EDOs of Australia

Submission on the draft Outcomes-based Conditions policy and guidance

9 October 2015

EDOs of Australia (Australian Network of Environmental Defenders Offices Inc.) consists of eight independently constituted and managed community legal centres located across the States and Territories.

Each EDO is dedicated to protecting the environment in the public interest. EDOs:

- provide legal representation and advice,
- take an active role in environmental law reform and policy formulation, and
- offer a significant education program designed to facilitate public participation in environmental decision making.

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Executive Summary

Thank you for the opportunity to provide comment on the *Outcomes-based Conditions policy* (**Draft Policy**) and *Outcomes-based Conditions guidance* **(Guidance**).

As a network of community legal centres specialising in public interest environmental law, our primary interests in this matter relate to *effective environmental protection* and *community engagement* in decisions that affect the environment. We therefore support initiatives to achieve improved environmental outcomes. However our extensive experience in this area indicates that good outcomes cannot be achieved without good process.

In summary, we believe it would be premature for the Environment Minister to endorse an Outcomes-based Conditions Policy (either in this context or for bilateral agreements with the States). We have formed this view based on:

- the necessary prerequisites for the appropriate use of outcomes-based conditions;
- the lack of demonstrated ability for projects to meet these prerequisites to date (such as baseline data, monitoring or knowledge of matters of NES);
- concerns about greater proponent control over condition-setting (such as proposing outcomes-based conditions at the time they refer the project); and
- the significant risks and uncertainties of the proposed approach (such as the wide acknowledgement that detailed milestones and performance indicators would be needed to replace existing detailed conditions).

To be clear, we *do* support improved condition-setting on development projects, including specific environmental outcomes where possible. In particular:

- making conditions clearer and more enforceable;
- continued use of robust, objective, science-based standards in conditions;
- *adding* key outcomes that contextualise other, more detailed conditions; and
- improving monitoring, evaluation and reporting conditions;
- sound governance and public transparency, both pre- and post-approval.

We believe that a mix of both 'prescriptive' and 'outcomes-based' conditions is likely to be more appropriate for any given project. In particular, the Department should clarify its support for objective standards, such as for air and water quality.

Accordingly, we recommend:

- not proceeding with the Outcomes-based Conditions Policy at present;
- a more holistic assessment of the Department's approach to conditioning, compliance and enforcement (including how to better monitor, achieve and report on environmental outcomes, and increase oversight efficiently);

- input from the Australian National Audit Office (**ANAO**) and independent environmental experts (and clear integration with recent ANAO findings);
- identification of current strengths, weaknesses and options for reform; and
- public consultation on those reform options and departmental proposals.

We reiterate some specific comments on the Draft Policy below:

1) **Is an Outcomes-based Conditions Policy the best solution?**
2) **Project conditions must be clear, robust and enforceable**
3) **'Suitability for outcomes-based conditions' (Draft Policy Part 3)**
4) **'Assurance Framework' and enforceability (Draft Policy Part 4)**
5) **Governance risks, perceptions and community engagement**

We hope these comments assist the Environment Department in continuing to improve EPBC Act processes, and we are happy to engage further on this issue.

1) Is an Outcomes-based Conditions Policy the best solution to address identified problems?

We agree that improving the effectiveness of conditions placed on projects approved under the EPBC Act is an important priority for the Department. However, implementing an 'outcomes-based conditions approach' is unlikely to address the current challenges of this multi-faceted issue. Ensuring that conditions achieve environmental outcomes is only one of several important parts of the broader picture.

First, a difficulty we have with the Draft Policy is that it seems to work backwards from a proposed solution (outcomes-based conditions), without clearly demonstrating why this is the *best solution to identified problems* with existing EPBC Act conditions. The Draft Policy does not cite any Australian regulatory or compliance literature as to why this should be the primary approach to conditioning (particularly for protecting matters of national environmental significance (**matters of NES**)). Any consideration to better achieve 'outcomes' should include a review of a representative sample of projects approved under the EPBC Act.[1]

Second, the Draft Policy and initial project findings have identified a range of uncertainties, limitations and risks of primarily relying on outcomes-based conditions (see Draft Policy Part 3). Many stakeholders can attest to inadequacies and problems with existing conditions, outcomes and compliance

[1] For example, key questions on strengths and weaknesses of past conditioning would include:
- How adequate was the *baseline data* provided before the project approval?
- What sort of outcomes have *already* been specified in past conditions?
- Are these outcomes *measurable* and *achievable*?
- Which conditions are *effective in achieving outcomes*, and which are not?
- Which conditions are *enforceable*, and which are not?
- Did *cumulative impacts* present a complicating factor?
- What lessons or patterns are revealed from this review and analysis?
- How adequate is the Department's compliance *resourcing* (skills, systems, budget)?

levels. However, prioritising an Outcomes-based Conditions Policy risks creating new problems, rather than holistically assessing and resolving existing ones.

