

1 Purpose

Bush Forever is a whole-of-government policy for the conservation of regionally significant bushland on the Swan Coastal Plain portion of the Perth Metropolitan Region. This Bulletin is to update and explain the package of planning instruments for *Bush Forever*, and outline the referral process for proposals to ensure that bushland protection and management issues are appropriately considered and addressed in planning decisions in the Perth metropolitan region.

2 Background

The *Bush Forever* (2000) policy seeks to:

- establish, as far as possible, a representative system of protected areas;
- promote the conservation of ecological systems and the biodiversity they support through a range of mechanisms; and
- protect sites of significance through government reservation and acquisition.

Bush Forever aims to protect at least 10 per cent of the original extent of each of the original 26 vegetation complexes (defined by Hedde *et al.* 1980) of the Swan Coastal Plain portion of the Perth metropolitan region. *Bush Forever* identified 287 sites containing 51,200 hectares of regionally significant bushland for protection. Regionally significant bushland was identified using criteria relating to its conservation value.

3 Planning Instruments

Metropolitan Region Scheme Amendments

1082/33 (2010)

Metropolitan Region Scheme (MRS) amendment 1082/33 came into effect on 15 September 2010, which resulted in *Bush Forever* areas being overlaid on the MRS map and 94 sites reserved as Parks and Recreation.

Bush Forever areas do not have a particular planning categorisation such as a reserve, zone or special control area. The identification as a *Bush Forever* area does not change the reservation or zoning of the land under the MRS or local planning schemes (LPS). *Bush Forever* areas overlay the current reservation or zoning of the land under the MRS. The inclusion of the *Bush Forever* areas on the MRS does not create an inconsistency between the MRS and LPS. Local governments are not required to amend their local planning schemes to show the *Bush Forever* areas.

Bush Forever areas on the MRS map inform decision-makers, land owners and the public that the development potential of the land is impacted by the land's natural characteristics, and due regard will need to be given to Government policy and legislation in preserving significant bushland when making planning and environmental decisions.

The Planning and Development Act 2005 recognises that the conservation of the natural environment is a matter to be considered in planning schemes and State planning policies. Identifying the environmentally sensitive *Bush Forever* area on the MRS map alerts planners to the need to give sufficient weight to relevant environmental considerations.

Identification of *Bush Forever* areas on the MRS links to the *State Planning Policy 2.8 - Bushland Policy*

for the Perth Metropolitan Region as *Bush Forever* areas are defined as a 'classification of land in the MRS (established through 1082/33) to protect and manage regionally significant bushland in accordance with the policy'.

The MRS will be amended as required to facilitate further additions or amendments to the *Bush Forever* areas.

1236/57 (2014)

MRS amendment 1236/57 added clause 28A to the MRS text to define the *Bush Forever* layer on the MRS maps, introduced through MRS amendment 1082/33, and amended clause 16 (1a)(a) to reflect current terminology and status of *Bush Forever* areas without changing the intent of the current clause 16 (1a) (a). This amendment was mainly an administrative action to tie the MRS maps to the text and does not change the intent of the *Bush Forever* policy or previous MRS amendment 1082/33.

State Planning Policy 2.8 - Bushland Policy for the Perth Metropolitan Region (SPP 2.8)

The purpose of SPP 2.8 is to guide and inform agencies, authorities, land owners and the broader community on bushland protection and management issues to be taken into account, and given effect to, by the relevant planning authority when considering a proposal or in undertaking decision-making which is likely to have an adverse impact, direct or indirect, on regionally significant bushland within a *Bush Forever* area.

SPP 2.8 was gazetted on 22 June 2010 and provides:

- a policy and implementation framework for the protection and management of regionally significant bushland within *Bush Forever* areas; and

- policy measures for other areas of native vegetation, outside *Bush Forever* areas, that support the preparation of local bushland protection strategies by all local governments in the Perth metropolitan region.

SPP 2.8 recognises the protection and management of significant bushland areas as a fundamental consideration in the planning process, while also seeking to integrate and balance wider environmental, social and economic considerations to secure long-term and improved environmental outcomes.

