



# Native Vegetation in Western Australia Issues Paper

## Submission

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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 138 Local Governments in Western Australia.

WALGA provides an essential voice for approximately 1,222 Elected Members and approximately 22,000 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 overall comments

WALGA welcomes the opportunity to comment on the *Native Vegetation in Western Australia Issues Paper*. Local Governments have been consulted in the development of this submission and it has been endorsed by WALGA State Council.

Local Governments, in their roles as a land owners and managers and as proponents for clearing proposals, 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.

In making this submission WALGA also notes that there are other parallel processes underway about modernising the *Environmental Protection Act 1986* (EP Act), and consideration of the review of the State Environmental Offsets Framework, both of which will have implications for the management of native vegetation in Western Australia, as may the review being undertaken of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

WALGA has previously commented on the need for a strategic and comprehensive approach to the management of Western Australia's native vegetation, including in its recent submissions on the [DWER Discussion Paper on Cost Recovery](#), [DWER draft Compliance and Enforcement Policy](#) and Modernising the *Environmental Protection Act 1986*. This submission should be read in conjunction with those submissions.

As a general comment, WALGA supports the proposed four initiatives contained in the Issues Paper as ways to improve consistency, transparency and fairness in how native vegetation is managed across all government processes. The Local Government sector represents a significant proportion of all clearing permit applications, second only to the State Government, and as such it has a clear interest in ensuring that the regulatory system and overall framework

for the management of native vegetation is efficient, effective and equitable.

Local Governments have expressed particular concern about unclear regulatory requirements, inconsistent advice and long timeframes for gaining approvals, especially where proposed works are supported by time limited grants, such as for local road construction and upgrades and bushfire mitigation works. It is noted that DWER's performance in meeting the target of assessing clearing permit applications within 60 business days is poor, with only 49 per cent within this timeframe in 2018-19. One example of approval timeframes brought to WALGA's attention shows that of the 20 clearing applications for road works upgrades lodged between March 2017 and July 2018, six have still not been completed, and for eight of the finalised applications, the timeframes between lodging of application and finalisation of the process has ranged from 136 to 505 days.

In summary, WALGA supports changes to the decision making processes that provide clear guidance on regulatory requirements, more consistent advice from DWER and improved timeliness of decisions especially where time limited grants are tied to works requiring clearing.

Better decision making can and should be done in a manner that doesn't compromise environmental standards. In WALGA's submission on the proposed EP Act amendments it was noted that various reports have argued that in some regions in WA, notably the Wheatbelt and the Swan Coastal Plain, ecological limits of clearing have been exceeded and that the State Government needs a strategic, comprehensive and sustainably funded approach to the protection of native vegetation of which clearing regulation is only one part. Consequently, it is disappointing that the primary purpose of the Issues Paper and the proposed initiatives are only about improved *process* – i.e. better consistency, transparency and fairness in how native vegetation is managed across all government processes.

An improved process alone will not lead to sustainable management of Western Australia's native vegetation. Rather, WALGA recommends that the Native Vegetation Policy must take a comprehensive approach to the management and protection of the State's native vegetation. This Policy must include clear, outcomes based objectives for each initiative which are embedded into the Policy's implementation.

Consistency in decision making is only possible when a strong and clear policy framework exists, which is currently absent. In this context, the development of a State Native Vegetation Policy is supported. However, if the scope of the policy is to be constrained to being high level and to only be about better process, the policy will be ineffective in dealing with the challenges facing native vegetation and its management as described on page 2 of the Issues Paper. These include fragmentation, loss of connectivity, over grazing, weed invasion, altered hydrology, salinity, exotic species, feral animals, altered fire regimes and climate change, and that in many cases, multiple threats are at play. Addressing these threats and pressures will require considerable effort by government at all levels, private land owners and the wider community, and needs to be supported by a clear and strong policy framework.

In short, WALGA recommends that the scope of the policy be expanded beyond being about better process and should have the broad aim of addressing the challenges facing native vegetation and its management through a collaborative approach involving all key

stakeholders including Local Government.

The Issues Paper notes that WA is a signatory to COAG 2012 Australia's Native Vegetation Framework, and that "the national goals have not been integrated into a single policy or approach." (P6). The framework has 5 goals:

- Goal 1 - Increase the national extent and connectivity of native vegetation
- Goal 2 - Maintain and improve the condition and function of native vegetation
- Goal 3 - Maximise the native vegetation benefits of ecosystem service markets
- Goal 4 - Build capacity to understand, value and manage native vegetation
- Goal 5 - Advance the engagement and inclusion of Indigenous peoples in management of native vegetation.

