

04: Legislative Framework

The Gorgon Development proposal was referred to the Commonwealth Department of the Environment and Heritage (DEH) and the Western Australian Environmental Protection Authority (EPA) in November 2003. These agencies then determined that the Gorgon Development should be formally assessed at the Environmental Impact Statement (EIS) and Environmental Review and Management Programme (ERMP) levels respectively. These are detailed levels of assessment that are generally applied to major projects which have significant environmental issues, many of which are complex or of a strategic nature.

The Commonwealth and Western Australian governments agreed to a parallel coordinated environmental assessment process. A single EIS/ERMP document, which satisfies the requirements of each jurisdiction, is required under this process.

The Joint Venturers have prepared this Draft EIS/ERMP in accordance with the requirements of the 'Guidelines for an Environmental Impact Statement and Environmental Scoping Document for an Environmental Review and Management Programme' (the Scoping Document) (ChevronTexaco 2004). The Draft EIS/ERMP is being placed on public exhibition for 10-weeks during which time public submissions will be sought. The DEH and EPA will assess the Draft EIS/ERMP following receipt of public submissions, and the Joint Venturers' response to those submissions. They will then report to relevant Ministers for a final decision on whether the Development should be approved and, if so, under what conditions.



4.1 Introduction

The Commonwealth Department of the Environment and Heritage (DEH) and the Western Australian Environmental Protection Authority (EPA) have agreed to a parallel coordinated process to concurrently assess the proposed Gorgon Development. Under this process, the Western Australian Department of Environment (DoE) is responsible for coordinating the environmental impact assessment on behalf of the EPA. The Western Australian Department of Industry and Resources (DoIR) also has responsibility for coordinating and facilitating effective communication between the Joint Venturers' Development Team and various state agencies.

A coordinated assessment requires preparation of a Draft Environmental Impact Statement (Draft EIS) and an Environmental Review and Management Programme (ERMP) consolidated as a single document (Draft EIS/ERMP) that satisfies the assessment requirements of both government jurisdictions. The primary purpose of this Draft EIS/ERMP is to provide information to the community, the EPA and DEH on the proposed Development within a local and regional framework. This Draft EIS/ERMP includes an explanation of how the proposal may impact on relevant environmental and socio-economic factors and how any negative impacts may be avoided or otherwise mitigated and managed, so as to be acceptable to government agencies under relevant regulatory requirements. (Refer to Section 4.2.4 for an explanation on when/how the document will become a 'Final EIS/ERMP').

4.1.1 Key Environmental Approvals

The environmental impact assessment process for the Gorgon Development is being undertaken in accordance with the requirements of two key pieces of environmental legislation: the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the Western Australian *Environmental Protection Act 1986* (EP Act).

EPBC Act

The EPBC Act sets out the national environmental impact assessment and approvals framework which is administered by DEH. The Commonwealth approvals process is triggered by an action which will, or is likely, to have a significant impact on a matter of national environmental significance of which the following three are considered relevant to the Gorgon Development:

- nationally threatened species and ecological communities
- listed migratory species
- Commonwealth marine areas.

In addition, DEH determined that an application for a permit under the Commonwealth *Environment Protection (Sea Dumping) Act 1981* is also required to be assessed under the EPBC Act. As such, the assessment to support the application for a Sea Dumping Permit is included in this Draft EIS/ERMP.

EP Act

Part IV of the EP Act establishes provisions for the EPA to carry out environmental impact assessment in Western Australia.

The environmental impact assessment provisions of the EP Act are triggered by proposals within state jurisdiction that have the potential, if implemented, to have a significant effect on the environment.

4.2 Environmental Impact Assessment Process

The environmental impact assessment and approval processes of the EPBC Act and EP Act broadly follow four phases: referral, scoping, investigation and document preparation, and finally government assessment.

The keys steps in the Gorgon Development environmental impact assessment process are summarised in Figure 4-1.

