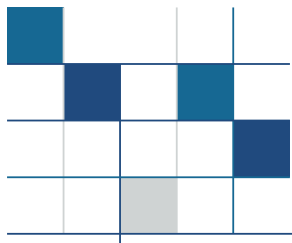




Consultation summary report

Guideline: Native vegetation clearing referrals

October 2021





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Contents

- 1. Background 1**
- 2. Submissions received 1**
- 3. Key issues and responses 1**
 - 3.1 Guidance does not protect native vegetation 1
 - 3.2 Timeframes and efficiency gains..... 2
 - 3.3 Interaction of referrals with the clearing permit application process..... 4
 - 3.4 How clearing permit exemptions fit into the referral process..... 4
 - 3.5 Delegation of authority to the Department of Mines, Industry Regulation and Safety 5
 - 3.6 Difference between Part IV and Part V referrals 6
 - 3.7 Interaction with the EPBC Act..... 6
 - 3.8 Inclusion of other types of covenants..... 7
 - 3.9 Meaning of ‘highly cleared landscape’ 8
 - 3.10 Submitting a clearing referral 9
 - 3.11 Interaction between referral assessment criteria and the clearing principles 10
 - 3.12 How will criterion 1 be determined and applied?..... 10
 - 3.13 Criterion 1 thresholds for the size of clearing area (hectares)..... 11
 - 3.14 Criterion 1 thresholds for remnant vegetation (percentages) 13
 - 3.15 Criterion 1 – thresholds required for remnant vegetation for the relevant ecological community..... 14
 - 3.16 Criterion 2 – environmental values list incomplete or requires clarification... 15
 - 3.17 Aboriginal heritage and engagement 16
 - 3.18 Availability of adequate information 16
 - 3.19 Clearing permit not required determination 18
 - 3.20 Clearing cannot proceed determination 19
 - 3.21 Interaction with other approvals and legislative processes 19
 - 3.22 No public comment or appeals process 20
- 4. Out of scope matters 21**
- Appendix A - Consultation respondents 22**



1. Background

The Department of Water and Environmental Regulation (the department; DWER) developed the draft [Guideline: Native vegetation clearing referrals](#) to support stakeholders' understanding of the new clearing referrals process.

The department released the draft guideline for a one-month public consultation period from 30 June 2021 to 30 July 2021. The department also delivered an online information session during the consultation period.

This report summarises the key issues raised during the consultation period, the department's responses to those issues, and how the final guideline was updated.

2. Submissions received

The department received 57 submissions, both supportive and unsupportive of parts of the guideline. Many submissions sought clarification on a range of content.

All submissions were considered during the preparation of this summary report. See Appendix A for a list of the respondents.

See Section 3 below for an outline of the key issues raised and the department's responses.

3. Key issues and responses

3.1 Guidance does not protect native vegetation

Submissions on this issue:

- objected to the clearing referrals process in general, based on concerns that it would:
 - authorise the clearing of native vegetation without a formal assessment, and/or
 - lead to increased cumulative clearing impacts
- urged the guidance to promote native vegetation conservation and restoration initiatives.

Some example comments were:

- *"I urge you to oppose the draft Guideline and instead, establish stricter controls that will protect our remaining areas of native vegetation. We need to do everything we can to protect these areas for the wildlife that depend on them, as well as for the benefit of current and future generations."*
- *"It is my belief that the draft new guideline for native vegetation referrals and its consequences are in contradiction to sound conservation guidelines and practices and need to be revised in their entirety. A guideline where true*



protection, management and restoration of these unique ecosystems are the key objective for the benefit of us all.”

- “[The submitter] *does not support the introduction of any process that diminishes biodiversity in our south west global biodiversity hotspot. Retention and protection of the remaining urban bushland is a key goal. In summary, there are major problems with this draft referral process and it is recommended that it be substantially revised with a changed focus to promote the ‘avoid’ principle for all clearing in the intensive land-use zone in SW WA, and especially in the urban Perth, Peel, and Greater Bunbury regions, and in the Wheatbelt.*”

The clearing referrals process is only suitable for those clearing activities that would have very low environmental impact, or where the referrer is uncertain about whether an exemption applies.

As applicable, DWER or the Department of Mines, Industry Regulation and Safety (DMIRS) will assess all clearing referrals against the criteria listed under s.51DA(4) of the EP Act to determine if they are very low environmental impact. The criteria are explained further in the guideline. Clearing activities that are not exempt or do not meet all of these assessment criteria will require a permit.

Outcome

The guideline was updated to clarify that:

- the referral process is suitable for clearing activities that are very low environmental impact
- all referrals will undergo an assessment against the referral criteria included in the guideline
- clearing activities that do not meet all criteria will require a permit.

