



Consultation summary

Guidance Statement: Environmental Siting

Version: Final

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Accessibility

This document is available in alternative formats and languages on request.

1. Background

The Department of Environment Regulation (DER) is developing a robust suite of documents consistent with DER's regulatory principles (see *Guidance Statement: Regulatory Principles*) to guide the administration of its regulatory functions under Part V, Division 3 of the *Environmental Protection Act 1986* (EP Act).

The draft *Guidance Statement: Environmental Siting* (Guidance Statement) for Part V, Division 3 of the EP Act was prepared as part of DER's hierarchy of instruments governing environmental regulation and applies to a range of DER's regulatory functions.

DER released the draft Guidance Statement for public comment on 25 November 2015 and consultation closed on 5 February 2016. In total, 21 submissions from external parties were received.

DER thanks all respondents and appreciates the time taken to provide comments on the draft Guidance Statement. DER has considered the issues raised in the submissions and has made amendments to the Guidance Statement as a result.

This consultation summary report summarises the submissions received on the Guidance Statement and DER's responses to key issues raised.

2. Submissions

External submissions were received from the following parties:

	Submitting Party
1	Association of Mining and Exploration Companies (AMEC)
2	City of Armadale
3	Environmental Consultants Association
4	Total Waste Management
5	AngloGold Ashanti
6	Mineral Resources
7	Conservation Commission WA
8	Mindarie Regional Council
9	Waste Management Association of Australia (WMAA)
10	Water Corporation
11	The Chamber of Minerals and Energy of Western Australia (CME)
12	City of Busselton
13	Western Australia Local Government Association (WALGA)
14	Wesfarmers
15	City of Wanneroo

	Submitting Party
16	Fortescue Metals Group Ltd (FMG)
17	Roy Hill
18	Department of Parks and Wildlife
19	Department of Water (1)
20	The Office of the Environmental Protection Authority (OEPA)
21	Department of Water (2)

3. General

There were a number of submissions which contained general comments not related to the specific drafting of the Guidance Statement.

Comments were received on the need for better linkage within and between various Guidance Statements to ensure that they are read in conjunction with one another.

DER agrees that it is important that the Guidance Statements are read with consideration for each other. DER has now finalised and published *Guidance Statement: Decision Making* and *Guidance Statement: Risk Assessments*. These documents provide greater context as to how the Guidance Statement fits within DER's overall decision making framework. As a result, the Guidance Statement has been significantly simplified and it now provides a list of environmental receptors. This list is not exhaustive.

To avoid duplication and inconsistency, the assessment of risks to these environmental receptors will be undertaken in accordance with the *Guidance Statement: Risk Assessments*.

DER will be holding a series of workshops with industry to explain the Guidance Statements in more detail.

Comments were received on the application of the Guidance Statement to existing premises. Environmental siting is used to inform DER's risk assessments for both new and existing premises. Under the EP Act, the Chief Executive Officer (CEO) is able to initiate a review of existing premises at any time. The *Guidance Statement: Risk Assessments* provides further guidance on how and when DER may conduct reviews of premises. DER will consider a range of factors including environmental siting during its risk assessment process relating to existing premises. Following this assessment, if DER considers that an unacceptable risk to public health or the environment remains, DER will determine whether additional controls are available which may bring the risk to within acceptable levels. Some examples of risk assessments applying this approach are available on DER's website.

Finally, comments were received which DER considered to be out of scope of this Guidance Statement, for example, comments relating to sensitive receptors such as residential premises, which are covered by *Guidance Statement: Separation Distances*.

The submissions raised a number of issues and questions about the use and implementation of the draft Guidance Statement. These issues are summarised below.

4. Datasets

A number of comments were received relating to the availability of some data sets which are not publically available. Some submissions questioned the lack of definition around datasets that are included in the development of “specified ecosystems”. Other submissions commented that some datasets appeared to be absent from Appendix 1 and should be included in the Guidance Statement.

