

Flying Minute - WALGA submission on Guideline: Native Vegetation Referral, Part V *Environmental Protection Act 1986* (05-095-03-0001 GM)

By Garry Middle, Acting Manager Environment Policy

That the submission on the draft Guideline: Native Vegetation Referral be endorsed.

RESOLUTION 207.FM/2021

CARRIED

Executive Summary

- On 5 July 2021 the Department of Water and Environment Regulation (DWER) released the draft [Guideline: Native Vegetation Referrals \(the Guideline\)](#) for consultation by 30 July. WALGA was granted an extension to 6 August 2021.
- The Guidelines relate to a new clearing referral process introduced as part of the *Environmental Protection Act Amendment Act 2020* passed in November 2020 which removes the requirement for a clearing permit for low impact proposals. Referrals are not subject to public consultation and no fees are payable by proponents to DWER for the assessment of referrals.
- The Guideline provides prospective proponents for native vegetation clearing permits with information on the process, which enables the approval of low impact native vegetation clearing. This new pathway could assist some Local Governments to undertake clearing for road upgrades, improving sightlines, the extension of crossovers and other minor infrastructure projects.
- WALGA's previous submission on the EP Act amendments supported the introduction of a referral process for clearing of native vegetation for which an exemption does not apply as part of the *Environmental Protection Act 1986* review in 2020 on the proviso that environmental outcomes are not negatively affected.
- This submission recommends that Guidelines need to provide greater clarity and detail regarding the type of clearing that would be considered under the new referral process to avoid confusion and delays to projects through proponents choosing a referral rather than a clearing application pathway.
- The submission also acknowledges that, as the referral pathway is only for low impact clearing activities, it will be of less benefit to some Local Governments, particularly those on the Swan Coastal Plain and in the Wheatbelt. In this context the submission reiterates WALGA's existing position on the need for further improvements and efficiencies to regulatory processes for native vegetation clearing to enable Local Governments to deliver projects for their communities.
- The draft submission was considered and endorsed by the Environment Policy Team.

Attachment

- Draft WALGA submission on Draft Guidelines: Native Vegetation Referrals.

Background

On 5 July 2021 the Department of Water and Environmental Regulation (DWER) released the draft [Guideline: Native Vegetation Referrals \(the Guideline\)](#) for consultation by 30 July. WALGA was granted an extension to 6 August 2021.

The draft Guidelines provide information on the new clearing referral process introduced as part of the *Environmental Protection Act Amendment Act 2020* which removes the requirement for a clearing permit for low impact clearing and seek to help with the interpretation of the criteria set out in Section 51DA of the amended *Environmental Protection Act* for the assessment of these referrals.



To facilitate sector engagement on the draft Guidelines, WALGA distributed an InfoPage on 9 July, inviting comments from the sector by 22 July. Local Governments were encouraged to join in the DWER's on-line information session held on 19 July.

Officer comments on the draft Guideline were received from one Local Government, the City of Joondalup.

This draft submission is consistent with WALGA's previous submissions on native vegetation regulation, in particular the [Environmental Protection Act 1986 \(EP Act amendments\) submission](#) endorsed by State Council in January 2020 and the [Native Vegetation in Western Australia Issues Paper submission](#) endorsed by State Council in February 2020.

Comment

In reviewing the draft Guidelines, WALGA focused on whether the Guidelines provide adequate detail on how prospective applicants can participate in the new referral process, what type of clearing activities can be referred to DWER for assessment and how will DWER determine the outcomes of the referral.

WALGA's draft submission notes that the new native vegetation clearing referral process has the potential to improve the efficiency of meeting the regulatory requirements for some essential clearing activities undertaken by Local Governments, such as small scale road upgrades, improving sightlines, the extension of crossovers or other minor infrastructure projects.

The draft submission recommends that further detail is provided in the Guidelines on the criteria for determining what is low impact clearing so as to avoid confusion and delays to projects through proponents choosing a referral rather than an application pathway.

The submission also acknowledges that the determination criteria are designed to ensure that only low impact clearing activities proceed without a clearing permit and that some Local Governments, particularly those on the Swan Coastal Plain and in the Wheatbelt will be less likely to be able to utilise the new referral pathway. In this context WALGA reiterates its documented position on the need for further improvements and efficiencies to the regulatory process for native vegetation clearing, including:

- Increased State Government investment in the collection and provision of better information to support regulatory processes;
- The implementation of a more strategic approach to the management of native vegetation in Western Australia, particularly for priority bioregions such as the Swan Coastal Plain and the Wheatbelt; and
- The allocation of dedicated staff within the Department to assist Local Governments with the native vegetation clearing referrals and permits process (noting the sector is second only to the State Government in the number of clearing permit applications submitted annually).