3.2 Timeframes and efficiency gains

Submissions on this issue:

- sought clarification on what the 21-day period is and how it works
- raised concerns the referrals process would not improve clearing permit assessment timeframes when there was a decision that a permit was required
- asked whether ‘stop the clock’ processes will apply to the referrals process.



Some example comments were:

- *“The Guideline lacks transparency regarding the decision timeline and stop-the-clock provisions relevant to the referral process. It is unclear whether the 21-day timeframe includes the referral validation process, and at what point the stop-the-clock mechanism may be activated by either DWER or DMIRS.”*
- *“...the guideline suggests that DWER may not be bound to a 21-day timeline for providing a decision on a referral. Therefore, at the end of 21 days if the applicant has not received a decision, the applicant is left either waiting for a decision, or deciding whether to submit a clearing permit application. Does this mean the referral stage was made redundant and the applicant is required to submit a clearing permit application and the process starts from scratch, therefore extending their waiting period by 21+ days? This issue of timing may cause uncertainty for applicants, and should be clarified in the Guideline.”*

The EP Act does not specify assessment timeframes for clearing referrals, but it does say that if the referrer has not received a notification within 21 calendar days of submitting their referral, they may:

- request in writing that the referral be treated as a clearing permit application and pay the prescribed fee, or
- wait until they are notified of the department’s decision.

If the referrer decides to apply for a permit or the department determines that a clearing permit is required, the permit application will progress through a more streamlined validation process, as most of the required information will have been provided to the department on the [Application for new permit/Referral to clear native vegetation form](#), or is captured in the department’s other databases.

Outcome

The guideline was updated to clarify that if a permit is required, the referrer’s permit application will progress through a streamlined validation process.

The [Procedure: Native vegetation clearing permits](#) was also updated to include more detail on:

- how the referrals process fits in with the overall stages of assessment for permit applications (including flowcharts)
- clearing permit assessment timeframes and when the ‘stop the clock’ protocols apply.



3.3 Interaction of referrals with the clearing permit application process

Submissions on this issue suggested the guideline would be improved with flowcharts and decision trees to help users visualise:

- the interactions of clearing referrals with clearing exemptions
- the broader clearing permit applications process.

Example comments were:

- “[The submitter] *recommends clarifying the scope of the native vegetation referral process in the context of existing native vegetation clearing exemptions and approvals processes through a diagram.*”
- “*Strongly suggest to include a flow chart on ‘Do I Need A Permit?’ (similar to the flowchart DWER has for environmental impacts on watercourse bed and banks).*”
- “*The description of the process relies on text and is not necessarily easily understood by all readers. A visual representation of the referral process would assist the reader’s understanding of the process. [Suggest including] a simple flow chart or diagram similar to ‘Figure 2. Stage 1: Pre-application process flowchart’ in the Procedure: Native vegetation clearing permits.*”

Outcome

The guideline was updated with diagrams to illustrate:

- when a clearing referral or clearing permit is required
- the different clearing referral process outcomes.

The [Procedure: Native vegetation clearing permits](#) was also updated to integrate the new referrals process (including flowcharts) and show how it fits into the broader clearing permit application processes.

3.4 How clearing permit exemptions fit into the referral process

Submissions on this issue sought clarification on how clearing permit exemptions fit into the referral process.

Example comments included:

- “[The submitter] *requests that applications for clearing of native vegetation associated with reduction of bush-fire risk (e.g. thinning out of vegetation, clearing of understory) be considered for instances where a Clearing Permit is not required.*”



- “[The submitter] recommends clarifying that if the person undertaking the clearing considers that an exemption applies, that person need not make a referral.”
- “[The submitter] recommends that the Guideline be amended to provide additional guidance and certainty in relation to the application of exemptions to proposed clearing.”

Proposed clearing that qualifies for an exemption under either Schedule 6 of the EP Act or r.5 of the Clearing Regulations does not need to go through the clearing referrals process. However, when prospective applicants are uncertain about whether an exemption applies, they should submit a referral form. DWER/DMIRS will then determine if an exemption applies. If an exemption does apply, the referral outcome would be that a permit is not required.

Outcome

The guideline was updated to clarify that:

- the clearing referrals process is suitable when there is uncertainty about whether an exemption applies
- if the department identifies that an exemption applies, the outcome of the referral will be ‘permit not required’
- the relevant exemption will be recorded on the referral decision notice.

3.5 Delegation of authority to the Department of Mines, Industry Regulation and Safety

Submissions on this issue expressed concern that DMIRS has delegation to assess proposed clearing related to mineral and petroleum activities.

Some of the concerns were about:

- a perceived conflict of interest
- potential inconsistencies in applying the referral assessment criteria.

