



Appeals Convenor
Environmental Protection Act 1986

**REPORT TO THE
MINISTER FOR ENVIRONMENT**

**APPEAL AGAINST THE DECISION TO GRANT A CLEARING PERMIT
CPS 7869/1: WANDERING-NARROGIN ROAD RESERVE
CONTINUE**

PERMIT HOLDER: SHIRE OF CUBALLING

Appeal Number C015 of 2018

January 2019

Appeal Summary

This report relates to an appeal lodged against the grant and conditions of Clearing Permit CPS 7869/1 issued by the Department of Water and Environmental Regulation (DWER) to the Shire of Cuballing to clear 0.924 hectares (ha) of native vegetation within Wandering-Narrogin Road Reserve, Contine for the purpose of road upgrades.

The appellant raised concerns regarding the impacts to a threatened ecological community (TEC), impacts to native vegetation within an extensively cleared area and DWER's consideration of avoidance and minimisation measures. The appellant was also of the view that the offset does not maintain or improve the extent of the vegetation communities to be cleared and was not adequate to counterbalance the impacts.

In relation to the TEC and native vegetation in an extensively cleared landscape, DWER found that the proposed clearing would result in significant residual impacts in the loss of 0.28 ha of a TEC and 0.924 ha of a significant remnant within an extensively cleared area.

Noting that the road upgrades provide a public benefit (road safety), DWER considered that the above significant residual impacts could be counterbalanced by changing the purpose of 2.6 ha of Crown Reserve 2556 from 'gravel' to 'conservation'. Crown Reserve 2556 was determined by DWER to contain environmental values related to those being lost.

During its assessment of the clearing permit application, DWER considered avoidance and minimisation measures, and also consulted with the permit holder on options to avoid potential habitat trees. However, the alternate option would involve a larger area of clearing and DWER considered that this was not the preferred option.

Having regard to the available information, it is considered that DWER's assessment of the clearing permit application was appropriate and its decision to grant the clearing permit subject to certain conditions, including an offset, was justified.

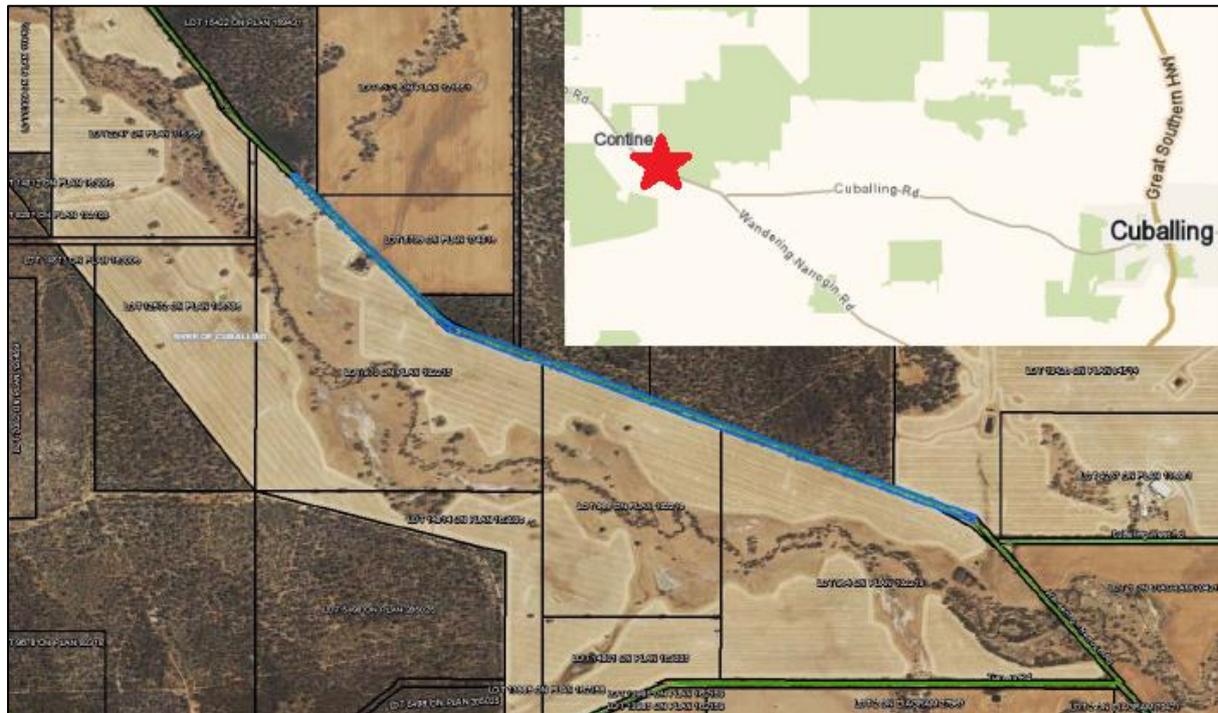
Recommendation

The Appeals Convenor recommended that the appeal be 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 7869/1 to the Shire of Cuballing (permit holder). The location and extent of the application area are shown in Figure 1.

