

CONSERVATION COMMISSION OF WESTERN AUSTRALIA

SUBMISSION TO THE DEPARTMENT OF THE PREMIER AND CABINET

DRAFT STATE SUSTAINABILITY STRATEGY

Introduction

This submission has been produced in response to the invitation offered by the Department of the Premier and Cabinet for organisations and members of the public to comment on the document entitled: *Focus on the Future: The Western Australian State Sustainability Strategy Consultation Draft* (the “Draft Sustainability Strategy”).

The Conservation Commission (the Commission) believes that the Draft Sustainability Strategy makes many references to concepts and issues that are directly relevant to the Commission’s interests. Our submission is structured as a direct critique of the Draft Sustainability Strategy, and also makes it clear where we believe that gaps and omissions lie.

The Commission has attempted to produce a submission that focuses on what it considers to be ‘key’ concerns. Comments are made in relation to four aspects of sustainability policy: the process for dealing with the sustainability agenda; the conceptual basis for sustainability; sustainability and governance; and sustainability and natural resources.

Before dealing with these aspects in turn, the Commission would like to record its general support for the concept of sustainability and the Draft Sustainability Strategy as an important whole-of-Government initiative.

The Process for Dealing with the Sustainability Agenda

The Commission's experience with developing the new Forest Management Plan over the past year or so has illuminated some important lessons with regard to the processes involved in the development and implementation of new policy.

It is the Commission's contention that the 'old' style of consultation, which tends to focus mostly on information transfer, is unable to provide the insights and understandings required to deliver on a sustainability objective. Where new proposals require choices to be made between competing options, successful proponents involve stakeholders in the listing of options, the development of criteria by which to compare them, and, when appropriate, the weighting of those comparison criteria. The Commission is aware that proponents such as Department of Planning and Infrastructure, Mindarie Regional Council, and – to a lesser extent – Chevron-Texaco, have been experimenting with this new approach. The Commission feels that the process chosen for developing the Forest Management Plan follows some aspects of this new way of approaching consultation to the extent that two scenarios were put forward in the draft plan. The Commission is pleased to see that the Draft Strategy refers to some of these experiments.

While the process for developing the State Sustainability Strategy does not itself require the intensive analysis of options or alternatives evident in the proposals mentioned above, a transparent means for engaging with public input remains important to ensure that the final outcome is shared across Government and the community.

Possibly the most important aspect is how public input and feedback are dealt with. The Commission is aware of the series of seminars held by the Sustainability Unit at the end of 2002, and the considerable amount of effort that was required by all those involved. From the Commission's experience, this input needs to be extensively recognized and the varied contributions engaged with. A laudable recent example is the Review of the Project Development Approvals System (also known as the 'Keating Review'), where the final document entered into a spirited debate with written public submissions. Here, arguments raised by people who produced submissions were addressed fairly.

The Commission recommends that the Final Sustainability Strategy be structured so that it comments on, and directly critiques, significant aspects of public submissions. It is suggested that the Keating Review is a good model in this regard.

The Conceptual Basis for Sustainability

An early section of the Draft Sustainability Strategy presents a conceptual framework for sustainability. It consists of seven foundation principles and four process principles. In effect, these principles help to define what is meant by a sustainable development (or policy) outcome. However, no guidance is given as to whether trade-offs are allowed across the triple-bottom-line categories (economic, social and environmental), or whether there are some baselines that cannot be crossed/sacrificed. The Commission has a number of concerns about the issue of trade-offs and integration. This section of the submission deals with: different conceptions of sustainability and how they relate to trade-offs across categories; net conservation benefit; integration of triple-bottom-line categories; and alternative measures of progress.

Sustainability and Category Trade-Offs

The Commission recognizes that trading between triple-bottom-line categories is a problematic issue in all jurisdictions where the concept of sustainability is being grappled with. A legitimate concern is that the move towards triple-bottom-line ‘balancing’ may result in hard-won environmental gains being lost in the process of trade-off. This would be the case where government policy allows for ‘weak sustainability’, which assumes that natural and human-made capital are equally interchangeable in the present, and across generations. If, however, the State Government decides to implement ‘strong sustainability’ policy, it would need to establish environmental, social, and economic baselines which cannot be crossed. A foundation of the ‘strong sustainability’ idea is that different forms of capital are not perfectly interchangeable. This concept is given support by the recent Environmental Protection Authority (EPA) Position Statement No. 6 (‘Towards Sustainability’), from where the following quote is drawn:

“Most traditional thinking is still based on the model which sees the economy as the main game, with social and environmental issues peripheral. A more appropriate way to see the world is the view-from-space model. This approach recognizes that the economy is an important part of society, but only a part; we expect from society important things which are not part of the economy, such as a sense of cultural identity, social justice, security, love, a sense of place and so on. Similarly, our society is totally enclosed within natural ecosystems, on which we depend for essential support services of breathable air, drinkable water and food, as well as less tangible benefits. That is the basis of sustainable development; recognizing that we need to live within the limits of natural systems”.¹

The Commission recommends that the Final Sustainability Strategy should adopt the concept of 'strong sustainability', and that mechanisms for developing uncrossable baselines be outlined.

Net Conservation Benefit

Determining where trade-offs can and cannot be made within and across the triple-bottom-line categories would arguably require wide community consultation. In the Commission's case, the best practical example of this 'trade-off problem' relates to the interpretation of the concept of net conservation benefit. Proponents are becoming increasingly used to trading natural assets, the idea being that it is often acceptable to gain access to public land if it can be traded against private land held by the proponent. The concept is sometimes extended across triple-bottom-line categories, with proponents gaining access to public land by offering economic or social assets as compensation. This could lead to weak sustainability policy in action.

As was mentioned above, the Commission subscribes to the strong sustainability conception. In practice, this means that the highest priority for net conservation benefit is clear, on-the-ground conservation of biodiversity in recognition of uncrossable baselines. For example, if approval were to be sought to gain access to public land for mining in the Pilbara, it should not be acceptable for permission to be granted for the proponent to grow trees in the wheatbelt as a compensatory activity. In addition, the Commission is

¹ Environmental Protection Authority. 2002. Position Statement No. 6, 'Towards Sustainability'. Perth,

concerned to ensure that net conservation benefit commitments made by proponents are delivered in a timely fashion. When decision-making occurs in a series of steps, the delivery of agreed conservation benefits should occur sooner rather than later to ensure that opportunities are not lost.

From all of this, it is clear that the Commission is interested in promoting the idea of a more rigorous approach to thinking about net conservation benefit.

The Commission recommends that the Final Sustainability Strategy discuss in detail how a State Government policy on net conservation benefit should be developed. The Commission believes that relevant Government agencies should further develop the concept, and that a wide community debate should be held about the issue.

Integration

The Commission has a specific interest in the issue of integration, as its authorizing Act specifies that a principle of ecologically sustainable forest management (ESFM) is, "that the decision-making process should effectively integrate both the long-term and short-term economic, environmental, social, and equitable considerations".²

The Commission is given further guidance as to how integration should work in practice in section 19(2)(d) of its authorizing Act. This section states that "the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making".

Section 19(2)(d) is clearly supportive of the strong sustainability concept introduced above. It is also consistent with the 'view-from-space' model of sustainability advocated by the EPA in its recent Position Statement on sustainability.

Western Australia.

² *Conservation and Land Management Act 1984*, section 19(2)(a).

The Commission has given effect to these legislative provisions and sustainability models in its development of the new Forest Management Plan by commencing its deliberations with a focus on the consideration of biological diversity and ecological integrity. We have sought to factor in social, economic and equitable considerations through the cumulative modeling of the impact of our proposals on the sustained yield of forest products (principally jarrah and karri) followed by the reconsideration of these proposals as required. We have approached this latter task with the objective of not falling below identified biological and ecological baselines.

That is, the Forest Management Plan has been driven by fundamental biological and ecological considerations while seeking to mitigate social, economic and equitable consequences; rather than by starting from a sustained yield and designing the plan to fit.

This approach has been seen by some as one in which social and economic concerns have received insufficient attention. The Commission's task would have been easier if there had been a broader understanding of the guidance given at the statutory level to its interpretation of ESFM.

