

Response ID ANON-4EM2-EKM6-B

Submitted to **Native vegetation issues paper**

Submitted on **2020-02-07 17:16:09**

Your details

1 What is your name?

Name:

City of Kwinana

2 Can we publish your response?

Yes, you may publish my response in full

3 What is your email address? (optional)

Email:

[REDACTED]

4 What is your postcode? (optional)

Postcode:

[REDACTED]

5 Do your views officially represent those of an organisation?

Yes, I am authorised to submit feedback on behalf of an organisation

If yes, please specify the name of your organisation.:

City of Kwinana

6 Which of the following best describes the group or person you represent?

Government body

If other, please specify.:

7 Which of the following best describes the sector you represent?

Government

If other, please specify.:

8 Are there specific parts of your submission that you want to keep confidential?

If yes, please outline which specific parts of your submission must be kept confidential and explain why. :

A State native vegetation policy

9 Referring to the proposed policy objective statements below, how well do you support each one in guiding our development of a policy?

Objective 1 matrix - Objective 1:

Supported

Please explain in the text box below.:

Please see attached submission for detail.

Objective 2 matrix - Objective 2:

Supported

Please explain in the text box below.:

Please see attached submission for detail.

Objective 3 matrix - Objective 3:

Strongly supported

Please explain in the text box below.:

Please see attached submission for detail.

10 What opportunities are presented by the development of a State Native Vegetation Policy focused on how government manages vegetation?

Please provide your answer in the text box below.:

Please see the attached submission for detail.

Upload a document

21 If you would like to upload a document to support your submission, please upload it here.

Upload document 1 here::

D20 5402 Final Draft Submission - Native Vegetation in Western Australia Issues Paper - Department of Water & Environmental Regulation.pdf was uploaded

Please describe which question(s) document 1 relates to. :

All questions.

Upload document 2 here::

No file was uploaded

Please describe which question(s) document 2 relates to. :

Good afternoon

Please find the City of Kwinana's submission for the Native Vegetation Issues Paper Attached.

Please note that this submission will be formally considered by Council at its meeting February 12 2020. The City will advise of any changes to its submission once considered by Council.

Regards

[Redacted Signature]

January 2020

**DRAFT SUBMISSION -
NATIVE VEGETATION IN WESTERN AUSTRALIA ISSUES PAPER -
CITY OF KWINANA SUBMISSION**

SUBMISSIONS CLOSE 10 FEBRUARY 2020

Introduction

The City of Kwinana (the City) welcomes the opportunity to respond to the Department of Water and Environmental Regulations (DWER) Native Vegetation in Western Australia Issues Paper (Issues Paper).

In making this submission the City notes that other environmental legislation is currently under review including, *The Environmental Protection Act 1986*, and the *Federal Environmental Protection and Biodiversity Conservation Act 1999*. The review of this legislation has implications for the management of native vegetation in Western Australia and as such should be considered as part of the discussion of the Native Vegetation in Western Australia Issues Paper.

Additionally, the City also notes that the Issues Paper does not consider how this proposal relates to the Department of Premier and Cabinet's review of the draft *Green Growth Plan, 2018*. As both proposals have significant implication for native vegetation in Western Australia, clarity is sought as to how these proposals will interact.

This submission from the City covers some background information and then details support, issues and concerns in relation to the Native Vegetation Issues Paper.

For clarification on any matters in this submission, please contact the City's Senior Environmental Planner, [REDACTED], on [REDACTED] or by email: [REDACTED]

Background

The City of Kwinana community's sense of place is intrinsically connected to its natural areas. The *City of Kwinana Strategic Community Plan 2019 – 2029 (Strategic Community Plan)* identifies four aspirational goals of which 'Aspiration 3' states that the City aspires to be, "surrounded by nature". These 'aspirations' have been developed following extensive community consultation and as such the retention of native vegetation is an important consideration for the City.

As a peri-urban Local Government the City faces increasing pressure in sustaining its aspiration to be 'surrounded by nature'. In particular, the combined threats of urban development and resource mining land-uses present major challenges. To address the former threat the City of Kwinana *Local Planning Policy No.1 Landscape Feature and Tree Retention (2016)* was developed to ensure that native vegetation is conserved in each new development area in alignment with its *Strategic Community Plan*.

City of Kwinana Administration

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Sand mining application Lots 53 and 1320, Banksia Road, Wellard

In terms of resource mining land-uses the City has been subject to significant challenges when working across local, state and federal legislation. Under the *Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act)* the Federal Department of Environment and Energy (DoEE) are currently considering an application for the clearing of 16.25 hectares of Very Good to Excellent condition (Keighery, 2004) Banksia Woodland at Lots 53 and 1320 Banksia Road, Wellard, in the City of Kwinana.

