



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

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**REPORT TO THE  
MINISTER FOR ENVIRONMENT**

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**APPEAL AGAINST DECISION OF THE DEPARTMENT OF WATER AND  
ENVIRONMENTAL REGULATION TO GRANT A CLEARING PERMIT**

**CPS 8943/1: CLEARING OF NOT MORE THAN 22 NATIVE TREES  
FOR THE PURPOSE OF EXTENDING A CYCLE PATH  
RAILWAY PARADE, BECKENHAM**

**APPLICANT: CITY OF GOSNELLS**

Appeal Number 054 of 2020

**January 2021**

## Appeal Summary

This is a report on an appeal against the decision of the Department of Water and Environmental Regulation (DWER) to grant a permit to the City of Gosnells to clear up to 22 native trees (including 19 Marri trees) along the side of Railway Parade, Beckenham, to allow the Perth Bicycle Network to be extended to connect to Beckenham Station.

The appellant submitted that the clearing permit should not have been granted because of potential impacts to black cockatoo species and the conservation values of the vegetation. The appellant also contended that stronger justification is required as to why the cycle path is needed and why it could not be put on the other side of the road, avoiding the need to clear vegetation.

Having regard to the issues raised in the appeal, the purpose and extent of the proposed clearing, advice provided by DWER and the permit holder, information obtained in discussion with the appellant and permit holder, and the results of a site visit, it is considered that DWER was justified in its decision to grant the clearing permit.

### Recommendation

It is recommended that the appeal be dismissed.

## INTRODUCTION

This report relates to an appeal lodged by Dr J E Wajon against the grant of clearing permit CPS 8943/1.

The clearing permit authorises the City of Gosnells to clear up to 22 native trees (including 19 Marri trees) within Railway Parade road reserve (PIN 11870267) and Lot 320 on Deposited Plan 61379, Beckenham (the Application Area) for the purpose of extending the existing Perth Bicycle Network to connect to Beckenham railway station.

The location and extent of the proposed clearing is shown in Figure 1.



**Figure 1 Location and extent of clearing footprint (shown as blue dots).**

The City of Gosnells submitted its application on 16 June 2020 and it was advertised on DWER's website on 22 July 2020 for a 21-day public comment period. No submissions were received.

In assessing the application, DWER considered the site characteristics, relevant available datasets, publicly available street view imagery and supporting information and photographs provided by the Permit Holder.

DWER determined that the proposed clearing is not likely to be at variance with any of the clearing principles and granted the permit on 7 October 2020 subject to conditions including requirements to avoid, minimise and reduce the impacts and extent of clearing, implement dieback and weed management, keep records, and report on activities done in accordance with the permit.

## OVERVIEW OF APPEAL PROCESS

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

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

To properly advise the Minister, the Appeals Convenor conducted an investigation that included:

- a review of the appeal grounds;
- a review of the written response to the appeal provided by the City of Gosnells on 6 November 2020;
- a review of the section 106 report provided by DWER on 16 December 2020;
- a meeting with the appellant on 14 January 2021; and
- results of a site inspection by the investigating officer on 16 January 2021.

The environmental appeals process is a merits-based process. For appeals in relation to a DWER decision to grant a clearing permit, the Appeals Convenor normally considers the environmental merits of the assessment by DWER based on principles as set out in Schedule 5 of the EP Act, as well as other environmental factors. Questions of additional information not considered by DWER, technical errors and attainment of relevant policy objectives are normally central to appeals.

## OUTCOME SOUGHT BY APPELLANT

The appellant requested that the clearing permit be refused.

## GROUND OF APPEAL

### GROUND 1: HABITAT VALUE

The appellant submitted that every Marri (*Corymbia calophylla*) tree in the Perth Metropolitan area is significant foraging habitat for Carnaby's Cockatoo (*Calyptorhynchus latirostris*), Forest Red-tailed Cockatoo (*Calyptorhynchus banksii naso*) and Baudin's Cockatoo (*Calyptorhynchus baudinii*)<sup>1</sup>. The appellant disagreed with DWER's finding that the 19 Marri trees proposed to be cleared is a small number and that suitable foraging habitat will remain in the adjacent road reserve. The appellant referred to recent clearing of large Marri trees for road intersections, extensions, and exchanges, raising concern that Marri trees in road reserves are not being retained.

