



Appeals Convenor
Environmental Protection Act 1986

**REPORT TO THE
MINISTER FOR ENVIRONMENT**

APPEAL AGAINST CONDITIONS APPLIED TO A CLEARING PERMIT
**CPS 8753/1: ROMEO ROAD AND WANNEROO ROAD UPGRADE,
BUTLER, CARABOODA, NOWERGUP, NEERABUP, RIDGEWOOD
AND ALKIMOS**

PROPONENT: MAIN ROADS WESTERN AUSTRALIA

Appeal Number 035 of 2020

September 2020

Appeal Summary

This report relates to an appeal lodged by BirdLife Australia in objection to the conditions of clearing permit CPS 8753/1 granted by the Department of Water and Environmental Regulation (DWER).

The clearing permit authorises Main Roads Western Australia (the permit holder) to clear 32.86 hectares (ha) of native vegetation within various land parcels along Romeo Road and Wanneroo Road. The proposed clearing forms a part of the larger Mitchell Freeway Extension Project (approved under Part IV of the *Environmental Protection Act 1986*).

The appellant submitted two grounds of appeal. Firstly, that the offsets were not appropriate to address the impact to Carnaby's cockatoo habitat and secondly, that a fauna overpass should have been considered by DWER as a more effective habitat connection than the fauna underpass as required by the conditions.

In relation to the offsets, DWER advised that in order to address impacts to Carnaby's cockatoo, DWER required the permit holder to provide a monetary contribution of \$194,600 to purchase 140 hectares (ha) of native vegetation within the Shire of Gingin comprising 140 ha of foraging habitat for Carnaby's cockatoo, revegetation of 18 ha within Department of Biodiversity, Conservation and Attractions (DBCA) managed lands and the installation of 12 artificial hollows. The allocation of the banked offset site representative of the Tuart Woodlands Threatened Ecological Community (TEC)/Priority Ecological Community (PEC) was not required to address impacts to Carnaby's cockatoo habitat but rather to address the loss of 8.27 ha of this TEC/PEC from the proposed clearing.

In relation to the fauna underpass, DWER noted that it is expected to improve connectivity across an existing road and minimise potential impacts to ground dwelling fauna.

Based on the available information, it is considered that the conditions applied to the permit were appropriate to counterbalance the identified impacts and it is recommended that the appeal be dismissed.

