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Knightside Nominees Pty Ltd

24 January 2013

Committee Secretary
Senate Standing Committee on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam

RE: Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012

Please accept this submission made by PGV Environmental on behalf of Eglinton Estates Pty Ltd on the Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012 (the Bill).

Eglinton Estates Pty Ltd is a major landholder in the North-West Corridor of Perth's Metropolitan Region. Several land development projects in the North-West Corridor, including a part of the Eglinton Estates' landholding, have been assessed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) over the last few years. At least two referrals, of which the Eglinton Estates Pty Ltd project is one, are still being assessed.

The two matters of National Environmental Significance that have been the reason for the assessment are the Threatened species Carnaby's Black Cockatoo (*Calyptorhynchus latirostris*) and the Graceful Sun-moth (*Synemon gratiosa*).

Duplication and Double Handling is Wasteful and Unnecessary

All development projects in the North-West Corridor that have been or are being assessed by the Commonwealth under the EPBC Act have undergone State environmental and planning assessment processes either as a Section 38 Public Environmental Review or a Section 48 Environmental Review under the Western Australian *Environmental Protection Act 1986*, and were subsequently approved by the State Minister for the Environment. None of the projects were assessed as a Bilateral Agreement under the EPBC Act. All of the decisions and pending decisions under the EPBC Act have vastly different approval conditions at the State and Federal levels. In every case the conditions imposed under the EPBC Act are more numerous more onerous than those imposed by the State Minister for the Environment.

The onerous assessment and approvals process under the EPBC Act has caused considerable delays to all projects assessed by the Commonwealth in the North-West Corridor and at considerable cost, adding to the cost of residential lots in a designated urban corridor and limiting the supply of affordable residential lots coming onto the market at a time when lot availability and housing demand is at its highest in Western Australia.

The Bill to reduce the ability of the States to undertake approvals of Bilateral Assessments and to have that power remain solely with the Federal Government will continue to inhibit the timely approval of proposals and cause unnecessary delays in the provision of much needed housing in urban areas and significantly add to the cost of that housing.

Response to Senator Waters' Explanatory Memorandum

The comments below have been formatted using the Explanatory Memorandum Schedule 1 Amendment list of Items as circulated by authority of Senator Waters. Not all items on this list have been addressed as there are a number of consequential changes resulting from the key amendments.

Item 1

It is not clear what type if any "agreement" between the Commonwealth and the State or Territory may be deemed acceptable by the Commonwealth for the State or Territory to decide that approval for an action is given or not needed under the EPBC Act.

Item 2

The repeal of bilateral agreements from the list of cases set out in Part 4 where environmental approvals under the EPBC Act are not needed is a backward step in removing duplication in the approval of actions under the EPBC Act.

The Matters of National Environmental Significance (MNES) protected under the EPBC Act are in many cases protected under State or Territory environmental instruments. The removal of "bilateral agreements" appears to remove any opportunity to simplify approvals under the EPBC Act and that the Commonwealth are unwilling to delegate responsibility for approval of actions under the EPBC Act to the State or Territory.

We understand that for some MNES there is a requirement for the Commonwealth to be making approval decisions such as on Commonwealth Lands and for those MNES that are not protected under State or Territory environmental instruments. However, in the case of Threatened species and Threatened Ecological Communities (TECs) the duplication in approvals at both State and Commonwealth levels is both costly with respect to both time and additional costs for both agencies and proponents.

The needless doubling up of approvals of projects at the State as well as the Commonwealth level is not required. The effective protection of Threatened species TEC's should only require one process. For Western Australia, the *Environmental Protection Act 1986* provides effective assessment process for the assessment of land development and the protection of Threatened species. There does not need to be a second assessment by the Commonwealth.

Item 3

This item amends the objects of bilateral agreements to reflect the change in definition of "bilateral agreements" so that the objects set out what is to be delivered through assessment bilateral only (not approvals bilateral agreements).

The bilateral assessment process allows for the State or Territory to undertake the assessment of an action and determine the significance of its impact on MNES.

We are concerned that removing the bilateral approval process from this Part of the Act will result in the further delay in approval of proposals and add to the cost of the approval process.

Our key concerns relate to the long delays in determining controlled actions, in some cases over two years where the process of reviewing listings under the EPBC Act after the State's have changed a species' status. Our concern has been raised over the long time lag between the State's firstly downgrading then secondly delisting the Graceful Sun-Moth from the State Threatened Species list. We understand that the paperwork for the downgrading has been with DSEWPC for a year and the paperwork for the delisting has been with DSEWPC for several months. Yet the Graceful Sun-moth is

still listed as Endangered under the EPBC Act. As a result, projects being assessed as Controlled Actions for the Graceful Sun-moth are being assessed at the level of Endangered and onerous and expensive conditions are still being imposed or considered on projects when the species should have been removed from the Threatened fauna list.

Had there been a bilateral approval process agreement in place with the State of Western Australia it is highly likely that the approval process would have been completed in an informed and timely manner. This would have resulted in considerably less time and money being spent on seemingly endless consultation between State and Commonwealth agencies and the Proponent.

Item 5

This item deletes section 46 of the EPBC Act, thus removing the ability for a bilateral agreement to declare actions that do not need approval under Part 9 (approval of action) of the EPBC Act.

The repeal of this section of the EPBC Act removes any opportunity for the States or Territories to approve or declare that approval is not required under the EPBC Act. All approval of actions under the Act will fall to the Commonwealth Minister for the Environment.

This appears to be a backward step in simplifying environmental approvals under the EPBC Act. The opportunity to remove some of the duplication in environmental approvals under the EPBC Act will be lost through the removal of the bilateral approval process. Whilst there is not any current agreement in place with any of the States or Territories for a bilateral approval process, this does not seem to be a valid reason for repealing this section of the Act.

In Western Australia, the *Environmental Protection Act 1986* provides for the protection of most MNES and approval of a Proposal under this Act should be more than adequate to meet Commonwealth requirements for approval of actions under the EPBC Act.

Items 6-36

These items are all consequential amendments as a result of the key amendment to remove bilateral approval agreements from the EPBC Act we therefore have not provided any comment on these items.

Conclusion

We do not support the Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012 for the reasons set out above. We support the notion espoused by COAG to simplify and streamline the environmental process with the view of minimising costs as a means of delivering residential housing in urban areas in a timely and cost effective manner.

Yours sincerely

Paul van der Moezel

Managing Director

CC Damian Molony Eglinton Estates