

*In fill self-care housing* – seniors housing on land zoned primarily for urban purposes that consists of 2 or more self contained dwellings with no services.

*Serviced self care housing* – self contained dwellings where services are provided on site.

*Vertical Villages* – there are additional provisions for development on land zoned residential or commercial which permit development with a density of 1:1 (expressed as a floor space ratio) provided there are on-site services and 10% of the housing in the development is affordable.

The Seniors SEPP applies to land zoned primarily for urban purposes or land adjoining that zoned primarily for urban purposes and on which development for dwelling houses, residential flat buildings, hospitals and special uses (including churches, convents and educational establishments) is permissible. This is consistent with SEPP 5. However, the only types of housing which are permissible with consent on land adjoining that zoned urban are serviced self care housing, hostels and residential care facilities. Accordingly, self contained dwellings and in fill self-care housing are only permissible on land zoned for urban purposes. In addition, for serviced self care housing to be approved on land adjoining that zoned urban, the consent authority must be satisfied that the residents will have reasonable access to home delivered meals, care and assistance with housework.

The Seniors SEPP specifies that development allowed under it must be for the accommodation of seniors (people aged 55 years and over) and disabled people and their carers, people who live with seniors and disabled people and staff employed to administer and provide services to the seniors and disabled people will occupy the development. The Seniors SEPP requires councils to impose a condition of consent in relation to the occupancy of the development. It will be interesting to see whether this mandatory condition is complied with in the future and how seriously local councils enforce compliance with this condition.

The design of development carried out under the Seniors SEPP is dealt with in great detail. Division 2, Part 3, Chapter 3 deals with the design principles which should be followed eg amenity and streetscape, privacy, solar access, stormwater, crime prevention, accessibility and waste management. Part 4, Chapter 3 sets out the relevant development standards. The standards are very detailed and identify requirements like sizes of car parks, width of doorways, compliance with Australian Standards and requirements for bathrooms.

It will be interesting to see how the Seniors Policy impacts on local development. Although the policy is not radically different to SEPP 5, there are enough changes to suggest that differing interpretations by developers and local councils may result in conflict and we should see some interesting decisions in relation to the Seniors SEPP coming out of the Land & Environment Court in the future.

---

## WESTERN AUSTRALIA

*Editor: Sally Marsh and Lewis McDonald*

---

### Environmental Harm and Clearing Laws Commence

The remaining sections of the *Environmental Protection Amendment Act 2003* (WA) came into operation on 8 July 2004. The new laws include the offences of serious and material environmental harm, the new clearing regime and the requirements to advertise works approval and licence applications.

The laws were awaiting finalisation of the regulations to support the clearing regime. These have now been finalised and were amended substantially since the draft (which we described in the last NELR). Some new exemptions now apply and significant changes have been made to others. For example, in many cases clearing is now only exempt to the extent that no more than 1 ha is cleared on a property within any financial year. Codes of practice may be prepared in the coming months to replace some of the temporary exemptions that apply under the regulations.

The effect of the transitional provisions relating to the 'Notice of Intent' procedure under the (now repealed) Soil and Land Conservation Act is that any notices of intent to clear that were issued in the 90 days before 8 July 2004 are taken to be applications for clearing permits under the new regime. Further, the commencement of these laws will enable the Department of Environment (DoE) to take enforcement action in respect of any unlawful clearing that occurred since 26 June 2002. Related amendments to the *Country Areas Water Supply (Clearing Licence) Regulations 1981* (WA) also commenced on 8 July 2004.

## Controlled Waste Regulations

The *Environmental Protection (Controlled Waste) Regulations 2004* (WA) commenced on 1 July 2004, imposing a new regime on controlled waste generators, carriers and disposal site operators. The regulations repeal the *Environmental Protection (Controlled Waste) Regulations 2001* (WA).

The regulations apply to all liquid wastes and all wastes that are not suitable for disposal at a class I, II or III landfill facility. Specific obligations apply to the disposal of asbestos. Central to the new regulations, the DoE has developed a new internet based waste tracking system which will gather data on the volumes and types of wastes generated, the sources of the waste, the transporter and the disposal location.

Waste generators and holders have several obligations under the regulations. They include:

- to ensure wastes they produce are transported by a carrier who holds the appropriate licences;
- to ensure the container is fit for transporting the waste;
- to describe the nature of the controlled waste to be transported; and
- to keep receipts issued by the carrier or driver for 3 years.

Waste holders may be required to provide information to the DoE about the nature and amount of controlled wastes they hold. The DoE may then require the holder to cause the waste to be disposed of in a particular manner.

Carriers of controlled wastes, drivers of vehicles and the vehicles themselves must be licensed to transport controlled wastes. Carriers and drivers must have a tracking number for controlled wastes they are transporting and have obligations to ensure wastes are transported safely and in a manner that will prevent spillage or other discharge. Carriers and drivers must ensure the waste generator and the disposal site operator are given the waste tracking number and the waste tracking form. Drivers may only dispose of the controlled waste at the place specified on the tracking form or otherwise approved by the DoE. Failure to do so is prescribed to be pollution under the *Environmental Protection Act 1986* (WA).

