



WILDFLOWER SOCIETY OF WESTERN AUSTRALIA (Inc)

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Department of Water and Environmental Regulation
Locked Bag 33, Cloisters Square
Perth WA 6850

To Whom It May Concern

COST RECOVERY FOR DWER

The Wildflower Society of Western Australia (WSWA) would like to make the following comments on the proposal by the Department of Water and Environmental Regulation (DWER) recover more of the costs relating to the provision of water licensing and environmental regulation. The WSWA would also like to take this opportunity to comment on some of the issues raised in the "Discussion Paper on cost recovery for the Department of Water and Environmental Regulation" August 2018.

SCHEDULE 1 NATIVE VEGETATION CLEARING

Section 2.1. The role of DWER

The discussion paper states that the DWER provides 'a one-stop-shop for environmental and water approvals, streamlining regulatory assessments for proposals'. The word 'approvals' here implies that all applications will be approved. The WSWA objects to this description of the DWER's services. DWER's first priority is to undertake rigorous environmental assessment of any proposal, and then, if impacts are shown to be acceptable or manageable, to give approval, with conditions if required. There should not be an expectation amongst proponents and applicants that approval will be given as a matter of course.

Further, the word 'streamlining' should be removed as it implies a lack of rigour in assessment. 'Good environmental outcomes' should come first.

Section 3.1. Background

The discussion paper implies that DWER seeks 'the right balance between clearing and protecting native ecosystems'. We object to this statement, for a number of reasons. Firstly, we object because what is meant by 'right balance'? Who is to judge, and in fact, what is right? Secondly, our recent work associated with the assessment and approval of Clearing Permit applications shows there is very little evidence that a balance is achieved, or indeed sought. In our experience, nearly all Clearing Permit applications are approved by the DWER, even if many crucial and keystone Clearing Principles are at variance. In these instances, it appears to us that **any other** consideration takes precedence over



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environmental considerations, even when endangered flora, fauna and vegetation communities are being removed or seriously adversely impacted. There is inadequate consideration of the loss of these environmental values, and of the fact that there are multitudinous applications for clearing which result in continuous and further incremental loss of these values, especially in the so-called 'intensive land use zone'. Such an approach by DWER does not represent 'balance' let alone a 'right balance'. When is enough clearing enough? We need to restore the 'balance' in favour of retaining essential natural infrastructure rather than its removal for human infrastructure.

Consequently, there should be a recognition and decisions by DWER, and a statement to that effect, that because both the Wheatbelt and the Swan Coastal Plain in the 'intensive land use zone' have been cleared beyond safe ecological limits, Clearing Permits will generally not be approved, and exemptions will not apply in these regions.

This is consistent with the Approved Conservation Advice for Threatened Species and Ecological Communities, such as for the Banksia Woodlands of the Swan Coastal Plain TEC, which states that

'Prevent further clearance, fragmentation or detrimental modification of remnants of the ecological community and of surrounding native vegetation, for example, during residential development, basic raw materials extraction, and associated infrastructure development. High conservation value, unmodified and older growth areas are particularly important for retention and management.'

Specific measures include 'Avoid the requirement for offsetting, by avoiding and mitigating impacts to the ecological community first.'

The Discussion Paper also states that 'As a trusted regulator, the department aims to ensure clear and consistent decisions which deliver **certainty** for industry and create transparency for all stakeholders and the community.' What is lacking in this statement is the crucial aim, objective and commitment to protect, and provide **certainty** for, the environment. At the moment, we have little **certainty** in DWER protecting the environment.

Section 3.2. Rationale for change and benefits

We acknowledge and agree that existing fees to assess Clearing Permit applications are grossly inadequate to cover DWER's costs. However, seeking increased fees to assess Clearing Permit applications is only acceptable if this results in more rigorous (and not just faster) assessment of those applications, and concomitantly results in an improvement in environmental values. This means there must be (and this can only be judged by) reduced levels of clearing permit approval, reduced levels of clearing and increased levels of revegetation/restoration of degraded ecosystems.



