

NELA (WA) State Conference 2003

The NELA (WA) 2003 State Conference will be held on 25 September 2003 at the new Fremantle Maritime Museum. The theme of the conference is "From dreaming up to cleaning up: environmental aspects of projects". Speakers include Justice Barker QC, Wally Cox (EPA Chairman), Charlie Welker (Welker Consulting), Peter Eliot (URS) and many more. Tickets are available at \$155 members and \$185 non-members. Contact Lewis McDonald on (08) 9269 7147 for further details or email Samantha.ross@bdw.com for registration details.

Western Australian Government gives "in principle" support to Gorgon gas development on Barrow Island

On 8 September 2003, the Western Australian Government gave its "in principle" support to the Gorgon joint venturers to access Barrow Island for gas development purposes (**Gorgon Development**). The Gorgon gas reserve is Australia's largest gas reserve. Barrow Island has been a "class A nature reserve" since 1910 and has been home to an operating oil field for around 40 years. The Gorgon Development will see development on around 300 Ha (or 1.3 %) of Barrow Island.

Prior to giving its in principle approval, the Western Australian Government sought advice on the environmental issues associated with the Gorgon Development from the Conservation Commission and the Environmental Protection Authority (**EPA**). It also sought advice on the economic, strategic and social aspects of the Gorgon Development from the Department of Industry and Resources (**DoIR**) (through its consultant, the Allen Consulting Group).

The Conservation Commission and the EPA advised against the Gorgon Development on Barrow Island. DoIR supported the Gorgon Development.

In summary, the Conservation Commission's report states that *"Government should not approve the location, construction and operation of any gas processing plant on the Barrow Island Nature Reserve."* The principal reasons given by the Commission are:

- the Commission considers any industrial development within a nature reserve as inappropriate, and within a nature reserve as important as Barrow Island as particularly inappropriate;
- not insignificant environmental impacts and unacceptably high risk to Barrow Island's biodiversity conservation values (its unique ecosystems, species and populations);
- approval would be likely to prevent a return of Barrow Island to full nature reserve status;
- approval would set a precedent for other developments which would in the long-term substantially diminish Barrow Island's biodiversity conservation values; and
- alternative sites remain as options under appropriate economic conditions.

Similarly, the EPA's report states that *"[g]iven the high environmental and unique conservation values of Barrow Island, which are reflected in its status as a class A Nature Reserve, it is the view of the EPA that, as a matter of principle, industry should not be located on a nature reserve and specifically not on Barrow Island"*.

DoIR's advice suggests that the Gorgon Development has substantial social, economic and strategic benefits and concludes that *"Barrow Island represents the only commercial option for monetising the substantial national asset represented by the Gorgon resource"*.

This advice was taken into account by the Western Australian Government along with public submissions and the Gorgon Joint Venturers' responses to those submissions in making its decision to give in principle approval to the Gorgon Development.

As part of an agreement between the State of Western Australia and the Gorgon Joint Venturers, the Gorgon Joint Venturers must contribute up to \$40 million over the life of the project to the Department of Conservation and Land Management (**DCLM**) to be used towards conservation projects to protect native

plants and animals in environments similar to Barrow Island. The Gorgon Joint Venturers must also fund DCLM officers who will monitor the construction and operation of the Gorgon Development.

Notwithstanding this "in principle" approval, the Gorgon Joint Venturers will still require formal environmental assessment and approval under Part IV of the *Environmental Protection Act 1986 (WA)* before any specific proposal may proceed on Barrow Island.

Information on the Gorgon project may be found at www.doir.wa.gov.au and at www.gorgon.com.au.

Environmental Protection Act 1986 to apply to all State Agreements

Section 5(2) of the *Environmental Protection Act 1986 (WA)* (**EP Act**) currently exempts State Agreements concluded before 1 January 1972 from Western Australia's environmental laws. This has meant that, in respect of certain projects, Alcoa, BHP Billiton and Rio Tinto (who are each parties to pre-1972 State Agreements) have not been legally obliged to comply with the EP Act.

On 13 June 2003, the State Development Minister, Clive Brown, announced that Alcoa, BHP Billiton and Rio Tinto have all agreed that operations governed by pre-1972 State Agreements will now be legally subject to the EP Act. This will be effected by amendments to nine individual State Agreements and to the EP Act itself.

Proposal to update memorandum of understanding between DoIR and EPA

Approval for mining activities on mining leases in Western Australia is generally governed by the Department of Industry and Resources (**DoIR**), through their assessment and approval of Notices of Intent submitted to DoIR by proponents of mining projects. Where these projects are likely to have a significant effect on the environment, these are referred to the Environmental Protection Authority (**EPA**) for assessment under Part IV of the *Environmental Protection Act 1986 (WA)* (**EP Act**).

The criteria by which DoIR identifies projects for referral to the EPA are set out in a Memorandum of Understanding (MOU) between the EPA and DoIR. This MOU was originally developed by the EPA and DoIR in 1995. Since 1995, there have been significant legislative changes both nationally and locally, and the actual practice of DoIR in referring proposals to the EPA has evolved from the process set out in the original MOU.

As a result, the EPA and DoIR are proposing to update the MOU to bring it into line with current practice and to take into account legislative changes since 1995. A draft version of this proposed MOU has recently been released for comment. Please contact Lewis McDonald on (08) 9269 7147 if you would like a copy.

The proposed MOU does not deal with proposed clearing controls which are likely to be introduced by the end of the year through amendments to the EP Act. The process for administering these clearing controls in respect of onshore mineral proposals will be dealt with by a separate MOU, which is currently in the early stages of its development.

Proposal to enshrine water restrictions in legislation

The Western Australian Government has introduced the *Water Conservation and Management Bill 2003* (WA) to State Parliament. If passed, this Bill will have the effect of making the current water restrictions scheme permanent. The scheme put in place by this Bill will replace the *Water Agencies (Water Restrictions) By-laws 1998* (WA) and restricts the use of water provided by the Water Corporation. The Bill provides for a degree of flexibility in the measures that may be taken to implement and effect water restriction in various areas in the State. Anyone in breach of the restrictions may face a fine of \$500.

New Director of CALM Appointed

Environment Minister Judy Edwards announced on 21 August 2003 that Keiran McNamara has been appointed Executive Director of the Department of Conservation and Land Management (now known as DCLM, formerly CALM). Mr McNamara has been acting Executive Director since July 2001. Mr McNamara was formerly CALM's Director of Nature Conservation.

Conservation bodies to be retained

Following an independent review of the Conservation Commission (established under s18 of the Conservation and Land Management Act 1984 (WA) (**CALM Act**)) and the Marine Parks and Reserves Authority of Western Australia (established under s 26A of the CALM Act), Environment Minister Judy Edwards has announced that the two bodies are to be retained as separate entities.