CONSERVATION COUNCIL
OF WESTERN AUSTRALIA INC.

WILDFLOWER SOCIETY OF WA SINCE 1958

Urban Bushland Council WA Inc

THE WILDERNESS SOCIETY

CLEARING REGULATIONS REVIEW PANEL
JOINT SUBMISSION

6th March 2009

The following submission is made jointly by the Conservation Council of Western Australia, the Wildflower Society of Western Australia the Urban Bushland Council WA and The Wilderness Society Western Australia.

Summary

The Land Clearing Regulations have failed to control clearing in WA.

WA's landscapes, vegetation, flora, fauna, and fungi are inherently diverse and rich in species. Endemicity is generally very high, for example some 80% of flora species in the south west botanical province are endemic. It is a nationally accepted principle, also recognised by the EPA, that *'biodiversity is best conserved in situ'*.

Land clearing remains a significant threatening process to the conservation of the State's biodiversity. Every hectare cleared results in a loss of biodiversity and thousands of hectares of intact bushland are being cleared each year in WA. Even clearing of individual trees in the wheatbelt results in significant loss of ecosystem process and species. Furthermore the rich assemblage of species and processes in a bushland ecosystem cannot be replaced by revegetation. It follows then that every hectare of bushland cleared results in a net loss of biodiversity. Now protection of biodiversity is one of the EPA's key objectives. Therefore clearing is 'a significant environmental factor' which requires assessment by the EPA under part IV of the Environmental Protection Act (EP Act).

Under the National Objectives and Targets for Biodiversity Conservation, to which WA is a signatory, the target for clearing controls is to reduce the net rate of land clearing to zero. With thousands of hectares approved for clearing and tens of thousands apparently cleared without approval or illegally each year, the controls are clearly not effective in reducing the

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net rate of land clearance to zero in WA. Thus WA is not meeting its commitment under the National Objectives and Targets for Biodiversity Conservation (Commonwealth of Australia June 2001).

There are serious shortcomings with the current regulatory framework and its implementation. We therefore recommend very significant changes. We argue that land clearing should be formally assessed under Part IV of the EP Act and that clearing regulations should only be used for small scale exemptions limited to items such as fire breaks, building envelopes. Public reporting of all land clearing is essential as is the establishment of a well- resourced 'Clearing Response Unit' for monitoring and compliance.

Four case study examples of clearing are included at attachment 1 of this submission. Each case study identifies serious failings of the existing system of clearing regulation in different contexts.

Performance of the Clearing Regulations

Specific government objectives for the Clearing Regulations do not appear to have been articulated so there is an absence of State-based performance measures. However we assume that the Regulations should at least have been a WA response to the National Objectives & Targets for Biodiversity Conservation promulgated in 2001 and to which the State is a signatory.

Section 1.1.1 of the statement reads:

'By 2001 all jurisdictions have mechanisms in place, **including regulations**, at the State and regional levels that:

- prevent decline in the conservation status of native vegetation communities as a result of land clearance, and
- prevent clearance of ecological communities with an extent below 10 % of that present pre-1770'.

Section 1.1.2 of the statement reads;

'By 2003 all jurisdictions;

- have clearing controls in place that prevent clearance of ecological communities with an extent below 30% of that present pre-1750, and
- have programs in place to assess vegetation condition'.

Section 1.1.4 of the statement reads;

By 2005, all jurisdictions have clearing controls in place that will have the effect of reducing the national net rate of land clearance to zero'.

The National Objectives & Targets included performance measures that needed to be serviced by State-wide monitoring and accounting systems. It is clear from the State of the Environment (SoE) and Auditor General's reports, and from our attempts to obtain information, that these systems have not been properly developed and as a consequence we

know very little about the outcomes of the Regulations. The State remains non-compliant with respect to its national obligations on vegetation clearing

Of course the need to protect native vegetation has many other dimensions with respect to the maintenance of 'ecosystem-services' apart from biodiversity conservation. These include the control of dryland salinity, the control of erosion and conservation of soil biota, the maintenance of groundwater quality, the generation of local rainfall and the sequestration of carbon. The assessment, monitoring and maintenance of native vegetation, with respect to the future delivery of these services, remains grossly deficient.

Land clearing is a major source of greenhouse gas emissions, representing over 10 per cent of Australia's emissions, which is higher than all transport emissions. However, deforestation has been excluded from the Carbon Pollution Reduction Scheme due in large part to the protections that are said to exist at State level against land clearing. Quite clearly the State would be negligent in not ensuring tight Regulations exist to reduce greenhouse gas emissions from deforestation and native vegetation clearing.

