# **Appendix B** – Relevant legislation, conservation codes and background information

#### Relevant legislation

# Federal Environment Protection and Biodiversity Conservation Act 1999

The Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) is the Federal Government's central piece of environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places, which are defined in the EPBC Act as Matters of National Environmental Significance (MNES).

The biological aspects listed as MNES include:

- Nationally threatened flora and fauna species and ecological communities
- Migratory species.

A person must not undertake an action that has, will have, or is likely to have a significant impact (direct or indirect) on MNES, without approval from the Federal Minister for the Environment.

The EPBC Act is administered by the Department of the Environment and Energy (DEE).

#### State Environmental Protection Act 1986

The *Environmental Protection Act 1986* (EP Act) is the primary legislative Act dealing with the protection of the environment in Western Australia. The Act allows the Environmental Protection Authority (EPA), to prevent, control and abate pollution and environmental harm, for the conservation, preservation, protection, enhancement and management of the environment and for matters incidental to or connected with the foregoing. Part IV of the EP Act is administered by the EPA and makes provisions for the EPA to undertake environmental impact assessment of significant proposals, strategic proposals and land use planning schemes.

The Department of Water and Environment Regulation (DWER) is responsible for administering the clearing provisions of the EP Act (Part V). Clearing of native vegetation in Western Australia requires a permit from the DWER, unless exemptions apply. Applications for clearing permits are assessed by the Department and decisions are made to grant or refuse the application in accordance with the Act. When making a decision the assessment considers clearing against the ten clearing principles as specified in Schedule 5 of the EP Act:

- a. Native vegetation should not be cleared if it comprises a high level of biodiversity.
- Native vegetation should not be cleared if it comprises the whole or a part of, or is necessary for the maintenance of a significance habitat for fauna indigenous to WA.
- c. Native vegetation should not be cleared if it includes, or is necessary, for the continued existence of rare flora.
- d. Native vegetation should not be cleared if it comprises the whole or part of native vegetation in an area that has been extensively cleared.
- e. Native vegetation should not be cleared if it is significant as a remnant of native vegetation in an area that has been extensively cleared.
- f. Native vegetation should not be cleared if it is growing in, or in association with, an environment associated with a watercourse or wetland.
- g. Native vegetation should not be cleared if the clearing of the vegetation is likely to have an impact on the environmental values of any adjacent or nearby conservation area.
- h. Native vegetation should not be cleared if the clearing of the vegetation is likely to cause appreciable land degradation.

- i. Native vegetation should not be cleared if the clearing of the vegetation is likely to cause deterioration in the quality of surface or underground water.
- j. Native vegetation should not be cleared if clearing the vegetation is likely to cause, or exacerbate, the incidence of flooding.

Exemptions for clearing include clearing that is a requirement of a written law or authorised under certain statutory processes (listed in Schedule 6 of the EP Act) and exemptions for prescribed low impact day-to-day activities (prescribed in the Environmental Protection (Clearing of Native Vegetation) Regulations 2004); these exemptions do not apply in environmentally sensitive areas (ESAs).

# State Biodiversity and Conservation Act 2016

The Biodiversity Conservation Act 2016 (BC Act) provides for the conservation and protection of biodiversity and biodiversity components, as well as the promotion of the ecologically sustainable use of biodiversity components in Western Australia. The BC Act replaces both the repealed Wildlife Conservation Act 1950 (WC Act) and the Sandalwood Act 1929 (Sandalwood Act), as well as their associated regulations. To attain the objectives of the BC Act, principles of ecological sustainable development have been established:

- Decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations
- If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation
- The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations
- The conservation of biodiversity and ecological integrity should be a fundamental consideration indecision-making
- Improved valuation, pricing and incentive mechanisms should be promoted.

The BC Act is administered by the Department of Biodiversity Conservation and Attractions (DBCA).

