



Draft Guideline on Environmental Noise for Prescribed Premises

Department of Environment Regulation

Contact
Kirillie Caldwell
k.caldwell@cmewa.com

Contents

About CME	1
Recommendations	1
Context	3
Application of Guidelines.....	3
Part IV Approvals	3
Definition of Noise.....	4
Licence Renewals.....	4
Screening.....	4
Cumulative Noise Assessment.....	5
Predictive Verification Noise Monitoring	5
Other Issues	5
Interpretation of Sensitive Land Uses	5
Agent of Change Principle	6
Conclusion	6

About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia.

The Western Australian resources sector is diverse and complex, covering exploration, processing, downstream value adding and refining of over 50 different types of mineral and energy resources.

In 2014-15, the value of Western Australia's mineral and petroleum production was \$99.5 billion. Iron ore accounted for approximately \$54 billion of production value to be the state's most valuable commodity. Petroleum products (including LNG, crude oil and condensate) followed at \$24 billion, with gold third at \$9 billion.¹

Notwithstanding the recent decline in the price of several export commodities, the estimated value of royalties the state received from the resources sector still composed almost 15 per cent of estimated total state revenue in 2015-16, or around \$3.8 billion.²

As at March 2016, there was approximately \$94 billion in resources sector projects committed or under construction in Western Australia and a further \$44 billion in proposed or possible projects.³

Recommendations

CME recommends:

- The Guideline is updated to remove the words “*must*” and “*will*” to state “*should*”, except where requirements are in accordance with the *Environmental Protection Act 1986* (EP Act) or *Environmental Protection (Noise) Regulations 1997* (Noise Regulations).
- The Guideline is updated to specify it does not apply where noise emissions have been assessed and approved under Part IV of the EP Act.
- The Guideline is updated to clarify the definition of noise aligns with the EP Act and Noise Regulations, including relevant exemptions.
- Section 3.1 “*What is Noise?*” is updated to remove ground or structure-borne vibrational impacts.
- The Guideline is updated to clarify the Guideline does not apply for licence renewals where there is no change to the facility or activities.
- Section 5.2 “*Next Steps*” is updated to include a step for applicants to consult with DER to determine the most appropriate type of detailed assessment.
- The assessment of cumulative noise is removed from the Guideline.
- Table 1 “*Prediction Verification Noise Monitoring*” is updated to state “*Where predictive modelling has been undertaken, verification monitoring requirements will be determined on a case-by-case basis.*”
- The Guideline is updated to include a definition of “*sensitive land uses*” which aligns with the draft *Guidance Statement: Separation Distances*.

¹ Department of Mines and Petroleum (DMP), 2015, *Western Australia Mineral and Petroleum Statistics Digest 2014-15*

² Department of Treasury, 2015, *2015-16 Government Mid-year Financial Projections Statement*

³ DMP, 2015, *Latest Resources Investment Release*, www.dmp.wa.gov.au/About-Us-Careers/Latest-Resources-Investment-4083.aspx

- DER work with the Western Australian Planning Commission (WAPC) and the Environmental Protection Authority (EPA) to establish the 'agent of change' principle within the broader planning framework.

Context

CME welcomes the opportunity to review and provide comment on the Department of Environment Regulation (DER) draft Guideline on Environmental Noise for Prescribed Premises (the Guideline).

The Guideline provides guidance for applicants, licensees, consultants, members of the public and DER staff on the assessment of noise emissions from prescribed premises. The Guideline assists proponents with screening for noise risk, determining whether a detailed assessment is required, selecting appropriate sound measuring equipment, implementing appropriate noise controls and the recommended content for an acoustic assessment report.

CME supports the intent of the Guideline, however, recommends the consideration of several matters outlined below.

Application of Guidelines

The recent Supreme Court ruling on the Western Australia Government's approval of Roe Highway Stage 8 extension (Roe 8 decision) as invalid has highlighted the importance of decision making authorities taking account of their own published policy statements. Further, a decision making authority must take into account mandatory considerations including policy enunciated in its own published policy statements.

Following the Roe 8 decision, the Minister for Environment, Hon. Albert Jacob MLA announced a third party legal and governance review of the Environmental Protection Authority's (EPA) policies and procedures and the *Environment Protection Act 1986* (EP Act).

