Submission to:

Productivity Commission

'Major Project Development Assessment Processes'

ASSOCIATION OF MINING AND EXPLORATION COMPANIES (AMEC)

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1. Introduction

Thank you for the opportunity to provide input to the Productivity Commission`s *'Major Project Development Assessment Processes"*.

The Association of Mining and Exploration Companies (AMEC) is the peak national industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises over 360 exploration mining and service industry companies.

AMEC's strategic objective is to secure an environment that provides clarity and certainty for mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

The range, number and complexity of approval processes are constantly increasing, resulting in unnecessary delays, additional costs and ultimately taxpayer revenue foregone. Prior to minerals exploration and mining activities commencing a large number of local authority, state / territory government and federal government approvals are required, for such issues as land access, cultural heritage, native title, environmental, water and planning matters.

Streamlining regulatory processes is not about reducing environmental protection, lowering cultural protections or removing land owner rights, but doing things better with the available resources, that is, **improving the productivity** of the regulatory system.

The adage that 'time is money' is of particular relevance to the development of major projects, as Mr Barry Carbon[1], Chairman of Bauxite Resources, in correspondence to AMEC writes:

> 'It takes about 1.5 million dollars a month for a new developer to stay active and afloat while they seek approvals for a medium-sized new project.
>
> It takes about five years in most of our jurisdictions to get approval processes to the stage of starting the project.
>
> You do the simple mathematics over 60 months. If you have less than 90 million dollars when you start your proposal, you will go broke or you will sell your company or your control, probably overseas.'

The time delays inevitably become lost revenue to the developer and governments.

Evidence is mounting that Australia is becoming or has become a high cost producer of commodities. Australia`s mining industry is no longer as cost competitive as it once was with production costs continuing to rise dramatically. Port Jackson Partners released a report[2] which clearly identified that Australia was now far less competitive than its international counterparts.

Amongst other matters, it found that:

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[1] In addition to being Chair of Bauxite Resources Mr. Barry Carbon has held the positions of Chair and Chief Executive of the WA Environmental Protection Authority, Chief Executive of the Commonwealth EPA and concurrently Supervising Scientist for the Alligator River Region and inaugural Chair of the Standing Committee for the National Environment Protection Council, Director General for the Queensland EPA and Parks and Wildlife, CEO for the New Zealand Ministry for the Environment and Secretary for Environment for New Zealand.

[2] Regaining competitive edge report, Port Jackson Partners, September 2012

- 'Capital costs are rising more rapidly here than in the rest of the world, with iron ore projects now 30% more expensive than the global average and thermal coal 66% more expensive,[3]
- 'By 2020, Australian projects beyond the Pilbara are forecast to have higher delivered costs than benchmark Brazilian producers and will cost up to 75% more to build than projects in West Africa,[4]
- 'Nearly half of Australia`s production is now in the most expensive 25% of mines globally. Even in iron ore we have lost our operating cost advantage for all but established Pilbara producers,[5]
- '75% of all projects included in the BREE major projects list remain uncommitted.'[6]

The Fraser Institute[7] is a respected research organisation based in Canada. Its annual Survey of Mining Companies monitors perceptions about jurisdictions attractiveness as a place to invest in exploration, the precursor to mining. Unfortunately the survey shows that Australia has slipped in the rankings from 8 out of 45 jurisdictions in 2001/02 to 30 out of 96 in 2012/13. This means Australia is seen as a less attractive place to invest in exploration now than it was 12 years ago.

The Metals Economic Group annual World Exploration Trends[8] shows that Australia's share of non-ferrous exploration expenditure has declined from 20% in 1996 to 12% in 2011. The implications of this decline are summarised in The World Bank Report *"Mining Royalties - A Global Study of Their Impact on Investors, Government, and Civil Society"*[9]

> *'One of the dangers for public policy is that the decline may take some years. The large economic rent associated with mining in the short run (the quasi-rent, other rent, and pure rent) means that higher tax rates on mining almost inevitably raise government revenues at first. The negative effects on mine output, and in turn revenues, may take years to become apparent; likewise, they take many years to reverse. Fortunately, there is an earlier indicator that mining taxes are too onerous. A decline in exploration expenditures relative to other countries often provides the first indication that a country is losing its competitiveness in attracting investment into its mineral sector' (emphasis added).*

Small mining and junior mineral exploration companies are currently experiencing increased cost pressures due to a range of additional operating expenses; taxes and levies that will bite further into limited working capital and cash flows. Many of these increases are outside the control of the individual company, but still require internal cost saving adjustments.

This submission has been structured on the basis of the sections outlined in the Productivity Commissions' Issues Paper using the titles from the Issues Paper. However, rather than provide specific responses to the questions posed AMEC has provided a broad commentary on the issues.

