



File No: A1439/201201

RER ADVISORY PANEL AGENDA

Date:	Fri 20 September 2013	Time:	9:30am – 11:30am
Venue:	Director General's Conference Room Level 8, Mineral House, 100 Plain Street, East Perth		

Agenda

Item	Topic	Who
1.	Welcome, apologies, actions from previous meeting	Chair
2.	Progress update: a. Status Report – for noting b. Duplication and overlap project – verbal update c. Legislative framework – verbal update d. Programme of Work period of validity review – verbal update e. Tenement conditions – verbal update	Chair/all
3.	Risk-based Framework for Environmental Regulation	All
4.	Other business a. Yammer network for communication b. Stakeholder representation at workshops	Chair/all
5.	Next meeting	Chair

Supporting Papers:

1. RER Advisory Panel – minutes and actions 26 July 2013
- 2a. RER Status Report
3. Risk-based Framework for Environmental Regulation

Scheduled Meetings:

- Fri 15 Nov 2013, 9:30-11:30am

NOTE: All meetings are audio-recorded for the sole purpose of producing accurate written Minutes of the meeting. Recordings are deleted once the Minutes are confirmed as the official record of the meeting.



File No: A1439/201201

RER ADVISORY PANEL MEETING MINUTES

Date:	26 July 2013	Time:	9:30am 11:30am
Venue:	Director General's Conference Room – Level 8, Mineral House, 100 Plain St, East Perth		

Members present, observers and apologies

Present

Dr Phil Gorey (CHAIRPERSON)	Executive Director, Environment Division, Department of Mines and Petroleum (DMP)
Mr Justin Fromm	Association of Mining and Exploration Companies (AMEC)
Mr Kane Moyle	Manager – Environment, Chamber of Minerals and Energy WA (CMEWA)
Mr Harry Backes	State Director Western Australia, Cement Concrete & Aggregates Australia (CCAA)
Dr Nic Dunlop	Environmental Science & Policy Coordinator, Conservation Council of Western Australia (CCWA)
Mr Patrick Pearlman	Principal Solicitor, Environmental Defender's Office WA (EDOWA)
Mr Mike Lucas	President, Amalgamated Prospectors and Leaseholders Association (APLA)
Mr Milan Zaklan	Policy Director – Resources, Pastoralists and Graziers Association of WA (Inc.) (PGAWA)
Mr Steve Tantala	Director Operations, Environment Division, Department of Mines and Petroleum (DMP)
Mr Alan Sands	Director, Environmental Regulation Division, Department of Environment and Conservation (DER)
Mr Anthony Sutton	Director, Assessment and Compliance Division, Office of the Environmental Protection Authority (OEPA)
Mr Paul Platt	Senior Project Manager, Project Facilitation Management, Department of State Development (DSD) (<i>proxy for Richard Riordan</i>)
Mr John Connolly	Director Regulation, Department of Water (DoW)

Observers

Richard Smetana	Environmental Officer, Reform Group, Department of Mines and Petroleum (DMP)
Anika Moore	Graduate Officer, Reform Group, Department of Mines and Petroleum (DMP)
Danielle Brown	A/Project and Policy Officer, Reform Group, Department of Mines and Petroleum (DMP)

Apologies

Mr Simon Skevington	Project Director, Reform, Department of Mines and Petroleum (DMP)
Mr Richard Riordan	General Manager Project Facilitation, Department of State Development (DSD) (<i>Paul Platt attending as proxy</i>)
Mr Simon Bennison	Chief Executive Officer, Association of Mining and Exploration Companies (AMEC) (<i>Justin Fromm attending as proxy</i>)
Mr Kevin Price	Secretary, Amalgamated Prospectors and Leaseholders Association (APLA) (<i>Mike Lucas, attending as proxy</i>)
Mr Damien Hills	Associate Director Environment, Australian Petroleum Production and Exploration Association (APPEA)
Mr Gary Peacock	Chairman - Property and Resources Committee, Pastoralists and Graziers Association of WA (Inc) (PGAWA)



Agenda items discussed and actions to be taken

Item	Topic	Action
1.	Welcome, apologies, actions from previous meeting	
	<p>The Chairperson welcomed members to the second meeting of the Reforming Environmental Regulation Advisory Panel.</p> <p>The department considered that it would be beneficial to have a representative from the Environmental Defender's Office of WA on the Panel, and the Chair welcomed Mr Patrick Pearlman, Principal Solicitor as the EDO's representative. The Chair also welcomed Mr Mike Lucas as the new representative from the Amalgamated Prospectors and Leaseholders Association.</p> <p>Apologies</p> <p>Richard Riordan from DSD was an apology; Paul Platt attended as his proxy.</p> <p>Simon Bennison from AMEC was an apology; Justin Fromm attended as his proxy.</p> <p>Simon Skevington is away until 2 September 2013.</p> <p>Actions from previous meeting</p> <p>Minutes are open for Panel members' comment for a specified time period and are then made available on the DMP website.</p> <p>The amended Terms of Reference is available on the DMP website.</p> <p>The Chairperson advised the Panel that other government agencies and industry groups may need to liaise with the Panel, where appropriate. These include:</p> <ul style="list-style-type: none"> • Department of Regional Development • Department of Lands • Department of Parks and Wildlife • Department of Health • Environmental Consultants Association • Australian Centre for Geo-mechanics • Australian Mine and Petroleum Law Association <p>In addition, a Ministerial Taskforce on Approvals, Development and Sustainability has been established, with the first meeting on Monday 29 July 2013.</p> <p>APPEA continues to be a member of the RER Advisory Panel, and will raise petroleum issues with DMP out of session. APPEA will attend Panel meetings, when it sees that it can add value.</p> <p>Panel meeting dates in 2014 will be advised once DER and OEPA confirm their availability dates.</p>	<p>Project team to update Terms of Reference to add EDO membership on the Panel.</p> <p>Open to Panel members for any further suggestions via email</p> <p>DER and OEPA to advise project team of proposed availability dates for 2014</p>
2.	Progress update	
	<p>The Panel discussed the duplication and overlap project and noted that in absence of stakeholder input, a systematic approach is the best option to achieve an appropriately streamlined regulatory system that delivers environmental outcomes. The process must be focused, to ensure industry and community gain value from the outcome.</p> <p>A one day workshop was agreed upon, with an opportunity for case studies involving relevant stakeholder organisations. CME conducted a similar activity on the imposition of cost to industry, which may be of use. Discussions already underway with agencies will continue, and will provide feedback to the workshop.</p>	<p>Project team to develop a 1 day workshop</p> <p>CME to provide cost to industry activity paper to project team</p>



