



Appeals Convenor
Environmental Protection Act 1986

**REPORT TO THE
MINISTER FOR ENVIRONMENT**

APPEAL AGAINST DECISION TO GRANT A CLEARING PERMIT
CPS 8782/1: PURPOSE PERMIT,
CLEARING OF UP TO 11.93 HECTARES OF NATIVE VEGETATION
BURRUP, DAMPIER AND MAITLAND, CITY OF KARRATHA

PROPONENT: WOODSIDE POWER PTY LTD

Appeal Number 027 of 2020

September 2020

Appeal Summary

This is a report on an appeal against a decision of the Department of Water and Environmental Regulation (DWER) to grant a permit to clear up to 11.93 hectares (ha) of native vegetation for the purpose of geotechnical investigations for a proposed hybrid power plant.

The appellant contended that DWER did not have adequate and appropriate information to assess the values present, and that the clearing posed a risk to the environmental values of the application area. In particular, the appellant raised concerns about DWER's assessment of flora and vegetation, fauna, watercourses and potential impacts to the adjacent Murujuga national park.

In its assessment of the application, DWER found that the proposed clearing is likely to impact on vegetation growing in associations with a watercourse, and may impact conservation significant flora and fauna, and a priority ecological community (PEC), and therefore determined that the proposed clearing is at variance to clearing principle (f) and may be at variance to (a), (b) and (h), and not at variance to the other clearing principles.

In granting the permit, DWER had regard for flora and fauna surveys commissioned by the applicant, supporting documentation from the application; and GIS databases and mapping, and had regard for its Guide to Assessment and public submissions on the application.

Having regard to the issues raised in the appeal, the extent of the proposed clearing, advice provided by DWER, and information obtained in discussion with the appellant and applicant, DWER's assessment of the vegetation under application is supported and its decision to grant the permit subject to conditions was justified. It is considered that the conditions specified in Clearing Permit CPS 8782/1 are appropriate to ensure that activities are undertaken in a manner which minimises and mitigates the the risk of potential environmental impacts from the clearing of native vegetation within the application area.

Recommendation

It is recommended that the Minister dismiss the appeal.

INTRODUCTION

This report relates to an appeal received in objection to the decision of the Department of Water and Environmental Regulation (DWER) to grant clearing permit CPS 8782/1 to Woodside Power Pty Ltd (the applicant). CPS 8782/1 is for clearing of up to 11.93 hectares (ha) of native vegetation within a 477.06 ha clearing footprint within various properties in Burrup, Dampier and Maitland (the application area) (Figure 1). The purpose of the clearing is for geotechnical investigations and associated activities, to inform the engineering design and construction planning for a proposed hybrid power plant.

The appellant is the Conservation Council of Western Australia (CCWA).