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[3] Regaining competitive edge report, Port Jackson Partners, September 2012, page 10

[4] Regaining competitive edge report, Port Jackson Partners, September 2012, page 10

[5] Regaining competitive edge report, Port Jackson Partners, September 2012, page 25

[6] Regaining competitive edge report, Port Jackson Partners, September 2012, page 50

7 Fraser Institute, 2001/02 to 2012/13 Survey Results.

[8] www.metalseconomics.com/sites/default/files/uploads/PDFs/meg_wetbrochure2013.pdf

[9] http://siteresources.worldbank.org/INTOGMC/Resources/336099-1156955107170/miningroyaltiespublication.pdf

2. Benchmarking Major Project Development Assessment and Approvals Processes

AMEC supports the Productivity Commissions approach to this inquiry, noting the difficulties in comparing Australian jurisdictions let alone international jurisdictions. Nonetheless, Canada given its similarities in resource endowment and government structure would make a useful comparison, but care needs to be taken in drawing direct conclusions.

A useful outcome of this inquiry would be a standard set off metrics that could be used on an ongoing basis to measure the performance of Australia's development assessment and approvals (DAA) regulatory agencies, including the ability to capture leading practices. As the PC has stated, benchmarking creates competition which can lead to better regulatory performance. At present, proponents and industry have no way of bringing to account poor performing regulatory agencies.

AMEC notes that the Terms of Reference do not provide a definition of a 'major' project. The PC's Issues Paper does not provide a definition. Often a major project is defined by its financial cost. AMEC supports a broad definition of what a major project is because placing restrictive thresholds on a project could exclude projects that may be of high complexity and require regulatory support but may not benefit from regulatory reforms.

3. Key Features of Major Project Development Assessment and Approvals Processes

AMEC supports the use of mechanisms to scope and identify, if any, the major risks of a project in the preliminary stages.

However, an issue that has continually arisen is regulatory creep. AMEC is aware of instances where the proponent has called all the relevant agencies into the room, discussed the project with them, identified the major risks and the regulatory agencies responsible for managing those risks. The proponent then went away and addressed the major risks identified by the agencies only to have further issues (scope creep) added at some later stage of the DAA process, issues that had been dismissed in the preliminary assessment.

4. What are the impacts of the current arrangements?

Environmental Approvals

4.1 Costs of Preparing Environmental Approval Documents for Assessment

A major cost of the DAA process is the accumulation of information and knowledge required for the assessment documentation.

In the first instance there is the need to generate knowledge about the project site. Information provided to AMEC by its environmental consultant members shows that the cost for a basic flora and fauna survey in an area of low biodiversity starts at around $20,000 and increases with increasing levels of biodiversity. This includes 3-4 days of field surveys, 2-3 days of data analysis and 2-3 days of report writing. If the survey is being conducted within the conservation estate where the level of detail required is considerably higher, then the costs subsequently increase.

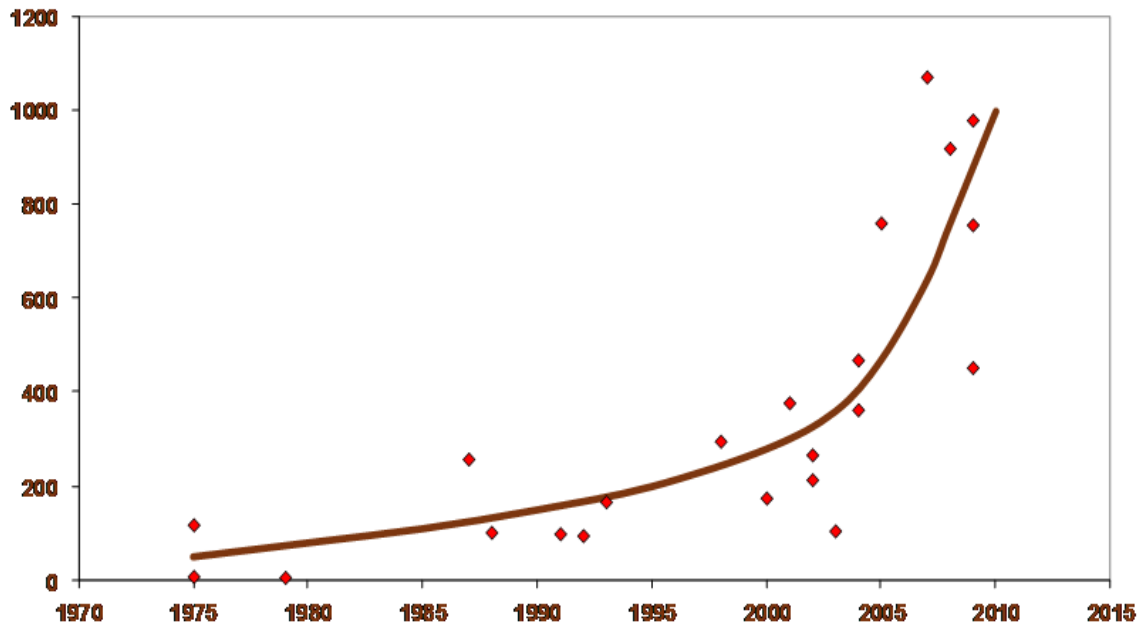
Once base line environmental information is obtained management plans are then prepared to demonstrate how the proponent will manage the risks to environment. To provide a real life case study,

AMEC cites a project currently undergoing a Public Environmental Review (PER) with the WA Environmental Protection Authority[10].

