Native Vegetation Clearing Regulations

Issues Paper

November 2024

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Acknowledgement of Country

WALGA acknowledges the continuing connection of Aboriginal people to Country, culture and community. We embrace the vast Aboriginal cultural diversity throughout Western Australia, including Boorloo (Perth), on the land of the Whadjuk Nyoongar People, where WALGA is located and we acknowledge and pay respect to Elders past and present.

WALGA

The Western Australian Local Government Association (WALGA) is an independent, member-based, not for profit organisation representing and supporting the WA Local Government sector. Our membership includes all 139 Local Governments in the State.

WALGA uses its influence, support and expertise to deliver better outcomes for WA Local Governments and their communities.

We advocate to all levels of Government on behalf of our Members and provide expert advice, services and support to Local Governments.

WALGA's vision is for agile and inclusive Local Governments enhancing community wellbeing and enabling economic prosperity.

1. Executive Summary

Native Vegetation management is an important issue for Local Government. Local Governments, as landowners and managers, and in undertaking infrastructure projects such as road construction, have significant interests in the management and protection of native vegetation and the effective, efficient and equitable operation of the regulatory system for the clearing of native vegetation.

WA Local Governments represent a significant share of all clearing permit applications, with a large proportion of these related to public works such as road maintenance, upgrade and construction. The current regulatory system is complex, costly and time-consuming process for Local Government. This situation is made acute because the South West Ecoregion of Western Australia is a global biodiversity hotspot - a region that is both rich in biodiversity found nowhere else In the world and under significant threat from habitat loss, invasive species and climate change.

This Paper outlines the challenges faced by Western Australian Local Governments regarding native vegetation clearing regulations, illustrated through clearing data and cases studies, and identifies opportunities for improvement.

Implementation of the opportunities outlined in this Paper have the potential to improve the efficiency, effectiveness, fairness and transparency of the regulatory system and environmental outcomes; delivering benefits for Local Government and the Department of Water and Environmental Regulation (DWER).

Legislation and Policy

In Western Australia the clearing of native vegetation is primarily regulated under Part V Division 2 of the *Environmental Protection Act 1986* (the EP Act) and *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*. The Australian Government regulates clearing that is likely to impact a matter of national environment significance through application of Parts 7 - 9 of the *Environmental Protection and Biodiversity Conservation Act 1999* (the EPBC Act) and *Environment*

Protection and Biodiversity Conservation Regulations 2000. Other relevant State legislation related to native vegetation is covered in Section 3 of this Paper.

Since the Clearing Regulations were introduced, there have been a number of refinements aimed at improving the process and reducing regulatory burden. These include the introduction of referrals which offers a more streamline process for low impact clearing and the increase from 5 to 10 years for previously lawfully cleared areas (Appendix 2 provides a summary of all the changes). DWER have also introduced a range process improvements, such as specific staff for Local Government clearing permits and a triage system to ensure prioritisation of time sensitive applications.

The Native Vegetation Policy for Western Australia and Australian Government's Nature Positive Plan (not yet fully implemented) provide strategic policy direction at both the state and national level.

Challenges for Local Government

Local Governments have held long-standing concerns with the operation of the regulatory system for native vegetation clearing, with WALGA, WALGA zones and individual Local Governments making numerous representations and submissions to the State Government on this issue. Issues reported by Local Governments include:

- Timeframes
    - For assessment of referrals, permits and appeals.
    - Limited prioritisation by the Department of applications which are time sensitive.
    - Inconsistent assessment between DWER staff, for example If the assessor change mid-way through the project
- Cost
    - For native vegetation assessments, to complete permit applications and for offsets.
    - Impact on Local Government finances if a grant is withdrawn due to delays assessing the referral/permit.
- Complexity
    - The complexity of the regulatory system, including duplication or inconsistency between State and Australian Government requirements.
    - Lack of appropriate guidance on the clearing permit processes and Local Government understanding of exemptions, referrals and permit requirements.
    - Limited local data on flora and fauna habitats.
    - Complexity in securing offsets for small amounts of vegetation.

Local Governments generally aim to align the timeline for clearing permit applications with financial year budgets for road works. If a decision on a clearing permit is delayed, this can result in missed funding opportunities or grant funding carry overs which may adversely affect future funding allocations. Significant road improvement projects may be delayed or cancelled.

DWER has identified that clearing permit delays can be caused when applications lack sufficient information, such as avoidance and mitigation options or details about the type of vegetation present.

Data

The legislative pathway for clearing includes exemptions, referrals and clearing permits (defined in Section 5). The regulatory process also allows for appeals to be lodged against the granting or conditions of a clearing permit, the amendment, revocation or suspension of a clearing permit, or the refusal to grant a clearing permit.

Applications

Most Local Government referral and clearing permit applications (exemption data is not tracked), are for road construction or upgrades - over 30% for referrals and over 60% for permits.

Based on analysis of 2016–2023 Local Government permit data:

- The average decision duration for a referral was 25 days, with a maximum of 78 days.
- For the 525 permits submitted by Local Governments, the average decision duration was 182 days.
- The time taken to process the permit has fallen significantly from 225 days in 2021, to 131 days in 2023.
- 95% of approved permits applications were less than 10 hectares (71 % less than 1 hectare, 24% 1 - 9.99 hectares).
- Of the 20 longest application processes, 13 were in the Avon-Wheatbelt region, with the longest taking more than three years.

Appeals

From January 2021 to August 2024:

- There were a total of 205 clearing permit appeals.
- For the 37 appeals where Local Government was the proponent:
    - The median duration to resolve these appeals was 156 days.
    - Time taken to resolve appeals where a Local Government was the proponent decreased from 225 days in 2021 to 131 days in 2023.

Case Studies

A range of case studies are included in this Paper as examples of Local Governments interactions with the referrals, permit, appeals, offsets and compliance aspects of the regulatory system. The case studies highlight the issues associated with timeframes consideration of referrals, permits and appeals, the sometimes-significant complexity relating to native vegetation clearing and the costs incurred by Local Governments. The case studies also provide examples of Local Governments developing strategic clearing permits and offsets.

Opportunities for Improvement

Based on discussions with the sector, and recommendations of previous submissions, WALGA has identified a range of potential opportunities to improve the native vegetation process. These focus on DWER process improvements, Local Government capacity building and taking strategic approaches to data collection, clearing permits and offsets:

1. The implementation of a State Government coordinated and funded biodiversity survey program.
2. Funding for a trial using Artificial Intelligence (AI) for biodiversity mapping.
3. DWER to develop a Strategic Offsets framework for Local Government.
4. The introduction of statutory timeframes for determination of referrals, permits and appeals and timely compliance and enforcement.
5. Increased support and capacity building for Local Governments to navigate the native vegetation clearing requirements.
6. Extended default periods for purpose permits and removal of the time limit requirement for maintenance in existing transport corridors.

2. Introduction

Native Vegetation management is an important issue for Local Government. Local Governments, as landowners and managers, and in undertaking infrastructure projects such as road construction, have significant interests in the management and protection of native vegetation and the effective, efficient and equitable operation of the associated regulatory system.

WA Local Governments represent a significant share of all clearing permit applications, with the majority of these associated with public works such as road upgrades and construction. The current regulatory system is complex, costly and time-consuming. This situation is made acute because the South West Ecoregion of Western Australia is a global biodiversity hotspot - a region that is both rich in biodiversity found nowhere else In the world and under significant threat from habitat loss, invasive species and climate change.

This Paper identifies the issues Western Australian Local Governments face regarding native vegetation clearing and proposes a range of opportunities for improvement. Effective management and regulation are crucial for cost efficiency, road safety, conservation of biodiversity, erosion control, aesthetic and amenity values, cultural significance, and climate change mitigation.

Local Government is not alone in calling for regulatory reform. State Government initiatives like Streamline WA aim to enhance regulatory practices. The State Government commissioned the Vogel and McFerran review of the environmental approvals processes. In December 2023, the State Government published the 39 recommendations from the Vogel McFerran Review and the Government's response. The Review recommended "DWER and Office of the EPA to commission a review of EP Act Part V clearing regulations in relation to their timeliness, complexity and interaction and consistency with Part IV".

WALGA supports Local Governments with resources and projects, such as the Local Government Biodiversity and Native Vegetation Management Project, funded by the State Natural Resource Management (NRM) Program. The project offers training and provides grants to Local Government to assist in undertaking native vegetation assessments and developing planning policies.

This Issues Paper summarises current legislation (Section 3), challenges (Section 4), data on clearing referrals, permits and appeals (Section 5), case studies (Section 6) and improvement opportunities (Section 7).

3. Legislation and Policy

Native vegetation clearing in WA is governed by both Commonwealth and legislation.

Commonwealth Legislation

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

The EPBC Act is the Australian Government's central piece of environmental legislation, administered by the Department of Climate Change, Energy, the Environment and Water (DCCEEW). The EPBC Act mandates the requirement for environmental impact assessments and approvals for any activities (including the clearing of native vegetation) that is likely to significantly impact matters of national environmental significance (MNES): MNES relevant to native vegetation clearing include:

- National heritage places
- Wetlands of international importance (listed under the Ramsar Convention)
- Listed threatened species and ecological communities
- Listed migratory species (protected under international agreements).

The EPBC Act impacts large areas of WA, for example, in 2016, the Banksia Woodlands of the Swan Coastal Plain was listed as a Threatened Ecological Community (TEC) under the EPBC Act.

Nature Positive Plan

The Australian Government's Nature Positive Plan is a strategic framework aimed at halting and reversing biodiversity loss across Australia. The plan was formulated in response to the 2020 independent statutory review of the EPBC Act, which found that the Act is outdated and in need of major reform.

The Nature Positive Plan emphasises the protection and restoration of habitats, the sustainable management of natural resources, and the integration of biodiversity into all levels of decision-making. Central to the Plan are initiatives to protect threatened species, restore degraded ecosystems, and enhance the resilience of natural landscapes. At the time of writing the status of the Nature Positive Plan legislation is:

- Stage 1: the Nature Repair Market and expanding the water trigger, is complete.
- Stage 2: which establishes a new national environment protection authority, Environment Protection Australia, a new data body, Environment Information Australia and other reforms to increase penalties and add some new enforcement powers to the EPBC Act, is before the Parliament.
- Stage 3: Development and consultation on environmental law reforms Is continuing, focused on:
    - Assessment and approvals system
    - Restoration Contributions
    - First Nations Engagement Standard
    - Regional Forest Agreements – focusing on how to appropriately apply National Environmental Standards to the Regional Forest Agreements (RFAs)
    - Exemptions (prior authorisation and continuing use)
    - Climate change – focusing on the interaction between environment and climate laws.

The Government has committed to releasing a comprehensive exposure draft of the new laws for public consultation, before its introduction to Parliament.

State Legislation

Environmental Protection Act 1986 (EP Act)

The EP Act is the principal legislation for environmental protection in Western Australia, administered by the Department of Water and Environmental Regulation (DWER). In 2004, under the EP Act provisions were introduced for regulating the clearing of native vegetation. If a proponent intends to clear native vegetation, they must apply for a permit from DWER unless the clearing is for an exempt purpose.

There are two types of clearing permits under the EP Act, Section 51E:

- Area Permits: An area permit provides for clearing of defined areas specified in the permit. Area permits are generally approved for a default period of two years.
- Purpose Permits. A purpose permit allows for the clearing of different areas from time to time for a purpose specified in the permit. Purpose permits are generally approved for a default period of five years.

