



Department of **Water and Environmental Regulation**

Department of **Planning, Lands and Heritage**

# Memorandum of Understanding

for collaborative arrangements between the

Department of Water and  
Environmental Regulation

and the

Department of Planning,  
Lands and Heritage

## Foreword

This Memorandum of Understanding (MOU) sets out how the Department of Water and Environmental Regulation (DWER) and Department of Planning, Lands and Heritage (DPLH) will interact with each other in relation to their respective regulatory approvals processes and services.

The primary intent of the MOU is to:

- ensure that when the two agencies interact with each other, their respective legislative and procedural responsibilities are carried out in an efficient, effective, transparent, and consistent manner;
- ensure timely delivery of efficient, effective, and consistent expert advice; and
- facilitate DWER's early engagement in Western Australian Planning Commission-led strategic planning processes, including providing advice on strategic planning instruments (regional and sub-regional strategies, district structure plans and State-led precinct plans), and statutory planning instruments (region schemes and amendments, and improvement schemes and amendments).

The principles and objectives outlined above and in this MOU are also supported and endorsed by the independent Environmental Protection Authority (EPA) and Western Australian Planning Commission (WAPC), which both receive significant technical, administrative, and regulatory support from the departments to enable them to effectively perform their respective statutory functions.



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**Darren Walsh**  
Chair  
Environmental Protection Authority

Date: 10 December 2024



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**David Caddy**  
Chair  
Western Australian Planning Commission

Date: 10 December 2024

# 1 Introduction

This Memorandum of Understanding (the MOU) sets out how the Department of Water and Environmental Regulation (DWER) and Department of Planning, Lands and Heritage (DPLH) (collectively, the 'Parties') will interact with each other in relation to their respective regulatory approvals processes and services.

DWER supports Western Australia's community, economy and environment by managing and regulating the State's environment and water resources under various Acts including the *Environmental Protection Act 1986* (EP Act). DWER provides support to assist the independent Western Australian Environmental Protection Authority (EPA) to meet its objectives and carry out its functions as required by the EP Act. This includes undertaking environmental impact assessments (EIA) of both significant proposals and schemes under Part IV of the EP Act. The outcomes of an EIA inform the EPA's recommendation to the Minister for Environment on whether a significant proposal or scheme should be implemented and, if so, what conditions should apply.

DPLH supports state-level land use planning and Crown land management, as well as the oversight of Aboriginal cultural heritage and built heritage matters. For the planning portfolio functions covered by this MOU, it provides technical, administrative, and regulatory support to the Western Australian Planning Commission (WAPC), Development Assessment Panel (DAP) and relevant State Government Ministers in their respective roles as statutory decision-making authorities, including in the formulation and assessment of planning proposals; region planning schemes or amendments to region planning schemes; and improvement schemes or amendments to improvement schemes as necessary under the *Planning and Development Act 2005* (PD Act).

Under the EP Act, the WAPC is the responsible authority (RA) for a region planning scheme, improvement scheme and associated amendments referred under Part 4 or Part 8 of the PD Act for EIA under Part IV of the EP Act.

The WAPC is also involved to some extent in the preparation and submission of local planning schemes and amendments which are prepared by the local government and referred by the local government to the EPA under the PD Act.

The arrangement between the WAPC and DPLH is outlined in a Charter. Ultimately, the WAPC is responsible for most state planning functions, subdivision applications, and significant development pathway applications. DPLH also supports the Heritage Council of WA, Aboriginal Cultural Heritage Committee, Aboriginal Affairs Planning Authority, Pastoral Lands Board, and the relevant State Government Ministers in a similar capacity.

This MOU seeks to facilitate the effective administration of the EP Act and PD Act (and related subsidiary legislation). It recognises that both Parties administer specific legislative functions and adopt procedural responsibilities for environmental protection and land use planning, amongst other matters. The primary intent of the MOU is to ensure that when the Parties interact with each other, these respective legislative and procedural responsibilities are carried out in the most efficient, fair, transparent and consistent manner. It also ensures timely delivery of consistent and efficient advice, and a reduction and (where possible) removal of administrative overlap and duplication within a risk-based regulatory approach.

## 2 Purpose

Both Parties have legislative obligations, functions, and responsibilities for environmental and water resource protection and land use planning. The purpose of this MOU is to assist the Parties to meet their respective legislative obligations and regulatory responsibilities under the relevant legislation. The MOU provides a framework for specific arrangements between the Parties that are contained in a series of Schedules.

## 3 Values

This MOU sets out how the Parties will work together to facilitate:

- the EIA of significant proposals and planning schemes under Part IV the EP Act; and
- DWER's consideration of strategic planning instruments including district structure plans, standard structure plans and precinct structure plans.

The Parties will always work towards central principles that support good public administration, including accountability, transparency, integrity and efficiency.