The appellant raised concern that the information from a site inspection and photographs do not provide adequate evidence that five larger Marri trees (diameter at breast height (DBH) greater than 500 millimetres) proposed for clearing, do not contain hollows suitable for black cockatoo breeding. The appellant is of the view that photographs provided by the Permit Holder exclude large Marri trees proposed to be cleared.

The appellant sought for avoidance of the trees (see Ground 3) and a site inspection during the breeding seasons of the black cockatoos.

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<sup>1</sup> The three species are collectively referred to as black cockatoos within this report.

## Consideration

DWER advised that its assessment of the potential impacts on black cockatoo species was based on relevant available information including a site inspection report and photographs provided by the Permit Holder, available datasets, and publicly available street view imagery.

In its application, the Permit Holder provided a site inspection report detailing the tree species names, location, DBH and whether any hollows were identified in the trees proposed to be cleared. A photograph of each tree was provided which correlated with the information provided. Based on the photographs of the five larger Marri trees with a DBH of greater than 500 millimetres, the tree branches did not appear to be of a suitable size to develop hollows for breeding by black cockatoos. DWER advised that this was verified utilising publicly available street view imagery.

Given the apparent lack of suitably sized breeding hollows, DWER determined that the Application Area did not comprise significant breeding habitat for black cockatoo species. DWER maintained its view that a black cockatoo habitat survey is not required to be undertaken during the breeding season, due to the low likelihood that the Application Area provides breeding habitat.

To determine the significance of the vegetation as foraging habitat for black cockatoos, DWER referred to the Environmental Protection Authority's (EPA) 2019 Technical Report titled "*Carnaby's Cockatoo in Environmental Impact Assessment in the Perth and Peel Region*"<sup>2</sup>. The EPA Technical Report indicates that proximity to foraging habitat and water sources is critical to support roosting and breeding sites for Carnaby's cockatoos. Foraging habitat within seven kilometres of a breeding site is considered important to support breeding cockatoos. According to available databases, the closest known breeding site is located approximately 10 kilometres from the Application Area. The foraging habitat within the Application Area is therefore not considered to be significant in supporting breeding by black cockatoos.

DWER advised that In the Perth-Peel region, individual night roosts require food and water within six kilometres, with overlapping foraging ranges within 12 kilometres. The closest known black cockatoo roosting site (red tailed cockatoo) is located approximately 1.5 kilometres NE from the Application Area. Yule Brook, a major watercourse, is located approximately 65 metres from the Application Area. The Application Area may, therefore, be used for foraging by black cockatoos utilising nearby roost sites.

DWER noted that Marri trees do provide suitable foraging habitat for black cockatoos (of all species) and the Application Area is located within six kilometres of a roost site and close to water sources. However, when considered within the context of the broader landscape, DWER considers that the existence of much better quality foraging habitat within the vicinity means that the Application Area is unlikely to represent a significant foraging site for black cockatoos.

DWER has provided Figures 2 and 3 (below) showing areas mapped as potential black cockatoo foraging habitat within 3 kilometres of the Application Area and within the 'local area' (10 kilometre radius). Potential habitat within 3 km includes the Greater Brixton Street (Kenwick) Wetlands and small patches along the Canning River. DWER advises that Carnaby's cockatoos have been recorded within the Greater Brixton Street (Kenwick) Wetlands which are located 410 metres east of the Application Area.

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<sup>2</sup> Environmental Protection Authority (2019) EPA Technical Report: Carnaby's Cockatoo in Environmental Impact Assessment in the Perth and Peel Region. Advice of the Environmental Protection Authority under Section 16(j) of the Environmental Protection Act 1986. Environmental Protection Authority. Perth WA.



