



Appeals Convenor

Environmental Protection Act 1986

REPORT TO THE MINISTER FOR ENVIRONMENT

**APPEAL IN OBJECTION TO THE DECISION OF THE DEPARTMENT OF WATER AND
ENVIRONMENTAL REGULATION TO AMEND A CLEARING PERMIT**

**CLEARING PERMIT CPS 7403/3: DAM CONSTRUCTION AND ORCHARD
DEVELOPMENT, BEEDELUP, SHIRE OF MANJIMUP**

PERMIT HOLDER: RED MOON PROPERTY HOLDINGS PTY LTD

Appeal Number 010 of 2020

July 2020

Appeal Summary

This report relates to an appeal lodged against the amendment of Clearing Permit CPS 7403/2 to CPS 7403/3 by the Department of Water and Environmental Regulation. The permit authorises Red Moon Property Holdings Pty Ltd to clear 48.12 hectares of native vegetation at Lot 1 on Plan 8940, Beedelup. The amendment was made to extend the period in which clearing may occur.

Broadly, the appellant submitted that the clearing permit should not be amended in the absence of black cockatoo surveys to quantify foraging and current/future breeding habitat within the clearing footprint. The appellant submitted that such information is necessary to determine the impacts and if mitigation and offsets are appropriate. The appellant is seeking for the Minister to overturn DWER's decision to amend the permit in the absence of these surveys.

The Appeals Convenor noted that:

- section 51K of the *Environmental Protection Act 1986* provides for the amendment of a permit for specified reasons, including 'removing or varying any condition to which the clearing permit is subject' and 'extending the duration of the clearing permit'
- black cockatoo habitat surveys have not been undertaken within the clearing footprint
- a substantial proportion of the clearing footprint has already been cleared under prior versions of the permit
- the local area is extensively vegetated and retains a high level of connectivity
- in response to the appeal, DWER obtained additional information which supported its finding that the clearing footprint contains suitable but not significant foraging habitat for black cockatoos noting it is dominated by karri and karri sheoak which are not preferred foraging species
- in response to the appeal, DWER acknowledged that black cockatoo breeding habitat may be present, and recommended that conditions be added to the amended permit to avoid and mitigate impacts to breeding black cockatoos
- the additional conditions recommended by DWER are generally appropriate and were agreed to by the permit holder
- based on the additional conditions there are unlikely to be any significant residual impacts to black cockatoos to warrant an offset.

Recommendation

The appeal be allowed to the extent that conditions are applied to the amended clearing permit requiring the permit holder to:

- engage a suitably qualified person to identify and inspect any trees potentially suitable for breeding use by black cockatoos prior to clearing, and if identified delay clearing of any trees found to be occupied until no longer in use
- install artificial nesting boxes to replace any breeding trees with evidence of use that cannot be avoided
- monitor and maintain any installed artificial nesting boxes
- keep records on efforts in relation to the implementation of these conditions, and report to DWER as required.

