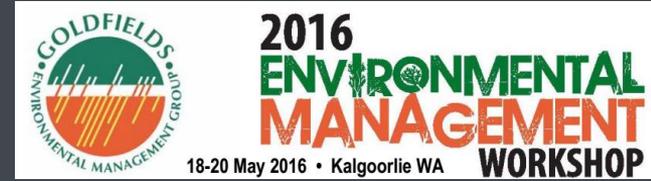


Benchmarking the EPA's Assessment Process



Andrew Mack – Associate Director



Asset Management | Civil Engineering | Environmental Services | GIS & Spatial Intelligence | Waste Management

Outline

- Setting the Scene
- Recent Problems with 'the Scene'
- Talis' Work
 - Methods and Projects
- Findings and Commentary
- Conclusions

Setting the Scene

- Principles of EIA for the EPA (EIA Admin Procedures 2012)
 1. Provide guidance on the types of proposals likely to attract assessment and the levels of assessment.
 2. Provide guidance as to the form, content and procedure of the environmental review which proponents will be required to undertake.
 3. Negotiate with key participants to set an assessment timetable on a proposal-specific basis and use best endeavours to meet these timeframes.
 4. Ensure that the total and cumulative effects of using or altering community environmental assets receive due consideration.
 5. Seek and promote public comment relating to proposals.
 6. Ensure predicted environmental impacts are monitored, the results assessed and feedback provided to improve ongoing environmental management of proposals.
 7. Monitor the efficacy and efficiency of the environmental impact assessment processes and management to allow for continuous improvement.
 8. Review and improve processes and tools to help minimise uncertainty and delays.

Setting the Scene

- Concept of Significance (EPA Admin Procedures)

In determining whether a proposal is likely to have a significant effect on the environment, the EPA may have regard to the following—

- a) the values, sensitivity and quality of the environment which is likely to be impacted;
- b) the extent (intensity, duration, magnitude and geographic footprint) of the likely impacts;
- c) the consequence of the likely impacts (or change);
- d) resilience of the environment to cope with change;
- e) the cumulative impact with other projects;
- f) level of confidence of the impacts predicted;
- g) objects of the Act, policies, guidelines, procedures and standards against which a proposal can be assessed;
- h) the public concern;
- i) presence of strategic planning policy framework; or
- j) the extent to which other statutory decision-making processes meet the EPA's objectives and principles for EIA.

Recent Problems with ‘the Scene’

- Roe 8 (HSF)

EPA Assessment Report – September 2013

1. Significant environmental values of the area would be impacted by the Proposal
2. A number of innovative planning and design measures and construction techniques proposed to minimise impacts
3. The majority of impacts could be managed to an acceptable level
4. Significant residual impacts predicted in relation to some environmental factors that could be counterbalanced by the provision of environmental offsets
5. Recommended approval subject to conditions (including comprehensive offsets package)

Recent Problems with ‘the Scene’

- Roe 8 (HSF)

- *Save Beelihar Wetlands (Inc) v Jacob* [2015] WASC 482
- Four grounds of appeal
- Three grounds challenged the report of the EPA (particular commentary on offsets)
- The final ground challenged the Minister’s decision to allow the Proposal to be implemented subject to conditions
- If any of the challenges in relation to the EPA report succeeded, it followed that the challenge to the Minister’s decision would succeed
- The winning ground was ground 2 – mandatory relevant considerations.

