

Environmental Protection (Western Swamp Tortoise Habitat) Policy 2026

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Schedule 1 — Map of policy area

Schedule 2 — Land comprising policy area

Environmental Protection (Western Swamp Tortoise Habitat) Policy 2026

DRAFT prepared by the Environmental Protection Authority under section 26(1)(c) of the Act.

Background to the *Environmental Protection (Western Swamp Tortoise Habitat) Policy 2026*

The Government of Western Australia —

- (a) *acknowledges the intrinsic value, and the ecological, genetic, social, economic, scientific, educational, cultural, recreational, aesthetic and natural values, of biological diversity and its components; and*
- (b) *acknowledges Australia's assent to the United Nations Environment Programme (UNEP) International Convention on Biological Diversity, 5 June 1992 under which it commits to conserve biological diversity in place, use its components sustainably and share the benefits arising from the use of genetic resources fairly and equitably; and*
- (c) *acknowledges its obligations under the Intergovernmental Agreement on the Environment between the Commonwealth, the States and Territories, and the Australian Local Government Association made on 1 May 1992 which establishes how the governments will interact on the environment, especially in relation to land-use decisions, biological diversity and nature conservation; and*

- (d) *acknowledges its obligations under Australia’s Strategy for Nature 2024-2030 to —*
 - (i) *connect all Australians with nature; and*
 - (ii) *care for nature in all its diversity, including to prevent further species from becoming extinct; and*
 - (iii) *share and build knowledge of biodiversity and nature so they can be better managed and protected;**and*
- (e) *acknowledges that the western swamp tortoise, a species endemic to the southwest of Western Australia, is a critically endangered species under the Biodiversity Conservation Act 2016 with the only known wild populations existing in the Ellen Brook Nature Reserve and the Twin Swamps Nature Reserve; and*
- (f) *is concerned that the habitat of the western swamp tortoise may be significantly degraded by certain human activities, which poses a serious threat to the conservation of biological diversity; and*
- (g) *recognises that the habitat of the western swamp tortoise extends beyond the boundaries of their protective nature reserves as the tortoise can travel for kilometres across the landscape and the habitat includes a suitable place for them to live (for example, breed, forage, aestivate and seek refuge); and*
- (h) *recognises the increasing importance of protecting the hydrology, water quality, ecological function and ecological condition of habitats across the landscape (including drought refuges, dams and wetlands in and near the policy area) in light of climate change projections and encroaching development; and*
- (i) *is concerned that adverse changes to the hydrology and water quality in the policy area could impact the long-term survival of the western swamp tortoise, in*

particular, the following adverse changes in the policy area —

- (i) lowering of the watertable;*
- (ii) changes to the wetting and drying periods of wetlands and waterway foreshore;*
- (iii) changes to the flow paths and volume of surface water and groundwater;*
- (iv) changes to flow rates and volume of drainage;*
- (v) changes to the quality of water;*

and

- (j) affirms its commitment to protect habitat suitable for the introduction and survival of wild populations of the western swamp tortoise, and to prevent the pollution and degradation of that habitat, and acknowledges this cannot be achieved independently of the ecosystems of which these habitats are a part; and*
- (k) is concerned that concentrations and loads of nutrients, sediments, pesticides and other materials that could have a detrimental effect on the western swamp tortoise may be increasing in both the western swamp tortoise habitat and its catchment; and*
- (l) identifies the need to adopt an ecosystem management approach to protect the western swamp tortoise habitat that is —*
 - (i) driven by environmental quality objectives; and*
 - (ii) based on the best understanding of the ecological interactions and processes necessary to sustain ecosystem structure and function; and*
 - (iii) implemented by policies, protocols and best management practices; and*
 - (iv) adapted as new information from monitoring, research and other sources becomes available;*

and

- (m) *acknowledges that there is a pressing need to strengthen measures to protect the western swamp tortoise and its habitat and that extinction of the western swamp tortoise in the wild would likely constitute a failing, both nationally and internationally, to conserve endangered species, genetic diversity and biological diversity.*

Consultation Draft

1. Citation

This policy is the *Environmental Protection (Western Swamp Tortoise Habitat) Policy 2026*.

2. Purpose

The purpose of this policy is to protect habitat that is critical for the long-term survival of wild populations of the critically endangered western swamp tortoise.

