

WESTERN AUSTRALIA

by Joe Freeman and Ainsley Reid

Proposed Marine Park at Eighty Mile Beach

On 30 September 2011, the WA Minister for the Environment released an Indicative Management Plan for a proposed class A marine park at Eighty Mile Beach, situated between Broome and Port Hedland, for public comment. The proposed marine park is part of the WA Government's Kimberley Wilderness Parks initiative within the Kimberley Science and Conservation Strategy. Eighty Mile Beach is a Ramsar-listed wetland which is a significant feeding ground for migratory birds, and supports an important nesting population of flatback turtles, along with other marine life including sawfish, dugongs, dolphins and invertebrates.

The Indicative Management Plan was open for comment until 20 January 2012 and is available at http://www.dec.wa.gov.au/component/option,com_docman/task,doc_download/gid,5635/Itemid/.

The Kimberley Wilderness Parks initiative will also see the establishment of marine parks at Camden Sound, North Kimberley and Roebuck Bay.

New environmental offsets policy

On 27 September 2011, the WA Government released its Environmental Offsets Policy, which provides guidance on the imposition of environmental offset obligations as conditions on clearing permits and approvals of proposals subject to environmental impact assessment.

The Department of Environment and Conservation is developing an Environmental Offset Register under the policy. This will provide a public record of all offset agreements in WA, including all offsets that may be negotiated by different agencies under different legislation.

Under the policy, environmental offsets:

- will only be considered after avoidance and mitigation options have been pursued
- are not appropriate for all projects
- will be cost-effective, as well as relevant and proportionate to the significance of the environmental value being impacted
- will be based on sound environmental information and knowledge

- will be applied within a framework of adaptive management
- will be focussed on longer term strategic outcomes.

The State Department of Environment and Conservation will develop detailed guidelines under the policy outlining:

- the roles and responsibilities of agencies, proponents and statutory bodies
- legislative requirements
- assessment, decision making, auditing, monitoring and review processes.

South West Forest Management Plan

On 10 November 2011, the WA Government began a consultation process for the development of a new Forest Management Plan, covering a 2.5m ha area from Moore River to the South Coast. The initial phase of the consultation will involve government agencies before moving to key stakeholder groups, such as the Conservation Council of WA and the Forest Industries Federation of WA.

The current 10-year Forest Management Plan is due to expire at the end of 2013. The EPA and Conservation Commission is expected to release a draft management plan for public comment in mid-2012. More information about the preparation process is provided on the Department of Environment and Conservation website at <http://www.dec.wa.gov.au/content/view/6857/2431/>.

Man imprisoned again for land clearing

On 11 November 2011, Martin CJ of the Supreme Court of Western Australia convicted Maxwell Jan Szulc of two acts of contempt of court for clearing native vegetation in breach of an injunction against illegally clearing native vegetation on his farming property near Esperance. He was committed to prison for terms of 9 months and 15 months, to be served concurrently.

Mr Szulc had already become the first person to be imprisoned in relation to the native vegetation clearing provisions of the *Environmental Protection Act 1986* (WA), after serving a 3 month sentence in 2010 for

contempt of court for similar clearing activities on the same property. He had ignored several notices from the Department of Environment and Conservation seeking to restrain him from unlawful clearing. In both cases, the Court noted that Mr Szulc's breach was wilful and deliberate, and in spite of his knowledge that his activities were illegal and contrary to court orders.

Minister upholds EPA coal mining rejections

The WA Minister for the Environment has upheld two decisions by the Environmental Protection Authority to reject applications for coal mining approvals.

On 20 December 2011, the minister rejected five appeals, including one by proponent Central West Coal Pty Ltd, against an EPA report concluding the company's proposal to develop a coal mine near Eneabba could not meet the EPA's objectives for flora and fauna. Foremost among the environmental concerns was uncertainty surrounding impacts to groundwater-dependant ecosystems in the nearby Lake Logue Nature Reserve.

On 21 December 2011, the minister rejected five appeals, including one by proponent Vasse Coal Management Pty Ltd, against the EPA's report rejecting the company's proposed coal mine north-east of Margaret River. Primary environmental concerns related to the uncertainty of risks to surface and groundwater in the Margaret River area. The EPA found that the proposed mine would pose serious risks to important environmental values, including significant impacts on the Leederville and Sue Aquifers, and that these would have consequential impacts on the social surroundings.

The minister will consult, in relation to each proposal, with relevant decision-making authorities under s 45(1) of the *Environmental Protection Act 1986* (WA) to determine whether either proposal may be implemented based on broader social and economic factors.

Conditional approval for lead transportation

On 3 October 2011, the EPA released the report of its review into the conditions placed on Magellan Metals' approval to transport lead carbonate from its Wiluna mine site to Fremantle. Magellan was issued a stop order in December 2010 after two instances of potential non-compliance. The WA Minister for the Environment imposed interim conditions in February 2011, relating to monitoring, reporting and auditing requirements, allowing Magellan to resume transportation.

