



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 GRANT A CLEARING PERMIT**

**CLEARING PERMIT CPS 8151/1: WANDERING-NARROGIN ROAD
RESERVE, CONTINE, SHIRE OF CUBALLING**

APPLICANT: SHIRE OF CUBALLING

Appeal Number 047 of 2019

February 2020

Appeal summary

This is a report in relation to an appeal received against the decision to grant a clearing permit to the Shire of Cuballing (applicant) to clear 0.42 hectares (ha) of native vegetation or 50 native trees within a 3.78 ha footprint along the Wandering-Narrogin Road reserve. The proposed clearing is for the purpose of road widening.

The appellant submitted that the proposed clearing is seriously at variance to clearing principles (d) threatened ecological community and (e) significant remnant in an extensively cleared area, and at variance to clearing principles (b) significant habitat for fauna, (c) threatened flora, (f) vegetation growing in association with a watercourse, (g) appreciable land degradation, (h) environmental values of nearby conservation area and (i) deterioration in water quality. The appellant also submitted that the loss of the Commonwealth-listed 'Eucalypt Woodlands of the Western Australian Wheatbelt' threatened ecological community (Wheatbelt Woodlands TEC) and a significant remnant in an extensively cleared area cannot be offset.

From its assessment DWER found that the proposed clearing will impact on the Wheatbelt Woodlands TEC, a significant remnant in an extensively cleared area, and vegetation growing in association with a watercourse. DWER also found that the application area is not likely to comprise significant habitat for indigenous fauna. DWER concluded that these impacts can be managed, and granted the clearing permit subject to conditions including an offset requirement.

In relation to threatened fauna and in particular Carnaby's cockatoo (*Calyptorhynchus latirostris*), DWER advised that while the application area contains suitable foraging habitat, no evidence of foraging was found within the application area during a site inspection or the habitat tree assessment. In addition, a habitat tree assessment did not identify evidence of this species within the application area. In relation to red-tailed phascogales (*Phascogale calura*), the habitat tree assessment did not identify evidence of this species within the application area, however could not confirm its presence or absence.

The habitat tree assessment recommended that tree hollows be inspected prior to and during clearing. The applicant advised that it intended to inspect hollows in line with this recommendation.

Having considered the information presented during the course of this investigation, the Appeals Convenor considered that DWER's assessment against the clearing principles was generally appropriate, however found the proposed clearing to be at variance to clearing principle (b) on the basis that the vegetation contains foraging habitat for Carnaby's cockatoo, and the application area is otherwise within the known range of the species.

The Appeals Convenor noted that the purpose of the proposed clearing is for a public benefit (being improved road safety), and supported DWER's conclusion that the proposed clearing should be approved, even though it is at variance to multiple clearing principles, subject to the impacts being managed and the significant residual impacts being counterbalanced. In this regard, the Appeals Convenor considered that the conditions should be strengthened.

Recommendation

The Appeals Convenor recommended that the appeal be allowed to the extent that conditions are applied to the clearing permit requiring the applicant to:

- more clearly exclude the majority of hollow-bearing trees from the scope of the approval by limiting clearing to within 8 metres of either side of the road centreline
- inspect any potential habitat trees for Carnaby's cockatoos and red-tailed phascogales (and other threatened fauna) immediately prior to clearing, and if they are identified delay clearing of any trees found to be occupied by these species until no longer in use and install artificial hollows or nesting boxes to replace any confirmed habitat trees required to be cleared
- keep records on efforts in relation to the implementation of these fauna management conditions, and report to DWER as required.

INTRODUCTION

The Urban Bushland Council WA Inc. (appellant) appealed against the decision of the Department of Water and Environmental Regulation (DWER) to grant Clearing Permit CPS 8151/1 (clearing permit) to the Shire of Cuballing (applicant) to clear 0.42 hectares (ha) of native vegetation or 50 native trees within a 3.78 ha footprint (PINs 11527809, 11527818). The clearing is proposed along about 2 kilometres (km) of the Wandering-Narrogin Road reserve (application area), Contine, for road widening. The location and extent of the application area is indicated in Figure 1.

Figure 1: Location (red star) and extent (yellow cross-hatching) of application area



(Source: Whereis.com, October 2019; DWER CPS 8151/1)

On 26 July 2019 the applicant applied for a purpose permit to clear 0.42 ha of native vegetation or 50 native trees. DWER's decision report¹ states that the application was advertised for a 21-day public comment period and no submissions were received.

DWER decided to grant the clearing permit on 23 August 2019, subject to conditions to avoid, minimise and reduce the impacts of the proposed clearing, undertake weed and dieback control, provide an offset, keep records and report. It was against this decision that the appeal was lodged.

¹ Available at: <ftp://ftp.dwer.wa.gov.au/permit/8151/>

For context, it is noted that other sections of the road reserve have been the subject of previous clearing applications:

- CPS 7266/1 – permit granted 17 November 2016 for the clearing of 0.8 ha within a 3.89 ha footprint (PINs 11586730, 11586729, 11560580), subject to weed and dieback control
- CPS 7524/2 – permit granted 15 November 2017 for the clearing of 0.86 ha within a 4.58 ha footprint (PINs 11560580, 11560577, 11560575, 11560572, 11560570), subject to conditions to avoid, minimise and reduce impacts, weed and dieback control, fauna management (Carnaby's cockatoo (*Calyptorhynchus latirostris*; endangered) and red-tailed phascogale (*Phascogale calura*, conservation dependent)), offset, and record-keeping and reporting
- CPS 7869/1 – permit granted 12 October 2018 for the clearing of 0.924 ha within a 4.99 ha footprint (PINs 11560570, 11560568), subject to conditions to avoid, minimise and reduce impacts, weed and dieback control, fauna management (Carnaby's cockatoo, forest red-tailed black cockatoo (*Calyptorhynchus banksia* subsp. *naso*, vulnerable) and red-tailed phascogale), offset, and record-keeping and reporting.²

OVERVIEW OF APPEAL PROCESS

In accordance with section 106 of the *Environmental Protection Act 1986* (EP Act), a report was obtained from DWER on the appeal. The applicant was also given the opportunity to address the matters raised in the appeals. During the appeals investigation, the Office of the Appeals Convenor consulted with the appellant and the applicant.

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.

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

OUTCOME SOUGHT BY APPELLANT

The appellant is seeking for the Minister to overturn DWER's decision to grant the clearing permit.

