



Appeals Convenor
Environmental Protection Act 1986

**REPORT TO THE
MINISTER FOR ENVIRONMENT**

APPEAL AGAINST AMENDMENT OF CLEARING PERMIT
CPS 7925/4: YANDIN WIND FARM, SHIRE OF DANDARAGAN

PERMIT HOLDER: YANDIN WIND FARMS PTY LTD

Appeal Number 005 of 2020

April 2020

Appeal Summary

This report relates to an appeal lodged by the Wildflower Society of Western Australia (Inc.) (the appellant), in objection to the decision of the Department of Water and Environmental Regulation (DWER) to amend Clearing Permit CPS 7925/4. The clearing permit authorises Yandin Wind Farm Pty Ltd (the permit holder) to clear four hectares (ha) of native vegetation for the purpose of a wind farm. The amendment the subject of this appeal approves a reduction in the buffer area between the approved clearing and identified priority flora species from 30 metres to 10 metres in a designated area.

In summary, the appellant was concerned that the reduced buffer area for the flora species *Banksia dallanneyi* subsp. *pollostata* (Priority three) was inadequate to protect priority flora.

In response to the appeal, DWER advised that the amendment does not permit disturbance to any priority or threatened species and that the reduced buffer area only applies to five individuals of *Banksia dallanneyi* subsp. *Pollostata*. In making its decision to amend the permit, DWER had regard for the number of recorded populations, the range distribution of the species and considered that the potential impacts to the five individuals could be managed through the mitigation measures committed to by the permit holder.

Having considered all of the information provided, the Appeals Convenor recommended that the appeal be allowed to the extent that the permit be amended to more clearly describe the different buffers that apply to different areas of the permit and that a condition be required that outlines the measures committed to by the permit holder to avoid impacts to threatened and priority flora.

Recommendations

The Appeals Convenor recommended that:

- The flora management condition 7 of the clearing permit be modified to clearly articulate that the reduced buffer distance of 10 metres to identified priority flora only applies to the area hatched red on CPS 7925/4(e) – Plan; and
- A condition be placed on the clearing permit requiring the buffer distances and individuals of the threatened and priority flora be demarcated (through flagging or GPS coordinates) prior to clearing.

The final wording is a matter for DWER under section 110 of the *Environment Protection Act 1986*. It is otherwise recommended that the appeal be dismissed.

INTRODUCTION

This report relates to an appeal lodged by the Wildflower Society of Western Australia (Inc.) (the appellant), objecting to the decision of the Department of Water and Environmental Regulation (DWER) to amend Clearing Permit CPS 7925/4. The permit was originally granted in June 2018 and authorises the permit holder (Yandin Wind Farm Pty Ltd) to undertake clearing of vegetation associated with roads associated with the development of the Yandin Wind Farm, approximately 11 kilometres south west of Dandaragan. The location and extent of the approved area for clearing is shown in Figures 1 and 2.

Figure 1 – Location of project (indicated by red star) (Source: Whereis.com, April 2020)

