



Appeals Convenor
Environmental Protection Act 1986

**REPORT TO THE
MINISTER FOR ENVIRONMENT**

**APPEALS IN OBJECTION TO GRANT AND
CONDITIONS OF CLEARING PERMIT**

**CLEARING PERMIT 7898/1: ALBANY HIGHWAY –
SLK 254.9 TO 266 – KOJONUP SOUTH WIDENING
SHIRE OF KOJONUP**

PROPONENT: MAIN ROADS WESTERN AUSTRALIA

Appeal Numbers: C005.001–003 of 2018

August 2018

Appeals Summary

This report relates to three appeals lodged against the grant and conditions of Clearing Permit CPS 7898/1 issued by the Department of Water and Environmental Regulation (DWER) to Main Roads Western Australia to clear 5.5 hectares (ha) of native vegetation within the Albany Highway road reserve (SLK 254.9 to 266), in the Shire of Kojonup.

In summary, the two third-party appellants submitted that the permit should not have been granted based on their view that the flora survey was inadequate in relation to the Smooth-lipped spider orchid, cumulative impacts to the threatened ecological community and fauna, and in particular the significance of the application area as a remnant in an extensively cleared area. Concerns relating to conditions including avoidance and minimisation, and offsets were also raised. The permit holder also lodged an appeal, submitting that the conditions in relation to dieback were unclear and unreasonable, and the conditions relating to offsets were practically unachievable.

In response to the appeal, DWER noted that the flora survey may not have been undertaken at the optional time for the Smooth-lipped spider orchid but due to its relative abundance and wide range, the Smooth-lipped spider orchid is not likely to be significantly impacted. DWER advised that cumulative impacts were considered through the extent of clearing within the local area, the relevant vegetation association, biodiversity and the conservation classifications of flora and fauna species.

In response to the permit holder's ground of appeal, DWER recommended that conditions 7 and 8 could be amended to provide clarity and practicability while facilitating the intended environmental outcomes that the conditions were set to achieve.

Based on the information provided in the appeal investigation, the Appeals Convenor considered that DWER's assessment of the proposed clearing and its decision to grant the permit subject to condition including an offset was justified.

Notwithstanding the above, the Appeals Convenor was also of the view that DWER's recommendation to amend conditions 7 and 8 in relation to dieback and offsets, respectively, is appropriate.

Recommendations

The Appeals Convenor recommended that the appeals be allowed to the extent that:

- condition 7(b) is amended to read:
 - ensure that no known *dieback* or *weed*-affected soil, *mulch*, *fill* or other material is brought into the area to be cleared;
- condition 8(a) is amended to reflect that the offsets payment is required prior to the commencement of clearing but no later than 12 months from the expiry date of the permit; and
- conditions 8(b–d) be removed.

The final wording is a matter for DWER under section 110 of the *Environmental Protection Act 1986*. It is otherwise recommended that the appeals are dismissed.

INTRODUCTION

This report relates to three appeals lodged in objection to the grant and conditions of Clearing Permit 7898/1 issued by the Department of Water and Environmental Regulation (DWER) to Main Roads Western Australia. Two appellants, the Wildflower Society of Western Australia (Inc) (Appellant 1) and the Western Australian Native Orchid Study and Conservation Group Inc (Appellant 2) lodged similar appeals against both the grant and conditions of the permit. The third appellant, Main Roads Western Australia (Appellant 3), lodged its appeal against the conditions of the permit.

The clearing permit authorises the permit holder to clear 5.5 hectares (ha) of native vegetation within the Albany Highway road reserve in the Shire of Kojonup for the purpose of road widening. The location and extent of clearing are shown in Figure 1.



Figure 1 – Location and extent (blue hatched area) of application area for CPS 7898/1

(Source: <https://cps.dwer.wa.gov.au/> & *WhereIs*)

Background

On 28 November 2017, the permit holder applied for a Purpose Permit to clear up to 8.03 ha of native vegetation within various lots in Kojonup, Lumeah and the Albany Highway road reserve in the Shire of Kojonup for the purpose of road widening. On 22 December 2017, the application was advertised for 21 days and no public submissions were received during this period.

Prior to lodging the clearing permit application, the permit holder referred the proposal to the Department of the Environment and Energy to determine whether the proposed clearing was deemed to be a 'controlled action' under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. The application was determined to be a controlled action due to the potential for significant impacts to Carnaby's black cockatoo, Baudin's black cockatoo, forest red-tailed black cockatoo and the *Eucalypt Woodlands of Western Australian Wheatbelt* threatened ecological community (TEC). The Commonwealth

environmental approval process is being progressed separately to the State process and an offset is yet to be decided. An application under the bilateral agreement between the State and Commonwealth was not submitted.

DWER wrote to the permit holder on 8 February 2018 outlining the significant environmental issues that were identified during the preliminary assessment. DWER invited the permit holder to provide additional information.

On 13 March 2018, the permit holder provided additional information to DWER and amended the application area from 8.03 ha to 5.5 ha.

Clearing Permit CPS 7898/1 was granted (subject to conditions) to the permit holder on 3 April 2018 authorising the clearing of up to 5.5 ha of native vegetation. It was against that decision and the conditions of the permit that the appeals were lodged.

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. The permit holder was also given the opportunity to address the matters raised in the appeals.

During the appeals investigation, the Appeals Convenor consulted the appellants and the permit holder in relation to issues raised in the appeals. A written response to the appeals was provided by Main Roads WA on 22 May 2018.

Two appellants requested and were provided a copy of relevant sections of DWER's section 106 report and both appellants provided a written response that was considered as a part of the appeals investigation.

The environmental appeals process is a merits-based process. For appeals in relation to a DWER decision to grant a clearing permit and conditions of 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

Appellants 1 and 2 are seeking for the Minister to overturn DWER's decision to grant Clearing Permit CPS 7898/1, and in the alternative, if the permit is granted, for additional conditions to be included on the permit.

Appellant 3 is seeking for the Minister to amend conditions relating to the management of dieback and offsets.

GROUNDINGS OF APPEAL

The appellants' grounds of appeal are summarised as follows:

- assessment of environmental impacts;
- environmental mitigation and management conditions; and
- offsets.

GROUND 1: ASSESSMENT OF ENVIRONMENTAL IMPACTS

Appellants 1 and 2 submitted that the clearing permit should not have been granted as the proposed clearing will impact on a significant remnant in an extensively cleared area that has a high level of biodiversity, provides habitat for conservation significant fauna and is associated with the *Eucalypt Woodlands of the Western Australian Wheatbelt* TEC. Concerns were also raised about DWER's conclusions around the significance of impacts and suggested that criteria be established to assist with determining what constitutes a significant impact on a threatened fauna species and TECs. Both appellants recommended that the removal of greater than 0.001 per cent (%) of individuals of a species or the area of a TEC should be considered a significant impact and should consequently not be approved.

Appellant 1 also raised that there is inconsistency within the Decision Report as the introduction stated that the proposed clearing is at variance with three of the ten clearing principles, whereas DWER indicates in the body of the Decision Report that the clearing is at variance with five clearing principles (a), (b), (d), (e) and (f).

Appellants 1 and 2 submitted that DWER's assessment of the proposed clearing against clearing principle (a) was flawed due to the timing of the flora survey, particularly in relation to the Priority 4 Smooth-lipped spider orchid (*Caladenia integra*).

Furthermore, Appellants 1 and 2 raised concerns that cumulative impacts were not considered by DWER in its assessment and that the removal of a small area of remnant vegetation will have significant environmental impacts through 'death by a thousand cuts'.

This ground of appeal has been considered as follows:

1. assessment against the clearing principles;
2. conservation significant fauna;
3. rare flora;
4. *Eucalypt Woodlands of the Western Australian Wheatbelt* TEC; and
5. cumulative impacts.

Consideration

Assessment against the Clearing Principles

Appellants 1 and 2 did not dispute DWER's findings that the proposed clearing is at variance with five clearing principles (a, b, d, e and f), however, were of the view that this was sufficient reason for DWER to refuse to grant the permit.

In response to this element of the appeals, DWER advised that the EP Act does not preclude a clearing permit from being granted where the proposal will be at variance with the principles. For example, section 51O(3) allows the Chief Executive Officer (CEO) to make a decision that is seriously at variance with the clearing principles if, in the CEO's opinion, there is a good reason for doing so.

DWER advised that in the case of this application, it had regard to the clearing principles and acknowledged that the clearing is at variance to five of the ten principles. DWER advised that it considered cumulative impacts of the clearing through the consideration of the extent of clearing within the local area and relevant vegetation associations under clearing principle (e), the level of biodiversity under clearing principle (a) and the conservation classification of flora and fauna species, considered under clearing principles (a), (b) and (c).

DWER's assessment, as outlined in the Decision Report found that the proposed clearing would result in significant residual impacts, including:

- the loss of 5.5 ha of foraging habitat for Carnaby's black cockatoo, Baudin's black cockatoo and forest red-tailed black cockatoo;
- loss of 5.5 ha of native vegetation that is significant as a remnant in an area that has been extensively cleared; and
- the loss of 5.5 ha of native vegetation that provides a high level of biological diversity.

Having regard to the information provided by the permit holder, the purpose of the clearing (upgrades for road safety) and the permit holder's avoidance and mitigation measures, DWER granted the permit subject to conditions including an offset to counterbalance significant residual environmental impacts.

In relation to the purpose of the permit, the permit holder advised that this stretch of road has had ten accidents occur between 2012 and 2016, with five being classified as major accidents and two requiring medical attention/hospitalisation. Furthermore, the permit holder advised that increasing the shoulder width from 0.5 metres (m) to 2.0m is expected to reduce 'killed and seriously injured' numbers by 64%.

In relation to the third-party appellants' proposed criteria to determine significance, DWER noted that it considered a range of factors in its consideration of significance including the conservation classification of the species, the percentage of impact on the species/community occurrence within a local area and the likely impacts on the remaining extent of the fauna habitat or TEC.

In response to the inconsistency identified by the appellant within the Decision Report, DWER acknowledged that the summary of the assessment against the clearing principles made under s1.5 (reasons for decision) only refers to principles (a), (b) and (e) and that this was a typographical error and variance to principles (d) and (f) should have been referenced. Notwithstanding, DWER advised that it granted the permit subject to conditions based on the full assessment against the clearing principles as described in the report.

Conservation Significant Fauna

In relation to conservation significant fauna, the primary concern raised by Appellant 1 was that cumulative impacts were not considered by DWER and submitted that DWER must contribute to the Threatened Species Recovery Plans by avoiding the clearing of black cockatoo habitat.

DWER advised that it assesses cumulative impacts through its consideration of the extent of clearing within the local area, the relevant vegetation association [clearing principle (e)], the level of biodiversity [clearing principle (a)] and the conservation classifications of flora and fauna species [clearing principles (b) and (c)]. In this case, DWER's assessment found that the application area comprises suitable foraging habitat for the forest red-tailed black cockatoo¹, Baudin's black cockatoo² and Carnaby's black cockatoo³ (collectively known as black cockatoos) and the Western rosella⁴ and on this basis concluded that the proposed clearing of 5.5 ha of black cockatoo foraging habitat is likely to result in significant residual impacts due to a cumulative reduction in habitat for these species. DWER's consideration of cumulative impacts is discussed further below.

¹ Classified as 'Fauna that is rare or likely to become extinct as vulnerable fauna' under the *Wildlife Conservation (Specially Protected Fauna) Notice 2017*

² Classified as 'Fauna that is rare or likely to become extinct as endangered fauna' under the *Wildlife Conservation (Specially Protected Fauna) Notice 2017*

³ Classified as 'Fauna that is rare or likely to become extinct as endangered fauna' under the *Wildlife Conservation (Specially Protected Fauna) Notice 2017*

⁴ Listed as Priority 4 by the Department of Biodiversity, Conservation and Attractions.

Rare Flora

In relation to flora, Appellants 1 and 2 noted that a NatureMap search [10 kilometres (km)] recorded the presence of 226 native plant species, and the presence of seven native plant species of conservation significance and in particular the Smooth-lipped spider orchid.

The appellants submitted that this orchid may not have been detected during the November survey as its peak flowering period is in September to early October. It was on this basis that the appellants submitted that the permit should not be granted until a survey has been conducted or a condition be included requiring a flora survey in September.

In response, DWER advised that its assessment had regard for information available in databases and the advice of the Department of Biodiversity, Conservation and Attractions (DBCA) in regard to the presence of conservation significant flora recorded in the area.

DWER noted that the Environmental Protection Authority's (EPA) "*Technical Guidance: Flora and Vegetation Surveys for Environmental Impact Assessment*" (December 2016) indicates that most appropriate timing for flora surveys in the South West and interzone botanical province is between September and November each year, and on this basis DWER considered that the timing of the survey was consistent with the guidelines.

In response to the appeal, DWER acknowledged that the survey was not undertaken at an optimal time for identifying the Smooth-lipped spider orchid. However, based on DBCA records, DWER noted that this species is relatively abundant with 45 known locations of which 10 occur in conservation estates, within a wide range of approximately 450 km and therefore concluded that should this species occur within the application area, it is unlikely that the proposed clearing would have an impact on the conservation status. DWER remained of the view that additional survey work was not required.

Eucalypt Woodlands of the Western Australian Wheatbelt TEC.

Appellants 1 and 2 raised concerns about impacts to the TEC, particularly in relation to cumulative impacts of many smaller portions of clearing. Appellant 1 also submitted that the size of the TEC and linear shape of the application area are irrelevant considerations in determining the significance of the impact.

As outlined in the Decision Report, the assessment of the impact on the TEC was considered against principles (a) and (d). DWER's assessment found that the proposed clearing would result in a loss of 0.035 ha of vegetation associated with the TEC, which comprised three small portions of larger remnants that comprise the TEC.

DWER advised that in its consideration of the significance of the impact, it had regard to the recorded extent of these occurrences in a local context, the size of the occurrences and the extent the proposed clearing will impact on these occurrences. DWER also took into consideration the permit holder's avoidance measures which were to reduce the area of clearing vegetation associated with the TEC from 0.91 ha to 0.035 ha.

Noting that the application area is narrow in width, occurs on the edge of the TEC occurrences and the mapped extent of the TEC within a 50 km radius is approximately 42,681 ha (of which the proposed clearing equates to approximately 0.00008 per cent), DWER considered that the proposed clearing will not lead to an unacceptable environmental risk to the TEC. DWER further noted that while the proposed clearing was found to be at variance to principle (d), it was assessed as unlikely to result in a significant impact.

In order to minimise the risk of impacts to the surrounding extent of the TEC, DWER included a condition on the permit to implement weed and dieback management practices.

Cumulative Impacts

In relation to Appellant 1 and 2's submission that cumulative impacts of the clearing must be considered particularly in regard to remnant vegetation in an extensively cleared area, DWER advised that given the mapped extent of vegetation the Beard Vegetation Association 4 and the local area contain less than the 30 per cent of the National Objectives and Targets, and that the vegetation in the Application Area comprises significant habitat for conservation significant fauna and a high level of biodiversity, it concluded that the proposed clearing would be at variance to clearing principle (e).

As noted above, DWER, taking into account the proposed purpose of the clearing, considered that the proposed offset is suitable to counterbalance the significant impacts of the clearing. DWER advised that during the assessment, it confirmed that there are areas of suitable native vegetation within the Shire of Kojonup that are significant as remnants of native vegetation and provide environmental values commensurate with those being impacted by the proposed clearing and therefore was satisfied that a suitable offset site could be located.

Conclusion

Taking into account the above and noting DWER's advice that the EP Act does not preclude a clearing permit from being granted where the proposal will be at variance with the clearing principles, it is considered that DWER's assessment of the application was supported by the available evidence and the grant of the permit subject to conditions was justified.

GROUND 2: ENVIRONMENTAL MITIGATION AND MANAGEMENT CONDITIONS

Two appellants submitted grounds in relation to the conditions applied to the permit. This ground of appeal is considered as follows:

- avoidance and minimisation of clearing (Appellant 1); and
- dieback management (Appellant 3).

Consideration

Avoidance and minimisation of clearing

Appellant 1 submitted that adequate conditions to avoid, minimise or ameliorate clearing were not included on the permit.

In relation to the appellant's concern on avoidance and minimisation, it is noted that the former Department of Environment Regulation's *A guide to the assessment of applications to clear native vegetation*⁵ outlines that native vegetation clearing should only be considered after all other reasonable attempts to mitigate adverse impacts have been exhausted, and that potential environmental impacts should be addressed through the mitigation hierarchy.

In response to the appeal, DWER advised that it assesses clearing permit applications on a case by case basis and noted that the permit holder amended and reduced the application area to the smallest area possible through numerous measures, including the use of engineering methods such as barriers. DWER also noted that the permit holder committed to the following mitigation and avoidance measures in order to avoid environmental impacts:

- retaining all trees containing suitable breeding hollows for black cockatoos and the western rosellas;

⁵ Government of Western Australia (2014). A guide to the assessment of applications to clear native vegetation. Under Part V Division 2 of the *Environmental Protection Act 1986*, Department of Environment Regulation, December 2014.

- avoiding areas with significant native vegetation through the installation of safety barriers, steepening in barriers and reducing the table drain depths; and
- ensuring no temporary clearing will be undertaken for the purpose of storage, side tracks, stockpiles, or turnaround bays.

DWER advised that it considered that Main Road's efforts to avoid and minimise impacts were sufficient in deciding to grant the clearing permit. While the appellant's suggested road design options are noted in the appeal, DWER noted that the permit holder is responsible for the planning, building and maintenance of the Western Australian road network and has the relevant expertise and experience to determine the technical engineering standards of the proposed road upgrades. DWER also advised that it does not exhaustively assess whether all options and technical solutions for reducing clearing have been applied to a proposal, however, it assesses the potential environmental impacts of the proposed clearing.

Dieback management

Appellant 3 (also the permit holder) requested that the wording of condition 7(b) be amended from:

ensure that no *dieback* or *weed*-affected soil, *mulch*, *fill* or other material is brought into the area to be cleared;

to:

ensure that no known *dieback* or *weed*-affected soil, *mulch*, *fill* or other material is brought into the area to be cleared.

The appellant submitted that the wording proposed by DWER was unreasonable on the basis that in order to comply with this condition, it would have to obtain materials from a source that is currently vegetated to allow the dieback status to be determined. In addition the appellant submitted that it was a regulatory burden for no benefit given that the majority of the project area is in a degraded condition and not considered to be a 'Protectable area' in accordance with the former Department of Parks and Wildlife's *Phytophthora Dieback Interpreters Manual for Lands managed by the Department* (2015).

In order to minimise the risk of dieback being introduced into the area, the appellant submitted that they would be prepared to engage a qualified dieback assessor to map the road reserve and adjacent areas. Where 'Protectable areas' are identified, the permit holder proposes to develop a Dieback Management Plan including measures developed by DBCA, for example:

- designating dieback Protectable areas during construction;
- redirecting road drainage away from Protectable areas;
- requiring vehicles, machines and equipment to be clean and on entry to the area; and
- maintain signage, turnarounds, gates, clean down points and drainage and any other relevant management points during clearing and construction activities.

The appellant did not dispute conditions 7 (a) and (c) which requires the permit holder to clean earth moving machinery of soils and vegetation prior to entering and leaving the area to be cleared and restrict the movement of machines and other vehicles to the limits of the areas to be cleared.

DWER advised that in this case the risk of spread of dieback through the introduction of infested material is low, as the proposed clearing area is not located adjacent to areas of conservation estate requiring protection and the risk of dieback already being introduced into the area through road usage is high, and on this basis agreed with the permit holder's proposed amendment.

Conclusion

In relation to dieback, noting the concurrence between DWER and the permit holder, it is recommended that the Minister allows the appeal to the extent that condition 7(b) is amended in the manner as agreed by DWER.

GROUND 3: OFFSETS

Appellants 1 and 2 submitted various concerns relating to offsets including:

- an offset would not replace the loss of values of the vegetation;
- the offset is inadequate (funds should be added to support ongoing management);
- a philosophical opposition to offsets; and
- the offset site should be purchased prior to grant of the permit.

Appellant 1 submitted a comprehensive description of its position on the application of offsets including: using offsets as a last resort, must be 'like for like' and close to the area of impact, must include rehabilitation of degraded land to ensure 'no net loss' and private land to be placed into the Conservation State as an offset must be in perpetuity.

In the alternative, the appellant 3 submitted that condition 8 (Offsets) is unclear, unreasonable and potentially unachievable, noting the following:

- the requirements to 'identify' suitable parcels of land is unclear with respect to the level of effort required to determine suitability of the site;
- the identification of ten separate 39 ha parcels of land within the Shire of Kojonup is unreasonable, with respect to availability and suitability;
- the requirement that the land parcels must be able to be 'acquired for conservation' is potentially unachievable and unreasonable;
- the timeframe for the identification of sites (nine months) is unreasonable;
- inconsistent with offset requirements for other clearing permits and permit holders with respect to the requirement to identify multiple parcels of land;
- uncertain as to why the offset site must comprise a high level of biodiversity when the application area does not comprise a high level of biodiversity;
- no justification to restrict the location of a suitable offset site to a local government boundary rather than environmental boundaries such as a bioregion;
- timeframe for the provision of the offset is unclear and not related to the commencement of clearing, potentially resulting in unreasonable financial burden if clearing is avoided; and
- specificity of the condition potentially limits the consideration of alternatives.

In response to DWER's advice provided during the appeal investigation, the permit holder also submitted that while it is not seeking a relaxation of the 12-month timeframe, it is seeking that the 12-month timeframe be applied from the commencement of clearing as opposed to a specified date.

Consideration

This ground of appeal is considered as follows:

- adequacy of the offset; and
- achievability and reasonableness of the offset conditions.

Adequacy of the offset

As discussed above, DWER noted that after considering the proposed avoidance, minimisation and mitigation measures, its assessment found that the proposed clearing would likely impact on 5.5 ha of vegetation that:

- contains a high level of biodiversity;
- significant foraging habitat for black cockatoos; and
- is a significant remnant of native vegetation within an extensively cleared area.

In response to the appeal, DWER advised that an offset was calculated in accordance with the Commonwealth Offset Assessment Guide which indicated that an acquisition of 39 ha is required in order to counterbalance the significant residual impacts associated with the proposed clearing, and equates to a monetary value of \$174,330 based on the estimated value per ha of a vegetated parcel of land in the Shire of Kojonup. DWER was of the view that this offset is appropriate to counterbalance the significant residual impacts of the proposed clearing and is consistent with the *WA Environmental Offsets Guidelines*⁶.

While Appellant 1's philosophical opposition to offsets and proposed suggestions for improvement are noted, the Western Australian Government has adopted a policy of applying offsets to counterbalance the significant residual impacts of a project. The *WA Environmental Offsets Policy*⁷ outlines that offsets will be used to compensate for residual environmental impacts and be designed to achieve long-term outcomes, building upon existing conservation programs and initiatives. An Offsets Register that provides a public record of all offset agreements in Western Australia is publicly available and allows for the monitoring of offset implementation and outcomes.

DWER advised that a review of the application of offsets under Part V of the EP Act is currently being undertaken and will provide advice to Government in the future. Notwithstanding, DWER continues to engage with DBCA, which has the relevant expertise and experience in this area to identify opportunities to purchase areas of native vegetation as offsets.

Achievability and reasonableness of the offset conditions

In response to this ground of appeal, DWER noted that where clearing is the subject of a clearing permit application and is also referred and approved under the EPBC Act, it is common for conditions to be applied through the EPBC Act approval requiring the acquisition of suitable offset sites within 12 months of the commencement of clearing. Where a monetary offset requirement is applied to the clearing permit, the required funds must be provided to DWER to enable the purchase of a suitable offset site, with the timeframe of the purchase to be determined by DWER.

DWER further noted that an offset property may also be identified and acquired during the assessment of the clearing permit to allow the impact of clearing to be immediately counterbalanced. In many cases this approach is not practical from a project timeline perspective and the provision of a monetary offset provides an alternative to avoid significant delays. DWER advised that it currently liaises with DBCA to locate and purchase suitable offset properties which cannot always be achieved within a 12-month timeframe.

Conditions 8(b - d) were applied to ensure that responsibility for identifying an initial set of possible offset sites remained with the permit holder (with subsequent work to be completed by DWER and DBCA). DWER acknowledges that aspects of the conditions such as the identification of 10 sites may be unreasonable and impractical and recommended that

⁶ The Government of Western Australia (2014). *WA Environmental Offsets Guidelines*. Environmental Protection Authority, 2014.

⁷ The Government of Western Australia (2011). *WA Environmental Offsets Policy*. Department of Environment Regulation, 2011.

conditions 8(b – d) relating to the identification of suitable offset sites be removed from the conditions.

While the permit holder did not object to the 12-month timeframe, it was of the view that payment of the offset should be linked to the commencement of clearing not to a specified date, particularly given that clearing may be delayed or cancelled due to changes in funding and priorities.

In response, DWER agreed that the offset payment should be linked to the clearing activity and noted that the suggested approach will reduce the risk of a refund being made if clearing is not undertaken. DWER however, raised that removing the due date could introduce potential issues if the permit holder undertakes the clearing at the end of the permit duration and activities in relation to the offset fall outside of the permit period.

On this basis, DWER recommended that the condition be amended to require the offset payment prior to the commencement of clearing but no later than 12 months from the expiry date of the permit. DWER advised that in cases where clearing activities are further delayed, the permit holder can apply to DWER for an extension of the permit period.

Conclusion

In relation to offsets, although Appellant 1's concerns are noted, it is considered that the conversion of spatial area to monetary contribution was appropriate and calculated in accordance with established tools and metrics, and relevant policy and guidelines.

Having regard to the information provided, DWER's recommendation in relation to the amendment to condition 8(a) and the removal of condition 8 (b– d) is supported.

CONCLUSIONS AND RECOMMENDATIONS

Having regard to the above, and noting that the EP Act does not preclude a clearing permit from being granted where it may be at variance with the clearing principles, it is considered that DWER's assessment of the application against the clearing principles was supported by the available evidence and its decision to grant the permit subject to conditions was justified.

However, based on DWER's advice, it is considered that the appeals be allowed to the extent that condition 7(b) is amended, to read as follows:

ensure that no known *dieback or weed*-affected soil, *mulch, fill* or other material is brought into the area to be cleared,

and condition 8(a) is amended to reflect that the offset payment is required prior to the commencement of clearing, but no later than 12 months from the expiry date of the permit and conditions 8(b – d) be removed.

The final wording of the conditions is a matter for DWER under section 110 of the EP Act.

It is otherwise recommended that the appeals are dismissed.

Emma Gaunt
APPEALS CONVENOR

Investigating Officer:
Tonya Carter, Senior Appeals Officer