

6 LEGISLATIVE FRAMEWORK

6.1 EIS PROCESS

6.1.1 EIS SCOPE

Issue:

The joint government Draft EIS Guidelines state that 'the production rate of the expanded mine could be up to 1 million tonnes per annum' (Mtpa). The Draft EIS assesses the potential impacts of a production rate of 750,000 tpa. As a result, respondents have questioned why the Draft EIS has not assessed the potential full scale of the project: that is, a production rate of 1 Mtpa and the associated increases in demand (e.g. water and energy) and increased impacts.

Submissions: 8, 10, 13, 43, 175, 177, 185, 206, 255, 306, 351, 363 and 389

Response:

Although the expanded mine has the potential to produce up to 1 Mtpa of copper and associated products, BHP Billiton does not currently propose to operate at that rate of production. The production rate for which BHP Billiton is seeking approval, and at which potential impacts and benefits of the proposed expansion have been assessed, is 750,000 tpa of copper and associated products.

The joint government EIS Guidelines were placed on public display as a draft in November 2005 and finalised in November 2008. At that time, it was considered possible that the production rate of the expanded mine could be up to 1 Mtpa. However the assessment (as presented in Section 4.4 of the Draft EIS) established that the optimal production rate for the proposed expansion would be approximately 750,000 tpa of copper and associated products.

BHP Billiton is seeking government approval for the introduction of a new open pit mine and related infrastructure, resulting in annual average production increasing to 750,000 tpa of refined copper equivalent plus associated products (19,000 tpa uranium oxide, 800,000 oz/a gold and 2.9 million oz/a silver). These production rates are likely to increase over time as a result of technological advances and improved operating efficiencies.

Issue:

It was asked whether the proposed landing facility would be used in the future for activities other than those described in the Draft EIS.

Submission: 386

Response:

BHP Billiton does not propose to use the landing facility for any other activities beyond those described in the Draft EIS, nor does it propose to allow third parties to use this facility. The facility would be established about 10 km south of Port Augusta to offload pre-assembled metallurgical plant and prefabricated infrastructure modules. The facility is expected to accommodate about one vessel every 11 days over seven years (during the construction phase). It would continue to be used infrequently by BHP Billiton during the operation phase to import equipment associated with ongoing replacement and maintenance (refer Section 5.9.5 of the Draft EIS for details).

6.1.2 EIS TIMEFRAME

Issue:

It was noted that the Draft EIS addresses only a 40-year timeframe of mining operations. This led to a question about what would happen if mining continued beyond 40 years and whether there would be another EIS.

Submissions: 12 and 265

Response:

If the expanded mining operation continued beyond 40 years, BHP Billiton would seek further government approvals. The need for another EIS would depend on the legislative requirements at that time. As discussed in Section 1.3.3 of the Draft EIS, while the Draft EIS presents the assessment of an expanded operation over 40 years, the massive ore body at Olympic Dam suggests that continued operation or future expansions beyond the scale and timeframe currently proposed are likely. If the mine was to operate for longer than the 40-year period assessed in the Draft EIS, or if BHP Billiton proposed a further expansion that increased the project impacts to a level greater than those accommodated by the approvals obtained, BHP Billiton would seek subsequent government approvals. The process of obtaining further approvals would depend on the scale of the proposed increase and the applicable legislative and government requirements at that time. This may, or may not, include the need for another Environmental Impact Statement.

6.1.3 EIS ASSESSMENT AND APPROVAL PROCESS

Issue:

It was questioned why the bilateral assessment agreement between the South Australian and Australian governments was not applied to the Draft EIS.

Submission: 306

Response:

When the environmental impact assessment process for the proposed expansion of Olympic Dam began in August 2005, there was no bilateral assessment agreement between the Australian and South Australian governments. A collaborative assessment process was developed that fulfilled the requirements of both these governments.

The requirements of the Northern Territory Government were subsequently integrated into the collaborative process when BHP Billiton amended the project description in June 2008 by adding the export of copper concentrate via the Port of Darwin. In September 2008, further development applications were submitted to the South Australian Government and a variation to the original referral of the project was made to the Australian Government to accommodate changes to the project description.

