

**To: Department of Climate Change, Energy, The Environment and Water**

**Re: Other Effective area-based Conservation Measures (OECMs) Framework**

18 April 2024

## Introduction

AMEC appreciates the opportunity to provide a submission to the Department of Climate Change, Energy, the Environment and Water (DCCEE) regarding the Other Effective area-based Conservation Measures (OECMs) Framework Discussion Paper. The Discussion Paper details in part how the Commonwealth Government intends for OECMs to be delivered in the Australian context. Industry has several unanswered questions and concerns regarding this new form of conservation management – particularly how it will relate to other preexisting property rights.

## About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing over 580 member companies across Australia. Our members are mineral explorers, emerging miners, producers, and a wide range of businesses working in and for the industry. Collectively, AMEC's member companies account for over \$100 billion of the mineral exploration and mining sector's capital value.

Mineral exploration and mining make a critical contribution to Australia's economy, directly employing over 274,000 people. In 2021/22 Industry generated a record high \$413 billion in resources exports, invested \$3.86 billion in exploration expenditure to discover the mines of the future, and collectively paid over \$63 billion in royalties and taxes.

## Discussion Paper

### General Comments

The Other Effective area-based Conservation Measures (OECMs) Framework is presented as necessary for Australia to conserve 30% of land and 30% of marine areas by 2030 agreed to via the Kunming-Montreal Global Biodiversity Framework (Kunming-Montreal Treaty). However, the voluntary nature of how these OECMs will be managed, monitored and reported upon creates ambiguity as to how the outcomes of conserving 30% of land and 30% of marina areas by 2030 will be achieved.

## Definition of OECMS

The Framework details the definition of OECMs as

*A geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in-situ conservation of biodiversity, with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values.*

It is unclear, but implied, that Australia has adopted this definition of OECMs. The adoption of this definition contains several elements that need greater explanation.

### Positive

The definition refers to positive. What is positive? This has been a central concern with the proposed reforms to the *Environmental Protection Biodiversity Conservation Act 1999* to introduce a concept of 'Nature Positive'. This concern is also reflected here. The sought after outcome does not appear to have been clearly identified, instead a nebulous concept of positive

### Ecosystem services

The *Environmental Protection Biodiversity Conservation Act 1999* (EPBC Act) does not reference Ecosystem Services, nor is it consistently jurisdictions in Australia.

Greater definition of what ecosystems are, and importantly, how this concept is measured in relation to the EPBC Act. Industry noted that DCCEEW has an Occasional Paper called *Ecosystem Services: Key Concepts and Applications* published in 2010<sup>1</sup>. This paper discusses the academic literature on ecosystem services and the challenges faced with measuring and ascribing value to ecosystems. It is applied in Queensland, but is not in the Western Australian, Northern Territorial or South Australian legislative frameworks.

The reference in the OECM framework assumes that the wider audience has clarity on this practice. This is not the case, greater supporting detail and guidance would be beneficial.

### Cultural, spiritual, socio-economic, and other locally relevant values

What are "cultural, spiritual, socio-economic, and other locally relevant values"? This appears on the face to be a direct transposition from the Kunming-Montreal framework. While important their inclusion appears secondary to the primary aim of biodiversity conservation. Who determines that they are valid? Are they self-identified and if so, why are they a necessary step? Is there an ability to object or appeal?

### Administrative burden and cost of doing business.

Industry is concerned that OECMs will create administrative burden for other landholders as it is not clearly defined, nor is an OECM's relationship with other tenure clear. It is unclear what the cost of an

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<sup>1</sup> <https://www.dcceew.gov.au/sites/default/files/documents/ecosystem-services.pdf>

OECM will be, but it is expected that it will generate costs for Government that may be recovered in the future.

### **Twenty-Five years**

The 25-year length of an OECM is much longer than many forms of tenure, leasehold and otherwise in Australia. Ensuring the nominating institutions responsible for the OECM continue throughout the 25 years so there is a responsible group for the OECM, its monitoring, and performance do not appear to have been addressed. It is foreseeable that over 25 years, there certain bodies – particularly if they are volunteer groups – may fall away over that time and the OECM will be little more than a demarcation on a map.

The inclusion of clear provisions for ensuring this foreseeable consequence does not occur are needed.

### **Clarification on the respective rights in the hierarchy of land uses**

The guideline needs to be explicit that an OECM does not render any further or greater rights, or privileges, to their holder respective to the other landholder. An OECM does not grant its holder a right to deny access to others.

The clarity that an OECM is not Commonwealth Land is welcomed. If the Government were to consider an OECM Commonwealth that would be actively opposed by Industry. Commonwealth land in some State and Territory legislative frameworks have specific rights and approvals processes. To do so would create potentially immense complications in the State and Territory cadastral systems.

### **Consent from authorities.**

This guidance would be more helpful if a list of authorities were suggested for consideration. This list needs to include the State mining and lands departments who manage and regulate the various leaseholds and licences across State land.

### **Free, Prior Informed Consent**

Free, Prior Informed Consent as detailed through the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP 2007) has not been formally adopted in Commonwealth or State legislative frameworks. OECMs should not adopt FPIC.

The Framework did not indicate that there had been any consultation with indigenous stakeholders in the drafting of this documentation.

### **Other activities occurring on an OECM.**

Mineral exploration companies have a right to access the Crown Estate and explore for the community's minerals beneath the surface. This is clearly legislated in each State and Territory, and the rights to the minerals in the ground delineated in the Constitution. OECM's do not have a right to deny access for mineral exploration, and subsequent mining, to occur. Mineral exploration can lead to the clearing of native vegetation in order to undertake drilling and geological reconnaissance. Clearing vegetation would seem counter to purpose of an OECM, which establishes a clear conflict between an OECM holder.

The framework does not address what will occur to an OECM's status if other activities occur. The guidance must be clear that an OECM holder has no right to prevent these legally valid activities from being undertaken. Clarity that an OECM holder cannot use OECM status as grounds for objection in the various Warden or Lands Courts is also necessary.

### **Final Comment**

AMEC welcomes continued engagement with DCCEEW as the Other Effective area-based Conservation Measures (OECMs) Framework moves to finalisation. As detailed above, several concerns remain outstanding as to how this new form of conservation management will work in practice.

### **For further information please contact:**

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