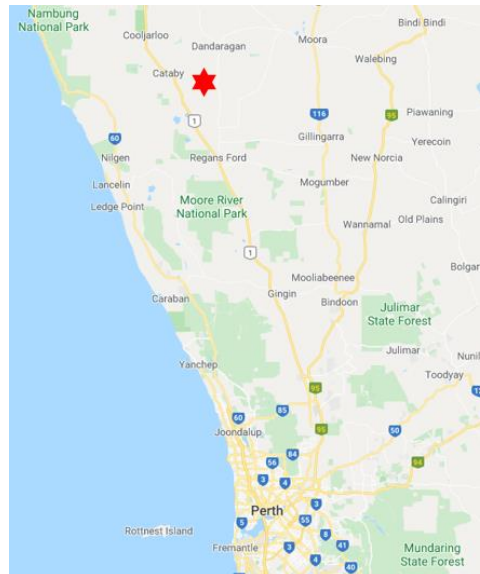
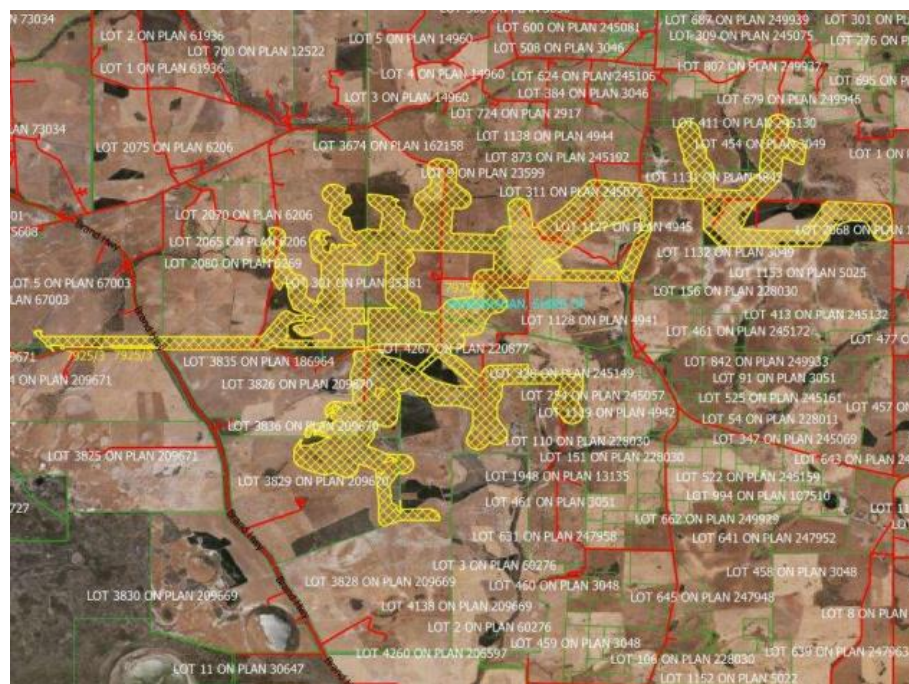


Figure 2 – Clearing application area (in yellow) (Source: DWER, CPS 7925/3)



The amendment the subject of this appeal approves a reduction in the buffer area between the approved clearing and identified priority flora species from 30 metres to 10 metres. This variation is to allow for upgrades to the access road at the intersection of Yandin Road and the Yandin Wind Farm, which is understood to be impossible if the buffers at that location remain as 30 metres. There were no other changes to the permit, including no change to the prohibition on clearing priority flora species.

The proposed amendment was advertised for a 21-day public comment period on 12 December 2019. The appellant made a submission at that time, which is understood to have raised the same concerns as those raised by this appeal.

In its assessment of the original application in June 2018, DWER determined that the proposed clearing is at variance to clearing principles (c) rare flora and (f) watercourses and wetlands, may be at variance to clearing principles (a) biodiversity, (d) fauna habitat, (d) threatened ecological community, (e) significance as a remnant and (h) nearby conservation areas, and is not likely to be at variance with the remaining principles. In considering the amendment, DWER advised that its previous assessment stands.

On 5 February 2020, DWER amended the permit as described above. It is against this decision that the appeal was received.

OVERVIEW OF APPEAL PROCESS

In accordance with section 106 of the EP Act, two reports relating to the matters raised on appeal are required for the Minister for Environment to determine the outcome of the appeal: the Appeals Convenor's Report and a report from the decision making authority of the decision under appeal.

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

In order to properly advise the Minister for Environment, the Appeals Convenor conducted an investigation into the matters raised on appeal. The investigation included:

- a review of the appeal submitted by the appellant
- a review of the response to the appeal provided by the permit holder
- a review of the section 106 report from DWER
- provision of a copy of DWER's s106 report to the appellant
- video conference with the appellant on 16 April 2020
- video conference with the permit holder on 8 April 2020
- a review of other information, policy and guidance as required.