The Banksia Road Conservation Reserve (the Reserve) is associated with a Tumulus Mound Spring Threatened Ecological Community (TEC) and is vested with the City of Kwinana. The Reserve is managed for the purpose of Parks, Recreation and Drainage under the City's Town Planning Scheme and located within a Special Rural Zone.

The site is subject to a mining tenement held by [REDACTED] for the purpose of sand mining and has support and approval from the Department of Mines, Industry, Regulation and Safety (DMIRS). The City has expressed strong opposition to the proposal on multiple occasions, as have the local community.

Despite the Threatened Ecological Community listing under both State and Federal Government legislation, association with a Tumulus Mound Spring TEC, strong opposition from community and the City of Kwinana, the proposal was approved to proceed independent of the requirement for assessment under the EPBC Act (1999). This case highlights Local Government's frustration with current environmental legislation and the process for the protection of native vegetation. Far in exceedance of the 2 hectares of Good condition vegetation threshold for assessment under the EPBC Act (1999), the DMIRS approval of the proposal demonstrates inconsistencies between government agencies in the application of legislation. These inconsistencies engender confusion and a perception of weakness of environmental legislation. The City considers that greater cross agency consistency and consideration of Local Government requirements in the application of environmental legislation regarding the clearing of native vegetation is well overdue.

General Comment

As a general comment, Local Government plays an important role in the conservation of native vegetation. Federal and State Government play a broader strategic role in protecting remnant vegetation, however, it is often the case that Local Government environmental practitioners and community groups have vast knowledge and on-ground experience with remnant vegetation at a fine scale. Given this knowledge and the interest of community in native vegetation conservation, it is important that instruments such as Local Biodiversity Strategies and Town Planning Schemes have a statutory role to play in the conservation of native vegetation that is locally significant.

The City notes, and is concerned that, the primary purpose of the Issues Paper appears to address improvement of processes. Fundamental to sustainable management of the State's native vegetation is the quantification and qualification of extent. This should be followed by clear, concise, evidence based targets for conservation. A consistent, transparent and fair process should be informed by the former. The Issues Paper neglects to provide clarity of what the overall outcome or purpose of the proposed initiatives are. It is acknowledged and supported that a State native vegetation policy is one initiative that should address this issue, however, clarity is required in regards to the intended overall outcome of the initiatives.

The current list of exemptions contained in the *Native Vegetation Clearing Regulations 2004*, especially the 'Five-hectare limit', allows manipulation of the process by landowners whereby cumulative clearing of native vegetation amounts to significant impacts over time. Also, the exemption for approved subdivisions under the *Planning and Development Act (2005)* has substantial issues. These exemptions negate the ability of Local Government to protect locally significant natural areas identified by the communities that value them. As such, a review of existing exemptions under Part V of the *Environmental Protection Act (1986)* is fundamental to the discussion of issues of native vegetation in Western Australia (WA).

In its discussion of '*striking the right balance*' the Issues Paper's emphasis is on economic factors. It is disappointing to note that the discussion is not sustainably focused in that equal consideration is not given to environmental and social factors. In planning for vibrant, sustainable communities, livability and community expectations are very much evolving. This is evidenced by the recent community support for the conservation of native vegetation in the 'Roe 8 case'. The proposed policy for native vegetation in WA should give equal consideration to, and discussion of, all factors underpinning sustainable development and be a driver for legislative change that reflects contemporary views rather than an update and/or review of existing legislation.

Clarity is sought as to how the proposed State vegetation policy will interact with the existing planning processes and frameworks. It is acknowledged that the current process for tracking the extent and location of native vegetation clearing is inadequate but how does the Issues Paper propose to address this gap? For example, how will agencies, industry and the community be compelled to report clearing under exemptions, and to whom will this be reported to and recorded by?

It is noted that a four week consultation period is proposed for the draft native vegetation policy. This timeframe is considered inadequate for comprehensive review and comment by stakeholders and should be extended.

Issues with the Native Vegetation in Western Australia Issues Paper

Policy

The proposed initiatives to manage native vegetation across all government processes are generally supported by the City. That being said the City highlights the following opportunities to strengthen native vegetation management beyond what is proposed.

It would be beneficial if the Issues Paper provided a comprehensive assessment of the effectiveness, or lack thereof, of the current framework and outline a timeframe for native vegetation reform. The statement that reform will be "*a long-term journey*" is ambiguous and not conducive for engendering confidence in process reform. It is recommended that similar to other reform, i.e. the Public Health Act, that a five year time frame be proposed with relevant stages outlined within the five years as key mile stones to be achieved.

