

APA Technical Note - Western Outer Ring Main - Environment Effects Statement

TECHNICAL NOTE NUMBER: TN07

DATE: 13 September 2021

SUBJECT: Specialist Area: Biodiversity
An update for the purposes of the *Environment Protection Act 2017 (Vic)*

SUMMARY This Technical Note outlines the implications of the *Environment Protection Act 2017 (Vic)* (as amended by the Environment Protection Amendment Act 2018) which came into effect on 1 July 2021, specific to Technical Report A *Biodiversity* of the Western Outer Ring Main (WORM) Environment Effects Statement (EES).

ATTACHMENTS: N/A

NOTE:

Background

- 1 EES Technical Report A *Biodiversity* and habitats and Chapter 7 of the WORM EES foreshadowed that the *Environment Protection Act 2017 (Vic)* (**new Act**) would come into effect on 1 July 2021 and that this would introduce the new General Environmental Duty (**GED**).
- 2 This note outlines the key implications of the new Act and relevant regulations, guidelines or standards that will be relevant to the assessment of the environmental effects of the WORM Project during construction and/or operation.

Implications of new GED

- 3 The new Act contains a General Environmental Duty (**GED**) that will be applicable to APA and all contractors carrying out the construction and operation of the WORM Project.
- 4 The GED (as defined in Section 25 of the new Act) requires a person or entity to:
 - Identify risks and hazards that may impact the environment or human health that arise from its operations; and
 - Eliminate or minimise those risks as far as reasonably practicable.
- 5 The Environmental Management Framework and Construction Environment Management Plan (CEMP) developed as part of the EES and Pipeline Licence Application responds to the identified risks to the environment and human health that may arise from the construction and operation of the WORM Project, responding to the first aspect of the GED. It is considered that the risk assessment undertaken for biodiversity as part of the EES does not need to be updated as it adequately identifies risks to the environment from the Project. The EMMs relevant to biodiversity as identified in EES Technical Report A *Biodiversity* have been developed to manage the identified risks to the environment. In this Technical Note, consideration has been given to whether the EMMs require updating to comply with the GED and that the EMMs either eliminate or minimise the risks as far as reasonably practicable.

Relevant provisions of the new Act and Regulations

- 6 Relevant provisions in the new Act and Regulations relating to Biodiversity include:
- Section 25 of the new Act (GED) which places a risk-based duty on a person to manage their activities to minimise the risk of harm to human health or the environment from pollution or waste so far as reasonably practicable;¹
 - Division 2, Part 3.5 of the new Act imposes duties on persons in 'management or control' of contaminated land to:
 - notify the EPA of groundwater contamination (including historical contamination) that exceeds set thresholds. The EPA must be notified as soon as practicable after it becomes aware of, or reasonably should have been aware of, "notifiable contamination" (being groundwater contamination above the thresholds prescribed in regulation 10 of the new Regulations); and
 - manage contaminated groundwater to the extent reasonably practicable
- 7 These new components of the EP Act 2017 are relevant to biodiversity (specifically aquatic ecology) as the consideration of groundwater dependent ecosystems, and potential risks to associated biodiversity values, is included in the EES Scoping Requirements for EES Technical Report A *Biodiversity and habitats*. As such, EES Technical Report A includes an assessment of potential groundwater contamination impacts to groundwater dependent ecosystems, by referencing Technical Report E *Contamination* (risk ID C4 - mobilisation of contaminated groundwater) and Technical Report C *Groundwater* (Risk GW5 - mobilisation of existing contaminated groundwater). Both of these reports state there is a low residual risk of construction works mobilising existing contaminated groundwater impacting beneficial uses. Mitigation measures are outlined in EMM GW3 of Technical Report C *Groundwater*.
- 8 The changes outlined in this Technical Note do not have any implications to the environmental management measures adopted as part of the Project, as EMM GW3 acknowledges approval from EPA may be required. Furthermore, Technical Report C *Groundwater* also notes that additional groundwater analysis (i.e. EPA suite) should be completed at some of the dewatering areas (i.e. Jacksons Creek) to further assess the groundwater quality and further inform the environmental management measures and disposal options.

Relevant Standards or Guidelines

- 9 Technical Report A *Biodiversity* and Chapter 7 of the EES refer to some EPA documents that have been replaced by new standards and guidance material.
- 10 Prior to the implementation of the new Act, the following standard applied to the biodiversity assessment:
- State Environment Protection Policy (Waters) (**SEPP (Waters)**).
- 11 Upon commencement of the new Act, SEPP (Waters) was replaced with the following:
- Part 5 (Water) of the *Environment Reference Standard*, gazetted on 26 May 2021;
 - *Environmental Protection Regulations 2021*; and
 - the GED.

¹ The GED replaces the clean water framework that existed under Part 5 of the *Environment Protection Act 1970*.

- 12 The requirements of the General Environmental Duty to manage risks to human health and the environment overrides the consideration of superseded clauses in SEPP (Waters), noting that requirements specified in the Environmental Reference Standard have not been substantially changed from SEPP (Waters). This does not have any practical implications on the Project but has been considered in this technical note
- 13 The *Civil construction, building and demolition guide*, 2020 (EPA publication 1834) provides guidance on eliminating or reducing the risk of harm to human health and the environment through good environmental practice during construction works. This EPA guidance was already incorporated into the biodiversity assessment as it was available prior to the exhibition of the EES. This will continue to be relevant to the Project. Additional EPA guidance recently published but not currently referenced have been added to the relevant EMMs for Groundwater, Surface water and Contamination.

Changes to EMMs

- 14 The EMMs in the biodiversity assessment relating to EPA guidance are EMM B10 (surface water sedimentation and runoff) and EMM B11 (surface water contamination). These two EMMs refer to EMM SW4 (river bed or bank erosion) in EES Technical Report B *Surface Water*, and EMM C1 (disturbance of existing contamination) and EMM C6 (leaks or spills) in EES Technical Report E *Contamination*. As the EMMs relevant to biodiversity do not directly reference any of the standards or guidelines identified above, no changes are required.
- 15 Consideration has also been given to whether the current EMMs reduce the risk of harm to human health and the environment to the extent reasonably practicable and therefore meet the GED. Based on this assessment, no amendments are considered to be required to the biodiversity the EMMs.

Currency of Technical Report and Chapter

- 16 The replacement of SEPP Waters with new standards and guidance material was foreshadowed in the EES. For example, section 5.3.7 of the Biodiversity and Habitats Technical Report (page 27) provided that:

“A review of the Environment Protection Act 1970 has resulted in the passage of the Environment Protection Act 2017 (EP Act 2017) which was scheduled to come into effect in July 2020, however this has been delayed until July 2021. The EP Act 2017 includes a new approach to environmental issues, focusing on preventing waste and pollution impacts rather than managing those impacts after they have occurred. The Act also includes the concept of general environmental duty (GED) which requires people to undertake reasonably practicable steps to eliminate, or otherwise reduce risks of harm to human health and the environment from pollution and waste. Unlike similar laws in other states and territories, a breach of the GED could lead to criminal or civil penalties, similar to those currently outlined in the Occupational Health and Safety Act 2004. Under the new Act, the beneficial uses of water, as outlined in the SEPP (Waters) will be known as environmental values.”
- 17 Having considered the new provisions referenced at paragraph 6 and Part 5 of the *Environment Reference Standard*, the EES Technical Report A - Biodiversity is considered satisfactory to meet the requirements of the GED and minimise risks to the environment and human health as far as reasonably practicable. The change incorporation of the sub-ordinate SEPP (Waters) policy in the EP Act does not alter any conclusions of the biodiversity assessment.