The value of soil carbon is emerging as an important carbon abatement opportunity for Australia. Native vegetation and forests in particular need to be permanently protected as dense stores of carbon lasting hundreds of years. By contrast growing plantations to offset emissions is slow and inefficient. Research has shown that between 1990 and 2006 the uptake of emissions by plantations (225 Mt CO_2e) was far less than the emissions released from vegetation clearing and forest logging (1875 Mt CO_2e)[1]. With proper carbon accounting, the CCWA research has shown that avoiding deforestation of native forests will be more valuable for its carbon sequestration potential than for logging. Enhancement of natural forest biodiversity is the best chance of protecting ecological services from the damaging consequences climate change due to stronger inherent capacity for adaptation and resilience.

The outcomes of the Clearing Regulations cannot be assessed because they have not been effectively monitored. However in dealing unsuccessfully with a large number of applications, and from the reports we receive about unauthorized clearing activity, our impression is that **the Clearing Regulations facilitated an increase** in the rate and extent of vegetation loss by licensing it. The situation with illegal clearing makes the situation much worse. In early 2008 CCWA received information from a credible whistleblower indicating that DEC's internal assessment was, that over the preceding year, there had been 5000 cases of illegal clearing involving the estimated loss of 70 000 hectares of native vegetation. This assessment was not made available to the Auditor General's office. CCWA brought the matter to the attention of the then Minister for the Environment Hon. David Templeman in mid-2008 but no investigation ensued. Investigation is still warranted into this matter, including the possible withholding of information from the Auditor General by the Department of Environment and Conservation.

Why have our clearing laws failed?

The Clearing Regulations have failed to meet national obligations with respect to reducing the rate of vegetation clearing. The fact that the outcomes are not known is itself a failure but beyond that our impression is that the rate of land clearing has in fact accelerated. This is no doubt in part the result of the political compromises that were taken in order to get the

Regulations through parliament. There were so many exemptions that the Regulations were almost useless.

We believe that the fatal flaw has been the abrogation of a fundamental principle in our environmental legislation, that is proposals or actions that have significant environmental impacts are assessed under Part IV of the Act. Only impacts (eg. emissions) that are not permanent and considered acceptable within certain standards are 'licensed' under Part V. Clearing of native vegetation is a permanent impact.

The EPA's position on clearing (EPA Bulletin 966) more or less mirrors the National Objectives & Targets. It also took the view that
'now all existing remnant native vegetation is important, and it should be managed to ensure its retention'. Given that perspective it is hard to understand how decisions about vegetation clearing in the heavily fragmented South West Biodiversity Hotspot can be relegated to a licensing process with no rigorous assessment. Clearly the EPA has been caught between its environmental obligations on the one hand and the need to divest itself of a work-load that it could not handle with the resources available.

There are number of serious negative consequences of the decision to manage native vegetation clearing under Part V of the EP Act. These include:

- The implication and the perception that native vegetation clearing is not a significant environmental impact.

- A lack of detailed information on the values or condition of the native vegetation in applications. Flora surveys are not required to meet EPA guidelines.

- Consequently, insufficient information available to respondents or decision-makers.

- There is neither knowledge of the values and conservation status nor record of what is being lost through clearing

- A shifting of vegetation survey responsibility and cost from the private sector / interest to the government and taxpayer. The would-be user / developer is not paying and government resources provided for the task have been totally inadequate.

- A lack of transparency. It is usually not possible to determine how the final decision was made by the DEC Executive Officer (e.g. Were the clearing principles actually applied? What other non-environmental consideration influenced or determined the decision and how were these weighted?). Contrast the transparency of the Clearing Regulation process against a published EPA Report.

- A lack of accountability in decisions made by a DEC Executive Officer verses decisions made by a Minister following public advice from the EPA.

To be consistent with the principles that have under-pinned the environmental assessment process since its inception vegetation clearing would be dealt with in the following way:

1. All clearing of native vegetation beyond the current exemptions (e.g. fire breaks, fence-lines, access tracks, recent re-growth) would be considered environmentally significant and automatically trigger formal assessment under Part IV of the EP Act.

2. Small-scale clearings that are currently 'exempt' (presumably because they a not environmentally significant) should be the subject of a Part V license to prevent the current practice of clearing by stealth and to keep tabs on net vegetation change.

Recommendations

Restore Clearing Regulation to Part IV of the EP Act

In shifting most land-clearing regulation from Part IV to Part V of the EP Act we have apparently lost sight of the universal environmental significance of land clearing and shifted the cost of assessment from the private developer to the taxpayer. The result has been a lack of a robust assessment process and a probable acceleration in the rate of land-clearing.

