



Government of **Western Australia**
Office of the **Appeals Convenor**
Environmental Protection Act 1986

Appeals Convenor's Report to the Minister for Environment

Appeal against grant of clearing permit CPS 9281/1 Charles Gardner Reserve, Ralston Road and Gardner Reserve road reserves, South Tammin



Appellant	Wildflower Society of Western Australia (Inc)
Applicant	Shire of Tammin
Authority	Department of Water and Environmental Regulation (DWER)
Appeal No.	001 of 2022
Date	June 2022

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Acknowledgement of Country

The Office of the Appeals Convenor acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community.

We pay our respects to all members of the Aboriginal communities and their cultures, and to Elders past, present and emerging.

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1 Executive summary

1.1 Decision under appeal

The Shire of Tammin (the applicant) was granted a permit to clear 0.36 hectares (ha) of native vegetation within Charles Gardner Reserve, Ralston Road reserve and Gardner Reserve road reserve, for the purpose of improving sightlines around bends (Figure 1).

DWER granted the permit (CPS 9281/1) under section 51E (5) of the *Environmental Protection Act 1986* (EP Act) on 16 December 2021.



Figure 1 Clearing authorised by CPS 9281/1 illustrated in blue

1.2 Grounds of appeal and appellant concerns

In January 2022, the Wildflower Society of Western Australia (the appellant) lodged an appeal against the decision to grant the permit and the conditions to which it is subject.

In summary, the appellant considers that because of the extensive clearing and exponential biodiversity loss in the region, the clearing should not be approved unless no other alternative exists. In that regard, the appellant submitted that there are alternatives that could be applied here to avoid the clearing, such as reducing the speed limit. If the clearing does occur, the appellant stated that an offset should be required at a ratio of at least 10 to 1.

Ancillary to the merits issues, the appellant also questioned the adequacy of the flora survey commissioned by the applicant.

1.3 Key issues and conclusions

The threshold question for the Minister on appeal is whether, based on the concerns raised by the appellant, this permit should be granted.

To answer this question, it is necessary to consider the grounds of the appeal in the context of the relevant considerations set out in section 51O of the EP Act, including the clearing principles, planning instruments, and other relevant matters.

Our consideration of these issues is summarised below. Section 2 provides further reasons for our conclusions, and supporting information is provided in Section 3.

What are the environmental values of the vegetation proposed to be cleared?

We agree with the appellant that the proposed clearing of up to 0.36 ha of native vegetation will result in the loss of native vegetation that, while in degraded condition, is within a highly cleared landscape and is part of a significant remnant (Charles Gardner Reserve). For this reason, the clearing is at variance to clearing principle (e). This is consistent with DWER's assessment which found that the local area (10 km radius) has only 6.57 per cent vegetation cover remaining (accurate as of 2018), which is well below the national objectives and targets of 30 per cent of that present pre-1750 for biodiversity conservation.

Having regard for the above, DWER nonetheless concluded that due to its small size and degraded condition, the proposed clearing would not significantly reduce the percentages of remaining vegetation, result in an impact to Charles Gardner Reserve (subject to conditions) and was unlikely to have long-term adverse impacts on biodiversity values. On this basis, DWER considered that the residual impact from the clearing was not significant.

We agreed with DWER's finding that the clearing was not at variance with any other clearing principles. However, noting that the clearing is within a highly cleared landscape, and the Shire of Tammin has one of the lowest percentages of native vegetation cover remaining, we agree with the appellant that any remaining vegetation is important.

Is the clearing consistent with relevant planning instruments?

We note that most of the clearing is not limited to gazetted road reserves, and instead extends into Charles Gardner Reserve. As such the applicant requires approval from the land manager (Department of Biodiversity, Conservation and Attractions (DBCA)) to access the application area (or parts that lie within the nature reserve). The applicant advised that its representatives have met with DBCA on site to agree to the clearing area. Any works within the nature reserve will need to be carried out in accordance with advice from DBCA. We note

that DWER has also applied conditions to the permit to further manage risks to the adjacent conservation areas and potential fauna.

On local planning specifically, we note that the Joint Planning Strategy for the Shires of Cunderdin, Quairading and Tammin and the Shire of Tammin's Local Planning Scheme support the retention of native vegetation within the Shire.

While this is a relevant consideration in determining whether or not to grant a permit under the EP Act, there may be other matters that provide justification for the clearing, discussed below.

Are other matters relevant to the decision to grant the permit?

DWER's published guidance on assessing clearing permit applications includes the consideration of the necessity of the clearing, and prioritises clearing for public use rather than private benefit or commercial gain.

It is evident that the clearing, to improve sightlines at two bends in Ralston Road through Charles Gardner Reserve, is consistent with improving road safety and will therefore have a public benefit.