3. Terms used

(1) In this policy —

aestivate means to go into an inactive state with slowed metabolic function, similar to hibernation, in high temperatures and dry conditions;

conservation department means the department of the Public Service principally assisting in the administration of the *Conservation and Land Management Act 1984*;

deposited plan means a plan or diagram, identified by a number, lodged or deposited with the Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5(1) and approved under a written law;

fill —

(a) means raw material excavated or removed from the ground; and

(b) includes clay, gravel, sand, soil, rock and rock fines;

habitat has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

habitat management area has the meaning given in clause 8(1);

hydrology includes —

(a) the distribution, movement and properties of the waters of the earth; and

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- (b) the interrelationship between the waters and their environment through the phases of the water cycle (also known as the hydrologic cycle); and
- (c) the physical, chemical and biological processes involving the waters as they move through the water cycle;

nature reserve has the meaning given in the *Conservation and Land Management Act 1984* section 3;

policy area has the meaning given in clause 4(1);

policy area map has the meaning given in clause 4(1);

western swamp tortoise means the fauna species *Pseudemydura umbrina* commonly known as the “western swamp tortoise” or “short-necked tortoise”;

wetland has the meaning given in the *Rights in Water and Irrigation Act 1914* section 2(1);

wild population, of western swamp tortoise, means a population of western swamp tortoise that —

- (a) occurs naturally in a natural environment; or
 - (b) lives in a natural environment, having been intentionally moved to that environment from another location (referred to as translocation) to establish or add to the population in that environment.
- (2) Words and expressions that are defined in the Act and used in this policy have the same meaning as they have in the Act.

4. Policy area

- (1) The **policy area** is the area delineated in black and identified as the policy area on the map (the **policy area map**) in Schedule 1 comprised of —
 - (a) the land in the lots on deposited plans listed in the Table to Schedule 2; and
 - (b) the roads in the delineated area.

- (2) The Authority must publish a copy of the policy area map on the Authority's website.

Note for this subclause:

The Authority is the Environmental Protection Authority. See the definition of **Authority** in section 3(1) of the Act.

5. Application of policy

This policy applies to the area of the State, and the portion of the environment, that comprises the policy area.

6. Basis for protection of western swamp tortoise habitat

- (1) Having regard to the object and principles of the Act (stated in section 4A of the Act), the basis on which the policy area is to be protected is —
- (a) to maximise the chances of the long-term survival in the wild of the critically endangered western swamp tortoise; and
 - (b) in doing so, to contribute to the conservation and protection of biodiversity in the State.
- (2) Without limiting subclause (1) and with knowledge of the ecological processes, surface and groundwater systems and interconnectedness of the terrestrial and aquatic ecosystems in the policy area, the basis on which the policy area is to be protected is by —
- (a) ensuring land use, land management and conservation planning and fire management in the policy area are appropriate for maintaining the ecological processes in, and the ecological integrity of, the western swamp tortoise habitat; and
 - (b) maintaining or improving the hydrology and water quality in the policy area so that the ecological processes in, and the ecological integrity of, the policy area are not altered to the detriment or degradation, or potential detriment or degradation, of the western swamp tortoise habitat; and

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- (c) landowners and public authorities managing land in the policy area in a manner that avoids or minimises impacts from activities that would be detrimental or potentially detrimental to the environmental values of the policy area.
- (3) For the purposes of subclause (2)(c), activities that would be detrimental or potentially detrimental to the environmental values of the policy area include —
- (a) using fertilisers and pesticides; and
 - (b) storing polluting substances or disposing of or otherwise discharging polluting substances into the environment; and
 - (c) carrying out earthworks that affect water or result in run-off; and
 - (d) depositing or disturbing fill; and
 - (e) using, constructing or altering drains from which water flows into the environment; and
 - (f) lighting fires.

7. Environmental values of policy area to be protected

- (1) The environmental values of the policy area to be protected under this policy are declared to be —
- (a) the beneficial uses of the policy area stated in subclause (2); and
 - (b) the ecosystem health conditions of the policy area stated in subclause (3).
- (2) The beneficial uses of the policy area are —
- (a) its use as a habitat for wild populations of the western swamp tortoise, being a habitat that includes suitable places for the tortoises to move around on land and in water, forage for food, find shelter, breed and aestivate; and