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The document states that 'Government has agreed that additional revenue that might be raised from increased fees will be reinvested in the Department to improve service delivery and efficiency in its regulatory services'. However, as stated above, this should result in more, not less, rigorous assessment of Clearing Permit applications, irrespective of how long that takes or what negotiations with proponents and other decision makers are required.

Further, the document states that 'Additional compliance resources will allow the Department to carry out more targeted and proactive inspection and audit activities.' What is missing from this statement is a commitment to undertake more prosecution for unlawful, excessive and un-necessary clearing which is at variance with the EP Act, the Clearing Regulations and any approved Clearing Permit. We have seen too many examples in the last few years where DWER has not imposed any meaningful, effective, financial and deterrent penalties on parties that have plainly cleared roadsides without the required Clearing Permits. There is adequate evidence that existing actions, such as writing warning letters, are not effective as many offenders are repeat offenders. More funds, legal authority and commitment needs to be allocated to investigate, **prosecute** and **penalise** such cases, and that should include Vegetation Conservation Notices and on-the-spot fines by empowered DWER Officers.

Section 3.4. Proposal for improved cost recovery

We support the principle of increased Clearing Permit application fees. The size of an acceptable fee is much harder to judge.

Our philosophy is that the user should pay, ie that the person wishing to clear should pay for the right to do so. However, already, even with a very low Clearing Permit application fee of \$200, many proponents, particularly rural Local Government Authorities (LGA) and landowners, do not undertake any assessment at all of the environmental values likely to be affected by the proposed clearing or planning how to minimise such impact, relying instead (implicitly or otherwise) on the DWER or the community to do so. The proposed increased fees to DWER will enable DWER to more robustly undertake the required assessments, such as flora and fauna surveys, that the proponent should really be responsible for under the EP Act.

With the revised fee, should the proponent now be exempt from undertaking any of the required assessments such as flora and fauna surveys? To address this, we suggest that the fee could include a component for 'adequate information' ie a fee set for flora and fauna survey based on area. If the application is accompanied by adequate flora and fauna surveys, this amount could be deducted.



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We believe there are several positive and negative implications of the revised fee structure, particularly as they relate to rural LGAs and landowners. These are as follows:

- rural LGAs may be more inclined to submit strategic clearing permits for packages of road widening, as the cost of Clearing Permit applications for several short stretches of roadway on the same road (as has been happening regularly with many LGAs). This will allow DWER to undertake cumulative impact assessments of the various proposals and apply appropriate conditions that include more strategic protection and enhancement of the environment, such as offsets, as we have been advocating for some time
- rural LGAs and landowners may be less inclined to clear, or to reduce the area they wish to clear, in order to reduce or avoid the Clearing Permit fee. In our view, this is a desirable outcome as there are many instances where the outcome desired by the proponent can be achieved without the clearing (or extent thereof) that they initially envisaged
- the increased proposed Clearing Permit application fees may provide an (additional) incentive for rural LGAs and landowners to clear (unlawfully) without a Clearing Permit in order to avoid paying the fee, which we recognise is a significant imposition on many rural LGAs and landowners. This would be unfortunate and reinforces our previous comment that DWER needs to significantly expand its prosecution capability, capacity and commitment.

We are not totally clear on the proposed fee for the Purpose Permit. It is not clear from the Discussion Paper (Table 1 and the accompanying discussion) whether the purpose component of the revised fee is in addition to (which we suspect is the case), or in place of, the area component.

Given these complexities and potential implications, it is difficult to know at what level to set the Clearing Permit fee. Our view is that the average 25% cost recovery will be inadequate in the long run, and fees will need to be increased. This is particularly true for very large areas (ie >1000ha) where both the cost to DWER and the capacity of proponents to pay is high and will increase. We submit that DWER should review and revise the fee structure every 4 years with a recommendation that the cost recovery increases to at least 50%, maintaining pace with inflation.