An example comment was:

“I am very concerned about the fact the Mines Department has authority to review applications relevant to mining and mineral exploration. This seems a lot like leaving the fox in charge of the hen-house. I don’t feel that the industry which stands to make economic gain from the results of clearing should be given authority to assess their own clearing applications. I imagine most mining applications will come from the extensive land use zone where the minimum size for permits is 5 ha – which is quite a large amount and numerous ‘small’ applications could quickly add up.”



The [DWER-DMIRS Administrative Agreement](#) allows DMIRS to receive, assess, and determine clearing referrals and permit applications for mineral and petroleum activities. The administrative agreement has been in place since 2005, with various iterations since then, and requires DMIRS to:

- use the application forms and external guidance that DWER produces
- apply the same assessment criteria, decision-making standards, and conditions that DWER uses to assess non-mining related applications.

The administrative agreement is being reviewed and updated to incorporate the clearing referrals process into its framework.

Staff from DWER and DMIRS also hold joint officer training seminars to ensure both departments apply the assessment criteria consistently. This will be continued for clearing referrals.

Outcome

No changes to the guideline.

3.6 Difference between Part IV and Part V referrals

Submissions on this issue sought clarification on the differences between the new clearing referrals process under Part V of the EP Act, and referrals to the Environmental Protection Authority (EPA) under Part IV of the EP Act.

An example comment was:

“The Guideline does not provide any insight on what threshold constitutes a clearing permit assessment under Part V or Part IV of the EP Act, clarity on how these differentiations would assist.”

Outcome

The guideline was updated to explain further the distinction between Part IV and Part V types of referrals.

The [Procedure: Native vegetation clearing permits](#) was also updated to reflect this.

3.7 Interaction with the EPBC Act

Submissions on this issue suggested the guideline should have more information on how the clearing referral process would interact with the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) processes and the assessment bilateral agreement.



Some example comments were:

- “...the guideline [should] consider how the relevant departments will account for assessment or approval decisions undertaken by other relevant government agencies, such as Commonwealth Government decisions under the EPBC Act. What if there’s an EPBC Act approval in place? How would this influence the department’s determination?”
- “A revision and addition should be that the new referral process cannot be used for proposed clearing in a TEC, PEC, in habitat for declared rare species of flora or fauna, or for areas which include matters of national environmental significance under the Commonwealth EPBC Act.”

The Australian Government and the State of Western Australia have entered into an [assessment bilateral agreement](#) (under s.45 of the EPBC Act).

The EPBC Act only deals with impacts to matters of national environmental significance. Any proposed clearing that would adversely impact on these environmental values would fail to satisfy the guideline’s criterion 2 (*‘no known or likely significant environmental values within the area’*) and would thus require a clearing permit.

Outcome

No changes to the guideline, which states that proposed clearing likely to have a significant impact on matters of national environmental significance is unsuitable for the EP Act referral process.

3.8 Inclusion of other types of covenants

Submissions on this issue recommended the guideline stipulate the referral process cannot be used for proposed clearing on land subject to soil conservation notices or other types of conservation covenants, such as those issued under the *Biodiversity Conservation Act 2016* (BC Act) or *National Trust of Australia (WA) Act 1964*.

Some example comments were:

- “*Recommendation: 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’.*”
- “[The submitter] recommends that biodiversity conservation covenants, as defined under Part 8 of the BC Act, be included as unsuitable for referral.”

Proposed clearing on additional types of conservation covenants will generally not satisfy the guideline’s criteria because of the potential impacts on environmental values (criterion 2) and/or would require conditions to manage those impacts (criterion 4).



Only agreements to reserve and conservation covenants under the *Soil and Land Conservation Act 1945* (SLC Act), and environmental protection covenants under Part VB of the amended EP Act (once those provisions take effect), are specifically excluded from being eligible for the referrals process. This is stipulated in s.51DA(1) of the EP Act.

DWER/DMIRS has no legal standing to prevent a person from submitting a clearing proposal through the referral process. However, if the proposed clearing is likely to cause environmental impacts, it may be more appropriate for that person to apply for a permit instead of submitting a clearing referral.

Although clearing that would contravene a soil conservation notice is technically eligible for the clearing referrals process, however, the legislation requires that the referral outcome is a 'clearing cannot proceed' determination (s.51DA(6)).

Clearing on land subject to a soil conservation notice that does not contravene that notice may be suitable for a referral, provided it meets the other suitability criteria and would have only very low environmental impact.

Outcome

The guideline was updated to reflect that the referral process is not suitable for proposed clearing:

- on land subject to a conservation covenant issued under the *Biodiversity Conservation Act 2016* or the *National Trust of Australia (WA) Act 1964*
- if it would contravene a soil conservation notice issued under the SLC Act.

3.9 Meaning of 'highly cleared landscape'

Submissions on this issue sought clarity on the meaning of a 'highly cleared landscape' in the list of types of clearing that would be unsuitable for the referrals process.