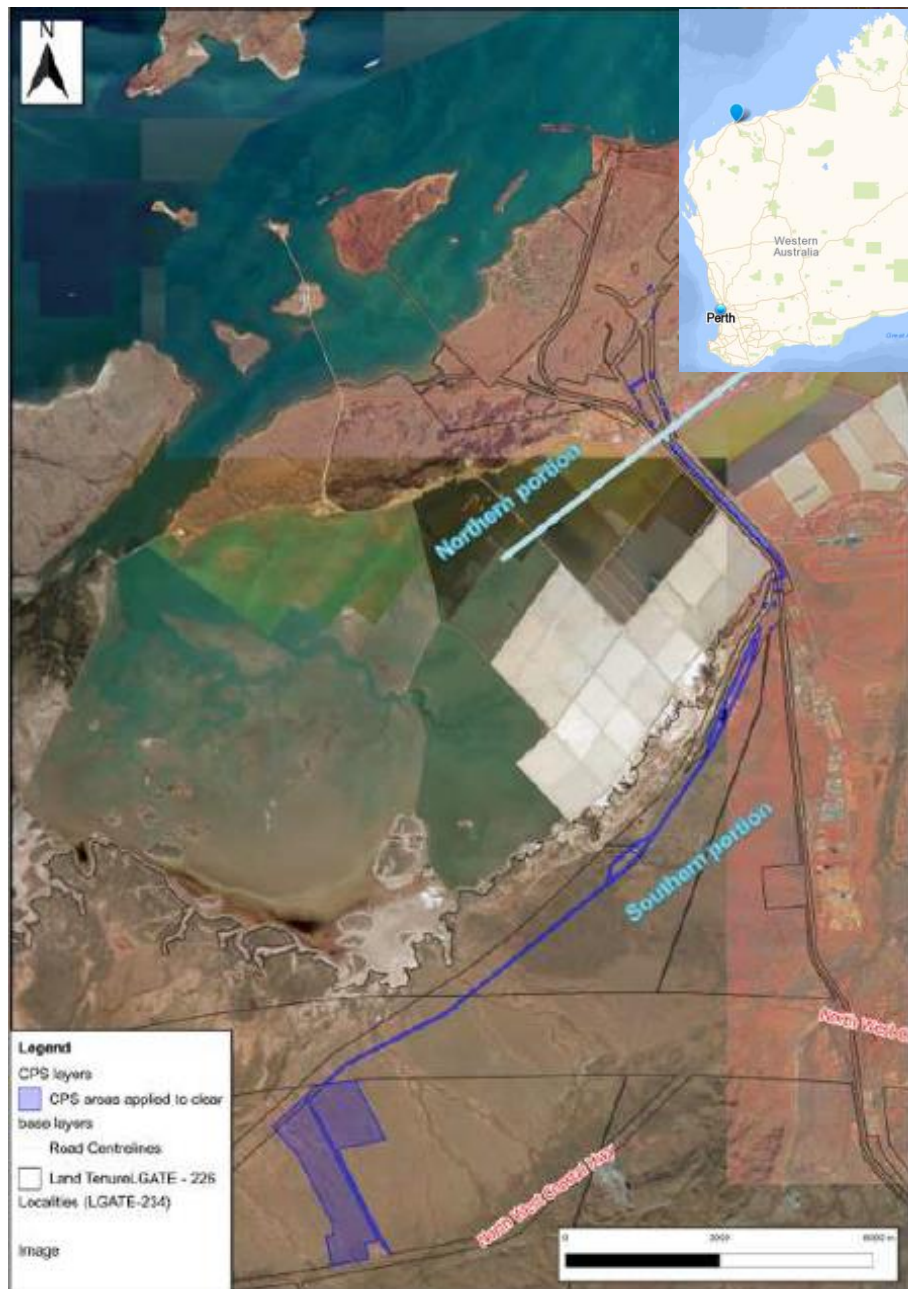


Figure 1 – Location of application area (cross-hatched blue)

(Source: DWER Clearing Permit Decision Report CPS 8782/1, 2020 and whereis.com)

BACKGROUND

The applicant is currently examining a proposal for a hybrid renewable energy plant and transmission line. The proposed clearing is to facilitate geotechnical investigations in the Maitland Strategic Industrial Area (MSIA), MSIA buffer area and along a land corridor leading to the Burrup Peninsular. The applicant intends to refer the full proposal for development of the hybrid renewable energy plant and transmission line to the Environmental Protection Agency (EPA) in accordance with Part IV of the *Environmental Protection Act 1986* (EP Act).

The appellant raised concerns that the granting of clearing purpose permit CPS 8782/1 implies approval for the proposed hybrid renewable energy plant, and that section 41(3) of the EP Act prevents DWER from making any decision that could have the effect of causing or allowing the proposal to be implemented until that assessment is complete.

Section 41(3) of the EP Act constrains a decision making authority, which has received notice under section 39A(3)(c) or (4) of the EP Act that a proposal is going to be or is being assessed by the EPA, from making a decision which would have the effect of causing or allowing a proposal to be implemented. DWER has advised that at the time of its assessment and grant of the clearing permit, the related hybrid power plant proposal had not been referred to the EPA under Part IV of the EP Act, and DWER was not constrained from making a decision on the clearing permit application.

In assessing the application, DWER concluded that the proposed clearing is at variance with clearing principle (f) and may be at variance to clearing principles (a), (b) and (h). DWER granted the clearing permit subject to conditions, including:

- avoid, minimise and reduce the impacts and extent of clearing;
- weed control;
- declared Pests and Weeds of National Significance;
- vegetation management;
- fauna management;
- priority ecological community management;
- retaining vegetation material and topsoil;
- rehabilitation; and
- record keeping, and reporting.

DWER advised that the clearing permit application was advertised on 29 January 2020 for a 21-day public comment period and one public submission was received. DWER and the applicant responded to the issues raised in the submission¹.

OVERVIEW OF APPEAL PROCESS

In accordance with the EP Act, for an appeal against a decision of DWER to grant a clearing permit, 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 DWER on the 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 conducted an investigation into the matters raised on appeal. The investigation included:

¹ DWER (2020) Clearing Permit Decision Report CPS 8782/1, page 14-15

- review of and regard for the matters raised in the appeal submitted by the appellant;
- review of and regard for the report from DWER on the appeal;
- review of and regard for the response to the appeal provided by the applicant on 25 June 2020;
- a meeting with the applicant in relation to issues raised in the appeal on 21 July 2020;
- a meeting with the appellant in relation to issues raised in the appeal on 17 August 2020; and
- review of relevant information, policy and guidance as considered necessary.

