

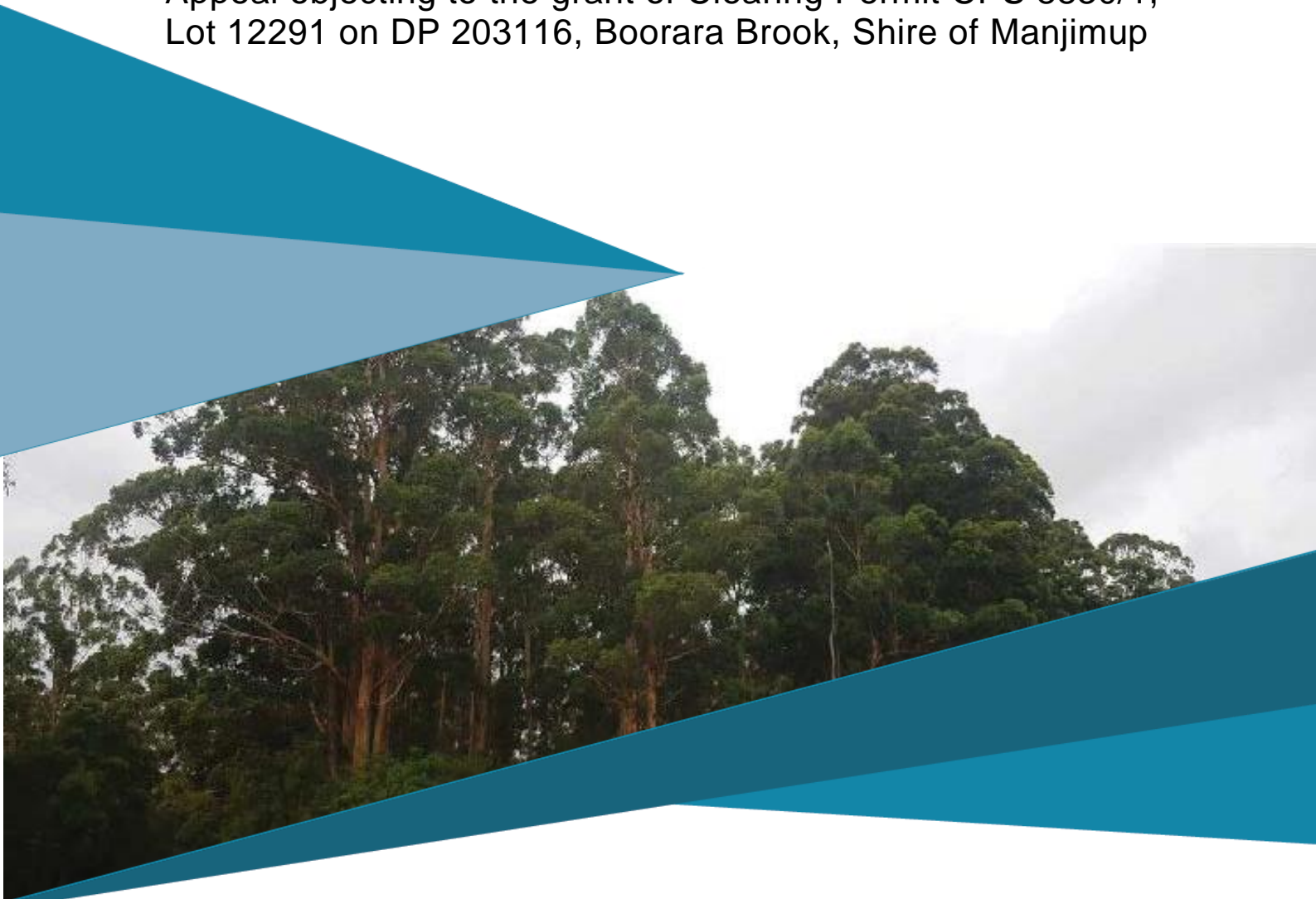


Government of **Western Australia**  
Office of the **Appeals Convenor**  
Environmental Protection Act 1986

# Appeals Convenor's Report to the Minister for Environment

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Appeal objecting to the grant of Clearing Permit CPS 8830/1,  
Lot 12291 on DP 203116, Boorara Brook, Shire of Manjimup



<b>Appellant</b>	Wildflower Society of Western Australia (Inc.)
<b>Applicant</b>	Gems Brook Pty Ltd
<b>Authority</b>	Department of Water and Environmental Regulation (DWER)
<b>Appeal No.</b>	002 of 2022
<b>Date</b>	May 2022

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**Office of the Appeals Convenor**

08 6364 7990 or TTY 13 36 77 (National Relay Service)

admin@appealsconvenor.wa.gov.au

www.appealsconvenor.wa.gov.au

221 St Georges Terrace  
Perth WA 6000

---

**Appeals Convenor**

Emma Gaunt

**Investigating Officers**

Carly Bishop

Emma Bramwell

Jean-Pierre Clement

---

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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

This appeal is against the Department of Water and Environmental Regulation's (DWER) decision to grant Clearing Permit CPS 8830/1 to Gems Brook Pty Ltd (permit holder) under Part V of the *Environmental Protection Act 1986* (EP Act). The clearing permit was granted on 20 December 2021, and authorises the clearing of up to 8.94 hectares (ha) of native vegetation on Lot 12291 on Deposited Plan 203116, Boorara Brook, in the Shire of Manjimup (Figure 1). The purpose of the proposed clearing is to facilitate primary production.