Recommendation

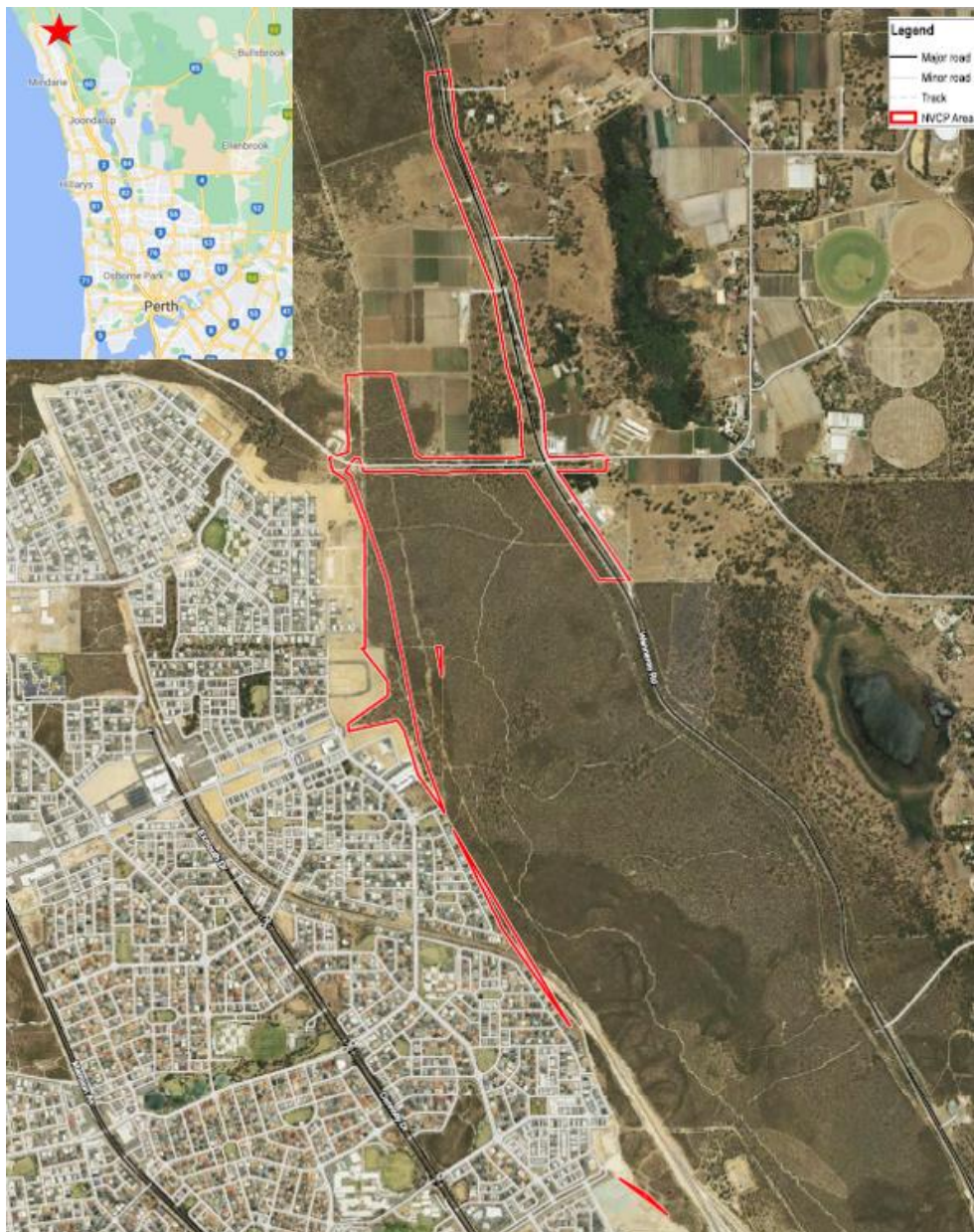
The Appeals Convenor recommended that the appeal be dismissed.

INTRODUCTION

This report relates to an appeal lodged by BirdLife Australia (the appellant) in objection to the conditions of purpose permit CPS 8753/1 granted to Main Roads Western Australia (the permit holder). The clearing permit authorises the permit holder to clear 32.86 hectares (ha) of native vegetation within various land parcels along Romeo Road and Wanneroo Road, in Butler, Carabooda, Nowergup, Neerabup, Ridgewood and Alkimos, for the purpose of road reconstruction, upgrades and associated activities. The proposed clearing is associated with the larger Mitchell Freeway Extension Project approved under Part IV of the *Environmental Protection Act 1986* (EP Act).

The location and extent of the approved clearing are shown in Figure 1 below.

Figure 1 – Location and extent of application area CPS 8753/1



(Source: [google.com/maps](https://www.google.com/maps), GHD (2019) cited by DWER Decision Report CPS 8753/1)

DWER determined that the proposed clearing is seriously at variance with clearing principle (b) significant habitat for fauna, is at variance with clearing principles (a) biodiversity, (e)

significant remnant in an extensively cleared area and (h) adjacent or nearby conservation areas, may be at variance with clearing principle (g) appreciable land degradation and is not likely to be at variance with the remaining clearing principles.

On 17 January 2020, the clearing permit application was advertised for public comment for 21 days. One submission was received. On 13 July 2020, the clearing permit was granted to the permit holder subject to conditions. It is against the conditions of the permit that the appeal was lodged.

OVERVIEW OF APPEAL PROCESS

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

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

To properly advise the Minister for Environment, the Appeals Convenor investigated the matters raised on appeal. The investigation included:

- a review of the appeal submitted by the appellant
- a review of the written response to the appeal provided by Main Roads WA provided on 31 August 2020
- a review of the section 106 report from DWER received on 28 August 2020
- a meeting with the appellant on 23 September 2020
- a review of other information, policy and guidance as required.