Some example comments were:

- *"This seems to be worded poorly. What is the value being impacted upon in a highly cleared landscape? Presumably the proposed clearing would not be supported not due to being situated within a highly cleared landscape but rather due to only having relictual or remnant vegetation. The wording should therefore state something to the effect of '...or is in an area with limited relictual and remnant vegetation'."*
- *"Can DWER please confirm whether the proponent could make an assessment against Consideration 1 to determine whether the area would be classified as a 'highly cleared landscape' (Section 3.3) and therefore not suitable for a referral? Alternatively, how do we quantify what is classified as a 'highly cleared area'?"*



- *“Some additional explanation of the intent behind this could be added as it is not immediately apparent why clearing within a highly cleared landscape (i.e. landscape with few remaining significant environmental values) is more sensitive than a landscape that is not highly cleared.”*

The phrase ‘highly cleared landscape’ encompasses several factors, with the quantity of nearby remnant native vegetation (primarily addressed through criterion 1) being one of these. Other factors may include how that remnant vegetation is distributed (addressed through criterion 2).

Outcome

The guideline was updated to note that the elements of criterion 1 can be used to define whether an area is a highly cleared landscape.

3.10 Submitting a clearing referral

Submissions on this issue sought clarity on which form to complete, and what information would be required when submitting a clearing referral.

An example comment was:

“The application link takes you to a generic page of application forms. It is not clear which application form to complete. And if a purpose or area permit form, how does DWER NVP know that it is a REFERRAL request rather than an APPLICATION for a clearing permit, if the form is the same for both processes.”

The department has prepared a new *Application for new permit/Referral to clear native vegetation* form which merges the existing area permit and purpose permit application forms.

On the form the referrer/applicant must indicate whether their submission relates to a referral, an area permit application, or a purpose permit application.

A referral’s information requirements are the same as those for a permit application, and these are listed on the form. This approach means that if the proposed clearing outlined in the referral form does require a permit, the permit application will undergo a more streamlined validation process.

There will be no changes to the fees for the different types of permit applications. There are no prescribed fees to submit a referral.



Outcome

The guideline was updated to explain how the new submission process will work, including a direct reference to the new combined form.

Supporting information was also added to the updated [Procedure: Native vegetation clearing permits](#) and the revised [clearing permit application forms page](#).

3.11 Interaction between referral assessment criteria and the clearing principles

Submissions on this issue asked about the relationship between the referral assessment criteria and the clearing principles under Schedule 5 of the EP Act, against which clearing permit applications are assessed.

Some example comments were:

- *“Parameters that will be assessed by DWER...as part of the referral process appear to cover similar environmental issues as the 10 clearing principles, and it is not clear how assessment against the four [criteria] will differ to assessment against the 10 clearing principles. If assessment of the four referral [criteria] involves a similarly robust and detailed process as DWER’s normal clearing permit assessment, it is not certain how achievable a streamlined process or reduced timelines will be.”*
- *“The Guidelines: Native vegetation referrals should clarify the relationship between table 2 of the guideline and the ten clearing principles and when they apply in the clearing application and assessment process.”*

Outcome

The guideline was updated to clarify that while the matters considered under the referral assessment criteria are similar to the clearing principles and often use the same data resources for their assessments, they are still separate and distinct.

3.12 How will criterion 1 be determined and applied?

Submissions on this issue:

- asked whether the cumulative impacts of clearing would be considered
- expressed concern around clearing within already highly cleared landscapes, especially the Swan coastal plain
- requested definitions for terms such as ‘region’ and ‘intensive land use zone’
- wanted to know which datasets were being used to determine whether the criteria had been satisfied (some suggested additional or alternative datasets).

Some example comments were:



- *“Further information is required as to how the department will assess and manage the cumulative impacts of clearing within a specific location.”*
- *“[The submitter] recommends a more detailed guide to the spatial data sets that are used to determine how much remaining vegetation is located within and surrounding proposed clearing areas referred to in Section 3.5 should be included in this document.”*
- *“Under [criterion 1] the guideline should refer to the more detailed vegetation datasets available on Data WA (vegetation complexes for SCP (DBCA-046) or south west forest region (DBCA-047)) as well as the currently mentioned vegetation types (DPIRD-006) that applies to the rest of the state.”*

Outcome

The guideline was updated to:

- clarify and expand on the specific datasets and resources that we will use to determine how much native vegetation remains within and near the proposed clearing, and thus how cumulative impacts are considered
- change references to ‘region’ in Table 1 to ‘IBRA bioregion’ and ‘Region Scheme constrained area’
- define the term ‘constrained area’ as it applies to the Perth Metropolitan Region Scheme and Greater Bunbury Region Scheme
- add a reference to the ‘South west agricultural region’ ([DPIRD-008](#)) dataset (on which the boundary of the intensive land use zone is based).