Whilst ensuring legislative requirements are met, the Parties will seek to apply a risk-based approach to deliver effective outcomes.

The Parties will remove administrative overlap and duplication where possible.

The Parties acknowledge the distinct roles of each department and relevant decision-makers. Each Party will reference delegations appropriately and note that advice provided is not binding in nature.

## 4 Agreed activities

This MOU provides an administrative framework that:

- defines the roles and responsibilities of DPLH (planning portfolio) and DWER in their interactions with each other; and
- recognises that there are both statutory and non-statutory processes requiring interactions between DPLH and DWER.

Schedules have been developed for specific working arrangements. These Schedules are attached to this MOU and can be updated or revised by the Parties without requiring amendment of the overarching MOU.

## 5 Respect roles and responsibilities

The Parties will respect each other's roles and responsibilities, including the provision of advice to decision-makers without constraining or fettering their discretion, except where required by law.

## 6 Planning and working cooperatively

The Parties will plan and implement work to be cooperative with each other. The Parties will regularly forecast requirements for cooperative work under this MOU to allow each other to plan and allocate resources as required.

## 7 Effective consultation and communication

The Parties will:

- exchange current, accurate and relevant information and advice in good faith; and
- ensure detailed consultation occurs for proposed changes to relevant external and internal documents relating to this MOU.

## 8 Timelines

The Parties will use their best endeavours to meet the timelines for advice outlined in the Schedules. Both Parties recognise that this may not always be achievable. Where possible, the Parties will accommodate reasonable delays in the provision of advice.

## 9 Sharing information

Both Parties will:

- maintain the use, security and non-disclosure of confidential information;
- assume information is confidential unless otherwise advised; and
- retain the intellectual property of their own documents.

Where the Parties consider the findings of an audit, investigation or inspection is of interest to the other Party, it will notify the other Party.

Where a Party becomes aware of a circumstance that may be a non-compliance or a notifiable event under the other Party's legislation, it will notify the other Party as soon as practicable.

The Parties will collect information that may assist each other in an investigation of any such non-compliance or notifiable event, where practicable and permitted by law.

## 10 Complaints and enquiries

For complaints and/or enquiries related to a jointly regulated project, it is agreed that both Parties will undertake a collaborative approach to notify each other of the complaint and/or enquiry, where relevant.

Where it is determined that a complaint and/or enquiry should be referred to the other Party for action, the Parties will consult each other and agree on which Party will take the lead role in the investigation. The Party conducting the investigation will ensure the other Party is kept up to date during the process of managing the complaint and/or enquiry.

## 11 Policy development

The Parties will consult each other about policy development, new or revised legislation, and guidelines, where relevant to planning and the environment.

The Parties will aspire to complementary policy and decision-making.

## 12 Contentious issues management

The Parties will undertake to coordinate advice on contentious issues related to application types covered by this MOU to the respective Ministers, the media and the public. The Parties will nominate a lead Party for contentious issues to provide advice to the respective Ministers, the media and the public. Where appropriate, the lead Party will act with the agreement of the other Party and provide final versions of advice and correspondence to the other Party.

## 13 Dispute resolution

The Parties will always try to resolve any disputes that arise through negotiation, commencing at the lowest, most informal level. The Parties will negotiate at an equivalent level. If disputes cannot be resolved by negotiation, they will be escalated to the next level.

Where necessary, matters will be referred to the Directors General of DWER and DPLH. The Parties commit to using their best efforts to resolve disputes where possible without escalation to their respective Ministers or Parliament.

## 14 Governance

The Parties will collaborate to achieve ongoing operation and oversight of this MOU.

The Parties will establish and participate in regular management meetings with agreed outcomes recorded. The frequency of the management meetings will be decided by agreement and will be varied as required.

The Parties will hold interagency workshops, specific to the content of each Schedule, on a regular basis. The frequency of the interagency workshops will be decided by agreement and will be varied as required.

## 15 Audit and reporting

The Parties may undertake audits during the period of this MOU. Audits will be performed by agreement according to terms including audit scope agreed by the Parties for the purpose of the audit.

The frequency of audits will be decided by agreement and will be varied as required.

The Parties may use external providers to perform audits, or they may perform audits themselves.

Audits will focus on implementation of this MOU and its effectiveness.

Where an audit is performed, the Parties will report the audit outcomes to the EPA and WAPC.

## 16 Duration

This MOU will commence from the date of execution and continue to apply, as amended from time to time, until it is terminated by written notice by either Party.

## 17 Review

This MOU (including its Schedules) is subject to a review every five years. A review may be undertaken sooner if there is a substantial change in State Government policy affecting the subject or substance of this MOU.

Amendments to this MOU (including revising existing Schedules or creation of new Schedules) must be in writing and may occur at any time, with the signed approval of both Directors General.