The draft submission has been considered and endorsed by the Environment Policy Team.

FLYING MINUTE OUTCOME

Total invited to survey: 24

Total finished survey: 13

Endorse recommendation: 11

Endorse recommendation subject to comment below: 2

Do not endorse recommendation: 0

First Name	Last Name	Completed Date
Carol	Adams OAM	Not Completed
Phillip	Blight	06/08/2021 7:55
Julie	Brown	03/08/2021 8:20
Ruth	Butterfield	03/08/2021 15:48
Karen	Chappel	03/08/2021 17:40
Cheryl	Cowell	Not Completed
Malcolm	Cullen	05/08/2021 16:15
Frank	Cvitan	Not Completed
Tony	Dean	02/08/2021 21:03
Catherine	Ehrhardt	Not Completed
Russ	Fishwick	30/07/2021 15:19
Ronnie	Fleay	02/08/2021 15:33
Logan	Howlett JP	02/08/2021 10:57
Mark	Irwin	Not Completed
Paul	Kelly	Not Completed
Jenna	Ledgerwood	04/08/2021 7:18
Peter	Long	04/08/2021 16:18
Cate	McCullough	Not Completed
Chris	Mitchell JP	Not Completed
Les	Price	01/08/2021 21:49
Michelle	Rich	Not Completed
Ken	Seymour	Not Completed
Stephen	Strange	Not Completed
Doug	Thompson	06/08/2021 9:10

Responses

Poll Created: 30/07/2021 at 14:27

Poll Closed: 05/08/2021 at 23:59

(11) Endorse the Recommendation: Russ Fishwick JP (on: 30/07/2021 15:19), Les Price (on: 01/08/2021 21:49), Logan Howlett JP (on: 02/08/2021 10:57), Ronnie Fleay (on: 02/08/2021 15:33), Julie Brown (on: 03/08/2021 8:20), Tony Dean (on: 02/08/2021 21:03), Jenna Ledgerwood (on: 04/08/2021 7:18), Peter Long (on: 04/08/2021 16:18), Malcolm Cullen (on: 05/08/2021 16:15), Phillip Blight (on: 06/08/2021 7:55), Doug Thompson (on: 06/08/2021 9:10)

(2) Endorse the Recommendation subject to comment below: Ruth Butterfield (on: 03/08/2021 15:48), Karen Chappel (on: 03/08/2021 17:40)

(0) Do not endorse

Comments

Mayor Ruth Butterfield on 03/08/2021 15:48

Very much hoping for a balance between delaying important roadworks and losing the last of the fringing vegetation which makes country roads enjoyable for visitors.

President Cr Karen Chappel JP on 03/08/2021 17:40

I believe that all Local Governments will be affected not just the Southern and the Wheatbelt as our submission states. Perhaps we can broaden our submission to include the State not just a portion of it.

Secretariat Comment

In response to Mayor Butterfield:

WALGA notes the comment. The submission reiterates WALGA's point made in its previous submission regarding the *Environmental Protection Act 1986* (EP Act) amendments that changes to the EP Act are only supported if they do not result in adverse environmental outcomes. Based on the information provided by DWER during the information session on 19 August 2021 and based on the criteria, it is unlikely that there will be many projects qualifying for approval under the new referral pathway.

In response to Cr Chappel:

The comment is noted. There are significant parts of the State where the new referral pathway provides a viable option to gain approval for low impact clearing. The examples included in the submission are parts of the State with well documented issues affecting decisions on clearing applications. Wording in the submission has been amended to better reflect the application of the limitations of the new referral pathway.

The following amendment has been made to paragraph 3 on page 4 of the submission to better reflect this:

“While it is acknowledged that the determination criteria is designed to ensure that only low impact clearing activities proceed without a clearing permit, this means that there will be many parts of the state including parts of the Swan Coastal Plain, Wheatbelt or areas of dieback risk that will be less likely to be able to utilise the new referral pathway.”



Guidelines: Native Vegetation Referrals

Under Part V of the *Environmental Protection Act 1986*

Submission

July 2021

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1.0 About us

The Western Australian Local Government Association (WALGA) is the peak industry body for Local Government in Western Australia. WALGA is an independent, membership-based organisation representing and supporting the work and interests of 139 Local Governments in Western Australia.

WALGA provides an essential voice for over 1,200 Elected Members and approximately 14,500 Local Government employees as well as over 2.5 million constituents of Local Governments in Western Australia. WALGA also provides professional advice and offers services that provide financial benefits to the Local Governments and the communities they serve.