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 seeks for DWER's decision to be overturned (i.e. that the clearing permit be refused). In the event that the clearing permit is not overturned, the appellant sought for additional conditions to be imposed on the permit.

GROUNDINGS OF APPEAL

The matters raised by the appellant broadly relate to DWER's assessment of the environmental values of the application area, and have been summarised under the following grounds:

1. flora and vegetation;
2. fauna;
3. watercourses; and
4. impacts to Murujuga National Park.

The appellant also submitted concerns about the information provided in relation to the purpose of the clearing, and its adequacy to allow for public comment on the application. This issue is considered beyond the scope of the appeal and is address as an 'Other Matter' below.

GROUND 1: FLORA AND VEGETATION

The appellant raised concerns about the significance of the flora and vegetation within the application area proposed to be cleared and the presence of a Priority 1 ecological community (PEC). The appellant asserted that any impacts to these species are unacceptable. The appellant submitted that DWER's decision to grant the permit was based on inadequate and inappropriate information regarding the presence and extent of priority ecological communities and conservation significant species.

The appellant sought for the decision to grant the permit be overturned on the basis that:

- the flora survey of the southern section of the application area was conducted at the incorrect time to establish the presence of PEC;
- flora surveys were inconsistent with the Environmental Protection Authority (EPA)'s *Technical Guidance Flora and Vegetation Surveys for Environmental Impact Assessment*;

- the assessment found that the clearing 'may be at variance' to principle (a) native vegetation comprising a high level of biodiversity due to presence of a Priority 1 PEC;
- there is uncertainty around the presence of the PEC and the potential impacts of the clearing; and
- any impacts to a PEC are unacceptable.

The appellant suggested that if the permit were not overturned, additional conditions should be placed on CPS 8782/1.

Consideration

In its assessment of the impacts to priority ecological communities and conservation significant flora species, DWER advised that it had regard to:

- relevant GIS databases;
- a flora survey commissioned by the applicant, which included a desktop assessment and a field survey; and
- other supporting documentation provided by the applicant.

The *Guide to the assessment of applications to clear native vegetation under Part V Division 2 of the Environmental Protection Act 1986* (the Guide) states:

Once a valid application to clear native vegetation has been made, assessors undertake an initial desktop assessment. This includes a review of non-spatial databases, geographic information system (GIS) spatial data, and other relevant information and documents as available.

Surveys and information may be required from the applicant where the scale and nature of the clearing application is likely to have a moderate or high impact on the environment.

For other applications, if after an initial assessment, the assessor identifies that insufficient information is available for the CEO to make an informed decision, further surveys or information may be required by the applicant

DWER advised that the applicant's flora survey consisted of a desktop assessment followed by field surveys which were undertaken between 3 and 5 June 2019 and between 22 and 23 July 2019.

The flora survey divided the application area into northern and southern sections. DWER agreed with the appellant that it considered the northern section was adequately surveyed and acknowledged that the timing of the survey of southern section (22-23 July) was not optimal due to the unseasonably low rainfall recorded prior to the survey. Due to the dry conditions, the initial field survey did not identify any PECs within the southern section of the application area. The flora survey report identified this as a limitation and recommended a supplementary survey be undertaken following summer rainfall/wet season.

In the absence of a supplementary survey, to adequately assess the southern section DWER advised that it based its assessment of the southern section on the available GIS databases and supporting documentation from the applicant. A supplementary wet season survey has since been undertaken by the applicant which confirms the location of the PEC (discussed below).

Roebourne Plains coastal grasslands PEC

DWER's review of GIS mapping relevant to the proposed clearing identified the presence of 'Roebourne Plains coastal grasslands with gilgai microrelief on deep cracking clays' (Roebourne Plains gilgai grasslands), which is listed as a Priority 1 PEC by the Department of Biodiversity, Conservation and Attractions (figure 2).

