



**Appeals Convenor**  
**Environmental Protection Act 1986**

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**REPORT TO THE  
MINISTER FOR ENVIRONMENT**

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**APPEAL AGAINST THE DECISION TO GRANT A CLEARING PERMIT**  
**CLEARING PERMIT CPS 7664/1: CLEARING OF 1.98 HECTARES OF**  
**NATIVE VEGETATION – COATES ROAD RESERVE, WUNDOWIE,**  
**SHIRE OF NORTHAM**

**PROPONENT: SHIRE OF NORTHAM**

Appeal Number C025 of 2017

**May 2018**

## Appeal Summary

This report relates to an appeal lodged against the grant of Clearing Permit CPS 7664/1, which was granted by the Department of Water and Environmental Regulation (DWER) to the Shire of Northam, to clear 1.98 hectares (ha) of native vegetation within the Coates Road reserve, Wundowie for the purpose of road widening and maintenance.

In summary, the appellant submitted that the permit should not have been granted as DWER's assessment of the proposed clearing was flawed in respect to principles (a) biodiversity, (b) fauna, (e) significance as a remnant, (f) water courses and wetlands and (h) nearby conservation areas, particularly as cumulative impacts were not taken into account. The appellant submitted that, should the permit be granted, conditions should also be strengthened and an offset applied.

DWER found that the proposed clearing 'may be at variance' to clearing principles (b) and (h), and was not likely to be at variance to the remaining principles. DWER, noting that the proposed clearing is for road upgrade and maintenance and the permit holder's commitment to avoid and minimise clearing, granted the permit subject to certain conditions including management of weeds and dieback and fauna management, requiring the permit holder to engage a fauna specialist to identify and inspect black cockatoo habitat trees, and delay clearing in the event that tree hollows are being utilised.

In responding to the appeal, DWER made a recommendation to impose an additional condition in relation to the recording and reporting on efforts made to avoid and minimise clearing.

Having regard to the information provided in the appeal, the Appeals Convenor considered that DWER's assessment of the proposed clearing against the clearing principles was supported by the available evidence and its decision to grant the permit subject to conditions was justified.

Notwithstanding, the Appeals Convenor was of the view that the fauna management condition could be improved by including a condition requiring the permit holder to install artificial hollows to replace hollows confirmed to be utilised by black cockatoos and required to be cleared, and that a requirement for the permit holder to maintain records on all activities undertaken pursuant to the clearing permit and provide reports at DWER's request, also be included.

## Recommendations

The Appeals Convenor recommended that the appeal be allowed in part, to the extent that the conditions are amended to include a requirement for the permit holder:

- to install artificial hollows to replace hollows that have been confirmed to have been utilised by black cockatoo's and are required to be cleared;
- to maintain records on all activities undertaken pursuant the clearing permit, and provide reports at DWER's request.

It is otherwise recommended that the appeal is dismissed.

## INTRODUCTION

This report relates to an appeal lodged by the Wildflower Society of Western Australia (Inc) (the appellant) in objection to a decision of the Department of Water and Environmental Regulation (DWER) to grant a clearing permit to the Shire of Northam (the permit holder) to clear 1.98 hectares (ha) of native vegetation within Lot 16150 and Coates Road Reserve, Wundowie for the purpose of road safety. The location and extent of the area are shown in Figure 1.



**Figure 1 – Location and extent (blue hatched area) of application area for CPS 7664/1**

(Source: <https://www.google.com.au/maps/search/>, <https://cps.der.wa.gov.au>)

On 27 June 2017, the permit holder applied for a purpose permit to clear 5 ha of native vegetation and on 2 August 2017, the application was advertised for public submissions for 21 days. No submissions were received.

On 22 November 2017, the permit holder reduced the application area. DWER granted Clearing Permit CPS 7664/1 to the permit holder on 7 December 2017, authorising the clearing of 1.98 ha. It was against this decision that the appeal was lodged.

This document is the Appeals Convenor's formal report to the Minister for Environment under section 109(3) of the *Environmental Protection Act 1986* (EP Act).