Item	Topic	Action
3.	Environmental objectives	
	<p>The Environmental Objectives discussion paper was released on 20 June 2013, and formal feedback was received from: CCWA; DoW; AMEC; and OEPA, with emails from DSD and CCWA. The Panel discussed the feedback received.</p> <p>AMEC noted that industry also has a role in risk management and it should not be expected that all responsibility for risk management defaults to the government. The government will determine how it ensures that industry is undertaking appropriate risk management.</p> <p>This consultation on the proposed environmental objectives was intended to enable the Panel to indicate support for the objectives or agree to further amendments if required.</p> <p><i>Legislative framework:</i> The Panel noted the lack of a legislation within the Mining Act or in the broader context, to 'anchor' DMP's environmental objectives. DER and OEPA proposed that the department use the EP Act as an umbrella for DMP environmental objectives. A whole-of-government approach was supported by the Panel.</p> <p>CME membership supports the broader direction of the Environmental Objectives Paper. OEPA noted that DMP already has an environmental role under EP Act and there is scope to be broader in DMP's approach on environmental objectives. DER commented that the proposed broader objectives may not reduce duplication.</p> <p>The Chairperson asked the Panel to consider whether it is appropriate to establish objects under Mining Act to allow for the creation of environmental objectives. There may be advantages to developing environmental objectives without being constrained by the Mining Act.</p> <p><i>Measurability:</i> The Panel asked how DMP would measure achievement of the objectives. CCWA sees environmental objectives as a matter for community to oversee. The Chairperson advised that the proponent may propose criteria, but it is the regulator's role to ascertain whether the criteria are appropriate.</p> <p><i>Definitions and terminology:</i> CCWA considers that the proposed environmental objectives in the discussion paper are process-based, rather than outcomes-based. The Chairperson noted that the Panel had differing views on this matter.</p> <p>CCWA believes a clear definition of the condition of the environment is necessary before introducing risk-based framework.</p> <p>CME asked for clear definition on the terms 'responsible' and what is the value of 'long term' to be raised in the mission statement of paper.</p> <p><i>Next steps:</i></p> <p>The Chairperson acknowledged the Panel's comments and the Panel supported the department writing environmental objectives into a broader risk-based framework discussion paper to provide the context and standards.</p> <p>EPA will soon finalise a report that clearly defines what might be done under the Mining Act and what might be done under the EP Act with regard to mine closure.</p>	<p>DER and CME to provide comments on environmental objectives paper</p> <p>Project team to consider legislative options and include in risk-based framework paper</p> <p>Project team to consider measurability of objectives and associated KPIs</p> <p>Project team to clarify wording of objectives where necessary</p> <p>Project team is to include environmental objectives in risk based framework paper</p>
4.	Legislative framework	
	<p>The legislative framework for mining regulation is dependent on the department seeking direction from the Minister. DMP may consult the Panel out of session on simpler legislative issues which may be scheduled into Parliament this year.</p>	



Item	Topic	Action
5.	Programme of Work period of validity review	
	<p>The Programme of Work (PoW) validity period review was identified as a priority by the Ministerial Advisory Panel. RER Advisory Panel members are invited to comment on the proposed extended time frame of 4 years.</p> <p>As the Mining Rehabilitation Fund now requires industry to provide annual reporting of land disturbance, there is a reasonable case to extend the validity period of PoWs. Annual Environmental Reports are also publically available and accessible to land managers.</p>	Panel members to provide comment by 23 August 2013 on proposed 4-year PoW validity
6.	Other business	
	<p>a. Productivity Commission draft report on Mineral and Energy Resource Exploration: DMP alignment notes – Noted</p> <p>b. Out of session Panel correspondence: Yammer (a web sharing application designed for collaboration, file sharing and knowledge exchange) was suggested to assist alignment and clarity.</p>	Project team to establish Yammer network and email details to Panel
7.	Next meeting	
	Fri 20 Sep 2013, 9:30-11:30am	



Completed	
In progress/on track	
Delayed	
Off track	

STATUS REPORT		Updated: 16 September 2013	
Reforming Environmental Regulation (RER) Program			
1. Environmental objectives		Contacts: Richard Smetana; Trish Edgar	
Recommendation	RER MAP recommendation 1: Establish clear and appropriate environmental objectives.		
Project objective	Clear and appropriate environmental objectives.		
Description	Environmental objectives are a fundamental component of the RER Program and underpin risk-based, outcomes-focused environmental regulation and compliance activities. This project will develop and publish an Environmental Objectives Policy Statement with the input of stakeholders and departmental staff.		
Milestones	Internal consultation completed	24 May 2013	
	RER Advisory Panel endorsement of environmental objectives	26 Jul 2013	
	Further internal review of environmental objectives based on feedback received from the RER Panel completed	23 Aug 2013	
	Integration of environmental objectives into risk-based framework discussion paper completed	6 Sept 2013	
Milestone status notes	<i>Draft environmental objectives developed in consultation with Environment Division and reviewed by the RER Advisory Panel on 26 July 2013.</i> <i>Objectives were revised after stakeholder feedback and have been incorporated into the risk-based framework discussion paper.</i>		
2. Risk-based regulatory framework (development phase)		Contacts: Hema Krishnan	
Recommendation	RER MAP recommendation 5: Implement a full risk-based assessment and compliance methodology for environmental regulation. RER MAP recommendation 6: Revise timelines and efficiency performance indicators in line with risk-based regulation.		
Project objective	<ul style="list-style-type: none"> Regulatory effort and resource allocation is targeted and proportionate according to evidence of risk to environmental objectives, such that regulation is effective, efficient and timely. Assessments and decision making by DMP is based upon a formalised risk assessment methodology recognising both approvals risk and operational risk. 		
Description	This project will identify and articulate a risk-based framework for DMP's environmental regulation and develop a plan for implementation. This project is a significant realignment for the department, especially for the regulation of mining, and requires considerable communication and extension work to ensure stakeholder and operational understanding and support.		
Milestones	Draft framework risk-based regulation completed for consultation with stakeholders and RER Advisory Panel	24 May 2013	
	Initial consultation with internal stakeholders completed	5 Jul 2013	
	Development of the previously drafted risk-based framework discussion paper to incorporate environmental objectives completed	6 Sept 2013	
	Consideration for endorsement at RER Advisory Panel meeting	20 Sept 2013	
	Review of RER Advisory Panel feedback completed	11 Oct 2013	
Milestone status notes	<i>The Environmental Objectives were incorporated into revised draft of the risk-based framework discussion paper, which was provided to the RER Advisory Panel for discussion at the Panel meeting on 20 September 2013.</i> <i>Environment Division has undertaken to deliver a pilot project for the application of a risk-based methodology for PoWs.</i>		



