



## **Appeals Convenor**

**Environmental Protection Act 1986**

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### **REPORT TO THE MINISTER FOR ENVIRONMENT**

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**APPEAL IN OBJECTION TO THE ENVIRONMENTAL PROTECTION AUTHORITY  
DECISION NOT TO ASSESS A REFERRED PROPOSAL**

**PILBARA REGIONAL WASTE MANAGEMENT FACILITY  
ONSLOW, SHIRE OF ASHBURTON**

**PROPONENT: SHIRE OF ASHBURTON**

Appeal Number 009 of 2019

**April 2019**

## Appeal Summary

This report relates to an appeal lodged in objection to the decision of the Environmental Protection Authority (EPA) not to assess a proposal by the Shire of Ashburton (proponent) to develop the Pilbara Regional Waste Management Facility, located approximately 36 kilometres south of Onslow, under Part IV of the *Environmental Protection Act 1986* (EP Act).

After considering the referral, the EPA concluded that the proposal is unlikely to have a significant effect on the environment, and determined not to assess the proposal. No public advice was given.

In summary, the appellant submitted that the proposal should be formally assessed by the EPA, with particular regard for the potential impacts of a Class IV landfill on conservation-significant fauna and flora species and a conservation area. The appellant is seeking for the Minister to remit the proposal to the EPA for formal assessment.

Having regard for the information provided during the appeals investigation, including information provided by the appellant, the proponent and the EPA, the Appeals Convenor considered that the EPA's conclusion that the environmental impacts are not so significant as to warrant formal assessment is supported by the available evidence and its decision not to assess the proposal was justified.

### Recommendation

The Appeals Convenor recommended that the appeals be dismissed.

## INTRODUCTION

This report relates to an appeal lodged by Tellus Holdings Limited (appellant) in objection to the decision of the Environmental Protection Authority (EPA) not to assess a proposal by the Shire of Ashburton (proponent) to develop the Pilbara Regional Waste Management Facility (PRWMF; proposal), located approximately 36 kilometres (km) south of Onslow, under Part IV of the *Environmental Protection Act 1986* (EP Act). The location and extent of the proposal are shown in Figure 1 (sourced from the referral documentation<sup>1</sup>).