Offences under the regulations carry a penalty of \$5,000.

## Other Legislative Changes

Briefly, other new Acts, Bills and Regulations include:

- the *Dangerous Goods Safety Act 2004* (WA) was assented to on 10/06/2004. This Act establishes a new regime for the regulation of dangerous goods in WA and replaces the previous legislation, including the *Dangerous Goods (Transport) Act 1998* (WA) and the *Explosives and Dangerous Goods Act 1961* (WA);
- the *Reserves (National Parks, Conservation Parks and Nature Reserves) Bill 2004* (WA) was introduced to the Legislative Assembly. The bill aims to create 9 new National Parks in WA's south-west forests and make other changes to National Parks;
- the *Environmental Protection Amendment Regulations 2004* (WA), which amend the *Environmental Protection Regulations 1987* (WA) commenced. The amendments relate to licenses and licence fees for waste discharge; and
- the *Planning and Development (Consequential and Transitional Provisions) Bill 2004* (WA) was introduced to Parliament. The bill aims to consolidate planning legislation in WA into a single Act.

## New Planning Bulletins – Wind farms and Acid Sulfate Soils

The Western Australian Planning Commission (WAPC) has released two new planning bulletins which relate to environmental issues. Planning Bulletin Number 64 provides advice and guidance on issues to be taken into account in planning issues that relate to acid sulfate soils. It will require site assessments to

determine whether and to what extent acid sulfate soils are present and an acid sulfate soil management plan to identify impacts and demonstrate how they will be managed.

Planning Bulletin Number 67 relates to wind farm developments. It was released in May 2004 and replaces Draft Bulletin Number 59. The bulletin describes matters that should be taken account when assessing wind farm development applications and notes that those issues should be balanced against the benefits of wind energy. In assessing a development application, the WAPC is likely to require a site analysis, a wind farm design statement and an impact assessment which describes how the relevant impacts will be managed.

The bulletins are available on the WAPC's website at: <http://www.wapc.wa.gov.au/cgi-bin/index.cgi?page=/publications/policies/Policies.htm>

## **New EPA Guidance Statements**

The Environmental Protection Authority (EPA) has released the following final guidance statements:

- Assessment of Aboriginal Heritage;
- Separation Distances Between Industrial and Sensitive Land Uses;
- Benthic Primary Producer Habitat Protection for Western Australia's Marine Environment;
- Terrestrial Flora and Vegetation Surveys for Environmental Impact Assessment in Western Australia; and
- Terrestrial Fauna Surveys for Environmental Impact Assessment in Western Australia.

The statements are available on the EPA's website at:  
<http://www.epa.wa.gov.au/template.asp?ID=14&area=EIA&Cat=Guidance+Statements>

## **Appeals to Environmental Conditions**

The Minister for Environment has issued a media statement which indicates she has requested amendments to the *Environmental Protection Act 1986* (WA) to be drafted to enable third parties to appeal EPA advice and recommendations to the Minister on changes to environmental conditions.

## **Cleaner Production Statement Action Plan**

The DoE has released its Cleaner Production Statement Action Plan which outlines the cleaner production initiatives the DoE is undertaking. These include incorporating cleaner production initiatives into policies, office practices, the licensing and regulatory regime, environmental impact assessment and Pt IV approvals. The report is available at: [http://www.environ.wa.gov.au/downloads/2661\\_CPAP\\_2005.pdf](http://www.environ.wa.gov.au/downloads/2661_CPAP_2005.pdf)

## **Brickwork licence condition appeals**

On 24 May 2004, the Environment Minister determined various appeals relating to Metro Brick's and Midland Brick's licence conditions for their Perth operations. The appeals were by the two brickwork operators and Hazelmere Progress Association and related to emissions limits, pollution control equipment, testing requirements, term of licences, monitoring methods, reporting methods, modelling estimates, and stormwater drainage.

The Department of Environment (DoE) reviewed the licence conditions for brickwork operators following the release of the Brickworks Licensing Policy (the **Policy**) in October 2003. The Policy arose from a 6 month review of the environmental impact of brickworks in the Swan Valley, which concluded that "overall, there is a need to change the way in which the brickworks industry is regulated, with a focus on significantly reducing emissions and improving emission monitoring". The Policy requires emissions of

Hydrogen Chloride and Sulphur Dioxide from the brickworks to be reduced. The Policy and a summary of the review are available at: [http://www.environ.wa.gov.au/downloads/1893\\_SVBrickworks\\_0310.pdf](http://www.environ.wa.gov.au/downloads/1893_SVBrickworks_0310.pdf)

As a result, new licence conditions were imposed on brickwork operators in the Swan Valley. The brickworks operators appealed against amendments to their licences on a number of grounds, including that certain amendments were unreasonable or unworkable.