Figure 2: Potential cockatoo foraging habitat (shaded green) within 3 km of the Application Area

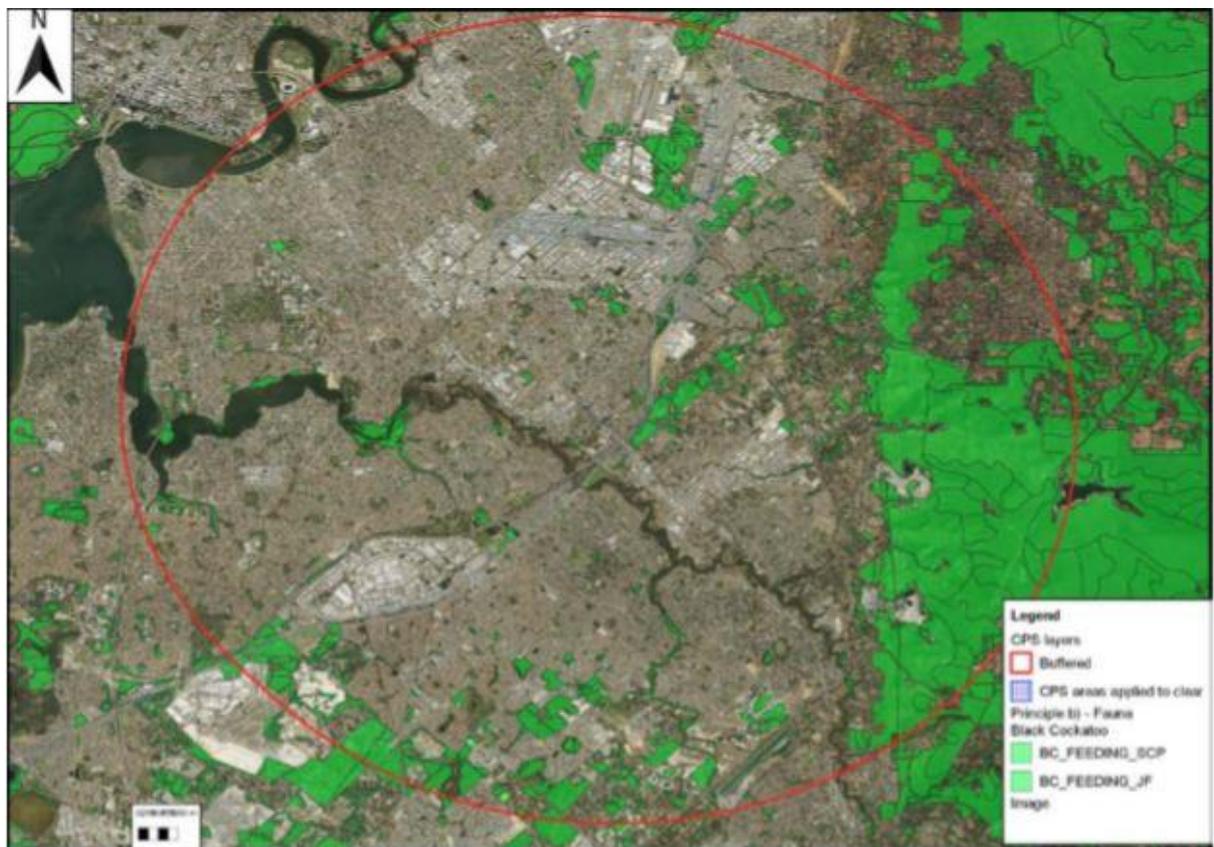


Figure 3: Potential cockatoo foraging habitat with 10 km of the Application Area.

DWER advises that the local area (10 kilometre radius) comprises approximately 5,567 ha of native vegetation mapped as potential black cockatoo foraging habitat and the application area represents approximately 0.003 per cent of this extent. DWER therefore concludes that the loss of 19 Marri trees is not likely to significantly reduce the amount of available foraging habitat within the local area.