Third, we have consistently recommended that the ANAO should be consulted on the overall approach and the details of any Draft Policy and guidance. There are also instances where the Draft Policy and Guidance may contradict ANAO advice (such as clearer conditions and greater use of generic conditions). We recommend clearer integration with findings of recent ANAO performance audits, and collaborative development of improved condition policies with the ANAO.

An alternative approach

The Department should consider and consult on other improvements to EPBC approval conditions, baseline data surveys, monitoring, compliance and enforcement – taking the 2009 Hawke Review of the EPBC Act and recent ANAO audits as a baseline. Improving and demonstrating proponent and regulator capacity in these areas is an essential prerequisite, which may 'build trust' towards more outcomes-led conditioning sometime in the future.

For example, other necessary improvements to EPBC Act (and state-based) conditions include greater clarity, enforceability and consistency; transparent monitoring and reporting; compliance tracking; and community engagement. All of these improvements require:

- strong governance, good systems and clear protocols;
- resourcing, including cost recovery options and environmental bonds;
- strong threat of penalties for non-compliance, including third party (community) enforcement powers; and
- flexible remedies that include 'restorative justice' options.[2]

2) Project conditions must be clear, robust & enforceable

A mix of conditions should underpin environmental outcomes

We believe that a mix of both 'prescriptive' and 'outcomes-based' conditions is likely to be appropriate for any given project. We agree that considering whether and how outcomes-based conditions are suitable is a case-by-base question (Draft Policy p 6). We also agree that a set of conditions which simply prescribes methodologies, that are not linked to outcomes, is insufficient.

On the other hand, prescriptive conditions are vital and complementary to achieving environmental outcomes. For example, the 2011 *Duralie Extension Project* case (run by EDO NSW) resulted in 'stricter, more precise, and more enforceable [conditions] than those imposed by the [NSW Planning] Minister.'[3]

[2] See for example *Protection of the Environment Operations Act 1997* (NSW), (**POEO Act**) ss 245-253A. See also Hawke et al., *Report of the Independent Review of the EPBC Act* (2009), recommendations 48-56.
[3] See N. Hammond-Deakin and E. Johnson, 'Merits appeal rights in New South Wales: Improving environmental outcomes', *IMPACT!* (ANEDO journal), 92 (2012) 6-10. Referring to *Ironstone Community Action Group Inc v NSW Minister for Planning and Duralie Coal Pty Ltd* [2011] NSW LEC 195.

These included outcomes *and* prescriptive conditions relating to water discharge, biodiversity protection and offsetting, noise and dust, and monitoring and transparency of ongoing operations.

We note that several of the Department's previous examples of conditions in the project findings include prescriptive aspects. Other examples, which are less prescriptive and more 'outcomes-based', appear to repeat the mistake of poor definitions as identified in the Port of Gladstone Independent Review. This highlights a risk of confusion and lack of clarity in high-level outcomes.

Terms must be clearly defined

The Draft Policy distinguishes between four main types of conditions: ***prescription-based***, ***management or systems-based***, ***outcomes-based*** and ***surrogate conditions*** (pp 4-5). The Draft Policy refers to 'technology or standards based' conditions as *prescriptive*. Yet arguably standards are also *outcomes-based* – because they keep pollution, environmental damage or health impacts within measurable and objective limits.

For example, the Productivity Commission appears to consider 'performance standards' as *outcomes*-based. It refers to various examples of noise standards, emissions and water quality,[4] while warning against excessive prescription more generally.[5] The ANAO also refers to 'performance conditions'[6] as one of several condition types (but does not specify a preference for them). This may suggest that while *specific technology* may be prescriptive, *objective standards* may actually fit in the 'outcomes'/'performance' category.

If 'outcomes-based' is the Department's preferred term, then this needs to be clearly defined to avoid unintended policy outcomes, confused expectations, misinterpretation and reduced enforceability. The Policy must also emphasise the importance of retaining prescriptive conditions in various circumstances.