WALGA's governance structure is comprised of WALGA State Council, the decision making representative body of all Member Councils, responsible for sector-wide policy making and strategic planning on behalf of Local Government, and Zones, (5 metropolitan and 12 country), groups of geographically aligned Member Councils responsible for direct elections of State Councillors, providing input into policy formulation and providing advice on various matters.

2.0 WALGA's position

WALGA welcomes the opportunity to comment on the Draft Guidelines: Native vegetation referrals (Draft Guidelines). Due to the short consultation timeframe, WALGA has undertaken limited Local Government consultation. This submission has been endorsed by WALGA State Council.

WALGA provided a [submission](#) to the Department of Water and Environmental Regulation (DWER) on proposed *Environmental Protection Act 1986* (EP Act amendments) in January 2020, strongly supporting the introduction of a referral process for clearing of native vegetation for which an exemption does not apply but may not have a significant impact on the environment. In its submission WALGA noted that the proposed referral system will lead to improved ability of Local Governments to implement projects and recommended that the decision on whether a clearing permit is required be published.

WALGA's support of proposed amendments to the *EP Act* was made on the proviso that environmental outcomes are not negatively affected.

In this context, WALGA is providing the following comments on the Draft Guidelines, including several recommendations for clarifications and amendments to the Draft Guidelines.

3.0 Comments on the Draft Guidelines

General Comments

WALGA considers that the new native vegetation clearing referral process has the potential to improve the efficiency of meeting regulatory requirements for some activities undertaken by

Local Governments, such as vegetation clearing for minor road upgrades, improving sightlines, the extension of crossovers or other minor infrastructure projects.

WALGA is however concerned that the draft Guidelines do not provide sufficient detail on the criteria for determining what is 'low impact' clearing and on the process following the 21 days referral assessment when DWER determined, the referred proposal require a clearing permit. This is likely to result in confusion and delays to projects through proponents choosing a referral rather than an application pathway. This could have the unintended impact of increasing the time taken to obtain a clearing approval compared to the previous regulatory process.

To avoid this uncertainty and delay WALGA considers it is essential that the Guidelines provide clear and adequate information to assist applicants with making the decision at the beginning of the referral/application process on the likelihood that their proposal would be considered as having low environmental impact. At the webinar on the draft Guidelines DWER officers indicated that the provision of more specific guidance would reduce flexibility in decision making and that the Department would adopt a case by case approach in this regard. WALGA considers such an approach is unlikely to reduce the timeframes for assessments of native vegetation clearing activities. WALGA also considers that clarification should be provided regarding how the time taken to decide on a referral will be taken into account if it is determined that a clearing permit is required.

While it is acknowledged that the determination criteria is designed to ensure that only low impact clearing activities proceed without a clearing permit, this means that there will be many parts of the state including parts of the Swan Coastal Plain, Wheatbelt or areas of dieback risk that will be less likely to be able to utilise the new referral pathway. In this context WALGA reiterates its documented position on the need for further improvements and efficiencies to the regulatory process for native vegetation clearing, including:

- increased State Government investment in the collection and provision of better information to support regulatory processes
- the implementation of a more strategic approach to the management of native vegetation in Western Australia (including a State Native Vegetation Policy - see WALGA's submission on the Native Vegetation in Western Australia Issues Paper [here](#)), particularly for priority bioregions such as the Swan Coastal Plain and the Wheatbelt; and
- the allocation of dedicated staff within the Department to assist Local Governments with the native vegetation clearing referrals and permits process (noting the sector is second only to the State Government in the number of clearing permit applications submitted annually).

Finally, WALGA considers further information is required as to how the Department will assess and manage the cumulative impacts of low impact clearing within a specific location, noting that while an individual proposal for clearing may itself be considered insignificant, taken together with other activity within a specific location it could be considered significant.

Recommendations:

- further detail and information is included in the Guidelines on the criteria for determining what constitutes low impact clearing
- the clearing permit process for referrals that were determined to require a permit needs to take into account the time it took to make the determination on the referral as to avoid unnecessary delays in final approvals
- the Department prioritises investment in better information to support regulatory processes for native vegetation clearing, including through Environment Online
- the implementation of a more strategic approach to the management of Western Australia's native vegetation, particularly for priority bioregions such as the Swan Coastal Plain and the Wheatbelt
- the continued allocation of dedicated staff in DWER to assist Local Governments with the native vegetation clearing referrals and permits process; and
- further information is required as to how the Department will assess and manage the cumulative impacts of clearing within a specific location.