## OVERVIEW OF APPEAL PROCESS

In accordance with section 106 of the EP Act, a report was obtained from DWER in relation to the issues raised in the appeal. The permit holder was also given the opportunity to address the matters raised in the appeal and provided a written response which was considered in the investigation.

During the appeal investigation, the Appeals Convenor met with the appellant and the permit holder to discuss the appeal.

The environmental appeals process is a merits-based process. For appeals in relation to a DWER decision to grant a clearing permit, the Appeals Convenor normally considers the

environmental merits of the assessment by DWER based on principles as set out in Schedule 5 of the EP Act, as well as other environmental factors. Questions of additional information not considered by DWER, technical errors and attainment of relevant policy objectives are normally central to appeals.

## **OUTCOME SOUGHT BY APPELLANT**

The appellant is seeking for the Minister to overturn DWER's decision to grant Clearing Permit CPS 7664/1 and, in the alternative, if the clearing permit is granted, for additional conditions to be included in the permit.

## **GROUND OF APPEAL**

The appellant's grounds of appeal are summarised as follows:

1. significance of environmental impacts; and
2. adequacy of conditions and offsets.

### **GROUND 1: ASSESSMENT OF THE CLEARING PRINCIPLES**

The appellant submitted that the permit should not have been granted on the basis that the proposed clearing will occur in an area that has been extensively cleared and the proposed clearing should have been found to be 'at variance' to five clearing principles: (a) biodiversity, (b) fauna, (e) significance as a remnant of vegetation, (f) wetlands and watercourses and (h) adjacent conservation areas. The appellant submitted that DWER did not consider the precautionary principle and cumulative impacts in granting the permit.

Furthermore, the appellant submitted that the proposed clearing is excessive and unnecessary and that DWER should have required the permit holder to provide justification for the removal of vegetation. The appellant noted that there are alternative options that do not require clearing and believed these should have been considered before the grant of the permit.

This ground of appeal has been considered as follows:

- assessment against the clearing principles; and
- justification for the clearing.

## **Consideration**

### Assessment against the clearing principles

DWER assessed the proposal against the clearing principles, as set out under Schedule 5 of the EP Act, and found that the proposed clearing 'may be at variance' to clearing principles (b) and (h), and was 'not likely to be at variance' to the remaining principles.

As outlined in the Decision Report, DWER found that the vegetation in the application area ranged from 'degraded to very good condition'. DWER considered the application area as two distinct areas based on quality and composition of vegetation: Area A (1.0 ha) comprising 2 kilometres (km) from the southern edge and Area B (0.98 ha) comprising 2.5 km of the application area from the most western edge. DWER noted that Area A provides good quality foraging and potential breeding habitat and Area B provides low quality foraging and potential breeding habitat for the conservation significant forest red-tailed cockatoo (*Calyptorhynchus banksia* subsp. *naso*), Baudin's cockatoo (*Calyptorhynchus baudinii*) and Carnaby's cockatoo (*Calyptorhynchus latirostris*).

DWER also found that the proposed clearing may impact the environmental values of the Woondowing Nature Reserve through the introduction and spread of dieback and weeds.

DWER, having regard to the purpose of the clearing and after considering the permit holders avoidance and mitigation measures, decided that the permit could be granted subject to conditions in relation to fauna management, and the management of weeds and dieback.

### *Biodiversity and fauna*

In relation to the appellants submission that surveys should have been undertaken as Priority flora and conservation significant fauna were identified by DWER as likely to occur in the area, it is noted that DWER's (2014) *A guide to the assessment of applications to clear native vegetation under Part V of the Environmental Protection Act 1986* (Assessment Guide) does not require the permit holder to undertake vegetation, flora or fauna surveys unless there is a likelihood that the proposed clearing will result in a moderate or high impact on the environment.

In this case, DWER advised that it had sufficient information to inform its assessment without the need for specific flora or fauna survey's and that it took into account:

- DWER's site inspection which determined the vegetation type and condition;
- the proximity and connectivity of the application area to other areas of remnant vegetation;
- the online NatureMap database;
- GIS biodiversity datasets from which recorded occurrences of conservation significant flora, fauna and ecological communities within the local area can be identified.