Strong support for objective standards

We strongly support the continued use of robust, objective, science-based standards in project conditions. We do not support removing standards from conditions because they are seen as 'prescriptive-based'. Examples of standards include the ANZECC Guidelines for water quality, World Health Organisation guidelines, and the National Environmental Protection Measure (**NEPM**) for Ambient Air Quality. We support the prescriptive example that Nominated Project Sites must at all times during the term of approval, meet the NEPM standards for

[4] Productivity Commission, *Major Protect Development Assessment Processes* (Nov. 2013), p 223.
[5] Productivity Commission (2013), pp 25-26. See also p 222: 'Outcome-based approval conditions require the proponent to achieve particular performance standards or measurable outcomes, but do not prescribe *how* to do so.'
[6] ANAO, *Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval* (June 2014), p 57: 'Performance conditions – specify the environmental outcomes required without specifying how they are to be achieved.' (Figure 3.1, citing Environment Department policy). See: http://www.anao.gov.au/Publications/Audit-Reports/2013-2014/Managing-Compliance-with-EPBC-Act-1999-Conditions-of-Approval.

Ambient Air Quality (Draft Policy p 4) (although the NEPM is long overdue for amendment to set higher standards).[7]

Scientific and technical standards contribute to key characteristics of good conditions and compliance, such as clarity, enforceability, measurement, monitoring and reporting. They are vital to protecting matters of NES because they:

- are objective and 'testable' by proponents, regulators and communities alike;
- set minimum performance benchmarks which help to evaluate outcomes;
- are clear indicators of compliance, provided that project conditions include them;
- make it easier to identify and enforce breaches that affect environmental quality;
- help the community and others interpret reported data by providing scale and context (in addition to baseline data).

For these reasons, we presume the Department would support the 'prescription' of scientific standards also. However, the Draft Policy does not state this apart from the NEPM example. The Department should clarify its position on the continued and improved use of objective standards in project conditions to protect matters of NES.

Conditions must be proactive and precautionary, not reactive to harm

It is very important that reliance on 'outcomes' does not imply a shift towards *reactive* measures when harm occurs, rather than *proactive* conditions which prevent harm. The suggested benefit of 'streamline[d] assessment and approval processes' (Draft Policy p 2) may imply an 'approve first, react later' approach. The Department's policy should include explicit aims to proactively prevent harm, and take a precautionary approach to uncertainty. How will this be ensured?

Preventing harm should include clearly defining and limiting permitted damage at a project area. The example conditions used in the Draft Policy for outcomes-based and surrogate conditions (p 5) are highly problematic in this regard.[8] Requiring 'no net loss' at an end point (as distinct from improvement or recovery) does not place *any limits* on how much damage can be done *during* the life of the project (which could be several decades). Nor do these performance-based conditions specify levels of protection or conservation of current populations, as distinct from using offsets or rehabilitation which are less certain.[9]

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[7] See Australian Government Department of Environment), at http://www.environment.gov.au/water/publications/quality/nwqms-guidelines-4-vol1.html and http://www.environment.gov.au/atmosphere/airquality/publications/cmp.html.

[8] Outcomes-based condition: '*At each of the Performance Dates, there will be No Net-Loss to the extent and distribution of the Existing Population of the Sandplain Duck Orchid (*Paracaleana dixonii*) within the Project Area.'*
Surrogate condition: *'At the Expiry Date of the Approval, there must be no Net-Loss to the extent and abundance of the Existing Habitat and Food Trees for Koala within the Project Area.'*

[9] (We assume in this hypothetical example that there is sufficient knowledge that rehabilitation is achievable, though this is another important point.)

Reactive measures alone are not an acceptable way of protecting community and environmental values; and are often more costly than preventing harm in the first place. We support standards such as to 'maintain or improve' specific environmental outcomes (robustly defined). However, there is a risk that focusing conditions on outcomes 'at the Expiry Date of the Approval' (Draft Policy p 5) will delay accountability to an end-date which may be decades into the future.

Performance milestones – prescriptive and enforceable

We agree it is essential that long-term outcomes have specific (even prescriptive) waypoints or performance 'milestones' (Draft Guidance pp 12-13).[10] The wide acknowledgement that detailed milestones and performance indicators would be needed to replace existing detailed conditions again raises questions about the rationale and method for the Draft Policy as a whole.

