

22 October 2021

EP Act Discussion Paper
Department of Water and Environmental Regulation
Locked Bag 10
Joondalup
WA 6919

By email: epactcostrecovery@dwer.wa.gov.au

Cost Recovery for Part IV Environmental Protection Act

Thank you for the opportunity to provide feedback on the Cost Recovery for Part IV Environmental Protection Act Discussion Paper and Draft Regulations.

General Comments

It is essential that the Department of Water and Environmental Regulation is appropriately funded to be able to efficiently and effectively undertake environmental assessments to protect our rich environmental assets whilst also delivering improved development outcomes. As such, the Urban Development Institute of Australia, WA (UDIA) and the Property Council WA support the 'user pays' principle of cost recovery. We also warmly welcome the creation of an opportunity for the Department to use qualified consultants to assist in delivering key elements of the environmental assessment.

Whilst UDIA and PCA support the design principles of the proposed cost recovery model, we have serious concerns about the impacts on housing affordability and project viability.

Cost and Uncertainty

Whilst welcoming the establishment of a funding regime to better support the Department in its role assisting the EPA, industry is disappointed that the proposed fee framework has been prepared without any engagement with the property development industry. Instead, the proposed cost recovery framework appears to have been developed with a sole focus and consideration of the cost impacts for large scale resource sector projects and large-scale state government infrastructure projects. As a result, the proposed assessment fee structure does not *'deliver equitable cost recovery outcomes'* and instead will mean that EPA assessment fees will consistently total circa \$500,000 regardless of the complexity of its environmental considerations or the scale of the development project.

The magnitude of the proposed assessment fees, the uncertainty of final assessment costs and outcomes, coupled with the expense of holding these costs from the very outset of a development project will severely threaten housing affordability in WA.

Whilst industry is supportive of a scalable assessment fee framework, the parameters used to determine the assessment fees do not clearly relate to actual assessment costs and/or valid environmental assessment considerations. **We are particularly concerned that scaling of assessment costs against factors such as the number of submissions received may lead to vexatious submissions, particularly in areas where people may live near an application site.** Similarly, the fact that third-party referrals are fully exempt from the fee structure may lead to the EPA receiving unnecessary referrals. We are also concerned that there are no safeguards in place to ensure that requests for further information are necessary, appropriate and relative to the scale of the \$16,000 fee for such

information requests. As such, the proposed scaling of assessment fees does not satisfy the 'reflective of effort' principle and instead will create considerable uncertainty and addition of financial risk that will further increase the cost of development and subsequently housing prices in WA.

The proposed costs far exceed environmental assessment costs in other jurisdictions within Australia and almost certainly internationally. Without any guarantee that these costs will result in improved assessment efficiencies or a more collaborative and positive regulatory assessment culture, UDIA and The Property Council cannot support the proposed fee structure.

It also appears that these projects will effectively subsidise EPA assessments made by decision making authorities or referrals by third parties which are both exempt from the charges. This subsidy fails the cost recovery model's 'impactor pays' and 'reflective of effort' principles.

To ensure that the proposed fee structure does not jeopardise housing affordability and undermine the competitiveness of our economy by increasing the cost of developing land, we call on the Department to collaborate with the development industry to prepare a framework for waiving assessment fees (at least in part) so that assessment fees remain proportional to size of the project as well as its environmental considerations. These reductions are vital to ensuring that the development industry is able to efficiently deliver the State Government's development and land-use aspirations as set out by the Perth and Peel @3.5 million sub-regional frameworks without jeopardising housing affordability and our economic competitiveness.

Transparency and Accountability

As well as the proposed fees appearing to have been developed with a narrow project focus, the development industry is disappointed that there is a lack of transparency regarding the unit cost inputs. Feedback from our members indicates that the private sector could deliver many of the assessment components far more efficiently and at a significantly lower cost. Similarly, we are also disappointed that the fee structure has been designed with consideration to past assessment procedures, ignoring the performance efficiencies that Environment Online and other procedural amendments will bring. The failure to factor in these efficiencies in the fee structure artificially inflates the assessment fees. The scale of the fees warrants independent oversight and regular review to ensure that the fees remain consistent with cost recovery model design principles. Although the discussion paper identifies a review of the fees after 18 months of operation, the regularity of further reviews is not identified. More importantly, without independent oversight, there are legitimate concerns regarding the transparency of any review outcomes. To resolve these concerns, an independent review panel containing key industry stakeholders should be established to monitor the appropriateness of the cost recovery model and the management of the funding pool that it generates. Establishing such a stakeholder reference group would also help in forecasting industry demand for EPA services and ensure that funds and resources are scaled according to the number of assessments.

The scale of the proposed fees will dramatically shift development proponent expectations of service and radically alter the relationship between regulators and proponents. It is imperative that appropriate staff resources and a customer-focussed culture are in place from the outset to ensure that proponents receive a level of service consistent with that they are paying for. However, it is not clear if and how this will be achieved. As a minimum, a system for complaints needs to be established.

Lack of Flexibility and the Retrospective Application of the Cost Recovery Model

The property industry is concerned that the proposed fixed fees for development proposals that are being implemented (s.45C, s.45C2, s. 46 etc.) are too high and not reflective of the level of assessment effort. Often it is necessary to make changes to a proposal or its conditions, given the original approval is not practical or amendments are sought that may result in improved environmental outcomes. Proponents should not be charged a fee ranging from \$16k to \$64k in those situations. Likewise, a proponent should not be charged those fees if the proposed change to the approval is of a minor nature.

We encourage the Department to work with the property development industry to create a framework that ensures that the fee structure for amendments is practical and fully satisfies the cost recovery model's design principles. Given the scale of the proposed fees, particularly for smaller projects, we do not support the retrospective application of the charges to projects currently being implemented. The proposed cost recovery fees and charges should only be applicable to proposals that are either 'called in' or referred after the Regulations come into effect.

Recommendations:

- The Department collaborate with the development industry to prepare a framework for waiving assessment fees (at least in part), so that assessment fees remain proportional to the size of the project as well as its environmental considerations.
- An independent review panel is established to monitor the appropriateness of the cost recovery model and monitor the management of funding that it generates.
- A framework enabling proponents to make complaints and managing poor agency performance to be made is established.
- The fee structure for amendments is revised to align with the cost recovery model principles.
- Greater flexibility is provided in the proposed fee structure to allow minor amendments, or minor information request to be charge at a rate consistent with 'reflective of effort' principle.

Should the Department require any assistance or further information regarding these comments UDIA would be delighted to assist. Please contact Chris Green, Director of Policy and Research at cgreen@udiawa.com.au or 9215 3400.

Yours sincerely



Tanya Steinbeck
Chief Executive Officer
UDIA



Sandra Brewer
WA Executive Director
Property Council of Australia