All three governments will now assess the proposed expansion in accordance with the joint assessment process. Chapter 6 of the Draft EIS provided a detailed description of the assessment and approvals process (refer Section 6.2).

Issue:

Clarification was sought regarding Northern Territory ministerial and departmental responsibility with respect to project approval and transport licensing for radioactive ores and concentrate.

Submission: 3

Response:

As noted in Section 6.2 of the Draft EIS, and confirmed by the Northern Territory Department of Natural Resources, Environment, The Arts and Sport (NRETAS), the Northern Territory Minister for Infrastructure is the responsible minister for the approval of proposed expansion activities at the Port of Darwin under the *Darwin Port Corporation Act*.

As noted by the Northern Territory Department of Justice, NT WorkSafe is the lead agency for licensing the transport of radioactive ores and concentrate, and monitoring the transport plan for uranium oxide, as required under the *Radioactive Ores and Concentrates (Packaging and Transport) Act* (NT) (refer Section 22.4.5 and Section E4.10.3 of Appendix E of the Draft EIS). The Department of the Chief Minister had a coordination role in the initial licensing process on behalf of the Northern Territory Government. At the time of writing, NT WorkSafe now undertakes this role.

Issue:

It was asked whether the Draft EIS could be changed, and whether the Supplementary EIS would be made available for public comment.

Submissions: 40 and 346

Response:

The Draft EIS is a published document that will not be changed. It provides the proponent's assessment of the proposed expansion and forms the document upon which government and other interested parties can comment. The Supplementary EIS is the next document in the government EIS process and will be available for public viewing. As part of the government EIS process, public comment will not be sought on the Supplementary EIS. The purpose of the document is to show how the proponent has considered the concerns raised by the public about the Draft EIS.

The Supplementary EIS provides the proponent's response to the written submissions received during the formal public exhibition period. Together, the Draft EIS and the Supplementary EIS form the 'Final EIS'. This will be the basis against which the three governments assess the merits of the project to determine the approval decision.

When the Supplementary EIS has been submitted to the Australian, South Australian and Northern Territory governments, it will be available for viewing by the public at the same locations where the Draft EIS was available. These include the Central Library of the Australian Department of the Environment, Water, Heritage and the Arts (now the Department of Sustainability, Environment, Water, Population and Communities), the State Library of South Australia, and relevant local council offices or libraries. The Supplementary EIS will also be placed on the websites of BHP Billiton and the Australian Department of Sustainability, Environment, Water, Population and Communities, the South Australian Department of Planning and Local Government, and the Northern Territory Department of Natural Resources, Environment, The Arts and Sport.

Issue:

It was suggested that the Draft EIS process was flawed and that an assessment of alternatives and a further round of public consultation were needed.

Submissions: 11 and 130

Response:

The Draft EIS was prepared in accordance with the assessment process required by the Australian, South Australian and Northern Territory governments (refer Section 6.2 of the Draft EIS). Before its publication, all three governments were satisfied that the joint government EIS Guidelines had been adequately addressed, and the Draft EIS was subsequently released for public comment. It is open to the three governments to approve the expansion with or without conditions, or to reject it.

Chapter 4 of the Draft EIS provided an assessment of alternatives to the proposed project configuration. For the purposes of the EIS Guidelines, the three governments deemed this assessment to be adequate. Chapter 4 of this Supplementary EIS addresses comments received on the assessment of project alternatives. The three governments and BHP Billiton all regarded the 14-week public consultation period as adequate for review and comment on the project alternatives without the need for a second round of public consultation on these alternatives.

Issue:

It was questioned whether the South Australian Environment Protection Authority (SA EPA) has any legislative jurisdiction to regulate the discharge of return water from the proposed desalination plant into Upper Spencer Gulf.

Submission: 130

Response:

The SA EPA has the legislative jurisdiction to regulate the discharge of return water from the proposed desalination plant. In accordance with the South Australian *Environment Protection Act 1993*, BHP Billiton would be required to apply for a licence from the EPA to discharge return water from the desalination plant into Upper Spencer Gulf.

As is the case with many of the permits and licences required for the proposed expansion under South Australian legislation, the application process for the licence to discharge is specified in Clause 7 of the *Roxby Downs (Indenture Ratification) Act 1982*.