STATUTORY CONTEXT

In considering a clearing permit application, the CEO of DWER is to have regard to the following (insofar as they are relevant):

- the clearing principles in Schedule 5 of the EP Act
- any applicable planning instruments and other matter.³

In addition, the extent to which conditions can be applied to prevent, control, abate or mitigate environmental harm or offset the loss of the cleared vegetation may also be relevant to whether a permit is granted.⁴

As the Minister is remaking the decision of the CEO on appeal, the Minister is also required to have regard to these considerations, as they are relevant to the application and within the context of the appeal.

² Information obtained from: <https://cps.dwer.wa.gov.au/main.html> and <ftp://ftp.dwer.wa.gov.au/permit/>

³ Section 51O(2) and (4) of the EP Act.

⁴ Section 51H(1) of the EP Act.

GROUNDS OF APPEAL

The appellant raised a number of objections to the decision to grant the permit, which relate to the following:

1. fauna habitat
2. threatened flora
3. threatened ecological communities
4. significant remnant in an extensively cleared area
5. appreciable land degradation
6. environmental values of conservation areas
7. underground and surface water quality
8. necessity of the proposed clearing; climate change
9. appropriateness of the offset.

These issues will be considered in turn.

GROUND 1: FAUNA HABITAT

By this ground of appeal, the appellant submitted that the proposed clearing ought to have been found 'at variance' to clearing principle (b). In support of this contention, the appellant stated that:

The 50 roadside trees proposed for clearing provide food for the endangered black cockatoos - Eucalyptus blossom and Eucalyptus and Allocasuarina seed. The roadside trees would provide cockatoos and other birds with stepping stones for resting and feeding as they traverse the landscape. With black cockatoos in serious decline and with so little tree and vegetation remaining in the Wheatbelt, the roadside trees, the subject of this proposal, are a very significant habitat for fauna.

Of the 110 trees identified in the EcoEdge tree survey of the applicable area, all except two are Wandoo and all, that is 110 trees, have a DBH of >30 cms. These trees will have hollows or the potential to develop hollows into the future and should all be retained. Such hollows are critical habitat for many species of fauna – birds, reptiles, insects. ...The precautionary principle should apply, particularly since alternative ways of making the road safer are available.⁵

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. From its assessment, which had regard for the findings of a habitat tree assessment⁶, a flora and vegetation survey,⁷ threatened fauna and flora databases, and observations from a site visit, DWER found that the proposed clearing was 'not likely to be at variance' to this clearing principle.

As set out in the decision report, DWER concluded that the vegetation proposed to be cleared is not likely to comprise significant habitat for fauna or include threatened flora. DWER's key assessment findings are summarised as follows:

- the application area contains suitable foraging habitat for Carnaby's cockatoos, however no evidence of foraging was found during the habitat tree assessment or the site inspection

⁵ UBC, Appeal letter 047/19, 10 September 2019, page 2.

⁶ EcoEdge (2019) *Habitat Tree Assessment of Proposed Clearing Areas (CPS 8151/1) – Wandering-Narrogin Road (~SLK 25.16 to 27.23) – Shire of Cuballing*. Unpublished report prepared for the Shire of Cuballing, dated April 2019.

⁷ EcoEdge (2019) *Reconnaissance and Targeted Flora and Vegetation Survey, Wandering-Narrogin Road, Cuballing (~25.16 to 27.23), Shire of Cuballing*. Unpublished report prepared for the Shire of Cuballing, dated May 2019

- the habitat tree assessment identified 109 trees with a diameter at breast height of greater than 300 millimetres within the application area, two of which appeared to contain hollows and one of which was assessed as possibly suitable for black cockatoos, although it did not show signs of historic or current use by this species and is located about 10 m from the road centreline and therefore unlikely to be cleared
- the application area contains suitable habitat for red-tailed phascogales in the form of *Allocasuarina* species and habitat trees containing suitable hollows, however no evidence of hollows being used was found during the fauna habitat assessment; presence/absence is difficult to determine due to the species leaving little secondary evidence around hollows
- noting the degraded/fragmented nature of the vegetation and its isolation from large expanses of better quality vegetation, these hollows are highly unlikely to be used by phascogales.

In response to the appeal, DWER advised:

... The Fauna survey was undertaken for all trees along the Application Area, including those that were not included in the Application. Only one tree was found to contain a possible large spout style hollow which has been assessed as possibly suitable for black cockatoos. At the time of the survey the hollow showed no signs of use by any fauna. Given the distance from the existing road centreline, it was advised that this habitat tree is likely to be retained, and therefore, the proposed clearing is not likely to directly impact on black cockatoo species.

The Fauna survey stated that camera traps were set up for a period of one month and that the only fauna identified were Australian ravens and a red fox. The Fauna survey stated that it is highly unlikely that the trees with hollows would be in use given the degraded/fragmented nature of the vegetation present in the immediate vicinity and their isolation well away from larger expanses of better quality native vegetation.

...

The Delegated Officer noted the Permit Holder's efforts to minimise impacts through selective clearing, and consequently, the Permit authorises only the clearing of up to 50 trees within the Application Area. As the Fauna Survey identified 109 potential habitat trees (diameter at breast height radius of 30 centimetres or greater), at least 59 potential habitat trees are expected to be retained. ...⁸

The *Guide to assessment of applications to clear native vegetation*⁹ (Guide to Assessment) published by DWER states that the aim of clearing principle (b) is:

... to maintain indigenous fauna species and assemblages of species in their local natural habitat. This principle protects habitat for threatened fauna and *significant habitat* for *meta-populations* of fauna.

...

Under this principle, a clearing proposal where only widespread fauna species are present, which are supported by the surrounding extensive, intact vegetation would not be at variance with this principle. An example could be common, widespread species of the Pilbara within extensive and intact Pilbara habitat.¹⁰

From the above, the Guide to Assessment appears to distinguish between the relative importance of habitat for threatened fauna compared to other fauna. This is reflected in the examples of where proposed clearing is likely to be at variance to clearing principle (b), including:

- habitat for specially protected or threatened fauna, or meta-populations of fauna
- native vegetation that is necessary for the maintenance of habitat of priority, migratory, specially protected or threatened fauna, or meta-populations of fauna.

⁸ DWER, response to Appeal 047/19, 28 October 2019, page 2.

⁹ Department of Environment Regulation (2014) *A guide to the assessment of applications to clear native vegetation – Under Part V Division 2 of the Environmental Protection Act 1986*. December 2014. Government of Western Australia.

¹⁰ Guide to Assessment, pages 10-11.