Proposals and decision-making should support a general presumption against the clearing of, or other degrading activities to regionally significant bushland. Proposals within or adjacent to *Bush Forever* areas need to ensure that all reasonable steps have been taken to avoid, minimise or offset any likely adverse impacts on regionally significant bushland, consistent with the requirements of the policy.

The key to determining proposals in a *Bush Forever* area is to regard the policy measures and processes in SPP 2.8 as an integral part of the design process and determine how the development accommodates the bushland rather than how the bushland fits into the development.

4 Referral Process

The land use planning referral process is bound by the *Planning and Development Act 2005* and the *Environmental Protection Act 1986* for matters relating to land use planning and clearing in *Bush Forever* areas.

Department of Planning

Since completion of the *Bush Forever* MRS amendments and gazettal of SPP 2.8, *Bush Forever* has been implemented through standard planning decision-making processes within the Department of Planning, on behalf of the Western Australian Planning Commission (WAPC), in relation to development and subdivision. *Bush Forever* is considered as part of the decision-making process along with all other matters affecting land use planning.

The Department of Planning remains the lead agency for determining negotiated planning solutions in *Bush Forever* areas. The sites that were identified in the *Bush Forever* (2000) document are the only sites that will be considered for negotiated planning solutions. The Department of Planning is the agency responsible for determining a reasonable outcome for these sites; however the Department of Parks and Wildlife (Parks and Wildlife) and the Environmental Protection Authority (EPA) will also be involved in negotiations.

Structure plans, MRS amendments and local planning scheme amendments that have the potential to impact a *Bush Forever* area may still be referred to the Department of Planning for comment. General enquires relating to *Bush Forever* however, will now be directed to the relevant Department of Planning area planning team or local government.

Department of Parks and Wildlife

The Department of Parks and Wildlife administers the *Conservation and Land Management Act 1984* and the *Wildlife Conservation Act 1950*, and focuses upon biodiversity conservation and management of the conservation estate. It also provides technical environmental advice to the Department of Planning on subdivision applications, strata survey applications and development proposals that may potentially impact a *Bush Forever* area. This advice is

then submitted to the WAPC with all other planning considerations, for determination.

Department of Environment Regulation

The Department of Environment Regulation administers Part V of the *Environmental Protection Act 1986*, *Contaminated Sites Act 2003* and the *Waste Avoidance and Resource Recovery Act 2007*. It administers industry regulation, clearing of native vegetation, classification of contaminated sites and waste management.

When making a decision on clearing in respect to *Bush Forever*, the Department of Environment Regulation will only refer a clearing permit application to the Department of Planning for advice if the application is likely to have an adverse and direct impact on a *Bush Forever* area. The Department of Environment Regulation has regard to environmental considerations, such as the clearing principles set out in Schedule 5 of the *Environmental Protection Act*. More information about clearing permits, assessments and exemptions can be obtained online at www.der.wa.gov.au/our-work/clearing-permits.

Environmental Protection Authority

Any projects that may affect *Bush Forever* areas are to be referred initially to the Department of Parks and Wildlife to ensure an environmentally acceptable outcome is achieved by avoiding or minimising impacts on *Bush Forever* areas. Where a proposal is likely to have a significant environmental impact it should also be referred to the Environmental Protection Authority under Part IV of the *Environmental Protection Act*.

Where recommendations for *Bush Forever* areas under the *Environmental Protection Act* have been implemented, the EPA will operate on the presumption that any further development adversely impacting on regionally significant values is environmentally unacceptable.

Referral of proposals or scheme amendments to the EPA may be via a number of avenues. For some

referrals under the *Environmental Protection Act*, a *Bush Forever* area may not be the only relevant factor. It should be noted that the EPA is unlikely to assess these if a negotiated planning solution has been agreed and a suitable environmental outcome has been reached.

Further advice on how to avoid impacts to naturally vegetated areas are detailed in the EPA's *Bulletin 20 – Protection of naturally vegetated areas through planning and development*. The *WA Environmental Offsets Policy 2011* and the *WA Environmental Offsets Guidelines 2014* outline the State Government's approach to determining and applying environmental offsets for decisions made under the *Environmental Protection Act 1986*.