TARGETED QUESTIONS

1. Strategic Approach

We support strategic purpose permits on the following conditions:

- proponents undertake the required environmental impact assessment (including adequate flora and fauna surveys) and environmentally-sensitive planning up-front



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- DWER undertakes adequate cumulative impact assessment, taking into account the Approved Conservation Advice for Threatened Species and Ecological Communities, such as the Banksia Woodlands of the Swan Coastal Plain TEC, the Eucalypt Woodlands of the Western Australian Wheatbelt and the Proteaceae Dominated Kwongkan Shrublands of the southeast coastal floristic province of Western Australia
- the proponent commits to offset the impact of their proposed clearing, including both the acquisition of high-value environmental assets similar to that destroyed, **and** the revegetation/revegetation/creation of strategic assets, such as wider, vegetated road reserves and corridors along drainage lines or between remnant vegetation; and
- there is no additional loss of land already in, or proposed to be added to, the Conservation Estate.

2. Purpose component

We support the need for an additional fee, in addition to a fee based on the total area proposed to be cleared, for the added complexity of assessing and managing a purpose permit over its life. However, we recommend that the fee should be set at a cost recovery of at least 50%.

3. Fair fee structure

The proposed fee structure should reflect the complexity and environmental significance of the landscape and the area proposed to be cleared, irrespective of the proponent's capacity to pay.

However, we suspect that rural LGAs and individual landowners may struggle to pay the proposed fees, unless there is financial gain to be obtained, such as the case of an individual landowner selling or subdividing a property, or proposing to establish a much higher value land use on the land.

If proponents object to, or struggle to pay, the proposed fee, they should be advised what alternatives they have, including undertaking up-front environmental assessment and planning which may reduce DWER's assessment work load, as well as the benefits of doing so, which could include more rapid assessment.

Proponents, or would be proponents, should also be widely and strongly advised of the prosecution and penalties associated with unlawful clearing.

4. Impact on us

The proposed fee structure may encourage some proponents to not apply for a Clearing Permit and to seek alternative ways of undertake the intended activity or purpose. This



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may include carrying out their activity on land already cleared, reducing/ minimising the area that needs to be cleared for their activity or purpose, or undertaking it on land which is more environmentally suited for the purpose proposed. We support and encourage this.

In summary, we support the proposal to increase Clearing Permit application fees. However, we caution against possible detrimental, un-intended side-effects, and strongly recommend DWER increase their audit, compliance and prosecution capability, capacity and commitment to detect, inspect and appropriately charge all native vegetation clearing activities whether lawful or unlawful.

SCHEDULE 2 WATER

Section 4.1. Background

Water, whether from rainfall, surface water (especially in wetlands) or groundwater, have a very significant impact on the composition, density and health of vegetation. With declining annual rainfall and changing rainfall patterns in south-western Western Australia, resulting in less and more variable soil moisture and declining water tables, the native vegetation in Western Australia's south-west biodiversity hotspot is becoming increasingly stressed. In particular, in recent times, we have noticed significant declines, including mass deaths, of remnant vegetation on the Swan Coastal Plain, including in the Perth metropolitan area, precipitated by low winter rainfall and long hot summers. This decline in water levels is a significant threat to the Banksia woodlands of the Swan Coastal Plain TEC and groundwater dependent ecosystems.

Further, such conditions not only adversely affect existing vegetation, but they also hamper re-establishment of vegetation in revegetation programs.

Consequently, the Wildflower Society is greatly concerned about the volume of groundwater abstracted from the Gngangara and Jandakot groundwater mounds, particularly for irrigation and public water supply, as this adversely affects the Banksia woodlands of the Swan Coastal Plain TEC and many groundwater dependent ecosystems, as well as definable lakes and wetlands.

Section 4.4 Fee structure for mining and public water supply scheme sectors

We support the introduction fees for water licence and permit assessments for the mining and the public water supply scheme sectors to recover the cost of assessing applications for some of the State's largest water users by volume.

