



**Appeals Convenor**  
**Environmental Protection Act 1986**

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**REPORT TO THE  
MINISTER FOR ENVIRONMENT**

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**APPEALS IN OBJECTION TO THE DECISION OF THE DEPARTMENT OF  
WATER AND ENVIRONMENTAL REGULATION TO GRANT A CLEARING  
PERMIT**

**CPS 8448/1: NORTH WALPOLE ROAD UPGRADE,  
SHIRE OF MANJIMUP**

**PERMIT APPLICANT: SHIRE OF MANJIMUP**

Appeal Numbers 048.001-009 of 2019

**February 2020**

## Appeals Summary

This is a report on nine appeals against the decision of the Department of Water and Environmental Regulation (DWER) to grant clearing permit CPS 8448/1 to the Shire of Manjimup. The permit is for the clearing of one hectare of native vegetation for the purpose of road widening and upgrades to a 4.6 kilometre section of North Walpole Road.

DWER's assessment found that the proposed clearing is at variance to clearing principle (f), may be at variance to principle (h), and is not or is not likely to be at variance to the remaining principles. The assessment took into account that the Shire had minimised the clearing through a commitment to only clear up to one metre either side of the road, and to only clear vegetation within that one metre zone if required for construction purposes. The permit was granted with dieback and weed hygiene and avoid/minimise clearing conditions.

The appeals sought for DWER's decision to be overturned (i.e. that the clearing permit application be refused). Appellants disagreed with DWER's assessment of the clearing principles and submitted that flora and fauna surveys should have been undertaken to inform the assessment. Appellants also submitted that further avoidance and minimisation is needed and the absence of an offset proposal was noted. Additional concerns were submitted relating to community consultation, climate change and tourism.

In relation to DWER's assessment against the clearing principles the appeals investigation found that:

- DWER's position that sufficient information was available to complete the assessment was supported by the available evidence
- DWER's assessment of principle (e) was consistent with the approach set out in its guide to assessment and therefore its conclusion that the proposed clearing is not at variance to principle (e) was supported
- DWER's decision that clearing can be permitted at a watercourse crossing and within close proximity to a wetland was supported noting impacts are likely to be negligible
- DWER's view that condition 7 of the permit is adequate to manage the risk of dieback spread to Mount Frankland South National Park was supported noting the required actions are appropriate towards mitigating such risk

The Appeals Convenor was satisfied that avoidance, minimisation and offsets were adequately contemplated by DWER. The Appeals Convenor recommended, however, that a condition should be added to the permit limiting the width of clearing to up to one metre either side of the edge of the road pavement (i.e. from the bottom of the gravel shoulder). This is to ensure the permit adequately reflects the Shire's avoidance/minimisation commitments and DWER's assessment.

### Recommendation

It is recommended that the appeals be upheld to the extent a condition is added to the permit limiting the width of clearing to up to one metre either side of the edge of the road pavement (i.e. from the bottom of the gravel shoulder).