Alternative Progress Measurement

Another sustainability concept that interests the Commission relates to quality of life measures. The Commission is concerned that the Draft Sustainability Strategy does not deal with the issue of alternative measures of economic growth/performance. This is a central component of sustainability thinking around the world. Much work has been done in European countries, and at multi-lateral agencies, testing new ways of measuring performance that address the inherent problems of traditional GDP approaches. The Index of Sustainable Welfare (ISEW) and the Genuine Progress Indicator (GPI) have been trialed in a number of countries.³ In addition, section 19 of the *Conservation and*

³ Lawn, P. 2003. 'A theoretical foundation to support the Index of Sustainable Economic Welfare (ISEW), Genuine Progress Indicator (GPI), and other related indices. *Ecological Economics* 44, pp.105-118.

Land Management Act 1984, which outlines the functions of the Commission, calls for the promotion of “improved valuation, pricing, and incentive mechanisms”.⁴

The sustainability policy process in Western Australia offers an opportunity to experiment with different ways of measuring quality of life. The Commission believes that community input could be obtained to determine quality of life indicators. These indicators could then be used to compare and evaluate policy choices. The Commission has the view that a wide community debate on this issue would result in a more explicit weighting being given to the value of natural assets.

The Commission therefore recommends that the Final Sustainability Strategy should include a section/chapter that outlines how the alternative progress measurement/quality of life indicator issue will be dealt with.

Sustainability and Governance

The Sustainability and Governance chapter of the Draft Sustainability Strategy is of particular interest to the Commission. From its recent experiences with the Forest Management Plan process, and from dealing with the Chevron-Texaco proposal, the Commission wishes to comment on the following issues: assigning responsibility for the implementation of proposed actions; legislative backing for the sustainability agenda; and the scope and institutional reforms needed to support sustainability assessment.

Assigning Responsibility for Proposed Actions

As it presently stands, the recommendations contained in the Draft Sustainability Strategy are essentially 'soft'. Responsibility for implementing recommendations is not assigned to Government agencies. The Commission believes that these two initiatives are essential if the Final Sustainability Strategy is to have real effect. Chapter 9 of the Draft Sustainability Strategy (Implementation) makes it clear that there is an intention to

⁴ *Conservation and Land Management Act 1984*, section 19(2)(e).

address the first of these concerns in the Final Sustainability Strategy. The Commission strongly supports this intention, to the extent that each recommendation should have a statement of responsibility and a timeline attached to it. For example, in relation to the proposed Sustainability Code of Practice, and Sustainability Action Plans, the Commission suggests the inclusion of a new proposed action for the Final Strategy that would read:

The Department of the Premier and Cabinet will require each and every Government agency to present its first Sustainability Action Plan at the end of the 2003/2004 fiscal year. The presence and quality of these Annual Plans will be audited by the Auditor-General. The Commission suggests that this level of commitment is required for each recommendation made in the Final Sustainability Strategy.

Legislative Backing for the Sustainability Agenda

It is the Commission's view that the sustainability agenda will only succeed in the long term if it has legislative backing.

There are a number of reasons for this assertion. First, enshrining the ideas and actions proposed in the Final Sustainability Strategy in law has a symbolic element. It effectively tells the public that the Government believes the sustainability agenda is important. It would make little sense, for example, to suggest a new biodiversity protection system in the State without legislative backing or reform. The same could be said for an environmental protection system. The Commission believes that sustainability issues should be treated no differently.

Second, providing legislative backing for sustainability will mean that it is much harder for future Governments to undo the good work achieved in the sustainability area by the current administration.

Finally, the Commission believes that some aspects of the Draft Sustainability Strategy, particularly those relating to sustainability assessment, can only be implemented by making changes to existing law.

The Commission believes that the Final Sustainability Strategy should recommend the drafting of a Sustainability Administration Act, to enshrine the most important proposed actions. This should be a brief ‘framework law, which would leave implementation details to future regulation. The Commission recommends that the Final Sustainability Strategy include an outline for this proposed new legislation.

The Scope of Sustainability Assessment

The Government has made a clear commitment to establishing a new administrative process that would enable sustainability assessment to be undertaken on development projects, and on other proposals such as policies, plans, programmes (PPPs), Cabinet submissions, and proposed legislation.

In the Commission's view this promise is to be welcomed, as it would bring Western Australia into line with other developed country jurisdictions, and would allow for a more rigorous analysis of the impacts of the full range of possible Government and private proposals.