Figure 1 – Location and extent of the application area for CPS 7869/1



(Source: DWER, 2018; Whereis, 2018)

On 27 June 2017, the permit holder applied for a purpose permit to clear 0.924 hectares (ha) of native vegetation within Wandering-Narrogin Road Reserve, Contine, for the purpose of road upgrades and road safety. The application was advertised for public submissions on 22 December 2017 for 21 days and no submissions were received.

In determining whether to grant the clearing permit, DWER had regard to information sources as detailed in the Decision Report which included site visits by DWER officers and advice from the Department of Biodiversity, Conservation and Attractions (DBCA).

DWER granted the clearing permit on 12 October 2018 and it was against this decision 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. The permit holder was also given the opportunity to address the matters 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 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 is seeking for the Minister to overturn DWER's decision to grant Clearing Permit CPS 7869/1.

GROUND OF APPEAL

This appeal raised a number of issues which are considered under the following grounds:

1. Assessment of environmental impacts; and
2. Offset.

GROUND 1: ASSESSMENT OF ENVIRONMENTAL IMPACTS

By this ground of appeal, the appellant submitted that the proposed clearing will impact both a Threatened Ecological Community (TEC) and clear an ecological community with an extent below the threshold of 30 per cent which will contravene the National Objectives and Targets 2001-2005¹. In this regard, the appellant noted that DWER acknowledges that the clearing is at variance with clearing principles and will result in significant residual impacts.

Additionally, the appellant contended that although 'avoid and minimise' is a top priority in the clearing hierarchy in the EP Act and DWER policy, this has not been given effect to in DWER's decision-making.

In seeking for the clearing permit not to be granted, the appellant is of the view that the planned roadworks should be reviewed and alternate options to improve road safety that do not require clearing should be implemented.

Consideration

DWER assessed the clearing permit application and concluded that the proposed clearing is at variance to clearing principles relating to (d) a TEC, (e) significant remnant within an extensively cleared area and (f) vegetation in association with a watercourse; may be at variance to principles (b) significant habitat for indigenous fauna and (h) adjacent conservation areas; and is not likely to be at variance to the remaining principles. DWER noted that the upgrades to the road will provide a public benefit in the form of improved road safety.

In determining to grant the clearing permit, DWER advised that it took into account: information sources referenced in the Decision Report, including a fauna report provided by the permit holder; advice from the Department of Biodiversity, Conservation and Attractions (DBCAs) on flora and vegetation complexes, and direct observations from DWER officers during a site visit.

¹ 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).

DWER's assessment found that the application area is a significant remnant in an extensively cleared area as:

- the extent of Beard vegetation association 1023, and the vegetation extent in the bioregion and in the local area are below the 30 per cent recommended threshold (18.5 per cent and 10.8 per cent respectively);
- it may contain significant habitat for indigenous fauna of conservation significance; and
- it contains 0.28 ha of the 'Eucalypt Woodlands of the Western Australian Wheatbelt' TEC (Wheatbelt Woodlands TEC) [meeting the condition thresholds outlined in the Threatened Species Scientific Committee's Conservation Advice²].

During its assessment, DWER sought DBCA advice on the potential impacts to the Wheatbelt Woodlands TEC. DBCA advised DWER that significant impacts to the TEC are unlikely to occur as a consequence of the proposed clearing in isolation but cautioned that cumulative impacts caused by multiple clearing events are incremental and ongoing. In its Decision Report, DWER assessed the risk of further loss and cumulative effects through consideration of the extent of remaining native vegetation and the extent currently managed as conservation estate in determining that the proposed clearing is at variance with clearing principle (e).

DWER also sought DBCA advice on whether previous advice for an adjacent application (CPS 7524/1) on two priority flora species (*Leucopogon darlingensis* subsp. *rectus* Hislop and *Andersonia bifida*) was still relevant, noting that suitable habitat for these species occurs within the application area. In response to this, DBCA advised that its previous advice, that if the abovementioned priority flora occurred within the application area it would be unlikely to be significant, is relevant to the clearing permit.

DWER's assessment determined that the proposed clearing would result in significant residual impacts in the loss of:

- approximately 0.28 ha of the Wheatbelt Woodlands TEC; and
- 0.924 ha of a significant remnant of native vegetation in an extensively cleared area.

In response to the appellant's concerns that the proposed clearing is at variance to the clearing principles, DWER advised that:

The EP Act does not preclude clearing permits being granted where the proposed clearing will be at variance with the clearing principles.

While the proposed clearing was found to be at variance to clearing principles (d) and (e), the environmental risk was assessed as not so significant that it warranted the refusal of the Application. In making the decision to grant the Permit, the Department also had regard to the purpose of the clearing, which includes the public benefit of improved road safety. The Department therefore determined that the Clearing Permit should be granted subject to conditions to mitigate environmental impacts and the provision of an offset to counterbalance significant residual environmental impacts associated with clearing a portion of a significant remnant.³

In relation to the avoidance and minimisation of clearing, DWER noted that condition 7 of the clearing permit requires the permit holder to document its efforts to avoid and minimise clearing and demonstrate that the clearing is reasonably necessary with no practical

² Department of the Environment (2015). *Approved Conservation Advice (including listing advice) for the Eucalypt Woodlands of the Western Australian Wheatbelt*. Canberra: Department of the Environment. Available from: <http://www.environment.gov.au/biodiversity/threatened/communities/pubs/128-conservation-advice.pdf>.