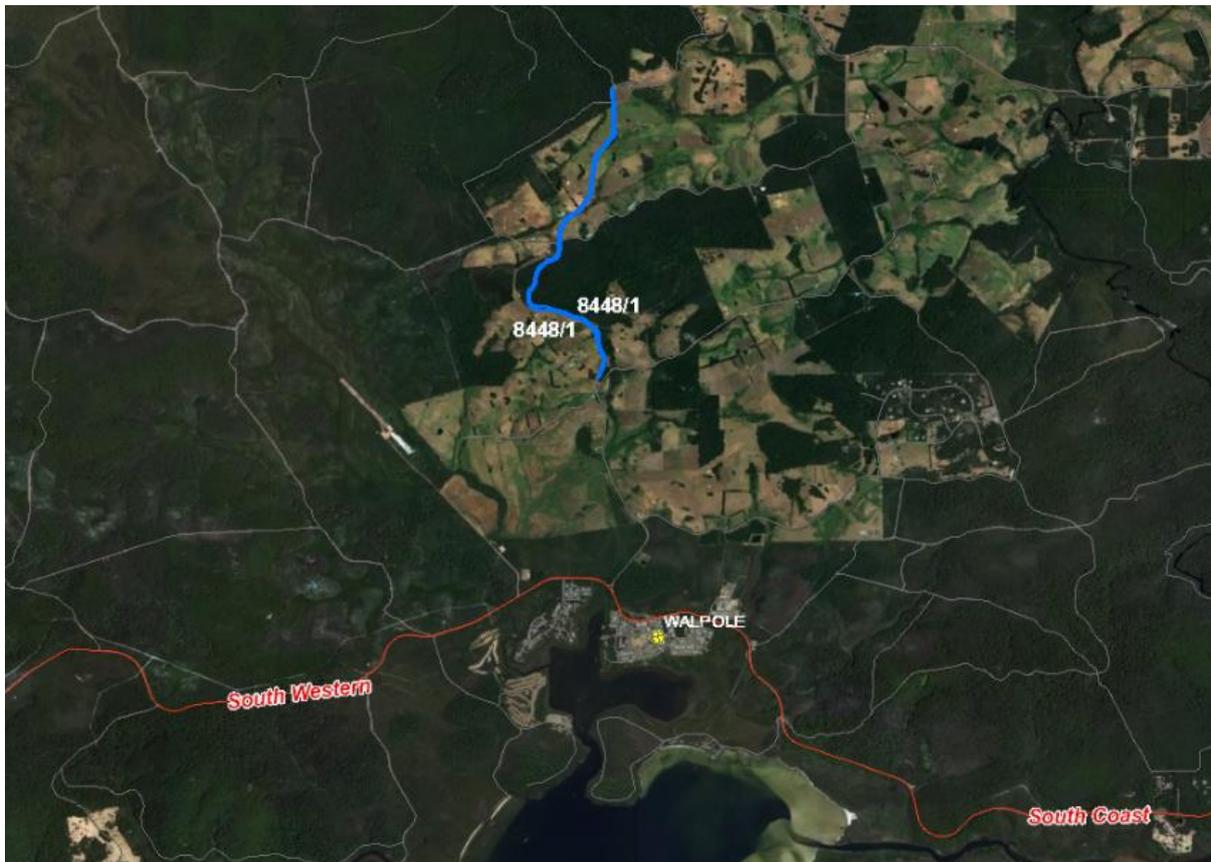
## INTRODUCTION

This report relates to nine appeals received in objection to the decision of the Department of Water and Environmental Regulation (DWER) to grant clearing permit CPS 8448/1 to the Shire of Manjimup. CPS 8448/1 is for the clearing of one hectare of native vegetation for the purpose of road widening and upgrades to a 4.6 kilometre section of North Walpole Road located approximately three kilometres north of Walpole in the Shire of Manjimup (Figure 1).

The appellants are:

- Wildflower Society of Western Australia (Inc) (WSWA)
- Urban Bushland Council WA Inc (UBCWA)
- Rachel and Philip Fry
- Steve Dreher
- Theres Dreher
- Robin Adair
- Michael Filby
- Sue Youngman
- Jan Cernohous

**Figure 1 – Location and extent of application area**



This document is the Appeals Convenor's formal report to the Minister for Environment under section 109(3) of the *Environmental Protection Act 1986* (EP Act).

## OVERVIEW OF APPEAL PROCESS

In accordance with section 106 of the EP Act, a report was obtained from DWER in relation to the issues raised in the appeals. Several appellants requested and were provided with a copy of DWER's report on the appeals.

During the appeals investigation the Appeals Convenor consulted appellants and the Shire in relation to issues raised in the appeals. A site visit was also undertaken.

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 the ten clearing principles as set out in Schedule 5 of the EP Act, as well as planning instruments and other relevant matters as set out in section 51O of the EP Act. Questions of additional information not considered by DWER, technical errors and attainment of relevant policy objectives are normally central to appeals.

## OUTCOMES SOUGHT BY APPELLANTS

The appellants seek for DWER's decision to be overturned (i.e. that the clearing permit application be refused).

## GROUNDINGS OF APPEAL

The issues submitted by the appeals have been summarised into three appeal grounds:

- assessment against the ten clearing principles
- avoidance, minimisation and offsets
- community consultation, climate change and tourism

### GROUND 1: ASSESSMENT AGAINST THE TEN CLEARING PRINCIPLES

A number of issues were raised on appeal relating to DWER's assessment of the application against the ten clearing principles. The issues primarily relate to the absence of flora and fauna surveys, and the assessment of impacts under clearing principles (e), (f) and (h).

#### Absence of flora and fauna surveys

Seven of the nine appellants noted that flora and fauna surveys had not been conducted. It was submitted that DWER's assessment was not adequately informed with several appellants questioning the robustness of DWER's conclusion that the proposed clearing is not likely at variance to clearing principles (a) and (b).

Flora and fauna species of concern that appellants raised as having the potential to be impacted by the clearing include *Drakaea micrantha*, Carnaby's cockatoo (*Calyptorhynchus latirostris*), western ringtail possum (*Pseudocheirus occidentalis*), Tingle pygmy trapdoor spider (*Bertmainius tingle*) and mystical pygmy trapdoor spider (*Bertmainius mysticus*). All of these species are listed as threatened under the *Biodiversity Conservation Act 2016* (BC Act) except the mystical pygmy trapdoor spider which is listed as a Priority 2 species by the Department of Biodiversity, Conservation and Attractions (DBCA).