Sorby Management Proprietary Limited, a joint venture between KBL Mining Limited and Yuguang (Australia) Proprietary Limited, is proposing to develop a Silver Lead Zinc mine at the Sorby Hills deposit 50 km north of Kununurra in the East Kimberley Region of Western Australia. The proposed Project involves mining of three open cut pits. Ore will be processed by flotation and a concentrate produced for export through the Port of Wyndham. The expected project life is approximately fourteen years. The Public Environmental Review documentation consists of 4 Volumes. Volume 1 alone is 200Mb. Volume 2 contains 7 appendices and Volume 3 contains 37 appendices. In total the documents are over 500Mb.

To illustrate the extensiveness of the size of the documentation required the following graph was prepared by the Chairman of the WA EPA. It shows the number of pages of environmental impact statements has multiplied significantly over the last decade.

Figure 1 - Size of Environmental Impact Statements



There is a community expectation that that the environmental review process is robust and rigorous. However, there is a significant question mark as to whether size and the level of detail of environmental impact assessment documents is delivering better environmental outcomes. The general public cannot be expected to download 500MB and/or read over 1000 pages of information and then ascertain whether their concerns have been addressed by the proponent.

4.2 Other Approvals

More recently there has been an increasing requirement on proposals to undergo broader social and economic assessments. A social impact assessment is necessary for all resource development projects undertaken in Queensland. In New South Wales, the Government is introducing Strategic Regional Land

[10] www.kblmining.com.au/projects/sorby-hills/public-environmental-review/

Use Plans (SRLUPs) to balance resource development with the protection of strategic agricultural land. The SRLUPs outline a new upfront assessment of certain mining and coal seam gas proposals by an independent panel. This process, known as the Gateway process, applies to State significant mining and coal seam gas proposals that require a new or extended mining lease and are located on strategic agricultural land. The SRLUPs will provide that an optional cost benefit analysis can be undertaken for State Significant Development proposals for mining or petroleum (including coal seam gas) that have passed the Gateway process. The SRLUP's also include new requirements for defining high value agricultural land through the Biophysical Strategic Agricultural Land (BSAL) protocol.

4.3 Number of Approvals Required

The number of approvals required for a major project is phenomenal. Executive Chairman of Hancock Prospecting Gina Rinehart is quoted as saying that Hancock Prospecting needed more than 3000 approvals and licences to start a mine, build a railway and operate a port[11].

4.4 Uranium Approvals

The process to gain a licence to explore and mine for uranium in Western Australia (WA) provides a good case study of the length and complexity of the approvals process.

The WA Department of Mines and Petroleum (DMP) have produced a Gantt chart[12] of the process. It shows that the minimum time it would take to get an approval to explore for uranium would be 358 days. The Gantt chart shows the whole process through to the final approval of a uranium mine – in total 1135 days from exploration to production.

4.5 Guidelines, Codes of Practice and other advisory documents

While the requirements of a proponent in developing a project are enshrined in legislation and regulation, they are supplemented by a plethora of guidelines, codes of practice and other advisory documents issued by regulatory agencies. Some of these are admissible in court as providing known risks that must be managed. In effect, they become secondary and tertiary approval mechanisms and another layer of approval. This kind of regulation is not generally picked up when benchmarking or investigating the burdens of red and green tape.

For example, the WA DMP has the following number of guidelines which is repeated across regulatory agencies and jurisdictions.

Resources Safety Division – 10 Codes of Practice, 34 Guidelines

Environmental Division – 8 Guidelines, 5 Environmental Notes

Native Title and Aboriginal Heritage

4.6 Native Title Determinations

Native Title is defined as the rights and interests that are possessed under the traditional laws and customs of Aboriginal people, and that are recognised by common law. In some areas, native title has been deemed to be extinguished, such as freehold land, but in other areas native title may continue to be active.

[11] www.theaustralian.com.au/national-affairs/rinehart-sees-enormous-shortage/story-fnapmixa-1226177718243

[12] www.dmp.wa.gov.au/documents/000464.rachel.maiden.pdf

Industry proponents and government approval agencies therefore need to ascertain whether the proposed tenement area is the subject of native title.

The Federal Court determines the validity of a claim for native title by hearing evidence presented in a native title claim by the claimants and makes a decision based on the evidence provided. The claim must meet all 12 conditions contained in a registration test in order to be entered on the Register of Native Title Claims.

A registered claim provides a native title party certain procedural rights, such as the 'right to negotiate' with others (such as any associated compensation from mining and exploration companies) in relation to the grant of an exploration licence or mining lease on an area covered by the native title claim.

If native title is determined, the determined holder of native title may be granted 'exclusive' or 'non exclusive' native title rights and interests.

Not all land in Australia is subject to native title.

Despite the fact that the *Native Title Act 1993* (Cth) is nearly 20 years old, AMEC understands there are still approximately 450 native claims throughout Australia requiring resolution. Various attempts have been made by governments to streamline the process, however more work needs to be done to reduce the current timeframes and subsequent costly delays.

Under the Native Title Act (NTA), the Federal Court may refer native title matters to the National Native Title Tribunal (NNTT) for mediation. The NNTT assists parties to reach agreements in relation to the existence of native title and related issues. These agreements then become the subject of determinations or other orders made by the Federal Court.