Completed	
In progress/on track	
Delayed	
Off track	

3. Legislative framework for mining regulation (stage 1)		Contacts: Phil Gorey; Anika Moore	
Recommendation	<p>RER MAP recommendation 3: Establish clear and enforceable environmental obligations for mining activities</p> <ul style="list-style-type: none"> • Priority: Review of tenement conditions <p>RER MAP recommendation 11: Establish an appropriate framework for the environmental regulation of mining</p> <p>RER MAP recommendation 12: Investigate the feasibility of implementing an external review mechanism for enforcement decisions of environmental compliance matters</p>		
Project objective	<ul style="list-style-type: none"> • Facilitate greater transparency in regulatory processes. • Strengthen environmental compliance. • Streamline regulatory approvals processes. 		
Description	<p>This project will progress a series of legislative amendments, primarily of an administrative nature, which will facilitate greater transparency, streamline the approvals processes and strengthen compliance.</p> <p>These changes will assist in meeting the Government's 2013 election commitments to support the implementation of the Mining Rehabilitation Fund (MRF), prior to the commencement of the mandatory levy in July 2014.</p>		
Milestones	Minister approves Cabinet Submission and Drafting Instructions	08 Aug 2013	
	Formal Stakeholder Consultation process commences	27 Aug 2013	
	Formal Stakeholder Consultation process ends	27 Sep 2013	
	Parliamentary Counsel Office finalises drafting of the Bill	10 Oct 2013	
	Minister introduces the Bill into Parliament	19 Nov 2013	
Milestone status notes	<p><i>Legislative amendments for DMP will occur through stages – 1 & 2 for compliance and process improvement matters; stage 3 for the risk-based framework. Stage 2 has separate project status below.</i></p> <p><i>The Minister requested that DMP have the first stage legislative reforms prepared in time for the Spring 2013 sitting of Parliament.</i></p> <p><i>Upcoming legislative amendments by DER and the OEPA may widen the scope of the proposed reforms.</i></p> <p><i>Phil Gorey will lead the progression of stage 1 for 8 weeks (commencing 15 July 2013), with support from the Reform Group as needed.</i></p> <p><i>A consultation paper was released for public comment on 27 of August. Comments must be submitted by 27 September.</i></p>		



Completed	
In progress/on track	
Delayed	
Off track	

4. Reduce duplication and overlap		Contacts: Trish Edgar	
Recommendations	RER MAP recommendations 7 & 8: DMP will work with other agencies to improve efficiency and eliminate duplication; Improvements in cross-agency policies, such as the Lead Agency Framework, will be addressed in appropriate inter-governmental forums.		
Project objective	To eliminate the duplication and overlap between State government agencies to provide more efficient environmental regulation without compromising effectiveness.		
Description	This project will establish a stakeholder reference group with relevant government agencies to develop an implementation plan to reduce/remove duplication and overlap.		
Milestones	RER MAP priorities addressed by OEPA, DER & DMP senior group.	31 May 2013	
	Stakeholder workshop completed	18 Sept 2013	
	Implementation plan to reduce/remove duplication and overlap drafted	31 Oct 2013	
	Comment period of draft implementation plan completed	30 Nov 2013	
Milestone status notes	<p><i>DoW/DMP meeting 21 June 2013 – it was agreed that tenement conditions regarding water should be removed. In a subsequent meeting, a modified process was agreed to that will significantly reduce the number of mining applications that need to be referred to DoW (by around 70%).</i></p> <p><i>A meeting of senior officers from OEPA, DER and DMP was held on 11 July 2013 to further the discussion on specific priority items raised by MAP.</i></p> <p><i>A stakeholder consultation workshop was completed on 18 September 2013.</i></p>		
5. Performance Measures		Contact: David Eyre	
Recommendations	RER MAP recommendation 2: Develop meaningful outcomes-based performance indicators RER MAP recommendation 6: Revise timelines and efficiency performance indicators in line with risk-based regulation		
Project objective	A system of regulatory performance measures will inform continuous improvement of DMP's environmental regulation. External reporting of meaningful measures will improve transparency, accountability and community confidence.		
Description	Consultation with stakeholders will identify a broad range of performance measures needed for reporting and accountability. Internal consultation will establish performance measures required for ongoing management, evaluation and improvement of regulation. Business systems will capture the required information to facilitate monitoring and reporting.		
Milestones	Commence project planning	20 Aug 2013	
	Finalise draft performance measures	31 Oct 2013	
	Department and RER Advisory Panel review and endorsement	30 Nov 2013	
	Implementation planning completed	30 Nov 2013	
Milestone status notes	<p><i>Project planning completed.</i></p> <p><i>Performance Measures discussion paper being prepared for stakeholder consultation.</i></p>		



Completed	
In progress/on track	
Delayed	
Off track	

6. Transparency strategy		Contacts: David Eyre; Trish Edgar	
Recommendation	Recommendation 9: Implement a formal transparency strategy for DMP.		
Project objective	To develop and implement a strategy to improve transparency in DMP regulatory processes; to improve community and industry confidence.		
Description	<p>Evaluate feasibility/issues for publication of:</p> <ul style="list-style-type: none"> DMP's regulatory assessment reports for all Mining Proposals and Mine Closure Plans. Approvals/granting instruments. Annual Environmental Reports (excluding commercially sensitive information). DMP's audit activity <p>Develop the draft Transparency Strategy including:</p> <ul style="list-style-type: none"> Consider procedural fairness, accountability, resourcing, and timeliness. An appeals process for DMP environmental decisions (noting there are differing views and expectations as to which, if any, new appeal mechanisms are to be implemented). Review and enhance EARS online tracking system: <ul style="list-style-type: none"> Include a post-approvals compliance monitoring system. Provide information on approvals referred to other agencies. <p>Consult with stakeholders. This project will need to coordinate with the Departmental Transparency Strategy.</p>		
Milestones	Planning, priorities and draft transparency discussion paper completed	15 Mar 2013	
	Internal reference group meetings completed	30 Aug 2013	
	Legal advice taken, revision of discussion paper completed	31 Oct 2013	
	External consultation completed	31 Oct 2013	
	Internal and external endorsement of recommendations paper	15 Nov 2013	
Milestone status notes	<p><i>Discussion paper completed for internal consultation.</i></p> <p><i>Approvals Group commenced an overarching DMP Transparency Project. It was agreed that the two project teams will maintain communications between each other whilst remaining independent.</i></p> <p><i>DMP internal reference group met on 27 June 2013 to review approvals documents to identify specific transparency opportunities and issues for referral for legal advice. A discussion paper has been prepared and will be distributed out-of-session to the RER Advisory Panel.</i></p> <p><i>Legal advice was received 27 June 2013, confirming that legislative changes and policy decisions would be required prior to the proposed publication of mine closure plans, mining proposals, and DMP's audit and compliance data.</i></p>		
7. Communications activities		Contacts: David Eyre; Trish Edgar	
Recommendation	Recommendation 10: Implement improved stakeholder consultation and communication.		
Project objective	The development of the RER program is well informed by stakeholder input, and reforms are communicated and understood by stakeholders.		
Description	This project will develop and implement a strategy to ensure stakeholder input, consultation and communication for all RER projects, facilitating the acceptance and adoption of reform outcomes.		
Milestones	RER and Mining Rehabilitation Fund briefing tour completed	29 Mar 2013	
	RER Advisory Panel first meeting	26 Apr 2013	
	DMP finalise RER Communications Strategy (DMP Communications Branch)	14 Jun 2013	
	PoW policy communications complete	6 Sept 2013	
Milestone status notes	<p><i>RER Advisory Panel meetings held on 17 May, 26 July, 20 September 2013. RER update presentation to Environment Division 28 June 2013. The next meeting is scheduled for 15 November 2013. RER Advisory Panel 'Yammer' networking page was established on 29 July 2013 to streamline Panel correspondence and simplify collaboration.</i></p> <p><i>Communication activities to announce the increase to the PoW validity period are in progress.</i></p>		