As noted above, DWER found that the application area comprises suitable foraging habitat for black cockatoos. Given that the Guide to Assessment suggests that clearing of habitat for specially protected or threatened fauna would likely be at variance to clearing principle (b), additional advice was sought from DWER as to the basis for its conclusion against this clearing principle.

In response, DWER advised:

... [F]urther internal expert advice has been obtained ... [which] concluded that the application areas are unlikely to provide significant habitat values for Carnaby's cockatoo, considering that:

- no suitable hollows were identified within the clearing area;
- the vegetation may provide some foraging habitat and facilitate movement ...; and
- the distance of nearest records of Carnaby's cockatoo is around 12 kilometres from the application areas, which is also the likely furthest extent of the daily foraging range for breeding cockatoos in the Wheatbelt.¹¹

Notwithstanding this, DWER acknowledged that the Guide to Assessment supports a conclusion that the proposed clearing is 'at variance' with clearing principle (b).¹²

Advice was sought from Ron Johnstone at the Western Australian Museum as to the value of the Cuballing area for black cockatoo species. In response, Mr Johnstone advised that:

There are few records of Carnaby's cockatoo for the Cuballing area but breeding is recorded nearby at Dryandra and to the east at Wickepin. Some patches of Wandoo in that area have good hollows but there is little foraging habitat. There are also numerous records from around Narrogin of birds in Wandoo woodland. Forest Red-tails also occasionally wander to Narrogin.¹³

Through a review of available datasets from 2000, the Office of the Appeals Convenor confirmed that there are multiple records of Carnaby's cockatoo within the broader Cuballing area. Birdlife Australia's 'Great Cocky Count' identifies a number of roost sites in the Narrogin area, with 62 white-tailed black cockatoos identified at these sites in the last count in 2018, and 77 identified in 2017.¹⁴

In relation to tree hollows, the habitat tree assessment identified that 102 of the 109 habitat trees are about 8-12 m from the road centreline and 'are considered the least likely trees to require removal', and the remaining seven trees are about 7 m from the road centreline and 'may or may not require removal ... One of these closer trees contains some possible small/medium sized hollows'.¹⁵

The application area is understood to cover the whole road reserve, meaning that the 50 trees approved to be cleared could be anywhere within that footprint. Advice was sought from the applicant as to whether the 50 trees were able to be specifically identified, or otherwise whether the area within which clearing may occur could be limited to within 8 metres (m) of the road centreline. The applicant responded that limiting clearing to within 8 m each side of the road centreline was acceptable.¹⁶

The habitat tree assessment included the following recommendations:

... the trees actually within the works footprint are specifically marked ... [and if] any of these trees ... [contain] hollows, consideration should be given to employing a zoologist/suitably qualified fauna spotted during clearing works to supervise their felling.

The task of the zoologist will be to ensure works are carried out in a manner that minimises the risk of death or injuring [sic] to any fauna that may be occupying hollows and in the unlikely event fauna are encountered, to facilitate their relocation into nearby, retained bushland, unharmed. It is also recommended that clearing, if possible, be undertaken outside of the documented breeding season of phascogales (~June to October).¹⁷

¹¹ DWER, Memorandum to the Minister for Environment, 2 January 2020, page 1.

¹² DWER, Memorandum to the Minister for Environment, 2 January 2020, page 2.

¹³ Johnstone, R, email to Office of the Appeals Convenor, 3 December 2019.

¹⁴ A. Peck, G. Barrett and M. Williams (Birdlife Australia), The 2019 Great Cocky Count Final Report, September 2019, page 62.

¹⁵ Habitat tree assessment, summary, page i.

¹⁶ Shire of Cuballing, email to Office of the Appeals Convenor, 12 February 2020.

¹⁷ Habitat tree assessment, summary, page ii

During a meeting, the applicant acknowledged this recommendation, and advised that any trees proposed to be cleared that contain hollows would be inspected for use prior to and during clearing.

From the above, the following is noted:

- records held by DWER (confirmed by the WA Museum) demonstrate that the application area is within the geographic range of Carnaby's cockatoo
- the vegetation within the application area contains suitable foraging habitat for Carnaby's cockatoo, however the habitat tree assessment and the site visit conducted by DWER did not identify evidence of foraging by black cockatoos within the application area
- DWER's Guide to Assessment supports a finding that the clearing of foraging habitat for threatened species (such as Carnaby's cockatoo) is at variance to clearing principle (b)
- some of the habitat trees within the application area contain hollows, one of which is of suitable size for use by black cockatoos, and others which may be used by other fauna including red-tailed phascogales
- the habitat tree assessment inferred that 102 of the 109 habitat trees within the application area are more than 8 m from the road centreline, and are therefore not likely to be cleared (though may be cleared as the authorised clearing footprint encompasses the width of the road reserve)
- the applicant does not object to the clearing permit being amended to limit clearing to a defined distance (8 m) from the road centreline, and to require pre-clearance fauna surveys of trees containing hollows.

Based on this, it is considered that while no evidence of black cockatoos was identified through the survey and inspection, it is open to find that the proposed clearing is at variance to clearing principle (b). This is on the basis of that Carnaby's cockatoo is a threatened species; the vegetation contains foraging habitat for the species and is within 12 km of recorded breeding habitat; and the application area is otherwise within the known range of the species. It is taken, therefore, that the proposed clearing meets the criteria for being part of a habitat significant for fauna in WA. However, noting the absence of confirmed evidence of recent activity by the identified threatened fauna species within the application area, it is considered that the proposed clearing is unlikely to result in a significant residual impact that would require offsetting.

A finding that the proposed clearing is at variance to a clearing principle does not prevent the proposed clearing being approved. The scale of the impact, purpose of the proposed clearing, other clearing principles, and planning context are all relevant to the final decision, and are considered further below.

GROUND 2: THREATENED FLORA

By this ground of appeal, the appellant submitted that the proposed clearing ought to have been found 'at variance' to clearing principle (c). In support of this contention, the appellant stated that:

Although wandoo is not listed as threatened, very little remains and it has suffered through Wandoo crown decline and 'since the 1980s, the dieback of Wandoo has occurred over a wider area than ever before, including much of the western Wheatbelt. They are suffering stress, probably as a result of a drying climate.' (Robert Powell, Leaf and Branch). ...¹⁸

Consideration

Clearing principle (c) provides that native vegetation should not be cleared if it includes, or is necessary for the continued existence of, threatened flora.¹⁹ From its assessment, DWER found that the proposed clearing was 'not likely to be at variance' to this clearing principle.