While Chapter 3 of the Draft Sustainability Strategy introduces the idea of an assessment process that would deal with the full range of possible proposals, it does tend to place a significant emphasis on major projects. While working towards a triple-bottom-line assessment process for large projects is undoubtedly important, the Draft Sustainability Strategy seems to discount the importance of cumulative impacts emanating from small projects, and from other types of proposal (e.g. policies, plans, and programmes). For example, on page 36 it appears to be supporting the Keating Review contention that moves towards sustainability assessment should focus on major projects alone.

It is the Commission's view that, in many respects, the impacts from large projects are already properly scrutinized – at least in relation to biophysical issues – and big proponents are well aware of their responsibilities. It is possible, in fact, that more serious cumulative impacts may result from many small projects, and from PPPs, than from major projects. The Commission is concerned about this issue in relation to the

land that it manages. For example, the cumulative impact of many small tourism operations in a national park, or the Statewide impact of a Government policy to significantly expand the eco-tourism market, may have more potential for negative impact than the establishment of a one-off mine.

The Commission therefore recommends that the Final Sustainability Strategy should present explicit proposed actions that address the need for sustainability assessment of small projects, policies, plans and programmes, Cabinet submissions, and proposed legislation.

Institutional Reforms Needed to Support Sustainability Assessment

The Draft Sustainability Strategy calls for the establishment of a social/sustainability unit in Department of Planning and Infrastructure, and an economic/sustainability unit in Treasury and Finance, both to complement existing arrangements at the EPA. To complicate matters, the recent Review of the Project Development Approvals System also makes recommendations about the establishment of a sustainability assessment system⁵.

While the Commission appreciates the importance placed on the need for institutional reform in the Draft Sustainability Strategy, it also believes that the institutional arrangements specified on page 38 do not go far enough. The ad hoc sustainability assessment arrangements developed for the Gorgon proposal are too unwieldy and inefficient to replicate for other proposals.

The EPA has a sophisticated mechanism for dealing with environmental approvals for proposals, as specified in the *Environmental Protection Act 1986*, and associated Administrative Procedures. No similar systems exist for social and economic assessment. Even if such institutional arrangements did exist, there would still be a need for some kind of overarching integrative institutional process.

⁵ Recommendation 56.

The Commission understands the argument that such integrative institutional reform should not replace Cabinet. It seems undeniable, however, that Cabinet would need administrative assistance to synthesize information provided by the proposed sustainability assessment units placed inside EPA, Department of Planning and Infrastructure, and Treasury and Finance. Just as the Department of Environmental Protection and the EPA provide advice to the Minister for the Environment on proposals presented in accordance with Part IV of the *Environmental Protection Act 1986*, so Cabinet would need to be assisted by an administrative body of some kind sitting 'above' the three units proposed on page 30 of the Draft Sustainability Strategy. This body should not have the function of trading-off between categories in a weak sustainability sense; that is, it should respect the baselines identified by the individual assessment authorities as being uncrossable.

A number of options were discussed by the Department of the Premier and Cabinet in stakeholder meetings during 2002. At a workshop series held in May the following three options were presented and discussed:

1. Empowering the EPA to carry out sustainability assessments. This could be done by amending the *Environmental Protection Act 1986* so that the EPA can assess all impacts of a proposal, and amending the EPA's Environmental Impact Assessment Administrative Procedures 2002 to introduce the new level of sustainability assessment. This would provide a mechanism for major proposals that raise significant social, economic and environmental issues to be subject to a sustainability assessment. As is presently the case, the Minister for the Environment, acting in consultation with other Ministers, would be the final decision-maker. Cabinet would resolve any dispute between these Ministers.

2. Restructuring the EPA into a new agency with a broader focus on sustainability. This agency could be renamed (for argument's sake) the Sustainability Commission. All assessments undertaken by the new agency would be sustainability assessments, which would address all significant social, economic and environmental factors raised by a proposal. It might be necessary to curtail the role of the Minister for the Environment as

an appeals body and decision-maker under this option, given the broader scope of the Sustainability Commission's operations.

3. Creation of a new Sustainability Commission. Under this model, the EPA would continue to prepare reports on the environmental factors of the proposals it assesses. Other agencies would prepare reports on the social and economic factors relevant to such proposals. The Sustainability Commission would then prepare an integrated report and a set of recommendations for Government.