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

OUTCOMES SOUGHT BY APPELLANT

The appellant is seeking that conditions applied to the clearing permit be strengthened around offsets and the management of an ecological linkage.

GROUNDINGS OF APPEAL

GROUND 1: INADEQUACY OF OFFSET

In summary, the appellant submitted that the required offsets are insufficient to address the impact of the proposed clearing to Carnaby's cockatoo. The key points made by the appellant included:

- the offset site being a parcel of Tuart Woodlands located 140 kilometres south of the application area, does not have equivalent foraging resources for Carnaby's cockatoo
- land should be purchased in the vicinity of the application area and be of equivalent or higher forage value for Carnaby's cockatoo

- the installation of 12 artificial hollows is insufficient to address the loss of trees with suitably sized hollows for nesting
- revegetation should be carried out in ex-pine plantations currently being cleared in the Yancheop/Pinjar and Gnangara areas.

Consideration

DWER's assessment, among other things, was based on flora and fauna surveys of the larger project area (including the application area) and targeted surveys including a flora survey, a Tuart Woodlands Threatened Ecological Community assessment and a targeted black cockatoo breeding tree assessment.

After considering the permit holder's proposed avoidance and mitigation measures, DWER found that the proposed clearing will result in the following significant residual impacts:

- loss of 29.39 ha of critical habitat to Carnaby's cockatoo
- loss of up to 19.31 ha of native vegetation that is representative of the Commonwealth listed *Banksia Woodlands of the Swan Coastal Plain* (Banksia Woodlands) Threatened Ecological Community (TEC)/ Priority Ecological Community (PEC)
- loss of up to 8.27 ha of native vegetation representative of the *Tuart (Eucalyptus gomphocephala) Woodlands of the Swan Coastal Plain* (Tuart Woodlands)
- loss of 4.865 ha of native vegetation within the Neerabup National Park and 6.18 ha within Bush Forever site 383
- loss of five trees with 12 hollows of a suitable size for Carnaby's cockatoo and forest red-tailed black cockatoo nesting

In response to the appeal, DWER advised that the permit holder made the following offset commitment, consistent with the *WA Environmental Offsets Policy 2011* (the offset policy) and the *WA Environmental Offsets Guidelines 2014* (the Guidelines), to address the significant residual impacts:

- providing monetary contribution of \$194,600 to purchase 140 hectares (ha) of native vegetation in the Shire of Gingin comprising 140 ha of foraging habitat for Carnaby's cockatoo and 93 ha of native vegetation representative of the Banksia Woodlands TEC)
- the allocation of 30.5 ha of a banked offset site representative of the Tuart Woodlands TEC/PEC in the Shire of Waroona
- revegetation of 18 ha within Department of Biodiversity, Conservation and Attractions (DBCA) managed lands which comprises:
 - 10 ha adjacent to Neerabup National Park, located within eight kilometres from the application area
 - 8 ha within Neerabup Nature Reserve surrounding Lake Nowergup, located 750 m from the application area.

The Guidelines provide for a number of different offset options and states that direct offsets may be achieved through land acquisition or rehabilitation/revegetation of areas outside of the application area.

DWER advised that after considering the permit holder's measures to avoid and minimise impacts, it undertook a calculation using the Commonwealth's Offsets Assessment Guide to assess whether the proposed offset adequately addressed impacts to Carnaby's cockatoo habitat. In determining the adequacy of the offset, DWER also considered advice received from DBCA expressing its support of the proposed revegetation proposal as a part of the offset package.¹

The allocation of the banked offset site representative of the Tuart Woodlands TEC/PEC, as required by condition 14 was imposed to counterbalance the impact of the proposed clearing of 8.27 ha of this TEC/PEC. DWER advised that this offset is unrelated and additional to the loss of Carnaby's cockatoo habitat.

As noted in its decision report, DWER was of the view that the monetary contribution and the proposed revegetation/rehabilitation would be adequate to offset impacts to Carnaby's cockatoo habitat and the Banksia Woodlands TEC. These offset commitments are set as conditions 13 and 15, respectively.