When an exploration company makes application for a licence they are normally asked to nominate a preferred native title process, such as an expedited procedure, right to negotiate, private indigenous land use agreement (ILUA), a State ILUA, or a combination thereof.

Each of these options requires close analysis and consideration by the exploration company prior to deciding which option to take as significant delays can occur. The process is further complicated where native title has still not been determined, a native title claim not yet submitted or registered, and where there may be several native title stakeholder groups with an interest in the licence area.

4.7 Costly and time consuming cultural heritage processes

Given the major proportion of minerals exploration and mining activity occurs in Western Australia, it is relevant to note the existence of the WA Aboriginal Heritage Act 1972 and that it explicitly provides for sacred sites as well as for the preservation of Aboriginal historical and archaeological sites that will continue to be valued by future generations.

The Act is the State`s principal legislation enabling protection of Aboriginal cultural heritage. A breach of the Act will result in financial penalty and reputational damage. For company Directors this is a significant governance issue and over time the industry has attempted to fill its heritage obligations by commissioning heritage surveys.

A heritage survey industry has grown from this requirement for company due diligence and is now a significant 'industry' in its own right. Issues of supply and demand of qualified persons plus unrealistic expectations on the exploration industry's capacity to pay have meant the industry sustains a large number of anthropologists, archeologists and native title representatives. In combination they are costing the industry $100 millions of dollars annually – money not being spent on the ground exploring.

Under the current scheme, a landowner (such as an exploration or mining company) is expected to lodge consultants` reports detailing site surveys (heritage surveys) to ensure compliance with the Act by protecting Aboriginal sites.

Following assessment of a Notice to use land for a purpose (Section 18 notice), the Minister for Indigenous Affairs makes a decision whether to consent to the landowner using the land after considering advice or recommendations from the Aboriginal Cultural Materials Committee (ACMC).

AMEC members have consistently expressed deep concern with the time delays and increasing costs in undertaking a heritage survey, and in progressing Section 18 consents. Some progress has been made in respect of the latter through the administrative processes of the ACMC, however, the high costs that are incurred by industry in obtaining a heritage survey continue unabated.

Based on member feedback the average cost of a heritage survey has increased from $11,000 per day in 2010 to the current approximate cost of $15,000 per day. There have also been examples where the daily cost of undertaking the survey has exceeded $20,000. There is limited opportunity for exploration companies to negotiate these costs. AMEC has reproduced an actual fee schedule from a Standard Heritage Agreement for conducting a heritage survey in the North West of Australia.

Category	Qty	Description	Rate	Amount
1. Advisors				
1a.		Anthropologist, ethno-biographical, environmental, archaeological consultants.	TBA	
2. Land Council Representatives				
2a.		Professional Fees		$2,550
		Operational and Logistical Fees		$7,500
3. Work Program Survey Team				
3a.	8	Filed Inspection Work Clearance Team Owners/Cultural Advisers/Senior Cultural Advisors	$500-$1000pp (number of senior cultural advisers is capped at 4 per survey)	$4,000 - $8,000
4. Camping and Supplies				
4a.		Accommodation		$2,000
b.		Food		$750
c.		Equipment/Out of Pocket expenses/incidentals		$350
5. Vehicles				
5a.		Vehicle Costs		$1,950
First Sub-Total				$19,100 - $23,100 + cat 1
6. Admin Fee				

6a		Administration fee 20% first sub-total		$2,865 - $4,620
7. Heritage Impact Assessment costs				
7a.		Cost of meeting with TO's varies according to context. Note Heritage Protection Agreement clause 41.1 cost included		$5,000 - $20,000
7b.		Airfares and air charter costs dependent on context		
Second Sub Total				Not more than $22,865 - $26,865 + air travel and expenses

One of the most significant costs highlighted above relates to Land Council Representatives. The daily cost is almost $10,000 per day.

The costs shown are in addition to those paid to anthropologists/archaeologists, consultants, lawyers; and a lesser percentage to native title representative bodies and Traditional Owners themselves. It is has been estimated that only 10-15% of all monies paid by companies for heritage purposes are received by the Traditional Owners. One member company reported that of a four million dollar exploration program they budgeted $500,000 for heritage surveys and agreements. This represented approximately $30,000 per day.

This is a significant issue that must be addressed as the finalisation and execution of heritage surveys is being used as a lever for excessive and an increasing number of financial demands on industry.

Despite the fact that these payments are the subject of contractual Heritage Agreements between two parties, AMEC has previously suggested that an agreed 'capped fee schedule' should be implemented to avoid extortionate and unreasonable fees being charged by representatives of native title groups or Traditional Owners.

There appears to be a need for the nature and extent of these payments to be benchmarked and where possible standardised Australia wide.

Environmental Protection

4.8 Jurisdiction Creep for Environmental Protection

Of major concern is the growing expansion of federal involvement in environmental matters without changes to the underlying legislation. Excluding the proposed amendments relevant to large coal mining and CSG activities, the Commonwealth only has the power to regulate matters of national environmental significance under the EPBC Act.