Guideline title

It is recommended that the title for these Guidelines be amended as its current format does not reflect its purpose and can create confusion. Section 51DA of the *EP Act* is titled 'Referral of proposed clearing to CEO for decision on whether a clearing permit should be obtained'. The only word that links the Draft Guidelines to this section of the Act is 'referral'. Amending the current 'Guidelines: Native vegetation referral' to "Guidelines: Referral of proposed native vegetation clearing" would better represent the purpose of the document.

Recommendation:

- The Guidelines title be amended to better reflect the purpose of the document which is the referral of proposed native vegetation clearing.

Section 3.3 Which proposed clearing activities are not suitable for this referral process?

The Draft Guidelines list conservation covenants set up under two specific Acts, the *Soil and Land Conservation Act 1945* (under Part IVA) and the proposed Part VB of the amended *EP Act*, as areas excluded from the clearing referral process.

There are two additional covenanting programs operating in Western Australia:

- conservation covenants provided under the *Biodiversity Conservation Act 2016* by the [Department of Biodiversity, Conservation and Attractions](#)
- conservation covenants provided by the National Trust of Western Australia, operating under the provisions of the *National Trust of Australia (WA) Act 1964*.

All of these covenants are legal agreements between the landholder and the covenant agency, registered on the title of the land. It is recommended that this section of the Guidelines is extended to include all types of covenants available in the State.

To make this section consistent with section 3.6 of the Guidelines, it is recommended that the list of lands for which the referral process cannot be used for a proposed clearing is extended to include lands that are subject to a soil conservation notice (issued under Part V of the *Soil and Land Conservation Act 1945*).

The third instance listed in the Guidelines where the referral process cannot be used is for clearing that will or is likely to trigger the need for referral to the Commonwealth Department of Agriculture, Water and the Environment under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. A link to the ['Protected Matters Search Tool'](#) – an on-line search tool for Matters of National Environmental Significance will help applicants with cross-referencing.

The final point in Section 3.3 of the Guidelines referring to protected flora, fauna or whether the clearing is likely to occur within highly cleared landscape can be confusing in the context of the Guidelines. Section 3.5 of the Guidelines lists all the considerations that will determine whether the proposed clearing can be undertaken without a clearing permit. The last point in Section 3.3 highlights only three of these considerations. Instead of listing these here, a note should be added to refer the readers to Section 3.5 of the Guidelines.

Recommendations:

- extend the list of lands where the referral process cannot be used to include all types of conservation covenants (there are four types available in Western Australia) and lands that are subject to a 'soil conservation notice'
- provide links/references to additional information to assist the applicant with self-assessment on the likelihood of their proposal having an impact on matters of national environmental significance; and
- remove the last item in Section 3.3 of the Draft Guidelines and refer readers to Section 3.5 instead.

Section 3.4: How to submit a clearing referral

It is difficult to comment on this section of the Guidelines as the application form does not yet reflect the new *EP Act* provision. It would be helpful to list in this section of the Guidelines the types of documentation needed to support a referral. For example, will referrals be considered if vegetation or fauna surveys for the proposed clearing area are not provided (currently an option in Part 6 of the Application form)?

It would also be helpful to highlight the requirement for all surveys submitted to support referrals to meet the requirements of the EPA's [Instructions for the preparation of data packages for the Index of Biodiversity Surveys for Assessments \(IBSA\)](#).

While the clearing permit application form includes checklists for other relevant regulatory approvals that might be required, it would be beneficial to highlight the need to seek other relevant approvals in this section of the Guidelines or add another section which explains these additional requirements.

Recommendations:

- extend section 3.4 of the Guidelines to define the requirements for information to support a referral, highlighting key documentation requirements listed in the Application form
- include (in this section or elsewhere in the Guidelines) information on other potential regulatory requirements that need to be checked by an applicant; and
- test the new native vegetation clearing application form with members of the Local Government Roadside Clearing Committee.

Section 3.5 Guidance on the matters the CEO must have regard to when determining when a clearing permit is required.

WALGA's recommendations in this section of the submission are not summarised at the end, but provided under each subheading. They include matters relating to the concepts covered and recommendations for changes to text to remove confusion and provide clarity.

Consideration 1: The area proposed to be cleared is small relative to the total remaining vegetation

Descriptions and terminology used in this part of the document are confusing:

- 'region' is used in the context of a bioregion (IBRA) as well as the heading for the three land use type classifications of Western Australia (Table 1) and in the context of Region Schemes.
- Table 1 heading 'The urban Perth, Peel and Greater Bunbury regions' needs to be clarified. Should it be interpreted as the Region Scheme Boundaries (DPLH-020) or the intent in Table 1 is that the listed thresholds only apply to the lands zoned 'urban' in the Metropolitan, Peel and the Greater Bunbury Scheme Regions?
- datasets listed as required to determine how much vegetation is remaining within and surrounding proposed clearing areas are confusing; DPIRD-006 is listed but to measure the vegetation extent remaining across the State, another datasets is required: 'Native vegetation extent' (DPIRD-005).
- while Figure 1 illustrates the extent of the Intensive and Extensive Land Use Zones, it does not help a potential applicant with identifying whether a project area will be in or out of the Intensive Land Use Zone (ILZ) for projects located along the eastern boundary of ILZ.

