



Understanding the Environmental Protection Act (1986) and How it Can Save Urban Bushland

SUMMARY NOTES of a UBC Workshop held on Sunday 20 November 2022

More than 30 conservation and Friends groups from across Perth attended the UBC's workshop held on 20th November 2022.

PROFESSOR MATTHEW TONTS, the current Chair of the **Environmental Protection Authority (EPA)**, spoke about the role of the Authority, environmental impact assessments, and how the community can have input to the process.

Created initially under the 1971 *Environmental Protection Act* (updated in 1986), the EPA is independent of the Minister for the Environment and any government agency. It consists of one full-time member and four part-time members who are supported by the Department of Water and Environmental Regulation (DWER) and can draw on expertise from other government departments, universities and others.

The EPA's two core areas of responsibility are: "(a) to protect the environment, and (b) to prevent control and abate pollution and environmental harm." In these roles, the EPA can be both **responsive and strategic**.

Strategic functions

In its **strategic role**, the EPA provides environmental advice to government, industry and the community. Until recently, the Authority has focused predominantly on Environmental Impact Assessments under Part IV of the Act. There is now a move towards a more advisory approach, as exemplified in two new reports on environmentally sensitive urban locations: [Environmental values and pressures for the Greater Brixton Street Wetlands](#) (October 2022), and [Guidance for planning & development: Protection of naturally vegetated areas in urban and peri-urban areas](#) (December 2021).

Responsive role

The EPA's **responsive function** under Part 4 of the Act primarily involves the conduct of [environmental impact assessments \(EIA\)](#) for development proposals. The EIA framework is described in several key documents:

- [Procedures Manual](#)
- [Statement of Environmental Principles, Factors and Objectives](#)
- Environmental Factor Guidelines, which are part of the above document.

Members of the public may sign up to the [EPA consultation hub](#) to be notified when proposals are open for public comment. At the proposal referral stage (Step 2 above) the EPA allows 7 days for initial public comments. At Step 4(d) - the Public Environmental Review (PER) stage - the EPA invites public submissions, usually with a period of 4-6 weeks to respond. The public are encouraged to provide individualised and succinct submissions that highlight specific local and scientific knowledge of the site. EPA decisions are subject to an appeals process (Step 6) which is another point at which the public can have input.

STEPS IN THE EIA PROCESS

Step 1 – Pre-referral discussion with the proponent using the mitigation hierarchy:

- a) Avoid destruction/damage
- b) Minimize destruction/damage
- c) Rehabilitation
- d) Offsets (last resort and not to be relied upon).

Step 2 – Referral of proposal. Four options:

- a) Self-referral by the proponent, by a third party or by the Authority itself
- b) EPA considers validity of referral
- c) Once the project is assessed as valid, it is released for **7 days of public comment**
- d) EPA considers if further information is required.

Step 3 – EPA determines if an EIA is required based on various environmental factors, the level of public interest, and the role of other regulators.

Step 4 – Decision on level of assessment:

- a) Assessment using referral information
- b) Assessment requiring further information
- c) Assessment with public review period, typically 2-4 weeks
- d) **Public Environmental Review**, normally for big complex projects.

Step 5 – Assessment:

- a) Scoping and environmental studies
- b) Public review of the scoping document
- c) Environment review document, and
- d) Public review/call for submissions.

Step 6 – EPA Report and recommended conditions:

This step is subject to an appeals process which is another point at which the public can have input.

Step 7 – Final decision:

After receiving the Appeals decision, the Minister consults with other decision-making authorities and issues a Ministerial statement.

Dr HUGH FINN, Lecturer at Curtin Law School, spoke about the range of government laws and policies that are useful in formulating public submissions and conservation campaigns. How can we articulate the value of urban bushland and persuade decision-makers of this value? Notably, aspects of the *Environmental Protection Act 1986* are central to this endeavour, particularly Part 4A: Object and principles of the Act, and Schedule 5: Principles for clearing native vegetation.

The need for bushland conservation is supported by other laws and policies, including the State Planning Policy ([SPP2.8 \(Bushland policy for the Perth Metro Region\)](#)), the new [Native Vegetation Policy 2022](#), and the [Public Health Act 2016](#).