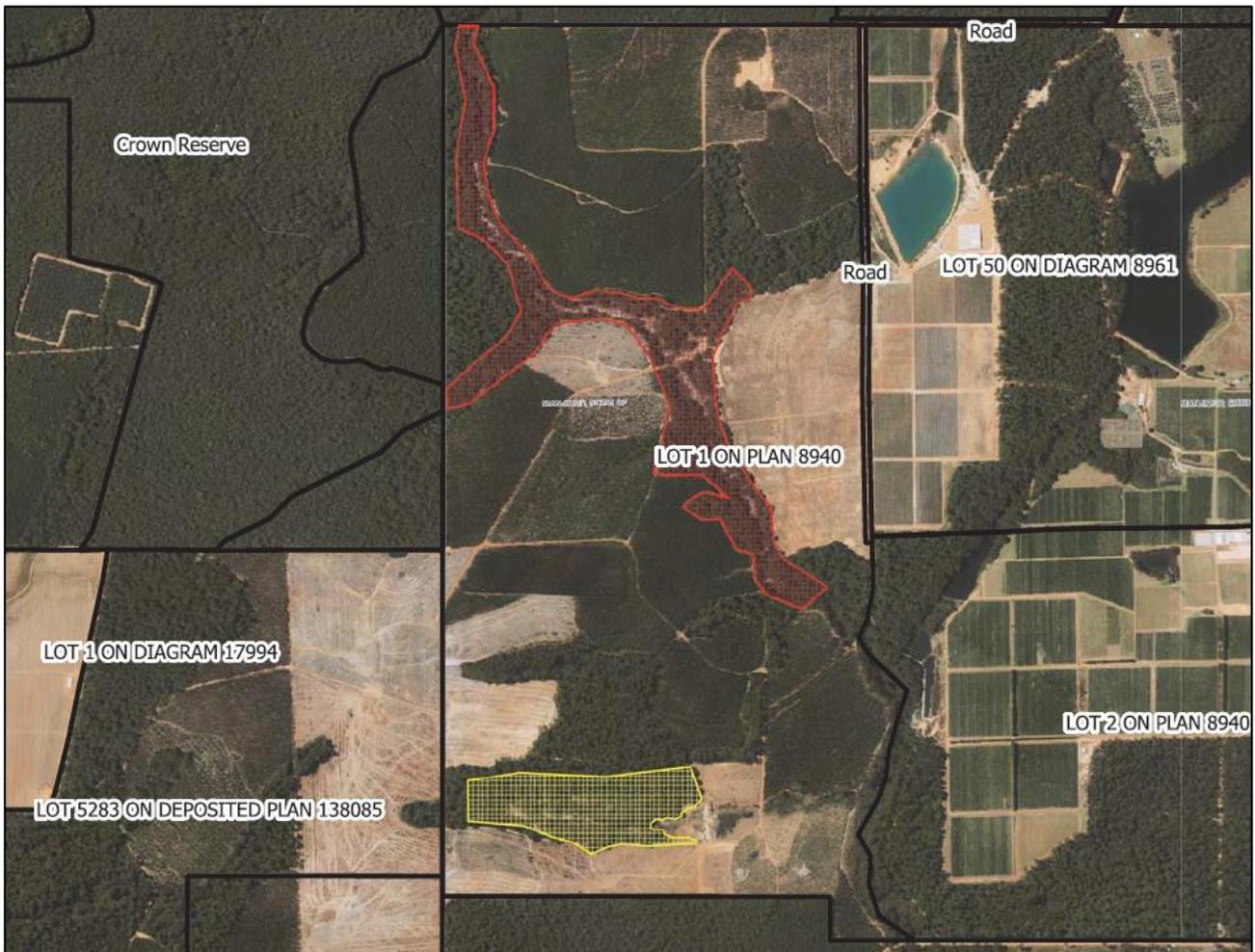
INTRODUCTION

This report relates to an appeal lodged by Rebecca Donaldson (appellant) against the decision of the Department of Water and Environmental Regulation (DWER) to amend Clearing Permit CPS 7403/2 to CPS 7403/3. The permit is held by Red Moon Property Holdings Pty Ltd (permit holder).

Clearing Permit CPS 7403/1 (original permit)¹ was granted on 11 April 2017, authorising the permit holder to clear 48.12 hectares (ha) of native vegetation on Lot 1 on Plan 8940, Beedelup, subject to conditions. The purpose of the clearing was described as 'Construction of dam and development of fruit orchard'.²

The clearing footprint is shown in Figure 1.

Figure 1: Location and extent of the clearing footprint (cross-hatched red and yellow)



(Source: DWER, Clearing Permit CPS 7403/3)

Section 51K of the *Environmental Protection Act 1986* (EP Act) provides for the amendment of a permit for specified reasons, including 'removing or varying any condition to which the clearing permit is subject' and 'extending the duration of the clearing permit'.

In August 2018 the original permit was amended on application to extend the permit duration to 12 May 2020 and to authorise clearing at any time of the year within the area cross-hatched yellow. Clearing of both areas had previously been restricted to the period October to April.

¹ Clearing permit versions, decision reports and supporting information available at: <ftp://ftp.dwer.wa.gov.au/permit/7403/>

² As stated in the permit holder's *Application for a clearing permit (area permit): CPS 7403/1*.

In October 2019, the permit holder sought a further amendment seeking for additional time to clear the area cross-hatched red due to delays encountered including an oversupply of timber in the market. A permit duration to 12 May 2021 was requested.

DWER advised that the amendment application was advertised for a 14-day public comment period in November 2019 and no public submissions were received. The extended permit duration was granted with the amended permit coming into effect on 6 February 2020.

It was against this amendment that the appeal was lodged.

OVERVIEW OF APPEAL PROCESS

In accordance with the EP Act, two reports relating to the matters raised on appeal are required for the Minister for Environment to determine the outcome of an appeal:

- a report from the Appeals Convenor, as required by section 109(3) of the EP Act
- a report from the decision-making authority of the decision under appeal, as required by section 106(1).