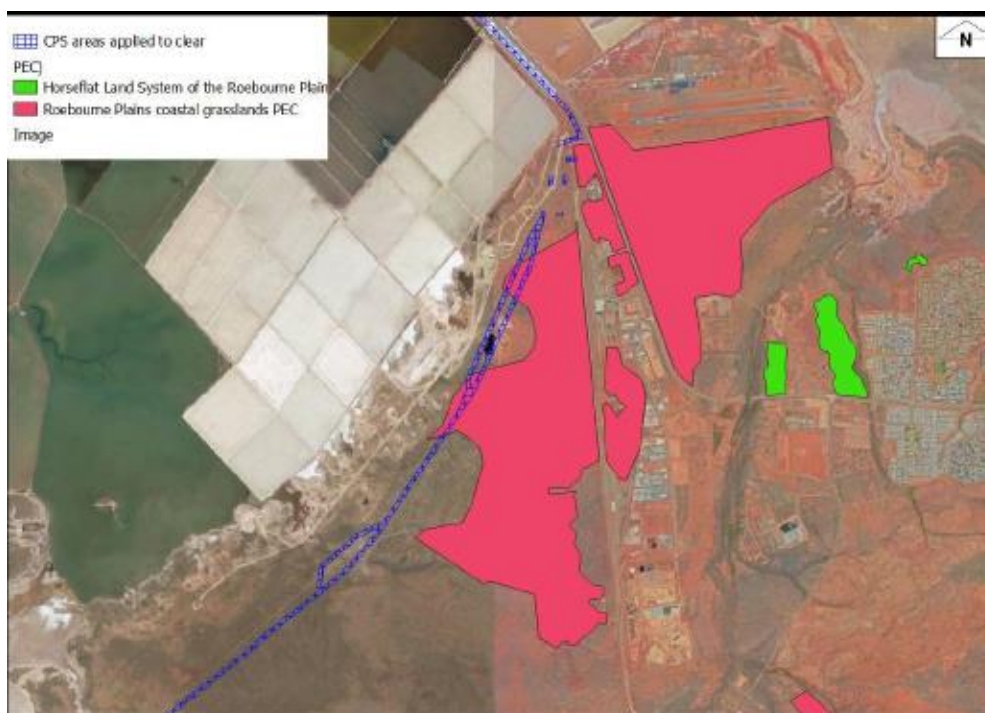


Figure 2 - Roebourne Plains coastal grasslands PEC (pink) mapped within the application area (cross-hatched blue) (Source: DWER Clearing Permit Decision Report CPS 8782/1, 2020)

The applicant's supporting information identified approximately 0.87 ha of the PEC would be impacted by the proposed clearing. Noting this and the GIS mapping, DWER concluded that the proposed clearing may impact Roebourne Plains gilgai grasslands PEC, and that the clearing 'may be at variance' to clearing principle (a).

DWER's review of GIS datasets indicated that the Roebourne Plains gilgai grasslands PEC is mapped across approximately 12,000 ha within a 50km local area, and the proposed clearing of 0.87 ha would impact approximately 0.007 per cent of the local extent of this PEC. DWER advised that it considered that the potential clearing of 0.87 ha of Roebourne Plains gilgai grasslands PEC scattered along the length of the application area in the context of the local area, is not likely to be significant.

While DWER considered that the methods adopted for the flora survey were designed in accordance with the EPA (2016) guidance, it advised that the applicant has since commissioned a supplementary field survey. As recommended in the flora survey report this was undertaken in the wet season (May/ June 2020) to address the inadequacy of the initial field survey. The applicant has advised that this supplementary survey specifically targeted the presence of PEC, targeted locations in which clearing may occur, and occurred following rainfall events. The applicant advised that the supplementary survey has confirmed the presence and location of the PEC, and will be used to further reduce any impacts to identified PEC.

Other priority flora and ecological species

In addition to the Roebourne Plains gilgai grasslands PEC, the flora survey also determined that the Priority 1 Burrup Peninsula rock pile communities PEC have been mapped approximately 390m east of the northern section of the application area, and a small section of this PEC is within the proposed clearing (0.029 ha). DWER noted that this area has been previously disturbed and contains weeds, and therefore considered that the PEC is degraded. DWER advised that given the small extent and degraded value, it considered that the clearing would not significantly impact the rockpile PEC.

The flora survey also noted that based on the similarities between the soil and vegetation types of these taxa, and the application area, one Priority 2, and a number of Priority 3 and 4 flora taxa may occur within the application area. The closest record of these flora species were largely outside the application area, with the exception of two Priority 3 and one Priority 4 species and DWER advised that these species are widespread on the Burrup Peninsula.

Acacia woodlands (AcAx?Tt), a vegetation type of high conservation value, was also mapped in the flora survey. These were noted to include very old, large, rare trees which are experiencing a decline in numbers due to their fire sensitivity.

