



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

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**REPORT TO THE  
MINISTER FOR ENVIRONMENT**

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**APPEAL IN OBJECTION TO THE DECISION TO GRANT A CLEARING PERMIT  
CLEARING PERMIT CPS 7662/1: JURIEN EAST ROAD UPGRADE  
SHIRE OF DANDARAGAN**

**PROPONENT: SHIRE OF DANDARAGAN**

Appeal Number 012 of 2018

**May 2019**

## Appeal Summary

This report is related to an appeal lodged against the grant of Clearing Permit CPS 7662/1 issued by the Department of Water and Environmental Regulation (DWER) to the Shire of Dandaragan to clear 2.4 hectares (ha) of native vegetation in various road reserves within Hill River and Jurien Bay for the purpose of road upgrades.

On the basis of the assessment, DWER identified that the proposed clearing is at variance to clearing principle (f) relating to vegetation associated with a watercourse or wetland, and may be at variance to clearing principles (a) high level of biodiversity, (c) includes or necessary for the continued existence of rare flora and (d) threatened ecological communities.

In summary, the issues raised in the appeal related to the Department of Biodiversity, Conservation and Attractions advice in relation to four species of priority flora, in particular *Synaphea sparsiflora* (Priority 2), the value of the application area as a biological 'hot spot' in a highly cleared landscape and an ecological linkage, and the inadequacy of the conditions relating to the protection of rare and priority flora.

In relation to the priority flora species, it was considered that DWER's finding that direct impacts to three of the four species raised by the appellant were unlikely to significantly impact the conservation of the species and that indirect impacts could be managed through appropriate management measures, was supported by the available evidence. In response to the appeal, the permit holder committed to reducing direct impacts to *S. sparsiflora* by reducing the clearing of 29 individuals to 18 individuals.

Having regard to the issues raised in the appeal and the advice provided by DWER and DBCA, it is considered that DWER's assessment of the clearing permit application was appropriate and its decision to grant the clearing permit subject to conditions, was justified.

Notwithstanding, on the basis of information provided by the DWER and the permit holder, the Appeals Convenor recommended that condition 8 be amended in the manner described in this report. It was otherwise recommended that the appeal be dismissed.

### Recommendations

The Appeals Convenor recommended that the appeal be allowed in part, to the extent that condition 8 of the clearing permit is amended to:

- amend condition 8 (a) to include a reference to a 'suitably qualified person'; and
- amend condition 8 (c) (ii) to reflect a reduction in the direct impact to *Synaphea sparsiflora* from 29 to 18 individuals.