In response to the appeals, DWER advised that in the absence of site specific biological survey information, the Department utilises available information to determine the likelihood of significant environmental values being impacted by the proposed clearing. DWER advised

that this includes datasets managed by DBCA which assist in identifying conservation significant flora and fauna known to occur within the local area.

DWER advised that it also sought advice from DBCA and conducted a site inspection to verify vegetation type and condition, soil type, potential habitat values and observations of fauna presence. DWER remained of the view that sufficient information was available to undertake a risk-based assessment of the application against clearing principles (a), (b), (c) and (d) without the need to obtain targeted flora and fauna surveys.

Further discussion regarding each conservation significant species identified by appellants is included below.

#### *Drakaea micrantha*

DWER advised that it found there was a lack of suitable habitat for *Drakaea micrantha* within the application area. DWER advised that its finding was supported by advice received from DBCA which stated that suitable habitat for *Drakaea micrantha* includes grey sands in *Allocasuarina fraseriana* and *Eucalyptus marginata* (jarrah) woodland or forest.

DWER found that the application area is dominated by kikuyu and bracken (*Pteridium esculentum*) or a karri (*Eucalyptus diversicolor*) jarrah mix in forested portions. This is consistent with observations from the Appeals Convenor's site visit. It is considered that DWER's conclusion that there is a lack of suitable habitat is supported by the available evidence. Based on the available information it is considered there is a low likelihood of *Drakaea micrantha* being present and therefore DWER's decision to not require a survey for the species was supported.

#### Carnaby's cockatoo

In relation to Carnaby's cockatoo, appellant concerns were centred on the loss of large trees which may provide habitat for the species. In response to the appeals DWER advised that there are several large trees within the application area, as observed during the DWER site inspection. DWER advised that these trees are limited to a small section of the application area (approximately 0.8 km of the 4.6 km length), and the majority are located past the one metre width proposed to be cleared. The Shire's commitment to not clear more than one metre from the edge of the road pavement is further discussed under Ground 2 including a recommendation that the commitment be reflected in the permit conditions.

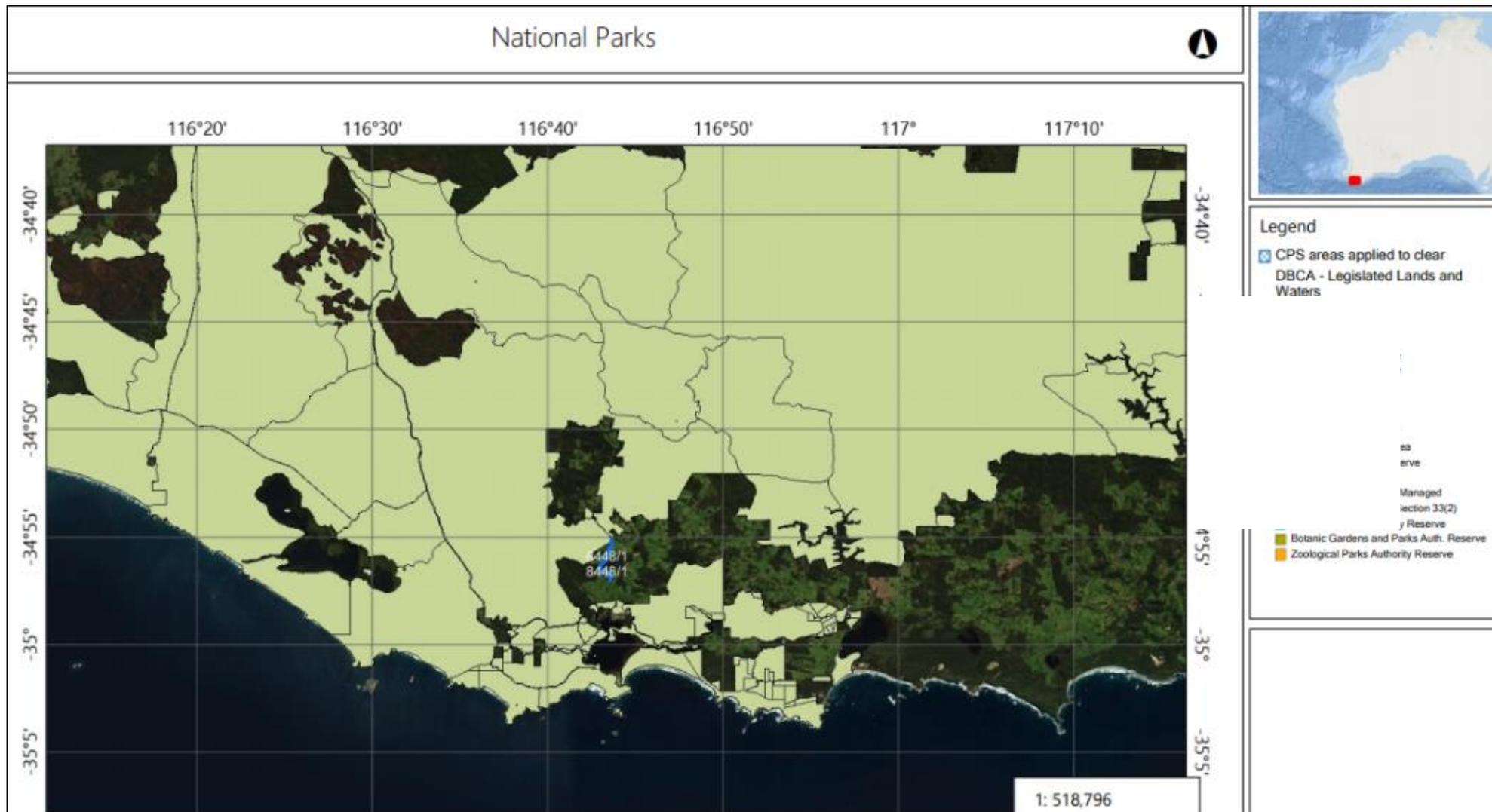
DWER advised that none of the trees were observed to contain hollows suitable for breeding. Noting the majority of large trees are beyond the one metre clearing width, and the high extent of vegetation remaining within a ten kilometre radius, DWER considered the proposed clearing did not include vegetation significant as Carnaby's cockatoo breeding habitat.