We strongly recommend that the regulation of clearing be restored to Part IV of the Environmental Protection Act. In addition we recommend:

a) Implementation of National Objectives

. The national objectives for land-clearing signed off by the State and largely reflected and EPA Policy (Position Statement 2-Environmental Protection of Native Vegetation – Dec 99) be reinstated in this process. These Objectives arefor no further net loss of native vegetation and no clearing of ecological communities at or below 30% of their original extent.

b) Repeal of s 510 (3) of the Regulations

In shifting most land-clearing regulation from Part IV to Part V of the EP Act the responsibility for decisions has moved from the Minister, on advice from the EPA and Appeals Convenor, to the CEO of the Pollution Control Division of DEC. This was a very retrograde step as the decision-making process has become much less transparent and the decision-maker much less accountable.

The deputy CEO of an environmental protection agency does not have the jurisdiction, expertise, or access to advice that could legitimize making decisions on socio-economic grounds. Such grounds have clearly been used to override the Clearing Principles in many cases but have not been articulated in statements of decision. In making such decisions the officer may also be exposed to conflicts of interest with other parts DEC. Accountability and transparency demand that socio-economic decisions are made by a Minister on behalf of the government as would be the case under Part IV.

c) Require carbon emissions accounting for areas to be cleared

Land clearing is a very significant source of greenhouse gas emissions that will not be accounted for, or controlled in any way under the proposed Commonwealth Government

Carbon Pollution Reduction Scheme. There is an expectation by the Commonwealth Government that emissions from land clearing are adequately dealt with through state government land clearing controls (CPRS White Paper). As such, detailed Carbon Emissions Accounting should be undertaken as a matter of course and policies for mitigating or offsetting these emissions in full should apply.

Attempting to regulate clearing using Part V appears to have been a fundamental error. If however the government decides to persist with this approach then the following are the minimum reforms necessary.

1. Make the clearing principles legally binding

The clearing principles should be made legally binding:

- No clearing permit shall be issued for a proposal that is at variance with *one or more* principles

The Act should be amended to make the clearing principles bind the crown.

Placing a greater legal emphasis on the clearing *principles* would allow a move away from the complex and cumbersome process of relying on *exemptions.*

No clearing should be allowed in **Environmentally Sensitive Areas** including actions that qualify elsewhere as exemptions. Banded Ironstone Formations should be added to the list of ESAs. ESAs should include, Bush Forever sites, Swan Bioplan areas, .Bunbury Region Scheme Conservation areas, TECs, Banded Ironstone Formations. etc**. ESAs must have statutory protection.**

2. Remove and rationalise exemptions

The current exemptions for mineral and petroleum exploration and land re-zoned under Town Planning Schemes should be removed as this is where the most significant native vegetation attrition is occurring. Rural landholders who are now not allowed to clear resent and object to the fact that urban lands zoned under Town Planning Schemes are still being cleared under exemptions.

The exemption on re-growth should also removed as it is impossible to police.

3. Require compulsory monitoring and reporting of all clearing

All clearing including that 'under exemption' should be subject to mandatory reporting (including location, area, timing and purpose) and accounted for in a centralized data base. Compliance with approvals and the limits of exemptions needs to be confirmed by the compliance inspectorate. All clearing outcomes must also be reported as part of national and state carbon accounting.

Aerial photography and satellite imagery should be (eg. Urban Monitor, Land Monitor) scanned annually to reconcile the distribution of native vegetation with clearing

applications / approvals. An investigation should be initiated wherever there is a discrepancy.

The annual monitoring data should be available and directly accessible to the public.

4. Establish a Clearing Response Unit

An adequately resourced **'Clearing Response Unit'** trained in investigation methods needs to be established along the same lines as the 'Pollution Response Unit' to deal with reports of unauthorized clearing in a timely manner.

DEC Inspectors will need powers of entry and capacity to issue cessation of clearing orders on site. Powers should also be extended to Shire Officers, DOMP Environmental Officers and the Police.

5. Provide adequate and appropriate enforcement of clearing offences

Unauthorized clearing should be a criminal offence as is the case with unauthorized mining, fisheries offences and offences under the Wildlife Conservation Act. Fines, or other penalties, should be significant enough to ensure that clearing infractions cannot be treated by developers as a minor business costs as is currently the case.

For only minor clearing offences, such as illegally clearing individual paddock trees or firebreaks where no permit has been granted, civil penalties should be introduced.

6. Establish an clearing education program

Two kinds of education campaigns are urgently needed.

1. A positive public education program aimed at increasing general awareness of the values and importance of native vegetation, and
2. A compliance orientated program articulating land owner / manager legal responsibilities with respect to the native vegetation regulations.

7. Require carbon emissions accounting and mitigation

Land clearing is a very significant source of greenhouse gas emissions that will not be accounted for, or controlled in any way under the proposed Commonwealth Government Carbon Pollution Reduction Scheme. There is an expectation by the Commonwealth Government that emissions from land clearing are adequately dealt with through state government land clearing controls (CPRS White Paper). As such, detailed Carbon Emissions Accounting should be undertaken as a matter of course and policies for mitigating or offsetting these emissions in full should apply.