# State Biosecurity and Agriculture Management Act 2007

The Biosecurity and Agriculture Management Act 2007 (BAM Act) and associated regulations are administered by the Department of Primary Industries and Regional Development (DPIRD) and replace the repealed Agriculture and Related Resources Protection Act 1976. The main purposes of the BAM Act and its regulations are to:

- · Prevent new animal and plant pests (vermin and weeds) and diseases from entering WA
- Manage the impact and spread of those pests already present in the state
- Safely manage the use of agricultural and veterinary chemicals
- Increased control over the sale of agricultural products that contain violative chemical residues

The Western Australian Organism List (WAOL) provides the status of organisms which have been categorised under the BAM Act. A Declared Pest is a prohibited organism or an organism for which a declaration under Section 22(2) of the Act is in force. Declared Pests may be assigned a control category including: C1 (exclusion), C2 (eradication) and C3 (management). The category may apply to the whole of the State, LGAs, districts, individual properties or even

paddocks, and all landholders are obliged to comply with the specific category of control. Categories of control are defined below.

# **Categories for Declared Pests under the BAM Act**

Control class code	Description
C1 (Exclusion)	Pests will be assigned to this category if they are not established in Western Australia and control measures are to be taken, including border checks, in order to prevent them entering and establishing in the State.
C2 (Eradication)	Pests will be assigned to this category if they are present in Western Australia in low enough numbers or in sufficiently limited areas that their eradication is still a possibility.
C3 (Management)	Pests will be assigned to this category if they are established in Western Australia but it is feasible, or desirable, to manage them in order to limit their damage. Control measures can prevent a C3 pest from increasing in population size or density or moving from an area in which it is established into an area which currently is free of that pest.

# **Background information**

# **Environmentally Sensitive Areas**

Environmentally Sensitive Areas (ESAs) are declared by the Minister for Environment under Section 51B of the EP Act. The Table below outlines the aspects of areas declared as ESA in the Environmental Protection (Environmentally Sensitive Areas) Notice 2005.

#### Aspects of ESAs

# Aspects of Environmentally Sensitive Areas

A declared World Heritage property as defined in Section 13 of the EPBC Act.

An area that is included on the Register of the National Estate (RNE), because of its natural values, under the Australian Heritage Commission Act 1975 of the Commonwealth (the RNE was closed in 2007 and is no longer a statutory list – all references to the RNE were removed from the EPBC Act on 19 February 2012).

A defined wetland and the area within 50 m of the wetland. Defined wetlands include Ramsar wetlands, conservation category wetlands and nationally important wetlands.

The area covered by vegetation within 50 m of rare flora, to the extent to which the vegetation is continuous with the vegetation in which the rare flora is located.

The area covered by a Threatened Ecological Community.

A Bush Forever Site listed in "Bush Forever" Volumes 1 and 2 (2000), published by the Western Australia Planning Commission, except to the extent to which the site is approved to be developed by the Western Australia Planning Commission.

The areas covered by the Environmental Protection (Gnangara Mound Crown Land) Policy 1992.

The areas covered by the Environmental Protection (Western Swamp Tortoise Habitat) Policy 2002.

The areas covered by the lakes to which the Environmental Protection (Swan Coastal Plain Lakes) Policy 1992 (EPP Lakes) applies.

Protected wetlands as defined in the Environmental Protection (South West Agricultural Zone Wetlands) Policy 1998.

#### Reserves and conservation areas

#### Department of Biodiversity, Conservation and Attractions managed lands and waters

DBCA manages lands and waters throughout Western Australia to conserve ecosystems and species, and to provide for recreation and appreciation of the natural environment. DBCA

managed lands and waters include national parks, conservation parks and reserves, marine parks and reserves, regional parks, nature reserves, State forest and timber reserves. DBCA managed conservation estate, is vested with the Conservation Commission of Western Australia. Access to, or through, some areas of DBCA managed lands may require a permit or could be restricted due to management activities. Proposed land use changes and development proposals that abut DBCA managed lands will generally be referred to DBCA throughout the assessment process.

# Vegetation extent and status

The National Objectives and Targets for Biodiversity Conservation 2001–2005 (Commonwealth of Australia 2001) recognise that the retention of 30 percent or more of the pre-clearing extent of each ecological community is necessary if Australia's biological diversity is to be protected. This is the threshold level below which species loss appears to accelerate exponentially and loss below this level should not be permitted. This level of recognition is in keeping with the targets recommended in the review of the National Strategy for the Conservation of Australia's Biological Diversity (ANZECC 2000).