4.1 Summary of comments received and DER response

Comment	DER response
<p>Numerous datasets are not publically available.</p>	<p>Most of the datasets are available through the Western Australia Government’s Shared Land Information Platform.</p> <p>Rare flora GIS datasets utilised by DER to inform its risk assessments are not available to the public. The publically available datasets for rare flora are limited and at a higher scale. This is in order to keep the locations of rare flora confidential to protect the species from potential threats from illegal trade.</p>
<p>There is a lack of definition and resolution around data sets that are included in the development of “specified ecosystems”</p>	<p>The Specified Ecosystem Map was only indicative and not intended to act as a final representation of the areas considered to represent environmental receptors including areas of high conservation value and special significance.</p> <p>The map was also not intended to be directly applied, as it is at a State level scale. To remove this confusion the Specified Ecosystem Map has been removed from the Guidance Statement.</p> <p>The datasets listed are publicly available and should be used when considering applicable environmental receptors which may be impacted from prescribed premises.</p>
<p>The effectiveness of this document relies on the information available in the "Specified Ecosystems Map" datasets.</p> <p>One dataset that appears absent is the Regional Parks. These parks are managed as a whole to certain environmental objectives and include Parks and Wildlife managed land parcels but may also have other land parcels managed by local government, Western Australian Planning Commission, Water Corporation.</p>	<p>The Guidance Statement captures all Department of Parks and Wildlife managed lands and waters. Following review and consideration of comments DER has included 19 additional datasets. Some of these datasets have been acquired by government departments since the release of the draft Guidance Statement.</p>

Comment	DER response
<p>It is understood that the Specified Ecosystems information is available through publicly available geographic information systems. It might however be helpful to have an enlargement of the Specified Ecosystems Map for the southwest and Perth metro in the guidance statement.</p>	<p>As stated above, the Specified Ecosystem Map was only indicative. DER considered the use of higher resolution Specified Ecosystem Maps for particular regions however it was considered that even at a higher resolution all applicable environmental areas may still not be adequately illustrated.</p> <p>The datasets listed are publicly available and should be used when considering applicable environmental receptors which may be impacted from prescribed premises.</p>

4.2 DER position

The list contained in Appendix 1 has been significantly expanded and the Guidance Statement now clearly provides that the list is not exhaustive. Applicants for a licence or works approval are able to determine which Specified Ecosystems their prescribed premises may have an impact upon and include consideration of that impact in their applications. DER may also seek comments from relevant government departments in undertaking its risk assessments.

5. Proximity

A large number of submissions were received relating to of the definition of “proximity” to sensitive environments used in paragraphs 2, 5, 6, 7(a) and 8 of the draft Guidance Statement. Many submissions called for a buffer to be placed around the sensitive environments.

5.1 Summary of comments received and DER response

Comment	DER response
<p>The assessment of an application is based on its "close proximity" to Specified Ecosystem.</p> <p>This is open to interpretation by DER staff and applicants. There needs to be guidance on how "close proximity" is determined and where does the burden of proof sit, with DER or the applicant.</p>	<p>The Guidance Statement has been reviewed and simplified. Reference to proximity and close proximity removed.</p>
<p>Point 7a – define a unit measure for “close proximity” e.g. within 50m per clearing principles.</p>	

5.2 DER position

The Guidance Statement now provides that Specified Ecosystems in Appendix 1 are environmental receptors for risk assessments undertaken by DER, and that the list is not exhaustive.

Where prescribed premises may impact a Specified Ecosystem, DER may require additional evidence or information relating to the risk to a Specified Ecosystem. DER’s risk based approach to assessments will be implemented in accordance with *Guidance Statement: Risk*

Assessments.

DER acknowledges that the term “close proximity” lacked certainty. DER also considers that a receptor may still be impacted by emissions due to pathways through air, water and land, even though the receptor is not immediately proximate.

6. Duplication with other approvals

Some submissions commented on a perceived overlap with other agency approvals, such as Part IV approvals under the EP Act.