### Priority flora

DWER considered impacts to Priority flora against principle (a) relating to biodiversity. Based on the available information, DWER identified 19 Priority flora species: one Priority 1, three Priority 2, six Priority 3 and nine Priority 4 species that may occur in the local area. Noting that Priority 3 and 4 species are not under imminent threat, are known to occur in other areas and the linear nature of the clearing, DWER determined that, even if individuals of these species do exist within the application area, the proposed clearing is not likely to impact on the conservation status of these species..

Furthermore, DWER advised that it had regard for the soil and vegetation types in which the Priority flora occur and found that suitable habitat does not occur in the local area for all but one of the Priority 2 species, *Lasiopetalum trichanthera*. The Decision Report noted that *Lasiopetalum trichanthera* has been recorded approximately 9.6 km from the application area and there are nine known occurrences distributed across five kilometres, with the majority of records occurring within conservation reserves. It was on this basis that DWER considered that there was a low risk that the proposed clearing would cause unacceptable impacts to this species.

### Fauna

Of the seven fauna species listed as 'rare' or 'likely to become extinct' under the *Wildlife Conservation Act 1950* recorded in the local area, DWER determined that for all but the three species of black cockatoo (forest red-tailed black cockatoo, Baudin's black cockatoo and Carnaby's black cockatoo), the application area is either not likely to provide suitable habitat to support the species or suitable and sufficient habitat is available adjacent to the application area.

With regard to black cockatoos, DWER's site inspection noted that the application area comprises suitable foraging habitat for the black cockatoo including jarrah, marri and *Banksia* species. DWER and noted that the application area is located within a mapped breeding area and determined that the area may comprise significant foraging habitat for the black cockatoo species.

Furthermore, DWER's site inspection identified a number of trees that may contain suitable hollows or have the potential to develop suitable hollows for black cockatoos, and concluded that should suitable breeding hollows be present then the application area, it is likely to comprise suitable breeding habitat for black cockatoo.

However, as outlined in the Decision Report, DWER noted that only Area A (1 ha) comprises good quality foraging habitat and potential breeding habitat and found that larger and better quality habitat is likely to remain adjacent to the application area, as:

- the local area retains 35% of native vegetation;
- the application area is located within close proximity to two conservations areas comprising 2075 ha of native vegetation; and
- the road reserve will retain approximately 10 – 20 metres of vegetation on either side.

It was on this basis, and the size and location of the application area (being along an existing road), that DWER concluded that the proposed clearing will not significantly impact on significant habitat for this species.

Notwithstanding the above, in the absence of a survey DWER included a fauna management condition on the permit to avoid and minimise impacts to individuals of the three black cockatoo species during clearing. The fauna management condition requires the permit holder to engage a fauna specialist to identify suitable habitat trees<sup>1</sup> that may be utilised by black cockatoo's, and inspect for their presence prior to clearing. The permit also requires that where the tree hollows are being utilised by black cockatoo's, the tree should be avoided where possible, and if clearing is required, clearing shall be delayed until the tree hollow is no longer in use and the Chief Executive Officer (CEO) is notified.

The appellant's concerns regarding the increasing loss of available habitat trees resulting from clearing and competition between other fauna species utilising the trees (including bees and lorikeets) is noted. The former Department of Environment and Conservation's *An investigation of the placement, use, monitoring and maintenance requirements of artificial hollows for Carnaby's black cockatoo* (2010) states that due to the time taken for trees to reach a certain age suitable for use by dependant fauna (minimum 130 years), the loss of trees due to clearing, logging or natural senescence, will result in a shortage of natural hollows available to cockatoos in the foreseeable future. The report concluded that artificial hollows will be required to provide nesting opportunities until natural hollows become available.