**Figure 1** Areas authorised to be cleared under CPS 8830/1 (up to 3.27 ha for broadscale clearing in 'A', 'D' (1-2) and between 'B' and 'C1' shaded yellow, and up to 5.67 ha for 'low impact' / 'incidental' clearing<sup>1</sup> in 'B', 'C' (1-3) and 'E' shaded red)<sup>2</sup>

<sup>1</sup> The clearing permit defines 'low impact clearing' as 'grubbing, pruning, slashing, burning, or the use of appropriate herbicides', and 'incidental clearing' as 'the incidental death of native vegetation from the spraying and mechanical removal of blackberry'.

<sup>2</sup> Department of Water and Environmental Regulation (2021a) *Clearing Permit granted under section 51E of the Environmental Protection Act 1986: Area Permit Number CPS 8830/1*. Granted 20 December 2021. Available from: <https://ftp.dwer.wa.gov.au/permit/8830>

## 1.2 Grounds of appeal and appellant concerns

The appellant is the Wildflower Society of Western Australia (Inc.). The grounds of appeal are outlined in Table 1.

**Table 1** Grounds of appeal (summarised)

Ground	Main concerns the appellant submitted
Flora	DWER's desktop assessment was incomplete, and overlooked two Priority 4 species <i>Stylidium leeuwinense</i> and <i>Gonocarpus pusillus</i> . A formal flora survey for threatened and priority species should be undertaken prior to any clearing.
Fauna	The targeted fauna survey and habitat tree assessment did not consider seasonality as they were undertaken through the summer months. Additional fauna surveys at key times throughout the year should be undertaken prior to any clearing.
Offsets	An offset should be required to compensate for the net loss of trees and vegetation from the broadscale clearing of areas 'A' and 'D' (1-2). In addition, area 'B' should be extended across to meet area 'A' and the adjoining State Forest to provide a vegetated linkage from the State Forest upstream along the creek line to allow fauna movement from the State Forest.

The appellant sought for the clearing not to be allowed unless/until targeted flora survey and additional fauna survey are conducted and an offset requirement applied.

## 1.3 Key issues and conclusions

From the appellant's concerns, we have identified three issues at the heart of the appeal. We summarise our conclusions for these issues below. Section 2 of this report details our reasoning and Section 3 provides supporting information.

Overall, we consider that DWER had sufficient information on which to base its assessment, and that its decision to grant the clearing permit subject to conditions was generally justified.

However, we find that given the native vegetation proposed to be cleared is potential habitat for conservation significant fauna, and therefore 'at variance' to clearing principle (b), we recommend that the conditions be modified to ensure that clearing for blackberry control is selective and low impact, as reflected in DWER's assessment.

A summary of our conclusions is provided below.

### Should DWER have requested a targeted flora survey?

DWER undertook a desktop assessment using relevant Department of Biodiversity, Conservation and Attractions (DBCA) databases, and identified that eight flora taxa of conservation significance are known to occur within a 10 kilometres (km) radius of the clearing footprint (local area). These included one threatened species and seven priority species, including *Stylidium leeuwinense* and *Gonocarpus pusillus*.

The decision report for the clearing permit contains detailed discussion on five of these eight taxa that DWER considered were 'likely' or 'possible' to occur within the clearing footprint based on soil types and vegetation associations. DWER advised that *Stylidium leeuwinense* and *Gonocarpus pusillus* were 'unlikely' to occur within the clearing footprint because it does not contain the preferred soil types or vegetation associations, and therefore did not discuss these species in the decision report.

We consider that DWER's approach of conducting a risk-based assessment to determine survey requirements is appropriate. We also agree with DWER's conclusion that the proposed clearing is unlikely to pose a significant risk to conservation significant flora taxa, including *Stylidium leeuwinense* and *Gonocarpus pusillus*. On this basis we consider that there would be little benefit to be gained from a formal flora survey.

### **Should DWER have requested additional fauna surveys?**

DWER undertook a desktop assessment using relevant DBCA databases, and identified that eight fauna species of conservation significance recorded within the local area may utilise the native vegetation within the clearing footprint based on habitat preferences. Following a risk-based approach, DWER requested a targeted fauna survey and habitat tree assessment<sup>3</sup> to determine the potential presence or absence of the eight fauna species. For the areas approved to be cleared, DWER noted the findings of the survey that fauna habitats were generally absent, unsuitable, or of poor quality for most of the species of concern. DWER advised that the identification of habitat types and features (such as hollows) for the eight conservation significant species can be done at any time of year, and considered that additional, multi-seasonal surveys would provide little additional context to the findings of the targeted fauna survey and habitat tree assessment.

We agree with DWER's position that in this case additional surveys would provide little additional information on the basis that the identification of habitat types and features for the eight species above are not seasonally constrained. However, we note that conservation significant species may utilise riparian vegetation within the clearing footprint, that at least one species (Baudin's cockatoo) was observed, and that three riparian vegetation types are described as being of 'moderate' habitat value for conservation significant fauna. DWER's *A guide to the assessment of applications to clear native vegetation*<sup>4</sup> contains examples of proposed clearing that is likely to be at variance with clearing principle (b), including 'clearing of native vegetation that is habitat for specially protected or threatened fauna'. Given this, and noting the vegetation proposed to be cleared includes moderate quality habitat for the 'critically endangered' western ringtail possum, we consider that the proposed clearing 'is at variance' with clearing principle (b).