## 18 Legal status

This MOU is not intended to be legally binding. It does not create enforceable obligations between the Parties. The Parties are bound by legislation to perform their functions. This MOU does not abrogate the legislative responsibilities of the Parties.

## 19 Execution

The signatories below endorse this MOU:



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**Alistair Jones**  
Director General  
Department of Water and Environmental Regulation

Date: 15 December 2024



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**Anthony Kannis**  
Director General  
Department of Planning, Lands and Heritage

Date: 16 December 2024

## Schedule 1

## List of Schedules

	<b>Title</b>
<b>Schedule 1</b>	<b>List of Schedules</b>
<b>Schedule 2</b>	<b>Schedule for arrangements to facilitate DWER's engagement in WAPC-led strategic planning processes</b>  Date approved: 16 December 2024  Status: Current
<b>Schedule 3</b>	<b>Communication Protocol between DWER and DPLH for advice to assist EPA assessment of significant proposals under Part IV of the <i>Environmental Protection Act 1986</i></b>  Date approved: 16 December 2024  Status: Current
<b>Schedule 4</b>	<b>Communication Protocol between DWER and DPLH for advice to assist EPA assessment of schemes under Part IV of the <i>Environmental Protection Act 1986</i></b>  Date approved: 16 December 2024  Status: Current



## Schedule 2

### **Schedule for arrangements to facilitate DWER's engagement in WAPC-led strategic planning processes**

This Schedule provides interim arrangements for the provision of DWER's (EPA Services Directorate) early advice and engagement in WAPC-led strategic planning processes. Both Parties agree that this Schedule will be further developed in accordance with the Review section provided below.

#### **Agreed activities**

The Parties agree to work together to support and enable DWER (on behalf of the EPA) to engage early and effectively in the planning process for strategic planning instruments and schemes.

The Parties agree that the objective of this Schedule is to achieve better environmental outcomes, and DWER commits to:

- provide preliminary advice in line with the pre-referral process, including identification of key environmental factors and environmental information requirements to inform and minimise environmental impact;
- participate in technical working groups with WAPC/DPLH and offer high-level technical expertise on complex planning and environmental matters; and
- provide constructive verbal and written advice at key milestones in the planning process to ensure potential environmental impacts are identified and appropriate mitigation measures are implemented.

This Schedule applies to the following instruments, including, but not limited to:

- regional and sub-regional strategies;
- district structure plans under region schemes and the *Planning and Development Act 2005*;
- region schemes and amendments; and
- improvement schemes and amendments.

#### **Review**

The Parties commit to review and update this Schedule within six months of the date of this MOU or at any earlier time as agreed.

## Schedule 3

## **Communication Protocol between DWER and DPLH for advice to assist EPA assessment of significant proposals under Part IV of the *Environmental Protection Act 1986***

The information provided in this Schedule relates only to the undertaking of environmental impact assessments (EIA) of proposals referred to the EPA under Part IV of the *Environmental Protection Act 1986* (EP Act). This Schedule applies to the following types of proposals, including, but not limited to:

- subdivision applications;
- development applications; and
- significant development applications under Part 11B or Part 17 of the *Planning and Development Act 2005* (PD Act).

### **Formal consultation procedures**

Formal consultation procedures between DWER and DPLH are detailed below.

Requests for information under s 40(2)(a) of the EP Act and investigations and inquiries under s 40(2a) of the EP Act will be made by the Chair or Deputy Chair of the EPA (under delegation).

All other requests for formal consultation will be made in writing from DWER's Executive Director, EPA Services or the relevant Branch Manager (or other authorised representative) to DPLH's Executive Planning Director (Metro/Regional).

Where the formal consultation is to the decision-making authority (DMA), the notification will be addressed to the WAPC or the relevant Minister that is the DMA under relevant legislation for the attention of DPLH's Executive Planning Director (Metro/Regional).

Where a proposal is:

- identified as a State significant or strategic project by the Government of Western Australia from time to time;
- of a type or category recognised in the Ministerial Statement of Expectation issued under the EP Act from time to time; and/or
- one of particularly high public interest,

DWER's Director General (or where authorised, DWER's Executive Director, EPA Services) may write directly to the WAPC Chair or DPLH's Director General to assist in meeting the requested response timeframe. In some cases, a specific timeframe for the WAPC Chair/DPLH Director General's response may need to be agreed based on consideration of complexity and urgency. DWER will also identify these matters in relevant correspondence and communications between the Parties.

Upon establishment of Cross-Sector Triage Teams (CSTTs) within each agency, advice requests, both formal and informal, may involve the CSTTs where appropriate.

## Consultation between the Parties

Consultation between the Parties throughout their respective administrative processes may be triggered where proposals are considered significant when applying the EPA's significance test (consideration of significance).