The environmental appeals process is a merits-based process. Appeals in relation to the amendment to the conditions of a clearing permit relate only to the amendment, and not to elements of the permit that are not amended. The Appeals Convenor normally considers whether the conditions are adequate or appropriate, taking into account an assessment of the proposal against the principles as set out in Schedule 5 the EP Act, as well as other environmental factors. Questions of additional information not considered by DWER, technical errors, errors in DWER's assessment and attainment of relevant policy objectives are normally central to appeals.

GROUND OF APPEAL: ADEQUACY OF BUFFER TO PROTECT PRIORITY FLORA

The appellant submitted that while the amendment may have been given on the basis that it will only affect two plants (*Banksia dallanneyi* subsp. *pollostae*):

... because of the open-ended nature of the variation, many other individuals of the same species may be affected in the future. WSWA considers that a 10 m buffer is inadequate long-term protection for any Priority species from the effects of clearing, including in this instance, and should be 50 m and certainly not less than the 30 m currently required.¹

In addition, the appellant submitted that any buffer around priority flora individuals should be measured from the edge of the foliage, not from the stem, or a GPS location, and this should be reflected in the condition accordingly.²

Consideration

This appeal relates to condition 7(b) of the clearing permit, which (prior to the amendment) provided:

- (b) Where threatened flora or *priority flora* are identified in relation to condition 7(a) of this Permit, the Permit Holder shall ensure that:
 - ...
 - (ii) no clearing of, or within 30 metres of, identified *priority flora* occurs.

'Priority flora' is defined in the permit as meaning:

... those plant taxa described as priority flora classes 1, 2, 3 or 4 in the Department of Biodiversity, Conservation and Attractions *Declared Rare and Priority Flora List for Western Australia* (as amended).

The amendment alters condition 7(b) and inserts a new subparagraph (c), as follows:

- (b) Where threatened flora or priority flora are identified in relation to condition 7(a) of this Permit, the Permit Holder shall ensure that:
 - ...
 - (ii) no clearing of, or within 30 metres of, identified priority flora occurs, with the exception of road reserve (PIN 1226159), Lot 301 on Deposited Plan 35381, Lot 302 on Deposited Plan 35381 and Lot 3827 on Deposited Plan 209670, in which case no clearing of, or within 10 metres of, identified priority flora is to occur.
- (c) With regard to condition 7(b)(ii), clearing within road reserve (PIN 1226159), Lot 301 on Deposited Plan 35381, Lot 302 on Deposited Plan 35381 and Lot 3827 on Deposited Plan 209670 must be confined to the area crossed hatched in red as shown on Plan 7925/4(e).

The amendment is spatially limited to the area identified in Plan 7925/4(e), which is reproduced as Figure 3 below.

¹ Wildflower Society, Appeal letter 005/20, 10 February 2020.

² Ibid.