The application area is located in an area surrounded by old-growth forests<sup>1</sup> and it is expected that these forests contain similar or better quality habitat for Carnaby's cockatoo. The vast majority of these forests are protected in conservation areas including national parks (Figure 2). Noting DWER did not identify potentially suitable nest hollows during its site inspection, and the prevalence of protected old-growth forests in the area, DWER's conclusion that the proposed clearing does not include vegetation significant as Carnaby's cockatoo breeding habitat is supported and its decision to not require a targeted Carnaby's cockatoo survey of the application area was reasonable.

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<sup>1</sup> DBCA (2019). Old-growth forest – Current extent and changes made between December 2017 and December 2018. Map produced by the Forest Management Branch under the direction of the Director General, Parks and Wildlife Service. Accessible from: <https://www.dpaw.wa.gov.au/images/documents/conservation-management/forests/FMP/Map%20of%20old-growth%20forests%20March%202019.pdf>

Figure 2 – National Parks surrounding application area



### Western ringtail possum

DWER acknowledged that based on its site inspection, approximately 25 per cent of the application area is considered to contain suitable western ringtail possum (WRP) habitat. DWER determined that the application area is on the edge of the South Coast management zone for WRP with large areas of suitable habitat available within the local area. Given this, and that the proposed clearing is adjacent to an existing road with areas of discontinuous suitable habitat, DWER considered that the application area is not significant WRP habitat.

The South Coast management zone for WRP is mapped in the WRP Recovery Plan.<sup>2</sup> As outlined by DWER, the application area is on the edge of the management zone although it appears to occur entirely outside the zone. The WRP Recovery Plan outlines that habitat critical to survival of the species varies between management zones but common themes are high nutrient foliage availability for food, suitable structures for protection/nesting, and canopy continuity to avoid/escape predation and other threats.

DWER's decision report outlines that the DWER site inspection did not observe any dreys within the application area. Noting this, that a substantial proportion of the application area is degraded and surrounded by cleared farmland with impacted canopy continuity, and that the application area appears to be located outside the South Coast management zone, DWER's conclusion that the application area does not include significant WRP habitat is supported.

### Tingle pygmy trapdoor spider and mystical pygmy trapdoor spider

DWER advised that according to the conservation advice for the two trapdoor spider species, the spiders construct shallow burrows in the tree bark of tingle trees or in soil on the banks of creek lines and gullies. DWER advised that there are no tingle trees within the application area and the only creek line present was observed to be infested with weeds and contained very little riparian vegetation. DWER considered that the application area lacks habitat for the two species and therefore they are unlikely to occur.