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

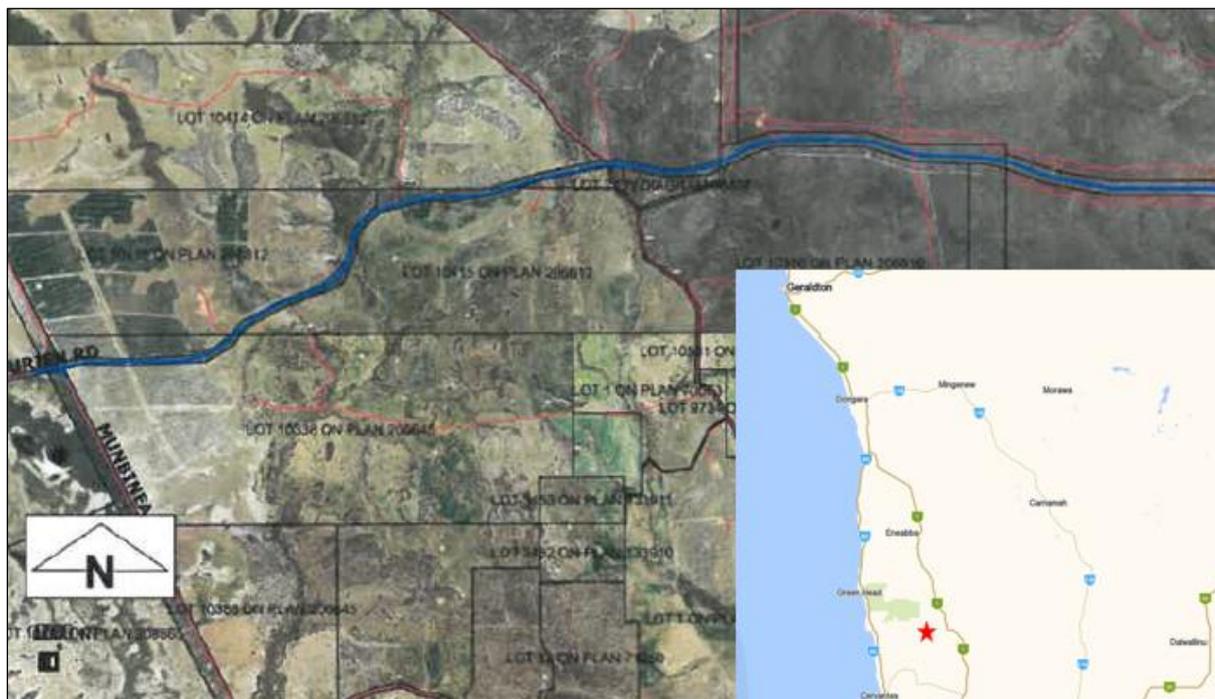
It is otherwise recommended that the appeal is dismissed.

## INTRODUCTION

This report relates to an appeal lodged by the Wildflower Society of Western Australia (Inc) (the appellant) in objection to the decision of the Department of Water and Environmental Regulation (DWER) to grant clearing permit CPS 7662/1 to the Shire of Dandaragan (the permit holder) for the purpose of road upgrades.

The permit holder applied for a purpose permit on 27 June 2017 to clear up to 2.4 hectares (ha) of native vegetation within Jurien East Road Reserve, Munbinea Road and Cockleshell Gully Road reserves at Hill River and Jurien Bay. The location and extent of the application area are shown in Figure 1.

**Figure 1 – Location and extent (blue hatched area) of application area for CPS 7662/1**



(Source: [www.cps.der.wa.gov.au](http://www.cps.der.wa.gov.au) and *WhereIs*)

The application was advertised for public submission on 11 March 2018 for 21 days. Two submissions were received, one from the Western Australian Native Orchid Study and Conservation Group (Inc) and the other from the Wildflower Society Western Australia (Inc). The submissions raised concerns in relation to rare flora, native orchid habitat, fauna habitat and the necessity of the road upgrades, of which DWER considered were addressed in its assessment of the clearing permit application against clearing principles.

DWER granted the permit on 28 August 2018, determining that the proposed clearing is at variance to clearing principle (f) relating to vegetation associated with a watercourse or wetland, and may be at variance to clearing principles (a) high level of biodiversity, (c) includes or necessary for the continued existence of rare flora and (d) threatened ecological communities. It was against this decision and the conditions applied to the permit, that the appeal was 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 appeal. During the appeal investigation the Appeals Convenor consulted the appellant and the permit holder in relation to issues raised in the appeal. The permit holder was also given the opportunity to address the recommendation made by DWER in the section 106 report.

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 the 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 the DWER, technical errors and attainment of relevant policy objectives are normally central to appeals.

## OUTCOME SOUGHT BY APPELLANT

The appellant is seeking for the Minister to overturn DWER's decision to grant the permit, and in the alternative, if the clearing permit is granted, for more stringent conditions to be applied.