4.2.1 Referral

Western Australia

The Gorgon Development proposal was referred to the Western Australian EPA under the EP Act on 18 November 2003. The EPA determined that the Western Australian sector of the Development should be subject to a formal ERMP level assessment under the EP Act. This is a comprehensive and detailed level of assessment and is applied to major projects which have significant environmental issues, many of which are complex or of a strategic nature. Such proposals require substantial assessment to determine whether environmental issues can be managed and, if so, how they can be managed in a manner that is considered acceptable by relevant government agencies. Two appeals were lodged against the decision on the level of assessment and were considered by the Minister for Environment. On 2 January 2004, the appeals on the level of assessment were dismissed.

Commonwealth

The proposal for the Gorgon Development was referred to the Commonwealth Minister of the Environment and Heritage for consideration under the provisions of the EPBC Act on 21 November 2003.

Following the provision of Preliminary Information from the Joint Venturers, a delegate of the Minister determined on 19 December 2003 that the proposed action must be assessed (in terms of potential environmental impacts) through the preparation of an EIS.

An application for a permit to dispose of dredge spoil was lodged with DEH. On 10 March 2004 a delegate of the Minister for the Environment and Heritage decided that the proposed activity was a prescribed action for the purposes of section 160(2)(d), and as such considered analogous to a controlled action requiring assessment under the EPBC Act. The Joint Venturers were directed to include the assessment of dredge disposal in this Draft EIS/ERMP.

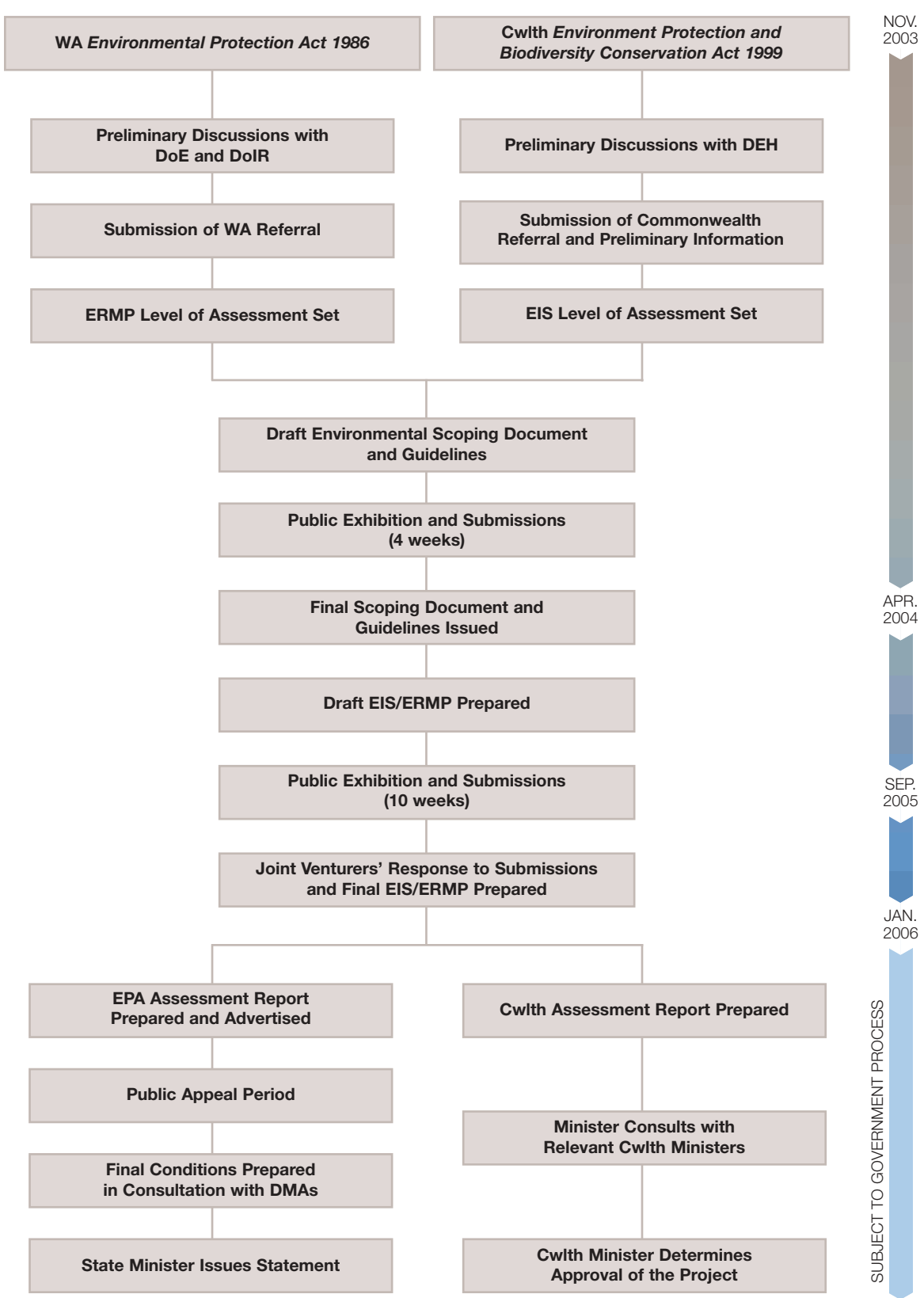
During the course of the environmental impact assessment studies, engineering works identified the need for an optical fibre connection between Barrow Island and the mainland (refer to Chapter 6). This was outside the scope of the original EPBC Act referral. In response a separate referral was lodged in May 2005. A delegate for the Minister determined that the activity was a controlled action. As the telecommunication connection is an integral part of the Development, an assessment of the environmental risks associated with the construction and operation of the cable have been included in this Draft EIS/ERMP, under a Bilateral Agreement between the Commonwealth and Western Australian Government.