¹⁸ UBC, Appeal letter 047/19, 10 September 2019, page 2.

¹⁹ 'Threatened flora' is defined as flora that has been listed as a threatened species under section 19 of the *Biodiversity Conservation Act 2016*; under section 26(2), a threatened species under may also include a rediscovered species.

The decision report sets out that DWER concluded that the vegetation proposed to be cleared is not likely to include threatened flora. DWER's key assessment findings are summarised as follows:

- the nearest record of threatened flora is 7.7 km north-east of the application area
- the vegetation within the application area (about 1.85 ha) is mainly wandoo and *Allocasuarina* spp. woodland with little indigenous understorey, and its condition²⁰ is considered to range from good (about 0.02 ha) to degraded (about 0.16 ha) to completely degraded (about 1.67 ha), with the balance being cleared areas
- the flora and vegetation survey identified 25 indigenous flora taxa within the application area, none of which are threatened, priority or of other conservation significance.

In response to the appeal, DWER advised:

... *Eucalyptus wandoo* is one of the species of the Commonwealth-listed Threatened Ecological Community (TEC) 'Eucalypt Woodlands of the Western Australian Wheatbelt' (the Wheatbelt Woodland) which is also the State listed Priority Ecological Community (PEC). While the Wheatbelt Woodland community is a TEC under Commonwealth legislation, *Eucalyptus wandoo* is not listed as a threatened species and so was not addressed under principle (c). It is noted that *Eucalyptus wandoo* is also not listed as a priority species, indicating that the species is not considered to be under threat of extinction.²¹

Noting that wandoo is not listed as threatened under the *Biodiversity Conservation Act*, it is not within the scope of clearing principle (c). As a result, it is considered DWER's assessment of, and conclusions in respect to, this clearing principle were justified.

The appellant's concerns are noted, however, and are considered in the context of clearing principles (b) above in relation to hollows, (d) below in relation to the Commonwealth-listed 'Eucalypt Woodlands of the Western Australian Wheatbelt' threatened ecological community²² (Wheatbelt Woodlands TEC), and (e) below in relation to significance as a remnant.

GROUND 3: THREATENED ECOLOGICAL COMMUNITIES

By this ground of appeal, the appellant submitted that the proposed clearing should to have been found 'seriously at variance' to clearing principle (d). In support of this contention, the appellant stated that:

Although the area of vegetation that meets criteria for Wheatbelt Woodlands TEC (Unit B1) covers 0.16ha of the application area, this area is a CE TEC (Commonwealth) and a PEC (State), *and because so little remains, it is therefore critically important that it all be retained and protected*. As the Clearing Permit points out,... the Avon Wheatbelt has only 2.42% remaining in DBCA managed lands compared with the Pre-European extent.... This is so far below the preferred 30% and 10% extents, especially in a global biodiversity hotspot.

...

50 trees (York Gum, Wandoo, Salmon Gum, *Allocasuarina* spp, *Banksia sessilis*) are proposed to be cleared. These trees 'are considered significant as a remnant of native vegetation in an area that has been extensively cleared'.

Notably, 59.8% of the application area was determined by the consultant to be cleared land. Therefore the opportunity is available to widen the road (if really necessary) in the cleared 59.8% of land. And this provides the opportunity *to protect all the roadside vegetation and trees*. Alternatively, other treatments such as speed restrictions and metal barriers that will increase road safety could be used to avoid clearing. The *principle of avoidance* should be employed in this already greatly over-cleared landscape.²³

²⁰ As described in: Keighery, B.J. 1994, *Bushland plant survey – A guide to plant community survey for the community*. Wildflower Society of WA (Inc.), Nedlands, Western Australia.

²¹ DWER, response to Appeal 047/19, 28 October 2019, page 3.

²² Listed as Critically Endangered under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, and as Priority 3 by the WA Department of Biodiversity, Conservation and Attractions

²³ UBC, Appeal letter 047/19, 10 September 2019, page 3.

Consideration

Clearing principle (d) 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 threatened ecological community (TEC).²⁴ From its assessment, DWER found that the proposed clearing was 'at variance' to this clearing principle.

As described in the decision report, DWER concluded that the vegetation proposed to be cleared comprises the Wheatbelt Woodlands TEC.²⁵ DWER's key assessment findings are summarised as follows:

- the flora and vegetation survey mapped Vegetation Unit B (dominated by wandoo) across about 0.16 ha of the application area, which is contiguous with adjacent vegetation and meets the size and condition criteria to be considered part of the Wheatbelt Woodlands TEC.

In response to the appeal, DWER advised that:

... The Flora survey and the Department's site inspection identified the vegetation type within a portion of the Application Area to be representative of the Wheatbelt Woodland TEC.

The Delegated Officer determined that the proposed clearing would result in the loss of 0.16 ha of the Wheatbelt Woodland TEC. ...²⁶

As to whether the proposed clearing should be found to be 'seriously at variance' to this clearing principle, the application area is linear in nature with substantial edge effects, the vegetation within it is in 'degraded' to 'completely degraded' condition, and the extent of direct impact to the Wheatbelt Woodlands TEC is 0.16 ha of this. It is considered that the proposed clearing is therefore not likely to be 'seriously' at variance, and DWER's assessment findings in this regard are supported. DWER considered the proposed clearing of 0.16 ha of the Wheatbelt Woodlands TEC to be a significant residual impact that could be counterbalanced by an offset, which is considered separately below.

GROUND 4: SIGNIFICANT REMNANT IN AN EXTENSIVELY CLEARED AREA

By this ground of appeal, the appellant submitted that the proposed clearing ought to have been found 'seriously at variance' to clearing principle (e). In support of this contention, the appellant stated that:

The UBC submits that the proposed clearing is extremely seriously at variance to this Principle, and on this ground alone, our appeal should be upheld, and the Clearing Permit should be revoked by the Minister.

The Clearing Permit states under Principle (e): *'Noting that the application area contains 0.16 hectares of the Wheatbelt Woodlands TEC, the extensively cleared local area and vegetation complexes, and the cumulative effect of clearing within Wandering-Narrogin Road Reserve, the application area is considered a significant remnant.'* *'The vegetation within the application area is considered a significant remnant in an area that has been extensively cleared. The proposed clearing is at variance to this Principle.'*

This advice is very clear and strong. What immediately follows, viz *'An offset condition will counter balance the residual impacts from the proposed clearing'* does not follow, is incorrect and is indeed nonsense. One is left with the realisation that this is an exercise in abuse of the scientific facts, reality, and environmental principles for an outcome that purports to be *for public benefit including improved road safety.* ...²⁷

²⁴ A TEC is defined as an ecological community listed by the Minister as 'critically endangered', 'endangered' or 'vulnerable'. The EP Act states that a TEC has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1).