National heritage is one of these matters and has been used to bring a whole region within the scope of the EPBC Act (i.e. the West Kimberley). During the listing process for the West Kimberley, several

submissions were put to the Commonwealth by AMEC and others pointing out that use of the national heritage regime to facilitate landscape scale assessment in this way is inappropriate.

The West Kimberley is not uniformly pristine or “iconic”. AMEC however recognises that the West Kimberley is potentially a region with natural, Indigenous and historic heritage values. AMEC considers that the concept adopted by the government to date is a radical departure from established processes for listing specific, rigorously evaluated “places of outstanding heritage value to the nation”.

AMEC also considers the EPBC Act process does not contemplate that a “place” comprises such a vast, diverse, loosely interconnected region. In taking such a broad-brush approach, the Commonwealth has made serious errors in ascribing “iconic” heritage values to large tracts of land in the region without any apparent scientific rigor.

The impact for the industry is duplication in existing regulation of environmental and heritage values, increasing regulatory constraints on resource and infrastructure development in the region without any associated net heritage, environmental, economic or social benefit. The listing of the Kimberley has set a precedent that could be replicated elsewhere with the same impacts.

Federal Environment Protection and Biodiversity Conservation approvals

4.9 Significant impact

Although Environment Protection and Biodiversity Conservation (EPBC) Act approvals mainly relate to mining activities, there is a requirement within the Act that ‘an action (such as exploration or mining) will require the approval of the Minister if an action has, will have, or is likely to have, a significant impact on a matter of national environmental significance’.

In turn, ‘significant impact’ is defined as ‘an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts’.

The Matters of National Environmental Significance guidelines issued by the Australian government state that ‘you should consider all of these factors when determining whether an action is likely to have a significant impact on matters of national environmental significance’.

AMEC members continue to express concern for the lack of clarity and certainty surrounding the definition of ‘significant impact’ under the EPBC Act, and therefore consider that it should be reviewed and amended, particularly in the context of low impact exploration, advanced exploration and mining activities.

4.10 Duplication between State and Federal Approvals

AMEC has raised the issue of duplication of federal and state approvals as a barrier to mining development. Duplication is not only contained in multiple approvals, but the submission of the same information to more than one agency.

A review of the Federal Environment Protection and Biodiversity Conservation Act (EPBC) has been completed, and the government has responded with several recommendations including the need to streamline its approvals processes surrounding the Act.

The Council of Australian Governments (COAG) has since acknowledged that considerable Federal Government resources can be saved by delegating its assessment and approval powers under the EPBC Act to accredited State and Territory Governments under the existing bi-lateral agreement process. This will have the effect of creating a single point of contact for environmental approvals. A consultation process had commenced with the aim of an implementation date of March 2013. The process has however stalled as some concern has been expressed by the Federal Government and other

stakeholders on whether State and Territory Governments have the capacity to meet the established accreditation standards, and whether the proposed timetable is achievable.

In view of the savings to industry and government, this is an initiative that has been recommended and actively promoted by AMEC for several years, and is therefore fully supported as it should remove the current significant duplications and additional layers of approval required by the EPBC Act, whilst maintaining the high environmental standards enshrined within that Act.

4.11 Extension of Federal Environmental Regulatory Powers

AMEC is concerned with the increasing intervention by the Federal government in environmental regulation through amendments to the EPBC Act. Most recently, the Federal Government has put forward amendments which seek to create a matter of national environmental significance (MNES) for coal seam gas and large coal mining developments which are likely to have a significant impact on a water resource.

AMEC is satisfied that the current state and territory-based regulatory arrangements are adequately addressing the interaction between minerals, coal and coal seam gas exploration, mining and extraction and water resources. The Amendment Bill has significant national implications because it creates a precedent for which other industries could be included under the EPBC Act. Commonwealth regulation in this area is unnecessary and unwarranted. Furthermore AMEC questions whether the amendments to the EPBC Act are within the powers of the Commonwealth under the Constitution.

The management of water resources is predominantly a responsibility for the States and Territories and not the Commonwealth. AMEC is of the view that the status quo should remain. Furthermore the existing regulatory frameworks, skills and local knowledge and experience currently reside in the states and territories regulatory agencies and therefore there is no need for Commonwealth regulatory duplication. This expertise is recognised through the current arrangements between the states and territories and Commonwealth governments.

4.12 Environmental Offsets

AMEC has been clear in its desire to see the environmental impact assessments (including the determination of a ‘significant impact’), avoidance and mitigation and environmental offsets policies exist under a quantitative risk-based assessment framework.

The current assessment of environmental impacts has been in the main, in AMEC’s opinion, a process too open to subjectivity. Science should underpin protection of all eight matters of national environmental significance and therefore AMEC sees no reason why this cannot be used to support the development of a quantitative risk-based assessment framework, including in the application of offsets.

AMEC is cognisant that the use of environmental offsets ‘as a last resort’ is a developing policy area. However, AMEC has and continues to express concern at the manner in which environmental offsets have been applied to date. Furthermore AMEC is concerned with the plethora of offset policies guidelines being produced by agencies and understands others may be in development. Each jurisdiction has their own version, with different terms, definitions, approaches and methodologies.