To determine significance, DPLH should consider whether a proposal would be likely, if implemented, to have a significant impact on the environment, informed by the following:

- the EPA's 'consideration of significance' principles (significance test) outlined in [Statement of environmental principles, factors, objectives and aims of EIA](#);
- the EPA's Environmental Factor Guidelines or equivalent guidance published from time to time; and
- any other EPA guidance it considers relevant.

DPLH should also consider whether:

- the proposal is of a prescribed class under the Environmental Protection Regulations 1987 (EP Regulations); or
- section 48I of the EP Act applies to the proposal.

Application of the significance test is undertaken on a case-by-case basis. DPLH should consider the environmental values and objectives for relevant environmental factors.

Prior to referring a proposal or seeking formal advice on a subdivision application, development application or significant development application under Part 11B of the PD Act, DPLH may liaise with DWER about the outcome of DPLH's application of the significance test, and the reasons that DPLH believes the proposal is likely, if implemented, to have a significant impact on the environment. DPLH should also indicate whether it has sought advice from another department or area of DWER on any aspect of a proposal.

## Criteria for requesting advice to support Part IV EP Act assessments

Advice may be sought from DPLH at appropriate stages of assessment where DPLH is considered a technical subject matter expert, including, but not limited to:

- Bush Forever matters;
- coastal planning;
- land management (WAPC property/Crown land);
- planning codes;
- planning schemes and amendments;
- State Planning Policies (SPPs);
- structure plans and local development plans;
- subdivision and development applications; and
- visual amenity.

The Parties acknowledge that nothing in this MOU precludes DWER from continuing to seek advice from DPLH regarding matters under other relevant legislation including the *Aboriginal Heritage Act 1972*, *Heritage Act 2018*, and the *Land Administration Act 1997*. The Parties may provide for advice on such matters in this MOU through future updates to this Schedule or additional Schedule(s) by agreement.

### **Interactions between DWER and DPLH throughout the EIA process**

Table 1 outlines process, timelines and expected information requirements for consultation and advice requests throughout each stage of the EIA process through to post-assessment.

DPLH will encourage proponents of relevant proposals (where there is potential for significant environmental impacts) to consult directly with DWER to determine whether referral of a proposal is required.

Either Party (or proponents as suggested by either Party) may seek informal comment from the other Party on draft documents on a case-by-case basis. The Party will determine the level of response based on potential environmental impacts and risks, and available capacity.

The Parties will attend joint site visits when considered appropriate and by agreement.

### **Timelines**

Prior to requesting advice, the Parties may consider reasonable adjustments to the timelines outlined in Table 1, set out below in this Schedule, based on the:

- priority of the request;
- volume of information for review;
- nature and complexity of the issues; and
- number of issues on which advice is sought.

The Parties will use their best endeavours to meet the timelines for advice outlined in this Schedule. Both Parties recognise that meeting these timelines may not always be achievable and will contact the other Party as soon as practicable to consider an extension if required. In these circumstances, the Parties will endeavour to accommodate reasonable delays in the provision of advice.

To meet target timelines for formal advice requests referred to in this document, open communication between DWER and DPLH staff during the assessment process on the progress of assessments and advance notice of upcoming advice requests (where possible) will be necessary. The Parties will develop agreed processes for regularly communicating respective workloads and priorities, which may include meetings between relevant teams.

When seeking advice from DPLH, DWER will ensure requests:

- clearly articulate the scope of review required;
- identify the particular issues on which advice and/or feedback is sought;
- are framed to aid risk-based decision-making; and
- use advice templates agreed between the Parties from time to time.

## **Parallel processing and parallel decision-making**

The Parties will work in a collaborative and coordinated manner to implement parallel decision-making (excluding a restricted decision) and parallel processing for Part IV EP Act approvals and related approvals for which DPLH (or WAPC/a Minister) is the relevant DMA. The Parties acknowledge that constraints on parallel decision-making will continue to apply to any relevant planning applications which are 'restricted decisions' as prescribed under the EP Regulations from time to time.

Both Parties will follow the whole-of-government [Parallel Decision-Making Policy](#) and any relevant guidance issued from time to time.

To the extent that parallel processing or decision-making of relevant approvals is necessary or agreed for a proposal at any stage during a Part IV EP Act assessment, DWER and DPLH will develop a coordinated assessment approach, including with respect to information required from proponents to support parallel assessments.

Where DPLH determines that a parallel assessment requires additional information beyond that required by DWER to support a Part IV EP Act assessment, DPLH will seek required information directly from proponents outside of the concurrent Part IV EIA process. This may include additional meetings with proponents.

Both Parties will endeavour to share information relevant to the other's approvals processes for efficient and streamlined parallel assessments, subject to any confidentiality requirements.