Suggested advocacy points are:

- A changing climate amplifies the risk of ecosystem collapse and increases the value of keeping vegetation intact. “We can’t keep making decisions that are based on 1990s thinking...”
- For more emotive power, use terminology like ‘deforestation’ (instead of ‘land clearing’).
- Stress that urban bushland is an **asset** that provides ecosystem services to wildlife and the community.
- Cumulative effects must be forefront, and decisions should not be made in isolation.
- Highlight the ‘precautionary principle’.

TIM MACKNAY, Managing Lawyer, Environmental Defender's Office, spoke about the mechanisms under the *Environmental Protection Act* Section 51c exemptions and Schedule 6 of the *Planning and Development Act 2005* that allow clearing of native vegetation without an EPA environmental impact assessment. Land managers, especially local governments, are sometimes unaware of these legal requirements.

Bush Forever sites were created under policy (not legislation) and are all Environmentally Sensitive Areas. This is important in the context of land clearing because the normal exemptions do not apply.

Suggestions for protecting Bush Forever sites:

- Monitor management activity and make complaints to local Council or through Department of Water and Environmental Regulation (DWER).
- Lobby to strengthen protections in the EP Act.
- Lobby the EPA to provide strategic advice on a particular site.
- Strengthen reserve status to transfer Bush Forever sites to become conservation reserves under *the Conservation & Land Management Act 1984 (WA)*.

COLMA KEATING, UBC Vice Chairperson, quoted one of WA's conservation champions, Felicity Bairstow, who reminded us that "if you aren't at the table, you are probably on the menu!" This is why UBC continues to put its efforts into writing submissions - at an average of two per month - sometimes in collaboration with local groups. These submissions are posted on the UBC website under the heading Resources.

Many other environmental groups are active in submission-writing too: the CCWA, for example, in the past year prepared 46 EPA submissions and 13 appeals, and 23 other submissions!

In its submission-writing role, the UBC has established a Submissions Sub-Committee and is encouraging members to join. We are also developing an online database of resources and references to assist members in preparing their submissions.

MARG OWEN (OAM), UBC Secretary and submission writer, shared some critical pointers about submission-writing.

The EPA's **Environmental Impact Assessments (EIP) are focused on** significant or strategic development proposals and land use planning scheme amendments. Many of these proposals relate to mining, industry and infrastructure projects.

The [EIP flowchart](#) has five stages: (1) Referral of a proposal to EPA, (2) EPA decides whether to assess, (3) Assessment, (4) EPA reports on the assessment, and (5) Implementation.

Anyone can subscribe to the EPA Consultation Hub at www.consultation.epa.wa.gov.au which posts the current list of proposals, the level of assessment, and the timeframe for submission.

Initial phase - FIRST OPPORTUNITY TO COMMENT

The initial phase usually allows 7 days for comment. These are short submissions of up to 500 words (about one A4 page) and with a choice of four recommended actions: (1) Do not assess (2) Assess – referral information (3) Assess – Environmental review with NO public review (4) Assess – including Public Environmental Review (PER). The UBC generally recommends that a PER is conducted.

Environmental principles to be addressed in your submission should relate to the objects contained in Part 4A of the *Environmental Protection Act (1986)*. This is to protect the environment of the State, having regard to the following principles:

- 1) The precautionary principle
- 2) The principle of intergenerational equity
- 3) The principle of the conservation of biological diversity and ecological integrity
- 4) Principles relating to improved valuation, pricing and incentive mechanisms
- 5) The principle of waste minimization.

The EPA also considers environmental factors and objectives under the five themes: Sea, Land, Water, Air, People.

Public Environment Review - SECOND OPPORTUNITY TO COMMENT

If a proposal is accepted by the EPA for public review (PER) there is usually more time given to submit a more details proposal.

Tips for making PER submissions:

- Prepare it on letterhead addressed to Professor Matthew Tonts, EPA Chair, Locked Bag 10, Joondalup DC, WA 6919. Include the date and title of the proposal.
- In your letter, address the likely impacts of the proposal for each of the EPA's environmental factors: Sea, Land (Flora/vegetation and Fauna), Water, Air, People (Social Impacts).
- Use expert references – for example, State of the Environment Report, CSIRO papers, UN recognition.
- Use your specific local knowledge of the patch under review.
- Draw attention to the cumulative impacts and precautionary principle.
- Because 'Significant impact' is not defined in the Act, the common meaning of the words should apply.
- Challenge any rationalising and unacceptable statements: for example, the removal of local fauna to other locations.
- Challenge the use of offsets.
- Acknowledge excellence in the proponent's report (if there is any).
- In your concluding remarks, restate your position and give a strong final paragraph.