Goals 1 and 2 are clear outcome based goals endorsed at the national level, and WALGA recommends that these or similar goals be articulated in the State policy as *net* gains as this would provide a clear management outcome for native vegetation management and decision making and be an important step in providing more consistency in decision making.

There is also a deeper and embedded problem with consistency around clearing permits and approvals. The current list of exemptions and their application in and outside of environmentally sensitive areas are both confusing and inconsistent and is open to manipulation where land owners can carry out clearing under an exemption which, over time, can lead to significant cumulative loss which would not otherwise be permitted. In this context it is noted that clearing by the Department of Biodiversity, Conservation and Attractions on land it manages is exempt, whereas clearing on conservation reserves vested in Local Government is not. Most recently Local Governments have received conflicting advice and unclear processes for approvals required under the EP Act, the *Biodiversity Conservation Act 2016*, and the *Bush fires Act 1954*, (in relation to clearing permits, exemptions and licences) to undertake bushfire mitigation works. WALGA recommends that State Government needs to provide a clear position about the permit process for clearing for fire risk mitigation.

It is also noted that significant clearing associated with approved subdivisions under the *Planning and Development Act 2005* is being carried out based on two assumptions which may not be valid in all cases. The first is that the planning scheme amendments that supported these subdivisions have been referred to the EPA and that the EPA has found that the affected vegetation is not significant. The second assumption is that the EPA has concluded that the planning system can address the need to protect any vegetation within a subdivision site, notably through the implementation of planning policies like Bush Forever and Liveable Neighbourhoods. The State Planning Framework talks extensively about the need to protect natural resources and promote urban forests. Unfortunately these policy positions have arguably not transferred into outcomes, nor influenced the dominant development patterns to an extent necessary to reduce clearing rates. WALGA's concerns on this matter relate to both greenfield and infill development. The majority of these approved subdivisions are on the Swan Coastal Plain where clearing has already exceeded ecologically sustainable limits. Consequently, it should not be assumed that all subdivisions are exempt from requiring a clearing permit and WALGA recommends that the status of the outcome of the referrals to the

EPA of the relevant scheme amendments should be reviewed to ensure that the significance of remnant vegetation within urban areas is assessed fully prior to decisions on subdivision being made.

In summary, there are significant and fundamental problems with the clearing permit process which are not, and cannot, be addressed by the limited scope of the Issues Paper and the proposed initiatives, and the current proposed changes to legislation. WALGA recommends that a wide ranging, strategic and comprehensive review of, and inquiry into, the clearing permit process and the planning and management of native vegetation in the State is required. As well, WALGA recommends that State of the Environment Reporting should be re-introduced which would allow public reporting on how the environment is responding to the various threats, pressures and management responses, including the extent of cover and condition of native vegetation. This information is vital in measuring the effectiveness of the initiatives proposed in the Issues Paper. WALGA recommends that the State Government allocates appropriate funding for this data collection.

The remaining comments in this submission will address the four initiatives described in the Issues Paper as well as comments on additional initiatives. WALGA notes that the Issues Paper is deliberately open and suggests options for addressing issues rather than proposing specific detailed measures. This approach is supported and provides the opportunity for more strategic responses to the key issues.

### **3.0 Comments on proposed initiatives**

#### **3.1 Consultation process and timeframes**

WALGA appreciates the effort made by DWER in the initial consultative process involving a series of workshops, and also that additional workshops have been scheduled in regional WA for early this year. The review period for this Issues Paper included the period between December and January which has made it difficult to consult with our member Councils as they close down for some of this period, and most Councils do not have meetings in January.

WALGA therefore recommends that the comment period for the Issues Paper be extended to give enough time for those who attend those later workshops to make a submission.

It is noted that only four weeks consultation will be provided on the draft State Native Vegetation Policy. This will not allow WALGA, our member Local Governments and other stakeholders sufficient time to consider the implications of the draft policy and prepare responses. WALGA recommends that the comment period for the draft State Native Vegetation Policy be extended.

#### **3.2 State Native Vegetation Policy**

Three broad objectives as proposed are generally supported but, as noted above, are process orientated only. WALGA recommends that an outcome based objective be included consistent with the 2012 COAG goals, particularly with respect to net gain in vegetation cover and net improvement in vegetation condition.

WALGA also recommends that outcomes based objectives that address the question of thresholds be included: i.e. what level of clearing represents a sustainable ecological limit, both in terms of total cover and for specific vegetation units. WALGA also recommends that the policy should make a clear statement that exceeding these thresholds is inconsistent with policy objectives and that clearing of vegetation where thresholds would be, or are already being, exceeded is generally unacceptable. As well, WALGA recommends the policy should set clear outcomes based objectives for key issues, including management of weeds, feral animals, fire regimes, connectivity and adapting to climate change. It is likely that different bio-regions will have different challenges and priorities for action, and it is recommended that objectives for these key issues be set both broadly and specifically for each bio-region.

