

10 February 2020

Native Vegetation Strategy
Department of Water and Environmental Regulation
Locked Bag,
10 Joondalup DC, WA, 6919

Submitted by email: nvs@dwer.wa.gov.au

Dear Sir/Madam,

RE: APPEA SUBMISSION – NATIVE VEGETATION IN WESTERN AUSTRALIA – ISSUES PAPER FOR PUBLIC CONSULTATION – NOVEMBER 2019

The Australia Petroleum Production & Exploration Association (APPEA) is pleased to provide feedback on the Department of Water and Environmental Regulation's (DWER) four native vegetation initiatives detailed in its *Native Vegetation in Western Australia – Issues paper for public consultation* (Issues Paper) released in November 2019. These four initiatives include:

1. a State Native Vegetation Policy;
2. investing in better information, including mapping and monitoring;
3. improved regulatory processes; and,
4. exploring a bioregional approach to managing native vegetation.

On 4 December 2019, APPEA attended a briefing session given by DWER and hosted by the Chamber of Minerals and Energy Western Australia. It was clear from this engagement that DWER is focused on improving the way native vegetation is managed across government. APPEA commends DWER for its consultative and inclusive approach, and APPEA will continue to engage at each stage of the reform process, in line with DWER's published consultation timeline.

By way of background, APPEA is the peak national body representing upstream oil and gas explorers and producers with interests in Australia. APPEA member companies account for more than 95 per cent of Australia's petroleum production, the majority of which is produced from facilities located in Western Australia (WA). As is well known by the Government, the oil and gas industry in WA, including the development of onshore resources, is a major contributor to the state and national economies, creating jobs and business opportunities whilst providing gas to domestic consumers and generating export revenue in sales of Liquefied Natural Gas. Further details about APPEA and the Australian oil and gas industry more generally can be found at www.appea.com.au.

APPEA and its member companies are committed to sound resource and environmental management practices as an integral part of industry operations. In WA the onshore petroleum industry has a small surface footprint, coexisting with other land uses and users such as private landholders and leaseholders, Traditional Owners, and nature reserves. Our onshore industry in WA primarily operates under the low impact framework detailed in the Environmental Protection (Clearing of Native Vegetation) Regulations 2004. Petroleum activities in general have a smaller surface footprint compared to many other industries and land uses.

'Striking the right balance' with respect to native vegetation management and delivering a strong economic outlook for the State is a key theme in the Issues Paper foreword¹ and associated media statement² by the Hon. Stephen Dawson MLC, Minister for Environment. Through this lens APPEA has detailed its feedback in Attachment A, for DWER's consideration, of which the key points are summarised as follows:

- The assessment and approval for native vegetation clearing, as well as any potential offsets required, should consider whether the clearing activities are temporary or permanent. For example, clearing for seismic surveys was always treated as permanent clearing even if a low impact clearing method was used, and it could be justified that the vegetation would recover within three to four years.
- That the WA Government should look to update and reintroduce the lapsed *Petroleum and Geothermal Energy Legislation Amendment Bill 2012*, as this Bill could add another potential option in terms of an offset in WA.
 - The Bill is designed to amend the petroleum legislation to provide a regulatory regime for the onshore storage of greenhouse gas, which will predominantly be carbon dioxide. These amendments will allow for greenhouse gas storage formation property rights, acreage release provisions, exploration, retention and injection licences, as well as addressing long-term liability issues.³
- Fair and reasonable compensation or financial assistance where rights and interests are impacted by revegetation.
- Consideration of incentives for revegetation and ongoing management – not set and forget approaches for direct offset projects.
- That the literature review undertaken by DWER to inform this process also includes relevant national research and reports (in addition to the typical review of applicable state legislation, regulation and policy) such as the Productivity Commission's Inquiry Report *Impacts of Native Vegetation and Biodiversity Regulations*⁴.

Urban biodiversity loss is not directly within the scope of APPEA's attached feedback as these losses take place locally, and petroleum operations are not undertaken in metropolitan areas.⁵

Should you wish to discuss APPEA's comments, please do not hesitate to contact me on [REDACTED]

Yours faithfully,

[REDACTED]

Claire Wilkinson
Director – Western Australia

¹ https://dwer.wa.gov.au/sites/default/files/NV_issues_paper_FINAL.pdf

² <https://www.mediastatements.wa.gov.au/Pages/McGowan/2019/11/Feedback-sought-on-improving-native-vegetation-management.aspx>

³ <http://www.dmp.wa.gov.au/Petroleum/Greenhouse-gas-storage-1593.aspx>

⁴ https://www.pc.gov.au/data/assets/pdf_file/0005/49235/nativevegetation.pdf

⁵ The *Petroleum and Geothermal Energy Resources Act 1967* requires express consent from land holders and occupiers if petroleum operations are proposed on private land less than 2,000m².

Attachment A - APPEA feedback on *Native Vegetation in Western Australia – issues paper for public consultation*

Minister's foreword

APPEA notes that in other jurisdictions⁶ iconic places reside in the planning portfolio to inform all different types of development applications. The Department of Planning, Lands and Heritage's *State Planning Framework* and *State Planning Policies* rely on meaningful consultation across government portfolios.

APPEA suggests that whole-of-government consultation is key to defining iconic landscapes or places.

Responding to the challenge / four initiatives

1. a State Native Vegetation Policy;
2. investing in better information, including mapping and monitoring;
3. improved regulatory processes; and,
4. exploring a bioregional approach to managing native vegetation.

1. Native vegetation policy (responsible development)

The assessment and approval for native vegetation clearing should consider whether the clearing activities are temporary or permanent. For example, clearing for seismic surveys was always treated as permanent clearing even if a low impact clearing method was used, such as mulching, and it could be justified that the vegetation would recover within three to four years.