²⁵ Commonwealth-listed TECs, such as the Wheatbelt Woodlands TEC, may be considered under clearing principle (a) which provides that native vegetation should not be cleared if it comprises a high level of biodiversity.

²⁶ DWER, response to Appeal 047/19, 28 October 2019, page 4.

²⁷ UBC, Appeal letter 047/19, 10 September 2019, pages 3-4.

Consideration

Clearing principle (e) provides that native vegetation should not be cleared if it is significant as a remnant of native vegetation in an area that has been extensively cleared. From its assessment, DWER found that the proposed clearing was 'at variance' to this clearing principle.

As set out in the decision report, DWER concluded that the vegetation proposed to be cleared comprises a significant remnant in an area that has been extensively cleared. DWER's key assessment findings are summarised as follows:

- the Avon Wheatbelt IBRA²⁸ bioregion has approximately 18.5 per cent of its pre-European vegetation extent remaining, and the local area retains about 15 per cent native vegetation cover
- the vegetation to be cleared is mapped as Beard vegetation association 1023, which has approximately 10.8 per cent of its pre-European extent remaining within the bioregion
- the application area contains 0.16 ha of the Wheatbelt Woodlands TEC
- the road reserve is subject to cumulative impacts of clearing under other permits.

In response to the appeal, DWER advised that:

[It] agrees with the Appellant that the vegetation within the Application Area has environmental value, in spite of its degraded condition. Through the assessment, the Delegated Officer noted the Permit Holder's efforts to minimise clearing ... [and] that the proposed clearing is required to support road widening to improve the safety of the road. ...²⁹

The Guide to Assessment provides the following examples of impacts that are likely to be at variance to clearing principle (e):

- clearing of native vegetation which contains habitat for a threatened fauna species and is below the national target and objective for biodiversity conservation (i.e. 30 per cent of the pre-European extent)³⁰
- 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.

Noting the finding in Ground 1 above that the proposed clearing is at variance to clearing principle (b) on the basis that it forms part of a habitat that is significant for Carnaby's cockatoo, and noting that the indicators cited by DWER confirm that vegetation levels are below the 30 per cent identified in the relevant national objectives, the proposed clearing is at variance to clearing principle (e).

As to whether the proposed clearing should be found to be 'seriously at variance', the vegetation within the application area is in 'degraded' to 'completely degraded' condition³¹ and is linear in nature with significant edge effects. It is not, therefore, considered of such a character to qualify as 'seriously' at variance. DWER's assessment, and its findings, are therefore supported. DWER considered the proposed clearing of a significant remnant in an extensively cleared area to be a significant residual impact that could be offset, which is considered separately below.

²⁸ Interim Biogeographic Regionalisation for Australia

²⁹ DWER, response to Appeal 047/19, 28 October 2019, page 4.

³⁰ As described in: Environmental Protection Authority (2008) *Environmental Guidance for Planning and Development*. Guidance Statement No. 33, dated May 2008. Government of Western Australia; and Commonwealth of Australia (2001) *National Objectives and Targets for Biodiversity Conservation 2001-2005*. Commonwealth of Australia, Canberra

³¹ DWER, response to Appeal 047/19, 28 October 2019, page 3.

GROUND 5: APPRECIABLE LAND DEGRADATION

By this ground of appeal, the appellant submitted that the proposed clearing ought to have been found 'at variance' to clearing principle (g). In support of this contention, the appellant stated that:

... [With reference to Table 2 in the decision report] the Noombling Subsystem (Dryandra) (87% of the application area) and the Popanyinning Subsystem (Pumphreys) (13% of the application area) 10-30% of the map unit, *'has a moderate to high salinity risk or is presently saline'*.

The assessor states that *'the mapped soil types do not pose high land degradation risk'* – despite three of the threats for the Noombling Subsystem (Dryandra) – (wind erosion, salinity and Phosphorus export risk) having from 10-30% rate of high to extreme risk. Within the Popanyinning Subsystem (Pumphreys), the severe risk categories all have risks of from 10-30%. Surely it would be wise to implement the precautionary principle and avoid the risks. Groundwater salinity in the application area has been mapped as saline at between 7,000-14,000 milligrams per litre total dissolved solids.

Already the groundwater is saline and there are other serious risks as stated. More clearing will only help raise the saline water table and this is unacceptable ...³²

Consideration

Clearing principle (g) provides that native vegetation should not be cleared if the clearing of the vegetation is likely to cause appreciable land degradation. From its assessment, DWER found that the proposed clearing was 'not likely to be at variance' to this clearing principle.

The decision report sets out that DWER concluded that the proposed clearing is not likely to cause appreciable land degradation. DWER's key assessment findings are summarised as follows:

- the proposed clearing is linear in shape and adjacent to both sides of an existing road, and extends for about 2 km.

In response to the appeal, DWER advised that:

[It] had regard to the Department of Primary Industries and Regional Development's (DPIRD) mapped soil subsystems to identify the presence of the Noombling Subsystem (Dryandra) (52.8 per cent), the Norrine Subsystem (Dryandra) (32.6 per cent) and the Biberkine Subsystem (Dryandra) (14.6 per cent) in the Application Area. ...

... [It] considered the DPIRD risk potentials for the identified mapped soil subsystems. These risk potentials depend on the percentage of the map unit having a 'moderate to extreme' risk of producing the particular type of degradation (erosion, salinity, acidification, etc.), indicated in Table 2 of the Decision Report.

The classification system includes six land degradation risk categories ranging from lowest risk soil subsystems with zero to three per cent of the map unit as land degradation-prone, to the highest risk soil subsystems with more than 70 per cent of the map unit having potential for land degradation. The risk category for a rating of 10 to 30 per cent relates to a 'medium 1' potential for land degradation while 30 to 50 per cent, represents a 'medium 2' potential for land degradation. As shown in Table 2 of the Department's Decision Report, the mapped soil types within the application area rank at the lower three categories of this classification system. ...