Having regard to the above, it is considered that DWER's assessment of the clearing against principle (b) was appropriate and in accordance with the published guidance and standard practice, however, it is considered that the clearing permit could be improved by including a condition requiring the permit holder to install artificial hollows, to replace hollows confirmed to be utilised by black cockatoos and required to be cleared. The installation of the artificial hollows should be undertaken with consideration given to the former Department of Parks

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<sup>1</sup> 'Habitat trees' defined as 'trees that have a diameter, measured at 1.5 metres from the base of the tree, of 50centimeters or greater' and therefore capable of developing a nest hollow.

and Wildlife's guidance material<sup>2,3</sup> on the design, installation and monitoring of artificial hollows for Carnaby's black cockatoo. The exact location and maintenance requirements for the artificial hollows would be a matter for DWER and the permit holder to determine.

#### *Significance as remnant vegetation*

In relation to cumulative impacts, DWER advised that in addition to its consideration of potential impacts to flora and fauna, its assessment also incorporated elements of a cumulative assessment through the consideration of the extent of the clearing in the local area, under clearing principle (e).

DWER in its assessment of this principle advised that it had regard for the national objectives and targets for biodiversity conservation in Australia, GIS datasets, publications containing native vegetation extent statistics for the Jarrah Forest Interim Biogeographic Regionalisation of Australia (IBRA) bioregion, the Shire of Northam, the mapped Beard vegetation association and the Hedde vegetation complexes, and the local area (10 km radius).

DWER, while acknowledging that the vegetation extent within the Shire of Northam is below the target threshold value of 30 per cent<sup>4</sup>, advised that the local area and mapped vegetation complexes, retain above the recommended threshold and furthermore, the application area is located adjacent to the Woondowing Nature Reserve, which contains vegetation in similar or better condition than the application area.

As outlined in DWER's Assessment Guide, the intent of principle (e) is to 'maintain sufficient native vegetation in the landscape for the maintenance of ecological values'. DWER advised that while the Shire of Northam retains below the recommended 30 per cent threshold and the application area contains foraging and potential breeding habitat for black cockatoo species, the local area and the mapped vegetation complex retain above the threshold value and the area is not likely to contain a high level of biodiversity, rare flora or a TEC. It was on this basis that DWER considered that the application area is not likely to be considered significant as a remnant of native vegetation in an extensively cleared area.

#### *Wetlands and watercourses*

In relation to the appellant's concern that the proposed clearing will impact on three water courses that traverse the application area and is therefore at variance with principle (f), DWER's assessment did not identify any watercourses within the application area. DWER advised that it relied on GIS hydrography datasets and the finding of the site inspection. The nearest watercourse is a minor non-perennial watercourse located approximately 20 metres from the application area.

#### *Adjacent conservation areas*

In response to the appellant's concerns that the proposed clearing may impact on the adjacent nature reserve and the application area is a potential ecological linkage between a Bush Forever site, a State Forest and an environmentally sensitive area (ESA), DWER advised that it did not agree with the appellants submission and advised that the nearest

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<sup>2</sup> Department of Parks and Wildlife (2015). *Fact Sheet: How to design and place artificial hollows for Carnaby's cockatoo*. Retrieved from [https://www.dpaw.wa.gov.au/images/plants-animals/threatened-species/carnabys\\_artificial\\_hollows\\_-\\_design\\_and\\_place\\_2015.pdf](https://www.dpaw.wa.gov.au/images/plants-animals/threatened-species/carnabys_artificial_hollows_-_design_and_place_2015.pdf).

<sup>3</sup> Department of Parks and Wildlife (2015). *Fact Sheet: How to monitor and maintain artificial hollows for Carnaby's cockatoo*. Retrieved from [https://www.dpaw.wa.gov.au/images/plants-animals/threatened-species/carnabys\\_artificial\\_hollows\\_-\\_monitor\\_and\\_maintain\\_2015.pdf](https://www.dpaw.wa.gov.au/images/plants-animals/threatened-species/carnabys_artificial_hollows_-_monitor_and_maintain_2015.pdf)

<sup>4</sup> The national objectives and targets for biodiversity conservation in Australia has a target to prevent clearance of ecological communities with an extent below 30 per cent of that present pre-1750 (pre-European), below which species loss appears to accelerate exponentially at an ecosystem level (Commonwealth of Australia, 2001).

