

Guideline

Title:	Native vegetation referrals – DRAFT
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1. Purpose

This guideline provides prospective applicants for native vegetation clearing permits with information on the clearing referral process.

Under this referral process, prospective applicants may choose to refer their proposed clearing activity to the relevant department to make a decision on whether a clearing permit is required.

2. Scope and context

The clearing of native vegetation in Western Australia is regulated under Part V Division 2 of the *Environmental Protection Act 1986* (EP Act) and under the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* (Clearing Regulations).

The *Environmental Protection Amendment Act 2020* was passed in November 2020 and includes amendments to the EP Act's provisions for regulating native vegetation clearing. One of the changes includes the introduction of a referral process for proposed native vegetation clearing activities (s.51DA of the amended EP Act).

A clearing permit issued under the EP Act is required for clearing native vegetation in Western Australia, unless:

- an exemption applies. See [A guide to the exemptions and regulations for clearing native vegetation](#), or
- the prospective applicant refers their proposed clearing activity to the relevant department to make a decision on whether a clearing permit is required, and the department notifies the referrer that a clearing permit is not required. This guideline provides information on this process.

This guideline provides information on how the department interprets and applies the legislation it administers.

The guidance is not mandatory; rather, the purpose is to assist with the provision of information from an applicant to the department to ensure efficient and effective assessment of a referral.



Native vegetation clearing, including assessing applications for clearing permits and investigating instances of illegal clearing, is primarily regulated by the Department of Water and Environmental Regulation (DWER).

The Department of Mines, Industry Regulation and Safety (DMIRS) has delegated statutory authority under s.20 of the EP Act to receive, assess, and determine applications for clearing permits. This delegation is restricted to only clearing permits relating to 'mineral and petroleum activities' regulated under:

- the *Mining Act 1978 (WA)*
- the *Petroleum and Geothermal Energy Resources Act 1967 (WA)*
- the *Petroleum Pipelines Act 1969 (WA)*
- the *Petroleum (Submerged Lands) Act 1982 (WA)*
- any state agreements administered by the Department of Jobs, Tourism, Science and Innovation.

Any clearing permit applications received by DWER's Chief Executive Officer (CEO) (or their delegate) that relate to mineral or petroleum activities regulated under the Acts listed above will be transferred to DMIRS.

Please refer to the [Western Australian Legislation website](#) for copies of the relevant legislation.

This guideline should be read together with other relevant guidance material on [DWER's website](#).

3. Guidance

3.1 What is a referral process?

A new referral process was introduced to simplify and modernise the regulation of native vegetation clearing in Western Australia.

This referral process provides prospective applicants with an option to refer their proposed clearing activity to the relevant department (i.e. either DWER or DMIRS) to make a decision on whether a clearing permit is required.

3.2 How does this referral process differ to referrals submitted to the Environmental Protection Authority?

Referrals submitted to the relevant department under the new referral process are assessed under Part V of the EP Act. This referral process relates to clearing native vegetation activities that are likely to have very low environmental impacts.

By contrast, referrals submitted to the Environmental Protection Authority (EPA) are assessed under Part IV of the EP Act. They are required for proposals that are likely to have a significant impact on the environment. The [EPA's website](#) has further information on Part IV referrals.



3.3 Which proposed clearing activities are not suitable for this referral process?

The referral process relates to clearing activities that are likely to have very low environmental impacts. The referral process cannot be used for proposed clearing that will occur on land subject to:

- an agreement to reserve or conservation covenant under the *Soil and Land Conservation Act 1945* (refer to the [Department of Primary Industries and Regional Development's website](#) for further details), or
- an environmental protection covenant under Part VB of the EP Act.

It is also not suitable for proposed clearing that:

- will or is likely to have a significant impact on matters of national environmental significance, thus triggering the need for referral to the Commonwealth Department of Agriculture, Water and the Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), or
- may impact on protected flora or fauna, or is to occur within a highly cleared landscape.

3.4 How to submit a clearing referral

Referrals may be submitted to the relevant department by completing the appropriate [application form](#) for a new clearing permit. There are no prescribed fees required to submit a referral.

Applicants should ensure that all required information is included with the referral. This will facilitate a smoother transition into the clearing permit application process if it is determined that one is required. This required information is specified on the application form.

3.5 How will the department determine when a clearing permit is required?

The relevant department will assess referrals against the following considerations set out in s.51DA(4) of the EP Act when determining if a permit is required:

- whether the area proposed to be cleared is small relative to:
 - the total remaining vegetation within the region in which the area is situated
 - the ecological community of which the vegetation proposed to be cleared forms part of
- whether there are any known or likely significant environmental values within the area
- whether the state of relevant scientific knowledge about vegetation within the region in which the area is situated is adequate
- whether the issues that would arise as a result of the proposed clearing are likely to require conditions to manage or mitigate effects on the environment.