Figure 3 – Area to which amended requirement applies

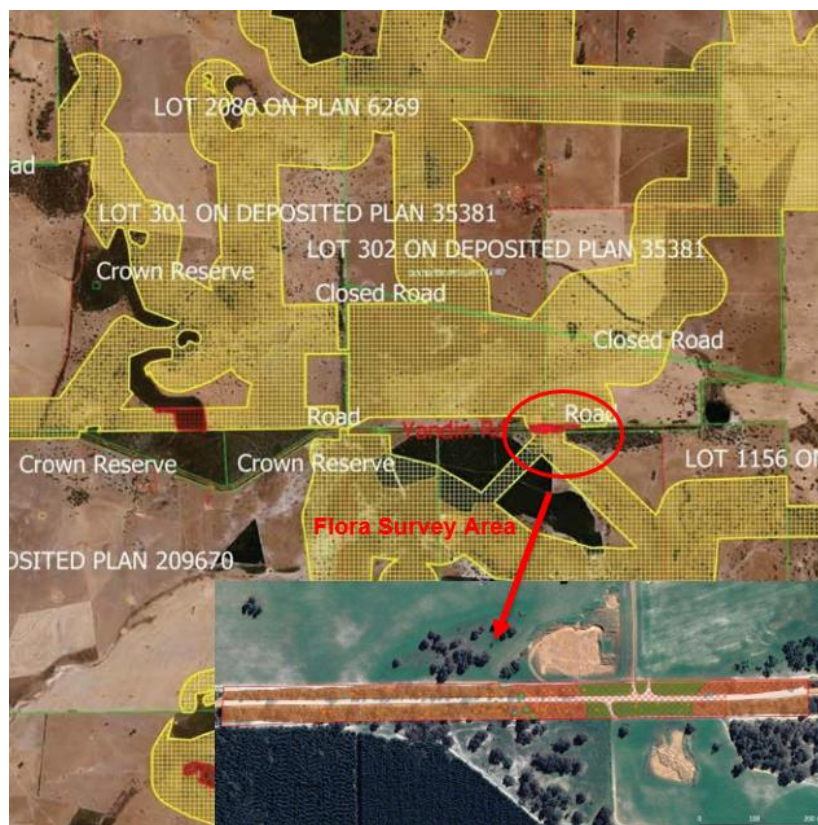
(Source: DWER 2020)



In accordance with condition 7 of Clearing Permit 7925/3, which requires the permit holder to inspect designated sections of the clearing permit area for the presence of threatened and priority flora prior to clearing, the permit holder commissioned a targeted flora survey in an area identified for a future access site to accommodate large trucks delivering materials to the site. Figure 4 shows the 1.7 ha area surveyed under condition 7 (c).

Figure 4 – Area subject to flora survey required by CPS 7925/3 (indicated by red hatched area)

(Source: DWER, CPS 7925/4)



The survey identified a population of 21 individuals of the Priority 3 species *Banksia dallanneyi* subsp. *pollostata*, within an area of 1.7 ha. While the permit holder does not propose to clear any *Banksia dallanneyi* subsp. *pollostata*, five individual plants were identified as being within 30 m of the proposed clearing. It was on this basis that the permit holder sought a revised buffer distance of 10 m for these five individuals to allow for the works to proceed.

DWER advised that the permit holder had demonstrated its efforts to avoid and minimise clearing of native vegetation and noted that the site selected by the permit holder included:

- an existing intersection along Yandin Road with areas already cleared as an entrance to the proposed Yandin Wind Farm along a previously used access track
- the only area along Yandin Road that is not mapped as remnant vegetation along Yandin Road for over 1.5 kilometres (km) to the east and 1.8 km to the west
- in comparison to other areas, not mapped as remnant vegetation, represents the furthest location from the recorded threatened species *Chamelaucium* sp. *Cataby* (G.J. Keighery 11009) and *Thelymitra stellata*.

DWER advised that in considering the amendment application, it also considered the recorded range distribution of the species, as well as the conservation code description for Priority 3 flora species:

Priority 3 flora species 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 surveys (Department of Biodiversity, Conservation and Attractions, 2019).³

DWER advised that the population of *Banksia dallanneyi* subsp. *pollostata* subject to the amendment does not occur outside of its known range, nor does it occur in a novel local environment. DWER also noted that this species is:

- known from 28 locations within Western Australia
- five of recorded populations occur within flora nature reserves and one population occurs within Watheroo National Park
- occurs over a wide geographic area, 110 km from north to south and over 120 km from east to west, with the approximate centre point of its range being the Dandaragan town site
- has been recorded within a broad range of soil types from granite outcrops with loamy soils to deep sand
- has been recorded within a broad range of vegetation types from *Banksia-Eucalyptus* woodland to low shrublands scrub-heath.