- (b) its use for habitat and species management to support the long-term survival of the western swamp tortoise; and
 - (c) its use as a resource for studying wild populations of the western swamp tortoise and the habitat critical to their survival in the wild, including to inform future decisions about managing the tortoise and its habitat through a process of adaptive management; and
 - (d) its use as a basis for conserving biodiversity and ecological integrity, and maintaining a diverse natural environment, for present and future generations by supporting the long-term survival of a critically endangered species endemic to the policy area.
- (3) The ecosystem health conditions of the policy area are the condition of the following aspects of the ecosystem of the policy area relevant to maintaining and improving the ecological structures, ecological functions and ecological processes that are critical for the long-term survival of wild populations of the western swamp tortoise —
- (a) habitat for wild populations of the western swamp tortoise that is suitable for the tortoise to move around on land and in water, forage for food, find shelter, breed and aestivate;
 - (b) the hydrology and water quality of the surface water, wetlands and groundwater;
 - (c) the quality of the land and soil;
 - (d) the extent, quality and connectivity of native vegetation, including seasonal ephemeral wetland, riparian and restored native vegetation, that provides habitat for the western swamp tortoise;
 - (e) the extent of the aquatic fauna that provide food for the western swamp tortoise.

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8. Western swamp tortoise habitat management areas

- (1) Each of the following is a *habitat management area* for the western swamp tortoise —
- (a) the Ellen Brook Nature Reserve, which is comprised of the nature reserve identified as Reserve No. 27620;
 - (b) the Twin Swamps Nature Reserve, which is comprised of the nature reserve identified as Reserve No. 27621;
 - (c) lot 505 on Deposited Plan 50920;
 - (d) lot 507 on Deposited Plan 41642;
 - (e) an area of the policy area that becomes a habitat management area for the western swamp tortoise under clause 9(2).

Note for this subclause:

The lots mentioned in paragraphs (c) and (d) are freehold land owned by the State of Western Australia and managed by the conservation department as though they are part of the Ellen Brook Nature Reserve.

- (2) The area comprised of a lot mentioned in subclause (1)(c) or (d) continues to be a habitat management area if the area becomes a nature reserve or part of a nature reserve.
- (3) For information purposes, the habitat management areas are identified on the policy area map.

Note for this subclause:

The policy area map is in Schedule 1.

9. Future western swamp tortoise habitat management areas

- (1) In this clause —
- CEO (Conservation)** means the chief executive officer of the conservation department;
- Conservation and Parks Commission** means the body of that name established under the *Conservation and Land Management Act 1984* section 18;
- section 8A agreement** has the meaning given in the *Conservation and Land Management Act 1984* section 3.

- (2) An area of the policy area becomes a habitat management area for the western swamp tortoise if any of the following happen in relation to the area —
- (a) the area is identified as the location of critical habitat of the western swamp tortoise under an order made under the *Biodiversity Conservation Act 2016* section 54(1);
 - (b) the area becomes a nature reserve or is added to the area of a nature reserve mentioned in clause 8(1)(a) or (b);
 - (c) the area becomes the subject of a section 8A agreement under which the CEO (Conservation) agrees to manage the area as though it were a nature reserve;
 - (d) the area is acquired by the State, the Conservation and Parks Commission or another entity and managed by the conservation department as though it were a nature reserve.
- (3) If an area of the policy area becomes a habitat management area under subclause (2), the Authority must —
- (a) notify a landowner in the policy area that the area has become a habitat management area; and
 - (b) publish on the Authority's website a copy of the policy area map amended to indicate the area that has become a habitat management area.

10. Environmental quality objective

The environmental quality objective to be achieved and maintained by means of this policy is the protection of the environmental values of the policy area declared under clause 7.

11. Program for achieving and maintaining environmental quality objective

- (1) The environmental quality objective specified in clause 10 is to be achieved and maintained through the following measures —
- (a) having regard to, and supporting the implementation of, a recovery plan that provides for the conservation,

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protection and management of the western swamp tortoise; and

- (b) the government promoting awareness of this policy and providing advice and services to the owners and occupiers of land in the policy area; and
- (c) landowners and public authorities managing land in the policy area in a manner that avoids or minimises impacts from activities that would be detrimental or potentially detrimental to the environmental values of the policy area; and
- (d) requiring public authorities to ensure their decisions and actions are compatible with the protection of the environmental values of the policy area.

(2) For the purposes of subclause (1) —

recovery plan, for the conservation, protection and management of the western swamp tortoise, means —

- (a) if a recovery plan (as defined in the *Biodiversity Conservation Act 2016* section 5(1)) has been prepared in relation to the western swamp tortoise — that recovery plan; or
- (b) otherwise — the document titled “Western Swamp Tortoise (*Pseudemydura umbrina*) Recovery Plan 2010: Wildlife Management Program No. 50” prepared by the Department known at that time as the Department of Environment and Conservation.