In relation to the appellant's submission that lower speed limits should be applied instead of clearing, the applicant received advice from Main Roads WA that vegetation management, rather than speed reduction, was the recommended method to improve safety. We accept DWER's advice that the applicant followed the mitigation hierarchy in implementing adequate and suitable measures to avoid, minimise and reduce the extent of clearing as far as possible.

Should the permit have been granted and if so, is an offset required?

As it is for a public rather than private benefit, and alternatives are not available, it is considered the clearing is justified despite being at variance with clearing principle (e) and being inconsistent with the objectives of the Shire of Tammin planning scheme (at least in respect to that part of the clearing within the area reserved for 'environmental conservation').

The appellant submitted that if the clearing is approved, an offset should be applied to counterbalance the impacts of the clearing.

Consistent with relevant WA offset guidance, we note that an offset should be considered where a permit is at variance to the biodiversity related clearing principles (including principle (e)). In this case, DWER found that the clearing was at variance to clearing principle (e) but concluded that the residual impact is not so significant as to require an offset. This is based primarily on the description of the vegetation condition as being degraded and the historical disturbance of the application area and is broadly consistent with the WA offset policy.

While DWER's position is acknowledged, we consider that the gazetted Ralston Road reserve could be re-aligned to reflect the existing constructed road which would allow the return of native vegetation to Charles Gardner Reserve to be protected and conserved into the future. Any areas that have been historically cleared within the former road reserve could be rehabilitated and restored to equivalent values of adjacent vegetation, which we recommend be coordinated by DBCA. We consider that this change of tenure will result in a positive environmental outcome.

1.4 Recommendation to the Minister

We conclude the decision to grant the permit was justified and no changes to conditions are required. It follows that we recommend that the Minister dismiss the appeal.

Based on the information presented during this appeal investigation, we recommend that the Minister request that DBCA, in consultation with the applicant, progress the realignment of the gazetted road reserve where it does not align with the existing constructed road, so that the unconstructed road reserve can be absorbed into Charles Gardner Reserve (and rehabilitated where necessary) to ensure it is managed for conservation purposes in the future.

2 Reasons for recommendation

It is DWER's role to assess the proposed clearing including the identification of environmental values and the potential significance of impacts from clearing, and its consistency with relevant planning instruments and any other relevant matters.

In this case, we agree that the local area (10 km) retains approximately 6.57 per cent of the original native vegetation cover. The clearing is therefore inconsistent with the protection of remnant vegetation in an extensively cleared landscape, as set out in clearing principle (e). We note that while DWER concluded that the clearing was at variance to principle (e), it determined that the clearing extent of 0.36 ha was small and would not significantly impact the percentage of remnant vegetation in the local area.

Having regard for the values identified, DWER is also required to consider other relevant matters in its assessment, including the purpose of the clearing. In this case, we accept that the clearing is to improve road safety. DWER's decision to grant the permit is therefore largely consistent with its *Guide to the assessment of applications to clear native vegetation (2014)*.

While we agree with DWER that the grant of the permit is justified, a finding that the clearing will impact environmental values and is at variance to clearing principle(s) requires the consideration of whether conditions could be applied that adequately manage, avoid, or offset the impacts. In this case we find that DWER's decision to not apply an offset is largely consistent with the WA Government's offset framework. However, having regard for the appellant's contention that all remaining vegetation is significant, we consider that actions outside the scope of this clearing permit can increase the area of the adjacent nature reserve, and result in a good environmental outcome.

Further explanation of our conclusions is below.

2.1 What are the environmental values of the vegetation proposed to be cleared?

The key issue raised by the appellant was the critically low level of existing vegetation in the region and that all remaining native vegetation is significant. DWER found the clearing was 'at variance' to clearing principle (e) related to remnant vegetation in an extensively cleared landscape, and we largely agree with its assessment. We explain this finding below, but first consider the adequacy of the information used to assess the application.

The assessment was based on adequate information

DWER advised that its decision to grant the permit considered the findings of the applicant's flora and vegetation survey among other information. The appellant raised concerns about the adequacy of this survey and sought for the survey to be reviewed by a third-party botanist to assess its completeness and accuracy.

We understand that in November 2019, DWER informed the applicant that a flora and vegetation survey was required to confirm the presence and/or absence of several rare flora species known to occur within 10 km of the application area.

The Shire of Tammin engaged a botanist to undertake the flora survey. According to the survey, it was performed in accordance with the EPA's *Technical Guidance: Flora and Vegetation Surveys for Environmental Impact Assessment*.

DWER advised that the botanist had the relevant skills to undertake the targeted survey, consistent with its definition of a “botanist”:

The Department defines a “botanist” as a person who holds a tertiary qualification in environmental science or equivalent and has a minimum of two years’ work experience in identification and surveys of flora native to the bioregion being inspected or surveyed, or who is approved by the CEO as a suitable botanist for the bioregion.