DWER notes that, as can be observed in Figure 3, native vegetation will remain within the road reserve and adjacent railway reserve following the removal of the 22 native trees. The vegetation remaining comprises of numerous Marri trees. The clearing proposed will not result in the current potential stepping stone being severed. Foraging habitat will remain adjacent to the proposed clearing area that can be utilised by black cockatoos moving between roost sites, foraging habitat and water resources located within the local area.

Given the avoidance of other trees within the road reserve and the presence of more significant habitat nearby, DWER determined that the clearing of 19 Marri trees was not likely to have a significant impact on foraging habitat for black cockatoos.

The City of Gosnells has advised that a number of re-designs to the path were undertaken to ensure the maximum retention of large trees. Publicly available aerial and street view imagery indicates that numerous Marri trees including some with a DBH greater than 500 millimetres will remain within the road reserve. Several larger trees within the road reserve have been avoided during the planning stages. The City also advised that it has an ongoing program of planting native trees (including Marri trees) in parks and reserves (see appeal ground 3).

A site visit by the Office of the Appeals Convenor investigating officer found no evidence of nesting holes or signs (such as scat or broken twigs) of black cockatoo roosting in any of the trees to be cleared or in other trees in the vicinity. There was evidence (a small number of old chewed Marri nuts on the ground, both in the vicinity of one of the trees to be cleared as well as trees to be retained) consistent with feeding in the past by red-tailed black cockatoos, however the site visit also confirmed that there are numerous other Marri trees in the immediate vicinity which will not be cleared and which will continue to provide feeding habitat for black cockatoos. It was noted that the largest single-stemmed Marri tree which will be removed has a DBH of 65 cm. (The list of trees to be removed which was provided by the City of Gosnells lists the largest tree as having a DBH of 110 cm but it was found on inspection that this tree has two separate trunks). It was also confirmed that three of the larger Marri trees to be removed, are significantly affected by termite damage at the base and are therefore likely to have only limited remaining lifespans.

## **Conclusion**

Having regard to the information provided on this ground of appeal, it is concluded that DWER's assessment against the relevant clearing principle is supported by the available evidence and had appropriate regard for the environmental impacts associated with the application including cumulative impacts.

## **GROUND 2: ENVIRONMENTAL VALUE OF NATIVE VEGETATION IN EXTENSIVELY CLEARED AREAS**

The appellant raised concern that the vegetation proposed for clearing has significant environmental values as a remnant in an extensively cleared landscape. In support of this view, the appellant submitted two key issues:

### ***Mapped vegetation complex***

The Decision Report indicated that the local area and the mapped 'Guildford' vegetation complex retain approximately 16 and five per cent native vegetation cover respectively of its pre-European clearing extent, which is less than the national objectives and targets for biodiversity conservation. The appellant raised concern that DWER's finding that the area proposed for clearing is not significant as a remnant of native vegetation is contrary to its assessment.

### ***Marri trees***

The appellant submitted that large Marri trees are significant as remnant native vegetation in the area, referring to Ground 1 and noting recent clearing along road reserves in proximity to the Application Area.

## **Consideration**

In responding to the appeal, DWER advised that it acknowledges that the Application Area is located within an extensively cleared area. As outlined in the Decision Report, the mapped 'Guildford' vegetation complex and local area retains approximately five per cent and 16 per cent native vegetation cover respectively which is well below the national objectives and targets for biodiversity conservation<sup>3</sup>.

Noting the species present within the Application Area, DWER considers that the Application Area is likely to be representative of the 'Guildford' vegetation complex. However, given the Application Area is in a completely degraded condition and has been impacted by the existing road and railway line, DWER determined that the Application Area is not a significant representation of the 'Guildford' vegetation complex.

DWER advised that the mapped remaining 'Guildford' vegetation complex is approximately 4,607.91 ha in size. The proposed clearing of 22 native trees (approximately 0.22 ha) represents approximately 0.005 per cent of the remaining vegetation representative of this vegetation complex. The removal of 22 native trees within the application area will therefore reduce the remaining extent by approximately 0.005 per cent.

