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

Discussion Paper on cost recovery for DWER, August 2018

The Urban Bushland Council WA Inc. (UBC) makes the following comments.

2 Introduction (p4)

2.1 The role of DWER: *'A one-stop-shop for environmental and water approvals'* The word *approvals* here implies that all applications will be approved. The word *approvals* should be changed to *assessments* so that a rigorous process is to be expected and provide that not all proposals may be approved. The word *'streamlining'* should also be removed as it implies a quick yes and a lack of rigour in assessment. Also *'good environmental outcomes'* should come first.

2.2 Modern regulatory approach

We agree with this section, well stated.

2.3 Government direction on cost recovery (p5)

Supported. Notably however the term 'sustainable development' has different meanings to different people. In a sustainable society, nature is no longer being destroyed.

3 SCHEDULE 1 – NATIVE VEGETATION CLEARING (p6-)

3.1 Background

Clearing regulatory framework and history: It is agreed that clearing in the Wheatbelt and on the Swan Coastal Plain is beyond safe ecological limits. It is therefore recommended that a statement be included here and in EPA clearing policy that:

'Because both the Wheatbelt and the Swan Coastal Plain have been cleared beyond safe ecological limits, Clearing Permits will generally not be approved, and exemptions will not apply in these regions.'

The last sentence in this section – *'The right balance between clearing and protecting native ecosystems'*... should be deleted as it can be described as weasel words, is vague and confusing, and it implies that clearing to allow for mining is acceptable because economic and social development is more important than protection of native ecosystems.

The services the agency delivers (p6-7)

The sentence *'Applications are also assessed with consideration of planning instruments and other matters considered relevant'* is a vague statement and can be regarded as a 'cop out' or open door for exemptions and is thus unacceptable. The EP Act prevails over the Planning and

Development Act and other acts (except the Mining Act) and thus EP Act provisions must apply in planning matters.

Appeals process – (p7): The UBC has participated for many years in making appeals and meeting with the Appeals Convenor on specific proposals. Our experience is that the Appeals process is a weak and dysfunctional process which is not effective in ensuring that the clearing principles are adhered to. It has no legal strength. When proposals are at variance to multiple clearing principles, the appeals process should uphold appeals and recommend to the Minister that such applications are refused.

It is thus recommended that a formal environmental legal appeals process and an Environmental Court or Tribunal be established in WA. For example NSW has had a *Land and Environment Court* for many years. An Environment Court in WA could also facilitate prosecution of illegal clearing and of failure to meet conditions of approval.

3.2 Rationale for change and benefits (p7)

Cost of service: - clearly described. Notably the average cost of assessment is \$10,000.

Anticipated service improvement:

Additional resources and staff are supported.

We submit that the proposed fee structure is still much too low.

The stated increasing demand for environmental assessments relating to economic growth is questioned. **In the Wheatbelt, and for the South West region, clearing permits should be refused as in our comments on 3.1 above. Clearing permits for all listed TECs (both state listed and listed under the EPBC Act) should not be granted and this needs to be made clear in strengthened regulations under EP Act and the BC Act.** Such clearing cannot be effectively offset and the **principle of avoidance** should legally apply.

We especially support increased staff and capacity for compliance with field inspection and audit and monitoring of existing approvals. Penalties for non-compliance need to be raised and legally enforced.

3.3 Benchmarking (p8-9)

Clearing fees in other jurisdictions: This information is appreciated and certainly supports the introduction of a greatly increased fee structure given the large size of WA and the complexity and richness of our biodiversity which is increasingly at risk.

3.4 Proposal for improved cost recovery (p 9)

Proposed fee structure: We again wish to emphasise that in the highly cleared South West Land Division (intensive land use zone), Clearing Permits should generally not be available – ie refused. Landholders and land managers in this region should all be made aware of this position and be advised to **plan land uses and facilities that avoid clearing. An awareness program to promote this would be justified and helpful.**

The utilities and Local Government Authorities in particular should be required to plan infrastructure so that clearing and significant impacts on bushland are avoided in this intensive land use zone.