For its part, Main Roads advised that it liaises with DBCA on revegetation opportunities, including areas within the Gngangara–Moore River State Forest. However due to uncertainties associated with the land, revegetation within the Gngangara-Moore River State Forest was not considered a suitable option for this permit application.²

In relation to the artificial hollows, DWER's decision report noted that the targeted black cockatoo breeding tree assessment identified that of the 230 potential breeding trees within the application area, five contain 12 hollows of a suitable size for nesting, however no nesting was identified for Carnaby's cockatoo or the forest red-tailed cockatoo. DWER, noting that none of the hollows identified showed signs of current or past breeding use, was of the view that a 1:1 ratio of artificial hollows to those being cleared was adequate to mitigate impacts to breeding habitat for both black cockatoo species.

GROUND 2: ECOLOGICAL LINKAGE

The appellant submitted that a land bridge connecting two conservation areas would be more effective than the fauna underpass required by condition 16 of the clearing permit. In particular, the appellant reasoned that small avifauna would not be able to travel across long distances in a single flight and would be unlikely to utilise the underpass.

Consideration

DWER assesses impacts to ecological linkages under clearing principle (h) relating to adjacent or nearby conservation areas. In its assessment, DWER found that the proposed clearing is at variance to clearing principle (h), noting that the application area forms a part of a regionally significant ecological linkage that facilitates the movement of fauna between two conservation areas, Neerabup National Park and Yanchep National Park. DWER also considered under clearing principle (b), relating to fauna habitat, that the widening of Romeo Road would increase the risk of fauna strike during attempts to cross the road.

As shown in Figure 2 below (cross-hatched area), the proposed fauna underpass is in a north-south alignment across the existing Romeo Road.

¹ Email 28 May 2020 from Department of Biodiversity, Conservation and Attractions to Main Roads WA included as Attachment 6 of DWER's s.106 advice for CPS 8753/1.

² Main Roads response to Appeal 035-20. 31 August 2020.

Figure 2 – Fauna underpass location required by condition 16 of CPS 8753/1



(Source: DWER Clearing Permit 8753/1)

In response to the appeal, DWER advised that Main Roads agreed to construct a dual use pedestrian/fauna underpass (4.6 metres (m) wide by 2.7 m high) between remnant vegetation on either side of the existing Romeo Road to allow for fauna movement, avoid road strikes and assist in maintaining fauna linkage values. Based on this commitment, DWER applied condition 16 to the permit, requiring that:

Within 24 months of commencing clearing, the Permit Holder must install a fauna underpass within the area cross-hatched red on attached Plan 8753/1h (Romeo Road Reserve) to allow the safe movement of fauna between the north and south remnant of native vegetation.

In response to the appeal, the permit holder advised that the installation of a land bridge would require significant additional clearing of native vegetation within the conservation areas. The permit holder advised that it has consulted with DBCA on the underpass location.

It is understood by DWER's advice that the permit holder is currently undertaking a monitoring program of similar underpasses it has installed at Hester Avenue and Neerabup Road. The permit holder advised that it has been confirmed that fauna are utilising the underpasses, and that the results of previous and future monitoring will be discussed with DBCA to inform future underpass design and fauna linkages.

CONCLUSION AND RECOMMENDATION

Having regard to the information provided during the appeal investigation, it is considered that the offset applied by DWER to address significant residual impacts to Carnaby's cockatoo was justified and in accordance with the relevant policy and guidelines. In particular, it is noted that the allocation of the banked offset site representative of the Tuart Woodlands TEC/PEC, was not required to address impacts to Carnaby's cockatoo habitat but rather to address the loss of 8.27 ha of this TEC/PEC from the proposed clearing.

It is also considered that DWER was justified in requiring the installation of 12 artificial hollows on the basis that the none of the 12 hollows identified in the five trees were being used for breeding by black cockatoos.

In relation to the fauna underpass, it is noted that the fauna underpass is expected to improve connectivity across an existing road and minimise potential impacts to ground dwelling fauna. It is therefore considered that the condition applied in this regard was appropriate and justified.

Based on the above, it is therefore recommended that the appeal be dismissed.

Emma Gaunt
APPEALS CONVENOR

Investigating Officer:
Tonya Carter, Senior Appeals Officer