## GROUNDINGS OF APPEAL

The appellants ground of appeal are summarised as follows:

1. Environmental values;
2. Value of vegetation in a highly cleared landscape; and
3. Conditions.

### GROUND 1: ENVIRONMENTAL VALUES

The appellant raised concerns in relation to the Department of Biodiversity Conservation and Attractions' (DBCA) advice to DWER (as referenced in DWER's Decision Report), that the potential impacts to four of the seven priority flora (P) species identified within the application area, in particular, *Synaphea sparsiflora* (P2), may be significant.

The appellant disagreed with DWER's assessment of the clearing proposal and submitted that the DWER should have taken a precautionary approach to its assessment and that the proposed clearing is 'at variance' to clearing principle (a) relating to biodiversity and that the permitted disturbance to *S. sparsiflora* is at variance to principle (c) rare flora.

### Consideration

In response to the appeal, DWER advised that, in its assessment it had regard to GIS biodiversity datasets (including recorded occurrences of conservation significant flora and ecological communities), information provided by the permit holder including a flora, vegetation and vertebrate survey of the Jurien Bay East Road Reserve<sup>1</sup> (the FVV Survey), and advice from DBCA.

DBCA in its advice to DWER, noted that:

Based on currently available information, potential impacts to *Acacia retrorsa* (Priority 2), *Synaphea sparsiflora* (Priority 2), *Patersonia argyrea* (Priority 3) and *Thysanotus vernalis* (Priority 3) may be significant.

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<sup>1</sup> Maia Environmental Consultancy (2017). *Shire of Dandaragan: Jurien East Road – Cockleshell Gully Road to Brand Highway Level 1 Flora, Vegetation and Vertebrate Fauna Survey, Autumn and Spring 2016*. Version 2.

In relation to *Acacia retrorsa* (P2), DWER's assessment identified that only two of the seven individuals identified during the survey are likely to be impacted by the proposal and according to DBCA advice, the loss of the two individuals is not likely to impact on the conservation status of the species, and that indirect impacts should be avoided through the implementation of buffers management measures.

In relation to *Patersonia argyrea* (P3), six of 28 individuals recorded during the FVV Survey occur within the application area. Although this species is known from a restricted range, DBCA advised that the direct loss of six individuals would be unlikely to have a significant impact on the conservation status of this species and that indirect impacts should be avoided through the implementation of buffers management measures.

As noted in DWER's Decision Report, *Thysanotus vernalis* (P3), a species also restricted in range, is associated with drainage lines and winter wet depressions. DBCA advised that, direct impacts are proportionally low, however indirect impacts from altered drainage has the potential to be significant. As noted by DWER in its decision report [under clearing principle (i)], impacts to drainage areas is expected to be minimal and short term, and as there are likely to be culverts in place it is unlikely that surface water will be disturbed.<sup>2</sup>

In relation to *S. sparsiflora*, the appellant submitted that the permit allows 60 per cent of this geographically isolated population to be removed and that the permit does not minimise direct impacts or avoid indirect impacts to this species in accordance with the recommendations made by DBCA.

In relation to the local population of *S. sparsiflora*, 48 individuals were identified during the FVV Survey: Twenty nine individuals were located within the application area and the remaining 19 individuals were located in close proximity to the application area.

The FVV Survey notes that the clearing of the 29 individuals *S. sparsiflora* within the application area would impact up to approximately 60 per cent of the local population and 8.6 per cent of the currently known population across Western Australia. The FVV considers that actual impacts are likely to be lower than this as only 8 percent of the vegetation outside of the application area was surveyed.

A review of available aerial photography and the vegetation type mapping, undertaken as a part of the FVV survey indicates that similar vegetation types to those within which *S. sparsiflora* has been recorded at this location occur more broadly in the road reserve and are likely to extend into the adjacent Coomallo Nature Reserve. On this basis, it is possible that this new population is not limited to the 48 plants recorded in the survey area.

It is noted that DWER held a similar view in its response to the appeal:

The Department considers the population to continue to be viable and may extend beyond the survey area as the individuals were found on sandy lateritic hills and sandy hills within the Survey Area adjacent to the Coomallo Nature Reserve. Suitable habitat in better condition to the application area is located within this Reserve.

The Department notes that the majority of the locations of quadrats and priority and flora locations within the Survey Area are situated adjacent to the existing road and determined that the survey effort may not have extended to the full extent of the survey boundary, and that individuals are likely to be located beyond those found during the survey. Based on the information available, the Department considers that removal of 29 specimens of *S. sparsiflora* will be acceptable with the mandated management measures in place.

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<sup>2</sup> DWER Decision Report CPS 7662/1 p 7.

In assessing the clearing application, DWER also took into account advice provided by the Department of Biodiversity, Conservation and Attractions (DBCA).

DBCA advised that this species is potentially locally significant as the occurrence of *S. sparsiflora* at this location represents a new population. Previously, it was only known from two disjunct locations (northeast of Eneabba and west of Gillingarra).

DBCA's advice also included that, based on the current data, the proposed clearing would have a high proportional direct impact locally (as approximately 60 per cent of plants will be removed at this location) and given that the remaining individuals are located adjacent to the application area, DBCA was of the view that indirect impacts may also be significant.

It is noted that DBCA recommended minimising direct impacts to this population and avoiding indirect impacts through buffers and management measures, however did not recommend that further surveys be undertaken to confirm the extent of the new population beyond the survey area.

In response to the appeal, DWER advised that, in making its decision to authorise the clearing, it determined that the local population is not a range extension (as the population found at this location is within the known distribution of this species) and therefore does not represent a significant population. DWER noted that 19 of the 48 individuals are located outside of the proposed clearing area and thus the entire population at this location will not be removed.

The permit holder, in response to the appeal, refined its scope of works and advised that the individuals of *S. sparsiflora* to be cleared would be restricted to those within the maintenance zone of the road reserve. This in effect, would reduce the number of individuals' directly impacted by the proposed clearing from 29 to 18 individuals. Based on the revised scope of works, the permit holder provided revised impact calculations in respect to *S. sparsiflora*, which indicated that the local impacts would be reduced from 60 % to 37.5 % with an estimated regional impact of 5.1 %.<sup>3</sup>

Advice was sought from DBCA on the methodology of the revised impact calculations provided by the permit holder and the acceptability of the revised impacts. While DBCA was satisfied with the calculations for the local impact, it was of the view that the regional impact was incorrect and would be 6.5 % as opposed to 5.1 %. The disparity between the permit holder's calculated regional impacts and DBCA's calculation was based on a difference in the total recorded population of the species.

Despite DBCA's reservation in the calculation methodology, the discovery of additional occurrences of this species regionally and the identification of habitat for the species at the project location, and the restriction of the proposed clearing of the species to the existing maintenance zone, DBCA advised that the revised impact is not considered to be significant to the overall conservation of the species.

In granting Clearing Permit CPS 7662/1, in accordance with DBCA's advice DWER applied the following conditions in relation to flora management:

**6. Avoid, minimise and reduce the impacts and extent of clearing**

In determining the amount of native vegetation to be cleared authorised under this Permit, the Permit Holder must have regard to the following principles, set out in order of preference:

- (a) avoid the clearing of native vegetation;

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<sup>3</sup> Maia Environmental Consultancy (2019). *Shire of Dandaragan: Jurien East Road, Synaphea sparsiflora, Updated Impact Estimates* – Memo, 1 March 2019.

- (b) minimise the amount of native vegetation to be cleared; and
- (c) reduce the impact of clearing on any environmental value.