Issue:

It was requested that specific conditions be attached to the project approval for aspects of the design, construction and future use of the proposed access corridor.

Submission: 49

Response:

Conditions of approval for the proposed expansion would be determined by the Australian, South Australian and Northern Territory governments once the assessment of the Draft and Supplementary EIS (i.e. the Final EIS) had been completed and a decision made by the ministers responsible for approval.

With specific reference to the proposed access corridor, and in consultation with the South Australian Government, BHP Billiton has agreed to realign the corridor between Caroona Road and the Eyre Highway further to the west than the original alignment contained in the Draft EIS (i.e. on an alignment closer to the boundary of the Port Augusta airport). Figure 5.18 of the Supplementary EIS shows the revised alignment.

As noted in Section 5.9.4 of the Draft EIS and Section 5.7.3 of the Supplementary EIS, the access corridor would be an unpaved all-weather surface constructed of compacted crushed rock and gravel and would be screened by tree planting to reduce potential impacts on nearby residents. The access corridor would be a private road that would be used only for the proposed expansion activities and not for public vehicle traffic. Once the access corridor was no longer required for these activities, it would be decommissioned and revegetated.

Issue:

It was asked whether the detailed design of the Pimba intermodal facility could be reserved for subsequent assessment.

Submission: 62

Response:

Should the proposed expansion be approved, applications would be made for permits and/or licences to construct and operate the project components. At this time, more detailed design information would be submitted by BHP Billiton and assessed by the relevant authority as part of the approval process.

Section 5.9.3 and Figures 5.44 and 5.45 of the Draft EIS provided details about the proposed Pimba intermodal facility, including an indicative design configuration. As the project progresses and detailed design information becomes available, BHP Billiton will consult with relevant stakeholders, including the Pimba Progress Association.

6.2 LEGISLATIVE COMPLIANCE

6.2.1 PERMITS AND LICENCES

Issue:

It was noted that further detailed information relating to the proposed gas pipeline would be required in support of a pipeline licence application at the time such an application was made. It was also noted that BHP Billiton had surrendered the preliminary survey licence held under the *Petroleum and Geothermal Energy Act 2000 (SA)*.

Submission: 2

Response:

It is acknowledged that further information, including a Statement of Environmental Objectives, would need to be provided to the South Australian Department of Primary Industries and Resources (PIRSA) when the application for a pipeline licence was submitted in accordance with the *Petroleum and Geothermal Energy Act 2000 (SA)*. This information would include Management Plans and Monitoring Programs related to pipeline activities. Following whole-of-project approval and a decision to proceed from the BHP Billiton Board, further studies to determine the preferred gas pipeline route in the assessed corridors would be undertaken and a pipeline licence application would be submitted after the application was discussed with PIRSA.

It is correct that the preliminary survey licence was surrendered by BHP Billiton; this occurred at the end of 2008.

Issue:

It was suggested that the necessary connective infrastructure (electricity, water/gas pipelines and roadways) would need to be constructed and maintained in such a way that they complied with natural resources management legislation, and take into consideration aspects such as native vegetation clearance and erosion mitigation.

Submission: 59

Response:

All activities undertaken by BHP Billiton or its contractors for the proposed Olympic Dam expansion would comply with all relevant legislation, including legislation related to natural resources management.

As discussed in Section 6.4.2 of the Draft EIS, numerous South Australian Acts are relevant to the proposed expansion. A summary of the relevant Acts was provided in Table 6.4 of the Draft EIS. Legislation related to natural resources management listed in Table 6.4 included (but was not limited to): *National Parks and Wildlife Act 1972*; *Natural Resource Management Act 2004*; *Native Vegetation Act 1991* (and Native Vegetation Regulations 2003); *Pastoral Land Management and Conservation Act 1989*.

As required under the *Native Vegetation Act 1991*, a Native Vegetation Management Plan would be prepared for vegetation clearing required for the proposed expansion. An outline of the proposed plan, including the significant environmental benefit (SEB) strategy, was described in Section 15.5.1 and Appendix N9 of the Draft EIS. In particular for the Northern and Yorke Natural Resources Management (NRM) region (where the linear infrastructure is proposed but BHP Billiton does not own land), the proposed clearance of 165 ha would require an SEB offset area of 1042 ha. Further management controls/actions to be considered during the construction and maintenance of linear infrastructure are described in the Draft Environmental Management Program ID1.1 – Land Disturbance (refer Appendix U of the Draft EIS for details).