The extent of remnant native vegetation in WA has been assessed by Shepherd et al. (2002) and the GoWA (2018), based on broadscale vegetation association mapping by Beard (various publications). The GoWA produces Statewide Vegetation Statistics Reports that are used for a number of purposes including conservation planning, land use planning and when assessing development applications. The reports are updated at least every two years.

# **Vegetation condition**

The vegetation condition can be assessed in accordance with the vegetation condition rating scale for the South West and Interzone (EPA 2016). The scale recognises the intactness of vegetation and consists of six rating levels as outlined below.

# Vegetation condition rating scale for the South West and Interzone Botanical Provinces

Condition	South West and Interzone Botanical Provinces description
Pristine	Pristine or nearly so, no obvious signs of damage caused by human activities since European settlement.
Excellent	Vegetation structure intact, disturbance affecting individual species and weeds are non-aggressive species. Damage to trees caused by fire, the presence of non-aggressive weeds and occasional vehicle tracks.
Very Good	Vegetation structure altered, obvious signs of disturbance. Disturbance to vegetation structure caused by repeated fires, the presence of some more aggressive weeds, dieback, logging and grazing.
Good	Vegetation structure significantly altered by very obvious signs of multiple disturbances. Retains basic vegetation structure or ability to regenerate it. Disturbance to vegetation structure caused by very frequent fires, the presence of very aggressive weeds, partial clearing, dieback and grazing.
Degraded	Basic vegetation structure severely impacted by disturbance. Scope for regeneration but not to a state approaching good condition without intensive management. Disturbance to vegetation structure caused by very frequent fires, the presence of very aggressive weeds at high density, partial clearing, dieback and grazing.
Completely Degraded	The structure of vegetation is no longer intact and the area is completely or almost completely without native species. These areas are often described as 'parkland cleared' with the flora comprising weed or crop species with isolated native trees or shrubs.

#### **Conservation codes**

Species of significant flora, fauna and communities are protected under both Federal and State Acts. The Federal EPBC Act provides a legal framework to protect and manage nationally important flora and communities. The State BC Act is the primary wildlife conservation legislation in Western Australia. Information on the conservation codes is summarised in the following sections.

# **Ecological communities**

#### Conservation significant communities

Ecological communities are defined as naturally occurring biological assemblages that occur in a particular type of habitat (English and Blyth 1997). Federally listed Threatened Ecological Communities (TECs) are protected under the EPBC Act. The BC Act provides for the Minister to list an ecological community as a TEC (section 27), or as a collapsed ecological community (section 31) statutory listing of State TECs by the Minister. The legislation also describes statutory processes for preparing recovery plans for TECs, the registration of their critical habitat, and penalties for unauthorised modification of TECs.

Possible TECs that do not meet survey criteria are added to the DBCA Priority Ecological Community (PEC) List under Priorities 1, 2 and 3. These are ecological communities that are adequately known; are rare but not threatened, or meet criteria for Near Threatened. PECs that have been recently removed from the threatened list are placed in Priority 4. These ecological communities require regular monitoring. Conservation dependent ecological communities are placed in Priority 5. PECs are not listed under any formal Federal or State legislation, however, may be listed as TECs under the EPBC Act.

# Conservation codes and definitions for TECs listed under the EPBC Act and/or BC Act

Categories	Definition
Federal Government Conservation Categories (EPBC Act)	
Critically Endangered (CR)	An ecological community if, at that time, is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria (as outlined in Environment Protection and Biodiversity Conservation Regulations 2000)
Endangered (EN)	An ecological community if, at that time:
	<ul> <li>A) is not critically endangered; and</li> <li>B) is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria (as outlined in Environment Protection and Biodiversity Conservation Regulations 2000)</li> </ul>
Vulnerable (VU)	An ecological community if, at that time:
	A) is not critically endangered or endangered; and     B) is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with the prescribed criteria (as outlined in Environment Protection and Biodiversity Conservation Regulations 2000)
Western Australia C	Conservation Categories (BC Act)
Threatened Ecological Communities	
Critically Endangered (CR)	An ecological community that has been adequately surveyed and found to have been subject to a major contraction in area and/or that was originally of limited distribution and is facing severe modification or destruction throughout its range in the immediate future, or is already severely degraded throughout its range but capable of being substantially restored or rehabilitated.

