

NATIVE VEGETATION IN WESTERN AUSTRALIA

Issues paper for public consultation

November 2019

Prepared by John Bailey on behalf of the Beeliar Group of Professors for Environmental Responsibility. Our group of 35 Professors was formed in January 2017 out of concern over the process used to plan and implement the Perth Freight Link and Roe Highway Stage 8.

We are pleased to see that the Government has decided to address the critical issue of native vegetation management with a comprehensive plan. We encourage the Government to develop further initiatives in related areas such as wetlands policy to address the management of our wetlands, wetland buffers and their catchments with our Ramsar wetlands as a priority.

The Beeliar Group supports the four initiatives that have been used to frame the issues paper, and offers the following comments.

OVERARCHING COMMENTS

The Issues paper can be seen very much as an ideal approach to the management and conservation of native vegetation. The Beeliar Group is familiar with the literature on environmental policy, and especially the successful implementation of such policy. There are two key components to implementation:

- Resourcing
- Sequencing

Resourcing is straightforward – new policy initiatives need to be adequately resourced from inception to provide the best opportunity for success. Gunningham and Grabosky¹ have identified six classes of policy instrument:

- Command and control or direct regulation
- Self-regulation by a particular industrial sector
- Voluntarism by an individual enterprise
- Educational and informational strategies
- Economic instruments
- Free-market environmentalism

The significant point here is not so much the categorisation used but the advice offered by the authors on the most effective timing, sequencing and mixing of the different policy instrument approaches. Thus educational and informational strategies are complementary to all other approaches; however, command and control regulation can be antagonistic to broadly-based economic instruments. Conversely, command and control regulation can be

¹ Gunningham, N and Grabosky, P (1998). *Smart Regulation*. Clarendon Press, Oxford.

introduced if a regime of economic instruments has proven ineffective. This may ultimately require a statutory approach in the form of a specific Native Vegetation Act.

Recommendation 1: We recommend that explicit provision is made for the sequencing of policy approaches in the final State Native Vegetation Policy. This may ultimately require a statutory approach in the form of a specific Native Vegetation Act.

A STATE NATIVE VEGETATION POLICY

The Issues paper sets as a desired outcome “an enabling framework for consistent, transparent objectives for consideration across all government processes”. This is a laudable objective; however, in practice it is important to allow room for flexible and discretionary decision-making by agencies operating under their own legislation as referred to in Box 10 – “Our work so far to streamline regulation”. Having said that, it is also important to ensure that all resource management agencies share the overall objective of native vegetation management and conservation. This can be best achieved by amending the legislation as summarised in Box 7 – “Diverse legislation to assess and approve clearing and other impacts” to include an explicit provision requiring a bioregional approach to native vegetation management.

Recommendation 2: We recommend the legislation as summarised in Box 7 – Diverse legislation to assess and approve clearing and other impacts be amended to include an objects clause requiring a bioregional approach to native vegetation management.

It is important to stress that the definition of clearing under the *Environmental Protection Act 1986* includes both direct and indirect clearing, and in particular the burning of vegetation. This includes prescribed burning that can cause long-term harm to biodiversity.²

The *Environmental Protection Act 1986* specifies the following five principles in Section 4A:

1. The precautionary principle

Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, decisions should be guided by –
(a) careful evaluation to avoid, where practicable, serious or irreversible damage to the environment; and

² Bradshaw, S.D., Dixon, K.W., Lambers, H., Cross, A.T., Bailey, J. and Hopper, S.D. (2018). Understanding the long-term impact of prescribed burning in mediterranean-climate biodiversity hotspots, with a focus on south-western Australia. *International Journal of Wildland Fire*. <https://doi.org/10.1071/WF18067>.

(b) an assessment of the risk-weighted consequences of various options.

2. The principle of intergenerational equity

The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

3. The principle of the conservation of biological diversity and ecological integrity

Conservation of biological diversity and ecological integrity should be a fundamental consideration.

4. Principles relating to improved valuation, pricing and incentive mechanisms

- (1) Environmental factors should be included in the valuation of assets and services.
- (2) The polluter pays principle — those who generate pollution and waste should bear the cost of containment, avoidance or abatement.
- (3) The users of goods and services should pay prices based on the full life cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any wastes.
- (4) Environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, which enable those best placed to maximise benefits and/or minimise costs to develop their own solutions and responses to environmental problems.

5. The principle of waste minimisation

All reasonable and practicable measures should be taken to minimise the generation of waste and its discharge into the environment.

There is merit in considering the application of these principles to decision-making under the raft of legislation referred to in Box 7.

Recommendation 3: We recommend the legislation as summarised in Box 7 – Diverse legislation to assess and approve clearing and other impacts be amended to explicitly include the principles currently contained in Section 4A of the *Environmental Protection Act 1986*.

BETTER INFORMATION

The Beeliar Group supports the goal of Statewide and regularly updated native vegetation information. The use of existing platforms, products and partnerships to improve access to datasets is ambitious and is strongly encouraged.

For example, the Biodiversity Audit II should be completed and published as soon as possible.

The reintroduction of State of the Environment reporting (SOE) is essential here to provide an overall view of progress. A statutory basis for this would be beneficial. The coverage of SoE reports should range from a statewide assessment of the comprehensiveness, adequacy and representativeness of our conservation reserve system (the strongest option to secure our native vegetation clearing), informed by detailed biodiversity assessments as noted above. Additional reservation should follow expeditiously.