Recent Problems with ‘the Scene’

- Roe 8 (HSF)

- Where a statute does not expressly state the matters a decision maker must take into account, these are to be determined by implication from the subject-matter, scope and purpose of the statute
- Obligation for EPA to take its own policies into account can be derived from the subject matter, scope and purpose of the EP Act
- This is because of the key features of the scheme of EIA under the EP Act:
 - **independence of assessment**
 - **reference to administrative procedures, assessment criteria and policies**
 - **procedural fairness considerations for participants (reliance)**
 - **consequences that would flow from ignoring policies**
- For Roe 8, three EPA policies (not taken into account) were mandatory relevant considerations:
 - Position Statement 9 – Environmental Offsets
 - Guidance Statement 19 – Environmental Offsets – Biodiversity
 - Environmental Protection Bulletin 1 – Environmental Offsets – Biodiversity

EPA's Framework

- Principle 5 for the EPA of the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012* states that the process of environmental impact assessment should be “procedurally fair and that all relevant EPA policies, guidelines and procedures are publicly available and are applied fairly and consistently.”
- Justice Martin said in his decision “I have concluded that the EPA must take into account all relevant administrative procedures, assessment criteria and policies which it has promulgated and which are operative at the time it undertakes an assessment of the environmental impact of any proposal.”

Talis' Work

- Engaged to consider whether the EPA's framework was being applied consistently across a number of different projects
- Looked at detail of assessment as well as key Factors of interest
- Goals - Parity of assessment, certainty in terms of the outcome and defensibility and reproducibility of that outcome

Talis' Work - Methods

Eight shortlisted projects were assessed in more detail for the following details:

- Level of assessment;
- Outcome and justification of the assessment;
- Nature/characteristics of the proposal;
- The value of the environment within the project area;
- Level of impact project has on the wider environment and its environmental value; and
- Whether the Factor of 'landform' was considered during the EPA's assessment process.

Individually assessed projects were then summarised and the key characteristics benchmarked against the other assessed projects. This exercise allowed Talis to compare similarities between the projects and draw a conclusion whether EPA assessment process is consistent for all projects.

Talis' Work - Projects



Level of Assessment	Year	Company	Project	Area of Disturbance
API-A	2014	Polaris Metals Pty Ltd	Jackson 4 (J4)	104 ha
PER	2010	Cliffs Asia Pacific Iron Ore Pty Ltd	Kooyanobbing Iron Ore Project – Mt Jackson J1 Deposit	605 ha
Not assessed – Public Advice Given	2014	Sirius Gold Pty Ltd	Nova Nickel Project	1,100 ha
PER	2014	Mount Bruce Mining Pty Limited	Koodaideri Iron Ore and Infrastructure Project	65,888 ha
Not assessed – Public Advice Given	2013	Golden West Resources	Wiluna West Iron Ore Mining	2,600 ha
PER	2014	Fortescue Metals Group Limited	Christmas Creek Iron Ore Mine Expansion	<18,335 ha
API-A	2014	Chevron Australia Pty Ltd	Gorgon Gas Development – additional construction laydown and operations support area	32 ha
PER	2014	Mount Gibson Mining Ltd	Iron Hill Deposit	75 ha

Polaris – J4

Level of Assessment	Year	Company	Project	Description of Project	Area of Disturbance	Commentary
API-A	2014	Polaris Metals Pty Ltd	Jackson 4 (J4)	The proposal is comprised of an iron ore mine and infrastructure on Mining Lease M77/1242, as well as a haul road and accommodation camp on Miscellaneous Licenses L77/250, L77252 and L77/254 in the Goldfields region.	104ha	<p>The proposed mine is located within the Mt Manning region, 8 km from the Helena-Aurora Range. Haul road traverses the corner of the Helena-Aurora Conservation Park.</p> <p>The J4 deposit is a low-lying outcrop of BIF, separated by gaps between the hills of the Mt Jackson Range to the west, and the Helena-Aurora Range to the east.</p> <p>The proposal will result in the permanent loss of BIF landform and its associated environmental values. However, the proposal area is considered to be sited in lower environmental value BIF, due to its separation from main ridgelines and low relief.</p> <p>Surveys undertaken did not identify any Declared Rare, Threatened or endemic species in the proposal area.</p>