Schedule 5 identifies exemptions and prohibitions regarding native vegetation clearing. Schedule 6 specifies the conditions under which clearing of native vegetation is permissible without an approval under Part V of the EP Act, such as for certain agricultural, forestry, or development activities.

Under Part V, Division 2 of the EP Act, the clearing of native vegetation is regulated to protect the environment. Division 2 outlines the requirement for a clearing permit for any activity involving the removal of native vegetation unless exemptions apply. Applicants must demonstrate that their proposed clearing is necessary and that all reasonable measures have been taken to avoid, minimise, and mitigate environmental impacts. The EP Act broadly defines native vegetation, including some intentionally planted indigenous flora (see Appendix 1).

Under the EP Act, native vegetation should not be cleared if it comprises a significant habitat for fauna indigenous to Western Australia. The Act also emphasises that clearing should not occur if it includes, or is necessary for the continued existence of, rare flora. In WA markers, resembling yellow hockey sticks, are used to indicate areas where threatened flora are located. This practice helps ensure that road maintenance and other activities do not inadvertently harm these protected species.

Any proposal likely to have a significant environmental impact is referred to the Environmental Protection Authority (EPA). The environmental impact assessment (EIA) of development proposals is undertaken in accordance with Part IV Division 1 of the EP Act and the Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2021.

Environmental assessments of planning schemes and non-minor scheme amendments are conducted under Part IV of the EP Act. The EP Act allows for the assessment of significant environmental impacts identified for land affected by the scheme amendment before the land is rezoned.

Environmental Protection (Clearing of Native Vegetation) Regulations 2004

Administered by DWER, the Environmental Protection (Clearing of Native Vegetation) Regulations 2004, referred to as the Clearing Regulations, establish the legal framework for managing and controlling native vegetation clearing in Western Australia. These Regulations outline various exemptions to the permit requirement, including activities such as routine agricultural practices, maintenance of infrastructure, and emergency situations where clearing is necessary to protect human life or property. However, even exempt activities must adhere to specific conditions to prevent significant environmental harm.

Not all clearing requires a referral or a permit. Exemptions may apply for low-impact activities, maintenance of existing cleared areas, or emergency purposes. Exemptions under the Clearing Regulations do not apply in Environmentally Sensitive Areas (ESAs) declared under section 51B of the EP Act. Appendix 1 provides further information regarding exemptions.

Local Governments can refer proposed very low impact clearing to DWER for a determination as to whether a permit is required. For a referral, rather than permit, four criteria must be met:

- The area proposed to be cleared is small relative to the total remaining vegetation
- There are no known or likely significant environmental values within the area
- The state of scientific knowledge or native vegetation within the region is adequate
- Conditions will not be required to manage environmental impacts.

Since the Clearing Regulations were introduced, there have been a number of refinements to improve the process and reduce unnecessary regulatory burden. These include the introduction of referrals which offers a more streamline process for low impact clearing and the increase from 5 to 10 years for previously lawfully cleared areas (Appendix 2 provides a summary of all the changes).

Environmental Protection (Environmentally Sensitive Areas) Notice 2005

Environmentally sensitive areas (ESAs) are classes of native vegetation where the exemptions for clearing vegetation under the Environmental Protection (Clearing of Native Vegetation) Regulations 2004 (Clearing Regulations) do not apply. The current list of ESAs, under the Environmental Protection (Environmentally Sensitive Area) Notice 2005, was gazetted on 8 April 2005.

Other Relevant Legislation

Planning and Development Act 2005

- Governs land use planning and development, including provisions related to native vegetation protection and clearance.

Biodiversity Conservation Act 2016 (BC Act)

- Focuses on the conservation and management of biodiversity, including native vegetation, and sets out requirements for approvals for activities affecting native species and approvals to modify listed threatened ecological communities. The BC Act includes provisions for biodiversity conservation covenants and agreements.
- The BC Act allows the Minister to list native species or ecological communities as threatened or specifically protected. This includes species that are rare or under threat of extinction. Once listed, any taking disturbance, or modification of these species requires authorisation from the Minister, and significant penalties apply for unauthorised actions.

Bush Fires Act 1954

- Deals with bushfire management and prevention, which may intersect with native vegetation clearing regulations to mitigate fire risk.

Water Agencies (Powers) Act 1984

- Governs the management and use of water resources, which can be relevant to native vegetation clearance near water bodies.

Local Government Act 1995

- Empowers Local Governments to regulate land use and development within their jurisdictions, including native vegetation clearance.

Rights in Water and Irrigation Act 1914

- A permit or amendment to a permit may be required to interfere with the bed and banks of a watercourse.

Soil and Land Conservation Act 1945

- Relating to the conservation of soil and land resources, and to the mitigation of the effects of erosion, salinity and flooding. Administered by the Department of Primary Industries and Regional Development.

Aboriginal Heritage Act 1972

- Protects Aboriginal sites and objects. It is illegal to damage or alter any Aboriginal Site without permission from the Department of Planning, Lands and Heritage.

Native Vegetation Policy

In 2022, DWER published the Native Vegetation Policy and the Native Vegetation Policy Implementation Roadmap. The Policy seeks to address the 'high decentralisation' in how native vegetation is managed in Western Australia. Through the implementation of the Policy, the State Government is seeking to:

1. Enable all sectors to contribute to a net gain and landscape-scale conservation and restoration (conserve biodiversity, sequester carbon, build the restoration economy and create jobs).
2. Increase business certainty through regulatory clarity, efficiency and coordination.
3. Establish a strong, accessible evidence-base for policy-making, decisions and transparency.

The Policy also stresses the importance of all stakeholders working together to ensure there is an effective, coordinated and systematic approach. The Implementation Roadmap includes a range of actions to implement the Policy, most relevant for the purposes of this Paper are those relating to the review of environmental offsets, policy options to support net vegetation gain, regional planning prioritisation, specific action in relation to regional planning for the Wheatbelt region, system improvements and greater data capture and use.

4. Challenges for Local Government

Local Governments concerns and issues with native vegetation clearing regulations are long-standing. Individual Local Governments, WALGA zones and WALGA have made numerous representations and submissions to the State Government on this issue over many years. These are outlined in Table 1, categorised into timeframe, cost and complexity. At a forum hosted by DWER in early 2024, for non-metropolitan Local Governments, native vegetation was cited as one of the top three challenges for the sector.

Timeframe	Cost	Complexity
Timeframes for assessment of referrals and permit applications.	Cost for native flora and fauna assessments.	Lack of appropriate guidance on clearing permit process.
Timeframes for determination of appeals.	Cost to secure offsets.	Duplication/Inconsistencies between State and Commonwealth Government environmental assessment and approvals process.
Lack of prioritisation from DWER for projects where there are financial implications of delay.	Additional costs and resources required to navigate the process, such as consultants to develop the permit application.	Limited understanding by Local Government of when exemptions, referrals or a permit are required.
Lack of prioritisation from DWER where road safety implications are a consideration.	If a project is delayed, funding may be withdrawn and the project cancelled.	Limited data availability for Local Government to understand the local flora and fauna habitats
Local Government obligations to address critical road safety issues, creating and maintaining a forgiving roadsides, in a timely manner.	If a project is unduly delayed Local Governments may have to cover the additional costs.	Complex process requires expertise beyond the capacity of most regional Local Governments requiring the engagement specialised consultants
Inconsistent assessment of impact between DWER staff, for example if the assessor changes mid-way through the project.	Opportunity cost of staff time to complete complex applications.	Complexity of securing offsets for small amounts of vegetation clearing.

Table 1: Challenges Local Governments encounter in native vegetation clearing applications

The combination of these challenges is significant for Local Government. For example, fitting the timeline for clearing permit applications with financial year budgets for road works. If a decision on a clearing permit is delayed, this can result in missed funding opportunities or project cancellation.

5. Clearing Permit Data

This section provides an analysis of data associated with Local Government clearing referrals, permits and appeals. For both referrals (Figures 2 and 3) and permits (Figures 4, 5, 6), most Local Government clearing relates to road construction or upgrades; for referrals over 30%, for permits over 60%.

Referrals

Local Governments can refer proposed very low impact clearing (see Appendix 1) to DWER for a determination as to whether a permit is required. Figure 2 shows 33% of Local Government clearing referrals relates to road construction or upgrades, with the next most frequent reason for water/gas/cable/pipeline/power installation (16%), building or structure (14%) and hazard reduction or fire control (13%).

Figure 3 shows the average number of days taken by DWER to determine referrals from Local Governments. The maximum was 78 days and the average decision duration was 25 days. DWER Annual Report 2023-24 shows that for 2021-22 referrals now make up 41% of the requests for clearing approvals, for all referrals the Department averaged a 23 day decision duration.

If DWER has not made a decision on a referral within 21 days, proponents have two options:

- Wait until they receive a decision which might be that a clearing permit is required and thus resulting in longer overall timeframe for the final decision.
- Re-submit their application as a clearing permit, paying the required application fee. This could potentially result in unnecessary costs if the referral decision would be that clearing is permitted under the referral stream.

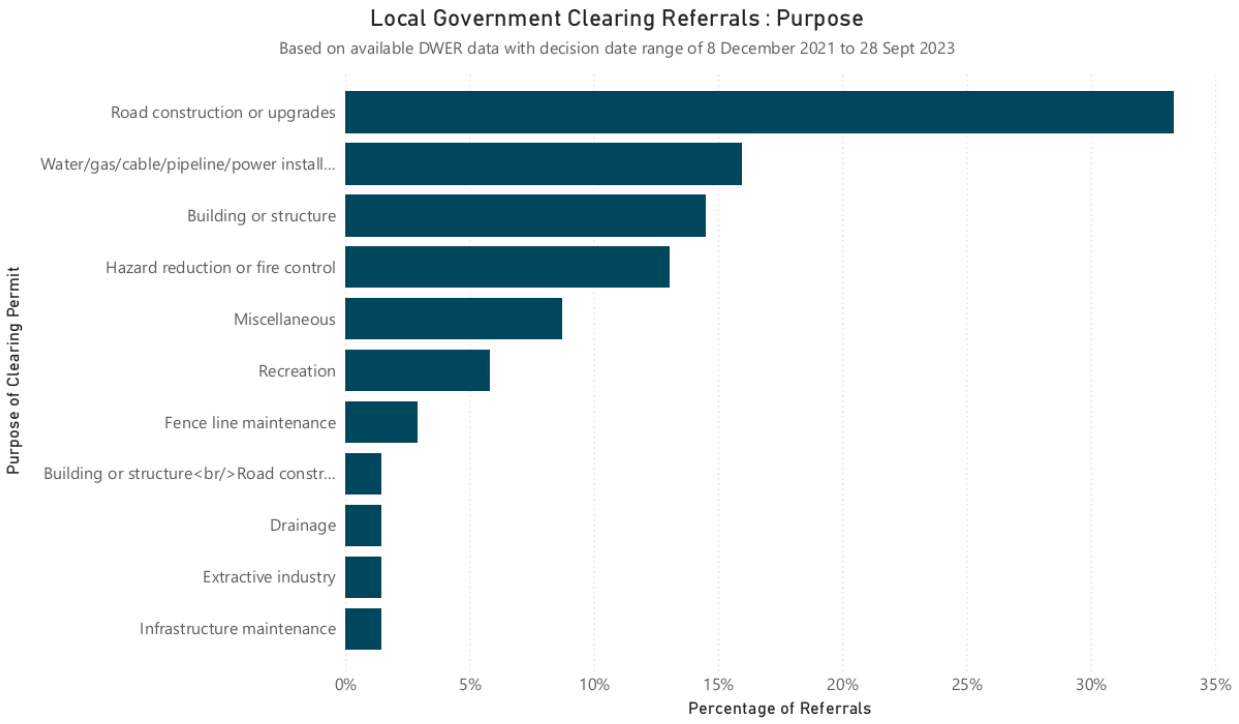

Figure 1: The range of reasons Local Governments have applied for referrals for native vegetation clearing