DWER advised that it provided approval for the authors to complete the survey based on:

- prior involvement in targeted threatened flora surveys;
- relevant local knowledge including prior work in the Charles Gardner Reserve; and
- greater than two years of relevant work experience.

We note that in February 2022, DBCA officers reviewed the surveys. While some concerns were raised regarding the adequacy of the surveys in identifying some flora genus, DBCA advised that there was sufficient confidence that Priority flora do not occur within the survey area, and that the application area was not considered suitable habitat for trap-door spiders.

Noting that DBCA reviewed the surveys, and that the key issues on appeal relate to the low cover of native vegetation, we agree with DWER’s conclusion that a third-party review of the flora survey is unwarranted.

DWER identified the values and impacts related to the clearing

The region is extensively cleared

The flora and vegetation survey found that the clearing proposed involves the mechanical removal of 0.36 ha “degraded” native vegetation, at two locations along Ralston Road. The vegetation is subject to edge effects from the road, and the majority is regrowth that has been cleared within the last 10 years.¹

Despite its relatively poor condition, the vegetation is consistent with mapped vegetation types:

- Beard Katanning 694, which is described as Shrublands; scrub-heath on yellow sandplain banksia-xylomelum alliance in the Avon-Wheatbelt regions; and
- Beard Katanning 1041, which is described as low woodland; *Allocasuarina huegeliana* & jam.

These vegetation types retain approximately 7.26 and 31.52 per cent of the original extent, respectively.² We note that these figures are accurate for 2018 and may therefore overestimate the remaining extent of vegetation.

DWER’s assessment found that the proposed clearing poses a risk to remnant vegetation and adjacent conservation areas. Its assessment against the clearing principles found that it was ‘at variance’ to clearing principle (e), which provides that “native vegetation should not be cleared if it is significant as a remnant of native vegetation in an area that has been extensively cleared.”

As illustrated in Figure 2 below, the native vegetation in the local area (10km radius) has been extensively cleared, with only 6.57 per cent remaining.³ The adjacent reserve is approximately 700 ha so makes up a large proportion of this remaining vegetation in the local

¹ Wheatbelt Revegetation, *Ralston Road Survey Report*, November 2021

² DWER, Decision Report CPS 9281/1

³ *ibid*

area. While not in the Decision Report, we note that the Shire of Tammin has less than 4 per cent of native vegetation remaining making it one of the most cleared local government areas in the State.