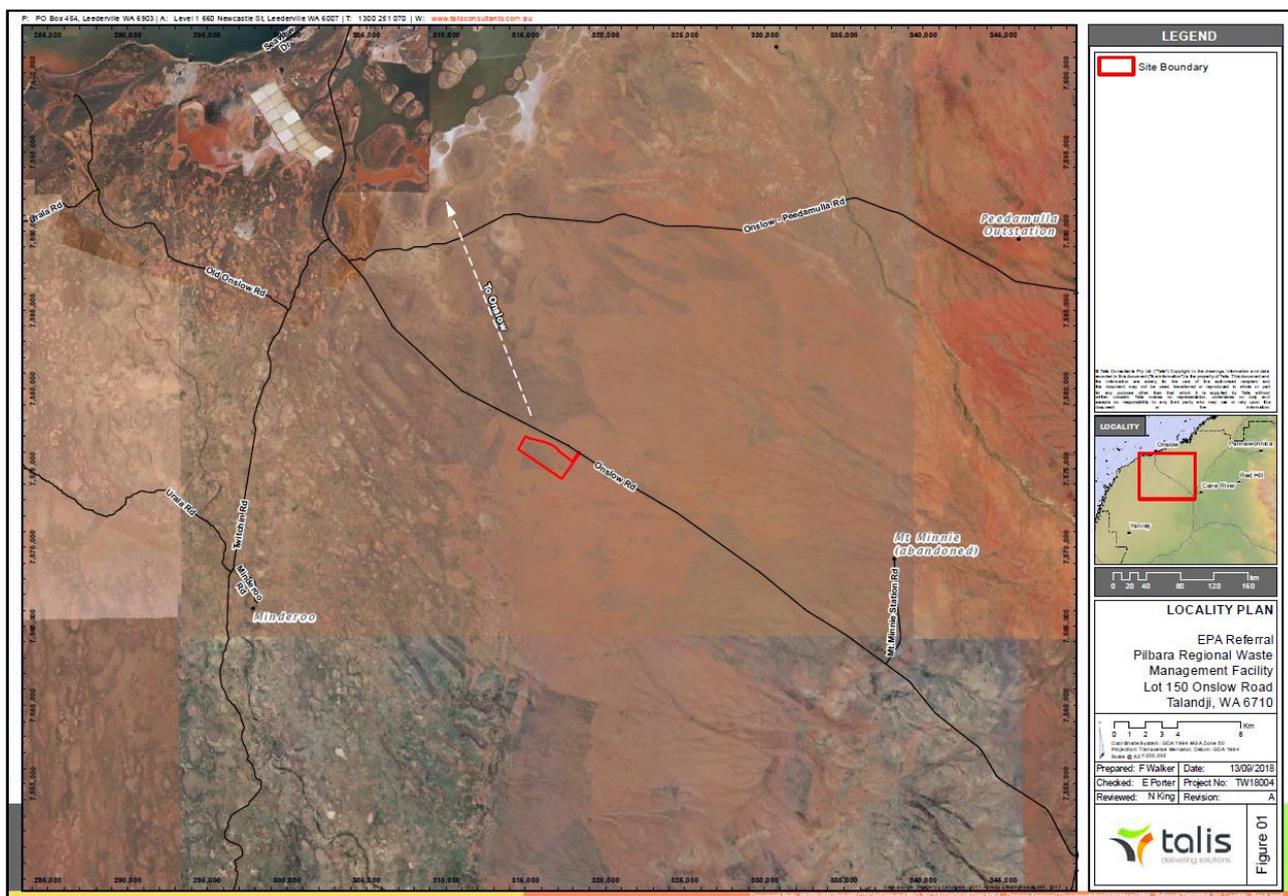


Figure 1: Location of proposed PRWMF

## Background

Clearing Permit CPS 7758/1 was granted by the former Department of Environment Regulation (now the Department of Water and Environmental Regulation (DWER)) in November 2017, authorising the proponent to clear up to 6.5 hectares (ha) of native vegetation within a 434.85 ha clearing footprint on Lot 150 on Plan 220207 (Lot 150) and Onslow Road reserve, Talandji, for the purpose of hydrogeological and geotechnical investigations relating to the PRWMF.<sup>2</sup>

In July 2018, the proponent referred to the EPA a proposal to develop the PRWMF on Lot 150. The referral documentation states that the PRWMF will provide a range of waste management services as well as treatment and disposal, and will include a Class IV landfill, bulk waste area, liquid waste area and monocells for tyres and asbestos. The proposal is located within a development footprint of approximately 70 ha within a broader development envelope of approximately 139 ha, within an overall footprint of approximately 435 ha.

<sup>1</sup> Available at: <http://www.epa.wa.gov.au/proposals/pilbara-regional-waste-management-facility>

<sup>2</sup> Available at: <ftp://ftp.dwer.wa.gov.au/permit/7758/>

On 1 February 2019, the EPA determined not to assess the proposal on the basis that it considers the likely environmental effects of the proposal are not so significant as to warrant formal assessment, and noted that the proposal will require a clearing permit and licensing under Part V of the EP Act. It was against this decision that the appeal was received.

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

## OVERVIEW OF APPEAL PROCESS

In accordance with section 106 of the EP Act, a report was obtained from the EPA in relation to the issues raised in the appeal. The proponent was also given the opportunity to address the matters raised in the appeals. During the appeal investigation, the Appeals Convenor consulted with the appellant and the proponent to discuss the appeal in further detail.