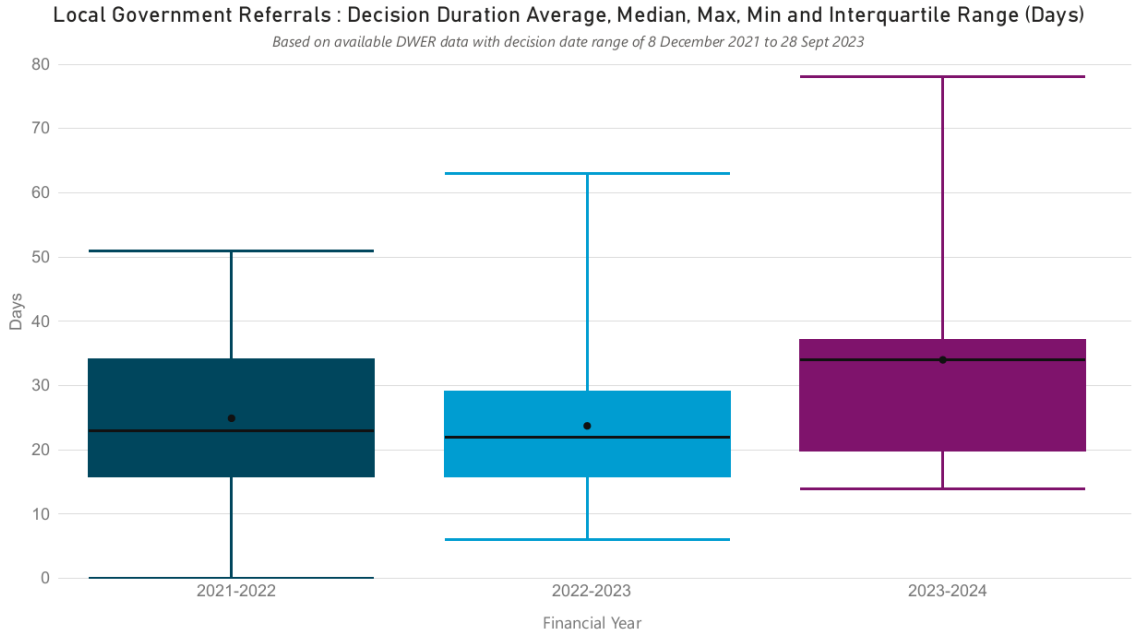

Figure 2: Decision duration for clearing permit referrals shown in box and whisker plot.
The top and bottom of the coloured box are the upper and lower quartiles. The box covers the interquartile interval, where 50% of the data is found. The vertical line that splits the box in two is the median. The dot is the average. The whiskers show the maximum and minimum values.

Permits

Figure 4 shows over 60% of Local Government clearing permit applications are for the purpose of road construction or upgrades. Figure 5 shows the total number of Local Government permit applications (including Local Government) between 2011 and 2022.

Table 2 shows the permit outcomes for all 524 permit applications that DWER received from Local Governments between August 2016 and April 2022. Nearly 75% of permits were granted, with less than 3% being declined or refused. However, 17% were withdrawn. There can be a range of reasons for an application being withdrawn and this is not provided in the data available.

Permit Outcome	Number of Applications
Granted	386 (73.7%)
Withdrawn	90 (17.2%)
Amended	33 (6.3%)
Declined	7 (1.3%)
Refused	7 (1.3%)
VCN Given	1 (0.2%)
Total	524

Table 2: Clearing Permit outcomes for Local Government applications, August 2016 to April 2022

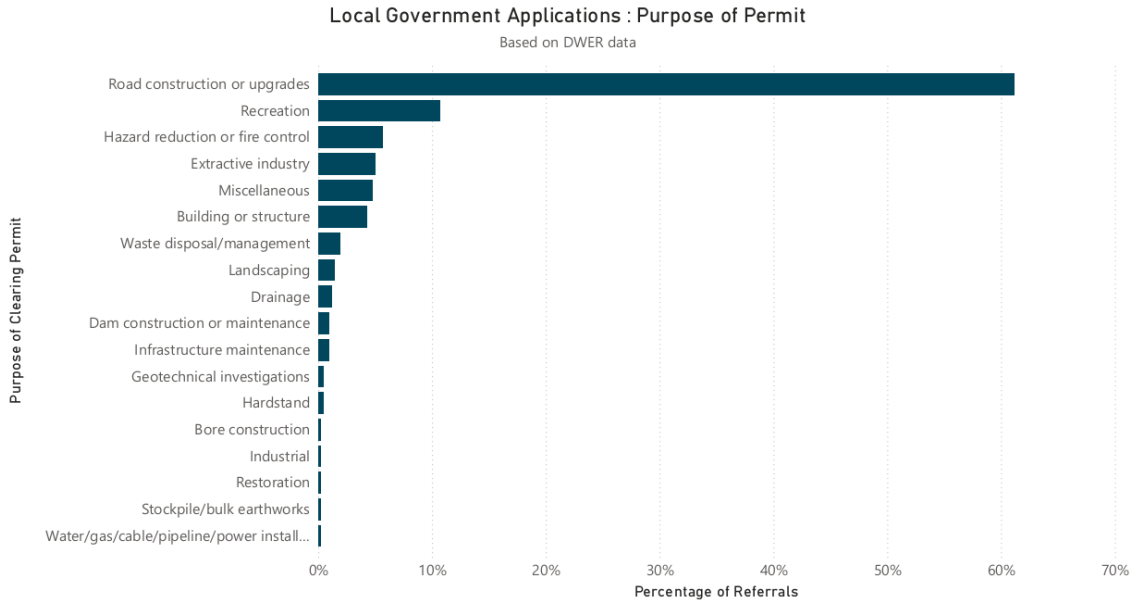

Figure 4: Local Government clearing permits by purpose.

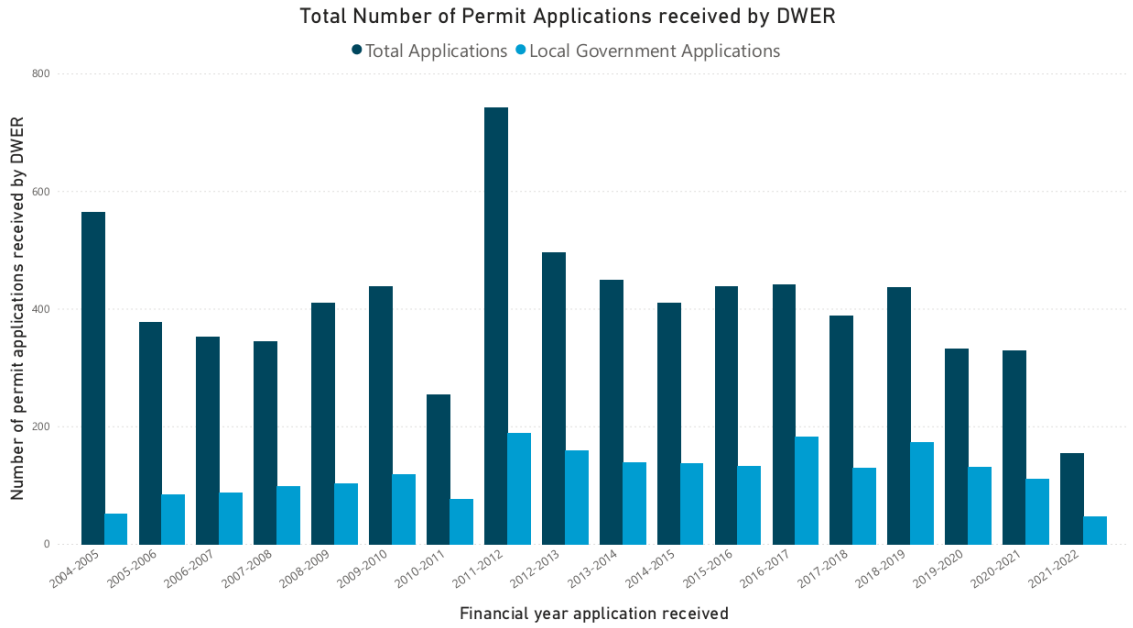

Figure 5: The total number of permit applications received by DWER between 2011 and 2022.

Figures 6 and 7 show the decision time for the 524 permit applications that DWER received from Local Governments between August 2016 and April 2022. These figures show a decrease in decision duration over time, from an average of 760 days in 2016 to 80 days in 2022. This can potentially be attributed to the use of the referrals process that commenced in October 2021.

The Department measures the number of applications decided within a timeframe of 60 days and stated in their Annual Report that this had reduced to 41% of applications in 2023-24, down from 53% in 2022-23. This reduction is attributed to the Departments processing of backlogged applications. Although assessment times for Local Government has reduced, the average is still well in excess of DWER's 60 day target.

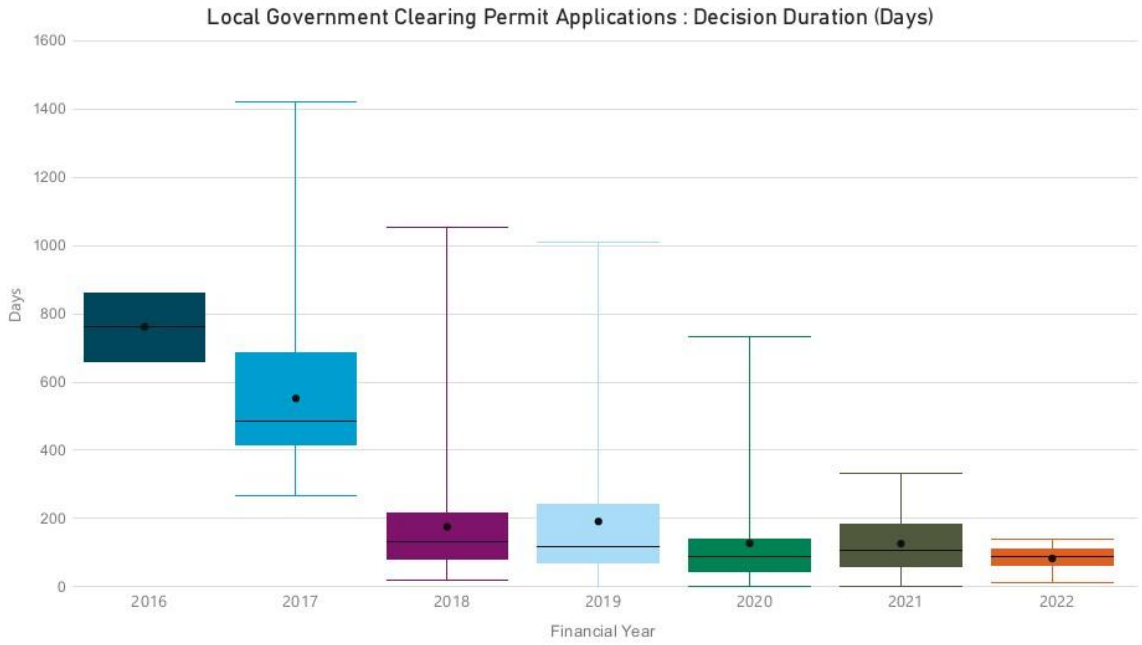

Figure 6: Decision duration for clearing permit application decisions shown in box and whisker plot. The top and bottom of the coloured box are the upper and lower quartiles. The box covers the interquartile interval, where 50% of the data is found. The vertical line that splits the box in two is the median. The dot is the average. The whiskers show the maximum and minimum values.