Subject to this broader question, project milestones would have to be clearly defined, and allow for meaningful monitoring of progress, auditing, adaptive management and reporting. They must also trigger *enforcement* where needed (as prescriptive conditions do now). However, the legal status of performance milestones is unclear. Would failure to fulfil milestones be a 'breach' of project conditions and trigger enforcement action? Or does it only trigger notification or negotiation with the Department?

Surrogate conditions (Draft Policy 2(iv)) may conflict with suitability criteria

The level of uncertainty around using surrogates or proxies for matters of NES suggests that proxy outcomes and conditions will not usually be appropriate.

The Draft Policy (p 5) and Guidance note that 'surrogate conditions' may be used where a project's impacts on matters of NES are 'difficult to measure' (such as using habitat as a proxy for species condition or extent). Yet this conflicts with the idea that 'lack of knowledge about threats to the protected matter' would make a project unsuitable for outcome conditioning (Draft Policy p 7); and that using outcomes requires a 'good understanding of and consensus about the likely impacts of an action on matters of [NES]' (p 6).

The koala example in the Draft Policy (no Net-Loss of Existing Habitat and Food Trees, p 5) also demonstrates the problem of surrogates:

- What are the criteria for whether '*something* which directly supports the protected matter' is an adequate proxy for the matter itself? (Relevant to consistent and robust condition-setting.)
- How is No Net-Loss defined, and is this definition contested?
- What if surrogates decline in *condition*, but not extent?
- What about cumulative and other impacts outside the Project Area?

[10] In some instances EDO NSW has proposed a 'recovery trajectory' approach to confirm that a proponent is on target to meet long-term outcomes, but this approach has yet to be supported.

3) 'Suitability for outcomes-based conditions' (Draft Policy Part 3)

The Draft Policy notes that (p 6):

- 'Actions will vary in the extent of their suitability for outcomes based conditions';
- 'Some actions or aspects of an action may not be suitable…'; and
- The suitability for outcomes-based approvals will be determined on a 'case-by-case basis incorporating an identification of potential risks.'

These important limitations and qualifiers must not be lost in an attempt to apply a general policy. This is a real risk, as has occurred with the adoption of broad bilateral agreements.

What makes a project suitable…? (3.1)

The Draft Policy includes seven general characteristics that 'may indicate than an action, or parts of it, is suitable for an outcomes-based approval' (p 6).[11] All seven are important (and potentially challenging) characteristics, but are not sufficient.

In addition, the suitability discussion should clarify or note:

- outcome-based conditions may suit low-to-medium risk activities;[12]
- baseline data must cover affected matters *onsite, offsite and cumulative*;
- at what scale or scope a 'sufficient level of knowledge and information' is required for matters of NES;
- at what points in the project lifecycle an outcome should be 'able to be enforced'; and
- the proportion of projects likely to meet these thresholds – see 5) below.

What makes a project unsuitable…? (3.2)

The Draft Policy includes six general characteristics that 'are likely to make a project, or parts of a project, *unsuitable* for an outcomes-based approval' (p 7). Again, all six are important and necessary characteristics, but are not sufficient.

Additional 'unsuitable' criteria that should be noted include:

- where outcomes-based conditions might not be suited to types of impact assessment or matters of NES (such as critically endangered species);
- where conditions regulate health, or prevent serious or irreversible environmental impacts (for example, greater prescription to ensure projects meet air quality limits); and

[11] i.e. high-quality baseline data; understanding of likely impacts; proponent capability/willingness; good information on matters of NES; measurable, enforceable outcomes; proponent's commitments to monitor and report.

[12] As one Canadian study previously noted by the Department (November 2014) concluded

- where outcomes-based conditions would reduce transparency or enforceability compared with more prescriptive conditions.

Lack of existing baseline data, monitoring and reporting is a key risk

The Draft Policy (p 6) and previous documentation note wide agreement that three essential prerequisites for an outcomes-based approach to conditions are:

- good baseline data
- knowledge of matters of NES and
- post-approval monitoring and reporting.

Crucially though, the *existing level* of adequacy and capacity in these areas has not been addressed(for projects, proponents or regulators). In our experience there is widespread evidence that:

- pre-approval baseline data is often missing or inadequate;
- knowledge is highly variable across matters of NES and geographically;
- proponent assessments and assumptions 'can be optimistic' (see note 17); and
- ongoing monitoring and reporting is often poor (due to lack of conditions, lack of compliance and enforcement action, and /or lack of resources).