Bush Forever site is located approximately 37 km to the west of the application area, the nearest area of State Forest is located approximately 14 km south of the application area and the nearest ESA is the Clackline Nature Reserve, located approximately 9.6 km north-east of the application area. DWER did note however, that the application area is adjacent to the Woondowing Nature Reserve and the Kwolyinine Nature Reserve is located one kilometre to the south of the application area.

DWER also noted in its Decision Report that although the application area may provide an ecological linkage allowing fauna to move between conservation areas and remnant vegetation, the road reserve retains predominantly 10 – 20 metres of vegetation either side of the existing road allowing the road reserve to function as an ecological linkage and the proposed clearing is unlikely to impeded the movement of fauna through the landscape.

While noting the above, DWER found that the proposed clearing 'may be at variance' to principle (h) given that the proposed clearing may indirectly impact on the adjacent Woondowing Nature Reserve through the spread of weeds and dieback. In order to minimise impacts to the adjacent Nature Reserve and nearby vegetation, DWER included a condition requiring the permit holder to implement dieback and weed control measures during clearing.

#### Justification for clearing

In relation to the appellant's contention that the proposed clearing is not necessary and alternatives should have been considered, DWER advised that it assesses applications on a case by case basis.

DWER advised that its function is to conduct an assessment of the proposed clearing area against the clearing principles, identify the environmental values and potential impacts from clearing, and impose conditions to mitigate and minimise these impacts. DWER noted that the permit holder is responsible for planning, building and maintaining the road network in its jurisdiction and advised that the setting of conditions does not include technical engineering standards of roads.

In this case, DWER maintained its view that the proposed clearing 'may be at variance' to clearing principles (b) and (h) and noted that the EP Act does not preclude clearing permits from being granted where the proposal is or may be at variance with the clearing principles. For example, section 51O(3) allows the CEO to make a decision that is seriously at variance with the clearing principles if, in the CEO's opinion, there is a good reason for doing so.

In making a decision on this clearing permit application, DWER, in addition to the environmental values and impacts, took into account the avoidance and minimisation measure undertaken by the permit holder (reduced the proposed area of clearing from five hectares to 1.98 ha) and the purpose of the clearing being road upgrades to improve general road safety, decided that the clearing permit could be granted subject to conditions to minimise clearing and mitigate impacts to black cockatoos.

#### **Conclusion**

Having regard for the above, and noting that the EP Act does not preclude a clearing permit from being granted where it may be at variance with the clearing principles, it is considered that DWER's assessment of the application and decision to grant the permit was supported by the available evidence.

However, noting DWERs advice on the potential for the application area to provide foraging and breeding habitat for black cockatoo, it is recommended that the condition be improved,

including a requirement for the permit holder to install artificial hollows to replace hollows confirmed to be utilised by black cockatoos and required to be cleared.

## **GROUND 2: INADEQUATE CONDITIONS AND OFFSETS**

The appellant submitted that adequate conditions to avoid, minimise or ameliorate clearing were not included on the clearing permit. The appellant also provided a list of recommended conditions to be included, in addition to the current conditions, should the permit be granted.

The appellant's recommended conditions included:

- additional roadside management and maintenance practices;
- preparation of detailed plans to provide adequate supervision of clearing;
- ensure adequate supervision of clearing to prevent over-clearing; and
- publicly available reporting requirements to evidence compliance.

In relation to the adjacent conservation areas, the appellant submitted that the condition requiring the permit holder to implement dieback and weed control measures is not sufficient to mitigate long term impacts. The appellant sought for the condition to be amended to include detailed specification of weed management and required outcomes, including post clearing weed management.

While the appellant noted that it is philosophically opposed to offsets, the appellant submitted that an offset condition requiring the permit holder to rehabilitate any nearby degraded area, such as gravel pits, and/or rehabilitate and maintain native vegetation on road batters should have been applied to the permit.

### **Consideration**

Section 51H of the EP Act provides that clearing permits may be granted subject to conditions considered to be necessary or convenient by the CEO for the purposes of controlling, abating or mitigating environmental harm or offsetting the loss of cleared vegetation.