Categories	Definition
Endangered (EN)	An ecological community that has been adequately surveyed and found to have been subject to a major contraction in area and/or was originally of limited distribution and is in danger of significant modification throughout its range or severe modification or destruction over most of its range in the near future.
Vulnerable (VU)	An ecological community that has been adequately surveyed and is found to be declining and/or has declined in distribution and/or condition and whose ultimate security has not yet been assured and/or a community that is still widespread but is believed likely to move into a category of higher threat in the near future if threatening processes continue or begin operating throughout its range.

# Collapsed Ecological Community

An ecological community is eligible for listing as a collapsed ecological community at a particular time if, at that time –

- (a) there is no reasonable doubt that the last occurrence of the ecological community has collapsed); or
- (b) the ecological community has been so extensively modified throughout its range that no occurrence of it is likely to recover
  - (i) its species composition or structure; or
  - (ii) its species composition and structure.

Section 33 of the BC Act provides for a collapsed ecological community to be regarded as a threatened ecological community if it is discovered in a state that no longer makes it eligible for listing as a collapsed ecological community.

# Conservation categories and definitions for PECS as listed by the DBCA

Category	Description
Priority 1	Poorly known ecological communities.
	Ecological communities that are known from very few occurrences with a very restricted distribution (generally ≤5 occurrences or a total area of ≤100 ha). Occurrences are believed to be under threat either due to limited extent, or being on lands under immediate threat (e.g. within agricultural or pastoral lands, urban areas, active mineral leases) or for which current threats exist. May include communities with occurrences on protected lands. Communities may be included if they are comparatively well-known from one or more localities but do not meet adequacy of survey requirements, and/or are not well defined, and appear to be under immediate threat from known threatening processes across their range.
Priority 2	Poorly known ecological communities.
	Communities that are known from few occurrences with a restricted distribution (generally ≤10 occurrences or a total area of ≤200 ha). At least some occurrences are not believed to be under immediate threat of destruction or degradation. Communities may be included if they are comparatively well known from one or more localities but do not meet adequacy of survey requirements, and/or are not well defined, and appear to be under threat from known threatening processes.
Priority 3	Poorly known ecological communities.
	<ul> <li>i. Communities that are known from several to many occurrences, a significant number or area of which are not under threat of habitat destruction or degradation or:</li> <li>ii. communities known from a few widespread occurrences, which are either large or with significant remaining areas of habitat in which</li> </ul>

Category	Description
	other occurrences may occur, much of it not under imminent threat, or; iii. communities made up of large, and/or widespread occurrences, that may or may not be represented in the reserve system, but are under threat of modification across much of their range from processes such as grazing by domestic and/or feral stock, and inappropriate fire regimes.
	Communities may be included if they are comparatively well known from several localities but do not meet adequacy of survey requirements and/or are not well defined, and known threatening processes exist that could affect them.
Priority 4	Ecological communities that are adequately known, rare but not threatened or meet criteria for Near Threatened, or that have been recently removed from the threatened list. These communities require regular monitoring.
	<ul> <li>i. Rare. Ecological communities known from few occurrences that are considered to have been adequately surveyed, or for which sufficient knowledge is available, and that are considered not currently threatened or in need of special protection, but could be if present circumstances change. These communities are usually represented on conservation lands.</li> <li>ii. Near Threatened. Ecological communities that are considered to have been adequately surveyed and that do not qualify for Conservation Dependent, but that are close to qualifying for Vulnerable.</li> <li>iii. Ecological communities that have been removed from the list of threatened communities during the past five years.</li> </ul>
Priority 5	Conservation Dependent ecological communities.
	Ecological communities that are not threatened but are subject to a specific conservation program, the cessation of which would result in the community becoming threatened within five years.