In WA Government agencies apply offsets to certain proposals subject to environmental impact assessment and as a condition of permits for clearing of native vegetation under the Environmental Protection Act 1986. They may also be considered in relation to other legislation, including planning developments under the Planning and Development Act 2005 and mining proposals under the Mining Act 1978.

The WA Environmental Offsets Policy outlines the following 6 key principles underpinning the application of environmental offsets.

1 Environmental offsets will only be considered after avoidance and mitigation options have been pursued.

2 Environmental offsets are not appropriate for all projects.

3 Environmental offsets will be cost-effective, as well as relevant and proportionate to the significance of the environmental value being impacted.

4 Environmental offsets will be based on sound environmental information and knowledge.

5 Environmental offsets will be applied within a framework of adaptive management.

6 Environmental offsets will be focused on longer term strategic outcomes.

Furthermore the policy contains the following three key statements:

1 "Offsets will be used to compensate for residual environmental impacts and be designed to achieve long-term outcomes, building upon existing conservation programs and initiatives"

2 "Environmental offsets will be used as a last resort, after due consideration of avoidance and mitigation measures"

3 "An environmental offset is an offsite action or actions to address significant residual environmental impacts of a development or activity"

AMEC is of the strong view that WA's regulatory agencies are at best implementing the policy in an inconsistent and non transparent manner and at worst, ignoring the policy completely and implementing their own offsets policies. AMEC considers the case studies below justify this statement.

Fundamental to AMEC's concern is the negotiation 'black box' that occurs between the proponent and the relevant agency, particularly the determination of appropriate indirect offsets which is predominately 'cash'. There appears to be no rules to define negotiations, especially on the side of the regulator, and the resulting offsets appear to be a function of which company can negotiate best. In the context of environmental offsets this does not promote openness, transparency and accountability of the decision making process.

Case Studies

A number of recently released EPA's reports highlight the lack of consistency and transparency in the application of the WA offsets policy.

In a number of reports, in the areas of environmental concern (flora, fauna and water) listed, the EPA states that the project is "unlikely to [have a] significant(ly) impact". AMEC contends that if there is no significant impact, then by default it means that there cannot be a significant residual impact and is therefore in conflict to principles 2, 3, 4, and with statement 3 above. However, offsets have been recommended as conditions of approval. In many cases these have been cash offsets which add millions more dollars to the cost of the project.

Notwithstanding the previous comments, AMEC has a fundamental problem with the calculation of the cash offsets. According to the reports, the cash offsets are calculated as following:

- $1,500 AUD (excluding GST) per hectare of good to excellent condition native vegetation, and
- $3,000 AUD (excluding GST) per hectare cleared of more sensitive vegetation communities.

The issue is that the cash offset framework and monetary multipliers have had no industry consultation, have not been substantiated by the EPA, nor has there been any methodology released on how "good to excellent" is determined. Furthermore there appears to be no governance processes in place for managing the payment. These are discussed later.

In another example, in the EPA report 1410 for Cazaly Resources's[13] Parker Range (Mount Caudan) Iron Ore Project, the EPA states that *"the proposal requires the clearing of up to 418.1 hectares (ha) within the 929 ha project area.* ***No*** *Threatened Ecological Communities would be impacted. The mine area is located within the Priority 3 Parker Range Priority Ecological Community (PEC); however, clearing of 0.07% of this is* ***not considered to be significant"*** (emphasis added). Again, AMEC contends that if there is no significant impact from the project, then there cannot be significant residual impacts. However, Cazaly Resources have been conditioned with "the acquisition and rehabilitation of 1,311 ha of farmland" as an offset. This is a conflict with principles 1, 2, 3, 4 and statements 1, 2 and 3 above.

With regards to the two figures above, $1,500 AUD per hectare and $3,000 AUD per hectare, AMEC believes that these figures have been calculated using an internally EPA generated '70:30 rule'. AMEC understands this to mean that for vegetation rated 'good to excellent' that the EPA considers that rehabilitation will only return to 70% of its function. The dollar value is generated from one company's estimates of the rehabilitation costs per hectare, that is, $10,000 per hectare. A lesser value is used for poorer condition vegetation. Despite EPA's use of this methodology, it has not had any industry consultation and is not substantiated by the EPA with peer reviewed science. It does not appear in the Draft Guidelines. Nonetheless it demonstrates to AMEC that a quantitative methodology can be used to transparently determine offsets.

Cash environmental offset payments to Government could be construed as an environmental levy and potentially a tax. AMEC understands that this would require Cabinet approval. AMEC is unaware that cabinet has approved such payments. Further, there is discussion about the cash going into a Pilbara Trust Fund to be spent on programs that are to be related to the mining proposal. We understand that this may be beyond the power of the EPA under the Environmental Protection Act 1986.

If such a fund is established properly, then AMEC wishes to see the companies and industry involved in the investment strategy, administration and governance of the funds collected for cash offsets. There is also the concern with a potential conflict of interest. If any agency grants approval on the basis that an offset is part of the approval process then there is a potential conflict. This is different if a company was to provide sponsorship as a part of a corporate social responsibility program.