The environmental appeals process is a merits-based process. For appeals in relation to an EPA decision not to assess, the Appeals Convenor normally considers questions of environmental significance, relevance of factors, additional information not considered by the EPA, and whether other approvals processes can adequately address the relevant environmental factors without the need for formal assessment by the EPA. The level of public interest may also be relevant.

## OUTCOMES SOUGHT BY APPELLANT

The appellant is seeking for the Minister to remit the proposal to the EPA for formal assessment.

## GROUND OF APPEAL

In summary, the appellant submitted that the proponent's referral documentation contained insufficient information for the EPA to determine that the potential impacts of a Class IV landfill on conservation-significant fauna and flora species and a conservation area are not so significant as to warrant formal assessment.

The appellant also submitted that the proposal should be referred to the Commonwealth Department of the Environment and Energy (DotEE) for assessment of the potential impacts to conservation-significant fauna and a conservation area. As this matter does not relate to the EPA's decision not to assess, it has not been considered in detail in this report and is described under 'Other Matters'.

## GROUND 1: INSUFFICIENT INFORMATION ON WHICH TO BASE CONCLUSION

The appellant submitted that locating the proposal within the Cane River Conservation Park proposed extension area is inconsistent with the IUCN<sup>3</sup> objective '*to protect natural biodiversity along with its underlying ecological structure and supporting environmental processes, and to promote education and recreation*'. In support of this view, the appellant submitted that:

- the intention to use double-lined cells in the construction of the Class IV landfill is problematic;
- wind-waves are likely to be greater than 64 millimetres high resulting in over-topping of the evaporation ponds, and leachate re-circulation is reliant upon human intervention (pumping);
- the determination of capping and restoration activities during operational life appears to be a 'try it and see' approach, and does not consider the impacts of putrescible material on post-closure settlement, erosion of the completed landform, or integrity of the LLDPE cap;
- the reliance on the Victorian EPA's *Siting, design, operation and rehabilitation of landfills*<sup>4</sup> principles for the design of the PRWMF and Class IV landfill may be inappropriate;

<sup>3</sup> International Union for Conservation of Nature

<sup>4</sup> Available at: <https://www.epa.vic.gov.au/our-work/publications/publication/2015/august/788-3>

- the proposal does not appear to align with objective 2 'Recover' of the WA Waste Authority's *Waste Avoidance and Resource Recovery Strategy 2030*<sup>5</sup>, and the co-mingling of Class I, II, III and IV wastes will affect recovery of available resources from a mono cell or single Class IV cell;
- the proponent intends for the Class IV landfill to accept putrescible wastes, however DWER's *Landfill Waste Classification and Waste Definitions 1996* (as amended 2018)<sup>6</sup> states that putrescible waste is only permitted for disposal in Class III landfills; and
- there is no mention in the referral documentation of:
  - any verification sampling, analysis activities or detection systems for radioactive waste, and it is unlikely all waste generators will adhere to the Class IV waste acceptance guidelines;
  - how liquid wastes<sup>7</sup> are to be disposed, and fixation or immobilisation does not appear likely to be successful with the proposed processing;
  - financial assurances or bond to ensure that the State does not have to fund long-term remedial works, nor of the proponent's insurance cover.

The appellant also submitted that the information (including surveys) provided to the EPA with regard to potential impacts to conservation-significant fauna and flora species was inadequate, with particular reference to threatened fauna fork-tailed swift (*Apus pacificus*), night parrot (*Pezoporus occidentalis*) and greater bilby (*Macrotis lagotis*), and priority flora *Abutilon* sp. Pritzelianum (Priority 1), *Triumfetta echinata* (Priority 3), *Abutilon* sp. Onslow (Priority 1), *Eremophila forrestii* subsp. *viridis* (Priority 3) and *Goodenia nuda* (Priority 4).