This document is the Appeals Convenor's report to the Minister.

In order to properly advise the Minister, the Appeals Convenor investigated the matters raised on appeal. The investigation included:

- review of and regard for the matters raised in the appeal submitted by the appellant
- review of and regard for the report from DWER provided under section 106 of the EP Act
- a video conference with the permit holder on 14 May 2020
- review of other information, policy and guidance as considered necessary.

The environmental appeals process is a merits-based process. Appeal rights in relation to an amendment to a clearing permit relate only to the amendment, and not to elements of the clearing permit that are not amended. The Appeals Convenor normally considers consistency with any conditions set under Part IV of the EP Act and previous Ministerial appeal determinations, as well as new information or evidence being presented that was not previously considered. Enforcement and compliance with the conditions of a clearing permit is a matter for DWER as the regulator and issues of this nature are considered to be outside the scope of an appeal against an amendment to a clearing permit.

OUTCOME SOUGHT BY APPELLANT

The appellant is seeking for the Minister to overturn DWER's decision to amend the clearing permit in the absence of black cockatoo surveys.

GROUND OFS OF APPEAL

Broadly, the appellant submitted that the clearing permit should not be amended in the absence of black cockatoo surveys to quantify foraging and current/future breeding habitat within the clearing footprint. It was submitted that the impacts to these species need to be better defined and also to inform the need for avoidance/mitigation and offsets. The grounds of appeal are summarised as follows:

1. adequacy of the assessment
2. adequacy of the conditions

GROUND 1: ADEQUACY OF THE ASSESSMENT

The appeal focuses on the potential importance of the trees proposed to be cleared as foraging and breeding habitat for Carnaby's cockatoo (*Calyptorhynchus latirostris*; endangered), Baudin's cockatoo (*Calyptorhynchus baudinii*; endangered), and/or forest red-tailed black cockatoo (*Calyptorhynchus banksii* subsp. *naso*; vulnerable). The appellants submitted that:

- the clearing footprint is within the distribution and breeding ranges of all three species
- both karri (*Eucalyptus diversicolor*) and marri (*Corymbia calophylla*) are present within the clearing footprint; karri is used by all three species for breeding, and marri is used by all three species for breeding as well as foraging; many of the trees proposed to be cleared may represent important habitat for all three species; retention of foraging habitat within a few kilometres of breeding habitat is essential to maintain breeding populations
- the proposed clearing represents permanent loss of 48.12 ha of foraging habitat; regardless of other habitat nearby, habitat is currently insufficient and this is driving ongoing decline of black cockatoos
- DWER's site inspection was not adequate; not all areas were visited and not all hollows are likely to be observable from ground level
- DWER should reconsider the environmental issues associated with the proposed clearing in light of information which may not have been available at the time of the original assessment such as survey information and the fact that Baudin's cockatoo's conservation status has since been raised to endangered
- with regard for the number of actions involving clearing of smaller areas of important habitat for black cockatoos in the southwest, consideration of cumulative impacts of clearing is vital for black cockatoo population viability and for clearing applications
- it should be clarified whether the proposed clearing of riparian vegetation along the watercourse is in contravention of the *Forest Management Plan 2014-2023*³

The appellants sought for black cockatoo habitat surveys to be undertaken, to quantify the foraging trees and current/future breeding habitat (known breeding trees; trees with large/smaller hollows), to enable a fuller assessment of the environmental impacts of the proposed clearing.

Consideration

Clearing principle (b) provides that native vegetation should not be cleared if it comprises the whole or a part of, or is necessary for the maintenance of, a significant habitat for fauna.

In relation to black cockatoos, the decision report for the original assessment states the following under principle (b):

The predominant vegetation type observed within the application area is closed forest consisting predominately of *Eucalyptus diversicolor* (karri) and *Allocasuarina decussata* (DER, 2017). Therefore, the application area is not likely to provide significant foraging habitat ...

Given the presence of karri within the application area it is considered suitable breeding habitat for black cockatoos. However, the majority of the karri trees observed within the application area were not old, or large enough to contain hollows. Larger karri trees observed within the application area did not appear to contain hollows.⁴

By its assessment for the amended permit, DWER considered that the findings for clearing principle (b) had not changed since the original assessment. In this regard, DWER determined that

³ Conservation Commission of Western Australia (2013) *Forest Management Plan 2014-2023*. December 2013. Government of Western Australia.