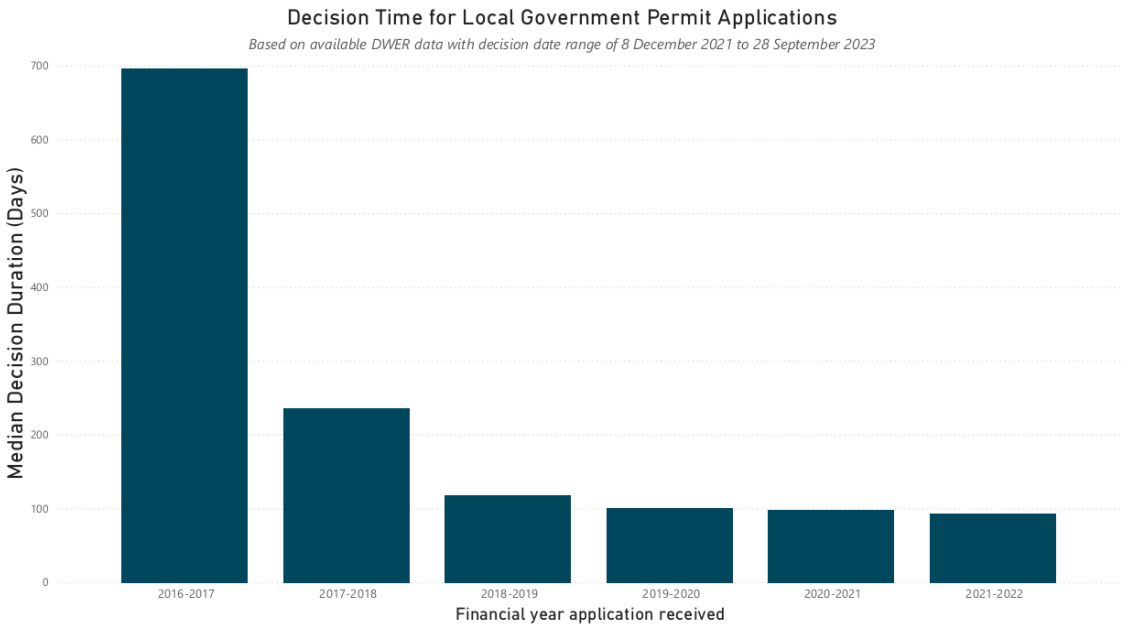

Figure 7: The median decision duration for Local Government clearing permits.

Of the 20 most lengthy clearing permit processes, 13 were from the Avon-Wheatbelt region, with the longest processing time being over 3 years. Figure 8 shows total clearing under approved permits by Interim Biogeographic Regionalisation for Australia (IBRA) bioregion, noting that DWER refers to IBRA bioregion data to assess permits and referrals.

Figure 9 identifies the amount of clearing granted through permits, with 71% being for clearing of less than 1 hectare and 25% being for less than 10 hectares.

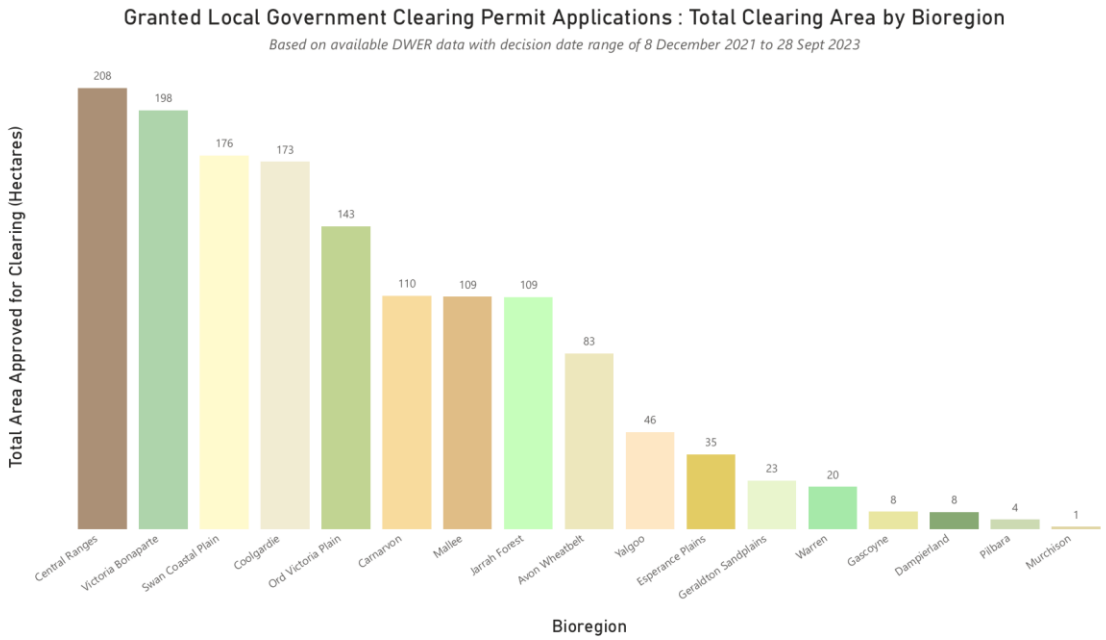

Figure 8: IBRA7 classifies Australia's landscapes into 89 bioregions. DWER analyses clearing permit applications and appeals within the IBRA framework

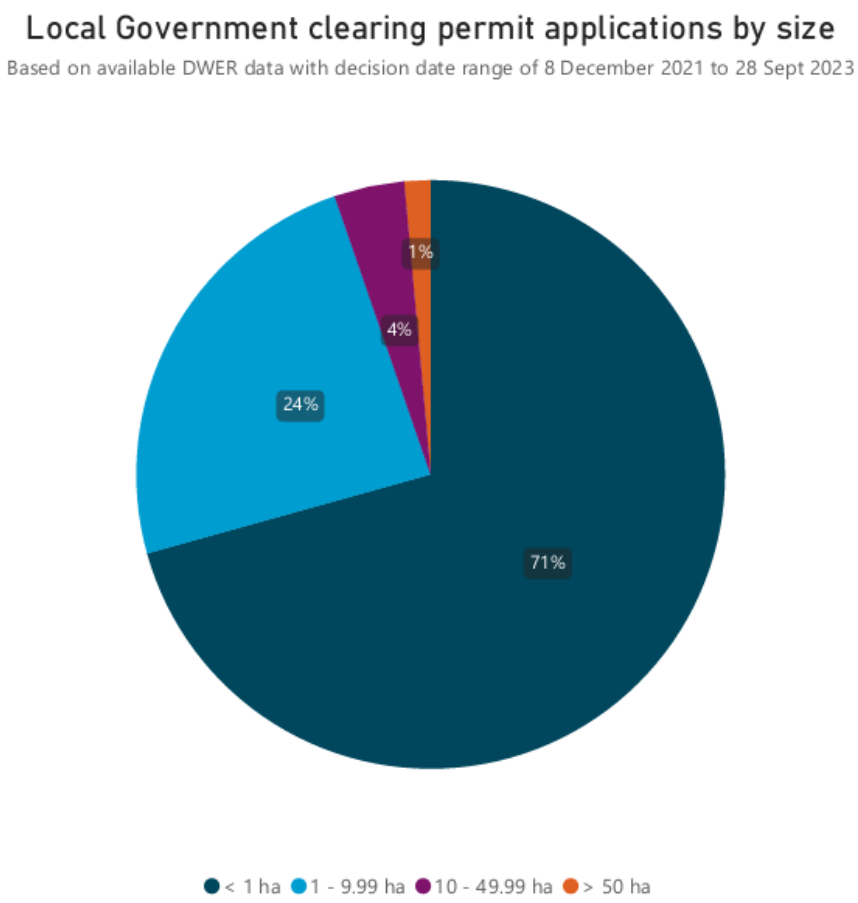

Figure 9: Local Government clearing permit applications by hectare.

Appeals

From 2021, to September 2024, there have been 37 appeals against clearing permits where a Local Government is the proponent. The outcome of the appeals process can be:

- Dismiss – the appeal is dismissed
- Allow in part – part of the appeal is upheld
- Allow – appeal is allowed
- Invalid – appeal is not valid
- Withdrawn.

The Office of the Appeals Convenor handles several types of appeals under the EP Act, including appeals relating to clearing of native vegetation. Table 3 shows the appeal outcomes for all 205 appeals lodged from 2021 to 2024. The data on appeals is difficult to analyse in relation to outcomes, as a number of cases are yet to be determined. For example, of the appeals lodged in 2023, 21% are yet to be determined. However it is worth noting that of those that have been determined, just under 40% were dismissed, with 36% allowed in part.

Appeal outcome	2021	2022	2023	2024
Dismiss	12 (20.7%)	13 (28.9%)	22 (39.3%)	5 (10.9%)
Allow in part	30 (51.7%)	21 (46.7%)	20 (35.7%)	-
Allow	1 (1.7%)	1 (2.2%)	-	-
Invalid	3 (5.2%)	1 (2.2%)	1 (1.8%)	1 (2.2%)
Withdrawn	10 (17.2%)	5 (11.1%)	1 (1.8%)	3 (6.5%)
Not yet determined	2 (3.4%)	4 (8.9%)	12 (21.4%)	37 (80.4%)
Total	58	45	56	46

Table 3: Appeal Outcomes All Appeals 2021–2024

Table 4 shows the outcomes for the 37 clearing permit appeals lodged from 2021 to 2024 where Local Government is the proponent. This data is more straightforward to interpret, as most appeals (except for 2024) have been determined. For 2023, 70% of the appeals were dismissed, compared to only 40% of overall appeals. In 2022 there is a similar pattern, with 62.5% of appeals dismissed, compared to only 29% of overall appeals.

Appeal outcome	2021	2022	2023	2024
Dismiss	4 (28.6%)	5 (62.5%)	7 (70%)	1 (20%)
Allow in part	5 (35.7%)	3 (37.5%)	2 (20%)	-
Allow	1 (7.1%)	-	-	-
Invalid	3 (21.4%)	-	-	-
Withdrawn	1 (7.1%)	-	-	1 (20%)
Not yet determined	1 (7.1%)	-	-	2 (40%)
Total	14	8	10	4

Table 4: Appeal Outcomes Where Local Government is a Proponent 2021–2024

Figure 10 shows the duration of appeal decisions where Local Government is proponent, which ranged from 10 to 553 days. The median decision duration for clearing permit appeals, where Local Government was the proponent during 2021–2024, was 156 days. Some of the specific appeals have been included in Section 5 as case studies.

Figures 11 examines the appeals data using a range of approaches to assess averages to determine if very long appeal timeframes for specific cases would impact the average data; the conclusion is that the outliers do not significantly impact the averages for appeal timeframes.

Of the 37 clearing permit appeals lodged from 2021 to 2024 where Local Government is a proponent Figure 9 shows the decision for 29 of the 37; the remaining 6 are either not yet determined or were withdrawn. The median (most common) duration is 166 days.

