

Latest developments - Review of Environmental Impact Assessment process

In March 2009, a comprehensive review of the Environmental Impact Assessment (EIA) process by the Office of the Environment Protection Authority (OEPA) recommended significant changes to the current EIA regime.

There have been significant recent developments in implementing those recommendations including:

- *The Approval and Related Reforms (No. 1) (Environmental) Act 2010 (Amending Act)* which was granted Royal Assent on 28 October 2010 and will be proclaimed on 26 November 2010. The Amending Act will remove duplicate or unnecessary appeal rights, align the appeal period across the environmental regulation process and streamline the decision making processes under other legislation whilst the OEPA is assessing a proposal; and
- The *Environmental Impact Assessment Administrative Procedures 2010* which are to be gazetted on 26 November 2010 and will, amongst other things, reduce the five levels of assessment currently available to proponents to two and set firm target timelines for the EIA process.

Approval and Related Reforms (No. 1) (Environmental) Act 2010

The Amending Act is a product of the OEPA's comprehensive review of its EIA processes which identifies reforms to improve the efficiency, transparency and consistency of EIA.

The key reforms require amendment to the *Environmental Protection Act 1986 (EP Act)* and include the following:

1 The removal of rights of appeal including:

- the OEPA's decision not to assess a proposal which includes a recommendation that the proposal be dealt with under the clearing permit process (section 100(1)(a) of the EP Act). This amendment removes an unnecessary appeal provision and acknowledges that the clearing permit process is comprehensive and accountable in itself;

2 Appeal periods:

- the OEPA's recorded level of assessment (section 100(1)(b) of the EP Act). The Minister still retains the power to remit a proposal or require the EPA to assess the proposal further;
- appeals in relation to the scope and content of a planning scheme assessment (section 100(1)(b) of the EP Act). The rationale for this amendment is that any issue raised by the scope and content is more appropriately addressed via discussions with the responsible authority and not through the environmental appeals process;
- appeal against the OEPA's decision that a proposal is a derived proposal identified in a strategic proposal (Section 100(1)(d) of the EP Act). The intent of the amendment is to streamline the administrative process for declaring a proposal to be a derived proposal and encourage proponents to use strategic assessments. The notice declaring the proposal to be a derived proposal must be published and the strategic proposal provisions are subject to the same appeal rights as other proposals; and
- third party appeal rights against the refusal to grant a clearing permit, works approval or licence and the revocation and suspension of a clearing permit, works approval or licence (Sections 101A(3) and 102 of the EP Act). These have been removed as they are considered unnecessary in that refusals, revocations and suspension do not affect third parties, only the proponent.
- The Amending Act also reduces the appeal period in respect of clearing permits from 28 days to 21 days. This brings the appeal period in line with other appeal periods in Part V of the EP Act.
- Please note that if the OEPA has made one of the above decisions in respect of a proposal before 28 October 2010, the transitional provisions provide that the Amending Act does not apply (i.e. the former provisions apply).

3 Decisions regarding minor or preliminary work that has the Authority's consent.

- The EP Act makes it an offence to carry out any works which will implement a proposal until the proposal has been assessed and approval granted, unless the OEPA provides its consent to minor or preliminary works.
- The EP Act currently prohibits decision making authorities from making any decision and the CEO from issuing clearing approval, works approval or licence where that decision could have the affect of implementing a proposal, even if those works were preliminary in nature. The Amending Act removes this constraint and allows decisions to be made in relation to minor or preliminary works, provided the OEPA has granted its consent.

Environmental Impact Assessment Administrative Procedures 2010

A key recommendation following the review of the EIA process was to update the outdated *Environmental Impact Assessment Administrative Procedures 2002*.

The key reforms in the *Environmental Impact Assessment Administrative Procedures 2010* include:

- the introduction of a seven day public comment period on referral before the OEPA makes a decision whether or not to assess and in setting the level of assessment. The rationale for doing so is to gauge the level of public interest in a proposal;
- the previous five levels of assessment have been simplified into two levels, namely Assessment on Proponents Information (API) and Public Environmental Review (PER);
- the creation of an option for an OEPA prepared environmental scoping document where the environmental factors are more easily understood. It is proposed that the OEPA's environmental scoping document will identify the environmental factors to be addressed in the PER and refer the proponent to relevant guides and other published EPA material as to how to do this;
- the OEPA will now summarise submissions in addition to providing edited copies of the submissions to the proponent; and
- the OEPA may seek comment from the proponent in relation to draft recommended conditions prior to finalising the OEPA report, with regard to correcting

errors, confirming conditions are technically feasible, confirming conditions are clear and relevant and identifying opportunities to strengthen environmental outcomes.

- Other miscellaneous changes and key issues including:
 - assessment of 'strategic proposals' rather than 'strategic environmental assessment' and strategic proposals usually assessed at the level of PER;
 - OEPA prefers to see 'entire' proposals, rather than piecemeal development; and
 - OEPA expects to assess impacts in the context of 'cumulative impacts' from any past, present and reasonably foreseeable future proposals.

What this means for your proposal?

The Amending Act will remove duplicate and unnecessary appeal rights and may mean faster assessment periods for your proposal. In addition, the gazettal of the *Environmental Impact Assessment Administrative Procedures 2010* provides an increase in certainty and transparency of how the EIA process is conducted (including provision for public comment and the imposition of time frames for decision).

If you have any queries with regards to how these developments impact on your current and future proposals please contact:



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