⁴ Decision report for Clearing Permit CPS 7403/1, page 3.

the clearing footprint contains suitable habitat for black cockatoos (and other conservation significant fauna), however did not consider this habitat to be significant for any of these species on the basis of the age of the trees and the extent of surrounding vegetation. DWER concluded that the proposed clearing is not likely to be at variance to this clearing principle.⁵

In response to the appeal, DWER advised that:

The local area contains large remnants of native vegetation, with over 77 per cent remaining [refer Figure 2]. The 48.12 ha vegetation within the Application Area represents 0.16 per cent of remnant vegetation in the local area. Vegetation types in the local area range from medium forests of jarrah, marri and red tingle to tall forests of karri, jarrah, and marri. There have been 29 records of black cockatoos within the local area, of which 17 have been recorded in the last 20 years. The closest confirmed roosting site is 17 km from the Application Area, though the Department acknowledges that unrecorded breeding and roosting sites may exist closer to or within the Application Area.

...

According to the respective black cockatoo *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) conservation advices and the Forest red-tailed black cockatoo Recovery Plan, the Application Area does not contain the preferred foraging habitat for black cockatoos. The Department considers that the highly vegetated surrounding area is likely to contain preferred foraging species and habitat (i.e. marri and jarrah).

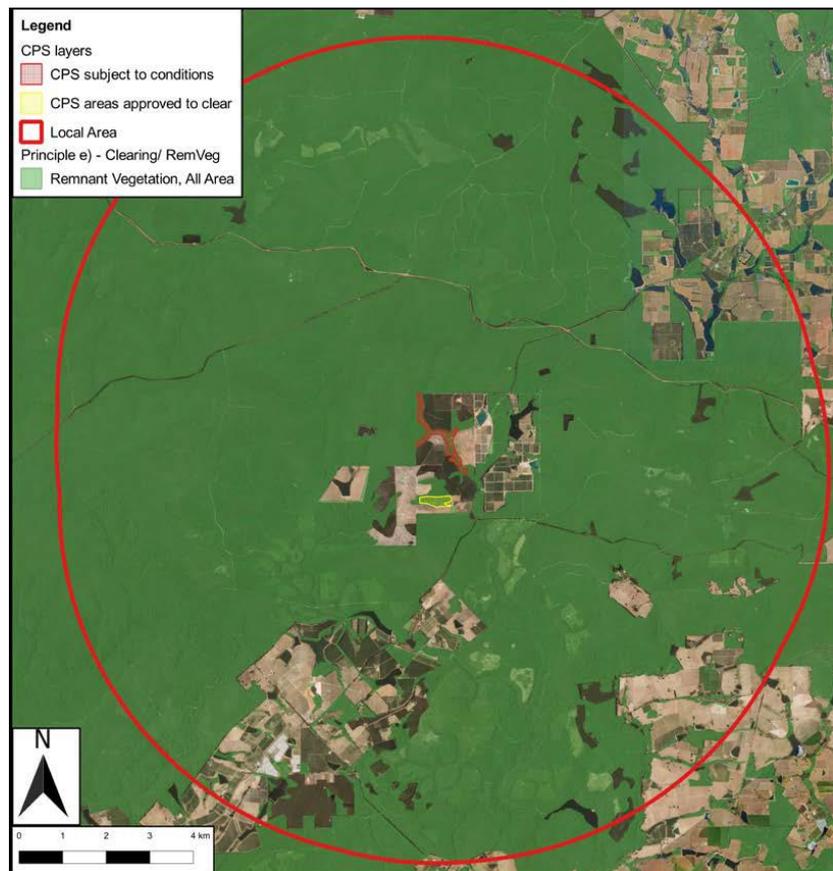


Figure [2]: Remnant vegetation (green) within the Local Area (10 km radius). Clearing Permit 7403/3 boundary hatched yellow and red.⁶

⁵ As set out in the decision reports for Clearing Permits CPS 7403/3, CPS 7403/2 and CPS 7403/1.

⁶ DWER response to Appeal 010/20, pages 3-4.

In preparing its response to the appeal, DWER undertook a site inspection on 9 March 2020 and provided the following further detail:

The Application Area consists predominately of Karri (*Eucalyptus diversicolor*) forest over Karri Sheoak (*Allocasuarina decussata*). The Permit Holder advised that the understorey was cleared of vegetation in 2017 after the granting of Clearing Permit 7403/1. Very few Marri (*Corymbia calophylla*) trees were noted during the 2017 site inspection, which was confirmed during the 2020 site inspection.