## Consideration

In accordance with the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016*,<sup>8</sup> the EPA, in making its decision on whether or not to assess the proposal, had regard to the *Statement of Environmental Principles, Factors and Objectives*,<sup>9</sup> which states:

When considering significant impact or effect, the EPA may have regard to various matters, including the following:

- a. values, sensitivity and quality of the environment which is likely to be impacted
- b. extent (intensity, duration, magnitude and geographic footprint) of the likely impacts
- c. consequence of the likely impacts (or change)
- d. resilience of the environment to cope with the impacts or change
- e. cumulative impact with other projects
- f. connections and interactions between parts of the environment to inform a holistic view of impacts to the whole environment
- g. level of confidence in the prediction of impacts and the success of proposed mitigation
- h. public interest about the likely effect of the proposal, if implemented, on the environment, and public information that informs the EPA's assessment.

The referral documentation acknowledges that a number of legislative approvals are required for the development of the proposal:

The key environmental approvals required for the PRWMF include:

- Referral to the Environmental Protection Authority (EPA);
- Works Approval and Licence from Department of Water and Environmental Regulation (DWER); and
- Clearing Permit/Exemption from DWER.

Following legal advice on planning approvals, the Shire has adopted a Public Works Exemption in accordance with Section 6 of the *Planning and Development Act 2005*.<sup>10</sup>

<sup>5</sup> Available at: <http://www.wasteauthority.wa.gov.au/publications/>

<sup>6</sup> Available at: <https://www.der.wa.gov.au/our-work/licences-and-works-approvals/publications>

<sup>7</sup> Fixation by mixing hazardous liquids and sludges with mulch.

<sup>8</sup> Available at: <http://www.epa.wa.gov.au/administrative-procedures>

<sup>9</sup> Available at: <http://www.epa.wa.gov.au/statement-environmental-principles-factors-and-objectives>

<sup>10</sup> Talis Consultants Pty Ltd (2018) *EPA Referral Supporting Document – Pilbara Regional Waste Management Facility*. Unpublished report prepared for the Shire of Ashburton, dated October 2018. Supporting document of the referral documentation, page iii.

The referral documentation also outlines a number of specialist studies conducted and management plans commissioned in recognition of the potential environmental impacts associated with the proposal, including the preparation of management plans relating to asbestos, bushfires and bushfire risk, feral animals and pests, leachate, surface water, and landfill gas, and an Operational and Environmental Management Plan (OEMP).<sup>11</sup>

The EPA's public record outlines the EPA's findings on review of the referral documentation:

There are potential impact on: Flora and Vegetation from the clearing of 70 ha, Landforms from the removal of material required for capping, Terrestrial Environmental Quality from the seepage of leachate from the landfill, Terrestrial Fauna from the clearing of habitat and from collision, Inland Waters from contamination of surface water, Human Health from landfill gases from the decomposition of organic material and asbestos airborne fibres. ...

The EPA considers that the likely environmental effects of the proposal are not so significant as to warrant formal assessment. ... The EPA is of the view that the proposal is of limited scale at a site where there are limited environmental values at risk, including biodiversity values and social surroundings. The EPA considers that the potential impacts of the proposal can be adequately managed through the implementation of the proposal in accordance with the referral documentation and the proponent's mitigation and management measures. In addition, the proposal will require a clearing permit and licensing under Part V of the [EP Act].<sup>12</sup>

In relation to the appellant's concerns regarding site selection, it is noted that the proposal is located approximately 26 kilometres north-west of the Cane River Conservation Park, within a portion of the former Mount Minnie pastoral lease proposed for addition to the Cane River Conservation Park.

The proponent's site selection process was informed by specialist studies, had regard for separation distances to social and environmental sensitive receptors, and included consultation with the former Department of Parks and Wildlife (now Department of Biodiversity, Conservation and Attractions (DBCA)).<sup>13</sup> The EPA's public record of determination notes the outcome of this consultation:

... the Department of Biodiversity, Conservation and Attractions indicated that it has consented to the proposal being sited at this location. ...<sup>14</sup>

For its part, the proponent advised the following:

... [DBCA] suggested that the preference is "to have any landfill facility sited as close to the northern/north western boundary of the proposed reserve as possible, whilst also ensuring that the Site hydrology does not present any issues for safe and effective waste containment, and impacts on visual amenity are reduced to as low as reasonably practical" ...