Existing literature

In April 2004, the Productivity Commission submitted its final report into the *Impacts of Native Vegetation and Biodiversity Regulations*. The Commission's scope of inquiry was broad and found:

'In the Commission's assessment, greater exposure of the costs and benefits of additional conservation effort, clarification of environmental objectives, and a process for determining agreed landholder and community responsibilities that promotes cooperation and trust, will be critical to achieving more efficient and equitable solutions.'

APPEA considers that the recommendations and findings from the above-mentioned final report are still relevant to policymakers today.

Offsets

Offsets are works or actions that make reparation for losses of native vegetation or make an agreement to carry out works or activities to conserve, enhance, monitor or rehabilitate an area comprising native vegetation. Generally, there are three ways for offsets to be negotiated: planning agreement, by conditions on a development consent, or through conditions of approval for the clearing of native vegetation from other decision makers (such as the EIA process for proposals assessed under the EP Act).

⁶ Qld framework - The characteristics or qualities that comprise iconic values vary from one iconic area to another as they are specific to a particular area. Each declared iconic place lists iconic values along with the location of iconic places and protected planning provisions, against which development applications relevant to iconic places are assessed.

It is also important that offsets should consider the temporary or permanent nature of the vegetation clearing. For example, it is not appropriate to apply the same offset principles for temporary clearing where loss of vegetation is limited to a maximum of five years, and given the land should be managed by burning 20% of the landscape each year i.e. every five to seven years.

APPEA supports offsets policies which are commensurate with actual losses of native vegetation. Policies should be flexible to give proponents options to most effectively and efficiently enhance revegetation.

APPEA advocates that offsets need to be sustainable and measurable - landowners, leaseholders and land managers need to have the right incentives / conditions placed on development so there is equity (especially if there is no immediate financial return on investment). APPEA queries the currency of the WA Government's Environmental Offsets Policy⁷.

Property rights

Property rights and / or the interference with lawful rights and interests, including those of Traditional Owners, add complexity to the challenges presented in the Issues Paper.⁸

APPEA supports fair and reasonable compensation or financial assistance where lawful rights and interests are impacted by revegetation.

Climate change hazards

APPEA supports a national climate change policy that delivers greenhouse gas emissions reductions at least cost and facilitates broad-based investment decisions consistent with an international price on carbon. It is also important that climate policy is fully integrated and consistent with policies in other areas – including energy, international trade, taxation, economic growth, population, and environmental and social responsibility.

APPEA understands that policymakers are looking to future proof legislation to ensure that climate change hazards (continued warming, reduced rainfall, increased fire risks, for example) may be effectively mitigated. APPEA notes that the petroleum industry is looking at several technological solutions to reduce emissions from our operations and activities, such as carbon capture and storage.

APPEA recommends that Government updates and reintroduces the lapsed Petroleum and Geothermal Energy Legislation Amendment Bill 2012. The Bill is designed to amend the petroleum legislation to provide a regulatory regime for the onshore storage of greenhouse gas, which will predominantly be carbon dioxide. These amendments will allow for greenhouse gas storage formation property rights, acreage release provisions, exploration, retention and injection licences, as well as addressing long-term liability issues.

⁷<https://www.dmp.wa.gov.au/Documents/Environment/Env Offsets Policy for release by Minister generic government.pdf>

⁸Complexities for native vegetation management may include: compulsory acquisition of interests in land; transmission line and water pipeline easements; land use zonings; subdivisions and development approvals; land clearing restrictions in agricultural areas; environmental policies relating to urban bushland and wetland conservation; industrial buffer zones; heritage lists; protection of endangered fauna and flora; conflicting land uses within close proximity; mining rights granted to third parties over privately held land; and, notification and recording of restrictions on land use.

2. Investing in better information, including mapping and monitoring

APPEA supports the role of data to drive evidence-based decision making, however, it is unclear how the Government would pay for the acquisition of broad baseline data and surveillance monitoring data.

3. Streamlining regulatory processes

APPEA supports continued efforts to streamline regulatory processes, particularly where there is potential for removal of duplication between Commonwealth and State; or within state jurisdiction where different portfolios are impacted.

Areas for further consideration and engagement may include policy implications under the *Native Title Act 1993* (Commonwealth). For example, indigenous land use agreements could be negotiated to develop sustainable environmental offset projects / programs (direct offsets⁹).

Cost recovery

APPEA supports legislative reform initiatives which scrutinise cost recovery proposals via a Regulatory Impact Statement. APPEA contends that cost recovery measures should be factored / applied holistically across government to avoid inefficiency and duplication.

State and Commonwealth interactions – matters of national environmental significance.

The *Environment Protection and Biodiversity Conservation Act 1999* does not directly apply to native vegetation; however, it does capture threatened species and ecosystems and the clearing of native vegetation may significantly impact on these matters of national environmental significance.

APPEA's position on this matter is that the State should have the delegated powers to enforce the EPBC Act requirements to reduce regulatory duplication, and that any regulatory controls reflect the nature and scale of the proposed petroleum activity.

APPEA believes that State regulators are also well placed to leverage the knowledge and expertise of native title parties to protect culturally significant flora, with medicinal and herbal customary value to Traditional Owners.

4. Bioregional approaches

The issues paper recognises that there is no one size fits all approach for native vegetation management (or more broadly any government natural resource management portfolio).

APPEA considers that any future bioregional approach must have transparent and measurable objectives and associated decision-making processes must be predictable and equitable for all regional industries.

⁹ Direct offsets are actions designed to provide for on ground improvement, rehabilitation and conservation of habitat e.g. land acquisition outside of a project area.