Mitigation measures

To mitigate direct impacts to Roebourne Plains gilgai grasslands PEC and Acacia woodlands, DWER imposed the following conditions on the clearing permit:

- Condition 10 ensures that the applicant does not clear any Acacia woodlands identified in the flora survey.
- Condition 15 ensures that the applicant clears no more than 0.87 ha of native vegetation representative of the PEC.
- Condition 16 requires the applicant to revegetate all cleared areas within six months of undertaking the authorised clearing.

DWER also advised that the application has committed to re-contouring and resspreading all boreholes and test pit pads to promote regeneration of native vegetation and inspect all clearing areas following the first wet season.

DWER advised that it did not require the applicant to rehabilitate access tracks, as the method for 'clearing' for access tracks involves vehicle and machinery driving over native vegetation and not earthmoving. DWER concluded that impacts to vegetation from this will be minimal and the vegetation will naturally regenerate.

Conclusion

In regard to the appellant's concerns about the timing of flora surveys, it is acknowledged that ideally, the applicant would have provided the initial July survey and subsequent 'wet season' survey in its application to DWER, for DWER's consideration in its decision to grant the permit. However, DWER's assessment did identify the presence of the PEC, which has been confirmed by the subsequent survey. DWER also determined that the methods adopted for the initial flora survey were designed in accordance with the EPA's technical guidance for flora surveys. Therefore it can be concluded that DWER had adequate information to establish the presence of this priority ecological community, and any potential impacts the clearing may have on it.

The flora surveys and DWER's assessment found that the proposed clearing may temporarily impact the Roebourne Plains gilgai grasslands PEC. However due to the clearing being restricted to linear tracks, test pits and boreholes, its limited extent within the local area, and the required revegetation and rehabilitation, it is considered that the proposed clearing will not cause serious or irreversible damage to the biodiversity values of the area and the PEC.

Having regard for the above, it is considered that DWER's assessment of the clearing proposal adequately considered and addressed the flora and vegetation values present and potential impacts resulting from the clearing.

GROUND 2: FAUNA

The appellant submitted that the vegetation proposed to be cleared is potential habitat for conservation significant fauna species, and proposed mitigation measures are insufficient to

mitigate the impact from loss of habitat to these species. The appellant raised concerns about the timing of the fauna² survey.

The appellant sought for the grant of the permit to be overturned on the basis that:

- the information DWER used to establish the presence of conservation significant fauna is not reliable;
- fauna surveys were not undertaken at the correct time; and
- there is uncertainty regarding the presence of priority and threatened species.

In the event that the clearing permit is not overturned, the appellant submitted that conditions should be imposed on the permit to prohibit the clearing of vegetation associated with the habitat and food resources for priority and threatened species and provide protection for native fauna from threats associated with clearing.

Consideration

DWER's assessment of clearing principle (b) native vegetation comprising of significant habitat for fauna, had regard for the Guide and the fauna survey commissioned by the applicant.

DWER advised that the fauna survey comprised of a desktop assessment and a preliminary likelihood of occurrence assessment, followed by seven days of field work conducted in June and July 2019. The survey was ground truthed with remote cameras and bat detectors. In total 30 camera nights over nine locations and three bat detector nights over three locations were undertaken.

Migratory birds

The fauna survey identified habitat types that are potentially medium and high value habitat for migratory birds, including mudflats, mangroves and grasslands, and quantified the impact of the proposed clearing on these habitats. The survey found that the habitat types identified in the survey, including those of migratory birds, are part of a large well vegetated area of similar habitat within the region, and are mostly well connected.

As well as identifying potential habitat, the fauna survey also established the presence of four species of migratory birds. These include the Whimbrel, Gull-billed Tern, Caspian Tern and the Crested Tern, all listed as Migratory under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* and International Agreement under the *Biodiversity Conservation Act 2016*.

The fauna survey noted that migratory bird surveys are typically conducted in the summer rather than June and July, and as such the timing of the survey is a limitation of the survey given migratory birds may not have been identified. Additional species were identified in the fauna survey's likelihood of occurrence assessment, which noted that these species likely use the application area irregularly and opportunistically, and alternative flyway options exist nearby.

DWER agreed with the appellant that the timing of the survey was relatively late in the season for assessing migratory birds, however highlighted:

Although the fauna survey was conducted late in the season for assessing migratory birds, the survey still managed to record four migratory species listed under the Environment Protection and Biodiversity Conservation Act 1999. Subsequently, the assessment of impacts of the proposed clearing on these species was conducted in accordance with the Guide...

² GHD (2019) *Woodside Energy Ltd Geotechnical Investigations Fauna Survey*

The Department notes that the fauna survey was undertaken with reference to the ... EPA (2016) guidance for fauna surveys. Considering this and the presence of other sections required under the guidelines, including sampling techniques and limitations of the survey, the Department was satisfied that the supplied surveys were prepared in accordance with the published guidelines.