## **Document distribution**

Formal requests for advice and supporting documentation from DWER to DPLH will be sent to the Government Relations Manager ([government.relations@dplh.wa.gov.au](mailto:government.relations@dplh.wa.gov.au)). For large documents, DWER will utilise online cloud services to facilitate DPLH's access to documents. DPLH's requests for advice on pre-referral and referral, and DPLH's responses to DWER's requests for advice, will be sent to [eosupport@dwer.wa.gov.au](mailto:eosupport@dwer.wa.gov.au), with a copy provided to the relevant DWER Branch Manager.

## **Contacts and delegations**

DPLH's Government Relations Manager ([government.relations@dplh.wa.gov.au](mailto:government.relations@dplh.wa.gov.au)) may nominate another DPLH contact as the point of contact with respect to any specific proposal or request.

DWER's Executive Director, EPA Services may nominate another DWER contact as the point of contact with respect to any specific proposal or request (if relevant, where delegation allows).

## **Problem solving/escalation of issues**

It is desirable for officers of DWER and DPLH to meet to clarify and resolve issues of a technical or policy nature, or matters of interpretation, that arise from time to time. The scheduled monthly meeting that takes place between DWER and DPLH is an appropriate avenue to discuss applicable major projects and issues for resolution.

If issues remain unresolved, Managers of the relevant branches of DWER and DPLH will meet to discuss the matter. If necessary, these issues will be escalated to the relevant Directors to resolve.

Where necessary, matters will be referred to the Directors General of DWER and DPLH.

## **Review**

Either Party may seek to review this Schedule at any time. However, the Parties agree this Schedule is to be reviewed:

- within six months of its commencement date; and
- at the time of any legislative or regulatory changes that affect matters in this Schedule.

Table 1: Protocol of interactions between DWER and DPLH for proposals assessed under Part IV Divisions 1 &amp; 2 of the EP Act

Stage of EIA	Step	Interaction	DWER personnel involved	DPLH personnel involved	Formal/Informal	Timeframe	Notes
Stage 1: Pre-referral and referral	Pre-referral consultation	DWER may seek advice from DPLH on referral issues, including at a pre-referral meeting.	Assessment Officer Relevant Branch Manager	Assessment Officer Relevant Planning Manager	Informal	Case-by-case basis	Both Parties are to encourage proponents to consult with the other Party at the earliest appropriate opportunity.  DWER may invite DPLH to attend pre-referral meetings with proponents.
		DPLH may seek advice from DWER on whether to refer a proposal.	Assessment Officer Relevant Branch Manager	Assessment Officer Relevant Planning Manager	Informal	10 business days	Prior to seeking DWER's advice: <ul style="list-style-type: none"> <li>DPLH must apply the significance test as outlined under 'Consultation between the Parties' (above);</li> <li>The DPLH Assessment Officer should consult with the relevant Planning Manager/Principal Planning Officer/Planning Director; and</li> <li>DPLH should consider whether s 481 EP Act applies to the proposal.</li> </ul> When formal referral is considered appropriate, the DWER Assessment Officer will consult with the Executive Director, EPA Services before confirming to DPLH that formal referral is required.  Please note, where relevant, s 481 EP Act only applies to formally assessed schemes.
	Referral	WAPC or DAP refers a proposal as a DMA to the EPA (facilitated by DPLH).	Executive Director, EPA Services	Executive Planning Director (Metro/Regional)	Formal		Referral should be justified based on DPLH's application of the significance test, as well as any other advice received, whether from DWER under the preceding step or another department.  DPLH must submit referrals through Environment Online.