MARY GRAY (OAM), UBC Committee member, former Chairperson and Honorary Life Member, focused her talk on Schedule 5: Principles for clearing native vegetation.

Much of the land clearing conducted in WA is controlled under the Department of Water and Environmental Regulation (DWER) as legislated under Schedule 5 of the Environmental Protection Act. The 10 principles listed in Schedule 5 are meant to guide environmental assessments.

On the Swan Coastal Plain, banksia and tuart woodlands, and other habitats, are ALL threatened ecological communities (TEC) listed under the State *Environmental Protection Act* (1986) and Federal *Environmental Protection & Biodiversity* (EPBC) Act (1999). Therefore, the 10 clearing principles should apply to these habitats and prevent ANY further clearing. Technically, if a proposal is at variance with one or more of the principles, a clearing permit should not be granted. However, this is not happening and the clearing regulation system is not functioning as it should.

Offsets do NOT compensate for native vegetation clearing and are also inconsistent with the precautionary principle.

There are also exemptions given for clearing permits and purpose permits – for example, Main Roads has a purpose permit, which allows it to clear wherever and whatever it likes.

Mary drew attention to the UBC's new [WA Biodiversity 2022: Issues and Actions](#) paper which addresses these issues and calls for specific actions – including a halt to land clearing and increased funding for the Department of Biodiversity, Conservation and Attractions.

QUESTIONS and DISCUSSION

Cate Tauss – What is the standing of ecological connectivity? How do we get the EPA to acknowledge this issue?

Hugh Finn – Agrees we need to get the “green corridor” concept accepted and entrenched in law. The EP Act Section 16E could be the best mechanism. In addition, Regional Parks need to have heightened conservation status.

Robyn Murphy – Clearing for firebreaks. The proponent for the Erindale Road Bushland development put in an application proposing offsets on their own adjacent land and a redefinition of the firebreak as public open space’. How can this proposal be challenged?

Tim Macknay – The main thing is to make sure the proposal goes to the EPA for formal review, so there is an opportunity for the public to raise these issues.

Lynn McLaren – (1) How do we advocate for a moratorium on all native vegetation clearing. (2) How do we convince the State government that urban bushland should be redefined as native forest, and protected under the new anti-logging policy?

Tim Macknay – We need a campaign. The simplest legal mechanism would be to amend the clearing regulations to introduce a moratorium, similar to the WA fracking moratorium. Otherwise, an amendment to the Act would be required.

Christine Richardson – UBC will confer with Tim about the campaign option.

Beth Schultz – Comment: The policy parameters of the anti-logging laws appear to be shifting away from a total ban on all native logging to a ban on ‘commercial logging’, which could then allow forest logging under another name.

Ray Thiess – Friends of Yellagonga Regional Park. (1) Suggests that Friends groups should apply to become a stakeholder long before clearing and development proposals are submitted. (2) How can we get together the various agencies to consider all impacts in their entirety? Public Health Act, EPBC, EPA, local government, etc.

Hugh Finn – Suggests enhanced focus on public health value of local bushland.

Tim Macknay – A structure to combine all the various agencies could be created – for example, a roundtable summit.

Carolyn Bloye, CCWA - Gelorup / Bunbury Outer Ring Road. Comment: There are 40 sites set aside in the area for quarries (mainly owned by Main Roads), which are intended to supply sand and gravel materials for the outer ring road. Unfortunately, because of a previous EPA decision, each of these quarries is subject to separate review and comment, placing a heavy burden on the public to monitor and comment on every proposal. Other clearing pressures in the area relate to the local Albemarle lithium mine.

Cate Tauss. Comment: Currently there are 390 proposals submitted by scientists to establish Threatened Ecological Communities in WA, that are still awaiting the Minister’s consideration.

CONCLUDING REMARKS by Christine Richardson, UBC Chairperson

Despite the setbacks and challenges, the conservation community needs to continue engaging with the EPA consultation process. However, UBC has limited capacity and is able to respond to a mere handful of proposals. To assist us in our work, members are invited to join the UBC Submissions Sub-Committee. Any required training and support will be provided. To wrap up, as Bronwen Keighery said at the Bush Forever 21st birthday celebration: “Bushland is our natural heritage. Bushland is very much part of the natural heritage we wish to leave for future generations.”

THE END