Between 2021 and 2024, most appeals to Local Government clearing permits were lodged by the Wildflower Society of Western Australia (49%) and/or the Urban Bushland Council of WA (11%).

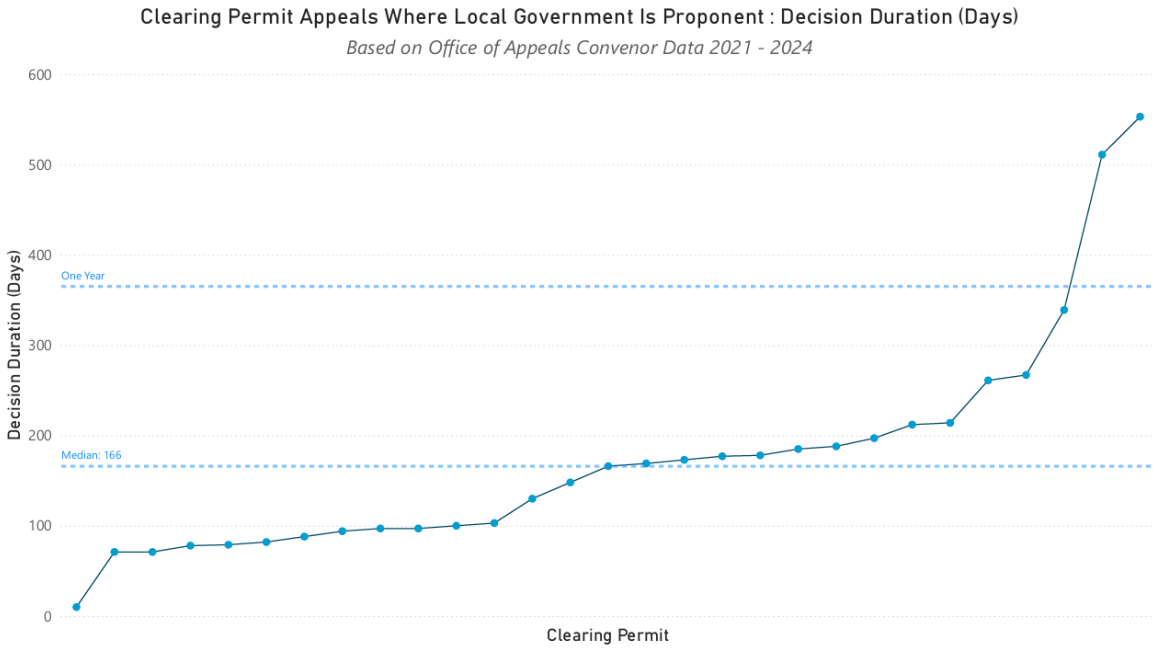

Figure 10: Time frame for 29 appeals where a Local Government is the proponent. Each dot represents an individual clearing permit appeal.

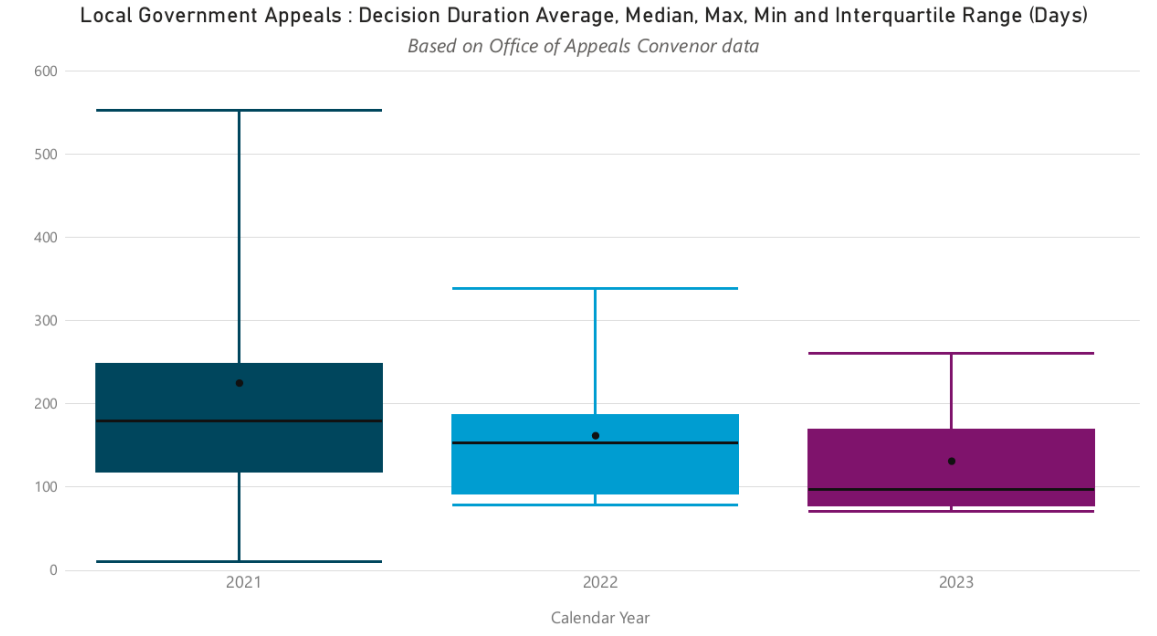

Figure 11: Decision duration for clearing permit appeal decisions shown in box and whisker plot. The top and bottom represent the upper and lower quartiles. The box covers the interquartile interval, where 50% of the data is found. The vertical line that splits the box in two is the median. The dot is the average. The whiskers show the maximum and minimum.

6. Local Government Native Vegetation Clearing Case Studies

This section provides a range of case studies from Local Governments across referrals, permits, offsets and appeals. Examples of where the process has worked well and where there are areas for improvement are included.

Referral

Shire of Wandering REF 10090/1 - permit not required

The Shire of Wandering, with a population 525, is located in the Wheatbelt region. The Shire sought to clear 3 trees within a road reserve for road construction purposes. The Shire submitted an area permit application to DWER. DWER reviewed the application and recommended that the Shire withdraw the area permit application and resubmit it as a referral. The proposed clearing of 3 trees was determined by DWER to present minimal impact to environmental values as there was high retention of native vegetation in the area. DWER determined that a clearing permit was not required for the proposed clearing, as it met all the criteria specified under section 51DA(4) of the EP Act. The referral was approved in eight days.

Permit

City of Bunbury CPS 9678/1 - area permit to tackle an invasive species

The City of Bunbury lodged an application to clear 0.285 hectares of native vegetation to improve the ecological values of the wetland. The proposed clearing potentially posed impacts to the wetland's water quality and fauna habitat. The City of Bunbury proposed avoidance and mitigation measures that limited the clearing to the invasive cattail (Typha) species only. Both *Typha orientalis* and *Typha domingensis* are capable of aggressive invasion that can transform wetland ecosystems unless actively managed.

DWER granted the area permit subject to conditions including fauna and wetland ecology management and acknowledged the negative impact of Typha on the area. Several Local Governments have clearing permits for Typha removal. The City's application was approved in 62 days.

Shire of Toodyay's CPS 9376/1 - offset banking

The Shire of Toodyay applied for a permit to clear native vegetation in Telegraph Road Reserve and Bindi-Bindi Toodyay Road Reserve for road widening and safety purposes. In the process of seeking native vegetation offsets during the planning phase of the project, the Shire of Toodyay signed a conservation covenant under section 30B of the *Soil and Land Conservation Act 1945*, setting aside a large area of 120 hectares for the protection and management of vegetation in perpetuity.

The Shire of Toodyay proposed an environmental offset consisting of the conservation of 2.18 hectares of native vegetation within Lot 108 on Plan 13653, Toodyay, owned by the Shire and shown in Figure 11. Only 2.18 hectares was required to be conserved for CPS 9376/1; the remainder of the area will be used for future projects requiring similar offsets. The Shire's application was approved in 320 days.

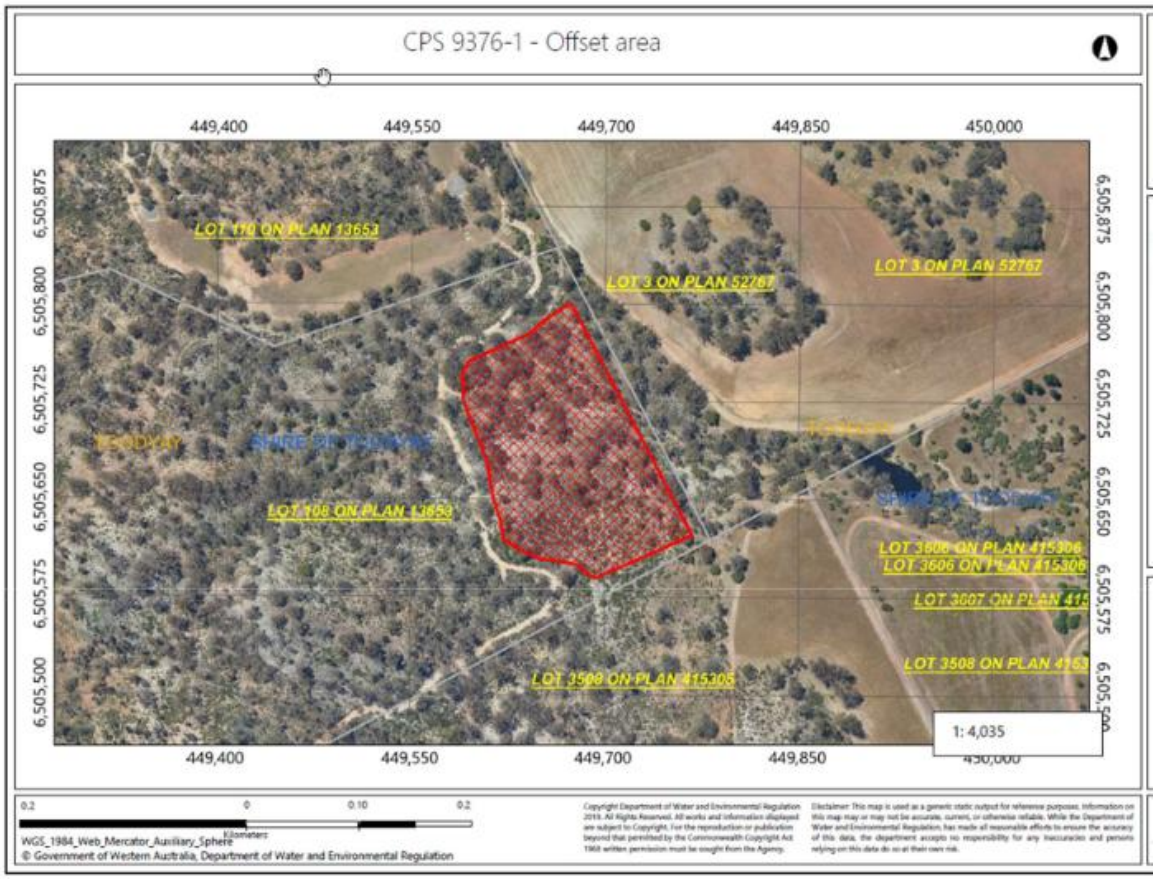

Figure 11: The Shire of Toodyay's proposed offset area for clearing permit 9376/1. The crosshatched red area is 2.18 ha.