The current and recent clearing permits and EPA approvals of roadsides, or of ESAs, TECs and Bush Forever sites by Main Roads, LGAs, developers, Landcorp and the Water Corporation should not be allowed. The UBC in the public interest and in good faith has often participated in making submissions and Appeals in line with Conservation Advices, Recovery Plans, Clearing Principles

and protection of ESAs by these and other utilities to no avail. This failure in good governance must be addressed.

In the event of an application in this region an application fee of at least \$20,000 is recommended. This should not be seen as a fee that will guarantee approval.

Basic raw materials: clearing for extractive industries should not be permitted in the South West Land Division. These raw materials should be obtained from cleared lands.

It is recommended that Purpose permits not be available in the South West Land Division (intensive land use zone).

3.5 Discussion and targeted questions (p12-13)

As stated above, we recommend that fees be increased much more than proposed.

Fees for applications to clear in excess of 1000ha in the extensive use zone should be much higher and not capped at \$5000. As stated this is well below fee levels in NSW. \$20,000 would be more appropriate.

Targeted questions (p13)

1. We do not support the proposed strategic approach for otherwise multiple permits for local government roadsides. **Purpose permits should not be offered for the intensive land use zone and the Wheatbelt.** In the South West Land Division, very little native vegetation remains and roadside remnants provide essential ecological linkage functions which must be maintained and enhanced. For example the Carnaby's Cockatoo depends on these linkages when migrating to and from the Wheatbelt breeding areas. Many other bird species and other invertebrate pollinators require connectivity across the landscape. Thus a strategic approach would not benefit these species and the environment in the South West and Wheatbelt. Vegetated roadsides are also a tourist attraction and should be retained also to maintain these values.
2. We suggest that the 'purpose component' is **not reasonable to apply** considering the added complexity of this type of clearing permit.
3. The proposed fee structure should reflect the complexity of the landscape and the area proposed to be cleared. It is irrelevant to consider the capacity of clearing permit applicants. Again we stress clearing should generally not be permitted in the South West and Wheatbelt. And application fees should start at \$20,000 even for small areas. Payment of such a fee should not imply or presume that a permit will be granted.
4. The proposed fee structure should encourage and promote landholders to carry out their land developments on land already cleared, and on which is environmentally suited for the purpose proposed.

Climate change: For all these proposed changes, it should be remembered that land clearing contributes to Greenhouse gas emissions by removing some of nature's carbon sink. State policy should be to increase vegetation cover of the landscape, and not reduce it each year as is occurring now with net loss of native vegetation cover.

ADDITIONAL COMMENTS APPLICABLE TO SCHEDULE 1

Implications of Banksia Woodlands TEC listing under EPBC Act

The UBC draws to your attention the Approved Conservation Advice (September 2016) that applies to the Banksia Woodlands of the Swan Coastal Plain TEC listing as endangered under the EPBC Act. This Advice applies to the WA State Government and thus your Clearing Permit application process, as well as other authorities and landholders.

The Advice states on page 33 under 5.2 *Priority protection and restoration actions*:

PROTECT the ecological community to prevent further loss of extent and condition;

RESTORE the ecological community within its original range by active abatement of threats, re-vegetation and other conservation initiatives

COMMUNICATE WITH AND SUPPORT researchers, land use planners, landholders, land managers, community members, including the indigenous community, and others to increase understanding of the value and function of the ecological community and encourage their efforts in its protection and recovery.

Priority actions are recommended for the abatement of threats and to support recovery of the ecological community. Actions inconsistent with these recommendations that are likely to significantly affect the ecological community should not be undertaken.

Further, on page 34 under 5.2.1 **PROTECT**

'Preventing vegetation clearance and direct habitat damage

Highest priorities'

A detailed list of clear specific priorities is given. One is:

'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.'

Then a detailed list is given of specific avoidance and protection measures, one of which is:

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

The UBC draws to your attention this Approved Conservation Advice as it provides an explicit manual for decision-making and actions under the Clearing Regulations for areas of the Banksia Woodlands of the Swan Coastal Plain. In essence there should be no more clearing of these Banksia Woodlands permitted. Refer especially to pages 33 – 43 incl.