On the information available through the appeal investigation, we agree with DWER that selective clearing to facilitate access for blackberry control, and then any incidental clearing as a result of blackberry control, are acceptable in the context of this proposal. However, noting that some of the native vegetation associated with this area is part of a significant habitat for threatened fauna species, and that the existing riparian vegetation has been identified by the Commissioner of Soil and Land Conservation as important for preventing land degradation, we recommend that the clearing permit conditions be amended to confirm that the impacts of the proposed clearing reflect the intent of the decision. The full details of these changes are set out below.

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<sup>3</sup> Harewood (2021) *Targeted Fauna Survey & Habitat Tree Assessment of Proposed Clearing Areas (CS 8830/1) Lot 12291 Boorara Brook*. Version 1, June 2021. Report prepared for Gems Brook Pty Ltd. Available from: <https://ftp.dwer.wa.gov.au/permit/8830/>

<sup>4</sup> 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*. December 2014. Department of Environment Regulation, Perth, Western Australia. Available from: <https://www.der.wa.gov.au/our-work/clearing-permits/48-guidelines-clearing-permits>

## Should DWER have required an offset?

Principle 2 of the *WA Environmental Offsets Policy* states ‘While environment offsets may be appropriate for significant residual environmental impacts, they will not be applied to minor environmental impacts’. In other words, where a residual impact is not considered to be ‘significant’, an offset would not be required. In respect to clearing permits, an offset might be required where an incidence of proposed clearing ‘is at variance’ to one or more of the biodiversity-related clearing principles and would result in a significant residual impact.

In this case, DWER determined that the proposed clearing ‘is at variance’ with clearing principle (f) because it will impact on riparian vegetation in areas ‘B’ and ‘C’ (1-3). Further, we found that the proposed clearing ‘is at variance’ with clearing principle (b) because it will impact on habitat for specially protected or threatened fauna.

As outlined above, we recommend that the conditions of the clearing permit be strengthened. As a result of these recommended changes, we do not consider that the proposed clearing will result in a significant residual impact that might otherwise warrant an offset.

We also agree with DWER’s view that creating a vegetated linkage between areas ‘A’ and ‘B’ would have little ecological benefit at the landscape or local scale.

### 1.4 Recommendation to the Minister

Allow the appeal in part, to the extent that the clearing is found to be at variance to clearing principle (b) and the conditions of the permit are amended as follows:

- condition 2(a) is amended by deleting ‘earth-moving machinery’ and inserting ‘vehicles or equipment used for the clearing’
- condition 3(b) is amended to clarify that:
  - clearing to access blackberry infestations is only to the extent necessary using the least invasive access method
  - clearing in association with blackberry control is only authorised if it is an unavoidable consequence of control method; for chemical control, this should include a requirement that herbicide application is in accordance with the product label and relevant best practice guidance for blackberry control in WA
- condition 5 is amended to include keeping of records about the dates of herbicide application or physical controls referred to under condition 3(b)
- definition of ‘incidental clearing’ is amended by deleting ‘mechanical removal’ and inserting ‘physical removal’.

## 2 Reasons for recommendation

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### 2.1 Should DWER have requested a targeted flora survey?

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The appellant submitted that DWER did not request the permit holder to undertake a formal flora survey to inform assessment of the clearing application, and instead undertook a desktop assessment that considered the likelihood of five conservation significant species known to occur within 5 km of the clearing footprint. The appellant submitted that the Atlas of Living Australia<sup>5</sup> indicates at least another two conservation significant species could occur in the clearing footprint (*Stylidium leeuwinense* and *Gonocarpus pusillus*, both Priority 4<sup>6</sup>). The appellant argued that DWER's desktop assessment was incomplete and should not be the sole source of information to assess risks to flora. The appellant sought for a formal/targeted flora survey to be undertaken prior to clearing to establish whether threatened or priority species occur within the clearing footprint.

#### A targeted flora survey is not required

Our conclusion is that a targeted flora survey within the clearing footprint is unlikely to provide any useful additional information. This is because the clearing footprint does not contain the preferred soil types or vegetation associations for *Stylidium leeuwinense*, *Gonocarpus pusillus*, or any other conservation significant species known to occur within the local area. We explain our reasoning below.

DWER advised that it considers that it undertook an appropriate assessment of the risk to flora taxa of significance likely to occur within the clearing footprint:

The Department applies a risk-based approach to the assessment of clearing permit applications<sup>7</sup>, consistent with the relevant Guideline and Procedure<sup>8</sup>. The scope and detail of any survey requirements are based on the level of environmental risk associated with the proposed clearing and determined on a case-by-case basis. While the Department encourages applicants to provide additional supporting information, the Department does not require additional information unless a desktop review indicates that there is a real risk of a significant environmental value being impacted by the proposed clearing.<sup>9</sup>

The decision report<sup>10</sup> indicates that the potential occurrence of conservation significant species is determined based on the desktop assessment, which interrogates relevant DBCA databases for threatened flora and threatened and priority flora and ecological communities. These databases are listed in Appendix H of the decision report.