In addition, DWER determined that the Application Area is in a completely degraded condition, does not comprise a high level of biodiversity, is not likely to contain threatened or priority flora, is not likely to represent a priority or threatened ecological community. The proposed clearing is also unlikely to reduce or sever an ecological linkage. Therefore, DWER considered that the Application Area is not a significant remnant.

On that basis, DWER determined that there will not be a significant residual impact from the proposed clearing on the 'Guildford' vegetation complex or significant remnant native vegetation and therefore an offset is not required.

In its response to the appeal, the City of Gosnells noted that:

"The proposed clearing footprint forms part of a highly degraded and modified landscape, consisting of a weedy understory. This can be seen from the photos included in the clearing permit application summary document. The clearing footprint is not considered to be a significant remnant of native vegetation given it forms part of a highly degraded and modified landscape ...

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<sup>3</sup> Commonwealth of Australia (2001) National Objectives and Targets for Biodiversity Conservation 2001-2005, Canberra.

While all efforts have been made to retain as many trees as possible, it is not pragmatic to retain all trees, as this would prevent the required path extension from taking place that will provide an important service to the local cyclist community. All efforts have been made to avoid impacts to the most significant trees along the alignment”.

## Conclusion

Having regard to the information provided on this ground of appeal, it is concluded that DWER's assessment against the relevant clearing principle is supported by the available evidence and had appropriate regard for the environmental impacts associated with the application including cumulative impacts.

## GROUND 3: AVOID AND MINIMISE

The appellant acknowledged efforts described in the Decision Report to minimise clearing, but submitted that the following alternatives to clearing, should be considered:

- an existing footpath on the east side of Railway Parade, opposite to the area proposed to be cleared, can be widened to a dual use path; and
- cyclists can use the quiet road between Rochester Road to Bickley Road, which is a distance of 1.3 kilometres before the cycle path resumes.

The Appellant submitted that the Permit Holder should provide much stronger justification, including cycle use and crash statistics, before a Clearing Permit is approved for 22 trees.

## Consideration

DWER advised that the Permit Holder is responsible for planning, building and maintaining the path networks in its jurisdiction and has the relevant expertise and experience to determine the technical options, solutions and engineering standards of the proposed path extension. The Permit Holder is responsible for the specifications of its proposed works.

DWER's guidance document, '*A guide to the assessment of applications to clear native vegetation*' (2014), assists applicants in the considerations for applications for clearing, including the mitigation hierarchy and reasonable attempts to avoid impacts. DWER's role is to conduct an assessment of the proposed clearing including the identification of environmental values and the potential significance of impacts from clearing.

The Permit Holder's efforts to avoid and minimise impacts were considered by DWER in deciding to grant the Clearing Permit. As outlined in the Decision Report, the Permit Holder advised that the proposed extension of the shared path has been designed in consultation with the Public Transport Authority to retain as many trees as possible. The proposed path underwent several re-designs to ensure tree retention was maximised. Two sections of the path are proposed to be elevated to ensure the retention of large, iconic trees. A section of the path near Beckenham Station is proposed to be constructed of concrete to minimise disturbance to significant trees. Using concrete is more expensive but entails less digging and avoids application of hot asphalt and associated risk of damage to shallow tree roots.

DWER determined that the Permit Holder considered avoidance and mitigation options. The following requirements were also applied to the Permit:

- Condition 6 for further avoidance, minimisation or reduction in the impacts of clearing where possible;

- Condition 8(d) requires record keeping of actions taken to avoid, minimise and reduce the impacts and extent of clearing; and
- Condition 9 requires reporting of records.

Considering the impacts identified, DWER remains of the view that the proposed clearing is not likely to lead to unacceptable risks to the environment and that appropriate conditions have been applied to Clearing Permit CPS 8943/1

In its response to the appeal, the City of Gosnells advised that

The proposed bicycle path between William Street and Ladywell Street on Railway Parade is part of several missing links intended to be completed as part of the continuing development of the Perth Bicycle Network. Considerable care and investigation was undertaken during the bicycle path design process to minimise impacts to the existing Marri trees along the proposed route. The design has reduced the loss of existing trees to an absolute minimum.