Completed	
In progress/on track	
Delayed	
Off track	

8. PoW validity period review		Contacts: Trish Edgar; David Eyre	
Recommendation	(One of the expected outcomes of) Recommendation 6. Revise timelines and efficiency performance indicators in line with risk-based regulation		
Project objective	To determine if the validity period of PoWs should be extended beyond two years.		
Description	The validity period of Programmes of Work (PoW) was increased from 12 months to two years in December 2012. The RER Ministerial Advisory Panel recommended that further extensions should be contemplated through consultation and in consideration of the risk-based approach.		
Milestones	Internal consultation complete	14 Jun 2013	
	External consultation or workshop complete	26 Jul 2013	
	RER Advisory Panel comment period	23 Aug 2013	
	Communication of project outcomes complete	6 Sept 2013	
Milestone status notes	<p><i>The validity period of PoWs was to be addressed through the Performance Measures project, however the timelines around the delivery of that will not suit the commitment made by the Minister and the department.</i></p> <p><i>DMP internal reference group meetings occurred 23 May & 20 June 2013. A paper was provided to the RER Advisory Panel for comment until 23 August 2013.</i></p> <p><i>It was proposed that where the scope remains unchanged, approved PoWs are valid for a period of (up to) 4 years. It is expected that rehabilitation of all activities approved under a PoW is completed within 6 months from the date of the ground disturbing activity occurring. The proposition was supported by the Panel and will now be implemented by Environment Division.</i></p> <p><i>*Draft communication of the project outcomes has been prepared and will be released by the Minister during September 2013.</i></p> <p><i>Following on from the consultation phase of the PoW validity period review project, Environment Division has undertaken to deliver a pilot project for the application of a risk-based methodology for PoWs.</i></p>		
9. Environmental tenement conditions review		Contacts: Richard Smetana	
Recommendation	Recommendation 3: Establish clear and enforceable environmental obligations for mining activities Priority 2: Review of environmental tenement conditions		
Project objective	To establish clear and enforceable environmental obligations to manage the risks of mining activities.		
Description	This project will review the environmental tenement conditions to ensure that they are necessary, outcomes-based, clear, concise and enforceable to deliver a net environmental benefit.		
Milestones	Categorisation meeting(s) with Environment Division completed	9 Aug 2013	
	Consultation with other agencies completed	20 Sept 2013	
	Public consultation completed	11 Oct 2013	
	Meeting(s) with Mineral Titles, Environment Division & Legal Services completed	25 Oct 2013	
Milestone status notes	<p><i>Project charter reviewed and project plan prepared.</i></p> <p><i>Tenement conditions list prepared and categorisation structure agreed.</i></p> <p><i>Categorisation meetings held.</i></p>		



Completed	
In progress/on track	
Delayed	
Off track	

10. Legislative framework for mining regulation (stage 2)		Contacts: Simon Skevington; Anika Moore	
Recommendation	<p>RER MAP recommendation 3: Establish clear and enforceable environmental obligations for mining activities</p> <ul style="list-style-type: none"> • Priority: Review of tenement conditions <p>RER MAP recommendation 11: Establish an appropriate framework for the environmental regulation of mining</p> <p>RER MAP recommendation 12: Investigate the feasibility of implementing an external review mechanism for enforcement decisions of environmental compliance matters</p>		
Project objective	<ul style="list-style-type: none"> • Clear and enforceable environmental obligations to manage the risks of mining activities. • Provide improved legislative framework for compliance and enforcement tools to ensure compliance with obligations and maintain the integrity of the regulatory regime. 		
Description	This project will review the current system of environmental obligations and compliance tools under the Mining Act and design a framework to clearly and effectively impose environmental obligations with access to appropriate and proportional compliance tools.		
Milestones	Internal consultation to establish potential legislative reforms	31 Oct 2013	
	External stakeholder consultation about potential amendments	31 Dec 2013	
	Drafting of legislative amendment business cases and PIAs	28 Feb 2014	
	Introduction of proposed amendments to Parliament	31 July 2014	
Milestone status notes	<p><i>Proposed legislative amendments for stages 2 & 3 will have a significant impact on industry and require extensive stakeholder consultation prior to finalisation. The timing for drafting the amendment will be impacted by the level of industry and community acceptance. The scope of the reforms and the necessary timelines will be set after the initial consultation.</i></p>		



RER Advisory Panel Submission/Decision Sheet

AGENDA NO: 3

MEETING DATE: 20 September 2013

SUBJECT: RISK-BASED FRAMEWORK FOR ENVIRONMENTAL REGULATION

ISSUES / BACKGROUND

- The Ministerial Advisory Panel on Reforming Environmental Regulation recommended that DMP *"Implement a full risk-based assessment and compliance methodology for environmental regulation"*
- At the 26 July 2013 meeting of the RER Advisory Panel, it was agreed that the draft environmental objectives would be incorporated into a discussion paper on the risk-based framework, subject to clarification of wording and consideration of measurability and outcomes.
- The attached discussion paper is intended to provide a high-level overview of the risk-based framework, so that Panel members can provide advice on the proposed way forward. Feedback from the Panel will then be considered before more detailed work is undertaken.
- Legislative aspects of the various RER projects are interrelated and will be progressively developed in conjunction with the risk-based framework. It is therefore too early to legislative options to be included in the discussion paper.
- This is only the start of the process, and the framework will be further developed with stakeholders' input.

RECOMMENDATION(S)

That the RER Advisory Panel provide advice on the proposed high-level risk-based framework.

ATTACHMENTS

- Risk-based Framework for Environmental Regulation

DECISION

- Supported
- Not Supported
- Noted
- Other

Signature (Chair)

Date



Government of **Western Australia**
Department of **Mines and Petroleum**



Risk-based Framework for Environmental Regulation

September 2013

DRAFT

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1. Purpose

To provide a conceptual overview of the proposed risk-based framework for environmental regulation to be undertaken by the Department of Mines and Petroleum (DMP) in the mining, petroleum and geothermal sectors.

It is envisaged that the framework will align with DMP's environmental objectives and outcomes. A risk-based environmental regulatory framework will move the State's environment regulation in the resources sector towards outcome and performance based regulation. Implementation of the risk-based strategy to a wide range of minerals, petroleum and geothermal energy activities will set the standard for continual improvement, targeted effort and efficient regulation.