Shire of Serpentine-Jarrahdale - Impacted by cost of clearing permit approval process

Byford Skate Park is a State Government-funded project in the Shire of Serpentine–Jarrahdale. Stage 2 of the project required the removal of twelve trees (0.05 ha), five of which are remnant native trees but not identified as Threatened Ecological Community (TEC). Two *Corymbia calophylla* and three Eucalyptus wandoo trees were assessed as providing suitable foraging habitat and potential roosting habitat for black cockatoos. The Byford Skate Park extension is located in Briggs Park within Bush Forever area (321), an area listed as an Environmentally Sensitive Area (ESAs). ESAs are classes of native vegetation where the exemptions for clearing vegetation under the Environmental Protection (Clearing of Native Vegetation) Regulations 2004 (Clearing Regulations) do not apply, as per the Environmental Protection (Environmentally Sensitive Areas) Notice 2005.

The clearing permit provided a number of offset conditions requiring the Shire to revegetate 0.35 ha of native vegetation and rehabilitate a wider 0.72 ha area within Brickwood Reserve. Representatives from the Shire have questioned DWER's offset conditions, suggesting it might be 'disproportionate and excessive' for the clearing of five trees that are not of high environmental value.

The Shire spent approximately $30,000 on consultancy for the preparation of an Offset Revegetation Management Plan and permit application so far. The implementation of the

revegetation offset management plan is estimated to cost $70,000. The project budget does not allow these expenses. In addition, the process to obtain the clearing permit from submitting the application to permit being granted took 12 months to complete which resulted in the project experiencing significant delays.

Road Upgrades

Shire of Denmark CPS 9827/1 - area permit

The Shire of Denmark initially applied to clear 31 native trees and the associated 0.04 hectares of native vegetation understorey for road upgrades to improve safety. This clearing was predicted to impact habitat for black cockatoos. The Shire proposed avoidance and mitigation measures including amendments to the road design to reduce habitat impacts, and a reduction of the number of trees to be cleared to 26. DWER granted an area permit subject to conditions including directional clearing, wind erosion management, and revegetation including the mitigation planting of 40 seedlings of species known to be black cockatoo foraging species within the road reserve. The Shire's application was approved in 148 days.

Shire of Cuballing – strategic clearing permit

In 2020, the Shire of Cuballing was granted a strategic clearing permit that authorises the clearing of native vegetation for eleven distinct project areas, to be delivered between 2020 and 2030. WALGA provided significant support to the Shire in the development of the strategic permit. The development of the permit commenced in March 2018 and was completed February 2020, taking several weeks of WALGA staff time over this period.

The total clearing footprint of 16.805 hectares spread across two gravel pits and nine road projects. Avoidance and mitigation measures included the reduction of road width from 18 to 16 metres, to avoid clearing of significant native vegetation and revegetation of an old road section. The clearing permit conditions included an offset package.

Flora, vegetation, and fauna habitat surveys supported some but not all projects in the clearing permit application. The key management conditions of the clearing permit include:

- Fauna management — Black cockatoos and Red-tailed Phascogales
- Flora management — demarcate and avoid priority flora
- Threatened and priority flora management
- Vegetative material and topsoil retention, revegetation and rehabilitation (1.57ha)
- Dieback and weed control
- Annual reporting.

While the preparation and assessment of a multi-project clearing application takes longer than assessing a single project clearing application, benefits to this approach, included:

- Increased certainty around timing of project delivery — in 2021 and 2022, the Shire was able to implement scheduled priority road projects covered by the clearing permit.
- A single permit covering road projects and gravel requirements.
- Simplified administration — one permit versus multiple permits for individual projects managed by a Local Government.
- Significant cost saving on permit fees; with a strategic purpose clearing permit application for multiple permits costing $4000 compared with the cumulative cost of $27,800 if each of the eleven projects was managed via individual clearing permit applications.

To maximise the benefits of the multi-project clearing application, it is recommended to consider:

- Due to potentially significant lead times, use strategic permits for projects to be delivered within a 2–5 year timeframe.
- Undertake as many flora and fauna surveys as feasible to support the clearing permit application.
- Group projects with similar design requirements to minimise the need for clearing permit amendments due to design changes that will affect the clearing footprint.

While there were many benefits to the project, the time and resourcing would be beyond the scope of many Local Governments.

Shire of Esperance CPS 9524/1 - delay in completion of roadworks

The Shire of Esperance sought a strategic purpose permit for clearing at seven sites to support roadworks projects scheduled for the 2021-22 financial year. The clearing footprints for these projects ranged between 0.35 and 7.09 hectares, with purposes including gravel supply, road widening, road upgrades and sight line clearing. The total proposed clearing area was 28.8 hectares.

The vegetation to be cleared had high environmental significance, including the Kwongan Threatened Ecological Community, Swamp Yate Priority Ecological Community (PEC), and Carnaby's Cockatoo habitat. There were 19 priority species, including one newly discovered plant, *Atrotriche platycarpa*. The Shire submitted the permit application in December 2021, along with supporting flora surveys in February 2022. DWER requested further surveys for certain flora, delaying the application assessment until the completion of the flora surveys in spring 2022.

The Shire's budget allocation was for the 2021-22 financial year, and due to the permit delay, completed works were limited to the existing road maintenance zone. Works at three of the seven sites were not able to commence on schedule.

Offsets were required for the project. Coomalbidgup Swamp, previously used to offset other clearing permit applications, was sought to offset the clearing under the strategic purpose permit. The swamp is reserved as an 'environmental conservation reserve', and the Shire has faced difficulties in demonstrating how this offset would enhance the protection of environmental values through management actions.

The Shire's application was approved in 319 days.

Shire of Esperance CPS 9341/1 - strategic permit for road upgrades

The Shire of Esperance applied for a permit to clear multiple areas within various road reserves to manage dieback and invasive weeds. This posed impacts to priority fauna, fauna habitat, ecological linkages, significant remnant vegetation, and Threatened Ecological Communities. A purpose permit was granted subject to conditions, including offsets. The area to be cleared was 19.21 hectares. The Shire's application was approved in 642 days.

(Note: This permit is not reflected in the Clearing Permit Data of this Issues Paper because DWER data was available for permits with a decision date no later than the 2021–2022 financial year. The Shire of Esperance applied CPS 9341/1 on 24 June 2021 and DWER granted the permit on 28 March 2023.)

City of Swan CPS 8696/1 - difficulties with identifying acceptable offsets

The City of Swan sought a purpose permit for the construction of a new road, Stock Road, in Bullsbrook. The works included clearing for the roads surface, drainage, utility services, and bridge construction with a total clearing area sought was 4.41 ha.

During the planning and design phase, the project team identified potential environmental concerns and took proactive measures to minimise the impact of clearing. The road geometry and earthworks were rationalised to reduce the extent of clearing. The City of Swan worked closely with the works contractor to ensure compliance with the Construction Environmental Management Plan (CEMP) and requirements specified in the clearing permit. The clearing permit boundary was clearly defined and monitored throughout the project.

Offsets were required to mitigate the unavoidable impacts of clearing. There were limited suitable freehold sites within the Bullsbrook area that could support the offset planting, and the City had to nominate land parcels that could have strategic development benefits in the future. The final offset location was 4 km from the clearing site, with 1,200 native trees planted to meet the project's offset requirements. Figure 12 shows the location of the project and offset.

The lack of available local offsets and the nomination of land parcels with development potential illustrated the challenge of balancing environmental considerations with strategic development needs. The ability to select offsets from a wider geographical area would have been beneficial. The City portioned a section of the approved lot for offset planting to minimise impacts on future development potential. The City's application was approved in 325 days.

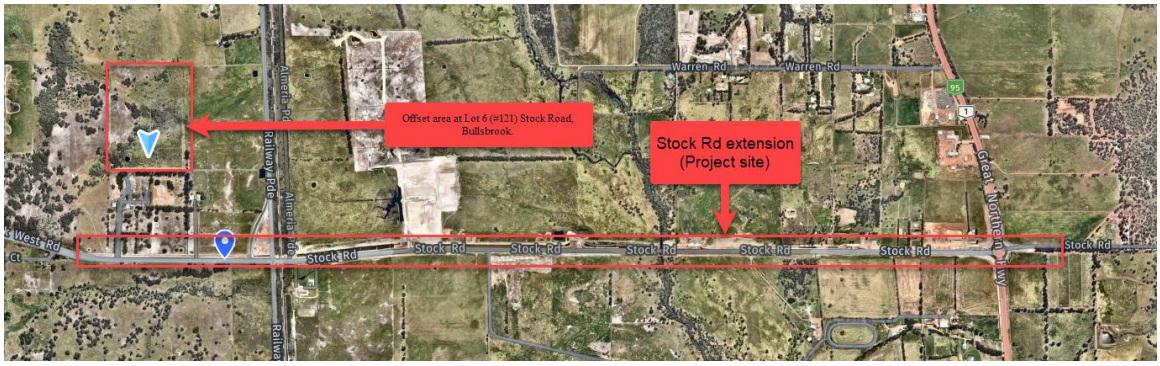

Figure 12: City of Swan project and offsets

Appeals

Shire of Tammin CPS 9281/1

The Shire of Tammin applied for a purpose permit to clear native vegetation obstructing the vision of oncoming vehicles at an intersection and around a bend. The proposed clearing area, totalling was 0.36 hectares, is a bushland reserve managed by the Department of Biodiversity, Conservation and Attractions, not a road reserve managed by the Shire.

In May 2021 the Shire applied to DWER. DWER requested a flora and fauna survey, which showed the presence of the Mallee Fowl in the reserve, though no habitat was identified in the area to be cleared. The Shire submitted the survey, and DWER granted the permit under section 51E (5) of the EP Act in December 2021, with no offsets required.

In January 2022, the Wildflower Society of Western Australia appealed the permit. The appeal was dismissed by the Minister in July 2022, taking 178 days to resolve.

From the Shire's perspective, the issue is that the same area had been cleared several times for the same purpose, necessitating a new permit at the expiry of the current permit in 2027. Purpose permits are generally approved for a default period of five years. To avoid delays, the Shire plans to apply for the permit in 2025, two years in advance.

Shire of Victoria Plains CPS 8357/1

The Shire of Victoria Plains experienced the lengthiest appeal decision duration, taking 553 days (678 days from the date of application for the permit). The Shire applied for a purpose permit on 30 May 2019 to clear vegetation for road upgrades associated with the transport of agricultural lime. The works included road maintenance, widening, installation of a culvert, improving sightlines and the creation of a new intersection.

In May 2020, DWER advised the Shire that their proposed mitigation and avoidance strategies were inadequate. DWER requested additional details on avoidance and mitigation measures before considering any proposed offsets.

The clearing permit, CPS 8357/1, was granted on 7 April 2021, approving the clearing of up to 2.46 hectares of native vegetation.

On 26 April 2021, the Wildflower Society of Western Australian lodged an appeal against the permit. Their reasons for appeal included concerns about excessive clearing beyond the original permit, incorrect offset calculations, inadequate revegetation and rehabilitation plans, potential harm to fauna, and the timing of the flora survey missing significant species.

The Minister's Appeal Determination was delivered on 31 October 2022. The Minister upheld DWER's decision to grant the permit but required amendments to the proposed offset to counterbalance significant residual impacts on the Threatened Ecological Community (TEC) and Carnaby's cockatoo foraging habitat.

Table 5 outlines the various steps in the process and timeline of the clearing permit appeal, showing that the main delay was due to the time the Shire needed to prepare supplementary information required by DWER.