In April 2011 Magellan voluntarily ceased transportation and placed the mine on care and maintenance after mud containing lead from Magellan's mine was found on the outside of a number of shipping containers at Fremantle, West Kalgoorlie, Forrestfield and Leonora.

In its report, the EPA approved of the interim conditions, and recommended further improvements, including:

- ensuring that shipping containers are free from visible mud containing lead carbonate prior to leaving the mine site
- requiring independent review of sampling and analysis methods to ensure the results are reliable
- requiring Magellan to provide the EPA with a report detailing options for downstream processing of lead carbonate, benchmarked against best environmental practice.

Magellan Metals' parent company, Ivernia Inc, responded that it would wait until the final operating conditions were decided before making an announcement regarding the impact they would have on the timing of a decision to restart the mine.

Decision of Environment Minister in relation to Cockburn Cement licence partially quashed

On 20 December 2010, the CEO of the Department of Environment and Conservation amended Cockburn Cement Limited's licence by imposing more stringent conditions, including that Cockburn Cement install new pollution control equipment to serve Kiln 6 at its Munster plant by 29 April 2011. The licence requires Cockburn Cement to operate the kilns within specified emissions limits and monitor and report on environmental performance. The licence will expire on 30 March 2012.

Two members of the community, who claimed to be affected by the operation of the plant, appealed the decision to the Minister for the Environment, arguing that stricter conditions should have been imposed. The minister allowed the appeals and imposed further conditions, including a requirement the new control equipment must be installed to serve Kiln 5 at the same plant, to be installed and operating by 30 November 2012.

Cockburn Cement appealed the minister's decision in the Supreme Court, on the grounds that the works

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could only be completed in accordance with a works approval granted by the CEO of DEC, and that the date for installing the equipment would fall after the expiration of the licence.¹

On 12 September 2011, Edelman J quashed this part of the minister's decision. The minister's power was to 'subject' the licence to conditions. Justice Edelman held that a condition on a licence must be 'fairly and reasonably related' to the licence. The condition in question did not meet this test, as it did not require Cockburn Cement to do anything within the time period of the licence. Further, the emissions which would be controlled by the condition would not be regulated by the licence, since from 30 March 2012 they would be controlled by a new licence. Therefore, the quashed decision was in excess of power and was a jurisdictional error.

Cockburn Cement's operations manager, Darrin Strange, has said that the technology is unproved, and that the company does not wish to add it to Kiln 5 until it had been demonstrated to be effective at Kiln 6.² The minister responded to residents' concerns by emphasising that

1 See *Cockburn Cement Ltd v Minister for Environment (WA)* [2011] WASC 260.

2 <<http://au.news.yahoo.com/thewest/business/a/-/wa/10245143/cockburn-cement-wins-appeal-over-licence/>>

the other conditions the minister imposed on the licence were upheld, and that the licence conditions were the 'toughest' to date.³

The Department is currently discussing the conditions which will apply to the new licence with Cockburn Cement.

WA's Southern Seawater desalination plant begins operations

On 2 September 2011, three months ahead of schedule, the WA Minister for Environment opened the Southern Seawater Desalination Plant, near Binningup in the Shire of Harvey. Current capacity of the plant is 50 GL per year, with plans to expand to 100 GL by the summer of 2012–13.

The Southern Seawater plant is the second reverse osmosis seawater desalination plant to provide drinking water in Western Australia. The Perth Seawater Desalination Plant in Kwinana, which has a capacity of 45GL per year, was completed in 2006, and was the first to begin operating in Australia.

3 <<http://www.mediastatements.wa.gov.au/Pages/WACabinetMinistersSearch.aspx?ItemId=144242>>

VICTORIA

by Barnaby McIlrath

Cattle grazing in alpine national parks ruled 'clearly unacceptable'

The Federal Environment Minister the Hon Tony Burke MP recently ruled that the Victorian Government's proposed alpine grazing trial would have a 'clearly unacceptable' impact on the national heritage values of the Alpine National Park, and would not receive approval under the EPBC Act 1999.

The Victorian Government had referred the trial to Minister Burke in late 2011, after failing to do so in relation to the first stage of the trial, January – April 2011, when the federal minister ordered the cattle out of the park.

The minister's decision, and his reasons, can be found in the EPBC Act website. The minister's decision that the alpine grazing trial is 'clearly unacceptable' is the strongest possible rejection that the minister can make under the Act, and is rarely exercised.

More frequently, the minister will conduct a more detailed assessment of the possible impacts of the proposal. In this case, however, the minister decided that there was clear scientific and historical literature to support the conclusion that alpine grazing has unacceptably damaging impacts on the ecology and species diversity of the park, and also on its aesthetic and recreational values. See also the Federal update on p7.

VCEC inquiry into a state-based reform agenda

The Victoria Competition and Efficiency Commission (VCEC) is conducting an inquiry into a State-based reform agenda for Victoria, and on 10 November 2011 released its draft report: *Securing Victoria's Future Prosperity: A Reform Agenda*.

Draft recommendation 16 is as follows:

- That the Victorian Government improve the overall business environment in Victoria by reforming major project approval processes to: