



**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 TO GRANT A CLEARING PERMIT  
CLEARING PERMIT CPS 7559/1: CLEARING OF 1.9 HECTARES OF  
NATIVE VEGETATION – LOT 14248 ON DP 27729 BOONANARRING  
AND LOT 14249 ON DP 27729 BEERMULLLAH, SHIRE OF GINGIN**

**PROPONENT: SHAWMAC PTY LTD**

Appeal Number C003.001-002 of 2018

**September 2018**

## Appeals Summary

The report relates to appeal received in objection to the grant of a permit to clear 1.9 hectares of native vegetation in the vicinity of the intersection of Brand Highway and Wannamal Road West in the Shire of Gingin. The purpose of the clearing is to upgrade the intersection associated with a mining proposal.

The appellants submitted that in granting the permit, the Department of Water and Environmental Regulation (DWER) failed to adequately assess potential impacts to a number of listed rare flora species known from the area. This included orchid species.

In response to the appeals, DWER sought additional advice from the Department of Biodiversity, Conservation and Attractions (DBCA) in relation to the values of the area proposed to be cleared. Based on this advice, DWER recommended that additional surveys be undertaken for two species, and that conditions be applied to the permit to prevent clearing within 50 metres if individuals were found.

The permit holder committed to undertaking a targeted survey for the two species identified by DWER and DBCA. The survey was undertaken in July 2018, and the results provided to the Appeals Convenor. The survey concluded that neither of the two species were located within the survey area.

The survey results were referred to DBCA for comment, and its advice (received in August 2018) was that the survey was carried out to an acceptable standard and by a competent botanist, and that the results should be accepted.

On the basis of the foregoing, it was considered that the decision to grant the permit was appropriate, and that none of the species identified by the appellants were identified as being impacted by the proposal.

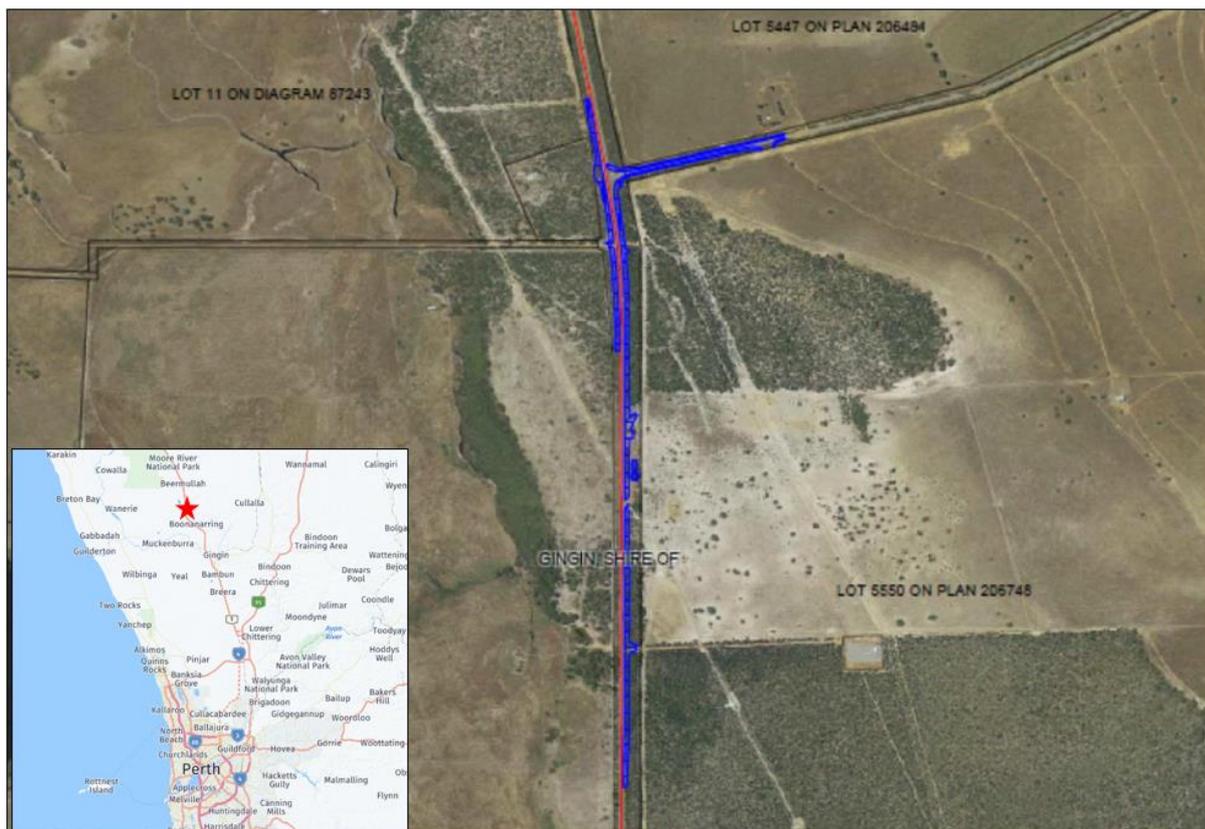
## Recommendation

It was recommended that the appeals be dismissed.

## INTRODUCTION

This report relates to appeals received by the Wildflower Society of Western Australia (Inc) (Appellant 1) and the Western Australian Native Orchid Study and Conservation Group Inc (Appellant 2) in objection to the decision of the Department of Water and Environmental Regulation (DWER) to grant a clearing permit to Shawmac Pty Ltd (permit holder) to clear 1.9 hectares (ha) of native vegetation within various lots straddling the Brand Highway and Wannamal Road West in the Shire of Gingin for the purpose of road widening and upgrades to support mining operations. The location and extent of the application area are shown in Figure 1.

**Figure 1 – Location of proposal and application area** (Source: DWER, Yahoo Maps, 2018)



## Background

On 13 April 2017, the permit holder applied for a purpose permit to clear 2.2 ha of native vegetation within Lot 14248 on deposited Plan 27729, Boonanarring and Lot 14249 on Deposited Plan 2779 Beermullah, Shire of Gingin.

On 16 May 2017 the application was advertised for public comment in *The West Australian* newspaper and on the former Department of Environment Regulation's (DER) website for 21 days. No submissions were received.

DWER granted Clearing Permit CPS 7559/1 to the permit holder on 27 February 2018 authorising the clearing of up to 1.9 ha of native vegetation. It was against that decision that the appeals were lodged.

On 22 August 2014, Ministerial Statement 981 (MS981) was published, approving the implementation of the Boonanarring Mineral Sands Mine proposal, the proponent for which

is Image Resources NL. A portion of the development envelope for the Boonanarring Mineral Sands Mine approved under MS981, intersects with the area the subject of the clearing permit the subject of this appeal. MS 981 authorised the clearing of a maximum 50 ha within the 1,205 ha development envelope.

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.

During the appeals investigation the Appeals Convenor consulted the appellants and the permit holder. The permit holder provided a written response to the appeals which was considered in the investigation.

The permit holder also requested a copy of DWER's report on the appeals, and in response to DWER's advice, the permit holder undertook further flora surveys in July 2018. The results of this are considered below.

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.

## OUTCOMES SOUGHT BY APPELLANTS

The appellants are seeking for the permit to be cancelled, or in the alternative, for additional conditions to be included in relation to flora.

## GROUND OF APPEAL – IMPACTS TO NATIVE FLORA

The appeals relate primarily to the adequacy of DWER's assessment of impacts to native flora. By its appeal, the Wildflower Society submitted that available information suggests that the application are may contain suitable habitat for five species of threatened flora. The appellant submitted this was likely to include *Caladenia speciosa* and *Thelymitra dedmaniarum* (or another similar threatened species in the *Thelymitra fuscolutea* complex).

On the basis of this information, the Wildflower Society further submitted that the timing of the surveys (March and April) was not suitable for orchid species, which it stated should be undertaken later in the year when they are flowering. The appellant indicated that further surveys of relevant species be undertaken, and that if found, they should be avoided. If avoidance was not possible, the appellant suggested that additional offsets should be applied to the proposal to counterbalance the residual impacts.

The Native Orchid Society raised similar concerns, identifying that on the basis of publicly available information and information from Society members, the application area may contain suitable habitat for four threatened orchids (*Diuris drummondii* (Tall Donkey Orchid), *Drakaea elastica* (Glossy-leaved Hammer Orchid), *Paracaleana dixonii* (Sandplain Duck Orchid) and *Thelymitra dedmaniarum* (Cinnamon Sun Orchid)) and one Priority 4 orchid (*Caladenia speciosa* (Sandplain White Spider Orchid)). Like the Wildflower Society, the Native Orchid Society requested that further appropriately timed surveys be undertaken, and

that the results of those surveys be used to avoid clearing of identified threatened orchid species.

## Consideration

In response to the appeals, DWER advised that it identified that the proposed clearing may be suitable habitat for two native species, being *Banksia mimica* and *Macarthuria keigheryi*.

In response to the appeals, DWER sought advice from the Department of Biodiversity, Conservation and Attractions (DBCA) on the additional species identified by the appellants. DWER summarised DBCA's advice as follows:

### *Diuris drummondii*:

- Found in scattered populations between Northampton and Walpole. Closest known population is 17 km south-east from the Application Area.
- Grows in low-lying areas that contain surface water well into summer.
- Given the habitat preference, this species is unlikely to occur in the Application Area.

