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Dear Mr Banks

### **DRAFT GUIDANCE STATEMENT ON ENVIRONMENTAL SITING**

The opportunity to review and provide comment on the Department of Environment Regulation (DER) draft *Guidance Statement on Environmental Siting* (Guidance Statement) is welcomed by the Chamber of Minerals and Energy of Western Australia (CME).

The Guidance Statement has been developed to set out DER's position on the siting of prescribed premises in relation to Specified Ecosystems and designated areas in relation to water. This will inform the risk assessment used to support decision-making for works approvals and licences.

Clause 2 of the Guidance Statement outlines DER's requirements to consider the proximity of prescribed premises to a threatened ecological community (TEC) or rare flora through the risk assessment with particular regard for applications requiring the clearing of native vegetation.

Notwithstanding the clearing permit exemptions under Schedule 6 of the *Environmental Protection Act 1986* (EP Act), CME is concerned the consideration of TEC or rare flora by DER will duplicate the assessment undertaken under Part IV of the EP Act for projects with a significant effect on the environment.

The reassessment of TEC and rare flora under Part V of the EP Act presents a number of issues for the resources sector, including duplication or potential for contrary conditions imposed on the proponent. CME is also concerned a situation could arise where a Part IV approval is granted but the DER will not grant the works approval or licence due to the proximity of TEC and rare flora.

CME considers regulatory overlap and duplication between Part IV and Part V assessments should be minimised as much as possible. As such, exemptions should apply in circumstances where the proximity of activities to TEC and rare flora has been assessed under Part IV of the EP Act.

The Guidance Statement states "*applications for works approvals or licences for premises which are located within or within close proximity to Specified Ecosystems will require a more detailed risk assessment*". The DER has also released a draft Guidance Statement on Environmental Risk Assessment Framework and it is unclear how these documents align, specifically what is meant in the Guidance Statement by "*a more detailed risk assessment*".

The draft Environmental Risk Assessment Framework includes prescriptive triggers/thresholds for assigning the 'likelihood' and 'consequence' which determines the risk rating. The 'likelihood' will not change due to the location of a specified ecosystem and the 'consequence' triggers already include impacts to "*significant high value or sensitive ecosystems*" and "*threatened species*".

CME considers the Guidance Statement should be updated to remove the statement "*a more detailed risk assessment*" and simply refer to the Environmental Risk Assessment Framework. The Environmental Risk Assessment Framework should be updated to ensure the risk of projects within or within proximity to Specified Ecosystems are appropriately considered.

In doing so, the approach to the risk assessment should therefore be consistent in the event the risk rating is 'low' and considered acceptable. In such events, the proponent would be subject to no further regulatory controls (in accordance with Appendix 3 draft Environmental Risk Assessment Framework).

This would also apply to Clause 7 of the Guidance Statement which states the existing licences located within or within close proximity to a Specified Ecosystem "*will be subject to the risk assessment at the time of renewal or during inspections. A works approval or licence will not be granted where the risks to the environment are unacceptable*".

Retrospective approvals can result in large capital costs to a business to upgrade facilities and CME considers a level of certainty is required for companies building an asset for the duration of the project. As such, any risk assessment undertaken by DER should be in accordance with the Environmental Risk Assessment Framework which considers the proponents proposed controls.

Given the restrictions in DER's Application Form for which applicants can only specify the premise boundary, CME is concerned the Guidance Statement will be applied to the prescribed premise boundary rather than to the location of activities which may only occupy a small portion. CME considers the location of activities is an important factor as operations can be designed to avoid impacts on the Specified Ecosystems and therefore, reduce the risk to the environment.

CME recommends the Guidance Statement is updated to allow proponents to nominate a subarea within the prescribed premise. DER should ensure the location of activities and/or subarea is considered when informing the risk assessment.

The geographic information systems (GIS) layer for water bodies shown in Appendix 1 is relatively broad, including ephemeral water bodies. CME considers this GIS layer may be too extensive and will impact a large number of works approval and licence applications.

In addition, some wetlands have higher protection values than others (i.e. due to some already being degraded or impacted). The value of the wetland to conservation/protection needs to be considered.

The approach under this Guidance Statement and the inclusion of all of the water bodies shown in Appendix 1 may result in the inefficient processing of applications. As such, CME considers the GIS layer for water bodies in Appendix 1 should be reviewed to ensure it is focused on high value ecosystems only.

Applications for licences which include the discharge of waste within designated areas (as defined in section 72 of the EP Act) will be referred to the Department of Water (DoW). In the event of referral, CME is concerned the granting of a works approvals or licence will be delayed if the DoW doesn't provide the advice within a timely manner. CME considers clear timeframes for should be established for DoW in the event of referral.

CME welcomes the opportunity to discuss any of the above in further detail should you have any further queries, please do not hesitate to contact Kirrillie Caldwell, Policy Adviser – Environment, on (08) 9220 8507 or [k.caldwell@cmewa.com](mailto:k.caldwell@cmewa.com).

Yours sincerely

A handwritten signature in black ink that reads "Nicole Roocke". The signature is written in a cursive, flowing style.

**Nicole Roocke**  
Deputy Chief Executive