Environmental impacts and the associated risks of these impacts in the resources industry need to be identified, avoided, managed, mitigated or monitored and measured throughout the life of a mine, from approval through to closure. Risk-based regulation provides a formalised structure to support decisions and effort. Processing risk through a systematic framework and iterating these assessments throughout the life of the project will assist proponents in identifying when a change will likely require further formal approval, or if it is within the existing approval. This provides proponents a transparent means to justify the decisions

Fundamentally, the risk-based framework is intended to ensure that regulatory effort and resource allocation is targeted and proportionate to the likely environmental harm of the proposal.

DMP will develop the risk-based framework in consultation with industry, the community and other State agencies to ensure the framework is appropriate and workable.

2. DMP's proposed regulatory environmental objectives

DMP's environmental objectives have four key overarching areas:

- Responsible development of resources through outcomes focussed development
- Continuous improvement through best practice regulation
- Targeted and proportionate effort through effective risk management
- Effective regulation in undertaking assessments and compliance activities

The proposed regulatory environmental objectives are listed in Table 1 on the next page.

Table 1 - DMP's Proposed Regulatory Environmental Objectives

Objectives	Outcomes
Responsible development of resources	
1. Minimise the impact to the natural environment whilst maximising the return to the State from mineral and petroleum resources	<ul style="list-style-type: none"> The environmental mitigation hierarchy will apply for all projects; avoid disturbance if at all possible, minimise the impact of any disturbance, and progressively rehabilitate Environmental values are protected Integration of long and short term economic, environmental and social actions and activities Employees at all levels recognise their responsibility for environmental management and are involved in the process Natural places that are environmentally significant are not adversely affected
2. Proponents establish project specific environmental performance objectives which must be measured, monitored and reported against	<ul style="list-style-type: none"> Performance against all environmental objectives is identified in approval and ongoing compliance processes Performance objectives are aligned with government expectations
3. Effective and ongoing consultation between stakeholders on environmental issues and performance by the resources sector	<ul style="list-style-type: none"> Extensive, proactive and productive communication between industry, community, land owners and government agencies on environmental matters Involvement of all stakeholders and consideration of their feedback regarding decisions and actions that affect them
Continuous improvement	
4. Continual development of environmental expertise and awareness, to deliver best practice environmental management	<ul style="list-style-type: none"> Training programs are developed and implemented to promote improving environmental outcomes and sustainability within the organisation and across the resources industry Development and support of generic and site-specific research and development programs on technologies and techniques to improve the effectiveness and efficiency of environmental protection measures.
5. Continual improvement in environmental performance	<ul style="list-style-type: none"> Systems and procedures are in place to support continual improvement Commitment to the pro-active identification and minimisation of environmental impacts, and less reliance on reactive solutions Industry environmental review, education and knowledge-sharing networks in place Innovative financial arrangements to improve environmental performance of resources operations
Risk Management	
6. Industry employs innovative and effective environmental protection measures to manage risks associated with mining activities	<ul style="list-style-type: none"> Environmental risks will be mitigated where possible Environmental management is recognised as a high priority, through the development and implementation of environmental management systems. Environmental risks are managed during the design, operation and decommissioning of resource activities
7. Premises/sites are rehabilitated, decommissioned or closed in a manner that is consistent with agreed outcomes including end land use.	<ul style="list-style-type: none"> Adopt best practices to minimise environmental harm, including circumstances where specific environmental regulatory requirements are absent Progressive rehabilitation for post-mining/petroleum/geothermal land use is considered throughout the life of the project Closed/decommissioned sites meet agreed outcomes Monitoring trends should demonstrate the sustained ability of the site to support future land use
Effective Regulation	
8. Enforcement action in a consistent and effective manner	<ul style="list-style-type: none"> Long term resource industry investment is encouraged through clear environmental standards with stable and predictable environmental criteria
9. Maximise transparency in DMP's decision making process	<ul style="list-style-type: none"> DMP's processes are transparent to industry and the community Industry meets environmental reporting requirements Communities are notified of proposed mining/petroleum activities and potential impacts
10. DMP will report on the effectiveness and efficiency of the regulatory process	<ul style="list-style-type: none"> Community has confidence in industry and the regulatory process

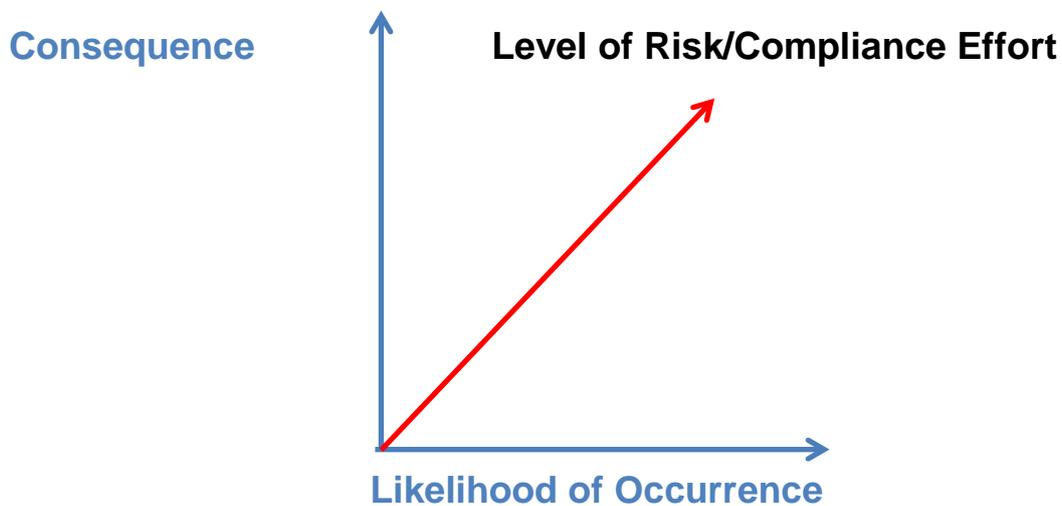
3. Rationale for a risk-based framework model

Risk-based regulation has become central to the reform agenda. With the cost of doing business for industry and government under scrutiny, opportunities to ensure regulatory effort is targeted and proportionate are gaining acceptance.

Focusing on risks rather than prescriptive rules, and encouraging policy makers and regulators to explicitly dimension and assess risks, enables limited resources to be better targeted to achieve desired policy outcomes.

This approach will also enable the proponents to focus on risks rather than prescriptive rules when managing their resource operations.

Figure 1: Proportional relationship of risk and effort to consequence and likelihood of harm to the environment



As illustrated in Figure 1, the effort required by the proponent and the regulator must be proportionate to the level of risk.