DWER's site observations are consistent with those from the Appeals Convenor's site visit. It is considered that DWER's conclusion that there is a lack of suitable habitat is supported by the available evidence.

### Conclusion

It is considered that DWER's position that sufficient information was available to complete the assessment is supported by the available evidence.

### **Assessment of clearing principle (e)**

Five of the nine appellants disagreed with DWER's conclusion that the proposed clearing is not at variance to clearing principle (e). It was submitted that the southwest of Western Australia has been extensively cleared and that most of the old-growth large trees have been logged. It was also submitted that the clearing of roadside vegetation is contributing to a cumulative effect.

Several appellants questioned the validity of per cent vegetation remaining statistics used by DWER in the assessment. It was submitted that the statistics are inflated by degraded regrowth forest infested with weeds and dieback. Appellants submitted that the assessment should have found the proposed clearing is at variance to principle (e).

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<sup>2</sup> Department of Parks and Wildlife (2017). Western Ringtail Possum (*Pseudocheirus occidentalis*) Recovery Plan. Wildlife Management Program No. 58. Department of Parks and Wildlife, Perth, WA.

In responding to the appeals DWER advised that, as outlined in the Department's *A guide to the assessment of applications to clear native vegetation under Part V Division 2 of the Environmental Protection Act 1986* (December 2014), clearing principle (e):

- aims to maintain sufficient native vegetation in the landscape for the maintenance of ecological values, and
- recognises the need to protect ecological communities that have been extensively cleared and to retain a representation of each ecological community in local areas throughout its pre-European range.

DWER advised that in assessing the proposed clearing against this principle, it considered:

- the context of the local and regional landscape in terms of historical clearing and vegetation extent; and
- the significance of the native vegetation as a remnant.

DWER found that the native vegetation extent remaining within the local area and bioregion is high and all relevant vegetation complexes retain more than 30 per cent of their pre-European extent. DWER also found that the application area is not significant as a remnant noting it is not considered to support high levels of biodiversity or significant fauna habitat and that the clearing is not likely to impact conservation significant flora or fauna species.

DWER advised that it does not consider it appropriate to assess the proposed clearing in the context of historical clearing within the whole southwest region. DWER advised that an assessment at this scale does not support the consideration of site-specific factors which are relevant to determining the impact of proposed clearing upon specific species, ecological communities or local landscapes. DWER acknowledged that some old-growth trees may have been logged in the local area over time but considered the age of vegetation to be more relevant to clearing principle (b) in that such vegetation may provide greater fauna habitat.

It is considered that there are two issues central to the consideration of the above; cumulative effects and the condition of vegetation remaining.

### Cumulative effects

The cumulative effects question raised on appeal is understood to be whether the high extent of clearing elsewhere in the State is reason to consider the vegetation under application, which is located in a highly vegetated area, as significant.

As outlined by DWER, its guide to assessment explains that principle (e) aims to maintain sufficient native vegetation in the landscape for maintenance of ecological values, and to protect ecological communities that have been extensively cleared in order to retain adequate local representation. An example of clearing which is not likely to be at variance to principle (e) is provided and is as follows:

Clearing in areas with greater than 30 per cent native vegetation is not likely to be at variance if there is greater than 30 per cent of the total vegetation in the local area and within the bioregion in 'good' condition. A jarrah-marri forest that is in an area with significant forests on public land may be an example.

This example is considered to align with the clearing proposed. As outlined earlier in this report, the application area is located in an area surrounded by old-growth forests, the vast majority of which are protected in conservation areas. These forests can reasonably be expected to be in 'good' or better condition.

It is considered that DWER's guide to assessment is clear that the assessment of vegetation significance for principle (e) is to focus on a more local context as opposed to the extent of clearing elsewhere in the State.

### Vegetation condition

The vegetation condition question raised on appeal is understood to be whether the vegetation remaining within the local area/bioregion is of sufficient condition to validate DWER's reliance on per cent remaining statistics in the assessment.

DWER's guide to assessment outlines that vegetation condition is an important consideration when applying threshold levels for vegetation extent remaining statistics. For example, the guide states:

In some areas there may be less than 30 per cent of pre-European extent of native vegetation in good condition if the systems are degraded for example in the rangelands. These areas may be significant despite an overall level of greater than 30 per cent of pre-European extent remaining.

The logging of old-growth forests in Western Australia ceased in 2001.<sup>3</sup> Over 334,000 hectares of old-growth forest in the southwest has been identified with around 93 per cent protected in existing or proposed national parks, conservation parks or nature reserves.<sup>4</sup> The majority of old-growth forests are located in areas surrounding the application area.<sup>5</sup> These forests can reasonably be expected to be in 'good' or better condition. Therefore the reliance on per cent remaining statistics by DWER in its assessment is supported.