On the basis of this information, DWER considered that this population is not an important extension to the species' known occurrence.

³ DWER, s106 Appeal Report CPS 7925/4, page 3.

As part of its assessment of the application, DWER also considered the permit holder's commitment to minimise the risk of inadvertent clearing or indirect impacts to priority flora, including:

- All priority flora identified during the targeted flora surveys shall be clearly demarcated on site with fluorescent ribbon, and a 10 m buffer zone shall be pegged and flagged.
- Prior to commencing clearing works a site walk down shall be conducted with all personnel to review the buffer zone and review the location of identified flora.
- A risk assessment shall be conducted to identify all risks and ensure appropriate measures are in place prior to commencing works.
- All clearing works shall be conducted with a spotter to ensure the buffer zone is not encroached upon;
- The delineated buffer zone shall remain in place for the duration of all road construction works.⁴

In response to the appeal, DWER suggested that it is open to the Minister to require that the above management commitments be included as conditions of the permit.

In response to the appellant's submission that 'many other individuals of the same species may be affected [by the amendment] in the future', DWER's decision report states:

Existing buffer distances to conservation significant flora remain applicable to all other areas within the approved clearing envelope and the proposed amendment does not reduce the 50 metre buffer required for clearing vegetation identified as threatened flora.⁵

DWER clarified that the area to which the reduced buffer distance applies is limited to an area of 0.00532 ha immediately adjacent to the Yandin Road intersection. DWER confirmed that the clearing is restricted to the red hatched area (as shown in Figure 3) and that no clearing, or clearing within 30 m, of identified priority species is permitted outside of this area. Defining the area of clearing ensures that the reduced buffer distance of 10 m to *Banksia dallanneyi* subsp. *pollostata* relates only to the individuals adjacent to this area.

In response to the appeal, DWER acknowledged that the conditions may not be clear on the different buffers that apply to different areas, and recommended that:

The flora management conditions under condition 7 of the Clearing Permit be modified to clearly articulate that the reduced buffer distance of 10 metres to identified priority flora only applies to the areas hatched red on CPS 7925/4(e) [Figure 3]⁶

In relation to the appellant's view that the buffer should be measured from the edge of foliage and not from the stem or GPS point, DWER advised that it:

... does not consider it necessary to measure the buffer distance from the edge of the foliage, as the current buffer from the centre point provides enough distance between the plant and the edge of clearing to mitigate impacts.

The requirements of *Environmental Protection Authority's Technical Guidelines – Flora and Vegetation Surveys for Environmental Impact Assessment - December 2016* do not include a stipulation for this level of detail in capturing individual plants' canopy cover for undertaking targeted threatened and priority flora surveys in accordance with the guidelines. The Department does not consider it necessary to impose such requirements for surveys.⁷

⁴ DWER, CPS 7925/4 Decision Report, page 3.

⁵ DWER, CPS 7925/4 Decision Report, page 2.

⁶ DWER, s106 Appeal Report CPS 7925/4, page 4.

⁷ DWER, s106 Appeal Report CPS 7925/4, page 4.

CONCLUSION AND RECOMMENDATIONS

Noting that the amendment of the permit does not permit clearing of the Priority three species *Banksia dallanneyi* subsp. *pollosta* and that the reduced buffer of 10 m applies to five individuals only, it is considered that the environmental risks posed by the amendment were appropriately assessed by DWER.

It is therefore considered that the decision to amend the permit was justified. However, for the reasons stated by DWER, it is considered appropriate for the appeal to be allowed to the extent that condition 7 is further amended to clarify that the 10 m buffer only applies to the area specified in Figure 3 of this report.

It is also considered that the management measures identified by the permit holder should also be included in the permit, in the manner suggested by DWER.

It is otherwise recommended that the appeal be dismissed.

Emma Gaunt
APPEALS CONVENOR

Investigating Officer:
Tonya Carter, Senior Appeals Officer