Noting the above, the already predominantly degraded nature of the Application Area and the small scale of proposed clearing, the Delegated Officer determined that the clearing is not likely to cause appreciable land degradation.³³

The flora survey considered a 4.6 ha footprint along a 2.1 km stretch of the road reserve, which wholly overlaps (and extends beyond) the application area. The flora survey recorded about 1.85 ha of native vegetation within this footprint (of which 1.67 ha or 90 per cent is in completely degraded condition), with the balance comprising the existing road formation.

³² UBC, Appeal letter 047/19, 10 September 2019, page 4.

³³ DWER, response to Appeal 047/19, 28 October 2019, pages 5-6.

It is estimated that the proposed clearing represents about 27 per cent³⁴ of the vegetation recorded within the footprint.

From the above, noting the extent of the proposed clearing and that its impacts are unlikely to be more significant than already caused by the existing road formation, it is considered that DWER's conclusion that the proposed clearing of 0.42 ha or 50 trees (being deep-rooted perennial vegetation) is not likely to cause appreciable land degradation, including in the form of increased secondary salinity, was supported by the available information.

GROUND 6: ENVIRONMENTAL VALUES OF CONSERVATION AREAS

By this ground of appeal, the appellant submitted that the proposed clearing ought to have been found 'at variance' to clearing principle (h). In support of this contention, the appellant stated that:

The assessor states that the proposed clearing may be at variance to this Principle. The UBC agrees that, as the application area is located adjacent to Fourteen Mile Brook Nature Reserve, the proposed clearing will very likely adversely impact on the environmental values of that area (edge effects, weeds and dieback.).³⁵

Consideration

Clearing principle (h) provides that native vegetation should not be cleared if the clearing of the vegetation is likely to have an impact on the environmental values of any adjacent or nearby conservation area. From its assessment, DWER found that the proposed clearing 'may be at variance' to this clearing principle.

As described in the decision report, DWER concluded that the proposed clearing may have an impact on the environmental values of the adjacent Fourteen Mile Brook Nature Reserve (Nature Reserve) through increased edge effects and introduction and spread of weeds and dieback. DWER's key assessment findings are summarised as follows:

- the proposed clearing may increase edge effects for, and introduce/spread weeds and dieback in, the adjacent Nature Reserve which contains similar vegetation types in better condition as the application area.

In response to the appeal, DWER advised that:

... [It] identified that the Application Area is adjacent to the Fourteen Mile Brook Nature Reserve (R21830), and concluded that the proposed clearing may be at variance to clearing principle (h).

Following assessment of the Application, the Department determined that potential impacts to adjacent native vegetation could be managed through weed and dieback management, and Condition 7 was placed on the permit to manage these risks.³⁶

Condition 7 on the clearing permit states:

When undertaking any clearing authorised under this Permit, the Permit Holder must take the following steps to minimise the risk of the introduction and spread of *weeds* and *dieback*:

- (a) clean earth-moving machinery of soil and vegetation prior to entering and leaving the area to be cleared;
- (b) ensure that no known *dieback* or *weed*-affected soil, *mulch*, *fill* or other material is brought into the area to be cleared; and
- (c) restrict the movement of machines and other vehicles to the limits of the areas to be cleared.

The Nature Reserve is adjacent to about 1.2 km of the southern side of the existing road formation, being about 30 per cent of the application area. The decision report states that the proposed clearing is to facilitate widening of the existing road formation by 0.5 m.

³⁴ Calculated as 10 m x 10 m canopy area per tree

³⁵ UBC, Appeal letter 047/19, 10 September 2019, page 4.

³⁶ DWER, response to Appeal 047/19, 28 October 2019, page 6.

It is understood that some vegetation will remain within the road reserve between the edge of the proposed clearing and the Nature Reserve.

From the above, it is considered that DWER's conclusion that the proposed clearing may impact on the environmental values of the adjacent Nature Reserve through the introduction and spread of weeds and dieback, and that these impacts can be managed, is supported by the available information.

GROUND 7: UNDERGROUND AND SURFACE WATER QUALITY

By this ground of appeal, the appellant submitted that the proposed clearing ought to have been found 'at variance' to clearing principle (i). In support of this contention, the appellant stated that:

As quoted above under Principle (g): 'Groundwater salinity in the application area has been mapped as saline at between 7,000 – 14,000 milligrams per litre total dissolved solids'. ... [T]his risks the near surface groundwater quality. ...³⁷

The appellant also raised clearing principle (f) in its appeal, but noted that it supports the assessment carried out by DWER. It is considered that the appellant has no objection to that clearing principle.

Consideration

Clearing principle (i) provides that native vegetation should not be cleared if the clearing of the vegetation is likely to cause deterioration in the quality of surface or underground water. From its assessment, DWER found that the proposed clearing was 'not likely to be at variance' to this clearing principle.

As set out in the decision report, DWER concluded that the proposed clearing is not likely to cause deterioration in the quality of surface or underground water. DWER's key assessment findings are summarised as follows:

- a minor, non-perennial watercourse traverses the central portion of the application area and the vegetation within the application area is growing in association with it (although no distinct riparian vegetation was seen), however no significant impacts are expected due to the presence of culverts, the modified nature of the watercourse and the extent of the proposed clearing
- the groundwater beneath the application area has a salinity of 7,000 to 14,000 milligrams per litre total dissolved solids,³⁸ which is considered to be saline and highly saline.

In response to the appeal, DWER advised that:

... [It] had regard to the GIS hydrography datasets, the findings of the site inspection, and to the DPIRD risk potentials for mapped soil subsystems.

... GIS hydrography datasets indicate that a minor non-perennial watercourse traverses the Application Area. Minimal native vegetation growing along the creek line was observed during the Department's site inspection. Notwithstanding, the Department considered that the proposed clearing may impact on vegetation growing in association with the mapped watercourse, and concluded that the proposed clearing is at variance to clearing principle (f).

[It] noted that the Application is for the proposed clearing to widen the constructed road by 0.5 metres to the top of the backslope along both sides of the Wandering-Narrogin Road, and therefore, considered that any impacts arising from the proposed clearing are not likely to be more significant than those already caused by the presence of the existing road.

... [It] considered it unlikely that the limited clearing proposed would result in deterioration of surface or groundwater.³⁹

³⁷ UBC, Appeal letter 047/19, 10 September 2019, pages 4-5.

³⁸ By way of context, this is about 20 to 40 per cent of the salinity of seawater

³⁹ DWER, response to Appeal 047/19, 28 October 2019, pages 6-7.