There are a range of agencies whose activities and policies have an impact on the protection and management of native vegetation, in particular the Western Australian Planning Commission, the Department of Planning Lands and Heritage, Department of Biodiversity, Conservation and Attractions, the EPA, and the Department of Mines, Industry Regulation and Safety. WALGA recommends that in order for the State Native Vegetation Policy to be effective, the relationship between other policies impacting on native vegetation should be fully explained, and where another policy is inconsistent with the State Native Vegetation Policy how will these inconsistencies be resolved.

If this policy is to be effective in achieving its objectives, its implementation will require considerable cooperation between key agencies and Local Government. WALGA recommends the policy be supported by a collaborative governance framework which should be described in the policy document and be adequately resourced by the State Government on an ongoing basis. Many Local Government will be willing participants on an appropriately designed collaborative governance framework.

WALGA also recommends that the policy recognises the important role that private land owners and local governments play in managing native vegetation, and that resources and incentives be provided to assist the ongoing management of native vegetation on private land. For example, the existing carbon credit scheme could be extended to carbon in the soil initiatives, and offsets could be applied in a more strategic way to create linkages between isolated pockets of remnant vegetation in highly cleared landscapes.

In particular, WALGA has proposed that the State Government fund a program to promote and coordinate the management of vegetation in rural road reserves with significant ecological values by Local Governments. Road reserves, particularly in otherwise extensively cleared landscapes, contain significant biodiversity, including threatened flora and ecological communities that may not be found elsewhere. Road reserves also provide critical wildlife habitat and corridors, especially when connected to native vegetation remnants and may assist in addressing biodiversity threats associated with climate change.

### **3.3 Better information**

WALGA agrees that that there is an urgent need for more and better information to support good decision making, and making this data publicly available as an on-line resource is also

supported. WALGA has worked with the State to improve access to the State's data relevant to regulatory requirements, and its analysis to support these, including the assessment of native vegetation clearing proposals by Local Government via its Environmental Planning Tool (EPT)<sup>1</sup>. This application demonstrates the value and benefits of such an application in early identification environmental matters requiring consideration in project delivery or asset upgrades and maintenance. WALGA would welcome an opportunity to work with the State on linking the State's new system with the EPT to avoid duplication and ensure the incorporation of local data as part of decision making.

Better information also means investing in the collection of data in priority areas, which should be an essential component of bioregional planning. Data on environmentally sensitive areas is of particular concern and WALGA recommends the spatial accuracy of this data should be regularly updated.

### 3.4 Better regulation

As a sector that is second only to the State Government in the number of clearing permits submitted, Local Government requires a regulatory regime that is effective, efficient and equitable. As a general principle, the level of regulation imposed should be at the minimum required to ensure the adequate protection of Western Australia's native vegetation.

The Issues Paper notes key issues with the current regulatory regime, including unclear objectives, inconsistency in the environmental standards applied in decision making, and uncertain wait times. The timeframe for approvals is a critical issue for Local Governments, especially where grants to carry out works such as bushfire mitigation and road construction and maintenance are involved.

Local Government frustration with the regulatory requirements for their activities requiring a native vegetation clearing permit are reflected in on-going requests for changes to the regulatory system. Via WALGA's Zone and State Council representation, Local Governments have requested changes to the native vegetation clearing regulations, including calling for:

- exemptions for Local Government services (State Council resolution 2012 & 2017)
- amendments to exemptions relating to clearing in road reserves, ranging from specific changes to clearing to improve sightlines to overall exemptions within narrow road reserves (20m wide) (via Regional Road Groups or direct representation to WALGA in 2017-2019)
- intervention in the system to prevent vexatious appeals which can result in significant delays in road works delivery dependent on time specific grant funding requirements
- a review of conditions put on clearing permits, due to impacts on timeframes for the deliverer of road projects (Zone resolution 2018), and

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<sup>1</sup> The Environmental Planning Tool is sector specific mapping application used by Local Government to inform land use, infrastructure and natural resource management planning, Note, the application will be known as LGmap from January 2019.

- clarity around the application of clearing exemptions (numerous requests for clarification via WALGA due to inadequate responses from DWER staff).

Local Governments have been seeking to progress issues with the clearing permit process through the Local Government Roadside Regulation Working Group comprising WALGA, Local Government officers, DWER and DCBA. WALGA recommends that, as noted in its submission on DWER's Discussion Paper on cost recovery, that DWER establish a dedicated resource within DWER to deal with Local Government permit applications to provide both a timely service and consistent application of policy.