...

The 2020 site inspection observed a number of mature eucalypt trees, including karri trees, with a diameter at breast height (DBH) greater than 500 millimetres (mm). While no hollows were noted, based on the height of the trees, any observations made from ground level are not considered sufficient to rule out the presence of hollows suitable for breeding. The quantification of trees with a DBH greater than 500 mm was not possible during the site inspection due to the extent of the Application Area.

There was no evidence of black cockatoo feeding within the Application Area during the 2020 site inspection. Evidence of foraging by smaller parrot species was noted.⁷

DWER advised that it also obtained additional advice from the Department of Biodiversity, Conservation and Attractions (DBCA) which stated that:

Black cockatoos are known to opportunistically forage on a variety of plant species. The EPBC Act Conservation advices and the Forest black cockatoo Recovery Plan state that the preferred native foraging plant species for Baudin's cockatoo is marri, and marri and jarrah seeds are approximately 90% of the diet for the forest red-tailed black cockatoo. Karri and sheoak are known foraging plants for black cockatoos, but not a preferred species.

The productivity of forage plants and availability of food for black cockatoos varies between seasons and years. For successful breeding there must be adequate foraging resources available in the local area surrounding a nesting tree during the breeding season.

Usually forest red-tailed black cockatoos forage within a 1 - 4 km radius of their roost site or nesting hollow. Carnaby's cockatoo are known to forage within a 6 to 12 km radius of their roost of nesting tree, and possibly greater distances. A foraging distance for Baudin's cockatoos is not provided in either document but is expected to be similar to the other two species, i.e. between 1 to 12 km from their roost or nest site.

Both species have been recorded nesting in the hollows of karri trees. Trees need to be of an age and size to develop large hollows of approx. 30 - 40 cm in diameter and greater than 30 cm deep for nesting, and red-tailed black cockatoos have known to nest in hollows with a depth of 1 - 5 m. Hollows in karri trees may be difficult to observe from the ground due to the height of the trees and angle or position of the hollow entrances.

Lack of available suitable hollows is a key threat to black cockatoos and the long-term survival of the three threatened species. It is not possible to say which trees may produce hollows in the future. Where possible, large eucalypt trees should be retained within the known breeding range of the species. Younger smaller trees should also be retained to ensure succession of nesting trees, as potential future nesting trees.

It is most important to retain known nesting trees and potential future nesting trees within the local area of known nesting trees as black cockatoos return to their breeding sites each breeding season. If a nesting hollow becomes unsuitable, cockatoos will look for another hollow within close proximity to their previous nesting tree.

There are few confirmed black cockatoo nesting sites within the southern forest areas due to the density of the vegetation, and lack of appropriate targeted surveys. It is difficult to determine the importance or significance of an area for black cockatoos nesting due to the lack of nesting data.⁸

⁷ DWER response to Appeal 010/20, pages 3-4.

⁸ DBCA advice to DWER in relation to Clearing Permit CPS 7403/3, page 5.

On the basis of its further investigations undertaken as a result of the appeal, DWER advised that it considers the clearing footprint contains suitable but not significant habitat for black cockatoos. DWER acknowledged the risk of impact to breeding black cockatoos if present and advised that in the absence of further survey information the clearing may be at variance to Principle (b). DWER recommended that conditions be added to the permit requiring a black cockatoo breeding habitat assessment and the implementation of mitigation measures where evidence of breeding is identified (discussed under Ground 2).

Cumulative impacts

In response to the appeal, DWER advised that:

Although many clearing actions in Western Australia may not reach the threshold for Federal level referral for impacts to black cockatoos, the State system for managing these smaller areas of clearing, Part V of the EP Act, includes assessment of the impacts on habitat for black cockatoos, including the context of available habitat in the wider region and at a local scale.

Cumulative impacts are considered in the assessment of clearing permit applications primarily through clearing Principle (e) – Native vegetation should not be cleared if it is significant as a remnant of native vegetation in an area that has been extensively cleared. Through this assessment, the proportion of native remnant vegetation remaining within the wider region (IBRA region) and at a smaller scale, such as local government areas and buffers surrounding application areas, is considered. The proportion of vegetation remaining in specific vegetation complexes, and the value of the area as a remnant, such as ecological linkage value, are also considered in the assessment. This assessment allows for the consideration of these smaller areas of clearing, which are reflected in remnant vegetation databases.