#### 7. Dieback and weed control

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

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

#### 8. Flora management

Prior to undertaking any clearing authorised under this Permit, the Permit Holder shall:

- (a) Demarcate all *rare flora* and *priority flora* individuals and the relevant *buffers*, located within the area hatched yellow on the Plan 7662/1;
- (b) Ensure that no clearing of rare flora occurs; and
- (c) Ensure that clearing of priority flora is limited to:
  - i. Two individuals of *Acacia retrorsa* (P2);
  - ii. 29 individuals of *Synaphea sparsiflora* (P2);
  - iii. one individual of *Synaphea endoethrix* (P3);
  - iv. 11 individuals of *Haemodorum loratum* (P3);
  - v. six individuals of *Patersonia argyrea* (P3);
  - vi. two individuals of *Thysanotus vernalis* (P3); and
  - vii. two individuals of *Hemiandra sp. Watheroo* (P4).

Buffers set by the permit are 50 metres for rare flora<sup>4</sup> and 10 metres for priority flora.

In relation to the appellant's view that the impact to *S. sparsiflora* should be considered 'at variance' to principle (c), it is noted that clearing principle (c) provides that 'native vegetation should not be cleared if it includes, or is necessary for the continued existence of, rare flora'<sup>5</sup> 'Rare flora' has the same meaning as given in section 23F of the *Wildlife Conservation Act 1950*.<sup>6</sup> As *S. sparsiflora*, as noted above, is listed as a priority 2 species, it was appropriate that DWER considered impacts to this species against clearing principle (a) relating to biodiversity.

#### Conclusion

Taking the above into account, it is considered that DWER's assessment of the clearing against principle (a) relating to priority flora was appropriate and that consideration of these species under principle (c) was not required.

In relation to the four species of priority flora, it is considered that DWER's assessment took into account DBCA's advice in relation to impacts to *Acacia retrorsa*, *Patersonia argyrea* and *Thysanotus vernalis* and applied conditions accordingly.

In relation to *S. sparsiflora*, noting DBCA's advice that additional occurrences of this species have been verified since the assessment and the permit holder's commitment to reduce the

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<sup>4</sup> On 1 January 2019, provisions relating to threatened species under the *Biodiversity Conservation Act 2016* came into effect, replacing the previous provisions of the *Wildlife Conservation Act 1950*. This included replacement of 'rare flora' with 'threatened flora'. Because the decision the subject of this appeal predated the new provisions taking effect, the previous provisions are cited. The listing of that species as 'rare flora' in 2018 is carried forward as 'threatened flora' under the new Act (see regulation 169 *Biodiversity Conservation Regulations 2018*).

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

direct impacts from 29 individuals to 18, in addition to the conditions applied to the permit to manage indirect impacts, it is considered that the potential for significant impact to the overall conservation of the species will be reduced.

To give effect to the permit holders commitment to reduce the impacts to *S. sparsiflora*, it is recommended that condition 8 (c) (ii) be modified to reflect the reduction in the permitted removal of individual plants from 29 to 18 individuals.

It is otherwise recommended that this ground of appeal be dismissed.

## **GROUND 2: VALUE OF THE VEGETATION IN A HIGHLY CLEARED LANDSCAPE**

In summary, the appellant submitted that the clearing permit should not have been granted as the application area comprises a high level of flora biodiversity in an extensively cleared area and serves as an important link between conservation areas.

The appellant also noted that the application area is located within a national and international biodiversity 'hotspot' and that the Jurien East Road has high aesthetic value and is known for its display of wildflowers. The appellant noted that the Shire of Dandaragan should avoid clearing and make the most of the opportunity to support wildflower tourism.

### **Consideration**

In relation to the appellant's concerns regarding the application area being a 'biodiversity hotspot' in an extensively cleared area and significant as a link between conservation reserves, DWER assessed these matters under clearing principle (e) and (h), respectively.

In determining the significance of the application area as a remnant in a highly cleared landscape, DWER under clearing principle (e) noted values of the vegetation within the application area, the clearing statistics in the local and regional area, and the identification of and any habitat fragmentation and isolation that may result from the proposed clearing.

Given that the assessment found that the application area and adjacent areas contain rare and priority flora and clearing may have indirect impacts on a Threatened Ecological Community (TEC), DWER considered that the application area may be considered to be a significant remnant of native vegetation.

The application area is located within the Geraldton Sandplains Bioregion and the Shire of Dandaragan, both of which have above 30 per cent of pre-European vegetation still existing (45 per cent and 44 per cent respectively)<sup>7</sup>. Similarly, the pre-European extent of the Beard vegetation associations within the Bioregion listed in the Decision Report were above 30 per cent and the local area (10 kilometre radius) retained approximately 56 per cent native vegetation. On this basis, DWER found that although the application area may be a significant remnant, it is not located within an extensively cleared area and therefore the proposed clearing is not likely to be at variance to principle (e).

As noted by the appellant, the application area is located within the Mount Lesuer-Eneabba National Biodiversity Hotspot.<sup>8</sup>

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<sup>7</sup> The national objectives and targets for biodiversity conservation in Australia has a target to prevent clearance of ecological communities with an extent below 30 per cent of that present pre-1750 (pre-European), below which species loss appears to accelerate exponentially at an ecosystem level (Commonwealth of Australia, 2001).

<sup>8</sup> <https://www.environment.gov.au/biodiversity/conservation/hotspots/national-biodiversity-hotspots>

Figure 2 below shows the application area and adjacent nature reserves, namely, the Coomallo Nature Reserve through which the application area passes, and the Lesuer National Park located to the north.

**Figure 2 – Areas of native vegetation (green areas show Conservation Areas) in the region of the application area.**



Noting that the most eastern portion of the application area is mapped approximately 80 metres from Coomallo Nature Reserve and that a vegetation nature reserve ranging between 80 – 100 metres is located between the proposed clearing and the Coomallo Nature Reserve, DWER determined that the proposed clearing would not have an impact on this nature reserve.

DWER acknowledged that the application area may provide an ecological linkage between conservation area and areas of remnant vegetation within the local area, however also noted that the local area retains approximately 56 per cent of native vegetation and a vegetated road reserve approximately 10 to 80 metres on either side of the road will remain post clearing, allowing the vegetation within the road reserve to function as an ecological linkage.

It was on this basis that DWER considered that the proposed clearing was not likely to be at variance with clearing principle (h).

## Conclusion

Taking into account the above, it is considered that DWER's assessment appropriately took into account the value of the application area in relation to the remaining native vegetation within the region and local areas under clearing principle (e), and its value as an ecological linkage under clearing principle (h).

Noting the extent of native vegetation in the region and local areas, and the vegetation remaining between the conservation areas and road, DWER's conclusion that the proposed clearing is not at variance to these principles is supported by the available evidence.

It is therefore recommended that this ground of appeal be dismissed.

### **GROUND 3: CONDITIONS**

The appellant submitted that the clearing permit does not offer sufficient protection for rare and priority flora species, and submitted that, should the permit be granted, the following mitigation and management actions should also be required of the permit holder:

- revision of road design to avoid rare and priority flora;
- increasing buffers from 50 m to 100 m (rare flora) and 10 m to 50 m (priority flora);
- retaining topsoil and vegetation debris;
- rehabilitation of back slopes; and
- area proposed for clearing to be delineated and inspected by DBCA prior to clearing.

#### **Consideration**

In response to the appeal, DWER advised that on the basis of its assessment it considered that the conditions contained in the clearing permit are adequate.

The advice provided by DBCA to DWER during the assessment stated that direct impacts to priority flora should be minimised and indirect impacts should be avoided through the application of appropriate buffers and management measures. In particular, DBCA advised the following management measures be implemented:

- demarcate all known locations of threatened and priority taxa in proximity to the application area and their buffers for avoidance;
- a Shire environmental officer should be present during clearing to ensure compliance with agreed and demarcated buffers;
- any indirect impacts to threatened and priority taxa in proximity to the application area, such as impacts from dust or altered drainage, should be avoided through the implementation of appropriate management measures (e.g. dust suppression, drainage design);
- implement appropriate hygiene measures to ensure that weeds are disturbed by the works; and
- the control of weeds be included in the road management program to maintain the quality of the adjacent flora habitat, in particular with respect to the Coomallo Nature Reserve.