As a result, the advantages of the risk-based approach are that it is more likely to:

- Deliver positive environmental outcomes, to support innovation in environmental management (where operators have greater ability to customise solutions to environmental risks at their site)
- Reduce the indirect costs borne by industry through undertaking unnecessary environmental monitoring and assessment (in particular where the risks are low)
- Establish a regulatory model which, unlike prescriptive regulatory approaches, does not need to expand in a manner which is directly proportional to expansion of the industry
- Provide a project approval for the whole life cycle of an operation, from development through construction, operation and closure within the same framework, adapted based on actual impacts and risks observed.

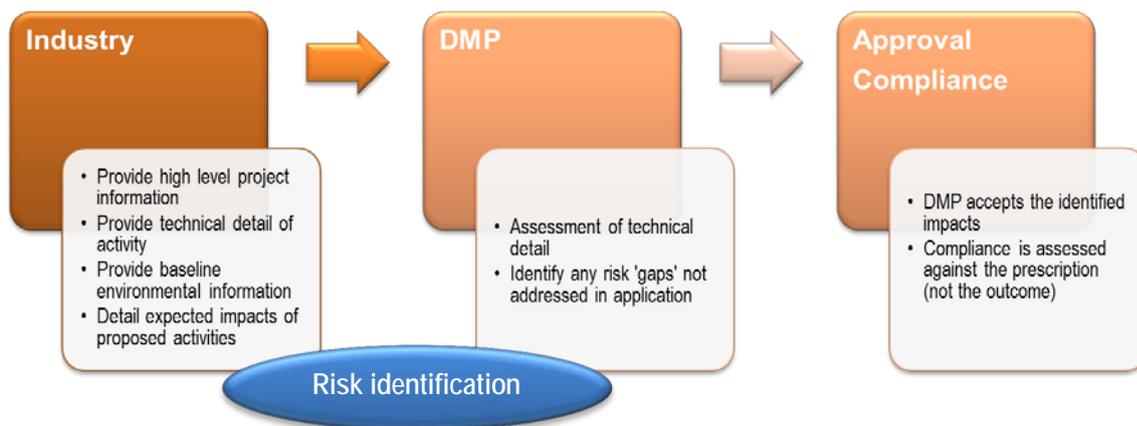
4. Proposed changes to the assessment process

Current DMP Assessment Process

The current assessment process used by DMP is based on the proponents providing information related to a series of compliance requirements. The information required from each proponent is not relational to the impact on the environment or the magnitude of this impact. The environment approvals are based primarily on the technical detail provided by the proponent and how the proponent meets the compliance requirements.

An outline of the current DMP Assessment process is outlined in Figure 2 below.

Figure 2: Current DMP Assessment Process



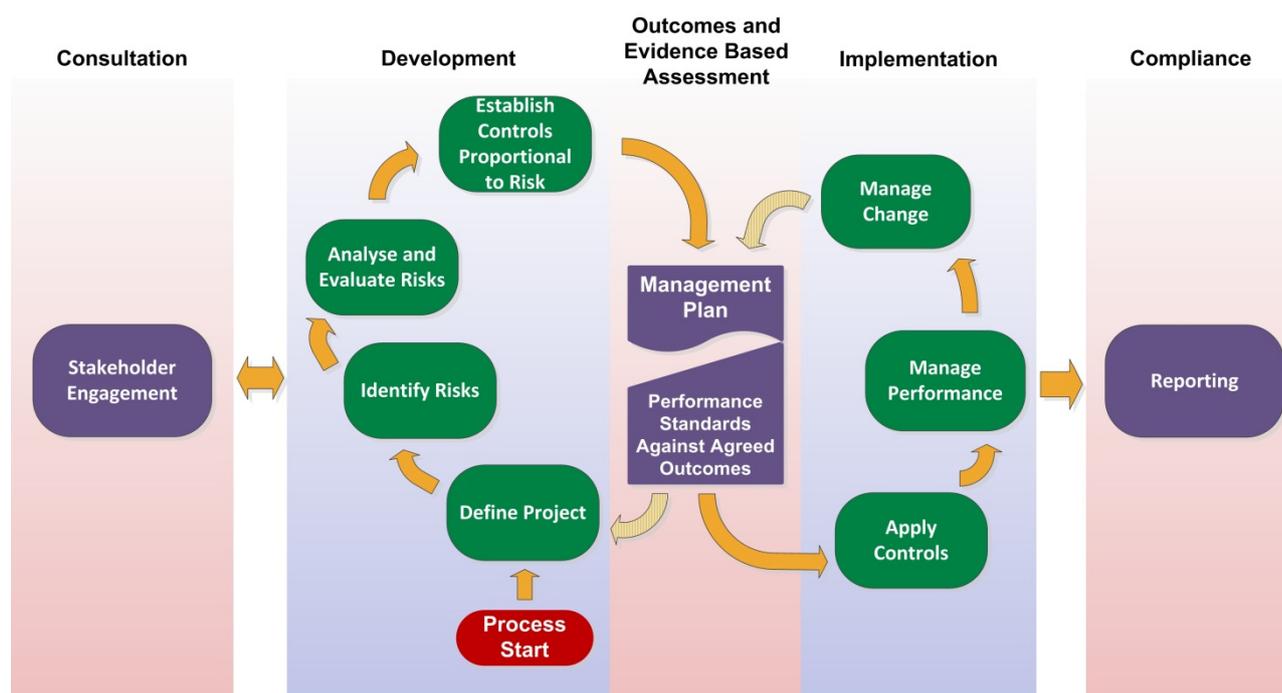
Proposed Risk-Management Process

The proposed risk-management process is based upon key principles of risk assessment and management where:

- *The operator* is responsible for:
 - undertaking the risk assessment for their operation, identifying the appropriate management actions, and keeping this information current
 - demonstrating that, through design and management actions, environmental risks are as low as reasonably practicable and the risks are environmentally acceptable.
- *The regulator* (DMP) is satisfied that the process of the risk assessment undertaken by the operator has been adequate and reasonable.

The proposed risk management process is outlined in Figure 3, and described in more detail in the next section.

Figure 3: Proposed Risk Management Process



5. Risk-Based assessment and implementation – an overview

Whilst DMP has already started incorporating some risk-management into their environmental assessments, the components of the proposed risk-management framework are detailed below:

1. Assessments

An environmental risk assessment is provided by the proponent during the application process. The level of detail provided in the application process will be proportionate to the inherent risks within the project. For example low impact seismic surveys will have fewer risk issues and therefore will require a less detailed application. Provision by proponents of basic mining or petroleum information will still be required. The main elements of an environmental risk assessment will be:

- **Stakeholder Engagement:** Stakeholders are actively consulted throughout the process.
- **Define Project:** Description of the activity
- **Identify Risks:** Identification of the sources of the risk and their impact
- **Analyse and Evaluate Risks:** Risk rating – the described outcome of this assessment will determine the environmental risks. This will include the likelihood and consequence of the event.
- **Establish Controls Proportional to Risk:** Identify controls to address risks and mitigate where possible
- **Apply Controls:** Implement risk controls.
- **Manage Performance:** Monitor performance against environmental objectives
- **Manage Change:** A process for monitoring, review and continuous improvement will be included. Incorporate the results from performance

reporting and from changes to the operation and/or environment into the Management Plan where there is a significant change.