While it is appreciated that this section of the Guidelines seeks to show what information the Department will be using to make a determination on a referral under Section V of the

amended *EP Act*, this information needs to be clear to applicants so that referrals for projects that are unlikely to meet the criteria are avoided.

To address the inconsistencies identified above, WALGA recommends the following changes to this section of the Guidelines:

- amend terminology to clarify the meaning of ‘region’ in the consideration of the size of the proposed clearing area relative to the remaining vegetation
- when referring to the planning boundaries of the Region Schemes, use terminology consistent with the Department of Planning, Lands and Heritage, the data custodian for the spatial dataset representing these
- facilitate the provision of the ILZ and ELZ boundary mapping as a mapping layer via www.data.wa.gov.au. Potentially, include a list of Local Governments that overlap with ILZ and ELZ boundary line; and
- include a table with the complete list of datasets used to determine the thresholds under Consideration 1, including a dataset name with code (e.g. DPIRD-005) and link to the www.data.wa.gov.au or the www.data.gov.au websites.

This section of the Guidelines demonstrates the need for a more strategic approach to native vegetation management consistently advocated for by WALGA (see WALGA’s [submission](#) on *EP Act* amendments). Table 1 applies vegetation extent thresholds based on ecological consideration to administrative boundaries without the consideration of the ecological values within the administrative boundaries. A study undertaken by WALGA’s [Perth Biodiversity Project](#) in 2012 demonstrated the importance of consideration of the distribution of pre-European vegetation type mapping within administrative boundaries such as Region Scheme Areas. This study has found that for some vegetation communities very limited opportunities existed for retention or protection outside the Perth Metropolitan and Peel Region Scheme areas. Thus applying the 10% threshold for vegetation retention for these administrative areas could result in significant decline of unique vegetation. While it is acknowledged that in the context of this new referral process, vegetation extent is only one consideration, for some vegetation types the likelihood of triggering criteria under Considerations 2, 3 or 4 for the determination of the referral might be limited in the designated Region Scheme areas.

Consideration 2: Known or likely significant environmental values within the area

WALGA recommends the following changes and additions to this section of the Guidelines:

- clarify what ‘the area’ means. It is implied that it is the proposed project clearing footprint and areas within certain distances from that clearing footprint. Clarification of ‘proximity’ will be helpful
- broaden the consideration of wetlands to incorporate wetland mapping across the State
- make the criteria for ‘Conservation Reserves’ consistent with other Department guidelines (e.g. [Guidance Statement: Environmental Siting](#)) by renaming it to ‘Conservation Areas’ and including Regional Open Space (Region Schemes) as Bush Forever only covers the Metropolitan Region Scheme area and other lands designated

for protection (e.g. all Crown reserves vested for conservation not only those managed by the DBCA as listed in the draft Guidelines); and

- extend Table 2 to include a column with the list of relevant datasets and their sources.

Consideration 4: Whether conditions are likely to be required to manage environmental impacts

WALGA recommends that this section of the Guidelines is extended to provide guidance on what type of information is required to demonstrate avoidance and mitigation of impacts of the proposed clearing undertaken by the applicant.

Section 3.6 What happens after a referral form is submitted?

Further information is needed to clarify the referral process and timelines. It is not clear till the next section of the Guidelines (Section 3.7) that the anticipated timeframe for a response to a referral application is 21 days. It would also be helpful to clarify what the applicant should consider when deciding whether to submit a new clearing application or request that the referral was dealt with as if it were an application. Inclusion of a graphic similar to that shown at the Department's information session on 19 July would be helpful.

Recommendations:

- provide timeframes for each option of the Department's consideration of a referral; and
- provide additional information to support applicant's decisions on how to proceed when a clearing permit is required.

Section 3.8 What happens after the department made its decision?

WALGA recommends publishing the referral details and including the clearing footprint approved via the referral process onto DWER's mapping and publish it via www.data.wa.gov.au ([Clearing Instruments Activities \(Areas Approved to Clear\) DWER-076](#)). This will not only assist with monitoring of cumulative impacts but also the effectiveness of this new process.