Section 10.5.1 of the Draft EIS discussed the potential for soil erosion during the construction and operation of the project components. Standard engineering practices would control erosion in those areas with low and moderate erosion potential, while areas of high and very high erosion potential would require additional measures and the development of an Erosion and Sediment Control Plan (ESCP). The Draft Environmental Management Program ID1.1 – Land Disturbance described the management measures to be considered for linear infrastructure (refer Appendix U of the Draft EIS for details).

As described in Section 24.4.6 of the Draft EIS, and as part of the Environmental Management Framework for the proposed expansion, the responsible contractor would be required to prepare a Health, Safety, Environment and Community (HSEC) Management Plan before the construction of all project components. This plan would define environmental management strategies and controls in response to the environmental obligations specified in the Design Criteria (e.g. drawings and specifications) and Environmental Objectives and Performance Criteria documents. This may include no-go areas for vegetation clearance, erosion and sediment control structures and rehabilitation or revegetation requirements. Any conditions attached to permits or licences would also be addressed in the HSEC Management Plan.

Issue:

BHP Billiton was asked to acknowledge that Clauses 17 and 19 of the Environment Protection (Water Quality) Policy 2003 must be complied with or an exemption sought.

Submission: 2**Response:**

It is acknowledged that BHP Billiton must comply with Clause 17 (Obligation not to discharge or deposit listed pollutants into waters or onto certain land) and Clause 19 (Obligation not to discharge listed pollutants or waste into bores, mine shafts etc) of the Environment Protection (Water Quality) Policy 2003 (EPA 2003), or apply for an exemption. Listed pollutants (as listed in Schedule 4 of the policy) would not be discharged into waters, bores, mine shafts, or onto certain land.

Issue:

Clarification was sought on the application of the *Australian Radiation Protection and Nuclear Safety Act 1998* (the ARPANS Act) and the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) Codes of Practice.

Submission: 2**Response:**

The ARPANSA Code of Practice and Safety Guide for Radiation Protection and Radioactive Waste Management in Mining and Mineral Processing 2005 establishes requirements for radiation protection in mining and mineral processing industries, and for protection of human health and the environment from the effects of radioactive waste from mining and mineral processing (ARPANSA 2005). The Code of Practice for the Safe Transport of Radioactive Material 2008 is intended to establish uniform requirements for the transport of radioactive material in Australia (ARPANSA 2008). Although not an exhaustive list, Table 6.3 in Section 6.3.3 of the Draft EIS identified many of the codes of practice and policies relevant to the proposed expansion. As well as applying to the proposed expansion on a national level, the ARPANSA Codes of Practice are adopted under South Australian legislation through the *Roxby Downs (Indenture Ratification) Act 1982* and the *Radiation Protection and Control Act 1982* (as highlighted in the footnote to Table 6.3 of the Draft EIS), and have been addressed in the Draft EIS accordingly. In particular, Section 22.4.3 of the Draft EIS discussed exposure to radiation and Section 22.6.10 discussed the safe transport of radioactive material (uranium oxide and concentrate).

As noted by the Radiation Protection Branch, the reference in Table 6.2 of the Draft EIS to licences currently held by BHP Billiton under Division 2, Part 5 of the ARPANS Act (1998) for controlled material, apparatus and facilities is incorrect. There is no requirement for the Olympic Dam operation to hold a licence under the ARPANS Act (1998) and none are held. All relevant licences for the operation are held under the South Australian *Radiation Protection and Control Act 1982* (refer Table 6.4 of the Draft EIS) and the Commonwealth *Nuclear Non-Proliferation (Safeguards) Act 1997* (refer Table 6.2 of the Draft EIS).

6.3 SOUTH AUSTRALIAN AND LOCAL GOVERNMENT COMPLIANCE

6.3.1 SA STRATEGIC PLAN

Issue:

It was suggested that the proposed Olympic Dam expansion is not consistent with targets T3.5, T3.7, T 3.9 and T3.12 listed in South Australia's Strategic Plan 2007. The respondent also stated that the proposed expansion would make it difficult for South Australia to achieve Objective 3 – Attaining Sustainability.