12. Obligations of the Authority in making decisions and taking actions

The Authority must ensure that a decision it makes or action it takes that could impact the environmental values of the policy area —

- (a) is compatible with the protection of the environmental values; and

- (b) avoids or minimises impacts from activities that would be detrimental or potentially detrimental to the environmental values.

13. Obligations of public authorities in making decisions and taking actions

- (1) In this clause, a reference to a public authority does not include a reference to the Authority or a Minister.
- (2) A public authority must ensure that a decision it makes or action it takes that could impact on the environmental values of the policy area —
 - (a) is compatible with the protection of the environmental values; and
 - (b) avoids or minimises impacts from activities that would be detrimental or potentially detrimental to the environmental values.
- (3) A public authority must respond promptly to a request from the Authority to provide information about a decision made or action taken by the public authority that could impact the environmental values of the policy area.
- (4) A public authority involved in the development of a planning document or water management document that applies to, or could affect, the land or waters in the policy area must liaise closely with the Authority to ensure the document is developed to be consistent with this policy.
- (5) In subclause (4) —
planning document means —
 - (a) a local planning scheme as defined in the *Planning and Development Act 2005* section 4(1); or
 - (b) a local planning strategy as defined in the *Planning and Development Act 2005* section 171H(1); or

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- (c) a structure plan as defined in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 14; or
- (d) a local development plan as defined in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 46;

water management document means a strategy or plan that plans for, or is about —

- (a) the management or use of water (including surface water and groundwater); and
 - (b) activities that may impact the quality or quantity of the water or the health of the ecosystems related to the water.
- (6) A public authority is not required to comply with an obligation under this clause to the extent that doing so would be inconsistent with a written law and failure to comply with this clause does not affect the legality of a decision made or action taken under another law.

14. Obligations of Ministers in making decisions and taking actions

If a Minister is making a decision or taking action that could impact the environmental values of the policy area, the Minister must have regard to this policy.

15. Decisions and actions

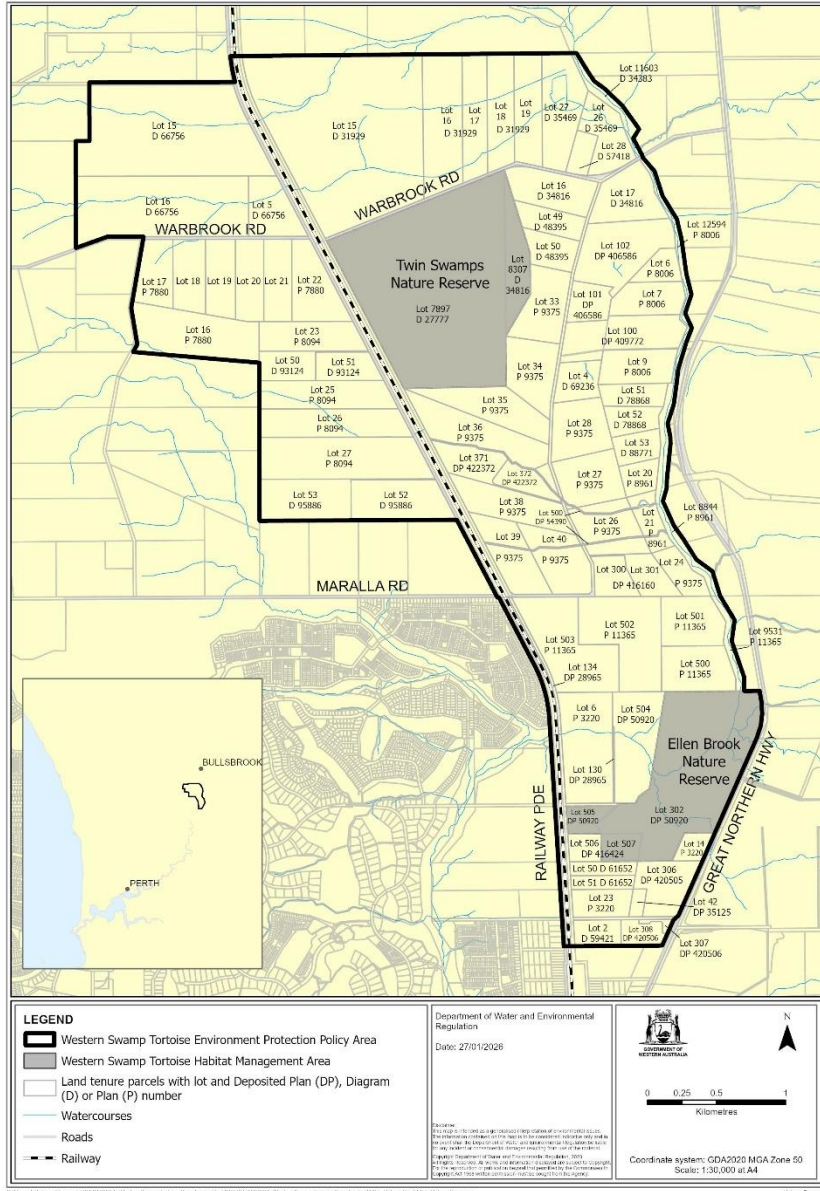
For the purposes of clauses 12, 13 and 14, a decision or action that could impact the environmental values of the policy area includes —