As discussed under Ground 1, DWER advised that it applied conditions requiring the permit holder to implement dieback and weed control measures, to inspect habitat trees suitable to be used by the three threatened black cockatoo species prior to clearing, avoid clearing of any habitat trees being used by those species where possible, and if clearing is required, clearing shall be delayed until the tree hollow is no longer in use and the Chief Executive Officer (CEO) is notified. The permit holder is also required to keep records of and report on the identification of habitat trees.

DWER advised that it encourages applicants to seek opportunities to avoid and minimise the impacts of clearing where possible and generally includes this condition on all purpose permits to require permit holders to document their effort and to demonstrate that clearing is reasonably necessary and that no practical alternatives to clearing exist. Accordingly, DWER included a condition on the clearing permit requiring the permit holder to avoid and minimise clearing. The condition indicates a clear intent that the permit holder should balance the need for the proposed clearing with other options.

DWER noted, however that a condition requiring the permit holder to keep records of and report on compliance with this requirement was not applied and therefore recommended that a recording and reporting condition should be added to the permit.

In regard to the appellant's submission that the permit should be subject to conditions relating to roadside management and maintenance practices, DWER included a condition on

the clearing permit to manage the introduction and spread of dieback and weeds. DWER advised that the intent of the condition is to manage the impacts associated with the proposed clearing activity, and that the condition would therefore only be effective in mitigating the spread of weeds and pathogens by movement of machinery undertaking the clearing.

DWER acknowledged that weeds and pathogens may continue to be spread by vehicles using the road, however DWER maintained that the conditions are adequate to minimise the spread of weeds and pathogens as a result of the clearing activity and that ongoing weed management programs for road reserves are a matter for the Shire of Northam.

In regard to recording and reporting, it is noted that the clearing permit did not include recording and reporting requirements in relation to the weed and dieback condition. It is considered that it is appropriate for a condition requiring the permit holder to maintain records on activities undertaken pursuant to the clearing permit and to provide reports to DWER upon request be included on the permit.

In relation to the appellant's suggestions about rehabilitate of nearby degraded areas such as exhausted gravel pits and batters, DWER advised it considered that this, in effect is a type of offset. DWER further advised that through the assessment of the application DWER determined that the proposed clearing is not likely to have any significant residual environmental impacts therefore, consistent with the Western Australian *Environmental Offsets Policy* (2011), an offset is not warranted.

## **Conclusion**

Having regard for the above, it is considered that the appeal be allowed in part to the extent that a requirement for the permit holder to maintain records on all activities undertaken pursuant to the clearing permit and provide reports at DWER's request, also be included as conditions of the permit.

In respect of the offset, although the appellant's concerns are noted, DWER's finding that the proposed clearing is unlikely to result in any significant impacts is noted and therefore DWER's decision not to require an offset is supported.

## **CONCLUSIONS AND RECOMMENDATION**

Based on the above, it is considered that DWER's assessment of the application against the clearing principles was appropriate, supported by available evidence and undertaken in accordance with policies and procedures.

Having regard to the available information and noting the purpose of the clearing permit, is for road upgrades and road safety, it is considered DWER was justified in its decision to grant the clearing permit subject to conditions.

However, noting DWER's conclusion that the application area may contain significant foraging and breeding habitat for conservation significant black cockatoo species, it is considered that the fauna management condition requiring an inspection of hollows and avoid or delay clearing where the hollows are found to be utilised by black cockatoo's, be improved by requiring the permit holder to install artificial hollows to replace hollows confirmed to be utilised by black cockatoos and required to cleared.

Based on DWER's advice, it is also considered that a condition to maintain records on all activities undertaken pursuant the clearing permit, and provide reports at DWER's request should also be included on the permit.

It is noted that the permit holder was notified of, and did not raise any issues with, any of the recommended conditions.

Therefore, it is recommended that the appeal be allowed in part, to the extent that the clearing permit is amended to include the conditions as detailed above. The final wording of the conditions is a matter for DWER under section 110 of the EP Act.

It is otherwise recommended that the appeal is dismissed.

Emma Gaunt  
APPEALS CONVENOR

**Investigating Officer:**  
Tonya Carter, Senior Appeals Officer