This is a key reason for our view that endorsing an Outcomes-based Conditions Policy would be premature. Given the necessary prerequisites for the appropriate use of outcomes-based conditions,[13] and the lack of demonstrated ability for projects to meet these prerequisites at present, there is a high environmental risk in assuming that these factors will be addressed in future.

Scope of impacts and outcomes difficult to define

Another uncertainty relates to the relevant *scope* for identifying project impacts, and outcomes to protect matters of NES (as per comments to 3.1). While proponents may push for a focus on high-level or 'overall' status and changes, communities are more likely to also want demonstrable local outcomes (and recognition of cumulative impacts).

One problem with assessing outcomes and impacts on matters of NES at a broader level (national, state, 'overall' matter of NES) is that local impacts could be overlooked as less significant or more acceptable. This may disenfranchise communities and lead to loss of local environmental assets. It may also exacerbate failures to account for cumulative impacts of degradation.

Suitability of approval holders (3.3)

We agree that a proponent's environmental record and history, and that of its officers, is relevant to 'suitability' (Draft Policy pp 7-8). We recommend additional thresholds for eligibility, such as higher environmental bonds for outcomes-based conditions, and considering the history of a project itself if an extension is sought.

[13] (noted above and see Draft Policy 3.1)

We note that the Draft Policy now includes a section on 'baseline data' (p 8). We agree it is appropriate that high-quality baseline data be provided to the Department at the time of referral, along with appropriate monitoring strategies. The Department should make clear that relevant offsite and cumulative impact data is to be included in baseline calculations.

4) 'Assurance Framework' & enforcement (Draft Policy Part 4)

The Draft Policy sets out an 'Assurance Framework' for monitoring, compliance and enforceability (p 9). We support increased monitoring and making monitoring data publically available. As to the circumstances that will trigger enforcement action, the Draft Policy refers to the 2013 Compliance Policy. That Policy should be reviewed for its capacity to regulate outcomes-based conditions, and in light of 2014 ANAO recommendations to improve monitoring and record-keeping.[14]

Any shift to more outcomes-based conditions must *increase* the enforceability of approval conditions. It would be a retrograde step if a more 'outcomes-based' approach essentially downgraded enforceable prescriptive conditions to unenforceable milestones or negotiable surrogates.

We welcome support in the Draft Policy and Guidance for making conditions clear and enforceable (whether or not they are outcomes-based). We also agree that outcomes-based conditions will not be appropriate if environmental outcomes remain too high-level or are not measurable.

It is important that the Draft Policy and Guidance does not conflict with ANAO advice and perpetuate problems with existing conditions. The ANAO (2014) did not assess the merits of conditions attached to controlled actions. However, it did discuss how conditions could be framed to increase enforceability and compliance.[15]

In our experience, a common example of ambiguous conditions is that a development be carried out '*generally* in accordance with the environmental assessment'.[16] This issue was raised in a 2011 review of air quality and coal mines for NSW OEH.[17]

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[14] ANAO, *Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval* (June 2014), at http://www.anao.gov.au/Publications/Audit-Reports/2013-2014/Managing-Compliance-with-EPBC-Act-1999-Conditions-of-Approval.

[15] The ANAO's general findings on this point were that:

- conditions should have *more specificity and clarity* (paras 1.23, 3.60); and
- increased use of 'generic conditions' over bespoke conditions was advisable (para 24). This was based on a finding that bespoke conditions tended to be more ambiguous, less enforceable, and increase the Department's compliance monitoring burden (paras 3.9-3.14).

[16] See for example *Hunter Environment Lobby v Minister for Planning & Ashton Coal Operations Limited* (NSW Land and Environment Court), at http://www.edonsw.org.au/hunter_environment_lobby_v_minister_for_planning_ashton_coal_operations_limited

[17] Katestone Environmental, *NSW Coal Mining Benchmarking Study: International Best Practice Measures to Prevent and/or Minimise Emissions of Particulate Matter from Coal Mining* (June 2011), prepared for NSW Office of Environment and Heritage (OEH), pp 3 and 269 (emphasis added). The review continued:

With regard to the Assurance Framework and Evaluation (pp 9-11) we recommend:

- *increased* enforceability be an overarching goal of any reform to conditions policies (and a key performance indicator (**KPI**) for any review and evaluation);
- the Department seriously consider reforms to increase third party (public) rights to post-approval engagement and breach enforcement;[18] and
- revisiting Hawke Review proposals 48-56 to improve enforcement.[19]

Legacy issues beyond a project's closure (including rehabilitation funds)

The Draft Policy and Guidance refer to achieving outcomes during the term of the approval. This does not explain what would happen if a project causes legacy issues *after* the approval expires (for example, aquifer damage, federal land contamination, methane gas plumes). This is clearly a negative 'outcome' – but is it a breach of condition?