4 SCHEDULE 2 – WATER

4.1 Background

Statutory obligation for assessing licences and permits (p15)

The regulatory criteria are supported.

For items (b) and (c) - ecologically sustainable and environmentally acceptable:

It is very important to include in these criteria the need to maintain groundwater levels. This is a very significant factor for consideration of new or increased licences on the Gngangara Mound where groundwater levels are falling. This decline in water levels is a significant threat to the Banksia

woodlands of the Swan Coastal Plain TEC and groundwater dependent ecosystems. Indeed it is essential to reduce the total volume of groundwater abstraction from licensed bores. Evidence of unsustainable decline and details of past recommendations are set out in *Department of Water, Hydrogeological record series, Report no. 60 September 2012: Loch McNess hydrogeology and causes of water level decline (1975-2011)*.

The UBC recommends that the total volume of water licensed to be abstracted from the Gnangara Mound be significantly reduced. This should apply particularly to all big commercial users for irrigation.

For items (d) and (h)ii the current overuse of groundwater on the Gnangara Mound prejudices current and future needs of native vegetation and for potable supply to Perth.

For item (f) irrigation for horticulture could be done more efficiently (with less water) by use of the latest technology for much more water efficient irrigation. This could be promoted by decreased volumes and increased charges for licences as well as a volumetric charge.

For item (h)i: The land use planning instrument *'Underground Water Pollution Control Areas'* (UWPCA) applies to areas of the Gnangara Mound. Why is this not mentioned and explained?

4.2 Number of licences and permits assessed 2015-2017(p 15-16):

It states that 3723 GL of water was licensed, but there is no data to record the actual volume of water used under these licenses. This is a major knowledge gap which can only be filled by mandatory meters independently monitored at least annually for all licensed users.

It is stated that most licence amendments seek to increase the volume of water to be taken. This should be resisted on the Swan Coastal Plain areas so that total volumes taken are significantly decreased. Any increases should be expensive and should require a two times reduction in adjacent or nearby licences.

Amendments such as reductions to licences and mandatory meters on the Swan Coastal Plain and especially on the Gnangara Mound could be initiated by DWER.

4.3 Water fees in other jurisdictions

As in Victoria, we recommend that WA introduces **a volumetric charge for all users** in addition to increased licence application fees.

4.4 Fee structure for mining and public water supply scheme sectors (Table 5 p19)

This section is well explained and is supported with the condition that, for both the new 5C licence assessment fees and renewal 5C licence assessment fees, these fees be much higher especially for medium and high risk areas.

For areas of the Gnangara Mound and Jandakot Mound, it is recommended that in general no new licences be permitted because groundwater is already over-committed, and abstraction is causing declining groundwater levels - which is a significant threat to the vegetation systems and wetlands of the Swan Coastal Plain.

4.5 Points for discussion (p20-21)

1. We do not consider it is reasonable for taxpayers to pay 100% of the cost of assessing water licence and permit applications. While a proportion paid by taxpayers is reasonable and should be maintained to ensure rigorous independent assessments by DWER, applicants should not be able to

gain permits at little cost, especially for mining and commercial uses. The user pays concept should apply.

The water resources of the land are a public resource which belongs to the people and to the natural environment. Licensed use must be much more tightly controlled.

2. Appropriate fees: As stated above, fees should be at the very least those shown, but preferably much higher because water resources are declining due to over use and to rainfall decline and increased temperatures with climate change. **For the Gnangara Mound, a significant overall net reduction of groundwater use is needed.** Refer to the recommendations in the Report No. 60

3. A risk-based model is supported.

4. We are not a business or industry. We suggest that the impact on big business would be negligible. Significant fees and a volumetric charge would help inspire more efficient use by using the latest water saving technology. This is especially the case for irrigated horticulture.

5. Fees for increased use licences should be paid up front.

We strongly recommend the introduction of a volumetric charge for all licensed users. This means meters are needed on all bores and wetland/river pumps. The DWER should be responsible for monitoring all bores and meter readings at least annually, 6 monthly may be better.

Representatives of the Urban Bushland Council are available to discuss these matters further with you. We may be contacted via our office as below.

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