4.2.2 Scoping

A draft environmental scoping document and guidelines for an EIS/ERMP were released for public comment on 26 January 2004 for a period of 28-days (ChevronTexaco Australia 2004). A finalised environmental scoping document and guidelines were issued by DEH and the EPA on 19 April 2004 following consideration of public comments. The scoping document was prepared to meet both Western Australian and Commonwealth legislative requirements and is based on the: *Environmental Impact Assessment Act 1986* – Environmental Impact Assessment (Part IV division 1) Administrative Procedures; and the Environment Protection and Biodiversity Conservation Regulations 2000, Schedule 4.

The final environmental scoping document and guidelines identify issues to be addressed in the EIS/ERMP and the actions and investigations to be undertaken in addressing these issues. A checklist of the scoping requirements with the contents of this Draft EIS/ERMP is provided in Appendix 1 (this document) with a full copy available at www.epa.wa.gov.au/docs/1744_Gorgon_EIS_ERMP.pdf.

Figure 4-1:
Environmental Impact Assessment Process



4.2.3 Investigations and Document Preparation

This Draft EIS/ERMP was prepared by the Joint Venturers in accordance with requirements outlined in the environmental scoping document and guidelines. The overall approach to the preparation of the Draft EIS/ERMP involved:

- identification of potential impacts on environmental and socio-economic factors considered relevant to the Gorgon Development and assessment of level of associated risk
- development of strategies to avoid, mitigate or manage consequences
- analysis of residual consequences and risks.

This process has involved completion of specialist studies to determine and broadly quantify potential impacts and benefits associated with the proposed Development and extensive consultation with government and community stakeholders.

This Draft EIS/ERMP was reviewed by DEH and EPA prior to public exhibition to ensure compliance with the requirements of the environmental scoping document and guidelines. The Draft EIS/ERMP will be placed on public exhibition for 10-weeks during which time public submissions will be sought.

During this time, a package of additional information will be issued, which presents the results of subterranean fauna species identification (refer to Chapter 10), the results of the field validation for the dredge plume modelling (refer to Chapter 11), and the selected barriers for the three key quarantine pathways (refer to Chapter 12). The Additional Information Package will be available for comment for the last four weeks of the period of public exhibition.

4.2.4 Government Assessment

Once the public comment period is closed, in consultation with the EPA and DEH, the Joint Venturers will identify issues requiring a response. The Joint Venturers will respond to issues and matters identified in submissions. Once the DEH and EPA have accepted that responses to public submissions are adequate, the document will become the Final EIS and ERMP (Final EIS/ERMP).