The Minister's determinations of the appeals varied for Midland Brick and Metro Brick and included a requirement for an expanded monitoring program for emissions at certain sites, and a request for the DoE to work with the brickworks operators to investigate and develop such a program. The Minister's determination requires the development of an expanded program to involve stakeholder consultation, particularly in relation to the location of ambient monitors and the reporting of data.

The Swan Valley Regional Reference Group, which is being implemented by the DoE, will assist in the development and implementation of this expanded monitoring program.

Charlie Grover  
[charlie.grover@malleasons.com](mailto:charlie.grover@malleasons.com)

## **CALM Prosecutions Policy**

A review has been conducted of the Department of Conservation and Land Management's prosecution policy. The Minister stated that the review did not find major flaws in the existing policy, but has resulted in the establishment of a prosecutions advisory panel to consider public interest issues. The findings of the review are available at: [http://www.naturebase.net/prosecutions\\_review\\_report.pdf](http://www.naturebase.net/prosecutions_review_report.pdf)

## **New Access Rules for Renewable Energy Generators**

New access rules have come into operation which will provide more opportunities for renewable energy to be sold on to the Western Australian electricity grid. The rules will assist to make renewable energy projects more financially viable by reducing balancing costs. Typically, the balancing costs for renewable energy generators are higher due to the variability of their power supply. They are charged heavily when they need back-up power from Western Power and are paid less when they sell excess power in to the grid. The new rules seek to equalise these charges.

## **Funding to improve project approvals**

The Minister for State Development, Clive Brown has announced \$3.9 million in new funding to strengthen the approvals process for new industrial and resources projects, including some funding to the Environmental Protection Authority. An interagency group will be established to implement policies to improve the approvals system. It will implement the Scoping Framework for Project Development Approvals which has been developed as a result of key recommendations from the Keating Review (available at <http://www.premier.wa.gov.au/main.cfm?MinId=01&Section=0110>).

## **Conservation Lands Tax Exemption**

As of 1 July 2004, the *Revenue Laws Amendment and Repeal Act 2004* (WA) amended the *Land Tax Assessment Act 2002* (WA) to provide that land used solely or principally for the conservation of native vegetation, and the subject of a conservation covenant, is exempt from land tax. The land tax exemption is aimed at encouraging, by way of financial incentive, private landowners to commit to preserving and managing environmentally important areas of native bushland.

To be eligible for the exemption, the land must be the subject of a permanent conservation covenant that restricts or prohibits certain activities on the land that could degrade the environmental value of the land and, if possible, is registered on the title to the land. The conservation covenant must be approved by, or entered into under a program approved by, the Minister for Environment and Heritage. This encompasses

conservation covenants administered by the Department of Conservation and Land Management and the National Trust of Australia (WA), which cover lands of high nature conservation value, and involve stewardship of the land to ensure appropriate management in the long-term.

Clare Wood  
clare.wood@bdw.com

## **Emergency Listing of Burrup Rock Art Precinct**

On 1 January 2004, amendments to the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) created a new regime for protection of places with heritage value to Australia. The “heritage value” of a place includes the natural and cultural environment of the place, having aesthetic, historic, scientific or social significance, or other significance for current and future generations of Australians. The Act provides for both ordinary and emergency listing procedures for places nominated that have national heritage values.

Earlier this year, pursuant to the emergency listing procedure, the National Trust of Australia nominated the Dampier Rock Art Precinct as a national heritage place, the national heritage values of which were under threat of destruction. The Precinct included the Burrup Peninsula, an important industrial area.

The Minister for Environment and Heritage had 10 days in which to decide whether to accept the nomination and include the Precinct on the National Heritage List, or to reject the nomination on the grounds that it was frivolous, vexatious and not made in good faith. However the nomination was withdrawn before the 10 day period expired.

If the Precinct and its national heritage values had been included on the National Heritage List, they would have been considered a matter of national environmental significance under the Act. Generally, it is an offence to undertake an activity for the purpose of interstate or international trade, that may have a significant impact on the national heritage values of a listed place, without prior approval of the Minister.

Clare Wood  
clare.wood@bdw.com

## **WA State Conference**

The National Environmental Law Association (WA Division) is holding its annual conference at the Old Swan Brewery, Mounts Bay Road, Perth on Thursday 30 September 2004. The topic of the conference is “River Systems: Managing a complex natural resource”. The conference will focus on water quality, water quantity and land use issues associated with this complex natural resource. The conference will also feature a discussion on the steps being taken at the legislative and policy levels to attain a balance between competing interests with respect to the Swan River.

We are currently seeking presenters to give papers on issues relating to these matters. If you are interested in presenting a paper for the conference or participating in any other way, please contact Sarah Hohnholt on (08) 9429 7687 or email sarah.hohnholt@minterellison.com. Registration forms will be available shortly.

## **SOUTH AUSTRALIA**

*Editor: Will Webster*

---

## **Natural Resource Management Bill Passed By Parliament**

The *Natural Resource Management Bill* was passed by the Upper House of State Parliament on 1st July 2004. The new Natural Resource Management structure, which will replace an existing system of more than 70 Boards, will manage collectively, issues relating to water, pest plants and animals, and soil conservation.