The site was chosen through a site selection study which used a multi-criteria analysis process to identify suitable sites. The site was subject to both desktop analysis of social and environmental factors as well as environmental studies and investigations. Due to a range of factors such as suitable screening, availability of cover material, separation distance from groundwater and reduced flooding risk, the site was selected as the preferred site for the PRWMF. The boundary of the site is approximately 25.7km from the existing conservation park boundary. ...<sup>15</sup>

The proponent also advised that in recognition of the proposal's location within the Cane River Conservation Park proposed extension area, it commissioned the preparation of management plans to mitigate any potential impacts on the Cane River Conservation Park.

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<sup>11</sup> Available management plans were provided as Appendices to the referral documentation.

<sup>12</sup> EPA's public record of determination.

<sup>13</sup> Supporting document of the referral documentation, sections 2.6 and 6.3.4.

<sup>14</sup> EPA's public record of determination.

<sup>15</sup> Proponent response to Appeal 009/19, pages 3-4.

In response to this ground of the appeal, the EPA advised that due to the location of the proposal it liaised with DBCA prior to determining whether or not to assess the proposal, and that:

... [DBCA] indicated that it would require the proponent to have an Environmental Management Plan in place, detailing strategies and procedures to monitor and control the effects of the proposal and prevent any impacts on the surrounding environment. The proponent is currently developing an overarching Operational and Environmental Management Plan (OEMP) that will be supplied to the relevant approval authorities for review. ...

... The proponent continually liaised with DBCA throughout the proposals development. Letters from DBCA to Talis Consultants and to the Department of [Planning,] Lands and Heritage (DPLH), stated that DBCA consented to the site selection of the proposal being located in the north-western boundary of the proposed extension area and are satisfied with the management considerations for this site. DBCA has also indicated that it will consider information provided during the Part V licensing process and contribute recommendations on conditions prior to providing support for the grant of tenure for the facility.<sup>16</sup>

From the referral documentation, the purpose and key environmental engineering and management measures contained in the Operational and Environmental Management Plan are described as:

... to outline the proposed operational and management requirements of the facility and the monitoring and reporting measures to be implemented to manage and mitigate environmental risks. The OEMP will outline the proposed operational and environmental management and monitoring requirements that the Shire will undertake in order to protect the environment from harm. The OEMP will also outline adaptive management strategies proposed in case of uncertainty. The OEMP will prescribe the requirements for undertaking environmental monitoring and the processes that should be undertaken to complete these tasks and will include environmental monitoring and sampling programs for groundwater, surface water, leachate, landfill gas, dust, odour and noise. It is proposed that the OEMP will become a 'live' document and be updated as the facility progresses. Following obtainment of the relevant approvals, any relevant conditions will be carried across to the OEMP.<sup>17</sup>

During a meeting with the Appeals Convenor, the proponent provided the following advice regarding the proposal design and specifications:

- waste acceptance: each waste load is required to be accompanied by certified assurance paperwork which will be checked at the gate, and any non-conforming loads would not be accepted or permitted to enter the premises.
- double-lined cells: the life expectancy of the geomembrane integrity is approximately 60 years, and implementation of a contingency plan will manage long-term risks associated with liners; and
- potential impacts to the quality of surface and underground water: leachate, runoff and overflow will be contained on-site through perimeter levee banks to prevent mixing with regional surface water flows, and treated through a leachate collection system and independent sumps prior to discharge into the environment, in accordance with international standards, and a network of groundwater monitoring bores around the perimeter of the development footprint (70 ha), development envelope (139 ha) and overall footprint (435 ha) will detect any changes in the quality of underground water.