Stage of EIA	Step	Interaction	DWER personnel involved	DPLH personnel involved	Formal/Informal	Timeframe	Notes
<b>Stage 2: Decision to assess proposal</b>	Reliance on other statutory decision-making processes	DWER may seek advice from DPLH regarding WAPC statutory decision-making processes.	EPA Chair*	Executive Planning Director (Metro/Regional)	Formal	10 business days Timeframes to be considered on a case-by-case basis	*Note that the EPA Chair is not an officer of DWER.
<b>Stage 3: Assessment of proposal</b>	Scoping issues	DWER may seek advice from DPLH regarding any preliminary scoping issues.	Assessment Officer Relevant Branch Manager	Relevant Planning Manager	Informal/Formal	Informal – Case-by-case basis Formal – 15 business days	
	Draft environmental scoping document (ESD)	DWER may seek DPLH's advice on a draft ESD.	Relevant Branch Manager	Relevant Planning Manager	Formal	Within the public review period or 10 business days	
	Draft environmental review document (ERD)/additional information	DWER may seek advice from DPLH on a draft ERD with proposal-specific advice requests.	Relevant Branch Manager	Relevant Planning Manager	Formal	20 business days	Pre-consultation to occur between the relevant DWER Branch Manager and DPLH Planning Manager prior to advice requests to determine DPLH's capacity to review the draft ERD.
	ERD/additional information at time of public review	DWER may seek advice from DPLH on an ERD with proposal-specific advice requests.	Relevant Branch Manager	Relevant Planning Manager	Formal	Within public review period; at a minimum 20 business days.	
	Response to submissions	DWER may seek advice from DPLH and vice versa.	Assessment Officer Relevant Branch Manager	Assessment Officer Relevant Planning Manager	Informal/Formal	Informal – case-by-case basis Formal – 20 business days	
<b>Stage 4: Preparation of draft assessment report</b>	Preparation of assessment strategy	DWER may seek advice from DPLH, particularly on draft conditions.	Assessment Officer Relevant Branch Manager	Assessment Officer Relevant Planning Manager	Informal	Case-by-case basis	
	Draft conditions	DWER may seek advice from DPLH, including after an EPA meeting.	Executive Director, EPA Services	Executive Planning Director (Metro/Regional)	Formal	7 business days Timeframes to be considered on a case-by-case basis	Where possible, DWER will endeavour to provide prior notice of its intention to seek advice on a particular condition set.
<b>Stage 5: Post-assessment</b>	Section 45C EP Act post-assessment approvals	DWER may seek advice from DPLH.	Relevant Branch Manager	Relevant Planning Manager	Formal	15 business days	



Stage of EIA	Step	Interaction	DWER personnel involved	DPLH personnel involved	Formal/Informal	Timeframe	Notes
	Section 46 EP Act amendment of conditions	DWER may seek advice from DPLH.	Relevant Branch Manager	Relevant Planning Manager	Formal	15 business days	
	Environmental management plans (EMPs)	DWER may seek advice from DPLH.	Relevant Branch Manager	Relevant Planning Manager	Formal	20 business days	
	Post-assessment discussions and advice	DPLH may seek advice from DWER regarding post-assessment Ministerial Statement condition(s) requirements.	Relevant Branch Manager	Relevant Planning Manager	Informal/Formal	Informal – case-by-case basis Formal – 20 business days	
<b>Other interactions</b>	All other requests for advice	Either Party may seek advice from the other.	Relevant Branch Manager	Relevant Planning Manager	Informal	Case-by-case basis	

## Schedule 4

## **Communication Protocol between DWER and DPLH for advice to assist EPA assessment of schemes under Part IV of the *Environmental Protection Act 1986***

The information provided in this Schedule relates only to the undertaking of environmental impact assessment (EIA) of schemes and scheme amendments referred under the *Planning and Development Act 2005* (PD Act) and assessed by the EPA under Part IV of the *Environmental Protection Act 1986* (EP Act). Accordingly, schemes included within the scope of this Schedule (collectively 'relevant schemes') are:

- region planning schemes and region planning scheme amendments referred by the WAPC as the responsible authority (RA) under s 38 PD Act;
- local planning schemes and amendments to local planning schemes referred by a local government as the RA under s 81 PD Act; and
- improvement schemes and amendments to improvement schemes referred by the WAPC as the RA under Part 8 PD Act.

### **Formal consultation procedures**

Formal consultation procedures between DWER and DPLH are detailed below.

Requests for information under s 48C(1)(b) of the EP Act and investigations and inquiries under s 48C(1)(c) of the EP Act will be made by the Chair or Deputy Chair of the EPA (under delegation).

All other requests for formal consultation will be made in writing from DWER's Executive Director, EPA Services, Director Major Project Assessments or Branch Manager (or other authorised representative) to DPLH's Executive Planning Director (Metro/Regional).

Requests to the WAPC as RA will be to the WAPC for the attention of DPLH's Executive Planning Director (Metro/Regional).

Where a planning scheme or scheme amendment is, relevantly:

- of a type or category recognised in the Ministerial Statement of Expectation issued under the EP Act from time to time; and/or
- one of particularly high public interest,

DWER's Director General (or where authorised, DWER's Executive Director, EPA Services) may write directly to the WAPC Chair or DPLH's Director General to assist in meeting the requested response timeframe. In some cases, a specific timeframe for the WAPC Chair/DPLH Director General's response may need to be agreed based on consideration of complexity and urgency. DWER will also identify these matters in relevant correspondence and communications between the Parties.

## Criteria for requesting advice to support Part IV EP Act scheme assessments

Advice may be sought from DPLH in its capacity as a technical subject matter expert at appropriate stages of assessment of relevant schemes under Part IV EP Act.

This includes circumstances where:

- a local government is the RA referring a local planning scheme or scheme amendment under s 81 PD Act; or
- DPLH is acting on behalf of WAPC as the RA referring a region planning or improvement scheme, or scheme amendment, under the PD Act and DWER requires advice from DPLH as a technical subject matter expert to support an assessment.