Activity	Date
Shire applies for clearing permit	30 May 2019
Shire increases application area increased from 1.98 to 2.46 ha	
Shire submits clearing permit application supplementary report	December 2019
DWER advised mitigation insufficient	1 May 2020
Granted clearing permit CPS 8357/1	7 April 2021
Appeal from Wildflower Society	26 April 2021
DWER's report to Minister under section 106 of the EP Act	21 June 2021
Shire of Victoria Plain's response to the appeal	15 July 2021
Supplementary information from the Shire- revised proposed clearing area	23 May 2022
Additional advice from Shire in response to committee questions	8 August 2022
Further information on alternative offset options from Shire	18 August 2022
Appeals Committee Report	October 2022
Minister's Appeal Determination	31 October 2022

Table 5: CPS 8357/1 process and timeframes

Compliance and Enforcement

Shire of Northam - native vegetation clearing Chinganning Road

In early 2024, The Shire of Northam was advised that DWER was prosecuting them for native vegetation clearing that occurred without the required permit during an upgrade to Chinganning Road in early 2017. The contractor cleared approximately 300 mature eucalyptus trees, which were deemed to be foraging habitat for threatened species of cockatoos. In response, DWER issued a Vegetation Conservation Notice in 2019, requiring the installation of nesting boxes for cockatoos.

DWER determined that the clearing likely caused a loss of flora and fauna species of conservation significance, leading to charges under the *Environmental Protection Act 1986*. The Shire of Northam explained that the clearing was a result of road maintenance and expressed regret over the situation. The Shire acknowledged that the road upgrade was necessary for a community safety perspective, but human error resulted in an incorrect interpretation of exemptions for road maintenance. Instead of applying the exemption to clearing within 7m of the centreline of the road, it was mistakenly applied to the edge of the road, resulting in excessive clearing.

Since the incident, the Shire has implemented several measures to prevent illegal land clearing. These include hiring an Environment Sustainability Officer to provide advice on clearing approvals and introducing of a documented process for identifying and obtaining relevant permits. The process was successfully used in 2023-24 to obtain clearing approvals for a major road upgrade within the Shire.

The Shire entered an early guilty plea to the offence and was fined $10,000, along with payment of costs of approximately $788. The prosecution took seven years to conclude.

7. Opportunities for Improvement

Based on feedback from the sector, previous WALGA submissions and issues raised through case studies WALGA has identified a range of improvements to the native vegetation clearing permit process. These options focus on process improvement, capacity building and taking a strategic approach to data collection and offsets.

1. *DWER process improvement*
    - Increase default time period for purpose permits.
    - Remove time duration for clearing in existing transport corridors
    - Statutory timeframes for determination of referrals, permits and appeals and timely compliance and enforcement activities.
    - Improve Local Government understanding of the regulatory requirements.

2. *Local Government capacity building*
    - Engagement with DWER.
    - Provide sufficient information with application.
    - Provide avoidance and minimisation considerations.
    - Allow as much time as possible.
    - Use WALGA Resources.
    - Adopt Local Biodiversity Strategies and Plan.

3. *Strategic approach for State and Local Government*
    - Streamline Strategic Clearing Permit Process
    - State Government to fund biodiversity survey program.
    - Funding a trial of using AI for biodiversity mapping.
    - DWER develop a Strategic Offset framework for Local Government.

DWER process improvement

In addition to the overall improvements that are outlined in Appendix 2, the Department advises that it has put in place a number of system improvements. These include:

- Engaging with Local Governments via pre-application meetings to discuss expectations, timeframes and issues early in the application process. These meetings have been encouraged by including a requirement in the clearing permit application.
- Developing a triage system to prioritise clearing permits based on their purpose, public benefit and state significance.
    - DWER advises that Local Government road upgrades are given a high priority in this system, with road safety works being assigned the highest priority level.
    - DWER also prioritises applications In consultation with applicants to meet their timeframe requirements, where resourcing allows.
- A specific team of officers assigned to assess Local Government clearing applications. If, due to resourcing, Local Government clearing assessments are allocated to another area, the Local Government team maintains clear communications with the other team to ensure that assessment is consistent.

Increase default time period for purpose permits

Purpose permits are generally approved for a default period of five years. If the clearing does not occur in the required time period, the Local Government would have to re-apply for the permit. These areas, such as with the Shire of Tammin example, may be regularly cleared.

DWER has indicated that for such cases they can consider longer time periods and Local Governments should request this.

WALGA recommends that purpose permits be granted for significant lengths of time when Local Governments apply to clear native vegetation in areas subject to regular clearing for the same purpose, such as roadside understorey clearing. This will reduce costs and the timeframes associated with minimal environmental impact.

Remove time duration for clearing in existing transport corridors

WALGA actively supported the inclusion of 'Schedule 2 – Clearing for maintenance in existing transport corridors' in the Environmental Protection (Clearing of Native Vegetation) Regulations 2004. Now, some 20 years on, the practicality of the 10-year timeframe (2a) in the Regulations has been questioned by Local Government. This approach encourages more regular clearing by Local Governments, meaning that the area is less likely to be a habitat in the meantime. If Local Government does not clear, then after the 10 years they would potentially need to go through the full process of applying for a clearing permit. The removal of the time duration limit would reduce potential costs associated with applying for permit if the Local Government does not clear.

Statutory timeframes for determining referrals, permits and appeals and timely compliance and enforcement activities

There are no statutory timeframes for referrals or clearing permit applications. DWER's goal is 'to review 80% of clearing permit applications within 60 business days.' However, data analysis shows that the median decision duration for clearing permit applications where Local Government was a proponent was 109 days. Data from the 2023/24 DWER Annual Report identified "the percentage of applications decided within a timeframe of 60 working days also reduced to 41 per cent in 2023–24, down from 53 per cent in 2022–23". This was partly because the Department was working through a backlog of applications. Having a required timeframe for referrals and permits would provide a clear imperative for resourcing the Department to reduce processing times.

There are no statutory timelines for clearing permit appeals. The Office of the Appeals Convenor aims to have 80% of appeal reports submitted to the Minister for Environment within 60 days of receiving a final response to the appeal from the relevant decision-making authority (e.g. DWER or the EPA) and the proponent. However, data shows that the median decision duration for clearing permit appeals from 2021 to 2024, where Local Government was a proponent, was 156 days. The timeframe for the Minister for Environment to decide on an appeal, under the *Environmental Protection Act*, is not defined in the Act. However, the Minister typically makes a decision based on the Appeal Convenor's report. A statutory timeframe for appeals would again assist in ensuring the process occurs within a reasonable timeframe and does not unduly impact on Local Government project delivery.

The Vogel–McFerran 'Independent Review of WA Environmental Approvals Processes and Procedures' found that "approvals processes have become overly complex, time-consuming, and costly – holding back economic development without any benefit to the environment" and recommends the establishment of specific timeframes for decision-making processes.

Recommendation 14(b) of the Review states:

> *Government and the State Solicitors Office to evaluate if s44(2c) of the EP Act has an utility in being able to direct the EPA to prepare an assessment report to the Minister for Environment within a specified period of time for State significant proposals or projects.*

WALGA recommends that statutory timeframes are mandated for all appeals, not just those deemed to be of State significance.

Feedback from Local Government has indicated slow follow up on reports on illegal clearing they have submitted. Without a timeframe for prosecution there is no urgency for the Department to investigate illegal clearing and undertake action, such as providing education to those clearing. The case of the Shire of Northam, where prosecution took place a number of years later, when the Shire had already implemented significant changes highlights the ineffective nature of these prosecutions. Timely enforcement activity will provide education, promote awareness and ensure incentives for compliance with the regulations.

Improve Local Government understanding of the regulatory requirements

Understanding the often complex native vegetation clearing requirements is a key skill set for Local Government roads managers and other staff. WALGA is keen to work with the Department to build the sectors capacity, through hosting webinars focusing on each element of the native vegetation clearing process (exemptions, referrals, permits and regulatory interventions) and on ground engagement activities. As the data shows, the bulk of clearing relates to road building and upgrades. The staff who are engaged in this activity are likely to be operational. It is therefore essential that training is developed which is relevant and accessible, for example short videos with examples showing what to do/not to do.

Local Government process improvements

Engagement with DWER

Local Governments should seek to engage with DWER as early as possible when considering clearing to seek advice on the most appropriate approval pathway and what information will be required. Ensuring this occurs means that the Local Government has all the information they require to progress the appropriate approach and coupled with constructive advice from the Department this would reduce the time taken for the process.

Provide sufficient information with application

DWER has indicated that issues arise when applicants do not provide sufficient biological site information, such as flora and fauna surveys and site photographs. Through Local Governments engaging early with the Department, and the Department providing advice, the full requirements can be identified. Some types of information, such as flora survey's, are time depended as for maximum accuracy they can only be undertaken at certain times of year.

Provide avoidance and minimisation considerations

When planning for native vegetation clearing, the mitigation hierarchy needs to be followed. The mitigation hierarchy calls for proponents to plan their clearing to: avoid, minimise, rehabilitate or restore, and finally, offset impacts. Significant residual impacts are what remains after the mitigation hierarchy has been applied. It is important that permit applications contain sufficient information on the avoidance and mitigation measures which have been considered and applied to the project.

Allow as much time as possible

DWER has identified that complications can arise when Local Governments submit permit applications too close to the expiry of funding deadlines for infrastructure projects. Local Governments should allow as much time as possible for the assessment of their application.

Use WALGA resources

WALGA aims to provide support and resources to Local Government to build capacity in relation to native vegetation management and conservation planning. WALGA has received funding from the State Natural Resource Management (NRM) Program for the Local Government Biodiversity and Native Vegetation Management Project. This project will operate until December 2024, delivering a range of resources including a roadside vegetation e-training module, field training, and funding to Local Governments via a devolved grant program.

WALGA developed Natural Area Initial Assessment (NAIA) templates to help Local Governments assess site-specific ecological values, biodiversity significance and threats. The current NAIA templates are applicable across the South West of Western Australia. A database of historical Local Government data collected using the NAIA templates is also available. Templates are accessible here.

Adopt a Local Biodiversity Strategy and Plan

Local Governments can take a more strategic approach to planning for biodiversity through the development and adoption of a Local Biodiversity Strategy and Plan. These documents provide for early consideration of significant vegetation and biodiversity in all Local Government activities, including land use planning, project design and management of Local Government lands. They also help to raise community awareness and engagement. This approach can assist in reducing timeframes and costs associated with native vegetation clearing as they might be considered in assessments of clearing applications under Part V of the Environmental Protection Act.

Strategic approach to clearing and offsets

Streamline Strategic Clearing Permit Process

Strategic clearing permits provide the opportunity to reduce timeframes and costs associated with clearing by grouping multiple projects together under one permit. However, Local Governments experience with strategic clearing permits has been mixed. In principle they provide the opportunity streamline the process, however the significant resourcing required, and time taken (see Shire of Cuballing and Esperance case studies), mean this approach is not possible for many Local Governments. Further work needs to be undertaken by the Department, in consultation with Local Government, to identify how strategic permits could be used to facilitate a steam lined process.

State Government to fund biodiversity survey program

Local Governments must provide detailed environmental information when they applying for a native vegetation clearing permit. Local Governments undertake clearing for public purposes, such as road improvements. Information generated through this process is proponent-led and does not necessarily integrate with existing data sets to increase knowledge of biodiversity in WA.