Cliffs – Mt Jackson J1

Level of Assessment	Year	Company	Project	Description of Project	Area of Disturbance	Commentary
PER	2010	Cliffs Asia Pacific Iron Ore Pty Ltd	Koolyanobbing Iron Ore Project – Mt Jackson J1 Deposit	Two mine pits and associated mining infrastructure.	605 ha	<p>The proposed mine is located within the Mt Manning region on a section of BIF range which forms part of a series of ridgelines of BIF within the Yilgarn Region of Western Australia.</p> <p>This region falls within the Great Western Woodlands which cover 60 million ha and is currently considered to contain 3000 flora species. The Woodlands are the subject of a 2010 “Biodiversity and Cultural Conservation Strategy” authored by the former DEC.</p> <p>Approximately 13 ha of the proposed haul road occur within the Class A Nature Reserves including the Die Hardy/Jackson/Windarling Ranges.</p>

Sirius – Nova Nickel

Level of Assessment	Year	Company	Project	Description of Project	Area of Disturbance	Commentary
Not assessed – public advice given	2014	Sirius Gold Pty Ltd	Nova Nickel Project	An underground mine for nickel and copper and associated roads and infrastructure.	1,100ha	<p>This project is located within Fraser Range in the Great Western Woodlands.</p> <p>No mention of BIF ranges. It is claimed that the proposal footprint has been designed so as to almost entirely avoid any clearing of Priority Ecological Communities (PEC).</p>

Mt Bruce - Koodaideri

Level of Assessment	Year	Company	Project	Description of Project	Area of Disturbance	Commentary
PER	2014	Mount Bruce Mining Pty Limited	Koodaideri Iron Ore and Infrastructure Project	An open cut iron ore mine and ore processing operation.	65,888ha	<p>Whilst this project is not associated with a BIF range, it is located partially within the Marillana 2015 Area which is proposed for conservation tenure. The proposal is also located in close proximity to the Fortescue Marsh and Karijini National Park.</p> <p>Extensive offsets have been proposed to offset the environmental impact associated with the project.</p>

Golden West – Wiluna West

Level of Assessment	Year	Company	Project	Description of Project	Area of Disturbance	Commentary
Not assessed – Public Advice Given	2013	Golden West Resources	Wiluna West Iron Ore Mining	<p>An iron ore mine located approximately 40 kilometres west of Wiluna which has an approximate life of 15 years.</p> <p>The proposal will result in clearing of a maximum 2600 hectares.</p>	2,600ha	<p>Located on a West Wiluna BIF PEC, however Landform has not been assessed as part of the EPA's assessment. Active Malleefowl mounds have been found within the project area.</p>

FMG – Christmas Creek Expansion

Level of Assessment	Year	Company	Project	Description of Project	Area of Disturbance	Commentary
PER	2014	Fortescue Metals Group Limited	Christmas Creek Iron Ore Mine Expansion	The proposal is for the expansion of the existing Christmas Creek mine for the development of an open-cut, strip mining iron ore mine.	No more than 18,335ha (total for the area)	<p>The proposal will involve mining of BIF material. The Cloud Break, Christmas Creek, Mount Nicholas, Mount Lewin and Mindy iron deposits are located in the East-Southeast elongated Chichester Range in the Pilbara of WA.</p> <p>These ranges are not part of the BIF strategic review and it would appear that their environmental value had therefore not been quantified or considered.</p> <p>EPA Scoping documentation suggests a considerable range of factors require consideration during the assessment process and extensive offsets have been proposed to offset the environmental impact associated with the project.</p>

Chevron – Gorgon Expansion

Level of Assessment	Year	Company	Project	Description of Project	Area of Disturbance	Commentary
API-A	2014	Chevron Australia Pty Ltd	Gorgon Gas Development – additional construction laydown and operations support area	Laydown area and operations support area	32ha	<p>The project is located on Barrow Island which is a Class A nature reserve.</p> <p>The use of land on Barrow Island for gas processing is provided for in the Barrow Island Act 2003 for up to 300ha of uncleared land.</p> <p>This proposal required an amendment to the Barrow Island Act 2003 for the additional clearing of uncleared land from 300ha up to 332ha.</p>