From the above, it is noted that DBCA supports the proposal's location within the Cane River Conservation Park proposed extension area, subject to appropriate management strategies being implemented to prevent impacts on the surrounding environment. It is also noted that the proponent has had regard for such impacts in the proposal's design and specifications, and has prepared a series of management plans to address the potential impacts of the proposal in this regard.

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<sup>16</sup> EPA response to Appeal 009/19, pages 2 and 4.

<sup>17</sup> Supporting document of the referral documentation, section 11.1.

In relation to the appellant's concerns regarding the adequacy of the information in relation to conservation-significant fauna and flora species, it is noted that the referral documentation includes reports from a Level 1 flora, vegetation and fauna survey<sup>18</sup> (Level 1 survey) conducted in September 2017, and a detailed flora and vegetation survey<sup>19</sup> (detailed survey) conducted in February and March 2018. In summary, the relevant findings of the surveys included:

- in respect of the fauna species stated in the appeal, the Level 1 survey report concludes that while the overall footprint (435 ha) contains suitable habitat for the fork-tailed swift and night parrot, this habitat is widely distributed and well represented outside the overall footprint, and the night parrot was not detected in acoustic call recordings;<sup>20</sup> and
- in respect of the flora species stated in the appeal:
  - the Level 1 survey report concludes that the records of *Abutilon* sp. Pritzelianum and *Triumfetta echinata* represent new populations within the known distributions of these species, and that the presence of *Abutilon* sp. Onslow, *Eremophila forrestii* subsp. *viridis* and *Goodenia nuda* is possible but unlikely due to a lack of suitable soil and/or habitat type;<sup>21</sup> and
  - the detailed survey report concludes that the previously-recorded plants had perished however may be present as seed in the soil, and that a further 37 plants tentatively identified as *Abutilon* (?)sp. Pritzelianum were recorded (including eight outside of the study area).<sup>22</sup>

The referral documentation indicates that the presence of three *Abutilon* sp. Pritzelianum and one *Triumfetta echinata* within the overall footprint is not considered to be of high significance on the basis that these records, whilst representing new populations, are within the known wide distributions of these species, and occur in habitat that is well represented outside the overall footprint.

It is further noted that these records of *Abutilon* sp. Pritzelianum and *Triumfetta echinata*, while within the overall footprint, are located outside of the development footprint (70 ha) for the proposal.

For its part, the proponent noted the survey findings (as outlined above), including the possible likelihood of occurrence of the night parrot due to the presence of suitable habitat, and the absence of evidence indicating that the greater bilby is unlikely to occur. The proponent advised that the vegetation and habitats within the overall footprint are widely represented in the surrounding area.<sup>23</sup>

In response to this element of the appeal, the EPA advised:

... DBCA have not raise[d] any concerns regarding the [fauna] species highlighted by the appellant. ...

The EPA considered the impacts on conservation significant flora from the clearing of 70 ha of native vegetation, the introduction of weeds, emissions from the waste management facility impacting on the surrounding vegetation.

The proponent has undertaken surveys that meet EPA guidelines. These include:

- a. Level 1 flora and fauna survey undertaken in September 2017, this included a desktop survey to identify any conservation significant flora, fauna and ecological communities, a single season reconnaissance survey.
- b. Detailed flora and vegetation survey undertaken in February 2018, this included targeting significant flora searches. ...<sup>24</sup>

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<sup>18</sup> Phoenix Environmental Sciences (2017) *Flora and vegetation survey and terrestrial fauna survey for the Pilbara Regional Waste Management Facility*. Report prepared for Talis Consultants, September 2017. Appendix 1 of the referral documentation.

<sup>19</sup> Phoenix Environmental Sciences (2018) *Detailed flora and vegetation survey for the Pilbara Regional Waste Management Facility*. Report prepared for Talis Consultants, April 2018. Appendix 2 of the referral documentation.

<sup>20</sup> Level 1 survey report, pages 43-44.

<sup>21</sup> Level 1 survey report, page 42.

<sup>22</sup> Detailed survey report, page 24.

