100,000. It should be noted that the environmental costs do not always correlate to the cost of the scheme. Environmental costs related to the feasibility (ie application) and construction stages can vary anywhere between 2 and 10% of the overall scheme costs.

Irrigators are informed upfront of the likely initial environmental compliance costs (eg Farm Water Access Plan development) and on-going costs (eg implementation of monitoring programs, audits) and factor this into their decision as to whether to join a scheme. Environmental compliance costs during the operational phase are primarily borne by the irrigators. They can be anywhere up to \$40/ML dependent on the commitments made in the referral application and any additional conditions applied to the EPBC Act approval. TI is continually seeking ways to reduce costs to irrigators whilst remaining compliant. Such measures include developing risk based approaches to monitoring and reviewing monitoring programs after agreed time periods or after sufficient data has been obtained to make an application for a reduction. Several of TI's schemes' environmental conditions (eg pest fish and water quality monitoring, Farm WAP auditing) are for the life of the scheme (ie 100 years) and the associated costs will continue to be borne by the irrigators.

One of the instruments used to assist in ensuring the long-term viability of land for agricultural production and the protection of natural values and biodiversity are **Farm Water Access Plans** (Farm WAPs). All TI referral applications for new irrigation schemes are submitted with the undertaking that all irrigators will have a Farm WAP in place prior to the application of TI water. The content and process for their development has been approved by the DoEE and DPIPWE. All land within 50m of an area to be irrigated is surveyed for threatened species and ecological communities. These areas are highlighted in every Farm WAP and management measures are prescribed to ensure their protection. Related environmental protection protocols (eg Forest Practices Plans for the removal of vegetation under the Forest Practices Authority and chemical use records) are also detailed in the Farm WAPs. Farm WAPs are a further cost to both TI and the irrigator. The production of each document in the construction phase usually ranges between \$1,500 and \$6,500; whilst in the operational phase amendments to the document (eg additional areas) can range between \$1,500 and \$3,000. The total annual Farm WAP audit cost for all TI schemes is in the vicinity of \$40,000.

TI spends a great deal of time and resources both in the pre-feasibility and construction phases explaining the requirements and the need for the EPBC Act to irrigators. This is particularly when they are questioning costs (eg Farm WAP development costs, fixed charge costs which cover on-going monitoring programs required by EPBC Act approval conditions for threatened flora and fauna species, water quality monitoring, AusRIVAS assessments, Farm WAP auditing requirements).

It has been found that despite the initial explanations, generally irrigators have little understanding of the EPBC Act's compliance obligations, implications of non-compliance and associated penalties. As such TI often assumes the role of educator and quasi-enforcement officers of the EPBC Act to ensure individual irrigators' compliance.

Data collection

The environmental compliance work undertaken by TI has resulted in a significant increase in environmental information held by the State and Federal Governments. Delisting of a species occurred after the application for the Midlands Irrigation Scheme Strategic Assessment was assessed and approved. Previously listed *Carex tasmanica* (curly sedge) was found throughout the irrigation area whilst undertaking surveys for the compilation of the Farm WAPs and the species was subsequently delisted.

Suggested efficiencies/ improvements to process

Based on the detail in the above findings and statements, TI recommends the following measures be adopted to address some of the inefficiencies and to improve administration of the EPBC Act:

- An automated online process be developed that can make a final determination based on clearly definable thresholds on whether an action is likely to have a significant impact on a Matter of National Environmental Significance and therefore require referral for assessment under the EPBC Act.
- That if such a process is implemented, and the process demonstrates that a particular action is not required to be referred for assessment, that there be a guarantee that external persons cannot request that the action be called in for referral at a later date.
- A dedicated contact person in the DoEE be responsible for overseeing the project through the entire EPBC Act process from referral to post approval and compliance monitoring and who will manage any enquiries throughout the life of the project. The proponent of the action also be required to have a nominated contact person, and that in the event either person changes, that a handover process occur.
- Clarity be provided as to who is ultimately responsible for the management/enforcement of EPBC Act conditions of approval particularly where they have been transposed/copied/devolved to State instruments and where they refer to management plans and other documents to be developed in consultation with State Regulators.
- Applications for irrigation districts that have had all of the assessed irrigable land included and are supported by extensive on-going management and mitigation measures not be considered as a Strategic Assessment. This is based on there being no possibility to assess any additional 'actions' under the Strategic Assessment as all of the land is already assessed and on-going monitoring and adaptive management strategies (eg Farm WAPs/ monitoring programs) are in place to ensure the on-going management of impacts on a Matter of National Environmental Significance.

Should you require clarification of any of the points raised, please contact Kate Guard, Manager, Environmental Services on 0477 661 466 or kate.guard@tasirrigation.com.au in the first instance.

Yours sincerely



Nicola Morris
Chief Executive Officer
Tasmanian Irrigation