Further clarification around the proposed policy objectives is required, i.e. in regards to objective (a), what criteria will be used and how will this be transposed through relevant legislation to enable consistency and cross referencing to ensure '*striking a balance between environmental, economic, social and cultural outcomes*'? A clear and concise explanation is required in regards to the definition of '*striking a balance*'.

It is noted that spatial records of all clearing of native vegetation in WA are not collected and that only 3 per cent of actual clearing to date is recorded. Comprehensive and up to date records of clearing are fundamental to management and must be systematically tracked. A

State-wide database of extent and condition of native vegetation should be pivotal in informing the development of policy. This database should be continuously updated to inform accurate management.

The City strongly supports a consistent, transparent and strategic approach to native vegetation management. Current ad-hoc practices are unpredictable and inconsistent with native vegetation principles and are compromised largely for economic development pursuits.

A more strategic and analytical approach to native vegetation conservation is also supported. The identification of percentage thresholds for complexes is essential. Strategic conservation of this vegetation is critical to facilitate genetic and species biodiversity through connectivity, particularly where target thresholds (i.e. 10% or less of a complex) are reached. Strategic identification of conservation areas will assist other land managers, including Local Government, to plan for, complement and support these important conservation areas.

Current practices are clearly inadequate in the sustainable protection of unique and at-risk vegetation. Strategic, targeted conservation of large, good condition and connected vegetation is strongly supported. This approach would ensure that the minimum percentage of at-risk vegetation is not cleared below threshold triggers. Strategic policy should support a holistic approach to conservation and give greater weight to the enforcement of conservation legislation.

The identification of strategic areas/targets/thresholds for native vegetation conservation should not however mandate that the minimum percentile is what the policy ultimately seeks to achieve. Strategic protection should consider an ecosystems unique circumstance and what is required to support that system. Also, importantly, policy should not exclude the opportunity for Local Government to conserve native vegetation (in addition to strategic objectives) in accordance with its conservation, cultural, societal and economic pursuits.

Whilst there is an urgent need for a clear, concise policy that defines objectives and thresholds for vegetation retention and conservation, it is important to define and develop an instrument for compliance that is supported by a regulatory body that is appropriately funded and is responsible for ensuring monitoring and prosecution of non-compliance.

Where thresholds for conservation status vegetation are reached, i.e. Threatened or Declared under legislation, there is no longer the opportunity for pragmatism in decision making. Policy should be explicit in the protection of vegetation under these circumstances to ensure consistency in approach and adherence to policy intent.

Cumulative impacts of clearing and the lack of mapping and monitoring are areas of concern. An instrument of regular measurement with clear thresholds will assist in ensuring the unmonitored decline of native vegetation beyond thresholds, assist Local Government in informing management objectives, and promote confidence that native vegetation decline is not further eroded by the 'death by a thousand cuts' currently evident. The case of the Banksia Road Sandmine provides the perfect example of the failure of the current approach, where two sites adjacent to each other have been subject to separate clearing approvals and whilst it is clear that the sites are being mined by [REDACTED] they have never been assessed for their cumulative impact.

Better Information

The City notes that the Western Australian Local Government Association's (WALGA) Environmental Planning Tool (EPT) is an effective program for assessing environmental management considerations, including native vegetation, and would support the incorporation

of the EPT into proposed State systems to capture local data, i.e. local natural areas. The City also notes that the Victorian State Government is currently undertaking mapping and monitoring of native vegetation incorporating new remote sensing technology and suggests that there may be benefits in considering work undertaken in Victoria in the development of a Western Australia model.

There are a number of tools, including native vegetation data that the City uses to plan and manage native vegetation. The Issues Paper requests input in regards to how the City of Kwinana utilises current vegetation data and mapping. The following points summarise this use:

- To plan for conservation – inform policy and planning (extent and conservation status), i.e. Local Biodiversity Strategy and conservation of Local Natural Area's
- To plan for restoration – evidence of eco-corridors and regional linkages to support and plan for genetic biodiversity and mitigate the occurrence of local extinctions that can be resultant of isolated and disconnected conservation areas.
- Scope for offset opportunities – identification, quantification and qualification of conservation worthy native vegetation for offset consideration.
- To inform applications to clear or impact vegetation – to identify and manage spatially and geographically local natural areas, connectivity and recreational opportunities.
- Baseline information for monitoring – to inform and support policy for retention targets.
- Other – to inform land-use planning, management and advice using current and correct data and statistics.
- Provide a measurement instrument for illegal clearing and compliance matters.