Submission: 311**Response:**

The contribution of the proposed expansion to the achievement of Targets T3.5, T3.7, T3.9 and T3.12 in the Attaining Sustainability objective of South Australia's Strategic Plan 2007 (SASP) is discussed below.

SASP is a broad framework that provides guidance for the activities of the South Australian Government, business and the community. The targets set are regularly reviewed and updated and are not legally binding. Appendix D of the Draft EIS provided a review of the proposed expansion's contribution to SASP. While the proposed expansion is not relevant to all the targets,

the review demonstrated that the project would significantly help South Australia meet 47 of the 98 targets. It is relevant to, and would contribute to, nine of the 15 targets in Objective 3 – Attaining Sustainability.

Target T3.5 – Greenhouse gas emissions reduction: achieve the Kyoto target by limiting the state’s greenhouse gas emissions to 108% of 1990 levels during 2008–2012, as a first step towards reducing emissions by 60% (to 40% of 1990 levels) by 2050

The proposed expansion of Olympic Dam is consistent with this target.

BHP Billiton’s Climate Change Position acknowledges that the increase in greenhouse gas concentrations in the atmosphere is a global challenge that needs to be addressed. A key focus area is to improve the management of energy and greenhouse gas emissions from production, including setting group targets and site-based plans and targets to reduce greenhouse gas emissions (BHP Billiton 2008).

While the Draft EIS acknowledged that the proposed expansion would result in increased greenhouse gas emissions, strategies have been developed to reduce the greenhouse footprint of the expanded operation. In accordance with the SASP, BHP Billiton also stated in the Draft EIS a goal of reducing greenhouse gas emissions (reportable under the National Greenhouse and Energy Reporting (Measurement) Determination 2008) to an amount equivalent to at least a 60% reduction (i.e. to an amount equal to or less than 40%) of 1990 emissions, by 2050 (refer Section 13.4.1 and Appendix L of the Draft EIS for details). An annual ‘road map’ that quantified emission reduction opportunities and achievements would also be produced.

Target T3.7 – Ecological footprint: reduce South Australia’s ecological footprint by 30% by 2050

The proposed expansion of Olympic Dam is consistent with this target.

It was noted in Appendix D of the Draft EIS that the proposed Olympic Dam expansion was not relevant to this target, however aspects of the expansion would contribute to achieving the target. SASP defines the ecological footprint of our community as a measure of our impact on the environment – how much our way of life affects productive land (DPC 2007). The progress fact sheet for Target T3.7 indicates that achieving the greenhouse emissions reduction target of 60% (T3.5) is likely to achieve the ecological footprint target (DPC 2009a). As discussed above, the proposed expansion aligns its greenhouse gas target with that of the South Australian Government and therefore would contribute to an overall reduction in the state’s emissions over time.

Target T3.9 – Sustainable water supply: South Australia’s water resources are managed within sustainable limits by 2018

The proposed expansion of Olympic Dam is consistent with this target.

One of the key initiatives identified in SASP is promoting sustainable water use and fostering innovative options for supplies of water, including desalination (DPC 2009b). The most recent progress fact sheet for Target T3.9 notes that the development of additional water sources such as desalination plants is an initiative of the South Australian Government’s Water Proofing Adelaide strategy (Department of the Premier and Cabinet 2009b).

The preferred option for water supply for the proposed expansion is a seawater desalination plant at Point Lowly. This option provides an alternative source of supply to the Great Artesian Basin (GAB), avoids reliance on water from the River Murray, and provides a sustainable long-term solution for the Olympic Dam operation. The comprehensive impact assessment undertaken for the Draft EIS (refer Section 16.6 for details) provides confidence that the marine environment of Upper Spencer Gulf would not be adversely affected by the proposed desalination plant (see also Chapter 17 of the Supplementary EIS).

The Olympic Dam EIS continues to seek approval for a 280 ML/d seawater desalination plant, despite the peak water demand for the expansion being 200 ML/d. This approach retains the future option for the South Australian Government to replace River Murray water as the primary water source for the Eyre Peninsula and further contribute to achieving this SASP target.