... consideration has been given to the context ... and the value of the vegetation to be cleared in comparison to the quantity and value of the vegetation in the local area and beyond.⁹

Consistent with DWER's advice, its Guide to Assessment states that 'the cumulative impacts of clearing within a particular area should be considered' under clearing principle (e). The Guide to Assessment contains examples of where proposed clearing is likely to be at variance, including:

- clearing of native vegetation which contains habitat for a threatened fauna species and is below the national target and objective for biodiversity conservation¹⁰
- clearing of biologically diverse remnant vegetation within an extensively cleared landscape
- clearing of remnant vegetation which is part of a significant ecological linkage and is located within an extensively cleared landscape
- clearing in landscapes where the existing vegetation is required to maintain ecosystem services (e.g. hydrological processes), or to compensate for a high degree of fragmentation.¹¹

It has been established that the clearing footprint contains suitable habitat for threatened fauna. However the decision report for the original assessment sets out that the mapped vegetation types retain well above the 30 per cent extent 'below which species loss appears to accelerate exponentially at an ecosystem level',¹² that the clearing footprint is unlikely to be biologically diverse (in the context of surrounding vegetation), is 2.5 kilometres from the nearest mapped ecological linkage, and is within a local area that retains about 76 per cent native vegetation cover. Given this, it is considered that DWER has had regard for cumulative impacts in its assessment and that DWER's finding that the proposed clearing is not likely to be at variance to clearing principle (e) was justified.

⁹ DWER response to Appeal 010/20, pages 7-8.

¹⁰ The Guide to Assessment outlines that the National Objectives and Targets for Biodiversity Conservation 2001-2005 recognise that the retention of 30 per cent or more of the pre-clearing extent of each ecological community is necessary if Australia's biological diversity is to be protected.

¹¹ Guide to Assessment, pages 18-21. Available from: <https://www.der.wa.gov.au/component/k2/item/3985-assessment-of-applications-to-clear-native-vegetation>

¹² Decision report for Clearing Permit CPS 7403/1, page 4.

Riparian corridors

The appellant's reference to consistency with the *Forest Management Plan 2014-2023* is presumed to be in relation to the reason given by the permit holder for the amendment, which relates to the end use of the cleared vegetation (timber).

In response to the appeal, DWER advised that:

The local area retains ... a high level of connectivity between areas of intact vegetation.

The portion of the Application Area hatched red contains a mapped non-perennial river, Four Mile Brook. Due to the district's high rainfall (>1,100 mm annually) and topography there are a large number of watercourses and drainage lines in the local area [refer Figure 3]. As the local area has a high proportion of intact vegetation and associated drainage lines, there are multiple 'riparian roads' connecting vegetation. In areas that have been more highly cleared, like the area to the east of the local area [refer Figure 3], the importance of riparian vegetation as a corridor for movement is more apparent. As such, the Department has determined that the removal of this portion of riparian vegetation, in the context of the local area, is not likely to restrict the movement of black cockatoos through the landscape.

The scope of the Western Australian Conservation and Parks Commission's "Forest Management Plan 2014-2023" encompasses lands vested in the Conservation Commission. As the Application Area falls within a freehold Lot, it does not fall within the scope of this management plan. The proposed clearing is not in contravention of the Forest Management Plan.