The State Government has commenced a 10-year Aboriginal Heritage Survey Program across the State, managed by the Department of Planning, Lands and Heritage to assist with the recognition, management, protection, and preservation of Aboriginal sites in WA. Local Governments, along with WALGA considers a similar approach could be used by the Government, through funding a biodiversity survey program to consistently map key bioregions. This approach would reduce costs for Local Government and ensure accurate data was collected and centralised.

Funding a trial of using AI for biodiversity mapping

Over 60% of Local Government native vegetation clearing permit applications are for road construction or maintenance. The WALGA infrastructure team facilitated the collection of digital

imagery for use in road condition assessments across much of the State. The captured imagery, collected predominantly by a vehicle-mounted camera, includes images of the roadside on both sides of the road at 10 metre intervals, including vegetation (see Figure 4).

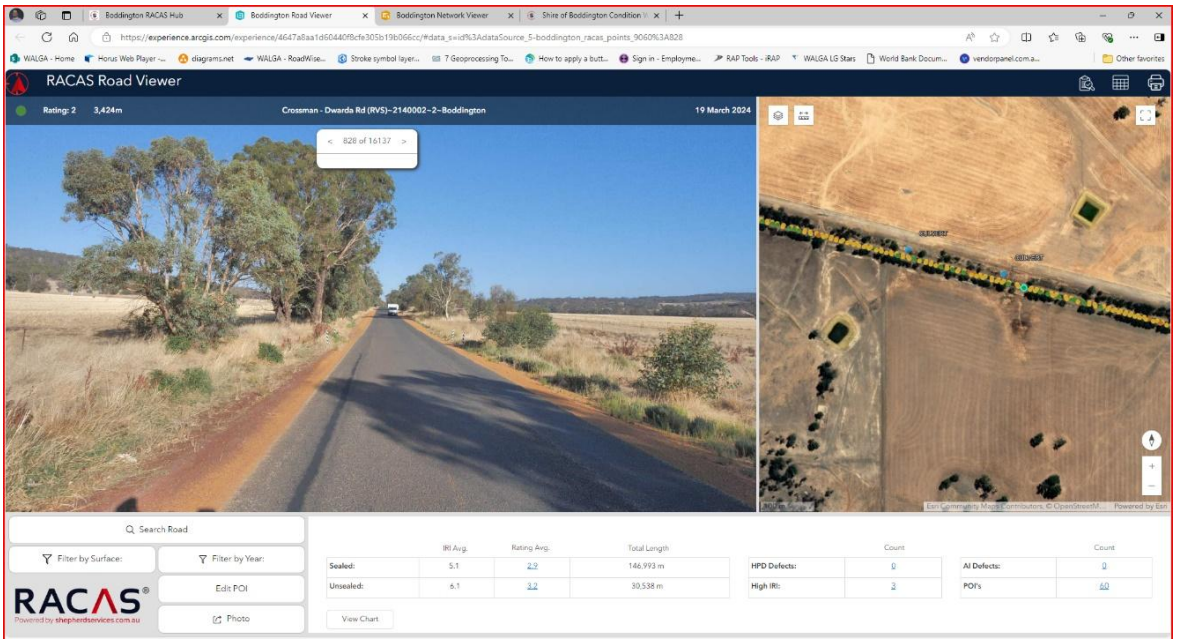

Figure 3: Example image captured by the WALGA infrastructure road mapping project

WALGA considers there is significant potential to use of Artificial Intelligence (AI) to interrogate existing imagery, to map the conservation value of roadside vegetation. It may be possible to apply the same principles used in road quality mapping—such as pattern recognition, anomaly detection, and predictive analytics—can be effectively applied to the mapping and monitoring of native vegetation. AI could be used to detect signs of illegal clearing, recognise bioregions, and identify Threatened Ecological Communities. This approach would utilise existing footage and reduce costs.

DWER develop strategic offset framework for Local Government

Under Parts 9 and 10 of the *Environmental Protection and Biodiversity Conservation Act* 1999 (EPBC Act), offset payments are required to compensate for significant residual impacts on protected environmental matters that cannot be avoided or mitigated. These offsets must directly relate to the environmental impact of the project and aim to achieve a net environmental benefit.

Frequently, Local Governments do not have suitable land available for offsets, making securing offsets increasingly complex and costly. WALGA supports the Native Vegetation Policy which calls for a regional approach to native vegetation management, particularly for highly cleared areas such as the Wheatbelt. Main Roads work in partnership with the DBCA, through a Memorandum of Understanding (MoU), to assist DBCA in identifying and acquiring suitable land offsets to be added to the conservation estate. This strategic approach has environmental and economic benefits and a similar approach could benefit Local Government.

WALGA recommends that, using a regional approach, the State Government identify key areas for strategic offsets and develop and implement a framework that Local Government can buy into for their offsets. The framework should ensure sufficient funding for ongoing maintenance, protection, and monitoring of offsets. This would reduce costs and timeframes associated with any application requiring offsets and provide additional environmental benefit.

A Note on Data Sources

Native vegetation clearing data was provided to WALGA by DWER in good faith to inform this analysis. DWER data is available up until the 2021-2022 financial year. The data is sourced from DWER's Clearing Permit System (CPS) and relates to the clearing of native vegetation under the authority of clearing permits issued under Part V, Division 2 of the *Environmental Protection Act 1986* (EP Act). The timeframe for approvals reflects the time from when the application was submitted until the processes was concluded.

The data does not include clearing authorised through Part IV of EP Act or any other statutory process. It also does not include clearing undertaken in accordance with exemptions listed in Schedule 6 of the EP Act and the Environmental Protection (Clearing of Native Vegetation) Regulations 2004, or statewide purpose permits. The data does not reflect the actual clearing undertaken as this can differ from the amounts authorised through a clearing permit.

The appeals data covers the timeframe 1 Jan 2021 to 27 August 2024. Appeals data was gathered from the website of the Office of the Appeals Convenor: https://www.appealsconvenor.wa.gov.au/Search-appeals

Appendix 1: Native Vegetation Definitions and Exemptions

The process for native vegetation clearing is governed by the DWER under the *Environmental Protection Act 1986* and the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* (Clearing Regulations).

Definitions

Clearing is defined in the EP Act as:

a) the killing or destruction of; or
b) the removal of; or
c) the severing or ringbarking of trunks and stems of; or
d) the doing of any other substantial damage to,

some of all of the native vegetation in an area, and includes the draining or flooding of land, the burning of vegetation, the grazing of stock, or any other act or activity, that causes—

a) the killing or destruction of; or
b) the severing of trunks or stems of; or
c) any other substantial damage to some or all of the native vegetation in an area.

Native vegetation is defined in the EP Act as:

> *indigenous aquatic or terrestrial vegetation, including dead vegetation unless that dead vegetation is of a class declared by regulation to be excluded from this definition, but not including vegetation in a plantation. Some intentionally sown or planted vegetation in included.*

[See: Native vegetation regulation fact sheet published by DWER]

If the activity meets the definitions of clearing and native vegetation, there are three pathways for Local Government:

1. Exemption
2. Referral
3. Permit.

The following section outlines what type of clearing can be undertaken through the exemption pathway.

Option 1: Exemption

Not all activities require a referral or permit. Certain exemptions may apply, such as for low-impact activities, maintenance of existing cleared areas, or emergency purposes.

There are two main types of exemptions:

1. Schedule 6 of the *Environmental Protection Act 1986*
2. Regulation 5 of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*.

Schedule 6 Exemptions

Schedule 6 exemptions in the EP Act include activities such as clearing for firebreaks, fence lines, infrastructure maintenance, public safety and emergency situations.

For example, a Local Government may require a landowner to clear firebreaks under Section 33 of the *Bush Fires Act 1954*. Clearing may be required for the establishment or maintenance of fence lines. Clearing may be necessary for the maintenance of existing infrastructure, such as roads or utility lines.

Regulation 5 Exemptions

Regulation exemptions are specified under the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*. They include exemptions for clearing that is necessary for public safety, such as maintaining sight lines for roads. Regulation 5 exemptions include clearing for the maintenance of existing infrastructure, such as roads, railways and utility services. Regulation exemptions can cover minor clearing of small areas of native vegetation for minor developments of activities that have minimal environmental impact. Regulation 5 exemptions can cover clearing required for emergency works and routine maintenance, such as maintaining fire breaks or access tracks.

Regulation 5 exemptions allow for necessary clearing activities without the need for a permit, provided they meet the specific requirements outlined in the Regulations.

See DWER (2019) A guide to the exemptions and regulations for clearing native vegetation under part V of the Environmental Protection Act 1986 for detailed examples and guidance. The Department has also issued specific guidance (2015) A guide to the exemption for clearing native vegetation for maintenance in existing transport corridors.

Appendix 2: Changes to Clearing Regulations

These changes are summarised from WALGA's 2020 Advice to Local Governments on the review of the EP Act.

Part V clearing permitting process

Environmentally sensitive areas

The Act has a modified process for declaring an environmentally sensitive area (ESAs) by prescribing them in Regulations, which is a more flexible process and make any changes easier (51B(1) modified).

Trivial clearing not requiring a permit

An important change is introduced in the referral process for clearing application which allows the CEO of DWER to determine that a proposed clearing can be considered trivial against specific criteria and would, therefore, not require a clearing permit (51DA(3)). The area to cleared must

- Be relatively small given how much vegetation remains in that region
- Be a relatively small portion of the remainder of that ecological community
- Not have significant environmental values within the area
- The state of scientific knowledge of the vegetation in the region is good
- The clearing doesn't raise any issues that require conditions to be set to manage or mitigate any impacts (51DA(4).

The CEO must inform the referrer and the public of any decision that a permit is not required, and there are no appeals against such a decision. However, if the CEO determines that an application does not require a permit, the referrer can still request the CEO to treat the application as requiring a permit ((51DA(8)).

This new provision would, in some cases, streamline the clearing permit process for Local Government activities.

Amending an existing clearing permit

The Act sets out a formal process for amending an existing clearing permit, which mirrors the process for new clearing permit applications (51KA).

Vegetation conservation notices

The EP Act now allows the CEO to impose specific measures to Vegetation Conservation Notices, notably monitoring, record keeping and reporting.

Clearing in response imminent danger

The Act now allows for clearing in an environmentally sensitive area to control an existing firewithout the need for a permit.

Clearing for fire mitigation purposes

Schedule 6 sets out clearing for which a clearing permit is not required, and the Act now provides some (but not complete) clarity as to whether clearing required under the Bush Fires Act (BF Act), requires a permit. The Schedule 6 references to the BF Act are amended to include:

(f) to comply with a notice given under section 33(1),

(g) as authorised under section 36(b)

Section 33 (1) of the BF Act gives the power to Local Governments to require land owners to carry out fire mitigation measures "for preventing the outbreak of a bush fire, or for preventing the spread or extension of a bush fire which may occur."

Section 36(b) of the BF Act allows Local Governments to uses it resources to control and extinguish fires, with 36(b) specifically providing a Local Government expend resources to "clear a street, road or reserve vested in it or under its control, of bush, and other inflammable material, for the purpose of preventing the occurrence or spread of a fire".

It is recommended that caution is used in interpreting these changes for two reasons. First, the Biodiversity Conservation Act 2016 (BC Act) and the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) still apply where there are threatened ecological communities (TECs) or threatened species present. Many local government reserves, especially in the Swan Coastal Plain and the Wheatbelt, have TECs present.

Second, there is some uncertainty as to the purpose of referring to these two sections in Schedule 6 and clarity is being sought from DWER on this. WALGA will provide separate advice on this issue.