- (a) a decision or action involved in the development of a planning document or a water management document (as defined in clause 13(5)); and

- (b) a decision made, or action taken, under any of the following Acts —
- (i) the *Biodiversity Conservation Act 2016*;
 - (ii) the *Bush Fires Act 1954*;
 - (iii) the *Conservation and Land Management Act 1984*;
 - (iv) the *Contaminated Sites Act 2003*;
 - (v) the *Country Areas Water Supply Act 1947*;
 - (vi) the *Electricity Corporations Act 2005*;
 - (vii) the *Environmental Protection Act 1986*;
 - (viii) the *Government Railways Act 1904*;
 - (ix) the *Health (Miscellaneous Provisions) Act 1911*;
 - (x) the *Local Government Act 1995*;
 - (xi) the *Local Government (Miscellaneous Provisions) Act 1960*;
 - (xii) the *Main Roads Act 1930*;
 - (xiii) the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*;
 - (xiv) the *Mining Act 1978*;
 - (xv) the *Planning and Development Act 2005*;
 - (xvi) the *Public Health Act 2016*;
 - (xvii) the *Public Transport Authority Act 2003*;
 - (xviii) the *Public Works Act 1902*;
 - (xix) the *Rights in Water and Irrigation Act 1914*;
 - (xx) the *Soil and Land Conservation Act 1945*;
 - (xxi) the *Swan and Canning Rivers Management Act 2006*;
 - (xxii) the *Water Agencies (Powers) Act 1984*;
 - (xxiii) the *Water Services Act 2012*.

Schedule 1 — Map of policy area

[cl. 4(1)]



Schedule 2 — Land comprising policy area

[cl. 4(1)(b)]

Table

Lots 130 and 134 on Deposited Plan 28965
Lot 42 on Deposited Plan 35125
Lots 302, 504 and 505 on Deposited Plan 50920
Lot 500 on Deposited Plan 54390
Lots 101 and 102 on Deposited Plan 406586
Lot 100 on Deposited Plan 409772
Lots 300 and 301 on Deposited Plan 416160
Lots 506 and 507 on Deposited Plan 416424
Lots 305 and 306 on Deposited Plan 420505
Lots 307 and 308 on Deposited Plan 420506
Lots 371 and 372 on Deposited Plan 422372
Lot 7897 on Diagram 27777
Lots 15, 16, 17, 18 and 19 on Diagram 31929
Lot 11603 on Diagram 34383
Lots 16, 17 and 8307 on Diagram 34816
Lots 26 and 27 on Diagram 35469
Lots 49 and 50 on Diagram 48395
Lot 28 on Diagram 57418

Lot 2 on Diagram 59421
Lots 50 and 51 on Diagram 61652
Lots 5, 15, 16 on Diagram 66756
Lot 4 on Diagram 69236
Lots 51 and 52 on Diagram 78868
Lot 53 on Diagram 88771
Lots 50 and 51 on Diagram 93124
Lots 52 and 53 on Diagram 95886
Lots 6, 14 and 23 on Plan 3220
Lots 16, 17, 18, 19, 20, 21 and 22 on Plan 7880
Lots 6, 7, 9 and 12594 on Plan 8006
Lots 23, 25, 26 and 27 on Plan 8094
Lots 20, 21 and 8844 on Plan 8961
Lots 24, 26, 27, 28, 33, 34, 35, 36, 38, 39 and 40 on Plan 9375
Lots 500, 501, 502, 503 and 9531 on Plan 11365