### Conclusion

It is considered that DWER's assessment of principle (e) is consistent with the approach set out in its guide to assessment and therefore DWER's conclusion that the proposed clearing is not at variance to principle (e) is supported.

### **Assessment of clearing principles (f) and (h)**

DWER's assessment of the application found the proposed clearing is 'at variance' to principle (f) and 'may be at variance' to principle (h). DWER identified the presence of a minor perennial watercourse crossing approximately 70 metres north of the intersection of Bee Road and a paluslope wetland located approximately 10 metres from a section of the application area. DWER also considered there was a risk of weed and dieback spreading into a conservation area where a 200 metre section of the application area is adjacent to Mount Frankland South National Park.

The appeals submitted that the variances identified by DWER were sufficient reason to not approve the clearing, or to at least exclude the related areas from the permit. Appellants submitted that clearing inevitably spreads dieback and concerns were raised regarding the ability of the Shire to keep its operations clean.

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<sup>3</sup> Government of Western Australia (2001). Labor delivers on promise to end old-growth logging. Media Statement. Accessible from: <https://www.mediastatements.wa.gov.au/Pages/Gallop/2001/03/Labor-delivers-on-promise-to-end-old-growth-logging.aspx>

<sup>4</sup> DBCA (2020). Protecting our biological diversity. Department of Biodiversity, Conservation and Attractions Parks and Wildlife Service. Updated 10 April 2019. Accessible from:

<https://www.dpaw.wa.gov.au/management/forests/about-our-forests/171-protecting-our-biological-diversity>

<sup>5</sup> DBCA (2019). Old-growth forest – Current extent and changes made between December 2017 and December 2018. Map produced by the Forest Management Branch under the direction of the Director General, Parks and Wildlife Service. Accessible from: <https://www.dpaw.wa.gov.au/images/documents/conservation-management/forests/FMP/Map%20of%20old-growth%20forests%20March%202019.pdf>

In relation to the minor perennial watercourse, DWER responded to the appeals by reiterating its findings documented in the decision report that the watercourse comprised of mostly introduced grasses and contained minimal native riparian vegetation. In relation to the paluslope wetland, DWER advised that the proposed clearing of 0.022 hectares in the vicinity of the wetland is not likely to cause a greater impact than that already caused by the presence of the existing road.

In relation to principle (h), DWER advised that it considers condition 7 is adequate to manage the identified impacts and that the additional cleared areas will not present a significantly greater risk to Mount Frankland South National Park than that which already exists from the existing road.

As previously mentioned a site visit was undertaken as part of the appeals investigation. The site visit found that the watercourse crossing was highly degraded consistent with DWER's findings. The vegetation in close proximity to the paluslope wetland was found to be degraded and separated from the wetland by an area of pasture. Given these observations it is considered that potential impacts to the watercourse and wetland from the clearing are likely to be negligible.

In relation to the risk of dieback spread, it is noted that North Walpole Road is a public road whereby there is an inherent risk of dieback spread by the public. DWER has imposed conditions on the Shire for the clearing operations including clean on entry and exit requirements, prohibiting the importation of known dieback infested material, and restricting the movement of vehicles. It is considered that such hygiene measures are appropriate for mitigating the risk to the Mount Frankland South National Park from the proposed clearing. In relation to concerns around whether the Shire can be trusted to not spread dieback, it is noted that the Shire would be liable to enforcement action under the EP Act if the conditions imposed by DWER were not complied with. DWER's view that the conditions imposed are adequate to manage the risk of dieback spread is supported.

In relation to the risk of weed and dieback spread it is noted that DWER imposed condition 7 on the permit. Condition 7 requires that during clearing operations, no known dieback or weed affected soil, mulch, fill or other material is to be brought into the area to be cleared, that all earth-moving machinery be cleaned before entering and leaving the clearing area, and that all machines/vehicles be restricted to the clearing area.

## Conclusion

It is considered that:

- DWER's position that sufficient information was available to complete the assessment is supported by the available evidence
- DWER's assessment of principle (e) is consistent with the approach set out in its guide to assessment and therefore its conclusion that the proposed clearing is not at variance to principle (e) is supported
- DWER's decision that clearing can be permitted at a watercourse crossing and within close proximity to a wetland is supported noting impacts are likely to be negligible
- DWER's view that condition 7 of the permit is adequate to manage the risk of dieback spread to Mount Frankland South National Park is supported noting the required actions are appropriate towards mitigating such risk

It is considered that in relation to the matters raised DWER's assessment of the application against the clearing principles was adequate and supported by the available evidence. Therefore it is recommended that this ground of appeal be dismissed.