The findings of this review could have broad implications across Government, specifically, how policies, procedures and guidelines are written in the future. Clear distinction should be made between documents which are policy statements and applied during decision making, and supporting documentation which assists proponents in preparing studies to support approval documentation (e.g. technical guidance).

The terminology used throughout the Guideline suggests all requirements outlined are mandatory for all applications. However, CME considers the document should only be used as technical guidance to assist proponents on what may be required for the assessment of noise emissions for works approvals and licences.

The use of the words "*must*" and "*will*" should be avoided to allow flexibility in determining the most appropriate type of assessment, except where those requirements are in accordance with the EP Act or Regulations.

CME recommends the Guideline is updated to remove the words "*must*" and "*will*" to state "*should*", except where requirements are in accordance with the EP Act or Noise Regulations.

Part IV Approvals

The Guideline will inform the works approval or licence risk assessment conducted by DER in accordance with the *Guidance Statement: Environmental Risk Assessment Framework*. However, it is unclear whether proponents will be required to apply this Guideline in circumstances where noise emissions have already been assessed and approved under Part IV of the *Environmental Protection Act 1986* (EP Act).

Further, CME is concerned a situation could arise where a Part IV EP Act approval is granted, which has already given consideration to noise emission, but the DER will not grant the works approval or licence due to the requirements in the Guideline.

Where noise emissions have been assessed and approved under Part IV of the EP Act, CME considers the re-assessment of noise emissions is not required for a works approval or licence. To ensure duplication between environmental approvals is minimised as much as possible, **CME recommends the Guideline is updated to specify it does not apply where noise emissions have been assessed and approved under Part IV of the EP Act.**

Definition of Noise

The Guideline specifies the EP Act defines noise to include “*vibration of any frequency, whether transmitted through air or any other physical medium*”. However, the *Environmental Protection (Noise) Regulations 1997* (Noise Regulations) specifies it does not apply to certain noise emissions (Part 1, r.3), including noise emissions from trains.

It is unclear whether the exemptions outlined in the Noise Regulations are also included in the definition of noise in the Guideline. The common hierarchy of instruments governing environmental regulation administered by DER is outlined in the *Guidance Statement: Regulatory Principles* and indicates (refer to Figure 1) the EP Act and Regulations have precedence over guidance materials prepared by DER. Therefore, **CME recommends the Guideline is updated to clarify the definition of noise aligns with the EP Act and Noise Regulations, including relevant exemptions.**

The Guideline also states noise “*is commonly recognised as an emission of sound but may also include ground or structure-borne vibration*”. Vibrational impacts are also listed in the Guideline as a factor influencing the impact of noise emissions. The Noise Regulations do not currently address vibration and therefore, it is difficult for applicants to determine how to assess, monitor and address vibrational impacts. Further, the Guideline does not include any detail on how to assess vibrational impacts within the Section 6 Detailed Assessments. Given vibration is not currently addressed by the Noise Regulations, the Guidelines would create a new requirement without adequate justification.

CME recommends Section 3.1 “What is Noise?” is updated to remove ground or structure-borne vibrational impacts.

Licence Renewals

The Guideline states it “*must be applied to new applications, amendments to works approvals or licences, or renewals involving noise emissions*”. There may be instances where application of the Guideline for all renewals involving noise emissions may not be practicable. For example, an application for a renewal with no changes to the facility/activities and therefore, no change to noise emissions. CME considers the requirement to re-assess noise emissions would be excessive, especially in circumstances where an instrument is renewed on an annual basis.

CME recommends the Guideline is updated to clarify the Guideline does not apply for licence renewals where there is no change to the facility or activities.

Screening

The screening process will determine whether further assessment is or is not required. Further assessment may include ambient monitoring, predictive modelling, and prediction verification monitoring or other studies in accordance with the Guideline. To streamline the assessment process for both DER and the applicant, a discussion between the applicant and DER regarding the need for additional studies at the screening assessment phase would be useful. For the majority of applications, this would ensure the detailed assessment addresses all requirements in the first instance and would save time for DER, the applicant and acoustic consultants conducting the assessment.

CME recommends Section 5.2 “Next Steps” is updated to include a step for applicants to consult with DER to determine the most appropriate type of detailed assessment.