³ DWER, *Response to the appeals*, 17 December 2018, page 2.

alternatives. DWER advised that this condition indicates a 'clear intent that the Permit Holder should balance the need for the proposed clearing with other options.'⁴

Additionally, DWER advised that the Decision Report detailed its consideration of mitigation and minimisation measures, which included consultation with the permit holder about options to avoid clearing two potential habitat trees. The permit holder advised DWER that widening the road on one side only (western side) would require more clearing and the trees would compromise the ongoing maintenance and safety of the road (root systems and proximity to the bitumen seal). Based on the foregoing, DWER determined that avoiding the potential habitat trees was not the preferred option as it would involve clearing a larger area of native vegetation. It is noted that the permit holder provided DWER with a Habitat Tree Assessment report which stated that the two potential habitat trees did not contain hollows suitable for black cockatoos and found no evidence of the hollows being used by black cockatoos or red-tailed phascogales.

Conclusion

It is noted that DWER determined that the proposed clearing would result in significant residual impacts (clearing of a TEC and within an extensively cleared area) and also considered the permit holder's mitigation and minimisation measures, and considered alternate options to avoid impacts to potential habitat trees.

Based on the information provided, it is considered that DWER's assessment of the clearing permit application against the clearing principles was appropriate and its decision to grant the permit subject to certain conditions was justified. Therefore it is recommended that this ground of appeal be dismissed.

GROUND 2: OFFSET

The appellant submitted that the proposed offset does not maintain nor improve the extent of the vegetation communities to be cleared and thus does not counterbalance the impact of the clearing. The appellant was of the view that the offset should not be used to justify clearing within an already highly cleared landscape.

Consideration

Section 51H of the EP Act provides that clearing permits may be granted subject to conditions considered to be necessary or convenient by the CEO for the purposes of controlling, abating or mitigating environmental harm or offsetting the loss of cleared vegetation.

Condition 11 of the clearing permit requires the permit holder to change the purpose of 2.6 ha of Crown Reserve 2556 from 'gravel' to 'conservation'. In relation to the adequacy of the offset, DWER advised that the offset site is located within the vicinity of the road upgrade project (30 kilometres northeast of the application area), contains BVA 1023, is dominated by wandoo and *Allocasuarina* spp. and is mapped as containing the Wheatbelt Woodlands TEC. Based on the foregoing, DWER was of the view that the offset condition is an effective and appropriate measure to counterbalance the identified significant residual impacts. Additionally, during a meeting the permit holder advised that Crown Reserve 2556 contains remnant vegetation and that no gravel extraction activities have occurred within the Reserve.

In response to the appellant's concerns that the offset does not counterbalance the impacts of the clearing, DWER advised that it:

⁴ Ibid. page 3.

... has applied an offset condition consistent with the *WA Environmental Offsets Policy 2011* (the Policy) and the *WA Environmental Offsets Guidelines 2014* (the Guidelines). The Guidelines recognise the protection of environmental values through improved security of land tenure or restricting the use of the land is a valid form of environmental offset. In this case, the offset comprised of improved protecting for a 2.6 ha portion of Crown Reserve currently vested with the Permit Holder for the purpose of gravel extraction through changing the reserve vesting to conservation.⁵

Conclusion

It is noted that the proposed offset of 2.6 ha, Crown Reserve 2556, is located near the application area, contains BVA 1023, is mapped as containing the Wheatbelt Woodlands TEC and the purpose will be changed from 'gravel' to 'conservation'.

Having regard to the above, it is considered that DWER's determination that the offset is relevant to the environmental values to be impacted was appropriate and in accordance with the *WA Environmental Offsets Policy 2011* and *WA Environmental Offsets Guidelines 2014*. Therefore, it is recommended that this ground of appeal be dismissed.

OTHER MATTERS

The appellant expressed concern with the manner in which the permit holder has submitted multiple clearing permit applications for relatively small areas as part of a larger strategic road upgrade project. The appellant likened this to 'death by a thousand cuts' whereby DWER considers each individual clearing permit application in isolation (which of themselves may not have a significant impact) without taking into account the cumulative impacts which may be significant when assessed on a broader scale. Noting this, the appellant expressed the need for a strategic approach to how clearing permit applications are submitted and greater collaboration at the planning and policy stages in order to enable the preservation of roadside vegetation.

CONCLUSION AND RECOMMENDATION

For the reasons stated in this report, it is considered that DWER's assessment of the clearing permit application against the clearing principles was appropriate, supported by the available evidence and had regard to the issues raised in the appeal. Therefore it is considered that DWER was justified in granting the clearing permit subject to certain conditions.

Emma Gaunt
APPEALS CONVENOR

Investigating Officer:
Cassie Chew, A/Senior Appeals Officer

⁵ DWER, *Response to the appeals*, 17 December 2018, page 3.