## GROUND 2: AVOIDANCE, MINIMISATION AND OFFSETS

All appellants submitted that the proposed clearing could be further reduced/minimised. Alternative options available for making the road safer that required less or no clearing were suggested and included speed limit reductions, signage, barriers and clearing on only one side of the road.

WSWA submitted that DWER should have noted that reasonable alternatives to clearing existed and should have reduced the amount of clearing permitted. UBCWA submitted that it is the driver of each vehicle who is responsible for driving safely not trees and that dangerous driving is the risk. UBCWA noted that DWER imposed an avoid/minimise condition on the permit (condition 6) but did not have confidence that it would be sufficient to ensure the Shire pursued alternatives. UBCWA cited an interim report of an inquiry into VicRoads' management of country roads<sup>6</sup> which outlines that the removal of old and very old trees cannot be replaced by planting with old trees providing vast quantities of nectar and pollen for nectar feeding birds, mammals and insects.

Multiple appellants expressed concerns about the clearing of large mature trees. Avoidance of such trees was requested. In this regard it was submitted that the Shire should mark the trees proposed to be removed and undertake community consultation. The consideration of community consultation is discussed further under Ground 3.

In relation to offsets, Steve Dreher submitted that the Shire should have an offset plan. Theres Dreher made reference to the 21 August 2019 edition of the Walpole Weekly<sup>7</sup>, in which the Shire president Paul Omodei was quoted stating:

Vegetation clearing is undertaken for the safety of motorists and critical for long standing road improvements. Off-set planting for vegetation clearing is always undertaken in the Shire and is in the order of about 100 trees planted to every one removed.

It was submitted that, contrary to Mr Omodei's statements, no offset had been identified for the clearing with the Shire choosing not to submit an offset proposal with the application.

### Consideration

Section 51O of the EP Act requires that in considering a clearing matter, the CEO (i.e. the CEO of DWER or delegated officer) shall have regard to any other matter that the CEO considers relevant. DWER's *A guide to the assessment of applications to clear native vegetation under Part V Division 2 of the Environmental Protection Act 1986* (December 2014) outlines that 'other matters' are not defined in the EP Act but typically include consideration of land use impacts, previous decisions related to the area, other legislative requirements related to the application and the necessity of clearing. In relation to necessity, the guide outlines:

- clearing should only be considered after all other reasonable attempts to mitigate adverse impacts have been exhausted
- impacts should be addressed using the impact mitigation sequence of avoid, minimise, rehabilitate and offset
- in determining the necessity of clearing higher priority will be given to clearing for public use rather than private benefit or commercial gain

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<sup>6</sup> Parliament of Victoria (2018). Inquiry into VicRoads' management of country roads – Interim report. Law Reform, Road and Community Safety Committee. July 2018.

<sup>7</sup> Walpole Community Resource Centre (2020). Walpole Weekly – Springing into the Walpole Wilderness. 21 August 2019. Accessible from: <http://www.walpole.org.au/springing-into-walpole-wilderness/>

In response to the appeals DWER advised:

- the purpose of the clearing, being to widen the road for safety reasons, was a relevant consideration for determining the application
- eight of the twelve submissions received during the public comment period for the application supported the clearing due to safety concerns
- the Shire's efforts to avoid and minimise impacts were noted by DWER including commitments to clear no more than one metre from the existing road on either side and to only remove trees that are deemed a risk to road safety
- condition 6 was imposed on the permit requiring the Shire to have regard to avoiding, minimising and reducing the impacts and extent of clearing
- in accordance with the *WA Environmental Offsets Policy* (September 2011), DWER considered that offsets should only be considered after appropriate attempts to avoid or mitigate the impacts, and should only be applied where significant residual impacts remain
- the assessment found that the proposed clearing is unlikely to result in significant residual impacts and therefore it was concluded that an offset is not required

DWER acknowledged that on review, the commitment by the Shire to only clear one metre either side of the road was a material consideration in the assessment. DWER therefore recommended the addition of a permit condition to restrict the width of clearing to one metre from the current edges of the road on both sides.

When consulted on DWER's recommended change, the Shire did not object to clearing being restricted to one metre from the edge of the road pavement on both sides. It was clarified that the road pavement includes the gravel shoulder and therefore the condition would restrict clearing to one metre from the bottom of the gravel shoulder on both sides of the road. The Shire advised that clearing would only occur if required for road construction purposes.