The EPA and DEH will then review the EIS/ERMP, public submissions and the Joint Venturers' responses to submissions, and prepare environmental assessment reports for relevant Commonwealth and State Ministers. The Commonwealth Minister for the Environment and Heritage and the Western Australian Minister for the Environment would then be in a position to determine whether the Development should be approved and, if so, under what conditions.

4.3 Other Relevant Legislation

4.3.1 Subsequent Approvals for the Proposed Development

Table 4-1 is a list of the key federal and state approvals that will be required if the proposed Gorgon Development receives environmental approval. Environment Plans and Oil Spill Contingency Plans will also be required for drilling and pipelines.

Table 4-2 is a list of other key associated Commonwealth and Western Australian legislation and international agreements that may apply to subsequent approvals of relevance to the proposed Gorgon Development.

4.4 EPA Guidance Statements

The EPA has developed a series of 'environmental protection Guidance Statements' that are applicable to environmental impact assessments. Several of these EPA guideline documents have been utilised during investigations and studies for this Draft EIS/ERMP including:

- Protection of Tropical Arid Zone Mangroves along the Pilbara Coastline – Guidance for the assessment of environmental factors (in accordance with the EP Act 1986) No. 1 (Final)
- Risk Assessment and Management: Offsite Individual Risk from Hazardous Industrial Plant – Guidance for the assessment of environmental factors (in accordance with the EP Act 1986) No. 2 (Final)
- Deep and Shallow Well Injection for Disposal of Industrial Waste – Guidance for the assessment of environmental factors (in accordance with the EP Act 1986) No. 4 (Final)
- Environmental Noise – Guidance for the assessment of environmental factors (in accordance with the EP Act 1986) No. 8 (Draft)

- Guidance Statement for Minimising Greenhouse Gases – Guidance for the assessment of environmental factors (in accordance with the EP Act 1986) No. 12 (Final)
- Guidance Statement for Emissions of Oxides of Nitrogen from Gas Turbines – Guidance for the assessment of environmental factors (in accordance with the EP Act 1986) No. 15 (Final)
- Management of Surface Run-off from Industrial and Commercial Sites – Guidance for the assessment of environmental factors (in accordance with the EP Act 1986) No. 26 (Draft)
- Benthic Primary Producer Habitat Protection for Western Australia’s Marine Environment – Guidance for the assessment of environmental factors (in accordance with the EP Act 1986) No. 29 (Final)
- Linkage between EPA Assessment and Management Strategies, Policies, Scientific Criteria, Guidelines, Standards and Measures Adopted by National Councils – Guidance for the assessment of environmental factors (in accordance with the EP Act 1986) No. 34 (Final)
- Assessment of Aboriginal Heritage – Guidance for the assessment of environmental factors (in accordance with the EP Act 1986) No. 41 (Final)