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<sup>5</sup> <https://ala.org.au/>

<sup>6</sup> Described as 'Species that are considered to have been adequately surveyed, or for which sufficient knowledge is available, and that are considered not currently threatened or in need of special protection but could be if present circumstances change. These species are usually represented on conservation lands' in: Department of Biodiversity, Conservation and Attractions (2022) *Threatened and Priority Flora List 05 December 2018*. Available from: <https://www.dpaw.wa.gov.au/plants-and-animals/threatened-species-and-communities/threatened-plants>

<sup>7</sup> Government of Western Australia (2014).

Government of Western Australia (2015) *Clearing Regulation Fact Sheet 16: Risk-based assessment of clearing permit applications – Environmental Protection Act 1986*. February 2015. Department of Environment Regulation, Perth, Western Australia. Available from: <https://www.der.wa.gov.au/our-work/clearing-permits/49-fact-sheets>

<sup>8</sup> Government of Western Australia (2019) *Procedure: Native vegetation clearing permits – Application, assessment, and management requirements under Part V Division 2 of the Environmental Protection Act 1986*. October 2019. Department of Water and Environmental Regulation, Perth, Western Australia. Available from: <https://dwer.wa.gov.au/procedure/native-vegetation-clearing-permit>

<sup>9</sup> Department of Water and Environmental Regulation response to Appeal 002/22, 4 February 2022, page 2.

<sup>10</sup> Department of Water and Environmental Regulation (2021b) *Clearing Decision Report: Permit Number CPS 8830/1*. Dated 20 December 2021. Pages 1 and 49. Available from: <https://ftp.dwer.wa.gov.au/permit/8830>



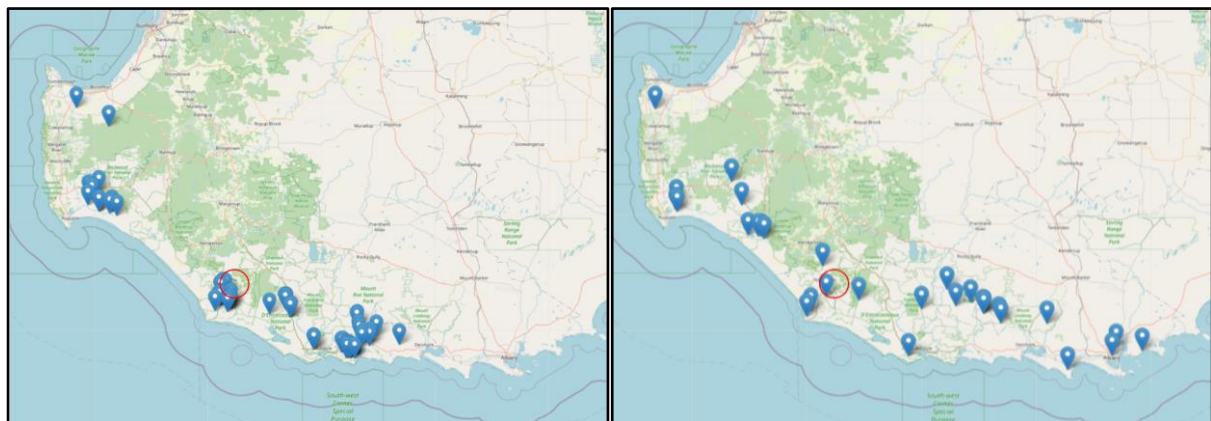
In this case, DWER’s desktop assessment identified eight flora taxa of conservation significance known to occur within the local area. These included one threatened (‘vulnerable’) species, and seven priority species (two Priority 2, one Priority 3, and four Priority 4 including *Stylidium leeuwinense* and *Gonocarpus pusillus*).

DWER advised that the decision report contains detailed discussion on five of these eight species that it considered were ‘possible’ or ‘likely’ to occur within the clearing footprint on the basis of its initial desktop review. DWER advised that from its initial desktop review *Stylidium leeuwinense*, *Gonocarpus pusillus* and one other taxon were considered ‘unlikely’ to occur and were therefore not considered for further analysis in the decision report.<sup>11</sup>

The FloraBase website<sup>12</sup> indicates the following:

- *Stylidium leeuwinense* is known from about 60 recorded populations (some records may overlap) from the local government areas of Augusta-Margaret River, Busselton, Denmark, Manjimup and Nannup; described as an erect perennial herb 0.15-0.6 metres (m) high, with pink flowers in February to May, growing in grey to black peaty sand, associated with winter-wet habitats and depressions.
- *Gonocarpus pusillus* is known from about 30 recorded populations (some records may overlap) from the local government areas of Albany, Augusta Margaret River, Busselton, Denmark, Manjimup, Nannup and Plantagenet; described as a prostrate annual her 0.05-1.2 m high, with green/yellow and red flowers in November to December, growing in grey sandy clay, associated with winter-wet swamps.

DWER advised that *Stylidium leeuwinense* occurs over a range of about 230 km from Kaloorup (west) to Kordabup (east), and that *Gonocarpus pusillus* occurs over a range of about 315 km from Wilyabrup (west) to Nannup (east) (Figure 2). DWER considered it unlikely that either species would occur within the clearing footprint because known records are from different soil and vegetation types to those found within the clearing footprint.<sup>13</sup>



**Figure 2** Ranges of *Stylidium leeuwinense* (left) and *Gonocarpus pusillus* (right), with location of clearing footprint indicated by red circle<sup>14</sup>

<sup>11</sup> Department of Water and Environmental Regulation response to Appeal 002/22, 4 February 2022. Page 3.