<sup>23</sup> Proponent response to Appeal 009/19, pages 2-3.

<sup>24</sup> EPA response to Appeal 009/19, pages 2-3.

The EPA also advised that prior to the commencement of ground disturbance and clearing, the proposal will require a clearing permit and licensing under Part V of the EP Act, and noted that further flora, vegetation and fauna surveys undertaken in accordance with EPA guidance are required as part of this process.<sup>25</sup>

It is noted that DBCA has previously reviewed the adequacy of the Level 1 fauna survey, and recommended that further survey work is required for the proposal in relation to the night parrot.<sup>26</sup>

## Conclusion

Based on the information available in this appeal, the following is noted:

- DBCA does not object to the siting of the proposal within the Cane River Conservation Park proposed extension area;
- the proponent commissioned a number of studies to inform the proposal design and specifications, and prepared a number of management plans to address the potential impacts of the proposal, which were provided to the EPA with the referral documentation; and
- the implementation of the proposal will be subject to a clearing permit and works approval/licence under Part V of the EP Act, and the design and specifications, and the need for further surveys to determine potential impacts, will be assessed by DWER through these processes; and
- by the EPA's advice, the EPA has formed a view that the referral documentation and other available information was sufficient on which to conclude that any impacts of the proposal on conservation-significant fauna and flora species and a conservation area are not so significant as to warrant formal assessment under Part IV of the EP Act, and can be assessed and managed under other statutory processes.

It is considered that the proposal requires careful evaluation of the potential impacts to fauna, flora and a conservation area, which can occur through the clearing permit and licensing processes administered by DWER without the need for a formal assessment by the EPA.

It is understood that the proponent has applied for a works approval (November 2018) and a clearing permit (March 2018; CPS 8395/1) in relation to the development of the proposal. It is further understood that DWER, in assessing these applications, will consider the prescribed premises design and specifications in respect of emissions and discharges, relevant guidance materials, potential impacts to the surrounding environment, the need for further surveys or expert advice to inform its decision-making, and any measures necessary to minimise or mitigate identified impacts.

Having regard to the above, it is considered that the EPA's conclusion that the potential impacts of the proposal are not so significant as to warrant formal assessment under Part IV of the EP Act and can be managed under other statutory processes was justified, and was supported by the available evidence.

## OTHER MATTERS

The appellant submitted that the proposal should be referred to DotEE for assessment of the potential impacts to the fork-tailed swift, night parrot, greater bilby and the Cane River Conservation Park proposed extension area under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Referral to DotEE is a matter for the proponent to determine. In this case, the proponent considered that referral to DotEE is not warranted on the basis that no matters of national environmental significance have been recorded within the overall footprint.<sup>27</sup>

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<sup>25</sup> EPA response to Appeal 009/19, pages 1-3.

<sup>26</sup> Decision report for Clearing Permit CPS 7758/1, page 2.

<sup>27</sup> Proponent response to Appeal 009/19, page 3.

The EPA advised that it:

... advised the proponent that under the EPBC Act, any actions that have, or are likely to have, a significant impact on a matter of national environmental significance or other protected matters under the EPBC Act, should be referred to [DotEE]. ...<sup>28</sup>

It is understood that DWER, in assessing clearing application CPS 8395/1, will advise the proponent of any obligations under the EPBC Act.

## **CONCLUSION AND RECOMMENDATION**

Having regard for the information provided during the appeals investigation, including information provided by the appellant, the proponent and the EPA, it is considered that the EPA's conclusion that the environmental effects of the proposal are not so significant as to warrant formal assessment, and that the predicted extent and consequences of impacts in this regard can be adequately managed, is supported by the available evidence and its decision not to assess the proposal was justified.

It is recommended that the appeal be dismissed.

Emma Gaunt  
APPEALS CONVENOR

**Investigating Officer:**  
Emma Bramwell, Senior Environmental Officer

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<sup>28</sup> EPA response to Appeal 009/19, page 2.