3.13 Criterion 1 thresholds for the size of clearing area (hectares)

Submissions on this issue raised concerns around the hectare-based threshold limits that DWER/DMIRS will use when assessing criterion 1.

Some of the concerns were about:

- the 1 ha threshold being too high for clearing within the intensive land use zone (and especially so for the Swan coastal plain area)
- the threshold limits being too low and that most referrals could not meet them
- what the specific thresholds for ‘extent of proposed clearing area’ were (i.e. ‘per area’, ‘per year’ or ‘per referral’)
- the significance of the 26° South latitude as a cut-off, north of which the threshold is 10 ha instead of 5 ha.

Some example comments were:



- *“This whole section would allow and could indeed encourage clearing of small areas up to 1 ha, patch by patch, and hence is unacceptable. For example, clearing and loss of an area of 1 ha of native vegetation in small patches in the already fragmented Perth region does result in a highly significant impact.”*
- *“As part of the thresholds, the [submitter] recommends that a minimum and maximum threshold be included. The current threshold of ‘exceeding 1 hectare’ suggests that areas smaller won’t have any implications, which is not always the case.”*

While most of the submissions that raised this issue broadly reflected the above points, one submission suggested the draft limits were too low and should instead be increased to 3 ha:

“...[the submitter] is concerned that the very low clearing thresholds proposed will not have any significant positive impact by providing certainty for industry or help improve DWER workload efficiencies. [The submitter] suggests that consideration is given to expanding the guideline to include a threshold and parameters for ‘low risk clearing’, in particular, by raising the threshold for the area of clearing to up to 3 ha within the Perth-Peel regions in Table 1...”

DWER/DMIRS will only issue a ‘permit not required’ determination when all of the referral assessment criteria are satisfied. The current 1 ha threshold is considered appropriate within the context of the typically highly cleared and/or fragmented landscapes within the intensive land use zone.

The 26° South latitude line was used because the proportion of remnant native vegetation located north of this boundary generally exceeds 90 to 95%. It is therefore able to support a higher threshold of 10 ha for the area of proposed clearing that may qualify for a ‘permit not required’ referral determination.

Outcome

The guideline was updated to:

- state that the hectare-based clearing thresholds apply on a per referral basis
- clarify that if the proposed clearing does not satisfy all of the referral assessment criteria, a permit will be required.
- explain the significance of the 26° South latitude line (and included its approximate location on the map depicting the boundaries of the intensive land use zone).



3.14 Criterion 1 thresholds for remnant vegetation (percentages)

Submissions on this issue queried the percentage thresholds for remnant vegetation used in criterion 1, suggesting they were too low, especially for the Swan coastal plain area.

Some example comments were:

- *“Degradation of bushland without referrals for clearing permits, such as allowing the clearing of land down to only 10% remaining coverage of native vegetation will reduce the resilience of such remnant patches. These remnants will be at greater risk of multiple threats including invasive species and the edge effect of weeds, infiltration of litter and plastics, loss of diversity of native fauna, and potential exposure to & spread of dieback disease.”*
- *“The urban area is already a highly cleared landscape. The minimum thresholds [that] are part of [criterion 1] do not take this into account when assessing against a 5 km radius or less than 10% of remaining vegetation. [The submitter] is concerned about the implications of additional habitat loss on unprotected fauna as part of this process.”*
- *“The threshold for remaining vegetation in regions should be 30% in urban regions, 50% in the [intensive land use zone (ILUZ)] and 70% in the [extensive land use zone (ELUZ)]. Similar levels should apply for the threshold vegetation surrounding the proposed clearing. Such levels provide a buffer to achieve the required minimum level of 30% in the ILUZ and prevent over-clearing locally and regionally in the ELUZ as a result of mining or energy projects.”*

DWER/DMIRS apply these thresholds when assessing clearing permit applications – see DWER’s [A guide to the assessment of applications to clear native vegetation](#) for further information. To ensure consistency across the department’s assessment framework, we will use the same thresholds to assess referrals.

The 10% remnant native vegetation threshold for the Metropolitan Perth and Greater Bunbury areas aligns with:

- their respective [Region Schemes](#)
- [State Planning Policy 2.8 – Bushland Policy for the Perth Metropolitan Region](#)
- the EPA’s interim strategic advice for [Perth and Peel @ 3.5 million](#).

The 30% threshold for the remaining areas within the state aligns with long-term state and federal native vegetation retention targets, and advice that species loss appears to accelerate exponentially below this threshold. The threshold is consistent with the [State Planning Policy 2.8 – Bushland Policy for the Perth Metropolitan Region](#), and the [National objectives and targets for biodiversity conservation 2001–2005](#)).



Outcome

The guideline was updated to:

- reflect that the Peel region's remnant native vegetation threshold is 30%, consistent with the EPA's interim advice for [Perth and Peel @ 3.5 million](#).
- clarify that if the proposed clearing does not satisfy all of the referral assessment criteria, a permit will be required.