<sup>12</sup> Western Australian Herbarium (1998–) *Florabase – the Western Australian Flora*. Department of Biodiversity, Conservation and Attractions. Available from: <https://florabase.dpaw.wa.gov.au/>

<sup>13</sup> Department of Water and Environmental Regulation response to Appeal 002/22, 4 February 2022, page 3.

<sup>14</sup> Department of Water and Environmental Regulation response to Appeal 002/22, 4 February 2022, page 3.

In relation to the quality of the habitat proposed to be cleared, DWER advised that:

Area A supports vegetation in Completely Degraded condition<sup>15</sup> (mainly Bracken Fern over unimproved pasture). Areas D1 and D2 are relatively small (1.86 ha), surrounded by cleared areas, and do not contain drainage lines or swampy areas. These areas contain 50-80 year old Karri regrowth with a patchy midstorey and understorey in Degraded to Good condition. All of the flora species identified in the desktop assessment, including *Stylidium leeuwinense* and *Gonocarpus pusillus*, are known from wet areas or granite outcrops and are not expected to occur in Areas A, D1 and D2.

The remaining 5.67 ha of authorised clearing is restricted to low impact clearing (such as slashing) limited to the extent necessary to facilitate access to control the weed blackberry (*Rubus* sp.), and any incidental clearing caused by the removal or killing of blackberry ...<sup>16</sup>

DWER considered that the risk posed by the proposed clearing to *Stylidium leeuwinense* and *Gonocarpus pusillus* is negligible, and that any inadvertent loss of individuals from the direct or indirect impacts of clearing would not compromise their conservation.

Of the five conservation significant species that DWER considered were 'possible' or 'likely' to occur within the clearing footprint based on an initial desktop review, the decision report contains an analysis of the preferred habitats and context of these species in relation to the impacts of the proposed clearing. For the one threatened species, DWER concluded that it is unlikely to occur and that no significant impacts are expected. Of the four priority species, DWER concluded that two are unlikely to occur on the basis that habitat within the clearing footprint is unlikely to be suitable, and that two could potentially occur however that 'significant impacts to the conservation of the species, if present, are not expected'.

We consider that DWER's approach of conducting a risk-based assessment to determine survey requirements is appropriate. We also agree with DWER's conclusion that the proposed clearing is unlikely to pose a significant risk to conservation significant flora taxa, including *Stylidium leeuwinense* and *Gonocarpus pusillus*. On this basis we consider that there would be little benefit to be gained from a formal flora survey.

## 2.2 Should DWER have requested additional fauna surveys?

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The appellant submitted that the targeted fauna survey and habitat tree assessment considered by DWER was undertaken during the summer months and did not consider the effects of seasonality. The appellant contended that fauna habitat requirements and preferences are likely to change with changing seasons. The appellant sought for additional fauna surveys should be undertaken at key times throughout the year prior to any clearing.

Our conclusion is that additional fauna surveys within the clearing footprint are not required as the available information is sufficient to characterise the risks posed to fauna. We explain our reasoning below.

### **The local area supports a number of conservation significant fauna species**

The decision report states that 21 conservation significant fauna taxa are known to occur within the local area, and that the native vegetation within the clearing footprint may provide suitable habitat for eight of these species on the basis of their habitat preferences (Table 2).

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<sup>15</sup> As per the scale described in: Keighery, B.J. (1994) *Bushland plant survey – A guide to plant community survey for the community*. Wildflower Society of WA (Inc.), Nedlands, Western Australia. Available from: <https://catalogue.nla.gov.au/Record/1778245>

<sup>16</sup> Department of Water and Environmental Regulation response to Appeal 002/22, 4 February 2022, page 4.

**Table 2** Conservation significant fauna that may occur in the application area

Species	Status
Carnaby's cockatoo ( <i>Calyptorhynchus latirostris</i> )	Endangered
Baudin's cockatoo ( <i>Calyptorhynchus baudinii</i> )	Endangered
Forest red-tailed black cockatoo ( <i>Calyptorhynchus banksii naso</i> )	Vulnerable
Noisy scrub-bird ( <i>Atrichornis clamosus</i> )	Endangered
Western ringtail possum ( <i>Pseudocheirus occidentalis</i> )	Critically endangered
Quokka ( <i>Setonix brachyurus</i> )	Vulnerable
South-western brush-tailed phascogale ( <i>Phascogale tapoatafa wambenger</i> )	Conservation Dependent
Quenda ( <i>Isoodon fusciventer</i> )	Priority 4

### Targeted fauna survey and habitat tree assessment

As noted under Section 2.1, DWER applied a risk-based approach to the assessment of the clearing application. Following this approach, DWER requested a targeted fauna survey and habitat tree assessment to provide additional contextual information for these fauna species.

The targeted fauna survey and habitat tree assessment describes methods used to determine whether target fauna species occupied the clearing footprint, including:

- habitat assessment (based on vegetation units, landforms and soils)
- camera traps over a 45 day period (two cameras in area 'B' and one camera in each of areas 'C3' and 'D1' of the clearing footprint)
- two day surveys (undertaken on 15 January and 1 March 2021) and one night survey (undertaken on 1 March 2021) over a series of transects searching for evidence (calls, tracks, scats, runnels, dreys, tree hollows, individuals, eye shine; location of transects not specified).