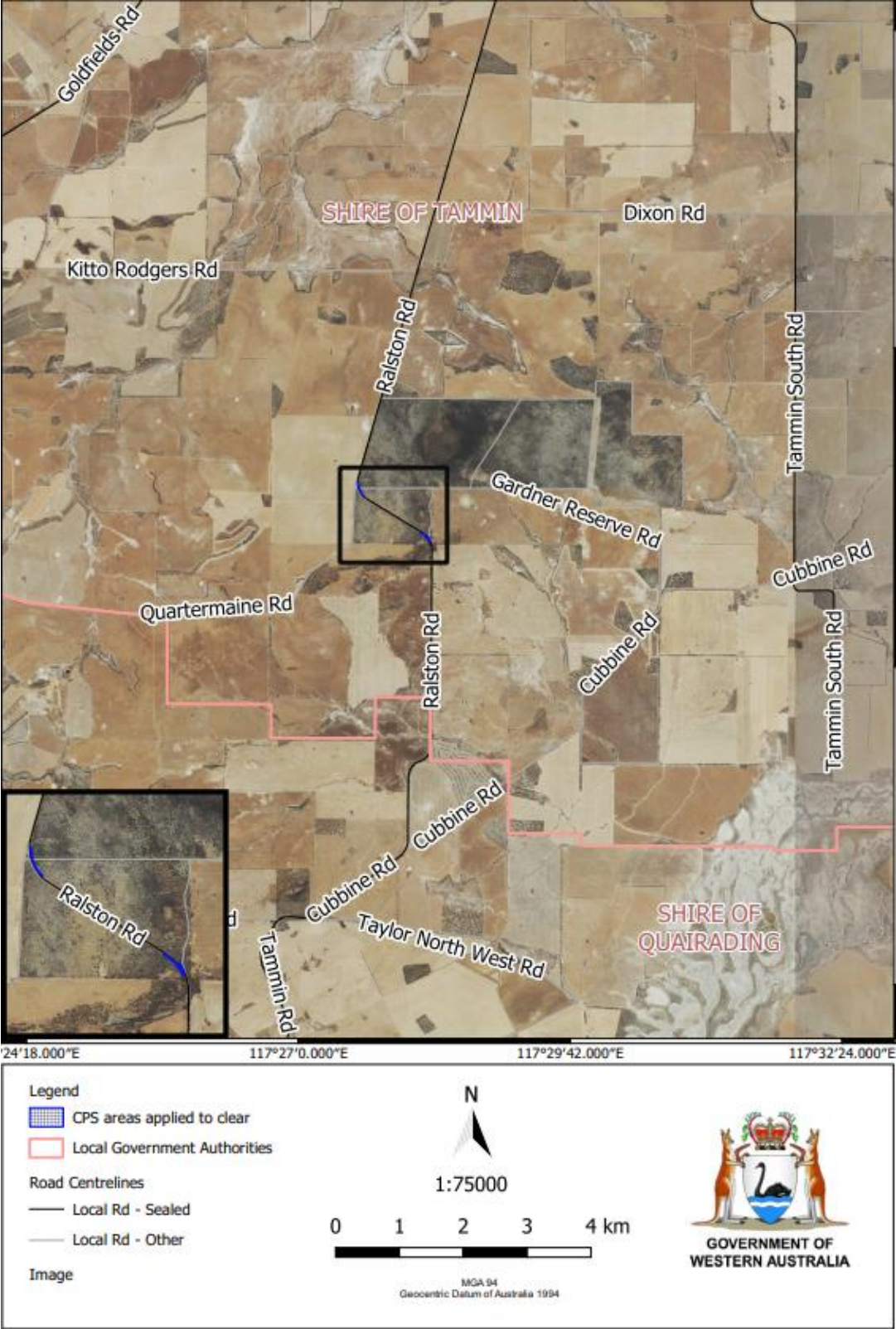


Figure 2 Context map including Charles Gardner Reserve and CPS 9281/1 application area

In this case, the clearing is of vegetation that forms part of Charles Gardner Reserve which is the most significant consolidated area of native vegetation remaining in the Shire of Tammin. The Reserve is understood to contain several important environmental values, including possible habitat for threatened fauna.

Noting these values and that the Shire of Tammin is one of the most highly cleared local government areas in Western Australia with approximately four per cent of remnant vegetation cover remaining,⁴ we agree with the appellant and DWER that the proposed clearing is 'at variance' to principle (e).

No significant biodiversity values were identified in area to be cleared

DWER's assessment found that the application area may provide marginal habitat for *Leipoa ocellata* (malleefowl) transient across the landscape, but due to the historic clearing of the application area their occurrence in the application area is unlikely. The assessment found the application 'may be at variance' to this principle and a condition was applied to manage this risk (discussed below).

Apart from malleefowl, no other conservation significant fauna or flora were recorded as present or likely to utilise the vegetation within the application area.

The clearing is located within and adjacent to a Reserve

DWER found the clearing 'may be at variance' to clearing principle (h), which provides that "native vegetation should not be cleared if the clearing of the vegetation is likely to have an impact on the environmental values of any adjacent or nearby conservation area".

The vegetation proposed to be cleared is largely within Charles Gardner Reserve which is a significant remnant in the local area (see Section 2.2 for further discussion on tenure). In this regard, DWER's Decision Report states:

Considering the clearing areas are located along Ralston Road and that [sic] majority of the vegetation under application is regrowth, has been cleared before and is in 'degraded' condition, environmental values within Charles Gardiner [sic] reserve are unlikely to be significantly impacted by the clearing.⁵

DWER also advised that it considered the clearing would not sever any linkage values associated with Charles Gardner Reserve and the adjacent landscape.⁶

DBCA provided advice to DWER that the introduction and spread of weeds and disease into Charles Gardner Reserve was the most significant potential impact, and DWER applied a hygiene management condition to mitigate the spread of weed and dieback (discussed further in section 2.2).

Having regard for the above, DWER concluded that the proposed clearing is unlikely to have long-term adverse impacts on environmental values and could be minimised and managed to be unlikely to lead to an unacceptable risk to environmental values. Whether the permit should have been granted and the degree to which any impacts can be managed is discussed below.

⁴ Shire of Tammin, <https://www.tammin.wa.gov.au/community/tammin-community/landcare.aspx>

⁵ DWER, Decision Report CPS 9281/1, December 2021, page 12

⁶ DWER, Response to Appeal CPS 9281/1, 16 March 2022, page 2

2.2 Is the clearing consistent with relevant planning instruments?

Section 51O(4) of the EP Act provides that DWER must have regard to the clearing principles, and any development approval, planning instrument, or other relevant matters when making decisions as to whether a clearing permit should be granted. Other matters are considered in the next section.

'Planning instruments' are defined in the EP Act to include local planning schemes and planning strategies. We note that DWER's decision document does not reference local planning documents in the context of this clearing permit application. However, noting the instruments considered below were published after the date the permit was granted, they were not available to DWER at the time of its original decision.

Local planning strategy says areas of remaining vegetation are significant

As noted above, if relevant to the proposed clearing, planning instruments should be taken into account as part of a decision to grant a clearing permit.

The Joint Planning Strategy for the Shires of Cunderdin, Quairading and Tammin published in May 2022 identifies the highly cleared landscape and encourages the protection of remaining vegetation:

Human disturbance of the natural environment in the Wheatbelt region since European settlement, including the broad scale clearing of vegetation, the introduction of stock and feral animals and alterations to fire regimes, has caused the local extinction of a significant amount of fauna with many others now facing extinction...

Given the Strategy area has a limited extent of native vegetation coverage, those areas that remain are of significant importance. An opportunity therefore exists to strategically address the protection and management of not only native vegetation, but the wider biodiversity values of the Shire.⁷ (emphasis added)

Local planning scheme promotes protection of remnant vegetation

The Shire of Tammin's Local Planning Scheme, published in January 2022, includes as an aim to 'protect, conserve and enhance the environmental values and natural resources of the Scheme area including the protection of remnant vegetation and the rehabilitation and revegetation of degraded land'.⁸

The area proposed to be cleared includes land reserved in the Scheme as a local distributor road and for environmental conservation. For the latter, the Scheme objectives include to protect areas of biodiversity conservation significance within conservation reserves.⁹

Some of the clearing is within a nature reserve

Noting Charles Gardner Reserve is set aside for 'environmental conservation' in the Shire of Tammin Local Planning Scheme, it is recognised as possessing values that are important within the Shire boundaries.

Cadastral mapping indicates that the constructed Ralston Road only partially aligns with the gazetted road reserve, and therefore the proposed clearing footprint extends into the nature reserve.

⁷ Shires of Cunderdin, Quairading & Tammin, Joint Local Planning Strategy, 10 May 2022, page 71.

⁸ Shire of Tammin, Local Planning Scheme No. 2, 26 January 2022, page 8.

⁹ Shire of Tammin, Local Planning Scheme No. 2, 26 January 2022, page 9.

DWER advised that Charles Gardner Reserve is 799 hectares in size making it the largest reserve in the Shire of Tammin. The native vegetation within the reserve is understood to comprise high biodiversity values and occurs in a highly cleared landscape (see Figure 2).

Consistent with the Planning Scheme, Charles Gardner Reserve is reserved under the *Conservation and Land Management Act 1984* for the purpose of 'conservation of flora and fauna'. It is managed by DBCA and we note that the applicant advised that DBCA had previously undertaken the clearing of vegetation within the application area.

DWER also advised that the applicant requires DBCA approval to access the application area within the reserve. As part of this approval, the applicant is required to undertake a site visit with DBCA to delineate the authorised clearing footprint. The applicant advised that it has met with DBCA on site and received approval to access the reserve.

Based on the above, we consider that the planning instruments are relevant to the proposal and support the retention of remnant native vegetation, particularly within areas set aside for environmental conservation.

2.3 Are there other matters relevant to the decision to grant the permit?

While 'other matters' are not defined in the EP Act, DWER guidance suggests this would include matters such as the necessity of the clearing. We also note advice and policy of Main Roads WA in relation to speed limits relevant to the proposed clearing.

We consider the public benefit resulting from the clearing and the lack of suitable alternatives is relevant to the clearing.

Reduced speed limit not consistent with Main Roads WA advice/policy

DWER's assessment guide sets out that native vegetation clearing should only be considered after all other reasonable attempts to mitigate adverse impacts have been exhausted through the application of the mitigation hierarchy. The appellant submitted that the applicant has not adequately considered options to avoid and/or minimise the clearing including potential alternative safety measures.

We understand that the applicant sought advice from Main Roads WA regarding potential alternative safety treatments to avoid the proposed clearing, mainly the reduction of the speed limit from the current unrestricted speed zone to 60 km/h.

Main Roads WA's Speed Zoning Policy¹⁰ states that speed limits should not be reduced for isolated hazards, such as school bus stops which operate on a limited basis, isolated curves or unsignalised intersections. In these situations, other treatments should be adopted such as warning or advisory signage or vegetation management.

Consistent with this policy, the advice from Main Roads WA to the applicant was:

Artificially low speeds lead to poor compliance which in turn adversely effect [sic] road safety. It is considered that the current speed limit is appropriate for Ralston Road and it is not proposed to implement a 60km/h speed limit...

It is however, recommended that vegetation impacting upon safe sight distance be reduced, to increase safety not only for the school bus stop, but also for motorists utilising the intersection.¹¹

¹⁰ Main Roads WA, *Speed Zoning Policy and Application Guidelines*, May 2021

¹¹ Email correspondence dated 12 January 2022

The applicant advised that having determined that the clearing cannot be completely avoided, the extent of the proposed clearing has been minimised as far as possible while still achieving the objective of improving sightlines. The clearing will also be largely limited to areas previously cleared by DBCA in the last 10 years.