The Department should consider and clarify how to ensure proponents are responsible for the entire lifecycle of their project, including decommissioning, rehabilitation and legacy issues.[20] The Productivity Commission has urged governments to guard against the risk of mining companies defaulting on rehabilitation, and leaving governments and the public to bear the costs. It cited a new Mining Rehabilitation Fund in WA as one model to consider further.[21] The Department could propose amendments to establish a pooled rehabilitation fund to address legacy issues that impact on matters of NES.

5) Governance risks, perceptions & community engagement

Risk of regulator-proponent collaboration & proponents drafting conditions

The Draft Policy and Guidance strongly emphasise collaborative development of outcomes-based conditions in cooperation with an approval holder (Draft Policy p 3). There is little reference to managing governance risks or community input.

We are particularly concerned that the Draft Policy suggests that proponents provide 'proposed outcomes-based conditions at the time of referral' (p 8). This implies that proponents 'set the bar' by proposing their own conditions, and raises

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Additionally, the assumptions made in the Environmental Assessment can be optimistic with regard to the mine's ability to achieve an appropriate level of minimisation or lack specificity as to how the minimisation will be achieved in practice.

See http://www.epa.nsw.gov.au/resources/air/ke1006953volumei.pdf.

[18] See *Environmental Planning & Assessment Act 1979* (NSW) s 123; POEO Act 1997 (NSW), s 252.

[19] A. Hawke et al., *Report of the Independent Review of the EPBC Act 1999* (2009).

[20] For example, respondents to the Productivity Commission's major projects inquiry (2013, p 223) identified '[t]he enforceability of mine site rehabilitation-related conditions… as a particular area of concern.' The Local Government Association of Queensland stated: 'Outcome-based conditions that are based on established standards… should also cover the project lifecycle…'

[21] See Productivity Commission (2013), p 226.

clear conflicts of interest. It also puts at risk public perceptions of the department's independence in setting conditions. While it is not unusual for proponents to demonstrate proposed mitigation measures by relying on scientific studies and data, proponents should not propose their own approval conditions.

Overall, close collaboration as implied in the Draft Policy and Guidance raises governance and transparency issues. We accept that a level of professional cooperation and coordination is necessary. However, the draft documentation gives the impression that risk assessment, condition-setting and any 'course correction' is a 'closed shop' between the regulator and proponent.

As noted, managing these governance risks could include:

- strong safeguards and clear protocols to avoid risks (or perceptions) of regulatory capture;
- specific mandatory involvement of communities, experts and the public at various stages, pre- and post-approval;
- arms-length environmental assessments, still funded by proponents;
- mandatory peer-reviews of environmental assessments and management plans (freeing up departmental compliance resources); and
- mandatory professional accreditation of consultants who produce environmental or other project reports.

Public consultation on conditions, and other community engagement

The Draft Policy cites enhanced transparency and public trust and confidence as a benefit of outcomes-based conditions (p 2). However there is nothing inherent or specific in the Policy that requires additional community engagement. It all depends on what practical opportunities are afforded to local communities, including:

- how conditions are formulated, pre-approval (and modified, post-approval);
- how conditions are monitored and reported; and
- what the community can do about pollution, damage and enforcement.

While we agree that proponents' engagement with independent experts, community members, scientists and others with local knowledge (including indigenous people) is important (Draft Policy, p 8), the Department should make clear that this is mandatory; and that assessment, conditions and monitoring will require independent expertise and best practice consultation. It should also be made clear that such engagement does not lessen legal and financial obligations on a project proponent, or on the Government to enforce compliance.

The Policy should refer in more detail to specific and timely methods of community engagement, pre- and post-approval. Currently, legislated opportunities for input focus on the *pre*-approval stage. Unfortunately, many important decisions and baseline studies are currently deferred to *post*-approval.