Notice of Delegation – Development Control Powers under the MRS to Local Government

Under the current Notice of Delegation, most development control powers under the MRS are delegated to local government. The introduction of *Bush Forever* areas on the MRS has not had any impact on delegation provisions.

Local governments are no longer required to send development applications to the Department of Planning.

Local governments should now refer any development proposal that, in their opinion is likely to have an adverse impact (as defined in SPP 2.8) on a *Bush Forever* area, to Parks and Wildlife for comment (only), prior to the local government determining the development application.

If Parks and Wildlife recommendation is not considered acceptable by the local government, and a proposal is deemed likely to have an adverse impact on a *Bush Forever* area, then the local government is to refer the proposal to the Department of Planning for comment or to the WAPC for determination.

The division of responsibility for *Bush Forever* areas between the WAPC and local government remains unchanged. Generally, in respect to *Bush Forever* areas that are within zoned land under the MRS, the relevant local government will continue to be the

decision-making authority under the Notice of Delegation in favour of local governments for development applications.

5 Legislative Context – Clearing Provisions

The *Environmental Protection Act* makes it an offence to clear native vegetation unless the clearing is done in accordance with a clearing permit, or an exemption applies. These laws apply to private and public lands throughout Western Australia.

Exemptions

An exemption is a type of clearing activity that does not require a clearing permit. There are two types of exemptions.

The first type can be found in Schedule 6 of the *Environmental Protection Act* and are exemptions for clearing that is a requirement of written law or authorised under certain statutory processes. An example of a Schedule 6 exemption includes clearing done in accordance with a subdivision approved by the responsible authority under the *Planning and Development Act*. This may include clearing for the purposes of any development that is deemed by section 157 of the *Planning and Development Act* to have been approved by the responsible authority, and clearing in any building envelope described in an approved plan or diagram.

The second type of exemption is found under Regulation 5 of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*; however, these exemptions do not apply in environmentally sensitive areas declared under section 51B of the *Environmental Protection Act*. An example of a Regulation 5 exemption includes clearing of a site for the lawful construction of a building or other structure on a property, done by or with the prior authority of the owner of the property and does not, together with all other limited clearing on the property, exceed five hectares per financial year, and does not clear riparian vegetation.

Environmentally sensitive areas

Under the *Environmental Protection (Environmentally Sensitive Areas) Notice 2005*, *Bush Forever* sites listed in *Bush Forever* Volumes 1 and 2 (2000) are declared as environmentally sensitive areas except to the extent to which the site is approved to be developed by the WAPC. A section of a *Bush Forever* area is approved to be developed by the WAPC if:

- the WAPC has made a decision with respect to the area that, if implemented, would have the effect that any development or other works can take place in the area; and
 - that decision is not under assessment under Part IV of the *Environmental Protection Act*; or
 - where an assessment under Part IV of the *Environmental Protection Act* has been made, the decision will be implemented.

Clearing permits and planning

Obtaining development approval from the WAPC or local government does not exempt proponents from applying for a clearing permit where one is required under the *Environmental Protection Act*. Clearing of native vegetation for proposals that do not require development approval by the responsible authority, including the WAPC, under the *Planning and Development Act 2005* or by local governments under the Notice of Delegation, is not regulated under the MRS.

The clearing of native vegetation is regulated under the *Environmental Protection Act* by the Department of Environment Regulation. If a clearing permit is required, the CEO of the Department of Environment Regulation will have regard to the clearing principles in Schedule 5 of the *Environmental Protection Act*, any planning instrument, or other matter that the CEO considers relevant when making a decision on a clearing permit application. Planning instruments include approved State planning policies, local planning strategies or a scheme or strategy, policy or plan made or adopted under a scheme.

6 Information

Copies of the planning documents discussed above are available from:

Western Australian Planning
Commission
Gordon Stephenson House
140 William Street
Perth WA 6000

Documents are also available online at
www.planning.wa.gov.au

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Published by the
Western Australian Planning Commission
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140 William Street
Perth WA 6000

Locked Bag 2506
Perth WA 6001

Published December 2015

ISSN 1324-9142

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