There is no statutory requirement for referrals to be advertised for public comment. While each referral will be assessed on the particular circumstances in the application, some guidance on the matters the CEO must have regard to are set out below.

Consideration 1: The area proposed to be cleared is small relative to the total remaining vegetation

When determining if a permit is required, the relevant department will consider the size of the proposed area to be cleared:

- relative to the total remaining vegetation in the region in which the proposed clearing is located, or
- relative to the total remaining vegetation of the ecological community that the vegetation proposed to be cleared forms a part of.

Table 1 provides a summary of these considerations.

The *Interim Biogeographic Regionalisation for Australia* ([IBRA](#)) and pre-European vegetation datasets [Data WA](#) (DPIRD-006) are used to determine how much remaining vegetation is located within and surrounding proposed clearing areas.

Figure 1 (below) shows where the 'intensive' and 'extensive' land use zones are located. The relevant Regional Planning Schemes (available from the [Department of Planning, Lands and Heritage's website](#)) show the boundaries of the urban Perth, Peel, and Greater Bunbury regions.

Table 1: Considerations for determining the need for a permit based on the extent of the proposed clearing area relative to thresholds for remaining vegetation

Considerations in determining the need for a permit	Region in which the proposed clearing activity is located		
	The urban Perth, Peel, and Greater Bunbury regions	The 'intensive land-use zone' located in South West WA	The remaining 'extensive land-use zone' located outside the intensive land-use zone
Extent of proposed clearing	More than 1 ha is proposed to be cleared.	More than 1 ha is proposed to be cleared.	More than 5 ha is proposed to be cleared (or more than 10 ha if north of 26 degrees south latitude).
Threshold for remaining vegetation in the region	Less than 10% native vegetation remaining within the region.	Less than 30% native vegetation remaining within the region.	Less than 30% native vegetation remaining within the region.
Threshold for vegetation surrounding the proposed clearing	Less than 10% native vegetation remaining within a 5 km radius of the proposed clearing.	Less than 30% native vegetation remaining within a 5 km radius of the proposed clearing.	Less than 30% native vegetation remaining within a 10 km radius of the proposed clearing.

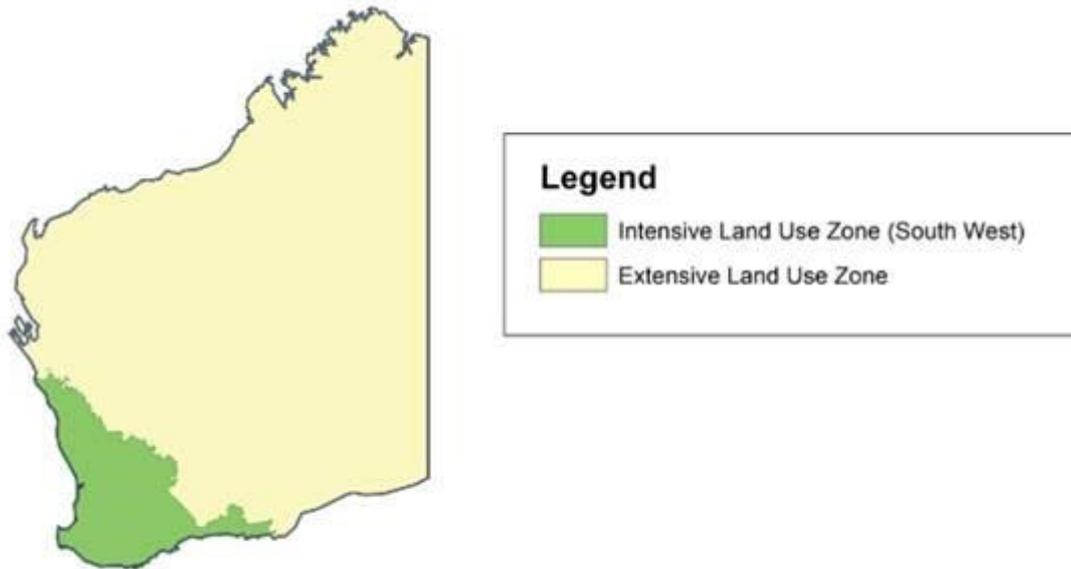


Figure 1: Extensive or intensive land use zone

Consideration 2: Known or likely significant environmental values within the area

The relevant department will consider the potential impacts on environmental values within the area, including:

- biological values (e.g. flora, fauna, ecological communities)
- conservation values (e.g. impact to ecological linkages and conservation areas)
- land and water resource values (e.g. wetlands and watercourses).