# Other significant vegetation

Vegetation may be significant for a range of reasons other than a statutory listing. The EPA (2016) states that significant vegetation may include vegetation that includes the following:

- Restricted distribution
- Degree of historical impact from threatening processes
- Local endemism in restricted habitats
- Novel combinations of taxa
- A role as a refuge
- A role as a key habitat for Threatened species or large population representing a significant proportion of the local to regional total population of a species
- Being representative of a vegetation unit in 'pristine' condition in a highly cleared landscape, recently discovered range extensions, or isolated outliers of the main range)
- Being poorly reserved

This may apply at a number of levels, so the unit may be significant when considered at the fine-scale (intra-locality), intermediate-scale (locality or inter-locality) or broad-scale (local to region).

#### Flora and fauna

# Conservation significant flora

Species of significant flora are protected under both Federal and State legislation. Any activities that are deemed to have a significant impact on species that are recognised by the EPBC Act, and/or the BC Act can warrant referral to the DEE and/or the EPA.

The Federal conservation level of flora and fauna species and their significance status is assessed under the EPBC Act. The significance levels for flora and fauna used in the EPBC Act align with the International Union for Conservation of Nature (IUCN) Red List criteria, which are internationally recognised as providing best practice for assigning the conservation status of species. The EPBC Act also protects land and migratory species that are listed under International Agreements. The list of migratory species established under section 209 of the EPBC Act comprises:

- Migratory species which are native to Australia and are included in the appendices to the Bonn Convention (Convention on the Conservation of Migratory Species of Wild Animals Appendices I and II)
- Migratory species included in annexes established under the Japan-Australia Migratory Bird Agreement (JAMBA) and the China–Australia Migratory Bird Agreement (CAMBA)
- Native, migratory species identified in a list established under, or an instrument made under, an international agreement approved by the Minister, such as the republic of Korea– Australia Migratory Bird Agreement (ROKAMBA).

The State conservation level of flora and fauna species and their significance status also follows the IUCN Red List criteria. Under the BC Act flora and fauna can be listed as Threatened, Extinct and as Specially Protected species.

Threatened species are those are species which have been adequately searched for and are deemed to be, in the wild, either rare, under identifiable threat of extinction, or otherwise in need of special protection, and have been gazetted as such. The assessment of the conservation status of Threatened species is based on their national extent and ranked according to their level of threat using IUCN Red List categories and criteria. Specially protected species meet one or more of the following categories: species of special conservation interest; migratory species; cetaceans; species subject to international agreement; or species otherwise in need of special protection. Species that are listed as Threatened or Extinct species under the BC Act cannot also be listed as Specially Protected species.

Possibly threatened species that do not meet survey criteria, or are otherwise data deficient, are added to the Priority Fauna or Priority Flora Lists under Priorities 1, 2 or 3. These three categories are ranked in order of priority for survey and evaluation of conservation status so that consideration can be given to their declaration as threatened flora or fauna.

Species that are adequately known, are rare but not threatened, or meet criteria for near threatened, or that have been recently removed from the threatened species or other specially protected fauna lists for other than taxonomic reasons, are placed in Priority 4. These species require regular monitoring.

Assessment of Priority codes is based on the Western Australian distribution of the species, unless the distribution in WA is part of a contiguous population extending into adjacent States, as defined by the known spread of locations.

For the purposes of this assessment, all species listed under the EPBC Act, BC Act and DBCA Priority species are considered conservation significant.