Other conservation significant fauna

The fauna survey also identified that the proposed clearing will involve clearing of vegetation that is potential habitat for conservation significant fauna including, the endangered northern quoll, the vulnerable Pilbara olive python, peregrine falcon, north-western free-tail bat, northern short-tailed mouse and lined soil-crevice skink. As stated in DWER's decision report, valuable habitat types for the northern quoll and Pilbara olive python include Rocky hills with exposed boulder piles (1.67 ha within clearing envelope), and Hummock Grassland on low rocky hills (1.75 ha within clearing envelope). Minor drainage lines that likely present a linear corridor of habitat for these species (35.7 ha) also exist within the clearing envelope. DWER advised that the proposed clearing of drainage lines (see Ground 3) is limited to access tracks only, and will largely be cleared by vehicle driving over it, rather than mechanical clearing.

Having regard for the above, DWER's assessment found that the proposed clearing of linear tracks, test pits and boreholes is not likely to impact on the vegetation that may comprise of significant fauna habitat, or the conservation status of conservation significant fauna.

To mitigate further potential impacts to fauna species, DWER imposed four fauna management conditions on the permit (Conditions 11-14) requiring the applicant to undertake the following:

- cover all boreholes at the end of each day and backfill upon completion and backfill all test pits on the day of drilling/excavating with excavated material;
- undertake all activities during daylight hours to avoid impacts to nocturnal species;
- conduct clearing in a slow progressive manner from one direction to the other to allow fauna to move into adjacent native vegetation ahead of the clearing activity; and
- avoid clearing of any vegetation associated with rock hills with exposed boulder piles within the application area.

The applicant has also advised that the proposed investigation will be undertaken in accordance with an Environmental Management Plan, which includes provision to related to the Pilbara Olive python such as staff awareness of the python, prohibition on killing native fauna and procedures for interaction with native fauna including snakes.

Conclusion

DWER determined that some sections of the application area comprise high value fauna habitat types. Having regard for the potential habitat for conservation significant species, including migratory birds, and recognising that fauna habitats of the application area are part of a much larger area of similar habitats within the local area DWER found the proposed clearing 'may be at variance' to clearing principle (b).

While DWER acknowledged that fauna surveys would usually be undertaken earlier in the season to identify all potential migratory bird species, the fauna survey did comply with EPA technical guidance, and it did identify the presence of migratory bird species. Therefore it can be concluded that DWER had adequate information to establish the presence of conservation significant fauna species including migratory birds.

Taking into account:

- the application area is part of a much larger well vegetated local area which contains similar habitats that are well connected;
- the clearing is largely temporary, and occurring as linear tracks, test pits and boreholes;
- fauna management conditions have been imposed on the permit to minimise impacts to fauna, particularly northern quoll and Pilbara Olive Python,

it is considered that DWER has sufficiently considered the fauna values and potential impacts in its assessment of the proposed clearing.

GROUND 3: WATERCOURSES

This ground of appeal raises issues with DWER's assessment of native vegetation growing in or associated with a wetland or watercourse, clearing principle (f).

The appellant submitted that DWER incorrectly concluded that the variance with clearing principle (f) is an acceptable variance by:

- incorrectly applying a test of significance when the EP Act requires no clearing of native vegetation that is growing in or associated with a wetland or watercourse; and
- applying the 'local area' as geographical limit in the assessment, as stated in the Decision Report (page 13), '... the proposed clearing is not expected to significantly impact on riparian habitat within the local area', rather than the 'environment associated with a wetland or watercourse' system.

The appellant sought for a condition on the permit that prevents any clearing of native vegetation that is at variance with clearing principle (f).

Consideration

DWER advised that in its assessment of the application against clearing principle (f), it had regard to

- the Guide,
- the GIS hydrography datasets,
- the supporting documentation and
- the findings of the flora survey.

DWER advised that a number of minor non-perennial watercourses traverse the application area. DWER's assessment of the proposed clearing determined that approximately 0.31 ha of vegetation growing in association with ephemeral drainage lines and intertidal flats would be impacted by the proposed clearing. It therefore concluded that the proposed clearing is at variance with clearing principle (f) due to impacts to vegetation associated with a watercourse.

DWER advised that a small number of geotechnical investigation sites are required on drainage lines, however the applicant has minimised the proposed works as far as practical. DWER's assessment found that because the extent of clearing is limited and the impact to riparian vegetation is scattered along the application area, the proposed clearing is not expected to significantly impact riparian habitat within the local area.