Comparison can be drawn to the SA Water desalination plant under construction at Port Stanvac. The EIS for the plant stated that the provision of a climate-independent supply of drinking water via this plant would contribute to increasing ‘sustainable’ levels of water consumption into the future and so help attain Target T3.9 (SA Water 2008).

BHP Billiton considers that the proposed desalination plant for the Olympic Dam expansion is consistent with the aim of target T3.9, which is to contribute to a sustainable water supply for South Australia.

Target T3.12 – Renewable energy: support the development of renewable energy so that it comprises 20% of the state’s electricity production and consumption by 2014

The proposed expansion of Olympic Dam is consistent with this target.

BHP Billiton is investigating the use of renewable energy in its proposed expansion of Olympic Dam. One of the key focus areas in BHP Billiton’s Climate Change Position is to support low-emissions-technology development and internal energy excellence projects, and to encourage emissions abatement by its employees and neighbouring communities (BHP Billiton 2008).

BHP Billiton is committed to using low-carbon-emission energy where practicable for the proposed expansion. This includes constructing and operating an on-site cogeneration power station (250 MW) and using renewable electricity, contracted through the National Electricity Market (NEM), to power the coastal desalination plant (35 MW). The Draft EIS included a commitment to source 35 MW of electricity for the desalination plant via renewable electricity. BHP Billiton has now extended that commitment to include sourcing the additional 22 MW required for all four pumping stations from renewable electricity contracted via the NEM.

The Draft EIS included other measures, including the use of energy efficiency measures in Hiltaba Village and Roxby Downs, and further opportunities would be investigated during detailed design. Examples of such measures discussed in the Draft EIS included solar water heating for new BHP Billiton-owned houses and community buildings in Roxby Downs and the permanent accommodation units, laundries and central buildings at Hiltaba Village.

As part of the investigation into potential renewable energy sources for the proposed expansion, BHP Billiton commissioned BP to undertake a feasibility study into the potential development of an on-site solar thermal electricity generation plant. The study found that in the absence of a significant carbon price base and further solar flagships funding, it is likely to remain uneconomic for the foreseeable future. Uncertainty also remains about the ability of such a system to provide baseload power due to storage constraints. While this option is not currently feasible, BHP Billiton would continue to watch this market segment with interest and would be prepared to instigate further investigations if significant changes to technology and/or the economic baseline eventuated.

Issue:

BHP Billiton was asked to confirm its approach and commitment to the South Australian Government's Industry Participation Policy.

Submission: 2

Response:

BHP Billiton is committed to the South Australian Government's Industry Participation Policy.

Section 19.5.1 of the Draft EIS noted that the South Australian Department of Trade and Economic Development has developed an Industry Participation Policy (DTED 2005) to give local businesses a full, fair and reasonable opportunity to be considered for major work, in both the public and private sectors. BHP Billiton has stated its intention to take account of this policy in awarding contracts. As described in Section 7.3.2 of the Draft EIS, a series of information sessions was held in 2008 in Roxby Downs, Port Augusta and Adelaide to help potential suppliers identify opportunities in the project.

In addition, a supplier registration page was added to the BHP Billiton Olympic Dam Expansion Project website, offering potential suppliers an opportunity to register their interest in participating in the expansion. These initiatives demonstrate BHP Billiton's commitment to this policy. BHP Billiton would continue to liaise with government and industry suppliers as appropriate during the ongoing development of the proposed expansion.

6.3.2 DEVELOPMENT PLANS

Issue:

The Draft EIS stated that the proposed landing facility and access corridor are not compatible with the Coastal Conservation Zone of the Port Augusta (City) Development Plan (Government of South Australia 2010a). This has raised the question of why these infrastructure components should be allowed in this zone.

Submission: 68

Response:

As noted in Section 6.6 of the Draft EIS, the proposed landing facility and access corridor are not compatible with the Coastal Conservation Zone of the Port Augusta (City) Development Plan. However, they have been sited and designed to minimise potential environmental, social and visual impacts (refer Chapters 16, 19 and 20 of the Draft EIS for details). A detailed assessment against the objectives and principles of development control in this zone was provided in Section G2.5 of Appendix G to the Draft EIS. This assessment showed that the proposed infrastructure could be constructed and operated in a manner that would not result in significant adverse impacts to the surrounding environment, nor would it impair the existing use or management of natural resources in the vicinity.