8. Clarify role of offsets

There is no way to offset the loss of native vegetation – it is impossible to replace a functioning ecosystem. Therefore, **under no circumstances** should offsets be used as

instrument of approval or to get a clearing application 'over the line' - the use of offsets in this way is stridently opposed.

References

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Environment Australia (2001). National Objectives & Targets for Biodiversity Conservation, 2001-2005. Commonwealth of Australia.

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Government of Western Australia *State of the Environment Report*

Commonwealth of Australia 1996 *The National Strategy for the Conservation of Australia's Biological Diversity*

Attachment 1

CASE STUDY NOTES

Gorge Rock / Brookton Hwy Upgrade – (Main Roads)
Aubin Grove Land Development (Landcorp)
Blue Hills (Mining exploration)
Kewdale Freight Terminal (PTA) – Threatened Ecological Community.

Lot 204 Aubin Grove Bush Forever site 492 (Landcorp)

- Conservation category wetland + at 50m buffer
- in Directory of Important Wetlands in Australia
- regionally and nationally significant bushland in good to excellent condition (Bush Forever site)
- only ~ 4% Bassendean Central and South vegetation complex secured in Bush Forever (ie <<10% national and state target)
- last remaining consolidated block of this vegetation complex in the area
- probable presence DRF *Caladenia huegelii;* also largest or one of largest populations of significant species *Dielsia stenostachya*
- no assessment of TECs
- significant ecological linkage: part of Greenway 120
- no fauna survey: quenda likely, Canaby's Cockatoo feeding habitat, small resident bush birds now under threat in metro area, birds of prey
- no transparency or public comment in Negotiated Planning Solution (NPS) process
- failure of EPA and clearing permit process to consider the case on its merits. In breach of EPA Guidance statement no 10. Appeals ignored.

Kewdale Freight Terminal - (Public Transport Authority)

- presumption against clearing on eastern side of Swan Coastal Plain (<10% vegetation remaining, Bush Forever Policy)
- regionally significant wetland (dampland) in excellent condition - a CCW
- dampland community is a TEC. Indicator species *Banksia telematia* as in Perth Airport bushland nearby
- failure of DEP and EPA to assess site for TEC until UBC's final appeal against clearing permit. Technical report by CALM WATSCU was amended and selectively reported (incomplete information and CALM recommendation omitted in Appeal report).
- was repeeatedly assessed on basis of wrong information (wrong vegetation complex) and site not inspected by DEP despite the error being brought to the attention of DEP/EPA over a long period of time by the UBC
- no spring survey by proponent- vegetation complex was inferred and incorrectly so. No proper assessment of Floristic Community Types. Proponent unwilling to consider conservation issues of a vegetated wetland
- presence of excellent large and one of best (or best remaining?) population of P4 taxon *Verticordia lindleyei,* Principle that biodiversity is best conserved in situ ignored.

Brookton Highway / Gorge Rock

- 2003 the Gorge Rock section was part of a larger proposed upgrade of Brookton Highway through to Hyden
- It was referred to the EPA and when Main Roads were told it would be formally assessed they withdrew the project split it into smaller parts one of which was the upgrade of the Gorge Rock section
- Main roads did not refer the Gorge Rock section upgrade to the EPA
- After 3rd party referral in 2005 the EPA decided not to assess the smaller Gorge Rock section upgrade
- Road proposed to go through a shire reserve containing York Gum/Jam woodlands. This vegetation type is very rare in the wheatbelt and the reserve was one of only two very small reserves in the Shire of Corrigin and in this case the vegetation was in very good condition
- In addition Main Roads proposed clearing a two kilometre northern side of the road containing Salmon Gum and York Gum which formed a 'cathedral effect" canopy. This was just east of Gorge Rock. They used their purpose permit to justify this.
- The clearing of the vegetation in the shire reserve was the subject of DEC Clearing Permit Decision Report
- The clearing was found be: seriously at variance with 2 principles
  at variance with 3 principles
  may be at variance with 4 principles
  not at variance with 1 principle
- However the clearing was to be allowed in the interests of road safety
- On appeal the decision to allow the clearing to go ahead was again allowed
- There were other ways the project could have been done and particularly if proper process and budgeting had been done back in 2003

Blue Hills

- During a tour of the area in 2007 by DEC, Conservation Council and Wildflower Society major clearing was notice to the north of the John Forrest lookout
- Clearing for drill rig access drill pads was seen
- The area is prospective for haematite and magnetite
- On arriving at the location there were uncapped drill hole on a close as eleven metre centres for what would have been "low impact resource exploration"
- The clearing was excessive
- DRF had been damaged in the process
- The clearing was typical of what was happening in the Blue Hills/Mungada area, clearly contrary to the spirit of the clearing regulations.