Noting the above, it is considered that the proposed clearing is unlikely to result in significant incremental impacts on groundwater levels or changes in water quality, and is therefore not likely to be at variance to the clearing principle. Furthermore, highly saline groundwater in the Wheatbelt largely reflects the geological history of the landscape, rather than being a result of clearing.⁴⁰

GROUND 8: NECESSITY OF THE PROPOSED CLEARING; CLIMATE CHANGE

By this ground of appeal, the appellant submitted that:

... The precautionary principle should apply, particularly since alternative ways of making the road safer are available. ...

... The UBC strongly insists that improved road safety can be achieved through means other than the proposed roadside clearing. ...

... Our climate is drying and climate change is affecting the south west and wheatbelt of WA and the UBC submits that all native vegetation should be retained, protected and restored ...⁴¹

Consideration

By section 51O(4) of the EP Act, the Chief Executive Officer (CEO) of DWER (and Minister on appeal) is to have regard to any planning instrument or other matter that the CEO considers relevant. A 'planning instrument' is defined to include a planning scheme, strategy or plan.

Planning instruments

As the proposed clearing the subject of this appeal relates to a road, and the Shire of Cuballing planning scheme is largely directed at 'zoned land' (i.e. not land reserved for public purposes), it is not considered to contain any content that is relevant to the proposed clearing. The appellant did not raise any aspect of the proposed clearing relevant to planning instruments in any event.

Other matters

The appellant raised issues relating to road safety/public benefit and climate change, which are considered to be within the scope of section 51O(4) and are considered below.

Road safety; public benefit

In assessing the proposed clearing, DWER noted 'that upgrades to the road will provide a public benefit including improved road safety.'⁴² The reference to a 'public benefit' is taken to be a reflection of the Guide to Assessment, which states:

Native vegetation clearing should only be considered after all other reasonable attempts to mitigate adverse impacts have been exhausted ...

In determining the necessity of the clearing higher priority will be given to clearing for public use than private benefit or commercial gain.⁴³

In response to the appeal, DWER advised that:

In determining the Application, the purpose of the clearing is a relevant matter. The Application is part of a project to widen the Wandering-Narrogin Road to provide contemporary road safety and asset management.

The Appellant's views about alternative planning strategies to avoid the need for clearing are noted.

⁴⁰ Hatton, T. Ruprecht, J. and George, R.J. (2002) *Preclearing hydrology of the Western Australia wheatbelt: Target for the future*. In: Plant and Soil, December 2003, page 341.

⁴¹ UBC, Appeal letter 047/19, 10 September 2019, pages 2, 4 and 5.

⁴² DWER, decision report for Clearing Permit CPS 8151/1, 23 August 2019, page 9.

⁴³ Guide to Assessment, page 40.

... The Department's assessment of the clearing permit application is focussed on the potential impacts of clearing native vegetation, whereas the Permit Holder is responsible for planning, providing specifications, building, and maintaining the road network within its jurisdiction. ...

... the Delegated Officer had regard to the efforts made by the Permit Holder to minimise the extent and impacts of clearing. As outlined in section 5 of the ... Decision Report, the Permit Holder had considered alternative road alignments but concluded that these would result in more clearing than proposed through the widening process.⁴⁴

For its part, the applicant advised that:

- the State Government's *Roads 2030 – Regional Strategies for Significant Local Government Roads – Wheatbelt South*,⁴⁵ which provides a strategic approach to allocation of funding across the road network in the Great Southern, and identifies that the Wandering-Narrogin Road is a RAV⁴⁶ Network 3 and 4 road that should be upgraded (sealed) to a 'Type 5' standard
- the Wheatbelt South Regional Road Group manual,⁴⁷ which sets out treatment details for upgrading roads of regional significance to meet adopted standards
- a report prepared by R Munns Engineering Consulting Services,⁴⁸ which identifies that:
 - a road to 'Type 5' standard has a minimum 10 m carriageway and 7 m seal width to safely accommodate heavy vehicles (Wandering-Narrogin Road currently has a 8.6 m carriageway and six m seal width)
 - the minimum desired clearing width for a 10 m wide carriageway is 19 m to provide sufficient table drainage and allow access for annual maintenance by a grader, however to reduce the clearing impact the applicant reduced this to 16 m (Wandering-Narrogin Road currently has a 14 m maintenance zone)
 - alternative measures (to clearing) were considered, including realigning Wandering-Narrogin Road onto nearby farmland, installing barriers around trees, and implementing speed restrictions, however were found to be either unaffordable, impractical, unviable or legally not possible.⁴⁹

It follows from the above that safety was taken into account as a justification for permitting the proposed clearing, and this is considered to be appropriate and consistent with the intent of section 51O(4) of the EP Act and the Guide to Assessment.

Contribution to climate change

It is acknowledged that clearing native vegetation contributes to climate change more broadly, however it is considered that the proposed clearing of 0.42 ha or 50 trees is unlikely to have any material implications for climate change.

GROUND 9: APPROPRIATENESS OF THE OFFSET; MITIGATION CONDITIONS

By this ground of appeal, the appellant submitted that the impacts to the Wheatbelt Woodlands TEC and a significant remnant in an extensively cleared area cannot be offset, and questioned the justification for this. During a meeting the appellant raised a number of broader issues relating to offsets, including that the offsets hierarchy should not be applied to threatened species and communities and instead impacts should be avoided, and that land acquisition offsets do not result in a 'no net loss' outcome.

⁴⁴ DWER, response to Appeal 047/19, 28 October 2019, page 7.

⁴⁵ Main Roads WA and Western Australian Local Government Association (2013) *Roads 2030 – Regional Strategies for Significant Local Government Roads – Wheatbelt South*. Government of Western Australia.

⁴⁶ Restricted access vehicle

⁴⁷ Wheatbelt South Regional Road Group (2015) *Local road project funding multi criteria assessment model – user manual*. Main Roads WA Wheatbelt South Region, May 2015.

⁴⁸ R Munns Engineering Consulting Services (2019) *A Report on Clearing Impact Mitigation and/or Avoidance by the Shire of Cuballing*. Unpublished report prepared for the Shire of Cuballing, November 2019.

⁴⁹ Shire of Cuballing, additional information provided in response to appeal, 18 November 2019.

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'. While 'offsetting' is not defined in the EP Act, it is taken to mean undertaking an activity or activities that counterbalance the environmental impact of the primary activity (being the clearing of native vegetation).

While the appellant's focus is on the appropriateness and adequacy of the offset, this section also examines the extent to which conditions can be applied to prevent, control, abate or mitigate environmental harm resulting from the proposed clearing.