3.15 Criterion 1 - thresholds required for remnant vegetation for the relevant ecological community

Submissions on this issue:

- raised concerns that Table 1 did not adequately address an aspect of criterion 1; that is, the size of the clearing relative to the total remaining vegetation for the ecological community which that vegetation was a part of
- asked for clarification on how we would apply the proximity radius/buffer when assessing the proposed clearing.

Some example comments were:

- *"The 10% remaining level that you state in the draft appears that it is general statement but the area to be cleared could have vegetation complexes considered and locally rare species."*
- *"There is a lack of guidance as to how and at what scale the 'total remaining vegetation of the ecological community' will be determined. The Guideline specifies thresholds for relative assessment of remaining vegetation at the regional level, however not at the ecological community level."*
- *"It is unclear how [the] proximity radius will be determined. [The submitter] recommends clarifying that the proximity radius will be determined from the perimeter of the proposed clearing area."*

Outcome

The guideline was updated to:

- change the *'threshold for remaining (native) vegetation in the region'* sub-criteria to *'threshold for remaining extent of that native vegetation association or complex in the relevant IBRA bioregion'*
- clarify that the proximity radius/buffer for the remaining total native vegetation surrounding the proposed clearing area will be measured from the boundary of the proposed clearing area.



3.16 Criterion 2 - environmental values list incomplete or requires clarification

Submissions on this issue:

- suggested the condition of native vegetation had not been factored into the assessment against criterion 1 (extent of remnant native vegetation)
- recommended the inclusion of additional environmental values in Table 2
- queried the definition of some environmental values, with some descriptions using potentially ambiguous and/or subjective language.

Example comments were:

- *“An issue with the above table [Table 1] is that it does not take into account native vegetation CONDITION, only quantity of native vegetation.”*
- *“A more comprehensive list of significant environmental values could be included under [criterion 2], perhaps including the values listed in the EPA’s [Environmental factor guideline: Flora and Vegetation](#). It may also be possible to refer to the criteria for identifying regionally significant naturally vegetated areas (see Section 3.7 of Bush Forever 2: Directory of Bush Forever Sites or Appendix 3 of the Greater Bunbury Region Scheme).”*
- *“The definition of ‘conservation reserve’ for [criterion 2] in Table 2 should be revised to include all crown reserves with conservation stated in the reserve purpose...”*

Outcome

The guideline was updated to provide more guidance on how criterion 2 will be assessed and applied.

In addition, the list of environmental values in Table 2 of the guideline has been updated to:

- add ‘vegetation condition’ to Table 2
- add ‘water resources’ to Table 2
- add ‘land and soil quality’ to Table 2
- add ‘heritage-related values’ to Table 2 (see also Section 3.17 below)
- change ‘fauna habitat’ description from ‘significant habitat’ to ‘critical habitat’
- change ‘significant ecological linkage’ description from ‘...proposed clearing may impact on...’ to ‘...proposed clearing is part of...’
- change ‘conservation reserve’ description to provide an expanded (but still not exhaustive) list of example land types that may be covered by this environmental value.



3.17 Aboriginal heritage and engagement

Submissions on this issue asked to include Aboriginal heritage issues as an environmental value (under the criterion 2 considerations) and to ensure traditional owners were consulted as part of the assessment process.

An example comment was:

“No consultation with traditional owners required before the proponent refers a low impact clearing referral and no notification to traditional owners of the proposal and opportunity to comment...it is paramount to the protection of Aboriginal sites or objects that vegetation clearing permits are granted with the knowledge and consent of the traditional owners.”

The department appreciates the importance of protecting Aboriginal cultural heritage sites and values, and consulting with traditional owners as part of the decision-making process.

Clearing located on native title land or that would impact on Aboriginal heritage values automatically triggers additional legal requirements under the *Native Title Act 1993* (Cth) or *Aboriginal Heritage Act 1972* (WA) respectively. As such, if DWER/DMIRS find that any proposed clearing would impact on either of these matters, it would immediately trigger a ‘permit required’ determination. This ensures adequate opportunity for consultation with traditional owners before a decision is made on whether to authorise the clearing.

Outcome

The guideline was updated to include Aboriginal heritage values and native title matters as an environmental value in Table 2.

3.18 Availability of adequate information

Submissions on this issue:

- suggested the available data resources were inadequate
- asked for more detail on relevant data resources, particularly related to Table 1 and Table 2, to aid in self-assessment before submitting a referral or permit application
- wanted clarification on what level of survey was expected to support a referral submission.