DWER advised that it considers the applicant has the best expertise to evaluate the alternatives includes options to avoid the clearing:

The Permit Holder is responsible for planning, constructing and maintaining the roads in its jurisdiction and has the relevant expertise and experience to determine the technical options, solutions and engineering standards of the road and road reserves.¹²

DWER also considered the applicant has made sufficient efforts in applying minimisation measures. Nonetheless, DWER applied conditions to the permit to further ensure the protection of vegetation in the area (discussed below).

Clearing is necessary and is for a public use rather than private benefit

DWER has published guidance on what types of 'other matters' could be relevant to a clearing permit application:

Other matters typically include consideration of land use impacts, previous decisions related to the area, other legislative requirements related to the application and **the necessity of the clearing**.¹³ (emphasis added)

DWER's assessment guide prioritises clearing for public use:

In determining the necessity of the clearing higher priority will be given to clearing for public use than private benefit or commercial gain.¹⁴

The applicant advised that a school bus service regularly utilises Ralston Road and passes through the intersection with Gardner Reserve Road. During harvest season between October and December each year, the applicant advised that loaded grain trucks use the road at 100 km/h and create a safety concern for the school bus and other vehicles on the road. Roadside vegetation has been growing over the last 5-10 years to the height that now significantly impedes visibility around corners on this stretch of road. The applicant advised that the bus driver identified the hazard and requested the removal of the vegetation, and there is now significant community pressure to undertake the work.¹⁵

Main Roads WA officers undertook an assessment of the road including a site visit on request of the applicant. Officers from Main Roads WA advised that Ralston Road is classified as a local distributor road with an indicative traffic volume of 100 vehicles per day. There is no crash history at or in the vicinity of the application area over the last 5 years, however, Main Roads WA considered that the sight distance in both directions is currently adversely impacted by vegetation. The sight distances were estimated to be 110 metres and 87 metres on the northern and southern approach to the intersection of Ralston Road and Gardner Reserve Road, respectively.

Based on the above, we accept that the proposed clearing will have a public benefit through improved road safety. Having regard for the necessity and purpose of the clearing, we consider that DWER's decision to grant the clearing permit was consistent with its assessment guide in this regard.

¹² DWER, Response to appeal CPS 9281, 16 March 2022, page 2

¹³ DWER, *A guide to the assessment of applications to clear native vegetation*, December 2014, page 39.

¹⁴ DWER, *A guide to the assessment of applications to clear native vegetation*, December 2014, page 40

¹⁵ Shire of Tammin, *pers comm.*, May 2022

Native Vegetation Policy identifies the Wheatbelt as having been extensively cleared

The recently published Native Vegetation Policy recognises the pressures on Western Australia’s native vegetation and its ongoing loss and degradation since European settlement. The policy specifically notes the Wheatbelt as an area where historic clearing has been extensive and where “strategic coordination and stewardship across sectors is needed to restore landscape and ecosystem function”.¹⁶

The policy encourages regional planning for native vegetation – with tailored solutions for each region. This can help address cumulative impacts, offsets and competing priorities, and reduce the complexities when assessing individual proposals such as this one. Regional planning can also assist in managing broader threats (such as climate change, invasive species, and unsustainable use) and improve the condition and resilience of remnant vegetation.

The policy seeks to achieve a net gain in native vegetation – meaning that improvements in the extent and/or condition exceed the losses – at a landscape scale. The policy does not require a net gain at the scale of individual proposals.

Among other things, the Native Vegetation Policy Implementation Roadmap includes a commitment to establish a ‘Wheatbelt native vegetation strategy’ which is described as:

Whole-of-government strategy for a net gain in extent and condition, coordinating restoration funding (including offsets), conservation, roadside management and regulation.¹⁷

Local actions to restore values are supported

We understand that the applicant proposes to revegetate 4 ha of recently gazetted road reserve in a highly cleared region of South Tammin in the next year. While this is not considered to directly counterbalance the impact resulting from this clearing application, measures to improve the native vegetation cover in the local government area are strongly supported.

2.4 Should the permit have been granted and if so, is an offset required?

Based on the information before us, we conclude that while the vegetation is part of a significant remnant of vegetation in a highly cleared landscape, as the clearing is for a public rather than private benefit the decision to grant the permit was justified.

Having formed the view that the permit should be granted, the investigation turned to the appellant’s submission that the clearing should be the subject of an environmental offset to counterbalance the loss of vegetation. We find that DWER should have taken into account the state government’s offset framework, including the WA offset guideline¹⁸, in forming its view about the significance of the residual impact. However, in this case, we conclude that DWER’s decision that an offset was not required is broadly consistent with the WA offsets policy¹⁹.