The proposed expansion was declared a Major Development under the South Australian Development Act 1993 as it was considered to be of major economic, social or environmental importance. This Act does not generally apply to development activities within core project areas, including the Special Mining Lease (SML) and areas that BHP Billiton owns, occupies or is entitled to tenure over, which are required for the transport, supply or provision of petroleum, electricity or water for the project. While not bound by the development plans, the South Australian Minister for Mineral Resources Development is to consider the provisions of relevant plans during the assessment process. Ultimately it is the minister who decides whether the project is approved.

Should the project be approved, the Port Augusta (City) Development Plan would be amended (through the Plan Amendment process) so as not to prevent or unduly hinder the proposed landing facility and access corridor and to provide a long-term planning policy framework against which future development proposals could be assessed.

Issue:

Clarification was sought on the approval pathway to be followed for the proposed sulphur storage facility and any necessary upgrades to wharf requirements.

Submission: 2

Response:

Discussions on the approval strategy for the proposed sulphur storage facility and possible wharf upgrades have been held with the South Australian Department of Planning and Local Government (DPLG). BHP Billiton, in consultation with the DPLG, will determine an appropriate pathway at the time in light of the applicable legislation.

Issue:

A submission from a member of the public noted that as part of their development application to build a house at Point Lowly, they were required to establish vegetation before the building plans were accepted. With this in mind, they have questioned whether BHP Billiton would be required to begin landscaping before the desalination plant building plans were accepted.

Submission: 348

Response:

The timing of commencement of landscaping would be a matter for the approving authority. Specific details of the landscaping associated with the proposed desalination plant have not yet been determined and would be undertaken during the detailed design phase of the project.

BHP Billiton or its nominated contractor would liaise with relevant authorities in ensuring appropriate landscaping was included in the building plans. As noted in Section 23.1 of the Supplementary EIS, only native species would be planted in this area.

6.3.3 MARINE PARK

Issue:

It was noted that Upper Spencer Gulf is proposed as a marine park, yet BHP Billiton proposes to locate a desalination plant and landing facility within the park boundaries. Respondents have questioned how this is consistent with the objectives and zoning of a marine park.

Submissions: 41, 83, 121, 138, 172, 210, 211, 212, 213, 263, 272, 273, 341 and 385

Response:

The desalination plant and landing facility would be constructed and operated in accordance with the principles of ecological sustainability.

The objectives of the *Marine Parks Act 2007* include the protection and conservation of marine biological diversity and marine habitats by declaring and providing for the management of a comprehensive, adequate and representative system of marine parks, while allowing ecologically sustainable development and use of marine environments.

As stated by the South Australian Department for Environment and Heritage (DEH), marine parks are not intended to preclude coastal developments, such as desalination plants, marinas or resorts. Rather, marine parks will be zoned and managed to accommodate well-planned development in suitable areas, as determined through the current development assessment process (DEH 2010a).

Provisional boundaries for 19 marine parks were proclaimed and released for public comment on 29 January 2009, while the Draft EIS was being printed. One of these parks was the Upper Spencer Gulf Marine Park, encompassing all waters north of a line just south of Whyalla and Port Pirie (DEH 2010b). The proposed desalination plant and landing facility are located within this boundary. The final boundaries were proclaimed on 23 July 2009, with minor changes to the Upper Spencer Gulf Marine Park to exclude existing commercial ports and indenture areas that are heavily trafficked (Government of South Australia 2009). These boundaries have been taken into consideration during preparation of the Supplementary EIS.

DEH notes that management plans with zoning for each marine park will be developed in consultation with the community and industry by about mid-2012 (Department for Environment and Heritage 2010a). Until then, existing activities and uses in these areas are able to continue unchanged (Government of South Australia 2009). Zones may include (Government of South Australia 2010b):

- general managed use – allowing ecologically sustainable development and use
- habitat protection – allowing activities and uses that do not harm habitats or the functioning of ecosystems
- sanctuary – allowing low-impact activities but prohibiting the removal of or harm to plants, animals or marine products
- restricted access – limiting public access to the area
- special purpose areas – which may be used to accommodate an existing use or activity that may otherwise be prohibited or restricted as a consequence of the zoning of the area.