Cumulative Noise Assessment

CME considers the methodologies for conducting cumulative impact assessments are not particularly well understood, described or standardised. Furthermore, the scope of cumulative impacts can vary considerably based on a project’s location and location-specific assets that need to be managed for cumulative impacts.

A number of different agencies have regulatory authority in assessing impacts of environmental, social/cultural and economic assets, however there is currently no clear guidance or policy in accounting for cumulative impacts. CME considers it important a transparent approach to considering cumulative impacts of project development is put in place across government.

Until such time, **CME recommends the assessment of cumulative noise is removed from the Guideline.**

Predictive Verification Noise Monitoring

Table 1 of the Guideline states “*where predictive modelling has been undertaken, verification must be undertaken prior to works approval certification and granting of a licence or amendment*”. Practically, verification will be difficult given commissioning cannot occur until a works approval or licence is granted. Further, full operations may be required to effectively verify the predictive noise monitoring and there may be instances where this may take a number of years.

In general, verification should not be required for standard known equipment such as haul trucks and mine fleet operations. However, CME acknowledges there may be instances which may warrant verification on a case-by-case basis. For example, where DER may be concerned about the accuracy of equipment sound power levels during the initial assessment and if a receptor is likely to be adversely affected if the noise emissions are not within predictions.

CME recommends Table 1 “Prediction Verification Noise Monitoring” is updated to state “*Where predictive modelling has been undertaken, verification monitoring requirements will be determined on a case-by-case basis.*”

Other Issues

Interpretation of Sensitive Land Uses

Sensitive land uses are defined in the DER’s draft *Guidance Statement: Separation Distances* as “*land uses, beyond the prescribed premises boundary, where people live or regularly spend time and which are therefore sensitive to emissions from industry. Sensitive land uses include, but are not limited to residences, hospitals and nursing homes, short-stay accommodation, schools, childcare and other educational facilities and some public buildings. The sensitivity of a land use may also be proportionate to the size of the population affected by the activity*”.

While the Guidelines refers to the draft *Guidance Statement: Separation Distances* when determining whether a Detailed Assessment is required, there is no direct link to the definition of “*sensitive land uses*” and therefore, it may be unclear for applicants or DER to determine whether noise emissions will impact sensitive receptors. Without clear definition, facilities which are used infrequently and for short time periods, such as recreational boat launching facilities, may be captured in the noise emission assessment.

CME recommends the Guideline is updated to include a definition of “sensitive land uses” which aligns with the draft Guidance Statement: Separation Distances.

Agent of Change Principle

This Guideline may result in a number of issues for the resources sector, particularly for existing licences where sensitive land uses have encroached on established industrial land uses. If the Guideline is applied to existing licensed premises, this could result in noise controls which would unfairly penalise the licensee, even if the site had been established in situ for many years.

As highlighted in CME’s submission on DER’s draft *Guidance Statement: Separation Distances*, encroachment by sensitive land uses in these locations is beyond the control of the incumbent and the onus to avoid or demonstrate mitigation of negative impacts potentially arising should sit with the proponent of the new development in accordance with the ‘agent of change’ principle. Application of this principle requires the ‘agent of change’ to provide evidence the proposed development will not impact upon, or be impacted by, existing development.


In order for the ‘agent of change’ principle to be effective, it needs to be applied at the earliest opportunity and within the broader planning framework in consultation with the Western Australian Planning Commission (WAPC) and the Environmental Protection Authority (EPA).

CME recommends DER work with WAPC and EPA to establish the ‘agent of change’ principle within the broader planning framework.

Conclusion

CME welcomes the opportunity to review and provide comment on the draft Guideline on Environmental Noise for Prescribed Premises. CME looks forward to ongoing engagement during the implementation of DER’s regulatory reform under Part V of the EP Act.

If you have any further queries regarding the above matters, please contact Kirrillie Caldwell, Policy Adviser - Environment, on (08) 9220 8507 or k.caldwell@cmewa.com.

Authorised by	Position	Date	Signed
Nicole Roocke	Deputy Chief Executive	16/06/16	
Document reference	160610-ENV-Submission-DER Draft Guideline on Environmental Noise-v0.3		