Clearing activities that have the potential to impact significant environmental values and/or require mitigation, management, and/or offsetting conditions are likely to require a permit.

The department will determine whether a permit is required based on the considerations outlined below, in Table 2.



Table 2: Considerations for determining the need for a permit based on known or likely significant environmental values within the area

Environmental value	Considerations in determining the need for a permit
Significant fauna	Whether the proposed clearing area provides habitat for any threatened, priority, or specially protected fauna.
Fauna habitat	Whether the proposed clearing area provides significant habitat for fauna.
Significant ecological linkage	Whether the proposed clearing may impact on a significant ecological linkage.
Mapped ecological community	The proximity of the proposed clearing to any threatened ecological communities or priority ecological communities.
Significant flora	The proximity of the proposed clearing to any records of threatened or priority flora.
Mapped wetland	The proximity of the proposed clearing to any wetlands listed under the Convention on Wetlands of International Importance (Ramsar Convention) or the Directory of Important Wetlands in Australia , or wetlands classified as 'Conservation category' or 'Resource enhancement'.
Mapped watercourse	Whether the proposed clearing may impact a watercourse (e.g. the structural stability of a watercourse or deterioration of water quality).
Conservation reserve (e.g. Bush Forever; land managed by the Department of Biodiversity, Conservation and Attractions)	Whether the proposed clearing may impact a 'Conservation reserve'.

Consideration 3: The state of scientific knowledge of vegetation within the region

The relevant department will consider relevant scientific data from various databases, spatial datasets, and other relevant and readily available information to determine whether the level of scientific knowledge in the area is adequate. If it is not adequate, and additional information is required to support the department's decision, a permit is likely to be required.

Consideration 4: Whether conditions are likely to be required to manage environmental impacts

Applicants should, as much as practicable, avoid and mitigate environmental impacts to the area before planning their clearing activity. Clearing activities that are likely to require conditions to minimise, mitigate, or offset effects on the environment will likely require a permit.



3.6 What happens after a referral form is submitted?

The relevant department will review the referral and make one of the following decisions, having regard to the criteria listed above:

No permit required

If the proposed clearing activity is considered to not require a permit, with reference to the above specified criteria, or if the activity qualifies for an exemption, the department will inform the referrer that a permit is not required.

Permit required

If the proposed clearing is considered to require a permit, with reference to the above specified criteria, the department will notify the referrer that a permit is required. The referrer will then have the option to submit a new clearing permit application, or request (in writing) that the referral now be dealt with as if it were an application. The applicant will also be requested to pay the relevant prescribed application fee.

Referral returned without assessment

The department may return a submitted referral form if:

- the referrer did not complete the correct form and/or did not provide the required information, and/or
- the proposed clearing is on land subject to an existing agreement to reserve, conservation covenant, or environmental protection covenant (see Section 3.3 above).

The referrer will be informed by written notice.

Notice that clearing may not proceed

If the proposed clearing contravenes a soil conservation notice, the department will notify the referrer that the clearing cannot proceed (see s.51DA(6) of the EP Act).

3.7 What happens if a decision notice is not received within 21 calendar days?

If you have not received a notification after 21 calendar days, you may:

- request in writing that the referral be treated as a clearing permit application, or
- wait until the relevant department notifies you of its decision.

3.8 What happens after the department has made its decision?

Once a determination is made, the referral and referral outcome will be published on the relevant department's (i.e. DWER or DMIRS) website.

There is no appeal process relating to referral decisions.



Document implementation

This guideline comes into effect on the day it is published.

If you have any queries about the information in this guideline, please contact DWER's Native Vegetation Regulation branch by phone on (08) 6364 7000 or via email to info@dwer.wa.gov.au.

For queries regarding clearing related to mining and petroleum activities under delegation, please contact DMIRS by phone on (08) 9222 0951 or via email to nvab@dmirs.wa.gov.au.

Related documents

LEGISLATION
Acts
<i>Environmental Protection Act 1986</i>
<i>Environmental Protection Amendment Act 2020</i>
<i>Mining Act 1978</i>
<i>Petroleum and Geothermal Energy Resources Act 1967</i>
<i>Petroleum Pipelines Act 1969</i>
<i>Petroleum (Submerged Lands) Act 1982</i>
Regulations and other subsidiary legislation
Environmental Protection (Clearing of Native Vegetation) Regulations 2004

Western Australian legislation and subsidiary legislation listed above is available through the [Western Australian Legislation website](#).

DWER DOCUMENTS
A guide to the exemptions and regulations for clearing native vegetation

Custodian and review

The currency of this document will be reviewed no later than three years from the date of issue or sooner as required.

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