6.1 Summary of comments received and DER response

Comment	DER response
<p>Notwithstanding the clearing permit exemptions under Schedule 6 of the Environmental Protection Act 1986 (EP Act), ... concerned the consideration of TEC or rare flora by DER will duplicate the assessment undertaken under Part IV of the EP Act for projects with a significant effect on the environment.</p> <p>The reassessment of TEC and rare flora under Part V of the EP Act presents a number of issues..., including duplication or potential for contrary conditions imposed on the proponent. ...is also concerned a situation could arise where a Part IV approval is granted but the DER will not grant the works approval or licence due to the proximity of TEC and rare flora... regulatory overlap and duplication between Part IV and Part V assessments should be minimised as much as possible. As such, exemptions should apply in circumstances where the proximity of activities to TEC and rare flora has been assessed under Part IV of the EP Act.</p>	<p>DER assessments must take into consideration all other previously granted approvals and will not duplicate or grant inconsistent approvals.</p> <p>Where a specified ecosystem may be impacted by a prescribed premises comment or advice may be sought from the relevant government department and subject matter experts on the matter.</p> <p>The Guidance Statement has been amended to reflect this and it is also detailed in <i>Guidance Statement: Decision Making</i>.</p>
<p>... suggest that the Guidance Statement identifies how DER considerations link to other State and Commonwealth processes and guidance. For example, the draft Bilateral Agreement, State Planning Policies, and the environmental factors used by the EPA in its assessments.</p>	<p>The Guidance Statement is not intended to duplicate Commonwealth and other State government process and agreements. Refer to <i>Guidance Statement: Decision Making</i> and <i>Guidance Statements: Risk Assessments</i>.</p>
<p>Reference to the need for vegetation surveys for clearing permits should be removed.</p> <p>Guidance from the DER on native vegetation clearing permits already exists. The Guidance Statement should focus on works approvals and licences only.</p>	<p>Baseline surveys, modelling and predictions of potential impacts, monitoring and information of management or impacts and risk will only be required in the absence or insufficiency of pre-existing data. DER will take into account vegetation surveys which have been undertaken for clearing permits.</p>

6.2 DER position

Baseline surveys, modelling and predictions of potential impacts, monitoring and management plans will only be required in the absence or insufficiency of pre-existing data. Requests for information will be likely if the risks of impact on the Specified Ecosystem are high.

7. Fauna

A number of submissions commented that the draft Guidance Statement does not sufficiently deal with the protection of fauna in its own right.

7.1 Summary of comments received and DER response

Comment	DER response
<p>The statement does not seem to contemplate the protection of fauna as its own entity.</p> <p>As a result, ... suggest that the addition of "...and fauna..." to Part(c) may be appropriate. This will cover the rare animals that may not fall under "<i>Threatened Ecological Communities or Ecosystems</i>" as they are transient by nature.</p>	<p>DER has updated the datasets in Appendix 1 to now include fauna habitat and threatened priority fauna datasets.</p> <p>DER will have regard to the risk to fauna which may not be covered by existing datasets.</p> <p>The Guidance Statement has been amended to provide that the list of Specified Ecosystems is not exhaustive.</p>
<p>That the siting guideline makes reference to important fauna habitat, particularly for threatened fauna listed by the Minister for special protection pursuant to the <i>Wildlife Conservation Act</i>...There is no reference in the siting guideline to important fauna habitat.</p> <p>While this will be partially addressed through the inclusion of all Parks and Wildlife "estate" there are other areas outside lands managed by the department. It is suggested that a part 1(d) be added for areas of important habitat for threatened fauna. While this will not be able to be mapped, it would highlight the area for investigation, and the guidance to take this into account should high value areas be identified.</p> <p>The inclusion of important fauna habitat areas would assist in making this Guidance Statement more compatible with the native vegetation clearing regulations.</p>	

7.2 DER position

DER has updated the datasets and also amended the Guidance Statement to provide that the list of Specified Ecosystems is not exhaustive.