It is therefore appropriate that fees for water licence and permit assessments are reflective of the level of effort required to assess licence and permit applications, and of the risk to the water resource. The current proposal is to assess the level of risk, and thus the licence



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fee is based on the volume of water to be abstracted and the degree of allocation of the water resource. We presume that the part of the fee based on the volume of water to be abstracted is set on the basis on the maximum volume of water permitted to be abstracted.

We believe that other major sectors of the economy that abstract surface or groundwater, especially horticulture, should be similarly licensed, if they are not already. Our philosophy is that the user should pay, ie that the person wishing to use water should pay for the right to do so, and we suspect that many horticultural users are not adequately paying for the state's water resource. A similar philosophy of fees reflective of the level of effort required to assess licence and permit applications, and of the risk to the water resource, should be used. Nevertheless, there may also be areas (such as the Gnangara Mound) where is no further water abstraction licences should be granted because the groundwater is already over-committed, and abstraction is causing declining groundwater levels.

However, the current fee proposal is only based on the level of effort required by the DWER to assess the water abstraction proposal. We contend that this is not sufficient and does not value the resource itself. A simple one-off assessment fee also does not encourage efficient or sustainable use of water. The proposed fee structure should therefore be modified or augmented with an actual annual volumetric usage fee component. This could/should include increasing unit charges for high water usage. After all, domestic water users are already charged this way - why should other sectors of society not do likewise. This would encourage more efficient water use and water recycling where feasible. For example, irrigation for commercial market gardens and turf could be done more efficiently (with less water) by use of the latest technology.

Setting volumetric water use charges would, of course, require water metering. We understand that, currently, there is no requirement to record the actual volume of water used under these water abstraction licenses, and this does not appear to be altered with the new proposal. Consequently, there is no data recording the actual volume of water used under these licenses. This is a major knowledge gap that can only be filled by mandatory water meters independently monitored at least annually for all licensed users.

The proposed increased water abstraction application fees and our suggested annual volumetric usage charging may provide an incentive for some, such as market gardeners, to abstract water (unlawfully) without a licence and a metered bore in order to avoid paying the required fee. This would be unfortunate and suggests that DWER may need to significantly expand its inspection and prosecution capability, capacity and commitment to identify and penalise un-registered bores.

TARGETED QUESTIONS

1. Taxpayers paying for assessment



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We consider it is totally un-reasonable for taxpayers to pay 100% of the cost of assessing water licence and permit applications. While a proportion paid by taxpayers is reasonable, applicants should not be able to gain permits at little cost, especially for commercial uses. WA's water resources are a public resource which belongs to the people and to the natural environment. The user pays concept should apply.

2. Appropriate fee for water licence and permit application

We consider that water licence and permit application fees should include a cost recovery component that covers some or all of the DWER's assessment costs. However, there should also be an annual volumetric water use component for all commercial users/takers of water which could/should include increasing unit charges for high water usage. If the proposed fees shown in the Discussion Paper (Table 5) already include some element of water usage, this should be separated out from the assessment cost, and the two different components should be made transparently clear.

3. Risk-based model for determining water licence and permit application fees

If the fees were determined solely on a risk-based model, then the proposed fees shown in the Discussion Paper (Table 5) would be rounded to the nearest hundred dollars. As it is, it appears that the proposed fees are a mixture of a risk-based model and actual cost recovery. A sliding scale of fees based on risk appears to be appropriate, but who determines the risk and what are the criteria for setting the level of risk?

4. Impact on our business

Our core activity is to know, grow, conserve and enjoy WA wildflowers. Conserving them in situ by maintaining an appropriate natural, sustainable water environment is key to our business.

5. Timing of payment of fees for water licences and permit applications

Water licence fees should be paid up-front. However, volumetric water usage charges should be paid quarterly.

In summary, we support the proposal to increase water licence and permit application fees. However, we strongly recommend that volumetric water usage charges be introduced for all commercial users. Further, we caution against possible detrimental, unintended side-effects, and strongly recommend DWER increase their audit, compliance and prosecution capability, capacity and commitment to detect, inspect and appropriately charge all active water abstraction activities whether lawful or unlawful.



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Yours faithfully,

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On behalf of
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