Mt Gibson – Iron Hill

Level of Assessment	Year	Company	Project	Description of Project	Area of Disturbance	Commentary
PER	2014	Mount Gibson Mining Ltd	Iron Hill Deposit	<p>The Proposal would operate as a satellite to the existing Extension Hill mining operations as part of the approved Mount Gibson Iron Ore Mine & Infrastructure project.</p> <p>Proposal comprises the following components: mine pit, WRD and supporting infrastructure.</p> <p>Likely to be subject to Ministerial Statement 753.</p>	75ha	The proposed mine is located within the Mt Gibson Range BIF PEC. There are significant direct and cumulative impacts on specially protected flora and fauna.

Talis' Work - Findings

The work completed by Talis suggests that such uniformity in approach is not present and that there are significant differences in how environmental issues are evaluated and considered by the EPA.

Talis' Work – Commentary

- All contemporary projects (2010-2014)
 - Should be consistent approach to assessment
- Discrepancies in how Factors and impacts have been considered
- Consider 3 Aspects (inter-related):
 - Clearing
 - Landform
 - BIF

Talis' Work – Commentary



Level of Assessment	Company	Project	Area of Disturbance	Factors
API-A	Polaris Metals Pty Ltd	Jackson 4 (J4)	104 ha	Landform; Flora and Vegetation
PER	Cliffs Asia Pacific Iron Ore Pty Ltd	Koolyanobbing Iron Ore Project – Mt Jackson J1 Deposit	605 ha	Flora and Vegetation, Terrestrial Fauna and Rehabilitation and Closure .
Not assessed – Public Advice Given	Sirius Gold Pty Ltd	Nova Nickel Project	1,100 ha	Flora and Vegetation, Terrestrial Fauna, Rehabilitation and Closure
PER	Mount Bruce Mining Pty Limited	Koodaideri Iron Ore and Infrastructure Project	65,888 ha	Terrestrial Fauna, Subterranean Fauna, Flora and Vegetation, Hydrological Processes and Inland Waters Environmental Quality, Human Health, Rehabilitation and Closure – integrating factor and Offsets – integrating factor
Not assessed – Public Advice Given	Golden West Resources	Wiluna West Iron Ore Mining	2,600 ha	Flora and Vegetation, Terrestrial Fauna, Subterranean Fauna, Rehabilitation and Closure
PER	Fortescue Metals Group Limited	Christmas Creek Iron Ore Mine Expansion	<18,335 ha	Hydrological Processes, Inland Waters Environmental Quality, Flora and Vegetation, Terrestrial Fauna, Subterranean Fauna, Rehabilitation and Closure, Offsets
API-A	Chevron Australia Pty Ltd	Gorgon Gas Development – additional construction laydown and operations support area	32 ha	Flora and Vegetation, Terrestrial Fauna, Subterranean Fauna, Offsets (Integrating factor)
PER	Mount Gibson Mining Ltd	Iron Hill Deposit	75 ha	Flora and Vegetation, Fauna, Rehabilitation and Closure

Talis' Work – Landforms



Talis' Work – BIF (and other sensitivities)

- The Jackson 4 project, Mt Jackson J1 deposit, Christmas Creek and Iron Hill projects all involve significant impacts to BIF
- EPA's presumption against mining in BIF – two notable appeals in recent months in this regard (Sinosteel and Mineral Resources)
- EPA's 2012-2013 Annual Report identified the Fortescue Marsh as a 'Pressure Point'

Conclusions

- Divergences in terms of approach employed by EIA
- Consideration of certain Factors for some projects and not for others
- Principles and Approach to EIA needs to be robust and stand up to scrutiny.
- Reproducibility of Assessment and Parity between Assessments (fair and consistent)
- Roe 8 Decision – Timely?
- More scrutiny – less room for error
- Longer timeframes for assessment



talis
delivering solutions

Andrew Mack

andrew.mack@talisconsultants.com.au

0402 029 244