DPLH is considered a technical subject matter expert with respect to the following matters, including, but not limited to:

- Bush Forever matters;
- coastal planning;
- land management (WAPC property/Crown land);
- planning codes;
- planning schemes and amendments;
- State Planning Policies (SPPs);
- structure plans and local development plans;
- subdivision and development applications; and
- visual amenity.

The Parties acknowledge that nothing in this MOU precludes DWER from continuing to seek advice from DPLH regarding matters under other relevant legislation including the *Aboriginal Heritage Act 1972*, *Heritage Act 2018* and the *Land Administration Act 1997*. The Parties may provide for advice on such matters in this MOU through future updates to this Schedule or additional Schedule(s) by agreement.

## Interactions between DWER and DPLH throughout the EIA process

Table 1 outlines process, timelines and expected information requirements for consultation and advice requests throughout each stage of the EIA process through to post-assessment.

DPLH will consult directly with DWER regarding region planning schemes and amendments, and improvement schemes and amendments (where WAPC is the RA). DPLH will also encourage RAs (such as local governments) to consult directly with DWER regarding information requirements for referrals of local planning schemes and amendments.

Either Party (or RAs as suggested by either Party) may seek informal comment from the other Party on draft documents on a case-by-case basis. The Party will determine the level of response based on potential environmental impacts and risks, and available capacity.

The Parties will attend joint site visits when considered appropriate and by agreement.

## Timelines

Prior to requesting advice, the Parties may consider reasonable adjustments to the timelines outlined in Table 1, set out below in this Schedule, based on the:

- priority of the request;
- volume of information for review;
- nature and complexity of the issues; and
- number of issues on which advice is sought.

The Parties will use their best endeavours to meet the timelines for advice outlined in this Schedule. Both Parties recognise that meeting this timeline may not always be achievable and will contact the other Party as soon as practicable to consider an extension if required. In these circumstances, the Parties will endeavour to accommodate reasonable delays in the provision of advice.

To meet target timelines for formal advice requests referred to in this document, open communication between DWER and DPLH staff during the assessment process on the progress of assessments and advance notice of upcoming advice requests (where possible) will be necessary.

When seeking advice from DPLH, DWER will ensure requests:

- clearly articulate the scope of review required;
- identify the particular issues on which advice and/or feedback is sought;
- are framed to aid risk-based decision-making; and
- use advice templates agreed between the Parties from time to time.

## Document distribution

Formal requests for advice and supporting documentation from DWER to DPLH will be sent to the Government Relations Manager ([government.relations@dplh.wa.gov.au](mailto:government.relations@dplh.wa.gov.au)). For large documents, DWER will utilise online cloud services to facilitate DPLH's access to documents. DPLH's requests for advice on pre-referral and referral, and DPLH's responses to DWER's requests for advice, will be sent to [eosupport@dwer.wa.gov.au](mailto:eosupport@dwer.wa.gov.au), with a copy provided to the relevant DWER Branch Manager.

## Contacts and delegations

DPLH's Government Relations Manager ([government.relations@dplh.wa.gov.au](mailto:government.relations@dplh.wa.gov.au)) may nominate another DPLH contact as the point of contact with respect to any specific relevant scheme referral or request.

DWER's Executive Director, EPA Services may nominate another DWER contact as the point of contact with respect to any specific relevant scheme referral or request (if relevant, where delegation allows).

## Problem solving/escalation of issues

It is desirable for officers of DWER and DPLH to meet to clarify and resolve issues of a technical or policy nature, or matters of interpretation, that arise from time to time. The scheduled monthly meeting that takes places between DWER and DPLH is an appropriate avenue to discuss applicable major projects and issues for resolution.

If issues remain unresolved, Managers of the relevant branches of DWER and DPLH will meet to discuss the matter. If necessary, these issues will be escalated to the relevant Directors to resolve.

Where necessary, matters will be referred to the Directors General of DWER and DPLH.

### **Review**

Either Party may seek to review this Schedule at any time. However, the Parties agree this Schedule is to be reviewed:

- within six months of its commencement date; and
- at the time of any legislative or regulatory changes that affect matters in this Schedule.