# Conservation categories and definitions for EPBC Act and BC Act listed flora and fauna species

Conservation category	Definition
Threatened species	
Critically Endangered (CE)	Threatened species considered to be "facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with criteria set out in the ministerial guidelines".
	Listed as critically endangered under section 19(1)(a) of the BC Act in accordance with the criteria set out in section 20 and the ministerial guidelines.
Endangered (EN)	Threatened species considered to be "facing a very high risk of extinction in the wild in the near future, as determined in accordance with criteria set out in the ministerial guidelines".
	Listed as endangered under section 19(1)(b) of the BC Act in accordance with the criteria set out in section 21 and the ministerial guidelines.
Vulnerable (VU)	Threatened species considered to be "facing a high risk of extinction in the wild in the medium term future, as determined in accordance with criteria set out in the ministerial guidelines".
	Listed as vulnerable under section 19(1)(c) of the BC Act in accordance with the criteria set out in section 22 and the ministerial guidelines.
Extinct species	
Extinct (EX)	Species where "there is no reasonable doubt that the last member of the species has died", and listing is otherwise in accordance with the ministerial guidelines (section 24 of the BC Act).
Extinct in the Wild (EW)	Species that "is known only to survive in cultivation, in captivity or as a naturalised population well outside its past range; and it has not been recorded in its known habitat or expected habitat, at appropriate seasons, anywhere in its past range, despite surveys over a time frame appropriate to its life cycle and form", and listing is otherwise in accordance with the ministerial guidelines (section 25 of the BC Act).

# **Conservation codes for DBCA listed Priority flora**

Priority category	Definition
Priority 1	Poorly-known taxa
	Species that are known from one or a few locations (generally five or less) which are potentially at risk. All occurrences are either: very small; or on lands not managed for conservation, e.g. agricultural or pastoral lands, urban areas, road and rail reserves, gravel reserves and active mineral leases; or otherwise under threat of habitat destruction or degradation. Species may be included if they are comparatively well known from one or more locations but do not meet adequacy of survey requirements and appear to be under immediate threat from known threatening processes. Such species are in urgent need of further survey.

Priority category	Definition
Priority 2	Poorly-known taxa
	Species that are known from one or a few locations (generally five or less), some of which are on lands managed primarily for nature conservation, e.g. national parks, conservation parks, nature reserves and other lands with secure tenure being managed for conservation. Species may be included if they are comparatively well known from one or more locations but do not meet adequacy of survey requirements and appear to be under threat from known threatening processes. Such species are in urgent need of further survey.
Priority 3	Poorly-known taxa
	Species that are known from several locations, and the species does not appear to be under imminent threat, or from few but widespread locations with either large population size or significant remaining areas of apparently suitable habitat, much of it not under imminent threat. Species may be included if they are comparatively well known from several locations but do not meet adequacy of survey requirements and known threatening processes exist that could affect them. Such species are in need of further survey.
Priority 4	Rare, Near Threatened and other taxa in need of monitoring
	Rare: Taxa that are considered to have been adequately surveyed, or for which sufficient knowledge is available, and that are considered not currently threatened or in need of special protection, but could be if present circumstances change. These taxa are usually represented on conservation lands.
	Near Threatened. Taxa that are considered to have been adequately surveyed and that do not qualify for Conservation Dependent, but that are close to qualifying for Vulnerable.
	Taxa that have been removed from the list of threatened taxa during the past five years for reasons other than taxonomy.

# Other significant flora

Flora species, subspecies, varieties, hybrids and ecotypes may be significant for a range of reasons, other than a statutory listing. The EPA (2016) states that significant flora may include taxa that have:

- A keystone role in a particular habitat for threatened or Priority flora or fauna species, or large populations representing a considerable proportion of the local or regional total population of a species
- Relictual status, being representation of taxonomic or physiognomic groups that no longer occur widely in the broader landscape
- Anomalous features that indicate a potential new discovery
- Being representative of the range of a species (particularly, at the extremes of range, recently discovered range extensions, or isolated outliers of the main range)
- The presence of restricted subspecies, varieties, or naturally occurring hybrids
- Local endemism (a restricted distribution) or association with a restricted habitat type (e.g. surface water or groundwater dependent ecosystems)
- Being poorly reserved.

# Introduced plants (weeds)

# **Declared Pests**

Information on species considered to be Declared Pests is provided under *State Biosecurity and Agriculture Management Act 2007.* 

# **Weeds of National Significance**

The spread of weeds across a range of land uses or ecosystems is important in the context of socio-economic and environmental values. The assessment of Weeds of National Significance (WoNS) is based on four major criteria:

- Invasiveness
- Impacts
- Potential for spread
- Socio-economic and environmental values

Australian state and territory governments have identified thirty-two Weeds of National Significance (WoNS); a list of 20 WoNS was endorsed in 1999 and a further 12 were added in 2012.

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