The most significant trees along the alignment will be retained through careful construction areas, by avoiding disturbance to root systems, including:

- constructing a section of path with concrete, and
- constructing two elevated sections of the path.

The existing footpath on the residential side of Railway Parade is not considered suitable for a bicycle path. Bicycle paths are designed to allow cyclists to travel along the path route at significantly higher speeds than a normal dual use path or footpath. This requires significantly different design and safety standards than other path types. It is to be noted that the residential side of Railway Parade has several road intersections and numerous crossovers which greatly increases potential for a cyclist/vehicle conflict (usually by vehicles backing out of internal driveways onto the road carriageway). Placing a bicycle path adjacent to the Beckenham Primary School exposes children to risk of being hit by cyclists using that bicycle path. Placing the bicycle path on the rail reserve side of Railway Parade is a much safer option for cyclists and is the preferred alignment of the City of Gosnells, Department of Transport and Perth Transport Authority.

Separating cyclists and vehicle traffic from roads is standard adopted by government authorities being considered best practice especially in terms of safety for cyclists.

The City of Gosnells has also advised that Railway Parade is at times quite congested with vehicle traffic particularly at school drop off and pick up times outside Beckenham Primary School, which is situated at the William Street end of Railway Parade. There are therefore compelling safety reasons for moving cycle traffic off the road and for this reason the new cycle path has strong support from the local cycling community.

The City has further advised that the cycle path has been made as narrow as possible to minimise the clearing footprint and that, for safety reasons, it would not be possible to make it any narrower. In addition, there is a large open drainage ditch on the railway side of the road reserve so it would not be practical to reroute the cycle track "behind" the vegetation to avoid the need to clear trees.

The City has an active tree planting program which includes planting of advanced Marri seedlings in reserves and parklands. The City advised that it would not favour planting

“replacement” Marri trees along Railway Parade as the preference is to plant Marri in parkland areas away from roads to minimise the risk of cockatoos being hit by vehicles.

The City has advised that, under its tree planting program, this winter at least 171 advanced seedling Marri trees and several hundred other advanced seedlings of other locally native trees suitable for Black Cockatoo foraging habitat will be planted in suitable streetscapes, parks and reserves. In addition, at least 430 Marri tubestock will be planted this winter throughout all of the City of Gosnells natural area reserves. The City also has a large-scale revegetation project at an environmentally sensitive site at Elkhorne Avenue, Edencourt Drive and Tiger Circle reserves in Southern River. This site adjoins a Conservation Category Wetland and Bush Forever site which is likely to be a suitable cockatoo foraging location, being close to a water source. The plan is to plant 55,791 native tubestock plants and 465 advanced native trees (including Marri trees) over the next 3 to 5 years.

## **Conclusion**

Having regard to the information provided on this ground of appeal, it is concluded that DWER's assessment had appropriate regard to measures to avoid and minimise impacts. It is considered that appropriate conditions were applied to the permit to ensure that impacts are avoided and minimised.

## **CONCLUSIONS AND RECOMMENDATION**

In conclusion, it is considered that DWER's assessment against the clearing principles is supported by the available evidence and had appropriate regard for the environmental impacts associated with the application including cumulative impacts and measures to avoid and minimise impacts.

It is noted that the proposed cycle path is for a public benefit (to improve road safety) and that the City of Gosnells has taken appropriate steps to avoid and minimise impacts. It is further noted that, for road safety reasons, the cycle path cannot be put on the other side of Railway Parade.

Based on the nature of the vegetation and the limited extent of clearing, and noting that the *WA Environmental Offsets Policy* (September 2011) specifies that offsets will not be applied to minor environmental matters, it is considered that an environmental offset is not required in this case.

It is therefore recommended that the appeal be dismissed.

Emma Gaunt  
APPEALS CONVENOR

**Investigating Officer:**  
Tim Gentle, Principal Appeals Officer