Table 1: Protocol of interactions between DWER and DPLH for schemes assessed under Part IV Divisions 3 &amp; 4 of the EP Act

Stage of EIA	Step	Interaction	DWER personnel involved	DPLH personnel involved	Formal/Informal	Timeframe	Notes
<b>Stage 1: Pre-referral and referral</b>	Referral of a scheme	DWER may seek advice from DPLH on referral issues.	Relevant Branch Manager	Relevant Planning Manager Principal Planning Officer, Land Use Planning	Informal	Case-by-case basis	Both Parties are to encourage RAs (e.g. local governments) to consult with the other Party.  Where DPLH is acting on behalf of, or supporting, an RA in referring a scheme or scheme amendment (e.g. WAPC), DPLH may seek advice from DWER under the following step.
		DPLH may seek advice from DWER regarding scheme referral matters.	Assessment Officer Relevant Branch Manager	Assessment Officer Relevant Planning Manager Principal Planning Officer, Land Use Planning	Informal	Case-by-case basis	
	Referral	WAPC refers a scheme as the RA to the EPA (facilitated by DPLH).	Relevant Branch Manager	Relevant Planning Manager Principal Planning Officer, Land Use Planning	Formal	As soon as practicable after preparing the region planning scheme or preparing/resolving to adopt a proposed improvement scheme.	Schemes include: <ul style="list-style-type: none"> <li>region planning schemes and amendments to region planning schemes; and</li> <li>improvement schemes and amendments to improvement schemes.</li> </ul> Referral of a scheme information requirement should be informed by the EPA's guidance documentation (particularly factor and technical guidelines).  DPLH must submit referrals through Environment Online.
	Notice of intent (scheme incapable of being made environmentally acceptable)	DWER may seek advice from DPLH on issuing an RA a 'Notice of intent' that the scheme is incapable of being made environmentally acceptable.	Relevant Branch Manager or Executive Director, EPA Services	Planning Director, Land Use Planning	Informal	Informal – Case-by-case basis	
<b>Stage 2: Decision whether to assess scheme</b>	If level of assessment (LOA) is a 'scheme incapable of being made environmentally acceptable'	DWER will liaise with DPLH regarding administrative matters as both Ministers must agree.	Relevant Branch Manager or Director Major Project Assessments	Planning Director, Land Use Planning	Informal	Case-by-case basis	

Stage of EIA	Step	Interaction	DWER personnel involved	DPLH personnel involved	Formal/Informal	Timeframe	Notes
<b>Stage 3: Assessment of scheme</b>	Scoping – Draft Instructions for Environmental Review (ER) or additional information requirements	DWER may seek advice from DPLH regarding any preliminary Instruction/additional information issues.	Assessment Officer	Assessment Officer	Informal	Case-by-case basis	Please refer to the ‘Timelines’ section in this Schedule for further guidance to support achievement of the statement timeframes.  Please note, DWER must issue the Instructions to DPLH (where it is acting on behalf of the relevant RA) within 60 calendar days.
			Director Major Project Assessments	Planning Director, Land Use Planning	Formal	5 business days	
	Assessment – No environmental review document (ERD)	DWER may seek advice from DPLH on referral information or additional information received.	Assessment Officer	Assessment Officer	Informal	Case-by-case basis	
			Director Major Project Assessments	Planning Director, Land Use Planning	Formal	15 business days	
	Assessment – draft ERD	DWER may seek advice from DPLH regarding the draft ERD.	Relevant Branch Manager	Relevant Planning Manager Principal Planning Officer, Land Use Planning	Informal	Case-by-case basis	Pre-consultation to occur between the relevant DWER Branch Manager and DPLH prior to advice requests to determine DPLH’s capacity to review the draft document.
			Director Major Project Assessments	Planning Director, Land Use Planning	Formal	20 business days	
	ERD at time of public comment	DWER may send the ERD to DPLH during public review.	Director Major Project Assessments	Planning Director, Land Use Planning	Formal	Within public comment period	When a local government is seeking comments during the public comment period as the RA, DWER may also seek comment separately from DPLH.
	Response to submissions	DWER may seek advice from DPLH relevant to matters previously raised in DPLH’s advice.	Assessment Officer	Assessment Officer	Informal	Case-by case basis	
			Relevant Branch Manager	Relevant Planning Manager Principal Planning Officer, Land Use Planning	Formal	15 business days	
	<b>Stage 4: Preparation of draft assessment report</b>	Draft conditions	DWER may seek advice from DPLH on draft conditions, including after an EPA meeting.	Director Major Project Assessments	Planning Director, Land Use Planning	Formal	7 business days

Stage of EIA	Step	Interaction	DWER personnel involved	DPLH personnel involved	Formal/Informal	Timeframe	Notes
<b>Stage 5: Post-assessment</b>	Environmental management plans (EMPs)	DWER may seek advice from DPLH.	Relevant Branch Manager	Relevant Planning Manager Principal Planning Officer, Land Use Planning	Formal	20 business days	
	Post-assessment discussions and advice	DPLH may seek advice from DWER regarding post-assessment Ministerial Statement requirements (management plans, etc.) or modifications to schemes post LOA.	Relevant Branch Manager	Relevant Planning Manager Principal Planning Officer, Land Use Planning	Formal	20 business days	
<b>Other interactions</b>	All other requests for advice	Either Party may seek advice from the other.	Relevant Branch Manager	Relevant Planning Manager Principal Planning Officer, Land Use Planning	Informal	Case-by-case basis	



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