Some example comments received were:

- *“Unfortunately, a desktop assessment is only as good as your data. This is an issue, as potentially data is not regularly updated, including aerials – and referrals and applications could be assessed on misrepresentative data – resulting in ‘death by a 1000 cuts’”*



- *“I would query how a landowner would decide if the clearing activities are ‘likely to have very low environmental impacts’. The landowner, who wants to clear his or her land, is motivated by this desire so will not be seeking to find out any environmental qualities his or her land might have. The CEO or officer of DWER will only be looking at the proposal on paper with advice from the landowner.”*
- *“If there are no known significant values, [this] does not mean they are not present. The lack of detailed scientific survey to record flora, vegetation community and fauna values and thus lack of scientific information will be a common issue for proposed clearing of small areas. It is likely that officers assessing whether a referral is required for a site will not have the relevant scientific knowledge of the site.”*
- *“...the environmental values identified in Table 2 that are also considered in the assessment process should be available on public spatial data sets. This will ensure proponents can easily conduct a self-assessment, enabling proponents to provide higher quality, informed applications.”*

DWER/DMIRS uses several information resources when assessing a proposed clearing activity. These include internal and external databases, many of which are listed on the [Data WA website](#).

The department recognises that aspects of the existing knowledge base for remnant native vegetation and environmental values in Western Australia may be incomplete and/or outdated. To that end, one of the primary objectives of the (draft) *Native vegetation policy* is the long-term improvement and standardisation of spatial data capture for environmental values, and regulatory and other decisions that may impact on remnant native vegetation. For more information about this objective and the proposed strategies for achieving it, see the [Native vegetation policy](#) (DWER consultation draft, August 2021).

The department also relies on information from the referrer to conduct its assessment, especially for site-specific information where other data is only available at a more regional level. Legal safeguards exist to ensure the accuracy of any information provided. For example, the provision of false or misleading information is a prosecutable offence (s.112 of the EP Act).

If referrers provide insufficient information with their referral submission, they will likely not satisfy criterion 3 (*‘the state of scientific knowledge of native vegetation within the region is adequate’*) and a permit will be required. There is no set standard for the level of biodiversity survey that may be required to support a referral submission.

Referrals will be assessed using the information available at the time. However, this information will change over time – for example, as the conservation status of certain species are revised, or new cumulative impacts become evident. Accordingly, if the referrer cannot complete the proposed clearing within two years, they will need a



permit. If clearing authorised under the referral is not undertaken within two years, they will have to make a new referral.

Outcome

The guideline was updated to:

- specify relevant datasets, particularly in relation to criterion 1 and the extent of remnant native vegetation.
- provide links to relevant publicly available datasets (e.g. the [Data WA website](#)).
- specify that if referrer cannot complete clearing within two years, they will need a permit.

3.19 Clearing permit not required determination

Submissions on this issue asked whether the referrer had to meet other requirements if they received a ‘permit not required’ determination (e.g. post-clearing reporting).

Example comments included:

- “[The submitter] notes that the Guideline does not address...the relocation or rescue of species of value prior to clearing...”
- “As this guideline is currently structured there is no reporting requirement if it is deemed that a permit is not required, will this apply in every instance? Such as if management actions are required or advised to be undertaken?”
- “[Will] any post clearing requirements...be needed in the absence of the clearing requiring a permit? For example, will there be a need for the provision of actual area cleared data?”

If the proposed clearing activity qualifies for an exemption or satisfies all of the assessment criteria, the referral outcome will be that a permit is not required. DWER/DMIRS will inform the referrer of the decision in writing. The decision notice will include an expiration date. If the clearing is not completed within that timeframe, the referrer will need to submit a new clearing referral.

No monitoring or reporting requirements are attached to a ‘permit not required’ determination, because of the low-impact nature of the clearing. If conditions or mitigation actions were required, the referral would not satisfy criterion 4 (*‘conditions will not be required to manage environmental impacts’*) and a permit would be required.

Outcome

The guideline was updated to reflect that:



- if the referral outcome is a ‘permit not required’ determination, that determination will only be valid for the time specified in the referral
- if the clearing cannot be completed within two years, a permit will be required.

3.20 Clearing cannot proceed determination

Submissions on this issue suggested:

- an outcome of ‘clearing cannot proceed’ is inappropriate
- the ‘clearing cannot proceed’ outcome is appropriate in more circumstances than only contraventions of soil conservation notices.

Example comments included:

- “[The submitter] *does not support a ‘clearing cannot proceed’ outcome from the referral process. A proposed clearing activity should only be refused after it has progressed through the proper assessment process. [The submitter] suggests the ‘clearing cannot proceed’ outcome to be checked against s.51E(4) of the EP Act in that if an application complies with the application requirements the CEO must advise the applicant that it has been received, as per s.51E(4)(a), invite comments, as per s.51E(4)(b) [and] (c), and then and only then can the CEO grant or refuse the application, as per s.51E(5).”*
- “*Are there other reasons that clearing may not proceed? Only contravention of a soil conservation notice is provided. [The submitter] suggest list these, or link.”*

The ‘clearing cannot proceed’ outcome is exclusively for cases where the proposed clearing would contravene a soil conservation notice. This is built into the statutory provisions, as per s.51DA(6) of the EP Act.

