

**Development (Regulated Trees) Amendment Bill 2007**

*By Rebecca McAulay – Associate – Norman Waterhouse*

The Development (Regulated Trees) Amendment Bill 2007 was withdrawn from debate on 18 October 2007. The amendments to the Development Act 1993 proposed by the Bill, which was introduced into the Legislative Council on 1 May 2007, were largely similar to those from the previous Bill introduced on 7 December 2006.

**Development Plan Amendments**

*By Rebecca McAulay – Associate – Norman Waterhouse*

*(as previously published by Norman Waterhouse Lawyers in Environment and Planning Briefly October Issue No 36)*

On 27 September 2007 a number of the suspended provisions of the *Development (Development Plans) Amendment Act 2006* (“the Act”) came into operation in conjunction with the *Development (Development Plans) Variation Regulations 2007* (“the Regulations”).

The most significant amendments relate to Sections 24-27 of the Development Act 1993, and a number of consequential amendments have been made to Regulations 9-13 of the Development Regulations.

The most obvious amendments are in relation to some basic terminology, the most significant being the transition from “Plan Amendment Report (PAR)” to “Development Plan Amendment (DPA)”. DPAs will be processed in accordance with either process A, B or C. A different set of each of these processes exists for DPAs of the council, and DPAs of the Minister. The three processes differ in respect of the order of events such as the referral to relevant departments and agencies, the consideration by the Minister, and the public notification. Changes have also been made to the council’s public notification process.

The amendments to the Development Regulations 1993 principally relate to the matters to be included in a Statement of Intent. The most significant changes being the introduction of matters under the headings: Minister’s Policies, Council Policies, Policy Library and Process, with Region-Wide Policies no longer being a requirement. Further, a council will now be required to provide a statement confirming that no one directly involved with the preparation of a DPA has a conflict of interest, and is required to forward a commitment that it will take steps to update the timetable for each step in the DPA process if it appears that an extension may be required.

**WESTERN AUSTRALIA**

*James Sippe and Clara Bowman*

**Biosecurity Bill Passed**

The *Biosecurity and Agriculture Management Bill 2006* (WA) (BAM Bill) has been passed by the WA Parliament and is awaiting assent. The BAM Bill will consolidate the WA legislation that controls pests and diseases and regulates the use of agricultural and veterinary chemicals.

The consolidation would involve:

- establishing a Biosecurity Council as an advisory body on matters related to biosecurity;
- establishing the Western Australian Agriculture Ministerial Body, which will assist the Minister in the administration of the Act;
- creating a number of offences, including an offence of importing a prescribed declared pest carrying a fine of \$15,000;
- providing for the declaration of pests and diseases as ‘prohibited organisms’ (with associated restrictions relating to importation and control); and
- providing for the management of chemical residues on land and the control of the manufacture and supply of agricultural and veterinary chemicals.

The Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Bill 2006 (WA), also awaiting assent, will repeal a number of Acts, including the *Aerial Spraying Control Act 1966* (WA); the *Agricultural Produce (Chemical Residues) Act 1983* (WA); the *Agriculture and Related Resources Protection Act 1976* (WA); and *Fertilizers Act 1977* (WA).

### **Petroleum Amendment Bill 2007**

The *Petroleum Amendment Bill 2007 (WA)* (**Petroleum Amendment Bill**) will amend the *Petroleum Act 1967 (WA)* to extend its coverage to geothermal energy. The Petroleum Amendment Bill will:

- amend the *Petroleum Act 1967 (WA)* title to the *Petroleum and Geothermal Energy Resources Act 1967 (WA)* (**PGER Act**);
- prescribe the geothermal energy operations that are exempted from the PGER Act, being primarily small scale, non-commercial operations;
- regulate geothermal energy resources mining and geothermal energy, including providing for geothermal exploration permits, drilling reservations, retention leases and production licences;
- require geothermal energy recovery development plans and provide for variation of approved plans;
- provide for geothermal special prospecting authorities and access authorities;
- provide for overlap between petroleum and geothermal energy operations, including overlap between petroleum and geothermal titles; and
- prescribe related fees, royalties, offences and notification requirements.

### **Gorgon Gas Project approved**

The Barrow Island Gorgon Gas Project has received Western Australian State Government approval, subject to strict environmental conditions, including:

- creating a Carbon Dioxide Injection System, which would store any carbon dioxide released underground;
- implementing a North West Shelf Flatback Turtle Conservation Program;
- the submission of a range of management plans;
- the submission of annual compliance and environmental performance reports; and
- the establishment of dredging monitoring panel.

