

28 August 2008

Garry Middle
Committee Chair
Associate Professor, Curtin University of Technology
Department of Urban and Regional Planning
GPO Box U1987
Perth WA 6845

Dear Dr Middle

RE: REGULATION REVIEW: CLEARING OF NATIVE VEGETATION

Please accept this submission as the final contribution from the Urban Development Institute of Australia (WA) to the Review of the Environmental Act 1986 and the Environmental Protection (Clearing of Native Vegetation) Regulations 2004. This submission includes commentary which is additional to the previous submission dated 19th August 2008.

The Urban Development Institute of Australia is the peak body representing the development industry in Western Australia with members drawn from the land development, urban design, planning, environmental and engineering professions.

UDIA has two key areas of interest in the review. The first is the industry's strong support for the existing exemption for the need to gain clearing permits for works undertaken in accordance with subdivision approvals. This exemption has protected it from the need to apply for clearing permits for the majority of development work undertaken and we support maintaining the status quo in this regard. The second area of interest is in relation to sand supply and the need for the development industry to have access to a steady supply of sand as the sand excavators fall under the requirements of the Clearing of Native Vegetation regulations.

Other key issues for industry are: the time taken for approvals; duplication; third party appeal rights and no practical minimum threshold or significance test to determine when a Clearing Permit is required. More detail on each of these issues follows.

1. Time taken for approvals

- The Clearing Permit approval process is slow – members report they have not achieved an approval in less than six months, even with all the appropriate level of vegetation survey etc. The average time for relatively straight forward approvals is estimated at nine months.
- Applicants are only given a broad timeframe within which their application will be processed which leads to a great deal of uncertainty with regard to project planning.
- There needs to be a statutory time limit, such as exists in the planning system, perhaps tied to "deemed refusal" or "deemed approval" provisions to ensure applications do not languish.

In 2002 the Keating Review of the EPA environmental approvals process for projects going through Section 38 Part IV of the Environmental Protection Act (1986) resulted in the introduction of timelines for the various stages of the approvals process. Regulatory authorities were allocated fixed timeframes within which they were expected to provide advice either to proponents, the EPA, or the Minister for the Environment. These timelines are audited annually by the Office of Development Approvals Coordination (ODAC) which measures the regulatory authorities' performance against the agreed timelines.

Recommendation

The introduction of a timeline system into the processing of native vegetation Clearing Permit applications would improve the process and provide more certainty to the land development industry in Western Australia. The process could include a 'Stop the Clock' provision if more information is required, however to avoid further potential disbenefit there should be a maximum timeframe that can be applied.

The benefits of introducing a timeline system similar to the system currently employed for projects being formally assessed under S.38 of the EP Act include:

- Provides certainty to the applicant that their application will be processed within a certain timeframe.
- 'Stop the Clock' provision will encourage applicants to provide all the necessary information up front so as to avoid unnecessary delays.
- Provides regulatory authorities a benchmark to measure their performance against, and in achieving that benchmark can insulate them from criticism.

2. Duplication

- There is no provision for informal Section 38 EPA assessments (e.g. proposals referred but not assessed) to confer clearing approval, with the result that it is quite possible to go through the referral process for several months and get a "not assessed" decision, only to be required to prepare and submit a Clearing Permit and wait a further nine months to obtain clearing approval. The Section 48 process provides for schemes that are referred but not assessed by the EPA to be deemed "assessed" for the purposes of subsequent approvals (including clearing) - why not Section 38?
- There appears to be considerable double handling within the DEC. The Clearing Permit application is submitted to the Native Vegetation Protection Branch in Head Office, it is then passed to the Native Vegetation Protection officers in the Regional Office to undertake the assessment. Once they have made their recommendations, it is passed back to head office from them to review before being signed off by the "Decision Maker".
- The Clearing Regulations are implemented by both DEC and DoIR (mining projects are assessed by the Native Vegetation branch in DoIR rather than DEC – this does not apply to sand excavation as this activity is not covered under the Mining Act). We believe DoIR has managed to make the process more streamlined, however review of the pending decisions on its website indicate there are still a lot of outstanding Clearing Permits outstanding for mining approvals.

3. No practical minimum threshold

- It is our understanding that the intention of the Clearing Regulations was to counter wide-scale and unapproved clearing, including clearing in environmentally sensitive areas. While this objective is fully supported, it appears the regulations are being applied without a logical and practical minimum threshold.
- There is currently no lower threshold or significance test that determines when a Clearing Permit is required and no means for the DEC to exercise discretion.

It is the case that when land developments require additional minor offsite works to facilitate construction (i.e. clearing within existing road reserves to install services or widen transport corridors), this minor action has triggered the requirement for a Clearing Permit which is then associated with months of delays on this component of the work. An extreme example is a case in 2007 where it took 7 months to get clearing approval to remove two limbs from two trees to put in a temporary access road.

Recommendation

There needs to be at least some provision for the DEC to quickly determine that clearing approval is not required in a particular case - A 'Quick Yes' for projects that pose minimal risk to biodiversity will make the process more efficient.

An officer could be allocated to undertake a quick initial assessment of all applications coming into the DEC. Those applications which pose minimal risk to biodiversity could be identified and fast-tracked to make the entire assessment process more efficient.

It should be noted that when meetings have been requested with Head Office it has been dealt with promptly with senior people attending who were able to provide clear direction advice during the meeting. However, this is yet to be translated into progress of the assessment or an approval.

4. Third Party Appeal Rights

UDIA submits that a review of the existing third party appeal rights under the legislation should be undertaken. There are currently extensive third party appeal rights against the issue of clearing permits to proponents. While the vast majority of appeals are dismissed, third party appeals can result in significant additional delays beyond those which normally occur through the permit assessment process. UDIA advocates for a review of the third party appeal rights with a view to restricting the opportunities for third party appeals.

5. Issues in the South West

While sand extraction is the province of the Civil Contractors Federation and the Chamber of Commerce and Industry both of whom I understand will be addressing the committee, the threatened supply of sand for subdivision fill is of grave concern to UDIA. In order to ameliorate this threat, the committee could consider allowing the clearing of 'poor' vegetation to access sand, with the cleared area then being revegetated to a higher standard once the sand had been removed. This is common practice in the mining industry.

The following comments relate to various issues that affect development in the South West of the state and are included for the committee's consideration.

- The use of offset polices that mimic eastern state versions such as Victoria.

- 'Compensation' for land owners with good quality bush who recognise it as a community asset. This may result in a reduced need for POS requirements or land bought at true value by the 'community' through the government. In effect, this turns bushland into an asset rather than a liability for development.
- The need for WA regulations to align with Federal regulations to streamline processes, reduce ambiguity and improve timelines.
- The draft Natural Values Strategy is often referred to in relation to environmental values in the South West. How could this be used within the sphere of Clearing Regulations?

I thank you again for giving UDIA the opportunity to comment and I trust the committee will give this submission due consideration in its deliberations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Debra Goostrey', with a stylized flourish at the end.

Debra Goostrey
Chief Executive Officer