In AMEC's view the fundamental component to improve openness, transparency and accountability of the decision making process for offsets is a quantitative method that shows what offsets are accepted by the EPA and provide assistance to proponents developing offset packages. The Australian Government Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) recently released the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) environmental offsets policy* (the policy) and the accompanying *Offsets assessment guide*. In AMEC's view the useful component of the EPBC Act policy and guidelines is the guidelines which provide a quantitative tool to determine suitable environmental offsets.

AMEC recognises this method has some flaws (such as scientific knowledge gaps and some level of professional subjectivity) but considers this is a significant positive step in the direction of providing clarity and certainty to proponents in developing offset packages. AMEC understands that NSW and Queensland have quantitative methodologies in place to determine appropriate offsets. AMEC considers that, at the very least, quantitative methodologies provide a basis from which offsets negotiations can begin. Therefore AMEC is looking to EPA to develop similar quantitative methodology. The '70:30 rule' demonstrates that it is achievable. While this approach has elements of prescription, AMEC believes that

[13] Environmental Protection Authority Report 1410, August 2011, Parker Range (Mount Caudan) Iron Ore Project, Cazaly Iron Pty Ltd.

sufficient flexibility can be built into the methodology to allow proponents to be innovative in developing cost effective offsets packages.

How environmental offsets are coordinated and aligned between the Federal and State/Territory regimes was going to be a critical component of the bilateral agreements that were progressing under the auspices of the Coalition of Australian Governments (COAG). This is still an outstanding issue and source of considerable frustration to industry.

5. Possible measures to improve the efficiency and effectiveness of processes

5.1 Clarity and Certainty

In order to plan their projects, developers need clarity and certainty from the regulatory system. In this sense by 'clarity', AMEC means the government has articulated its policy position and desired outcome publically and in a manner which is not ambiguous and is easy to understand. By 'certainty' AMEC means the policy will remain in force for or introduced in a timeframe that is relevant and appropriate to business planning and investment decisions.

5.2 Regulatory Agency Structures

As an aspirational goal AMEC considers that a one-stop-shop approvals system has considerable merit. However, to date it has proved an elusive goal given the complexity of the regulatory framework. Nonetheless, the one-stop-shop should lie within the relevant agency for the regulation of minerals exploration and mining. In AMEC's view these agencies have the expertise to properly determine the risk of the activity on the environment.

5.3 Lead Agency Framework

In AMEC's view the lead agency framework concept has arisen because the regulatory environment has become so complex that proponents had little chance of understanding it, let alone navigating it, to deliver their project. In order to assist proponents understand and navigate the system Governments invented the Lead Agency Framework. It essentially amounts to the provision of 'inside information' provided by the Government itself.

The WA Governments Lead Agency Framework provides a set of general criteria for major projects which each individual lead agency has adapted to their specific industry. For mining projects the DMP is the lead agency.

In AMEC's experience the Lead Agency Framework has provided assistance for the large projects, but does not provide much assistance to smaller operators. One of the issues is that the DMP administers the WA Mining Act and to AMEC's knowledge it does not have the explicit role as an industry development agency; although through the Geological Survey of WA provides pre-competitive geological data. Its primary role is to assess and approve exploration and mining projects. Project facilitation is not its core business.

As of March 2013 the DMP was currently providing assistance to 6 minerals projects, 5 petroleum projects and was providing support to 3 projects being assisted by the Department of State Development.

AMEC considers all mine development projects as major projects and whether or not a project justifies a specific case officer to manage should not diminish the need for the lead agency to provide assistance to proponents beyond just the assessment of the agency's regulatory objectives.

In the December quarter 2012 the DMP received 77 applications to assess mining projects

AMEC's contends that there a number of project proponents that are provided no assistance in navigating the DAA process across agencies despite being significant investments in their own right..

5.4 Risk Based Outcomes Focused Assessments

AMEC has been clear in its desire to see the environmental impact assessments (including the determination of a 'significant impact') exist under a quantitative risk-based assessment framework.

The current assessment of environmental impacts has been in the main, in AMEC's opinion, a process too open to subjectivity. Science should underpin protection of matters of environmental significance and therefore AMEC sees no reason why this cannot be used to support the development of a quantitative risk-based assessment framework.

'Risk-based' means the existence of systematised decision making frameworks and procedures which are able to prioritise regulatory activities and deploy resources against the **real risks** that regulated firms pose to the regulator's policy objectives. Regulatory agencies must undertake a formal risk assessment which identifies the likelihood and consequences of an action.

'Outcomes focused' means a regulatory system that focuses on high-level principles and a requirement to achieve the best outcomes for the environment, business and the community. It should enable business to use appropriate methods of achieving outcomes which suit their business, their type of operation and their workplace without having to follow prescriptive rules.

5.5 Streamlining Approvals Processes

AMEC has made a number of approvals related submissions and representations to various state/territory and federal governments over the past few years in an attempt to streamline the approvals process and improve efficiency and productivity.

AMEC considers that where duplications have been identified strategies should be implemented to eliminate any unnecessary overlapping and decision making processes.

- Efficiencies can also be driven by all agencies through:
- Reviewing and promoting a reduction in timelines (including the 'stop the clock' mechanism),
- Condition setting
- Developing and implementing clear escalation policies,
- Parallel processing,
- Delegation of responsibilities,
- Development of an approvals related training package
- Reporting and design of performance targets
- Wider adoption of information communication technology (Online Approvals Systems)
- Integration of geographic and geophysical information databases

Timelines

AMEC strongly supports statutory timelines for DAA's.