- **Management Plan:** Management strategy - there will be various management actions which will be in place to ensure that the activities do not result in impacts greater than those predicted in the assessment. This will include responsibilities, reporting requirements, training, incident reporting and relationship to the operator's environmental management system.
- **Performance Standards against Agreed Outcomes:** Defining performance objectives, standards and measures – An outline of each environmental risk will be provided through identifying the relevant objective. Measurement criteria used will inform the level of management actions (or project design) required to ensure that the residual environmental risk is acceptable.
- **Reporting:** Report on performance against agreed outcomes

The introduction of tiered assessment systems provides an opportunity where by proposals with inherently low risk activities will be subject to a quicker administrative process. Conversely, projects which present higher risks will have a higher resourcing priority and be subject to greater assessment and compliance processes.

2. **Compliance**

It is proposed that all assessment and compliance processes used by DMP will be proportionate to the environmental risks posed by the application.

Performance standards and management plans will be used to demonstrate that proponents are achieving their agreed outcomes.

3. **Inspections**

The inherent environmental risks posed by operations will be the primary determinant of DMP's inspection and compliance activities.

This will form a critical component in the proponent's compliance with assessment processes undertaken by DMP and where necessary other agencies.

Factors such as performance history and logistical efficiencies will be considered while undertaking these inspections. The department will rank, according to the project/site risk (i.e project complexity and environmental management) the sites that will be inspected throughout the year.

4. **Annual Reporting**

Efficiencies and effort for reporting should be proportionate to the project risk-identified during the assessment of the proposal. Therefore monitoring towards agreed outcomes should be appropriately focused on necessary reporting and monitoring requirements.

For those environmental risks identified as requiring management actions, the operator will be required to ensure that appropriate performance monitoring occurs. This will be reflected in the conditions of approval. In more high risks cases, there could be the requirement to report the results of third party auditing against management actions.

6. Next Steps

- Stakeholder consultation across government and industry will be crucial in developing a staged implementation process.
- Further development of the framework will include testing and verification of the risk management process.
- In conjunction with various RER projects, legislation will need to be reviewed, to implement risk-management processes.
- Development of guidance material, compliance tools and strategies
- Development of a communication and roll-out strategy



File No: A1439/201201

RER ADVISORY PANEL MEETING MINUTES

Date:	20 September 2013	Time:	9:30am 11:30am
Venue:	Director General's Conference Room – Level 8, Mineral House, 100 Plain St, East Perth		

Members present, observers and apologies

Present

Dr Phil Gorey (CHAIRPERSON)	Executive Director, Environment Division, Department of Mines and Petroleum (DMP)
Mr Simon Bennison	Chief Executive Officer, Association of Mining and Exploration Companies (AMEC)
Mr Kane Moyle	Manager – Environment, Chamber of Minerals and Energy WA (CMEWA)
Mr Harry Backes	State Director Western Australia, Cement Concrete & Aggregates Australia (CCAA)
Dr Nic Dunlop	Environmental Science & Policy Coordinator, Conservation Council of Western Australia (CCWA)
Mr Alan Sands	Director, Environmental Regulation Division, Department of Environment Regulation (DER)
Mr Chris Stanley	Senior Environmental Officer, Assessment and Compliance Division, Office of the Environmental Protection Authority (OEPA)
Mr Richard Riordan	General Manager Project Facilitation, Department of State Development (DSD)
Mr John Connolly	Director Regulation, Department of Water (DoW)

Observers

Mr Justin Fromm	Senior Policy Officer, Association of Mining and Exploration Companies (AMEC)
Mr Steve Tantala	Director Operations, Environment Division, Department of Mines and Petroleum (DMP)
Ms Trish Edgar	Policy/Project Officer, Reform Group, Department of Mines and Petroleum (DMP)
Mr David Eyre	Project Manager, Reform Group, Department of Mines and Petroleum (DMP)
Ms Hema Krishnan	Project Manager, Reform Group, Department of Mines and Petroleum (DMP)
Ms Anika Moore	Graduate Officer, Reform Group, Department of Mines and Petroleum (DMP)
Ms Richard Smetana	Environmental Officer, Reform Group, Department of Mines and Petroleum (DMP)

Apologies

Mr Patrick Pearlman	Principal Solicitor, Environmental Defender's Office WA (EDOWA)
Mr Mike Lucas	President, Amalgamated Prospectors and Leaseholders Association (APLA)
Mr Gary Peacock	Chairman - Property and Resources Committee, Pastoralists and Graziers Association of WA (Inc) (PGAWA)
Mr Damien Hills	Associate Director Environment, Australian Petroleum Production and Exploration Association (APPEA)
Mr Anthony Sutton	Director, Assessment and Compliance Division, Office of the Environmental Protection Authority (OEPA) (<i>Chris Stanley attending as proxy</i>)
Mr Simon Skevington	Project Director, Reform, Department of Mines and Petroleum (DMP)



Agenda items discussed and actions to be taken

Item	Topic	Action
1.	Welcome, apologies, actions from previous meeting	
	<p>The Chair welcomed members to the third meeting of the RER Advisory Panel.</p> <p>Actions from previous meeting:</p> <ul style="list-style-type: none"> • <i>Project team to update Terms of Reference to add EDO membership: Completed</i> • <i>Open to Panel members for any further suggestions via email [on other parties which may need to be consulted]: Noted</i> • <i>DER and OEPA to advise project team of proposed availability dates for 2014: Completed – proposed dates for 2014 sent by email.</i> • <i>Project team to develop a 1-day duplication & overlap workshop: Completed</i> • <i>CME to provide cost to industry activity paper to project team: Completed</i> • <i>DER and CMEWA to provide comments on environmental objectives paper: Discussed as part of agenda item 3.</i> • <i>Project team to consider legislative options and include in risk-based framework paper: Legislation to be developed in conjunction with other RER projects.</i> • <i>Project team to consider measurability of objectives and associated KPIs: Environmental objectives amended, KPIs covered by Performance Measures Project.</i> • <i>Project team to clarify wording of objectives where necessary: Completed</i> • <i>Project team is to include environmental objectives in risk based framework paper: Completed</i> • <i>Panel members to provide comment by 23 August 2013 on proposed 4-year PoW validity: feedback received.</i> • <i>Project team to establish Yammer network, email details to Panel: Completed</i> 	<p>Panel members to advise availability for proposed 2014 RER Advisory Panel meeting dates</p>
2.	Progress update	
	<p>1. Environmental Objectives:</p> <p>Environmental Objectives have been integrated into the Risk-based Regulatory Framework, so any outstanding matters associated with the objectives will be part of the Risk-based Framework project.</p> <p>2. Risk-based Regulatory Framework</p> <p>(Discussed at agenda item 3).</p> <p>3. Legislative Framework (stage 1)</p> <p>Public consultation paper for Legislative Framework Stage 1 available on DMP website for comment from 27 August to 27 September 2013. Some stakeholders have already met with the department to clarify particular details, and written submissions have been received. Some submissions relate to legislative changes under stages 2 and 3. DMP will publish submission comments and responses after the consultation period ends. Transparency provisions will require careful consideration of what can or cannot be made public, such as commercially sensitive information.</p> <p>CCAA discussed a proposal in its submission to use a simpler 'low-risk' category for the quarrying industry. Some Panel members considered that a separate category would not be appropriate, as the environmental risks for each site depend on its particular environmental circumstances, and the risk-based process will cater for differing amounts of documentation required for high/low-risk operations.</p>	<p>Panel members to note 27 Sep 2013 submissions deadline for Stage 1 legislative framework</p> <p>Project team to distribute CCAA submission to Panel</p>