Project operator Chevron confirmed that the joint venture partners, Chevron, ExxonMobil and Shell, had accepted the conditions.

### **DEC Charges Esperance Port Authority (WA)**

The Esperance Port Authority has been charged under the EP Act by the DEC. The charge follows the lead contamination of the Esperance Port which has attracted considerable media attention. The Esperance Port Authority has been charged with causing pollution with criminal negligence, failing to give notice of a waste discharge likely to cause pollution, causing pollution, emitting unreasonable emissions and causing an emission in contravention of a licence. The offence of causing pollution with criminal negligence carries a maximum penalty of \$1 million.

The Parliamentary Inquiry into the contamination found that the DEC failed in its regulatory responsibilities, that the Esperance Port Authority had acted irresponsibly and possibly unlawfully, and that the transport company, Magellan Metals, exposed its workers and the Esperance community to unacceptable health and environmental risks. The report concluded that the lead contamination was foreseeable and preventable.

Magellan Metals has since changed its lead handling procedures and has applied to the EPA to export metals through the Fremantle Port.

### **Climate Change on the APEC Agenda**

'Aspirational' goals to tackle climate change were set by leaders attending the APEC meeting in Sydney. APEC's approach allows individual goals and action plans for improving energy efficiency to be tailored by each member nation to suit their own economic and social circumstances. Former Prime Minister John Howard claims the goals are a significant step, despite the lack of specific targets, because major polluters such as the US, China and Russia are included for the first time.

This new agreement also obliges developing countries to cut emissions, which is an important step given that the vast bulk of growth in emissions is from the developing world. All countries will have to reduce emissions for the goals to be achievable.

The agreement was comprised in the *Sydney APEC Leaders' Declaration on Climate Change, Energy Security and Clean Development*, of which the key components include:

- long-term 'aspirational' goals for the reduction of global greenhouse gas emissions and the contributions each economy will make to achieve these goals;
- regional goals for the reduction of energy intensity and to increase forest cover;
- emphasis being placed on improving both economic growth and reductions in greenhouse emissions through new technologies.

The 'aspirational' goals include an APEC-wide 25% reduction in energy intensity by 2030 and increasing the region's forest cover by at least 20 million hectares by 2020. If these goals are achieved they would store some 1.4 billion tonnes of carbon, equivalent to around 11 per cent of annual global emissions (in 2004).

To help achieve the goals, two new co-operative bodies are planned, an Asia-Pacific Network for Sustainable Forest Management & Rehabilitation and an Asia-Pacific Network for Energy Technology. The bodies will strengthen information sharing and facilitate research linkages and co-operation.

Australia and other APEC economies have also welcomed the US Major Economies Meeting in Washington and the December UN meeting in Bali to develop an effective framework for future action on climate change.

### **Review of native vegetation clearing regime**

*Kathryn Barras, Lawyer, Minter Ellison*

In 2004, amendments were made to the *Environmental Protection Act 1986 (WA) (Act)* and the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004 (WA) (Regulations)* were introduced in order to establish a regime to govern the clearing of native vegetation.

Pursuant to the Act, clearing of native vegetation is an offence unless a clearing permit has been granted or the clearing is exempted under the Act and the Regulations. Applications for clearing permits are made to the Department of Environment and Conservation (**DEC**), or in the case of resources-related clearing, the Department of Industry and Resources (**DoIR**).

The Auditor-General undertook recently a review of the management of native vegetation clearing in Western Australia (**Report**).

The Auditor-General found that since 2005 over 800 applications have been made, of which 550 clearing permits have been granted. During that period clearing permits for an area of more than 16,500 hectares (**ha**) had been approved, with two thirds of that area for mining and petroleum activities. This equates to clearing ten football fields per day. The total area of clearing that has been refused is around 7,300ha.

The Report was highly critical of the DEC in its failure to test whether there is compliance with application decisions and to investigate unauthorised clearing identified through satellite imagery and to investigate complaints of unauthorised clearing. Part of this failure may be due to DEC's focus in implementing a programme of reforms to improve efficiency and effectiveness of processing applications to clear a backlog of applications. In addition, the DEC will provide training of DoIR departmental assessors to take on the power of inspectors under the Act to enable DoIR to assist DEC in assessing compliance with approvals and conditions.

No applications made to DoIR have been refused or declined (where the applicant has no legal right to make the application), although 27% applications have been withdrawn. Of applications made to DEC, 6% have been refused and 6% have been declined, with 25% withdrawn. This would appear to indicate that, particularly in relation to clearing permits for mining and petroleum-related activities, the trend is clearly towards approval.