### *Drakaea elastica*:

- Found between Cataby and Ruabon. Closest population is 11 km north-west of the Application Area. The Application Area is within the overall distribution of the species, but it is more commonly found to the south.
- Grows in deep sandy soil in Banksia woodland and is usually found in low-lying areas alongside winter wet swamps.
- The area to the immediate west of the Application Area shows signs of being winter wet (green showing up on the aerial photography) and that corner of the woodland vegetation block is more densely vegetated which could indicate a site of water accumulation. This area of vegetation near the Application Area could thus be suitable habitat for the species and would warrant further investigation.

### *Paracaleana dixonii*:

- Found between Moore River National Park and the Arrowsmith River (north of Eneabba). Closest population is in Moore River (this is the southern-most population for this species), approximately 18 km north-east of the Application Area.
- Grows in deep sand in open areas beneath dense tall shrubs or in shallow sand over laterite in heathland.
- Unlikely to occur in the Application Area.

### *Thelymitra dedmaniarum*:

- Found in the Toodyay/Gidgegannup area.
- Grows on granite slopes and in open Wandoo woodland.
- Given the habitat preference, this species is unlikely to occur in the Application Area.<sup>1</sup>

Based on the foregoing, DBCA concluded:

*Drakaea elastica* appears to be the most likely to occur within the area if it is confirmed that the site is in fact a low-lying winter wet area. It is within the range of the species, and from remote assessment, the habitat and vegetation could be suitable habitat for the species. Further survey is recommended at that site for this species. The species is best surveyed when the leaf (rather than flower) is present, that is during July and August.

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<sup>1</sup> DWER, Advice in response to appeals, 30 April 2018, pages 3 to 4.

Note, this habitat may be suitable for *Macarthuria keigheryi* if it is a low-lying winter wet area, and hence this species should be included in the survey if one is undertaken.<sup>2</sup>

In response to DBCA's advice, DWER officers conducted an additional site visit in May 2018. Additional advice was obtained from DBCA following this site visit, which confirmed the application area may be suitable for both *Drakaea elastica* and *Macarthuria keigheryi*.

As a result of the foregoing, DWER recommended that:

... a targeted flora survey should be undertaken to confirm the presence or absence of the threatened orchid *Drakaea elastica* in the part of the Application Area identified as potentially being a low-lying winter wet area. Noting the DBCA advice that this habitat may also be suitable for *Macarthuria keigheryi* if it is a low-lying winter wet area, this species should also be included in the survey.<sup>3</sup>

In the event the species were identified from within the application area, DWER further recommended that the conditions of the permit be amended to:

- prohibit clearing within 50 metres of known locations of the species; and
- require the permit holder to keep records on the targeted flora survey undertaken, and to report on the findings of the targeted flora survey and the actions taken.

DWER did not recommend a change to the offset if the rare species are identified, as it recommended that these species be avoided if found. As a result, DWER was of the view that the offset was appropriate.

The permit holder was given an opportunity to respond to DWER's recommendations. To this end, the permit holder indicated it was prepared to undertake surveys in July 2018, to inform the Minister's decision on the appeals.

The consultant for the permit holder submitted a report on the outcomes of the survey on 30 July 2018. The findings were that no *Drakaea elastica* and *Macarthuria keigheryi* were identified within the search area.

The findings of the July 2018 survey were provided to DBCA for comment. In response, DBCA advised that:

The survey for the above species [*Drakaea elastica* and *Macarthuria keigheryi*] was undertaken at an appropriate time of the year, by a competent botanist.

The methodology was appropriate for the targeted survey for these species in a linear vegetation area, being sequential foot traverses across the survey area.

The surveyor has demonstrated an understanding of the differentiating characteristics of these species, and was able to locate three plants of the closely related *Macarthuria australis*, which often co-occurs with *Macarthuria keigheryi*.

The survey did not find any plants of either target species. Given the methodology employed, if either target species are present in the area, they would not be expected to be present in numbers likely to be significant to the conservation of either species.<sup>4</sup>

Based on the foregoing, it is considered that there is sufficient information now available to confirm that the proposed clearing will not significantly impact on the species identified by the appellants. As a result, it is considered that DWER's decision to grant the permit was justified.

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<sup>2</sup> DWER, Advice in response to appeals, 30 April 2018, page 4.

<sup>3</sup> Ibid, page 5.

<sup>4</sup> DBCA, advice in response to request, 7 August 2018, page 1.

Given the foregoing, it is considered unnecessary for additional controls to be applied to the permit, as no threatened species have been identified as being impacted by the proposed clearing.

## **CONCLUSION AND RECOMMENDATION**

For the reasons stated above, it is considered that the decision of DWER to grant the permit was justified, and that as a result, appeals against the grant of the permit are recommended to be dismissed.

In addition, noting that no threatened species were identified within the application area through the additional survey, it is recommended that appeals in respect to the conditions of the permit are also dismissed.

Emma Gaunt  
APPEALS CONVENOR

**Investigating Officer:**  
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Tonya Carter, Senior Appeals Officer