Local Governments are also frustrated at the time taken to resolve appeals on clearing permits. WALGA recommends that there should be statutory timeframes introduced in the EP Act for the appeals process and that a report on the appeal should be provided to the Minister within 60 days. WALGA also recommends that DWER introduce as part of its decision making processes ongoing consideration of the outcomes of the appeal process to identify and address recurring matters raised in appeals that can be addressed and modified in future assessments and approval conditions.

WALGA supports the changes to the clearing permit process for trivial clearing proposed in amendments to the EP Act currently under consideration. While WALGA supports this change it considers that there are significant and fundamental problems with the clearing permit process which are not, and cannot, be addressed by the limited scope of the Issues Paper and the proposed initiatives, and the current proposed changes to legislation. As stated earlier in the submission WALGA recommends that a wide ranging strategic and comprehensive review of, and inquiry into, the clearing permit process and the planning and management of native vegetation in the State is required.

WALGA also recommends that the matter of unauthorised clearing needs to be given greater attention by DWER to avoid the perception that there are few, if any, consequences for land owners who carry out unauthorised clearing. Having better and updated information on vegetation cover and condition would help DWER identify and act on any unauthorised clearing.

### **3.5 Bioregional approach**

The Issues Paper notes that the proposed policy will apply a strategic approach to vegetation management through 'bioregional tailoring' where regional priorities are set. Presumably, these priorities will drive decision making and management within the region, where 'unique or at-risk environmental values' are addressed at the regional level. WALGA recommends that greater clarity on this is needed as to what 'bioregional tailoring' means. The discussion on the State vegetation policy suggests that there will be two levels of objectives - state-wide and at the bioregion – but it is not made clear what matters will be covered at the state-wide level and what is relevant at the regional level. For example, it is unclear whether clearing thresholds vary from region to region, or if offset options will be tailored to the priorities of each bioregion. WALGA recommends that greater clarity is provided on how the two levels of objectives will work.

As previously indicated WALGA recommends that the development of bioregional approaches and priority setting is underpinned by investment in data collection and provision, and that engagement with key stakeholders in each bioregion, including Local Government is undertaken.

## 4.0 Other initiatives

The implementation of the State Environmental Offsets Framework has been inconsistent, lacking in transparency, and overall effectiveness. DWER's internal review of the State Offsets Framework has found that it is not achieving its objective of counterbalancing the significant residual impacts of proposals.

In this context WALGA recommends that changes to the existing environmental offsets framework are needed to improve the clarity and transparency of the offsets process; ensure compliance and improved reporting (see [WALGA's recent submission on the Department's draft Compliance and Enforcement Policy](#)); ensure offsets are appropriate and environmentally effective; reduce duplication; and achieved at least cost.

The Issues Paper refers to exploring the innovative use of environmental offsets to drive a net improvement to native vegetation extent or condition, which WALGA supports in principle. The more strategic use of offsets offers an opportunity for Local Governments to be the custodians of offsets in critical areas where restoration of native vegetation should be a priority, however, WALGA recommends that the cost of on-going management of offset sites needs to be addressed. A key barrier to a more strategic use of offsets would be a strict adherence to like for like offsets. WALGA supports in principle trading offsets between regions rather than just within a region as a way to facilitate restoration in highly clear areas like the Wheatbelt.

The requirement to provide offsets as a condition of some clearing permits can be a significant financial burden for smaller Local Governments in the agricultural region, which is also a region where the extent of clearing has already exceeded ecological limits. The limited resources available to Local Governments in this region is a significant barrier to reversing the decline in vegetation: however, WALGA supports a more strategic use of offsets from other regions, including the establishment of regional conservation funds, could help address this resource constraint and address the decline in vegetation in the region.

## 5.0 Conclusion

WALGA appreciates the opportunity to comment on the *Native Vegetation in Western Australia Issues Paper* but has concluded that there are significant and fundamental problems with the clearing permit process which are not, and cannot, be addressed by the limited scope of the Issues Paper, and the current proposed changes to legislation. WALGA recommends that a wide ranging strategic and comprehensive review of, and inquiry into, the clearing permit process and the planning and management of native vegetation in the State is required.

Three of the key initiatives – the implementation of the policy, better information and the bioregional approach – will likely require considerable cooperation between key agencies, Local Government and, where appropriate, private land owners. WALGA recommends that these initiatives be supported by a collaborative governance framework which should be described in the policy document and be adequately resourced by the State Government on an ongoing basis. WALGA and many Local Governments will be willing participants on an appropriately designed and collaborative governance framework.