The targeted fauna survey and habitat tree assessment found that:

With the exception of a flock of Baudin's black cockatoos observed flying overhead during a day survey (in addition to some foraging debris) no fauna species of conservation significance were recorded within the application area during the course of the survey.

Superficially, areas of dense continuous midstorey vegetation which generally occur in or adjacent to the drainage lines appears suitable for the western ringtail possums. There also appears to be suitable habitat for quenda, in similar areas along some sections of the drainage lines where sedges and blackberry are densest. Habitat for the south-western brush-tailed phascogales is generally of poor quality given a general absence of hollow bearing trees which the species requires for daytime refuge and breeding

Overall, the vegetation present is also unlikely to represent habitat suitable for quokkas. While some areas may be suitable, they are unlikely to harbour a self-sustaining population given their limited extent.

Habitat that appears suitable for the noisy shrub-bird (i.e. very dense understory) also appears to be generally absent except in small areas of the application area making it unlikely that a population could persist. Based on the results of the assessment it is concluded that clearing can be carried out without significantly impacting on fauna species of conservation significance or existing black cockatoo breeding/foraging/roosting habitat.

With respect to black cockatoos only one marginally size hollow that may represent potential breeding habitat was identified. Quality foraging habitat is restricted to those areas containing marri, jarrah and blackbutt trees in the southern half of the application area where a small amount of foraging evidence was observed (chewed marri fruits). There is some potential roosting habitat, though no evidence of roosting activity by black cockatoos was observed.<sup>17</sup>

The targeted fauna survey and habitat tree assessment concluded that the proposed clearing 'can be carried out without significantly impacting on fauna species of conservation significance or existing black cockatoo breeding/foraging/roosting habitat'. The findings are summarised in the decision report.<sup>18</sup>

### **Additional fauna surveys not required**

DWER considered that the information obtained from the targeted fauna survey and habitat tree assessment was adequate for it to be able to determine the likelihood of fauna species of conservation significance occurring within the clearing footprint, and to inform the likelihood of risk to these species based upon the scale of the proposed clearing, the condition and size of the areas of clearing, and the type of clearing authorised.<sup>19</sup>

Based on this, DWER noted the findings of the targeted fauna survey and habitat tree assessment that fauna habitats within the revised clearing footprint were generally absent, unsuitable, or of poor quality for most of the species of concern. DWER concluded that:

[T]he impacts of the proposed clearing on fauna and fauna habitat can be managed by implementing the Permit Holder's avoidance and minimisation strategies, minimising the risk of the introduction and spread of weeds and dieback, and implementing slow, directional clearing to allow fauna to move into adjacent vegetation (Attachment 1). The reduction in area authorised for clearing, and the conditions applied to the Permit, reduce the likelihood of impacts further.<sup>20</sup>

Relevant to fauna habitats within the clearing footprint generally, DWER advised that:

The only broadscale clearing approved is limited to Areas A, D1, D2 and two small drainage line crossings (0.1 ha). Area A contains negligible fauna habitat value and the drainage line crossings are considered too small to represent significant fauna habitat. While areas D1 and D2 may provide moderate Quenda habitat and non-preferred foraging habitat for black cockatoos (i.e. karri), additional surveys of Areas D1 and D2 would unlikely change the conclusions of the Decision Report or the conditions applied to the Permit. The assessment acknowledged the potential presence of Quenda and black cockatoos and found that impacts to those species are not expected to be significant, noting the exclusion of the most significant vegetation and the permit conditions applied. Quenda and black cockatoos are expected to persist on the property given the vegetation that will be retained.<sup>21</sup>

In relation to the timing of the targeted fauna survey and habitat tree assessment, DWER advised that the identification of habitat types and features (such as hollows) for the eight conservation significant species can be done at any time of year, and considered that:

Additional, multi-seasonal surveys would provide little additional context and conclusions arising from the fauna habitat assessment and black cockatoo habitat tree assessment would likely remain unchanged.<sup>22</sup>

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<sup>17</sup> Harewood (2021), pages 15-16.

<sup>18</sup> Department of Water and Environmental Regulation (2021b), page 9.

<sup>19</sup> Department of Water and Environmental Regulation response to Appeal 002/22, 4 February 2022, pages 5-6.

<sup>20</sup> Department of Water and Environmental Regulation response to Appeal 002/22, 4 February 2022, page 6.

<sup>21</sup> Department of Water and Environmental Regulation response to Appeal 002/22, 4 February 2022, page 6.

<sup>22</sup> Department of Water and Environmental Regulation response to Appeal 002/22, 4 February 2022, page 6.

We acknowledge that in some situations and for some species targeted fauna surveys may need to be repeated due to the impacts of seasonality. In this case, we agree with DWER's view that additional surveys would provide little additional information to the findings from the targeted fauna survey and habitat tree assessment, on the basis that the identification of habitat types and features for the eight species above are not seasonally constrained.

### **Clearing of habitat for 'critically endangered' fauna a key consideration**

While we conclude that additional fauna surveys were not required in this case, we note that the areas proposed to be cleared were identified as being suitable habitat for multiple species of threatened fauna. For example, the targeted fauna survey and habitat tree assessment report noted that 'areas of dense continuous midstorey vegetation which generally occur in or adjacent to the drainage lines' appear to be suitable for western ringtail possums (one of nine mammals listed as 'critically endangered' in Australia).