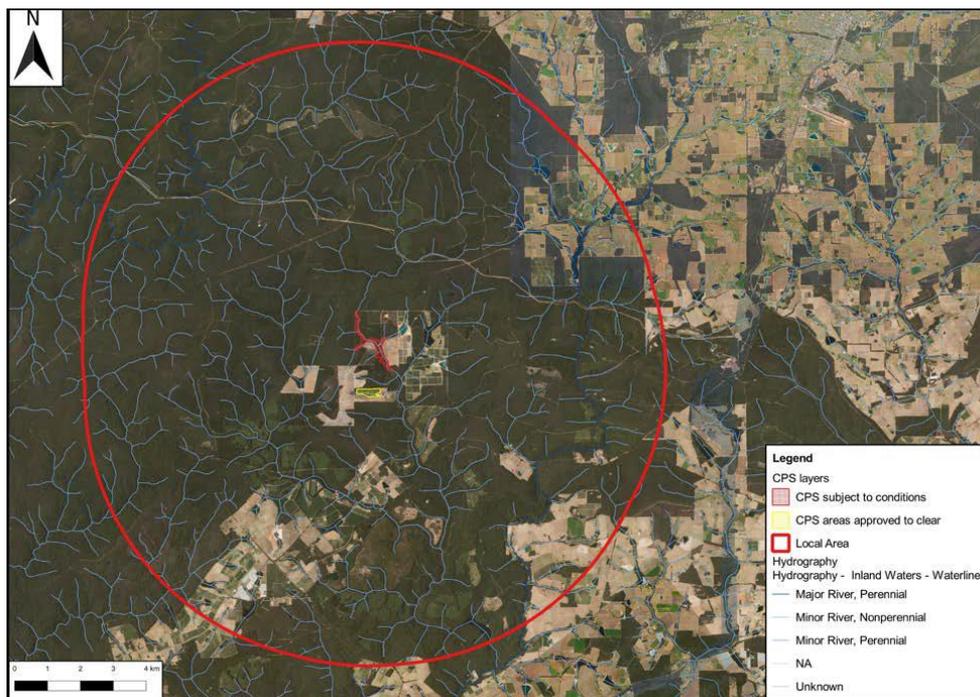


Figure [3]: Connectivity of riparian habitat in the local area.¹³

From the above, DWER was satisfied that the local area retains a high level of connectivity, and that in the context of the extent of native vegetation in the local area, the proposed clearing of riparian vegetation in this case is not likely to restrict black cockatoo movement. DWER also considered proposed clearing is not in contravention of the *Forest Management Plan 2014-2023*.

It is understood that the end use of cleared vegetation is beyond the scope of regulation under a clearing permit. It is also noted that the sale of forest products is regulated under legislation administered by other State government departments, including DBCA.

¹³ DWER response to Appeal 010/20, pages 6-7.

Conclusion

This ground of appeal raises concerns in respect to the adequacy of DWER's assessment of the impacts of the proposed clearing on black cockatoos. The investigation found:

- additional information obtained from DBCA supports the conclusion that the clearing footprint contains suitable but not significant foraging habitat for black cockatoos noting the dominance of karri and karri sheoak
- the local area is extensively vegetated and retains a high level of connectivity
- black cockatoo habitat surveys have not been undertaken within the clearing footprint and therefore breeding habitat may be present
- DBCA advised that it is important to retain known and potential future nesting trees within the local area and it is difficult to determine the importance or significance of the clearing footprint for black cockatoo nesting due to a lack of nesting data in the region
- in the absence of further survey information, the clearing may be at variance to Principle (b)

Additional conditions to mitigate impacts are discussed under Ground 2.

GROUND 2: ADEQUACY OF THE CONDITIONS

The appellant submitted that if the proposed clearing is permitted, conditions should be applied to ensure no net impact to black cockatoos, including:

- cleared foraging habitat needs to be replaced with at least the same area of foraging vegetation, through revegetation in the range areas of the affected flocks
- if there is a possibility that hollows are used by black cockatoos for breeding, the proposed clearing should not occur within peak breeding season¹⁴
- any trees containing currently used, or suitable or potential, breeding hollows should be retained in situ; if this is not possible then measures to mitigate the impact should be implemented such as:
 - installation, monitoring and maintenance of artificial hollows in nearby protected reserves
 - revegetation using suitable hollow-forming tree species.

Consideration

Section 51H of the EP Act provides that the CEO can grant a clearing permit subject to conditions considered necessary for the purposes of 'preventing, controlling, abating or mitigating environmental harm or offsetting the loss of the cleared vegetation'.

In relation to offsets, the WA Environmental Offsets Policy and Guidelines¹⁵ provide that an offsite action or actions may be applied to counterbalance significant residual impacts that remain after avoidance and mitigation measures have been undertaken. The documents state that applicability will be determined on a case-by-case basis and that offsets will not be applied to minor environmental impacts. The Guidelines include a 'residual impact significance model' which provides examples of the types of impacts that will or may require an offset.

As noted under Ground 1, it was found that the clearing footprint contains suitable but not significant foraging habitat for black cockatoos. Therefore, in accordance with the Policy and Guidelines it is

¹⁴ The appellant submitted that peak breeding months for Carnaby's cockatoos and Baudin's cockatoos are October to January, and for forest red-tailed black cockatoos are April to June and August to October.

¹⁵ Government of Western Australia (2011) *WA Environmental Offsets Policy* and (2014) *WA Environmental Offsets Guidelines*. Available at: <http://www.epa.wa.gov.au/policies-guidance/wa-environmental-offsets-policy-2011-and-guidelines>

considered that an offset (e.g. offsite revegetation) is not warranted in relation to impacts to foraging habitat.