To minimise impacts to riparian vegetation, DWER advised that it placed Condition 9 on the permit, which requires the applicant to not clear riparian vegetation of any watercourse or wetland within the application area for the purpose of temporary construction areas or extraction of borrow material, with the exception of minor access tracks. Clearing for minor access tracks is to facilitate movement of vehicles within the application area. The applicant advised that there would be minimal mechanical clearing of access tracks due to vehicles 'driving over' the vegetation. Where mechanical clearing is required for an access track,

clearing would likely be restricted to no more than five metres in width to allow vehicle movement.

Local area

In relation to the appellant's concerns about DWER's assessment of the 'local area', the Guide describes a local area as a radius that varies within a region and indicates the distance across which there is a little change in a vegetation community. In the Eremaean Province, which encompasses the application area, a recommend radius is 50 kilometres (km). DWER advised that consistent with the Guide, it assessed the impacts of the proposed clearing on the environment within a 50 km radius measured from the perimeter of the application area.

The Guide states that clearing principle (f) aims to conserve vegetated watercourses and wetlands and their buffers. In this principle, the word "association" refers to the buffer area.

Conclusion

Given the proposed clearing will impact vegetation growing in association with ephemeral drainage lines and intertidal flats, DWER's finding that the proposal is at variance to clearing principle (f) is considered appropriate. It is also considered that the proposed clearing of 0.31 ha of riparian vegetation in the context of a 50 km local area is not likely to be significant.

Under s.51O(2) of the EP Act, the CEO (or their delegate) must have regard to the clearing principles in its decision on clearing permit. The EP Act does not prevent the granting of a permit for clearing which is at variance with one or more clearing principles.

GROUND 4: IMPACTS TO MURUJUGA NATIONAL PARK

The appellant raised concern that the environmental values of the Murujuga National Park, immediately adjacent to the application area, will be impacted by the proposed clearing.

The appellant submitted that the potential for serious or irreversible damage to the environment from the clearing should result in refusal of the clearing permit. In the event that the clearing permit is not refused, the appellant submitted that conditions should be imposed on the permit to create a buffer zone prohibiting activity in any area which has potential to affect the Murujuga National Park.

Consideration

DWER's assessment determined that the proposed clearing 'may be at variance' to principle (h), vegetation likely to have an impact on the environmental values of adjacent or nearby conservation areas. DWER's Decision Report states that due to the clearing's close proximity to Murujuga National Park, the proposed clearing may increase the spread of weeds into the national park.

In response to the appeal, DWER advised that it calculated that the closest clearing is approximately 190 metres west from the boundary of Murujuga National Park (Figure 3). The applicant's supporting documentation notes that the application area lies either downhill of the Murujuga National Park or is separated from the National Park by drainage lines. Given this and the minimal extent of the proposed clearing, DWER determined that no direct impacts to the Murujuga National Park in the form of movement of introduced fauna species or altered fire regimes were anticipated.

However, DWER advised that to mitigate any potential impacts from weeds being introduced into the adjacent native vegetation, it imposed Condition 7 and 8 on the permit which requires the applicant to implement weed control management actions and to conduct a treatment of Declared Pests and Weeds of National Significance prior to commencement of clearing activities respectively.