The Commission is aware that all of these options have advantages and disadvantages. However, the Commission is of the view that the EPA's focus on environmental considerations should not be broadened, rather its role within the Government's decision-making processes should be complemented by bodies with a social and economic focus; all of which provide input into an integrative sustainability assessment structure/process.

Institutional reform for sustainability assessment is clearly a fluid area of Government policy at the moment.

The Commission therefore recommends that the institutional reform work on sustainability assessment being undertaken by the Department of the Premier and Cabinet, and by SIAC in its implementation of Recommendation 56 from the Keating Review, be brought together into one coordinated effort through the establishment of a Sustainability Assessment Institutional Arrangements Committee. It is further recommended that this committee be made up of officers from the Department of the Premier and Cabinet, the Department of Industry and Resources, SIAC, and other relevant Government bodies such as the Commission, the EPA, the Department of Conservation and Land Management, and the WA Planning Commission. The Final Sustainability Strategy could present Terms of Reference for this group, which should report within 6 months of the Strategy being adopted.

Sustainability and Natural Resources

A number of different sections of the Draft Sustainability Strategy touch on the sustainable management of natural resources. Examples include the sections relating to ‘maintaining our biodiversity’, and ‘sustainable forestry and plantations’. Both of these sections mention the draft Forest Management Plan, and the former mentions the Government’s interest in developing a new Biodiversity Conservation Act.

Clearly these sections are of interest to the Commission. One aspect of sustainability and natural resources that the Commission feels has not been adequately addressed by the Draft Sustainability Strategy is the issue of the ‘precautionary principle’. While the concept appears as one of the 11 core sustainability principles, its operationalisation needs to be spelt out to clarify how the principle would play an active part in the policies and day-to-day operations of Government agencies.

The precautionary principle is now an accepted part of Australian environmental law. The Draft Forest Management Plan stresses the importance of this principle as an underlying foundation for proper forest management. The principle is expressly included in the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). In WA the precautionary principle is included in the Commission's authorizing Act (*Conservation and Land Management Act 1984*), the *Agricultural Chemicals (Western Australia) Act 1995*, and the *Fish Resources Management Act 1994*, amongst other legislation. Since its application in the Leatch case⁶ in 1993, the precautionary principle is now widely accepted and requires decision-makers to positively weigh and assess environmental consequences even where these consequences are scientifically uncertain. The precautionary principle has also recently been applied in

⁶ Leatch v Director-General of National Parks and Wildlife Service and Shoalhaven City Council (1993) 81 *Local Government and Environmental Reports of Australia* 270.

the cases of *Re Ajka Pty Ltd and Australian Fisheries Management Authority*⁷ and *Re Blank and Australian Fisheries Management Authority*.⁸

In the Commission's view the precautionary principle should become a required part of all new Western Australian natural resource management law and policy. The issue that concerns us most is that there is little guidance as to how the precautionary principle should be translated from law into Government agency policy, and then on to the practical operations of agencies. Commission experience suggests that a 'whole-of-Government' policy needs to be developed to give more certainty on this issue. Our concern here is that it remains unclear as to the circumstances under which the principle should be invoked; i.e. what scale of threat of serious or irreversible environmental harm is required before action ahead of full scientific certainty becomes appropriate.

The Commission recommends that the Final Sustainability Strategy should present a process for instituting the precautionary principle across Government, as suggested above. It is further recommended that when this process is complete, the outcomes should be written into the proposed Sustainability Code of Practice, and thereby into the proposed Sustainability Action Plans of relevant Government agencies.

Conclusion

The Draft Sustainability Strategy has already had a significant impact on the thinking of proponents and Government agencies in WA. There is no doubt that the ideas contained in the Draft are influencing the way organisations think about what they currently do, and how they intend to present new proposals.

The Commission is happy to see these cultural changes taking place because they can lead to more concern for the natural assets that the Commission has custodianship over.

⁷ *Re Ajka Pty Ltd and Australian Fisheries Management Authority* (2001) 63 ALD 261.

⁸ *Re Blank and Australian Fisheries Management Authority* (2000) 62 ALD 787.

The Commission is encouraged by the hope that the good intentions shown in the Draft Sustainability Strategy are carried over to the Final Strategy and subsequent implementation. The Commission believes that this will require a firmer intention to act, and the nine recommendations presented in this submission are offered as mechanisms for achieving that aim.