Offset

The WA Environmental Offsets Policy and Guidelines⁵⁰ provide that offsets may be applied to counterbalance significant residual impacts that remain after avoidance and mitigation measures have been undertaken, and state that applicability will be determined on a case-by-case basis. The Guidelines includes a 'residual impact significance model' which identifies 'unacceptable impacts' as being those 'which are environmentally unacceptable or where no offset can be applied to reduce the impact'. While the Guidelines do not provide any specific guidance as to what types of impacts would be unacceptable, examples of the types of impacts that require offsetting are provided.

DWER's published guidance on the application of offsets⁵¹ states:

Offsets are required when a clearing application is determined by the Department of Environment Regulation (DER) or Department of Mines and Petroleum (DMP) to be at variance with one or more of the biodiversity related clearing principles (principles a-f, h) and a significant residual impact remains following application of the mitigation hierarchy.

From the above, offsets can be required as a condition of a clearing permit, and the circumstances in which an offset can be contemplated is broad and determined on a case-by-case basis.

In this case, DWER concluded that the loss of 0.16 ha of the Wheatbelt Woodlands TEC and the loss of 0.42 ha or 50 trees that are considered to be significant as a remnant of native vegetation in an extensively cleared area are significant residual impacts. DWER considered that these significant residual impacts could be counterbalanced through the conservation of 1.105 hectares of Crown Reserve 2556 as an offset.⁵² DWER advised that while the offset refers to the conservation of a portion of Crown Reserve 2556, the applicant will arrange for the purpose of the entire reserve to be changed, as portions have been used to satisfy the offset requirements of other clearing permits.⁵³

DWER advised that it had regard for the applicant's endeavours to minimise clearing, and the public benefit of road safety, in assessing the clearing application and deciding to grant the clearing permit subject to an offset.⁵⁴ In this context, it is considered that despite the proposed clearing posing significant residual impacts 0.16 ha of the Wheatbelt Woodlands TEC and to a significant remnant in an extensively cleared area, and the findings in this report that the proposed clearing is at variance to clearing principle (b), there is justification to grant the clearing permit based on the purpose of the proposed clearing.

⁵⁰ 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>

⁵¹ Department of Environment Regulation (2014) *Clearing of native vegetation – Offsets procedure – under the Environmental Protection Act 1986*. August 2014. Government of Western Australia. Available at: <https://www.der.wa.gov.au/our-work/clearing-permits/48-guidelines-clearing-permits>

⁵² As set out in: DWER, decision report for Clearing Permit CPS 8151/1, 23 August 2019, page 1.

⁵³ DWER, response to Appeal 047/19, 28 October 2019, page 5.

⁵⁴ DWER, response to Appeal 047/19, 28 October 2019, page 2.

The WA Environmental Offsets 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 project area. The Guidelines also state that environmental offsets must relate to the environmental value that is being impacted and that in some instances it may be necessary to offset a value with a similar but not identical value.

The decision report sets out that DWER assessed the suitability of the proposed offset using the Commonwealth *Offsets Assessment Guide*,⁵⁵ and determined that the proposed offset is adequate to counterbalance the significant residual impacts. The decision report also states that Crown Reserve 2556 is located about 30 km north-east of the application area, and is dominated by wandoo and *Allocasuarina* spp.

Based on the above, it is considered appropriate that the significant residual impacts are required to be offset, consistent with section 51H(1) of the EP Act and relevant policy, and that DWER's findings on the adequacy of the offset in this case are appropriate.

Conditions to mitigate environmental harm

In Ground 1 of this report, it was found that the proposed clearing is at variance to clearing principle (b), as the application area is part of a habitat significant for Carnaby's cockatoo. The application area may also be part of habitat of other species of fauna, including the red-tailed phascogale.

Consistent with the above findings, and noting commitments given by the applicant, it is considered that additional conditions could be applied to the clearing permit to better define the area within which the proposed clearing of 0.42 ha or 50 trees may occur, and to provide for the inspection of any identified tree hollows before clearing to ensure threatened fauna is not present.

These additional conditions provide greater certainty that the majority of hollow-bearing trees will not be cleared, and that threatened fauna, if present, will be afforded additional protection if clearing is approved.

CONCLUSION AND RECOMMENDATION

In summary, the applicant proposes to clear 0.42 ha of native vegetation or 50 native trees within a 3.78 ha footprint along a 2 km stretch of road. From its assessment DWER found that the proposed clearing will impact on the Wheatbelt Woodlands TEC, a significant remnant in an extensively cleared area, and vegetation growing in association with a watercourse, and may impact on the environmental values of the adjacent Nature Reserve. DWER concluded that the impacts can be minimised and managed, and the significant residual impacts could be offset.

On the basis of the information provided in respect to this appeal, I conclude that while DWER's assessment against the clearing principles was generally appropriate, the proposed clearing is found to be at variance to clearing principle (b). This is on the basis that the vegetation contains foraging habitat for Carnaby's cockatoo (a threatened species), and the application area is otherwise within the known range of the species.

The purpose of the proposed clearing is for a public benefit, namely improving road safety through widening of the sealed surface. Consistent with DWER's Guide to Assessment, this purpose supports a conclusion that the proposed clearing should be approved, even though it is at variance to multiple clearing principles.

The significant residual impacts identified by DWER should appropriately be counterbalanced. On the information available to me, I consider the offset in this case meets that objective, and is consistent with relevant policy.

⁵⁵ Available at: <http://www.environment.gov.au/epbc/publications/epbc-act-environmental-offsets-policy>

I recommend, however, that the conditions of the clearing permit are amended to:

- more clearly exclude the majority of hollow-bearing trees from the scope of the approval by limiting clearing to within 8 m of either side of the road centreline; and
- require a qualified person to inspect any potential habitat trees for Carnaby's cockatoos and red-tailed phascogales (and other threatened fauna) immediately prior to clearing, and if they are identified:
 - delay clearing of any trees found to be occupied by these species until no longer in use; and
 - install artificial nesting boxes to replace any confirmed habitat trees required to be cleared.
- keep records on efforts in relation to the implementation of these fauna management conditions, and report to DWER as required.

The final wording of the conditions is a matter for DWER under section 110 of the EP Act, should the Minister determine to amend the conditions in this way.

Emma Gaunt
APPEALS CONVENOR

Investigating Officer:

Emma Bramwell, Senior Environmental Officer
Jean-Pierre Clement, Deputy Appeals Convenor