¹⁶ Government of Western Australia, Native vegetation policy for Western Australia, May 2022, DWER, page 13

¹⁷ Government of Western Australia, Native vegetation policy for Western Australia Implementation roadmap, May 2022, DWER, page 7

¹⁸https://www.epa.wa.gov.au/sites/default/files/Policies_and_Guidance/WA%20Environmental%20Offsets%20Guideline%20August%202014.pdf

¹⁹ https://www.epa.wa.gov.au/sites/default/files/Policies_and_Guidance/WAEnvOffsetsPolicy-270911.pdf

Nonetheless, we consider the significance of the remaining vegetation in the region can best be addressed through reviewing the status of the land tenure for the road and gazetted reservation, with rehabilitation of formerly disturbed areas undertaken in consultation with DBCA.

Further explanation for this conclusion is below.

The grant of the clearing permit is supported

In summary, the key factors in respect to this appeal are:

- The vegetation to be cleared is in degraded condition, having been previously cleared for the existing road alignment.
- The vegetation proposed to be cleared is part of a significant remnant of native vegetation in a highly cleared landscape and as a result is at variance to clearing principle (e).
- Planning instruments promote the retention of remnant vegetation within the Shire of Tammin.
- The clearing is for a public benefit, being to improve sightlines for two bends in Ralston Road.
- A new speed limit to address the safety concern is not supported by Main Roads WA.
- The area of clearing is relatively small.

Based on the above, we consider the decision to grant the permit was justified despite it being found to be at variance to clearing principle (e).

Clearing at variance to a biodiversity principle may require an offset

DWER's *Clearing of native vegetation offsets procedure* (offsets procedure)²⁰ provides that offsets are required when the clearing is at variance with one of more of the biodiversity related clearing principles [(a-f) and (h)] and a significant residual impact remains. The offset procedure therefore requires two conclusions to be reached – (1) identifying if the clearing is at variance to a relevant clearing principle, and (2) establishing whether a significant residual impact remains.

While DWER found the clearing to be at variance to clearing principle (e), in this case it concluded that an offset was not required:

The assessment did not identify significant residual impacts resulting from the proposed clearing and the Department does not consider that an offset is required to counterbalance residual impacts.²¹

Noting the appellant's contention that *all* remaining vegetation in the region is significant, we address the question of whether this clearing would result in a significant residual impact within the context of the WA Environmental Offset framework more broadly.

We note that the offset procedure referenced above does not provide a specific explanation on how to determine if a residual impact is significant, however the *WA Government Environmental Offset Guideline* (offset guideline)²² does. The offset guideline uses a 'residual impact significance model' (see Figure 3 in Section 3) to determine when a proposal has a significant residual impact.

²⁰ <https://www.der.wa.gov.au/component/k2/item/3990-clearing-native-vegetation-offsets-procedure>

²¹ DWER, Response to Appeal CPS 9281/1, page 3

²² https://www.epa.wa.gov.au/sites/default/files/Policies_and_Guidance/WA%20Environmental%20Offsets%20Guideline%20August%202014.pdf

The offset guideline suggests that a highly cleared landscape (a finding of at variance to (e)) is a significant residual impact which would require an offset:

Where cumulative impacts are known to be already significant and these are published (e.g. loss of high conservation value wetlands on the Swan Coastal Plain, **native vegetation in the Wheatbelt**) impacts will normally be considered as requiring an offset. (Emphasis added)

Figure 3 includes the example for clearing principle (e) that would require an offset:

Impacts where the existing vegetation is highly cleared (such as vegetation complexes with less than 30 percent of its pre-clearing extent remaining in a bioregion).

Based on this information, and noting the clearing is within a highly cleared landscape within the Wheatbelt, the offset guideline establishes that the clearing is likely to result in a significant residual impact that should be offset.

Notwithstanding the above, we considered that in this case DWER's view that an offset was not required, given the degraded condition and that it has been previously cleared, was generally consistent with the *WA Environmental Offsets Policy* (offset policy) which says:

Environmental offsets are not appropriate in all circumstances. The applicability of offsets will be determined on a project-by-project basis. While environment offsets may be appropriate for significant residual environmental impacts, they will not be applied to minor environmental impacts.²³

Tenure change and rehabilitation can result in a good environmental outcome

Given that Ralston Road does not align with the gazetted road reserve through the southern section of Charles Gardner Reserve, there would be benefit from the reservations being amended to absorb the unconstructed road reserve into the nature reserve to ensure it is managed for conservation purposes in the future.

Similarly, there is some evidence of earlier use of the unconstructed road reservation as a road, which may benefit from some rehabilitation.