In relation to breeding habitat, DWER recommended that additional conditions be added to the amended permit to avoid and mitigate impacts to breeding black cockatoos. Specifically, DWER recommended that:

...a condition be added to the permit requiring the Permit Holder to commission a habitat assessment prior to clearing to avoid impacts to breeding individuals. Should breeding hollows with signs of use be identified, these should be avoided where possible and, at a minimum, not cleared within relevant breeding seasons. Any clearing of breeding hollows with signs of use, which cannot be avoided, should be mitigated through the installation of artificial hollows within the local area.¹⁶

The permit holder was provided with and agreed to DWER's recommendation.¹⁷

Given the potential importance of confirmed breeding trees to black cockatoos, it is considered that DWER's recommendation is justified. Ongoing monitoring and maintenance of any installed artificial nesting boxes should be required to ensure their ongoing suitability for use. It is considered that installations should occur as close as practicable to any confirmed breeding tree noting DBCA's advice that birds return to the same site each breeding season.

Taking into account DWER's recommended measures to avoid and mitigate impacts to breeding black cockatoos, and noting the context of the extent of native vegetation remaining in the local area where the formation of breeding hollows is likely to continue over time, it is considered reasonable to form a view that there are unlikely to be any significant residual impacts to breeding habitat and that an offset, such as revegetation, for this value is not required at this time.

Conclusion

This ground of appeal raises concerns in respect to the adequacy of the conditions contained in the clearing permit. The following key points are noted:

- in response to the appeal, DWER recommended that additional conditions be added to the amended permit to avoid and mitigate impacts to breeding black cockatoos
- DWER's recommended conditions are supported and any installed artificial nesting boxes should require monitoring and maintenance

It is recommended that the appeal be allowed to the extent that conditions are applied to the amended clearing permit requiring the permit holder to:

- engage a suitably qualified person to identify and inspect any trees potentially suitable for breeding use by black cockatoos prior to clearing, and if identified delay clearing of any trees found to be occupied until no longer in use
- install artificial nesting boxes to replace any breeding trees with evidence of use that cannot be avoided
- monitor and maintain any installed artificial nesting boxes
- keep records on efforts in relation to the implementation of these conditions, and report to DWER as required.

¹⁶ DWER response to Appeal 010/20, page 5.

¹⁷ Response to DWER recommendation from permit holder, received 8 June 2020.

OTHER MATTERS

The appellant submitted that it is unclear if the proposed clearing was referred to the Commonwealth for assessment under the *Environment Protection and Biodiversity Conversation Act 1999*. The appellant submitted that if DWER's assessment or a habitat survey identifies foraging and potential breeding habitat for black cockatoos at the site, then Commonwealth referral should be considered.

The Commonwealth referral guidelines for black cockatoos¹⁸ states that the responsibility for deciding whether or not to refer a proposed action to the Commonwealth is with the person proposing the action. DWER's advice on this matter was that Commonwealth referral is a matter for the permit holder's consideration.

CONCLUSION AND RECOMMENDATION

The appellant's view that the proposed clearing will impact black cockatoo foraging habitat and potentially black cockatoo breeding habitat is supported. However, it is considered that impacts to foraging habitat are unlikely to be significant and impacts to any potential breeding habitat can be adequately mitigated through additional permit conditions.

It is recommended that the appeal be allowed to the extent that conditions are applied to the amended clearing permit requiring the permit holder to:

- engage a suitably qualified person to identify and inspect any trees potentially suitable for breeding use by black cockatoos prior to clearing, and if identified delay clearing of any trees found to be occupied until no longer in use
- install artificial nesting boxes to replace any breeding trees with evidence of use that cannot be avoided
- monitor and maintain any installed artificial nesting boxes
- keep records on efforts in relation to the implementation of these conditions, and report to DWER as required.

The final wording of the conditions will be a matter for DWER to determine in giving effect to the Minister's appeal decision under section 110 of the EP Act.

Emma Gaunt
APPEALS CONVENOR

Investigating Officer:

Emma Bramwell, Senior Environmental Officer
Simon Weighell, A/Senior Appeals Officer

¹⁸ Department of Sustainability, Environment, Water, Population and Communities (2012) *EPBC Act referral guidelines for three threatened black cockatoo species*. Commonwealth of Australia.