As noted above under Ground 1, condition 8 of the clearing permit provides for flora management prior to undertaking any clearing by requiring the permit holder to undertake the following management measures:

- avoid and minimise clearing;
- dieback and weed control;
- demarcation of all rare flora and priority flora, and relevant buffers;
- limit clearing of specific priority flora individual species; and
- ensure no rare flora is cleared

In relation to buffers, DWER advised that it took into account the advice from DBCA recommending that a minimum buffer of 10 m around rare flora is likely to be acceptable in the majority instances but could be increased depending on species and circumstances.

In response to appeal, DWER advised that, based on current and previous advice from DBCA on other clearing permit applications, it considered that the requirement to exclude clearing within 50 m of rare flora and 10 m of priority flora will adequately minimise impacts to these species.

With regard to the appellant's request for the delineation and inspection of areas to be cleared by DBCA to ensure that clearing is minimised, DWER advised that:

the permit holder is responsible for ensuring that any clearing undertaken is compliant with the EP Act. Inadvertent destruction of native vegetation outside the Application Area would constitute unauthorised clearing, which is an offence under the EP Act.

However, noting the potential impacts to rare and priority flora species should the demarcation be undertaken incorrectly, DWER recommended that condition 8 of the clearing permit be amended to include a reference to a 'suitably qualified person' to undertake the demarcation of the rare and priority flora and their associated buffers. A 'suitable qualified person' is defined by DWER as follows:

"Environmental specialist: means a person who holds a tertiary qualification in environmental science or equivalent, and has a minimum 2 years work experience in identification and surveys of flora native to the bioregion being inspected or surveyed."

In regard to the appellant's recommendation to alter the road design and associated works, DWER advised that it encourages permit holders to continue to seek opportunities to avoid and minimise the impact of clearing, where possible. To give effect to this position, DWER applied condition 6 to the permit requiring the permit holder to document efforts to avoid and minimise clearing and to demonstrate that clearing is reasonably necessary and that no practical alternatives to clearing exist. DWER was of the view that this condition indicates a clear intent that the Permit Holder should balance the need for the proposed clearing with other options.

In relation to the request to rehabilitate disturbed areas, DWER advised that it determined that the vegetation to be cleared is not significant and not required to be mitigated through revegetation. In addition, DWER advised that it would not condition the requirement to revegetate an area within the road maintenance zone, so as to not restrict the permit holder's ability to maintain the vegetation for road safety.

## **Conclusion**

Having regard to the above, it is considered that DWER applied appropriate conditions to the permit to mitigate and manage direct and indirect impacts to conservation significant flora. However, based on DWER's advice, it is recommended that this ground of appeal be allowed to the extent that condition 8 is amended to include a reference to a suitably qualified person to undertake demarcation of species and associated buffers.

## **CONCLUSIONS AND RECOMMENDATION**

Noting the advice provided by DWER, the proponent and the appellant, it is considered that DWER's assessment of the clearing permit against the clearing principles was supported by the available evidence.

In order to give effect to the permit holder's commitment to reduce direct impact to *S. sparsiflora* by reducing the permitted removal of 29 individuals of to 18 individuals, it is recommended that condition 8 (c) (ii) be amended accordingly.

Based on the advice of DWER, it is considered that the conditions applied to the permit were appropriate. It was, however, agreed that condition 8 (a) relating to the demarcation of rare and priority flora, and associated buffers, could be strengthened by requiring a 'suitably qualified person' to undertake the demarcation.

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

It is otherwise recommended that all other grounds of appeal are dismissed.

Emma Gaunt  
APPEALS CONVENOR

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