If s.51DA(6) did not exist, the permit application outcome would be a refusal if the clearing contravened a soil conservation notice, as granting a permit for such clearing would not be compatible with s.51D(3)(c).

Outcome

No changes to the guideline.

3.21 Interaction with other approvals and legislative processes

Submissions on this issue sought clarification on how the referrals process would interact with other approvals and legislative processes.

Some example comments were:



- *“With regards to the new referral determination and clearing in Country Areas Water Supply Act 1947 (CAWS Act) areas; is the determination of ‘no clearing permit required’ similar to an exemption in that a CAWS Act licence would then still be required?”*
- *“The draft Aboriginal Cultural Heritage Bill 2020...provides that a clearing permit is an exempt activity. Even if this is amended it may still include referrals under s.51DA where a decision is made that a permit is not required.”*

Outcome

A new section was added to the guideline advising that other local, state, and/or federal legislative obligations will still apply, and explaining the types of circumstances where exemptions from those other obligations may or may not encompass referral determinations.

3.22 No public comment or appeals process

Submissions on this issue raised concerns that:

- referrals will not be published for public comment before a determination was made
- there will be no options for appealing against a referral decision.

Some example comments were:

- *“[The submitter has] concerns around the lack of public comment and then lack of appeal. If there is an issue that has been understated or overlooked, there is no avenue for reversal of this decision.”*
- *“[The submitter] recommends that an appeals process on the relevant department’s referral decision is available. This is significant particularly if the referral is assessed at the level of ‘Notice that clearing may not proceed’ as effectively there would be no recourse on the referral. The only other option would be to refer the clearing proposal to the EPA under s.38 of the EP Act.”*

The amended EP Act does not provide for an appeals process against the outcome of a clearing referral assessment. This applies equally to both referrers and third parties. Adding an appeals process for referrals would require further amendments to the EP Act, which was outside of the scope of this guideline and consultation.

The guideline establishes the criteria that DWER/DMIRS will consider when making a determination on whether a permit is required. The department considers that a public comment period before making a determination is not necessary, as the referral process is only suitable for very low environmental impact clearing.



Outcome

No changes to the guideline.

4. Out of scope matters

Some submissions raised matters outside the scope of this guideline. These broadly included, among others:

- clearing permit application fees (and fee waivers)
- industry-specific guidance materials (e.g. silviculture)
- proposed changes to the existing clearing exemptions regime
- suggestions for new guidance or programs aimed at incentivising the protection of native vegetation
- the allocation of departmental resources
- the effectiveness of the compliance and enforcement programs.

While these are not specifically addressed in this report, the information has been captured by the department and will be used to inform future regulatory and legislative reform programs.

The department is committed to ongoing engagement with its stakeholders and the community. The matters raised through submissions and in consultation will be considered as part of this engagement.



Appendix A - Consultation respondents

Government agencies
Department of Biodiversity, Conservation and Attractions
Department of Jobs, Tourism, Science & Innovation
Department of Mines, Industry Regulation and Safety
Department of Planning, Lands and Heritage
Department of Primary Industries and Regional Development
Department of Transport
Development WA
Environmental Protection Authority of WA

Local government authorities
City of Bunbury
City of Swan
Shire of Augusta Margaret River
Shire of Chapman Valley
Shire of Denmark
Shire of Donnybrook Balingup
Shire of Murray
Shire of Waroona

Other
Aqwest
Association of Mining and Exploration Companies
ATCO Australia
Australian Petroleum Production & Exploration Association
Bronwen Veale
Canning River Residents Environment Protection Association
Cement Concrete & Aggregates Australia
Chamber of Minerals and Energy of WA
Cleveland Agriculture
Colma Keating
Denmark Environment Centre



Other
Diane Matthews
Environment Institute of Australia & New Zealand
Friends of Mosman Park Bushland
Friends of Trigg Beach
Grecian Sandwell
Isabelle Gagnon
Karena Joyce
Katanning Landcare
Kimberley Pilbara Cattleman's Association
James Mumme
JC Forestry
Joy Boothman
Margaret Owen
Metropolitan Cemeteries Board
Murdoch University, School of Veterinary Medicine
Murray Radestock
National Environmental Law Association (WA Division)
Sian Mawson
Sonya Elek
Strike Energy Limited
SW Environmental
Terrestrial Ecosystems
Urban Bushland Council of Western Australia
Urban Development Institute of Australia (WA)
Warwick Boardman
Water Corporation
Western Australian Local Governments Association
Western Power
Wildflower Society of WA
Yamatji Marlpa Aboriginal Corporation