The rationale for regulatory agencies having timelines for approvals is strong. If asked how quickly they want their approval all proponents would say as soon as possible. However, this in itself creates uncertainty because there is no definition of as soon as possible, so the proponent is unable to plan accordingly. Timelines deliver this certainty.

In AMEC's view there is a neccisty for statutory timelines. Statutory timelines create discipline within regulatory agencies, deliver certainty and promote openness and transparency of the decision making process. They also provide a mechanism for government and industry to monitor the regulatory agencies performance.

AMEC is of the view that the regulatory timelines for DAA's are not reflective of the level of complexity and risk that developments pose. Furthermore little justification and evidence is provided by agencies for the setting of timelines. The variety (from published timelines to no timelines at all) of approval timelines across the jurisdictions suggests that efficiencies can be made with a requisite reduction in timelines.

Stop-the-clock

When measuring their approvals performance, regulatory agencies exclude the time taken by processes outside their control. When an application process is outside of its control (i.e. with the proponent or another agency), the time taken during this process is not included when calculating the agency's approval performance. In effect the "clock is stopped". The clock is started again when the regulatory agency receives other agency advice or proponent information.

AMEC considers that while the primary regulatory agency is the one that accepts the application, approval timelines should be whole-of-government. That is there should be no stop-the-clock mechanism at all when the application is referred to other agencies.

Licence Condition Setting

Licence conditions are a necessary part of an approval. However they must only be used to manage the highest level of risk that the project has to the objectives of the regulatory agency. That is, risk-based conditions. They also must be written in a way that not only allows the proponent to be able to comply but for enforcement to occur.

Escalation Policies

The ability of a proponent to escalate an assessment or approval decision in a timely and orderly manner from the assessing officer to higher levels of the agency is a key component of an efficient approvals system. The experience of AMEC members has been one of frustration at the seemingly ad hoc nature and slow manner in which regulatory agencies approach a proponent's appeal for a review of the administrative decision.

Parallel Processing

'Parallel processing' means that multiple approval processes can occur simultaneously within and across government agencies. Where there is no legislative or regulatory link between one process and another, one approval should not be a prerequisite for another.

Delegation of Responsibilities

Under a risk based outcomes focused approvals system, AMEC considers that lower level officers are capable of approving low risk exploration activities. However, AMEC is aware that in some agencies delegated authority is utilised at a minimal level, and in some cases possibly enshrined in legislation. AMEC's view is that delegated approval will reduce costs (because lower level officers are capable of approvals) and minimise bottlenecks (therefore reducing timeframes) because there will be a greater number of possible delegated officers, so that the approval is not reliant solely on one or two officers.

Approval Officer Training

In conjunction with the previous point, AMEC believes that assessing and delegated officers should have approvals related training, focusing on administrative decision making. This will ensure their decisions are consistent, open and transparent and that the right decisions are made at the right time.

Reporting and Design of Performance Targets

Government agencies have internally developed their own key performance indicators and targets. However, the methodology and design of these monitoring programs is not communicated to industry.

AMEC considers that current reporting of performance targets is overly simplified and that the key performance indicators (KPI's) have no real commercial meaning or context. AMEC is of the view that the design of key performance indicators and targets varies between agencies and often the way performance is reported can disguise delays in processing applications.

Opening the design and methodology of these to industry scrutiny is a key component of improving the Governments openness, transparency, accountability and increased efficiency.

Wider Adoption of Information Communication Technology

AMEC considers online application lodgement and electronic tracking systems are important and necessary tools to improve the efficiency, effectiveness, openness, transparency, and accountability of the approvals process.

In the past, after a proponent submitted a development application, they have had few mechanisms of knowing at what stage of the approvals system the application was. This uncertainty translated into the inability of the proponent to properly plan the development.

However, the advances in information communication technology (ICT), including the internet, should be fully utilised and provide proponents with real-time tracking of the progress of their application. The use of ICT in the approvals process will improve the transparency and accountability of decision making of the approval agencies.

AMEC acknowledges that many jurisdictions have or are moving towards integrated electronic lodgement and tracking system for applications. Notwithstanding this, AMEC is concerned that it will take a number of years before these systems are universally implemented across government because of resource constraints and difficulties arising from the different ICT and information technology platform systems in agencies.

Contemporary ICT has a number of benefits that combined make them useful tools for proponents and government throughout the approvals process, including:

- reducing paper use,
- provision of real-time information,
- improved proponent and regulator relations,
- increased agency productivity,
- improved agency demand responses, and
- improved collaboration, integration and sharing of information between agencies

Integration of geographic and geophysical information databases

Governments should have an emphasis on integrating the geographic information system (GIS) databases held by their various agencies. Integrated databases, such as environment, heritage, and water, are extremely valuable tools in the approvals process because they allow proponents to understand better environmental and cultural heritage sites surrounding their development. Further integration of GIS databases would greatly improve its value to industry. For example, inclusion of environmental offsets locations would ensure greater consistency in their application.