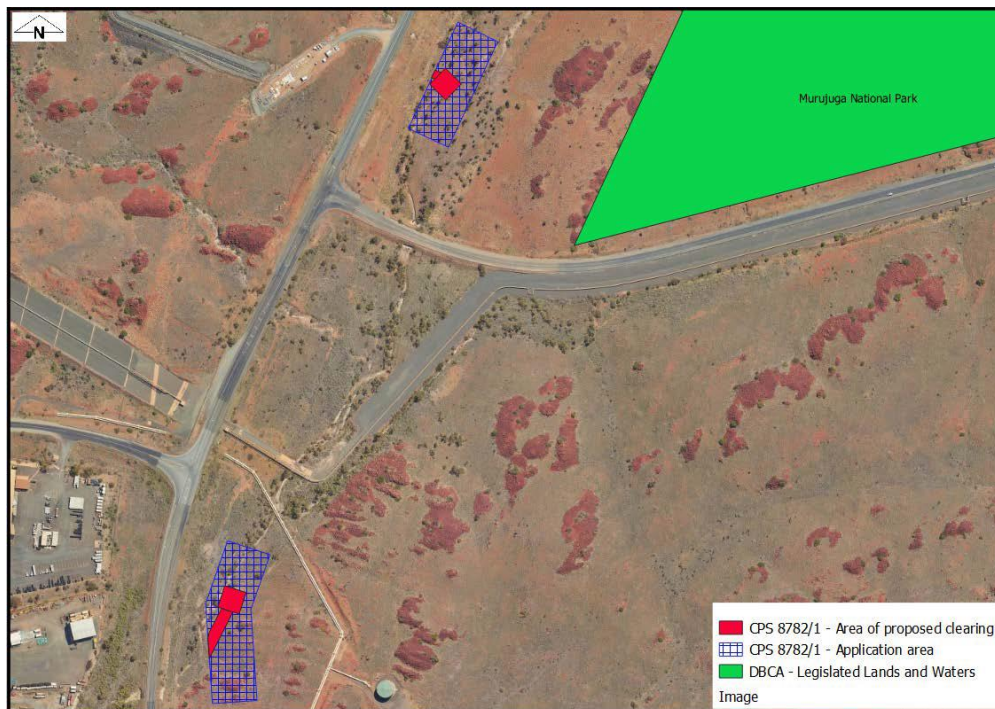


Figure 3 - Location of the Application Area with respect to Murujuga National Park
(Source: DWER Clearing Permit Decision Report CPS 8782/1, 2020)

Conclusion

Noting that:

- the proposed clearing is 190m from the boundary of Murujuga National Park,
- there is potential for weeds to be spread as a result of the clearing,
- the extent of the clearing at this proximity is small (figure 3) and
- it is unlikely that the clearing will impact on the National Park in any other way,

It is considered that DWER's finding that the clearing 'may be at variance' to clearing principle (h) is appropriate and it is considered that the potential impacts to the Murujuga National Park have been appropriately considered by DWER in their assessment of the proposed clearing.

OTHER MATTERS

The appellant submitted that the purpose for the clearing set out in the original advertisement (being 'geotechnical investigation for a potential hybrid renewable power plant') was insufficient to provide the public with a fair opportunity to comment on the project when it was open to submissions under section 51E(4)(c) of the EP Act.

The appellant submitted that the nature, strategies and procedures of the geotechnical investigations, the machinery to be used, purpose of the boreholes and test pits, and the strategy for collecting relevant data for the potential power plant was not published. The appellant expressed the view that the omission of these details is inconsistent with the requirements of section 51E(8) of the EP Act, and that as a result, the permit should be refused.

This issue relates to whether DWER complied with section 51E(4)(c) of the EP Act when the application was advertised for public comment. This is not a matter that goes to the merits of the decision to grant the permit, and as such, is considered to be outside the scope of an appeal under section 101A(4) of the EP Act.

CONCLUSIONS AND RECOMMENDATION

In considering a clearing matter, section 51O of the EP Act requires the Chief Executive Officer (CEO) of DWER to have regard to the clearing principles and to any planning instrument, or other matters that the CEO considers relevant.

In its assessment of the application, DWER took into account information obtained from the applicant including flora and fauna surveys and supporting documentation; GIS databases and mapping, and had regard for the Guide and public submissions on the application.

In assessing the application against the clearing principles, DWER found that proposed clearing is at variance to principle (f); may be at variance to clearing principles (a), (b) and (h); and was not at variance to the other clearing principles. DWER identified that the proposed clearing may impact on the environmental values of the application area, including:

- flora and vegetation, specifically Priority 1 PEC and conservation significant flora;
- Threatened and priority fauna and their habitat;
- watercourses; and
- impacts to an adjacent national park.

As a result of these potential impacts, DWER imposed a number of management conditions on the permit, including but not limited to:

- ensuring that the applicant clears no more than 0.87 ha of native vegetation representative of the identified PEC.
- requiring the applicant to revegetate all cleared areas within six months of undertaking the authorised clearing.
- requiring the applicant to not clear riparian vegetation of any watercourse or wetland within the application area for the purpose of temporary construction areas or extraction of borrow material, with the exception of minor access tracks.
- requiring the applicant to implement weed control management actions.

DWER determined that the proposed clearing, subject to management conditions is not likely to lead to an unacceptable risk to conservation significant flora, fauna, ecological communities or conservation estate.

Having regard for the above, it is considered that DWER:

- had adequate and appropriate information to establish the values present in the application;
- sufficiently considered the environmental values of the application in its assessment;
- imposed adequate conditions on the permit to ensure impacts are limited to those assessed and determined to be acceptable

It is considered that the grant of clearing purpose permit CPS 8782/1 subject to conditions was justified and it is recommended that this appeal be dismissed.

Emma Gaunt
APPEALS CONVENOR

Investigating Officer:

Nikki Pursell, Acting Senior Appeals Officer