Principle 2 of the *WA Environmental Offsets Policy* (September 2011) outlines that offsets are not appropriate for all projects and will not be applied to minor environmental impacts. DWER's *Clearing of native vegetation – Offsets procedure* (August 2014) outlines that offsets are required when clearing is at variance with one or more of the biodiversity related clearing principles (principles a – f, h) and a significant residual impact remains.

DWER's assessment found that the proposed clearing is at variance to principle (f), may be at variance to principle (h), and is not or is not likely to be at variance to the remaining clearing principles. The assessment took into account that the Shire had minimised the clearing through a commitment to only clear up to one metre either side of the road, and to only clear vegetation within that one metre zone if required for construction purposes.

As outlined earlier in this report, DWER's conclusion that the impacts associated with principle (f) are not significant is supported by the available evidence. Furthermore, DWER's conclusion that the impacts associated with principle (h) can be adequately managed through permit condition 7 is also supported. Noting this, it is considered that the proposed clearing is not likely to result in significant residual impacts and an offset is not required.

DWER has also made it clear the decision to grant the permit took into account the purpose of the clearing which is to widen the road to improve safety for use by the public.

Given the above it is considered that DWER's assessment has taken into account the necessity of the clearing, including avoidance and minimisation measures and whether an offset is required. However, it is considered that the Shire's avoidance/minimisation

commitments, upon which the assessment was based, should have been fully reflected in the permit conditions.

### Conclusion

It is recommended that a condition be added to the permit limiting the width of clearing to up to one metre either side of the edge of the road pavement (i.e. from the bottom of the gravel shoulder). It is considered that the existing permit condition 6 is adequate to hold the Shire to its commitment to only clear vegetation within the one metre zone where necessary.

### **GROUND 3: COMMUNITY CONSULTATION, CLIMATE CHANGE AND TOURISM**

A number of additional matters were raised on appeal including community consultation, climate change and tourism/aesthetic values of the vegetation.

#### Community consultation

By their appeal, WSWA submitted that consultation was sought with the Shire but none occurred with the Shire still to agree on a time and on-site location to discuss the works with the community. Steve Dreher and Jan Cernohous also submitted that no community consultation had occurred.

DWER advised that on 16 April 2019, the clearing permit application was advertised for a 21 day public comment period with a total of 12 public submissions received. DWER advised that direct interest stakeholders were also notified. Given this, DWER considered that the requirement for public consultation as outlined in section 51E(4) of the EP Act had been met. DWER recommended that appellants contact the Shire to further discuss opportunities for consultation.

The public submissions received by DWER were considered and addressed in page 7 of its decision report. The appeals process has also provided further opportunity for public input. It is considered that the assessment has included consideration of public input and it is recommended that appellants contact the Shire to discuss opportunities for further consultation.

#### Climate change

Several appellants submitted that climate change needed to be considered in the assessment of the application. It was submitted that every action that contributes to climate change should be seriously evaluated.

In response to this matter, DWER advised that while clearing of native vegetation contributes to climate change, the clearing proposed by the Shire would be trivial in this regard. DWER advised that the State Government is developing a State Climate Policy which will consider the impacts of clearing on climate change and opportunity to sequester carbon.

DWER's position is accepted: the small scale of the proposed clearing is not considered to have any material implications for climate change. It is considered that the implications of future policy developments are a matter for consideration at the time that policy position is settled.

#### Tourism

Eight of the nine appellants submitted that roadside trees, especially the larger trees, should not be cleared given they are a tourist attraction noting aesthetic values. It was submitted that

North Walpole Road is a tourist route and that the Walpole region is known as a tourist destination for its old-growth forests.

DWER advised that concerns with tourism and aesthetic values of trees are noted, however, these are not matters that are assessed by the Department for clearing permit applications.

The purpose of the clearing is to widen the road to improve safety for use by the public. As the authority responsible for management of North Walpole Road, it is considered that the Shire is better placed to balance the safety and tourism concerns of the community relating to the road.

### Conclusion

While concerns around community consultation, climate change and tourism are acknowledged, it is considered that, on balance, these matters do not support a decision to overturn the grant of the clearing permit.

### **CONCLUSION AND RECOMMENDATION**

It is recommended that a condition be added to the permit limiting the width of clearing to up to one metre either side of the edge of the road pavement (i.e. from the bottom of the gravel shoulder). This is to ensure that the Shire's avoidance/minimisation commitments, upon which DWER's assessment of the application was based, are fully reflected in the permit conditions. It is otherwise recommended that the appeals be dismissed.

Emma Gaunt  
APPEALS CONVENOR

**Investigating Officer:**  
Simon Weighell, A/Senior Appeals Officer