As tenure issues involve other written laws, they are not considered to be amendable to condition setting under a clearing permit. In this case it is recommended that the Minister request DBCA to liaise with the applicant and the Department of Planning, Lands and Heritage to progress these actions.

²³ https://www.epa.wa.gov.au/sites/default/files/Policies_and_Guidance/WAEnvOffsetsPolicy-270911.pdf

3 Supporting information

3.1 Residual Impact Significance Model

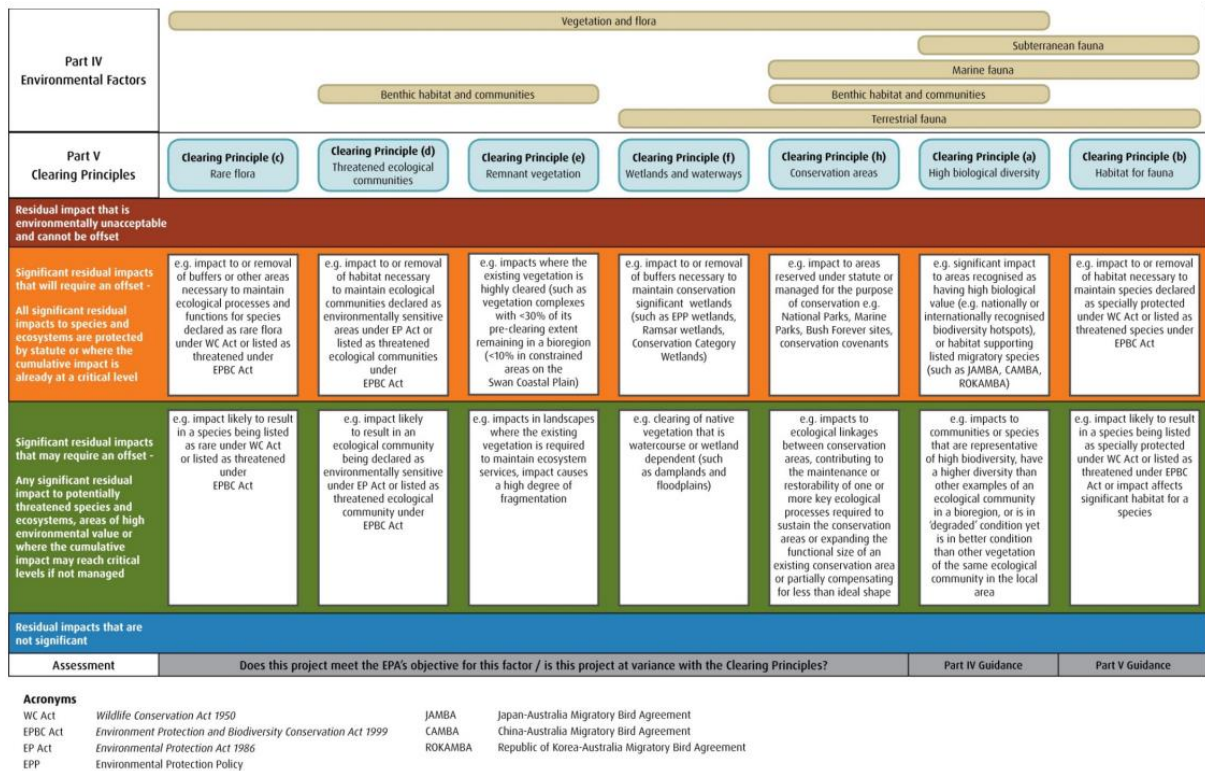


Figure 3 Residual Impact Significance Model as illustrated in the WA Environmental Offsets Guidelines (2014)

Appendix 1 Appeal process

The Minister assesses the merits of a decision

Environmental appeals follow a merits-based process. This means the Minister can consider all the relevant facts, law and policy aspects of the decision and decide whether it was correct and preferable.

We report to the Minister, as does the decision-making authority

To decide an appeal's outcome, the Minister for Environment must have a report from both:

- the Appeals Convenor [see section 109(3) of the EP Act], and
- the authority that originally made the decision under appeal [see section 106(1)].

To properly advise the Minister in our report, our investigation included:

- reviewing documents
- meeting with the appellant on 31 March 2022
- meeting with the applicant on 31 March 2022

Table 1 Documents we reviewed in the appeals investigation

Document	Date
DWER CPS 9281/1 and Decision Report	December 2021
DWER Response to appeal on CPS 9281/1	March 2022
DWER Guide to the assessment of applications to clear native vegetation	December 2014
WA Environmental Offsets Policy	2011
WA Environmental Offsets Guidelines	August 2014
DWER Clearing of native vegetation Offsets procedure	August 2014
WA Native Vegetation Policy	May 2022
WA Native Vegetation Policy Implementation Roadmap	May 2022
Main Roads WA Speed zoning policy and applications guidelines	May 2021