Table 4-1:
Key Subsequent Approvals Required for the Gorgon Development

Approval Required	Associated Statutes
Access Authorities	<i>Petroleum (Submerged Lands) Act 1967 (Commonwealth)</i>
Authority to Excavate, Disturb or Damage Cultural Heritage Sites	<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Commonwealth)</i> <i>Aboriginal Heritage Act 1972 (WA)</i>
Barrow Island Lease	<i>Barrow Island Act 2003 (WA)</i> <i>Land Administration Act 1997 (WA)</i>
CO ₂ Injection	<i>Barrow Island Act 2003 (WA)</i>
Dangerous Goods Transport Licences	<i>Dangerous Goods (Transport) Act 1998 (WA)</i>
Drilling and Workover Approvals	<i>Petroleum (Submerged Lands) Act 1967 (Commonwealth)</i>
Infrastructure Licences	<i>Petroleum (Submerged Lands) Act 1967 (Commonwealth)</i>
Licence to Operate/Emit	<i>Environmental Protection Act 1986 (WA)</i>
Major Hazard Facility Safety Report (Operation)	<i>Explosives and Dangerous Goods Act 1961 (WA)</i>
Pipeline Licences	<i>Petroleum (Submerged Lands) Act 1967 (Commonwealth)</i> <i>Petroleum (Submerged Lands) Act 1982 (WA)</i> <i>Petroleum Pipelines Act 1969 (WA)</i>
Pipeline Management Plan (Safety Case) (offshore)	<i>Petroleum (Submerged Lands) Act 1967 (Commonwealth)</i> <i>Petroleum Safety Act 1999 (WA)</i>
Ports Approvals	<i>Marine and Harbours Act 1981 (WA)</i> <i>Shipping and Pilotage Act 1967 (WA)</i> <i>Jetties Act 1926 (WA)</i>
Production Licence	<i>Petroleum (Submerged Lands) Act 1967 (Commonwealth)</i>
Safety Case for Fixed and Mobile Units for Hydrocarbon Production	<i>Petroleum (Submerged Lands) Act 1967 (Commonwealth)</i>
Sea Dumping Permit	<i>Environment Protection (Sea Dumping) Act 1981 (Commonwealth)</i>
Sea Installations Permit	<i>Sea Installations Act 1987 (Commonwealth)</i>
Vegetation Clearing Permit	<i>Environmental Protection Act 1986 (WA)</i> <i>Environmental Protection Amendment Act 2003 (WA)</i>
Works Approval Permit	<i>Environmental Protection Act 1986 (WA)</i>

Table 4-2:

Key Commonwealth and Western Australian Environmental and Petroleum Legislation

Commonwealth Legislation

- Environment Protection and Biodiversity Conservation Regulations 2000
- *Petroleum (Submerged Lands) Act 1967*
- *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999*
- *Australian Heritage Commission Act 1975*
- *Australian Maritime Safety Authority Act 1990*
- *Environment Protection (Sea Dumping) Act 1981*
- *Historic Shipwrecks Act 1976*
- *Native Title Act 1993*
- *Navigation Act 1912*
- P(SL)A Schedule of Specific Requirements as to Offshore Petroleum Exploration and Production 1999
- *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*

Western Australian Legislation

- *Barrow Island Act 2003*
- *Conservation and Land Management Act 1984*
- *Environmental Protection Act 1986*
- *Environmental Protection Amendment Act 2003*

- *Fish Resources Management Act 1994*
- *Heritage of Western Australia Act 1990*
- *Land Administration Act 1997*
- *Local Government Act 1995*
- *Occupational Safety and Health Act 1984*
- *Petroleum Act 1967*
- *Petroleum Pipelines Act 1969*
- *Petroleum (Submerged Lands) Act 1982*
- *Pollution of Waters by Oil and Noxious Substances Act 1987*
- *Soil and Land Conservation Act 1945 (WA)*
- *Town Planning and Development Act 1928*
- *Wildlife Conservation Act 1950*

International Conventions

- International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 (MARPOL 73/78)
- China Australia Migratory Birds Agreement (CAMBA)
- Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention)
- Japan Australia Migratory Birds Agreement (JAMBA)

- Guidance to assist proponents in understanding the EPA's requirements in relation to the environmental condition on Environmental Management Systems – Guidance for the assessment of environmental factors (in accordance with the EP Act 1986) No. 43 (Draft)
- Assessment of Odour Impacts from New Proposals – Guidance for the assessment of environmental factors (in accordance with the EP Act 1986) No. 47 (Final)
- Groundwater Environmental Management Areas No. 48 (Draft)
- Terrestrial flora and vegetation surveys for Environmental Impact Assessment in Western Australia No. 51 (Final)
- Consideration of subterranean fauna in groundwater and caves during environmental impact assessment in Western Australia – Guidance for the assessment of environmental factors (in accordance with the EP Act 1986) No. 54 (Final)
- Implementing best practice in proposals submitted to the environment impact assessment process – Guidance for the assessment of environmental factors (in accordance with the EP Act 1986) No. 55 (Final)
- Terrestrial fauna surveys for Environmental Impact Assessment in Western Australia No. 56 (Final).

These guidance statements provide the basis for the EPA's evaluation of, and advice on, development proposals subject to formal environmental impact assessment. Accordingly, the Joint Venturers have considered and applied these guidelines where appropriate.