Item	Topic	Action
	<p>4. Reduce Duplication and Overlap</p> <p>The Chair thanked all stakeholders who participated in the Workshop. Notes from the 18 September 2013 Reduce Duplication and Overlap Workshop will be distributed to Panel members and workshop attendees, together with an implementation plan to address the four priorities identified. A separate meeting will be scheduled to cover Petroleum-related issues, which were not covered at the workshop.</p> <p>DMP will focus on the key activities it regulates, eliminate unnecessary requirements, and clearly describe its responsibilities and processes to stakeholders, especially for small to medium Tier 1/Tier 2 projects.</p> <p>One issue not covered at the workshop was the Planning Act, where quarry operations may be close to town planning areas, and whether DMP needs to be involved if the operation is covered under the Planning Act.</p> <p>5. Performance Measures</p> <p>Discussion paper including draft outcomes-based measures will be distributed for comment out of session and discussed at the next Panel meeting.</p> <p>6. Transparency Strategy</p> <p>Implementation paper will be distributed out of session for comment and discussion at the next Panel meeting.</p> <p>7. Communications Activities</p> <p>All scheduled communication activities now completed. Communications tasks will be added as required on an ongoing basis.</p> <p>8. PoW Validity Period Review</p> <p>Project completed with default validity period now being four years. The Chair thanked all stakeholders for their feedback on the proposal.</p> <p>9. Environmental Tenement Condition Review</p> <p>Consultation with other agencies is underway to determine which conditions are still required or could be covered by other agencies. A report will be produced on the final agreed categorisation of tenement conditions and the implementation plan. In a later phase, DMP will consider whether environmental tenement conditions are covered by EP Act Part V requirements or DMP's risk-based framework.</p> <p>10. Legislative Framework (stages 2 & 3)</p> <p>The department is preparing a paper on the next stage of proposed legislative changes. The paper will cover the issues being addressed, options (including the potential for separate environmental regulations), urgency, and cost/benefits. This paper is scheduled for release in December 2013.</p>	<p>Project team to:</p> <ul style="list-style-type: none"> consider potential overlap between Mining Act and Planning Act for quarries in town planning areas distribute Duplication & Overlap Workshop notes and implementation plan to address priority issues; arrange meeting to discuss petroleum-related duplication & overlap issues <p>Panel to provide comment on duplication & overlap workshop notes and implementation plan</p> <p>Project team to distribute papers on Environmental Performance Measures and Transparency Strategy; Panel to provide comment by 18 Oct 2013.</p> <p>DMP to distribute tenement conditions report and implementation plan</p> <p>DMP to publish details of Stage 2 & 3 legislative changes in December 2014</p>
3.	Risk-based Framework for Environmental Regulation	
	<p>The <i>Risk-based Framework for Environmental Regulation</i> paper provides a high-level description of the framework and will guide further development work.</p> <p>Environmental objectives have been integrated, after being amended to improve clarity and measurability and linked to environmental outcomes.</p> <p>Feedback from Panel members included;</p> <ul style="list-style-type: none"> The objectives table combines regulatory and environmental objectives, and some these could be separated or more clearly delineate between them. 	



Item	Topic	Action
	<ul style="list-style-type: none"> Objectives should be outcomes-based, framed in the context of post-mining land use, similar to the EPA's environmental objectives. The paper should include how DMP's objectives align with the EPA's environmental objectives. Environmental outcomes for a resources project should be set at the start of the project, not at the end of its life, so that the environmental risks are assessed and risk-mitigation strategies and Mine Closure Plans are implemented progressively. If the agreed post-mining land use changes during the life of the mine, then the environmental outcomes, risk-mitigation/rehabilitation strategy and Mine Closure Plans should also be amended. Figure 3 covers DMP's process, not referrals to other agencies, such as EPA. Environmental impacts can occur outside the area covered by the tenement or project, and the approach taken should be able to take account of this. The definitions in of the paper should be clarified, e.g. "Define Project" is not the same as a Mining Proposal, and actually refers to project description. Roles and responsibilities for the proponent and department need to be clarified within the document. <p>The Chair outlined that under the risk-based approach, proponents could lodge an Environmental Management System (EMS), which demonstrates they have adequately described the various elements of their mining project, the environmental risks and mitigation strategies, and procedural standards. An EMS could meet the requirements of the various environmental regulators in one document, streamlining the process for proponents and the regulators. The EMS could evolve over time, adding more detail when required. This is similar to the Safety Case approach, where companies review and update the description of their operation, assess the risks, identify and implement mitigation strategies on an ongoing basis. The regulator conducts an assessment before the documentation is accepted (not for approval). If a company later determines that it can change its risk-mitigation strategies, it can proceed without having to first seek approval from the regulator.</p> <p>Next steps in implementing the framework are identified on the last page. The Panel suggested trialling the risk-based framework with a proponent, perhaps in parallel with the current process, to identify issues. Procedures will need to be developed and then refined as a result of the trial.</p> <p>The Chair also proposed using a recent existing project to prepare mock examples of what the proposal would look like (e.g. project description, EMS).</p>	<p>Project team to consider feedback provided at meeting regarding risk-based framework</p> <p>Panel to provide comment on the risk-based framework paper by 4 October 2013</p>
4.	Other business	
	<p>a. Yammer network for communication</p> <p>Some Panel members have not yet registered for Yammer. Minutes and agenda papers will still be sent by email, but papers for out-of-session discussion will only be posted on Yammer.</p> <p>b. Stakeholder representation at workshops</p> <p>Stakeholders may invite more than two people, but please advise the project team, for logistics purposes.</p>	<p>Panel members to ensure they are registered on Yammer</p> <p>Panel to advise project team if inviting extra people to workshops</p>
5.	Next meeting	
	Fri 15 November 2013, 9:30-11:30am	