Recommendation 4: We recommend that Biodiversity Audit and State of the Environment reporting be reintroduced at 5 yearly intervals in which the extent and condition of native vegetation is described in detail and compared with the 2007 and earlier reports.

In particular, an improvement in the evidence-base of decisions is supported. To provide an incentive to employ better evidence in decision-making the reasons for decisions should be made available, at least to affected parties if not the general public.

Recommendation 5: We recommend that reasons for resource management decisions should be made available, at least to affected parties if not the general public.

BETTER REGULATION

The Beeliar Group is concerned that the use of offsets to “drive a net improvement to native vegetation extent or condition” is complied with in practice. The use of offsets must be through a regulatory approach rather than through policy/guidelines only. It is important that an offset for essential clearing genuinely achieves no net loss and therefore offsetting an immediate loss with like for like fails on this count. The offset must require the restoration of a parcel of land/biodiversity values to compensate over time for the initial loss. Furthermore it should involve land/biodiversity values geographically proximal to the land/values being lost to ensure biological/ecological equivalence.

In addition, research has suggested that offsets are often of marginal effectiveness and therefore the use of offsets should be the exception³.

It is acknowledged that this opens up the risk of the restoration being unsuccessful. Perhaps the restoration of land of a greater area provides suitable insurance against this outcome.

Recommendation 6: We recommend that the use of offsets be provided through regulation to ensure the restoration of a parcel of land/biodiversity values to

³ May, J., Hobbs, R.J. and Valentine, L.E. (2017). Are offsets effective? An evaluation of recent environmental offsets in Western Australia. *Biological Conservation*. **206**, 249–257.

compensate over time for the initial loss. The land/biodiversity values involved should be geographically proximal to the land/values being lost.

Native vegetation clearing must only be approved and a clearing permit must only be issued if it is determined and demonstrated that the project requiring native vegetation to be cleared is of high social and/or economic importance and that no viable alternative to the proposal, its size/scale or its location has been shown to exist through thorough investigation and assessment.

Schedule 5 to the present Act provides for the principles that should be followed in determining applications for clearing permits. These state that native vegetation should not be cleared if;

- (a) It comprises a high level of biological diversity; or
- (b) It comprises the whole or a part of, or is necessary for the maintenance of, a significant habitat for fauna indigenous to Western Australia; or
- (c) It includes, or is necessary for the continued existence of, rare flora or fauna; or
- (d) It comprises the whole or a part of, or is necessary for the maintenance of, a threatened ecological community; or
- (e) It is significant as a remnant of native vegetation in an area that has been extensively cleared; or
- (f) It is growing in, or in association with, an environment associated with a watercourse or wetland; or
- (g) The clearing of the vegetation is likely to cause appreciable land degradation; or
- (h) The clearing of the vegetation is likely to have an impact on the environmental values of any adjacent or nearby conservation area; or
- (i) The clearing of the vegetation is likely to cause deterioration in the quality of surface or underground water; or
- (j) The clearing of the vegetation is likely to cause, or exacerbate, the incidence or intensity of flooding or salinization.

The Beeliar Group recommends that the clearing principles be rewritten as positive duties that flow from the axiom that 'native vegetation can only be cleared if it is absolutely necessary and if;

- (a) It comprises only a low level of biological diversity and clearing the land will not result in a cumulative loss of critical habitat for native species; or
- (b) It does not comprise the whole or a part of, or is unnecessary for the maintenance of, a significant habitat for fauna indigenous to Western Australia;
- (c) Etc

Recommendation 7: We recommend that native vegetation can only be cleared if it is absolutely necessary and if the proposal requiring the clearing is of high social and/or economic importance and that no viable alternative to the proposal, its size/scale or its

location has been shown to exist through thorough investigation and assessment, and if a rewritten set of positive clearing principles are complied with.

Schedule 6 – “Clearing for which a clearing permit is not required” – should be reviewed and brought into line with the proposed policy.

Recommendation 8: We recommend that Schedule 6 – “Clearing for which a clearing permit is not required” – be reviewed and brought into line with the proposed policy.

A common difficulty with environmental legislation is provision for cumulative impacts individually falling below relevant thresholds but exceeding those thresholds cumulatively. This needs to be addressed

Then there is the option of the statutory prohibition of native vegetation clearing under prescribed circumstances. The current provision from Section 51O states that "The CEO may make a decision that is seriously at variance with the clearing principles if, and only if, in the CEO's opinion there is a good reason for doing so."

This is unacceptable. The granting of an area or purpose clearing permit under these circumstances should be prohibited. A similar prohibition should apply whenever threatened or priority species or ecosystems are involved.

Recommendation 9: We recommend that a statutory prohibition on the grant of an area or purpose permit be prohibited if to do so would be seriously at variance with the clearing principles, and/or if one or more threatened or priority species or ecosystems are involved.

A BIOREGIONAL APPROACH

This section of the Issues paper contains some welcome proposals; e.g. concerning a planned approach to cumulative impacts, and supporting landscape-scale initiatives for conservation driven by partnerships between the public and private sector. One difficulty with such approaches is the information requirements. In such cases a precautionary approach is recommended.

Recommendation 10: We recommend that a precautionary approach be adopted when bioregional decisions are required.

CONCLUSION

The Beeliar Group reiterates its support for the Issues paper in general, subject to its above comments and recommendations. We look forward to the release of the Draft in April and a further opportunity to comment.