According to the *Western Ringtail Possum (Pseudocheirus occidentalis) Recovery Plan*<sup>23</sup> (WRP Recovery Plan), the Boorara Brook locality (and the clearing footprint) is within the current known range of the species (based on records from 1990-2016), and is situated south of the 'Southern Forest' and west of the 'South Coast' management zones for western ringtail possums where individuals are concentrated. While these management zones are a priority focus, the WRP Recovery Plan notes:

Western ringtail possums recorded outside of these three key management zones could be managed with the same general priorities and recovery actions assigned to the nearest key management zone unless further review indicates they should be managed differently.<sup>24</sup>

Noting the above, we do not consider that the location of the property outside one of the key management zones should be taken to be determinative as to whether the vegetation forms part of a habitat significant for fauna.

While there is little information available about western ringtail possums in the Boorara Brook locality, we note that the WRP Recovery Plan makes the following comments about the species' preferred habitat in the broader area:

Populations in the southern forest management zone ... occur mainly in jarrah or marri dominated forests, in adjacent stands of riparian vegetation often with an overstorey of flooded gum (*Eucalyptus rudis*) and extending to wandoo (*Eucalyptus wandoo*) forests to the north-east of Manjimup and karri (*Eucalyptus diversicolor*) forests from Northcliffe to west of Manjimup ...<sup>25</sup>

The targeted fauna survey and habitat tree assessment describes two vegetation types as being of 'Moderate value given the presence of continuous midstorey and some peppermint' in respect to western ringtail possums (Figure 3 and Figure 4):<sup>26</sup>

Tea Tree (*Melaleuca*) Low Woodland with some scattered and small groves of karri trees and peppermint in southern section. Some fringing areas dominated by bracken fern (heath/shrubland). Natural ground cover (sedges) in some areas however much of this area is infested with blackberry. Occupies drainage line in northern section of application area ...

Warren River Cedar Low Closed Forest with some scattered and small groves of karri trees and peppermint. Natural ground cover (sedges) in some areas however much of this area is infested with blackberry. Occupies drainage line in middle section of application area ...

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<sup>23</sup> Department of Parks and Wildlife (2017) *Western Ringtail Possum (Pseudocheirus occidentalis) Recovery Plan*. Wildlife Management Program No.58. Department of Parks and Wildlife, Perth, Western Australia. Available from: <https://www.awe.gov.au/environment/biodiversity/threatened/publications/recovery/western-ringtail-possum-recovery-plan>

<sup>24</sup> Department of Parks and Wildlife (2017), page 7.

<sup>25</sup> Department of Parks and Wildlife (2017), page 9.

<sup>26</sup> Harewood (2021), pages 7-8.



**Figure 3** 'Tea Tree (*Melaleuca*) Low Woodland' (view to northern end of area 'B')



**Figure 4** 'Warren River Cedar Low Closed Forest' (view of south-western end of area 'C3')

Both of these vegetation types are associated with watercourses and form part of the areas cross-hatched red in Figure 1 above. The permit holder's supporting document<sup>27</sup> describes this vegetation as 'a dense thicket of mostly Warren River Cedar (*Taxandria juniperina*) and WA peppermint (*Agonis flexuosa*), with incursion of blackberry'.

The targeted fauna survey and habitat tree assessment describes another vegetation type within the clearing footprint as being of 'Low value given absence of continuous midstorey component' in respect to western ringtail possums (Figure 5):<sup>28</sup>

Karri Tall Open Forest over Tall Open Shrubland/Shrubland. Appears to be largely regrowth from historical clearing event. Borders drainage line in central eastern section of application area ...

The targeted fauna survey and habitat tree assessment further notes that 'Due to the relatively young age of the trees present, hollow bearing trees appeared to be almost totally absent. Midstorey and understory vegetation is variable in density but is generally sparse'.

<sup>27</sup> Gems Brook Pty Ltd (2020) *Report to accompany clearing permit application by Gems Brook Pty Ltd*. Supporting information for clearing application CPS 8830/1, dated 21 February 2020.

<sup>28</sup> Harewood (2021), page 9.



**Figure 5** 'Karri Tall Open Forest over Tall Open Shrubland/Shrubland' (view to area 'D2')

This vegetation type forms part of the areas cross-hatched yellow in Figure 1 above.

In addition, the targeted fauna survey and habitat tree assessment describes a fourth vegetation type as being of 'Very low value given absence of coherent midstorey vegetation. Some very occasional small peppermints' for western ringtail possums (Figure 6):<sup>29</sup>

Grassland with some scattered karri trees and shrubs/sedges. Present in a small section of the application area in the north east - mapped as part of application area due to overlapping canopy cover from adjoining property/road reserve.



**Figure 6** 'Grassland with some scattered karri trees and shrubs/sedges'

The decision report indicates that DWER supported the findings of the targeted fauna survey and habitat tree assessment in relation to western ringtail possums, including that 'no sightings, distinctive dreys or other evidence, or sightings, of the species was recorded during the survey'.<sup>30</sup>

<sup>29</sup> Harewood (2021), page 6.

<sup>30</sup> Department of Water and Environmental Regulation (2021b), pages 9-10.

