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Licence Documentation Strategy and Reform
Department of Environment Regulation
Locked Bag 33
CLOISTERS SQUARE WA 6850

Dear Sir or Madam

Re: Consultation Paper – Assessment Framework and Controls

Thank you for the opportunity to comment on this paper and its associated materials. MBS Environmental offers the following comments for your consideration.

1. REGULATORY ASSESSMENT FRAMEWORK

We understand the *Draft Guidance Statement: Regulatory Assessment Framework* (December 2015) to be an attempt to document DER's intended over-arching assessment process under Part V of the EP Act.

We note that process as set out appears to abandon the former practice of application enquiries and scoping meetings for Works Approval or Licence applications. To reduce the risk of assessment delays we suggest that the process should still allow for some (more or less formal) means of obtaining advice from DER on whether a Works Approval or Licence is likely to be required, and the kind of information that is likely to be expected, before submitting an application rather than later in the assessment process.

If DER intends to rely on applicants to determine these things for themselves, the guidance should be clear about this. We note that DER provides some guidance on determining whether a Works Approval or Licence is required in its *Guidance Statement: Licensing and Works Approvals Process* (September 2015), however this document does not appear to be referred to in the regulatory assessment framework guidance statement.

The guidance statement indicates that DER will decline to deal with applications where information requested for an assessment has not been submitted within 14 days. While it is quite reasonable for DER to not keep incomplete assessments open indefinitely, we suggest that where the information required is complex, DER should allow that within those 14 days an alternative, appropriate, timeframe for submission can be negotiated. If DER is concerned about how this will reflect on its KPIs, it should just discount days waiting on applicant information from its approval times.

The guidance statement also indicates that DER will refuse or finalise an application if an applicant has not responded with additional or alternative controls, within 21 days. Again, where such controls may reasonably require time to develop, it should be possible within the 21 days to negotiate an alternative timeframe, rather than having to resubmit.

The flow chart appears to imply that clearing (which we take to mean *assessment* of clearing) must be completed before proceeding to advertisement and assessment of a Works Approval or Licence application. We take it that

the assessment of clearing would in practice be more or less in parallel with the rest of the assessment, and in the case of mining developments on minerals leases, continue to be dealt with by DMP under their delegated authority. We recommend that DER clarifies this point.

2. ENVIRONMENTAL RISK ASSESSMENT FRAMEWORK

We understand that the *Draft Guidance Statement: Environmental Risk Assessment Framework* sets out DER's intention to formalise its assessments of environmental risk in a manner consistent with AS/NZS ISO 31000:2009, and we believe such a framework is appropriate, if properly implemented.

We note that the framework includes criteria for evaluating and rating risk, including specific health and ecosystem criteria, on which my colleague Dr Michael North provided detailed technical comments in his submission of 21 February. We also note that the framework allows for deviation from criteria, where it can be adequately demonstrated that impacts will still be acceptable.

3. REGULATORY CONTROLS

We understand that DER intends the *Draft Guidance Statement: Regulatory Controls* to guide the risk assessment process by providing a list (Table 1) of the most common or significant risks associated with different types of prescribed activity; we concur that this could assist the assessment process, on the understanding that the list is not considered authoritative or exhaustive – some risks will not be significant for some sites, and other sites may present risks uncommon or insignificant for the same activity elsewhere.

Further, the document sets out how DER will select appropriate controls, based on the outcome of the risk assessment. We find this aspect of the guidance statement very difficult to follow, in particular the practical distinction between “primary” and “secondary” controls, and the application of different types of controls as set out in Table 2. If this is not simplified, we believe the process will prove difficult to understand and implement, both for applicants and for DER case officers.

4. GENERAL COMMENTS

We expect that the more formalised process implied by the guidance statements will introduce new work procedures and place a greater administrative workload on case officers; we trust that DER will make training and resources available as necessary for case officers to be able to complete their cases to an appropriate standard and within appropriate timeframes.

We note that the framework allows for DER to review the applicant's history, and reject applications or impose additional controls where they consider the applicant unfit or incompetent. We further note that the current application form (released this month) only requires the history of “small proprietary companies”, which appears arbitrary, and at odds with DER's stated principle of competitive neutrality.

While the current guidance statements appear to describe, at a high level, how DER will conduct their regulatory process, which is useful and consistent with the principal of transparency, they seem to offer relatively little in the way of practical guidance to applicants. We would recommend that before they are put into practice, the current guidance statements are supplemented with more practical materials that set out clearly and simply what is expected from applicants. DER might look to some of the materials published by DMP as examples in this regard.

We note that the proposed framework relies heavily on several guidance statements for emissions and environmental standards, which DER has yet to release. It is therefore difficult for us to offer properly informed comment on the proposed framework; we do however look forward to reviewing these guidance statements when available.

We trust that these comments are of help. Please contact me on [REDACTED] or [REDACTED] if you have any questions.

Yours sincerely
MBS Environmental



David O'Brien
Senior Environmental Scientist