In regards to which elements for better information provision would be most relevant to your sector, the City considers the following to be most relevant:

- “Evidence-base for decisions”, to show clear, consistent and reliable decision making. For example the Threatened Status of Banksia Woodlands is difficult to predict and of concern with regards to its application. Giving regard to the established assessments thresholds, experience shows that multiple applications to clear Banksia Woodlands are routinely provided with Clearing Permits in contradiction to guidelines. There is currently very little certainty in the predictability of assessment outcomes in accordance with policy and guidelines

Better regulation

Accurate and current monitoring and mapping of vegetation extent and condition is fundamental to informing sustainable native vegetation conservation. Development of a robust instrument for monitoring and mapping must be supported by a mechanism to ensure compliance and prosecution for non-compliance with policy.

The intent of the Issues Paper, at times, appears to be primarily concerned with the improvement of regulatory process and not the conservation of native vegetation. More specifically the Issues Paper appears to facilitate regulatory frameworks to clear native vegetation, i.e. *‘Continuous improvement of operational systems, policy and processes for clearing permits, making best use of new resourcing from clearing fees and applying a risk-based approach’*. What use of resources from clearing fees are proposed to assist in the conservation and protection of remnant vegetation? What is the definition of “essential development” in the context where “vegetation must be impacted”? A risk based approach to regulation would be an effective methodology so that there is monitoring and accountability of what is happening and the legislation can respond effectively.

Current practices in regards to lack of prosecution for small scale illegal clearing are an example of how the lack of monitoring and management negates the intent and purpose of legislation. It is a common and frequent experience in Local Government to witness multiple episodes of small scale, illegal clearing that are not prosecuted by the DWER. The cumulative impact is significant and unregulated. Additionally, the 5 hectare per year clearing exemption requires revision for the aforementioned reasons. Unlawful clearing can have significant impacts in the Local Government context. Investigation and prosecution of unlawful clearing should be referred to Local Government for comment as a minimum, as part of the process of investigation.

Monitoring and compliance in regards to vegetation condition is critical. Commonly, Local Government's experience the significant degradation of protected vegetation through land-uses such as grazing and frequent burning, this is especially prevalent in peri-urban areas where land owners wish to degrade the value of vegetation to allow for development. Systematic degradation without consequence has created a precedent that has engendered an understanding that the *Native Vegetation Clearing Regulations* (2004) can be circumvented without prosecution.

Consequently, Local Governments are left to address clearing compliance matters if they wish to conserve local natural areas. This is an area where Local Government expertise and responsibility is not supported by statutory requirements.

Regulation Reform

The Issues Paper suggests a number of reforms for the better regulation of native vegetation management. Of these the City considers the following elements for better regulation would be most important:

- Improved protection for native vegetation
- Ensuring development is sustainable
- Transparent, evidenced-based decisions
- Improved compliance and enforcement of unauthorised clearing
- Confidence in the regulatory system for all stakeholders

A Bioregional approach

A bioregional approach is broadly supported in principal but should not preclude Local Government from identifying and protecting native vegetation within its jurisdiction. Clarity is sought in terms of the definition of 'bioregional', spatially what is a 'bioregion' and what are the implications of an area attracting this status?

Vegetation identified as Threatened or near - Threatened should have prescriptive direction in planning and environmental policy to ensure they are not reduced or degraded once thresholds have been reached. Current practice allows the unmonitored and unquantified clearing of Threatened Ecological Communities such as Banksia and Tuart Woodlands in spite of their status.

The Issues Paper seeks the City's input in regards to what it considers are the most important aspects of the proposed bioregional approach. Having considered these aspects, the City provides the following:

- Establishing a planned approach to dealing with cumulative impacts, the co-incidence of high-value native vegetation with high-value development or environmental offset;
- Devising transparent outcomes and objectives, tailored to regional ecosystems and risk types, to drive coordination toward common goals across a range of regulatory tools; and
- Underpinning an effective monitoring and evaluation framework to understand and improve the effectiveness of regulation and conservation efforts.

Conclusion

The City of Kwinana, whilst welcoming the opportunity to comment on issues associated with native vegetation, considers that the current clearing permit process and management of Western Australia's native vegetation is fundamentally flawed. These flaws cannot be addressed by the limited scope of the Issues Paper. A comprehensive inquiry into the current process and management of native vegetation in Western Australia is required to inform any future direction or way forward. The development of a strategic policy for the conservation of native vegetation and annual reporting is supported as a first step in addressing these issues, but needs to ensure the focus remains on the protection and advancement of native vegetation in WA having regard to local and federal legislation in this area.

Maria Cooke
Director City Regulation