A comprehensive impact assessment was undertaken for the proposed desalination plant and landing facility and was reported in Chapter 16 of the Draft EIS. The assessment concluded that:

- the desalination plant would have a negligible residual impact on the marine ecosystem at Point Lowly beyond the immediate vicinity of the outfall (refer Section 16.6.5 of the Draft EIS)
- the landing facility would have a negligible residual impact on marine communities and coastal processes (refer Section 16.6.12 of the Draft EIS)
- shipping movements associated with the landing facility would have a negligible residual impact on the marine environment (refer Section 16.6.13 of the Draft EIS).

BHP Billiton considers that both the proposed desalination plant and the landing facility would be compatible with the proposed objectives and zoning requirements of the Upper Spencer Gulf Marine Park. BHP Billiton will continue to liaise with the South Australian Government to ensure that the proposed infrastructure would have no significant adverse impacts on the marine environment.

6.4 ROXBY DOWNS INDENTURE

Issue:

The *Roxby Downs (Indenture Ratification) Act 1982* is said to provide BHP Billiton with legal privileges under South Australian legislation. Many respondents asked that the indenture be repealed and that the proposed expansion of Olympic Dam be subject to all relevant Acts and standards.

Submissions: 7, 8, 10, 11, 13, 16, 24, 35, 37, 38, 42, 43, 44, 46, 50, 65, 67, 68, 72, 85, 88, 92, 97, 112, 116, 125, 131, 132, 141, 144, 147, 152, 161, 177, 178, 180, 182, 185, 196, 197, 204, 206, 208, 211, 216, 217, 241, 245, 247, 248, 251, 254, 255, 258, 266, 278, 287, 289, 296, 299, 309, 313, 315, 318, 326, 331, 335, 351, 352, 363, 388 and 389

Response:

The *Roxby Downs (Indenture Ratification) Act 1982* does not provide BHP Billiton with privilege or exemption from complying with legislation. A description of the Act was provided in Section 6.4.1 of the Draft EIS.

Indenture Agreements (or State Agreements, as they are referred to in some states) have been used by governments in Australia for a long time. In South Australia, for example, before the Roxby Downs Indenture, they were used to set conditions for investment in forestry, iron ore processing, petroleum refining and gas production.

Indenture agreements have been applied in circumstances where companies are contemplating investment over a very long period and accordingly seek certainty that the value of their investment will not be undermined by the subsequent passing of laws.

Indenture or State Agreements do not allow companies to evade the law. They provide some degree of certainty about the legislative and regulatory regime that will apply over the life of an investment.

In the case of Olympic Dam, BHP Billiton must comply with all state laws of general application. For example, Olympic Dam complies with all applicable Aboriginal Heritage legislation. In fact, Olympic Dam regards compliance as the minimum requirement, and works to achieve much better outcomes in its practices and operations.

The *Roxby Downs (Indenture Ratification) Act 1982* requires Olympic Dam to have rigorous environmental management systems and to ensure the operation does not harm the environment. To ensure compliance, state regulators visit Olympic Dam every quarter and the operation must regularly renew a range of licences and other approvals issued in accordance with regulatory requirements.

Issue:

It was suggested that development activity undertaken by BHP Billiton in Roxby Downs should be required to meet all provisions and approval procedures of existing state development legislation, rather than those currently contained in the *Roxby Downs (Indenture Ratification) Act 1982*.

Submission: 72

Response:

The existing state development legislation applies to development activity together with (but only to the extent required by) the proper application of the *Roxby Downs (Indenture Ratification) Act 1982*. As such, the proposed expansion of the Roxby Downs town is subject to the Roxby Downs (Municipality) Development Plan (consolidated 1 November 2007). The objectives and principles of development control have been considered in the development of the Draft Master Plan for Roxby Downs (refer Chapter 5 and Appendix F4 of the Draft EIS for details). The proposed town expansion has been designed to be consistent with the objectives and principles of development control in the Roxby Downs Development Plan (refer Section 6.6 and Appendix G2 of the Draft EIS).