## Proposed clearing is at variance to clearing principle (b)

DWER's *A guide to the assessment of applications to clear native vegetation*<sup>31</sup> sets out the approach for assessing applications to clear native vegetation under the EP Act. In relation to clearing principle (b) under Schedule 5 of the EP Act,<sup>32</sup> the guide provides the following examples of proposed clearing that is likely to be at variance:

- clearing of native vegetation that is habitat for specially protected or threatened fauna
- clearing of native vegetation that is habitat for meta-populations of fauna
- clearing of native vegetation that is necessary for the maintenance of habitat of priority, migratory, specially protected, threatened fauna or meta-populations of fauna.

From the above, we note that conservation significant species may utilise riparian vegetation within the clearing footprint, and that at least one species (Baudin's cockatoo) was observed.

We also note that two riparian vegetation types (Figure 3 and Figure 4) are described as being of 'moderate' habitat value for western ringtail possum. The targeted fauna survey and habitat tree assessment describes these vegetation types as also being of 'moderate' habitat value for quokka and quenda, and the karri forest vegetation (Figure 5) as being of 'moderate' habitat value for black cockatoos and quenda.

Despite DWER's views about the quality and importance of habitats within the clearing footprint for conservation significant species, we consider that the proposed clearing 'is at variance' with clearing principle (b). This is on the basis that the vegetation proposed to be cleared forms part of a habitat significant for fauna, in this case multiple species of threatened fauna, including a critically endangered species.

## Blackberry is a 'weed of national significance'

The stated purpose of the clearing is to facilitate the removal of blackberry (*Rubus* sp.) which is listed as a 'weed of national significance':

It is regarded as one of the worst weeds in Australia because of its invasiveness, potential for spread, and economic and environmental impacts in cool to warm temperate to sub-tropical areas. European Blackberries can infest large areas quickly as they are vigorous growing plants with many plants able to germinate and vegetatively root covering large areas. European Blackberries currently infests about 9 million hectares of land in Australia. Thickets can pose a fire hazard because of the dry material contained within them. Larger animals may become trapped in the prickly thickets while smaller animals, native and feral rabbits and foxes use these thickets as shelter, and it also provides food for introduced species such as starlings, blackbirds, and foxes that subsequently spread of the species new areas. Control costs are high and a sustained effort is needed to attain success.<sup>33</sup>

Blackberry (specifically *Rubus anglocandicans*, *R. fruticosus*, *R. laudatus*, *R. rugosus*, and *R. ulmifolius*) is also a 'declared pest' in the whole of Western Australia.<sup>34</sup> The control and keeping category for the species is 'category C3', which requires land owners to:

Treat to destroy all plants, prevent seed set and prevent the spread of seed or plant parts within and from the area on or in livestock, fodder, grain, vehicles and/or machinery. Treat prior to seed set each year.<sup>35</sup>

<sup>31</sup> Government of Western Australia (2014).

<sup>32</sup> Clearing principle (b): Native vegetation should not be cleared if it comprises the whole or a part of, or is necessary for the maintenance of, a significant habitat for fauna indigenous to Western Australia

<sup>33</sup> Weeds Australia, European blackberry profile page: <https://profiles.ala.org.au/opus/weeds-australia/profile/Rubus%20fruticosus%20aggregate>, accessed 23 May 2022.

<sup>34</sup> <https://www.agric.wa.gov.au/declared-plants/blackberry-declared-pest>

<sup>35</sup> <https://www.agric.wa.gov.au/declared-plants/declared-plant-requirements>



Herbicides are considered to be the most reliable blackberry control method and should be used with other control methods:

Physical control either by manual (hand) or mechanical (machine) means removes biomass, but alone is rarely successful because it's hard to remove all the roots and is normally used with a follow-up herbicide.<sup>36</sup>

### **Clearing of riparian vegetation intended to be limited**

The permit holder indicated that the proposed clearing around the creeklines would be undertaken with a loader to create tracks and a slasher mounted on the back of a tractor. In this regard, condition 3(b) of the clearing permit states that clearing in the areas cross-hatched red in Figure 1 is limited to:

... the extent necessary to facilitate access to control blackberry (*\*Rubus* sp.), and the incidental clearing caused by the removal or killing of blackberry (*\*Rubus* sp.) using low impact clearing methods where practicable.

The clearing permit therefore contemplates two types of clearing with the areas cross-hatched red in Figure 1:

- clearing to facilitate access to areas where blackberry control is to be undertaken
- clearing that is incidental to the chemical or mechanical removal of blackberry.

In relation to clearing for access, the decision report acknowledges:

... that access to blackberry infestations is a key constraint to their control, with it often being located amongst dense riparian vegetation. However, it is considered that broadscale clearing of Areas B and C1-C3 is unlikely to be necessary to eliminate the infestation on the property and instead selective clearing should be sufficient to provide access.<sup>37</sup>

DWER also stated:

It is considered that the broadscale clearing of Areas B and C1-C3 should also not be granted. These areas currently show signs of pugging and erosion and the denuding of these areas will only exacerbate this. [H]owever, low impact partial clearing to assist the landowner to access and control blackberry infestations is considered acceptable noting the potential biodiversity benefits of blackberry control including those off-site (e.g. prevention of incursions downstream or in surrounding vegetation through reduced seed source).<sup>38</sup>

The risk of land degradation resulting from the clearing of riparian vegetation is emphasised by advice reviewed by DWER from the Commissioner of Soil and Land Conservation which was to the effect that:

Areas B and C1-C3 (predominantly of Teatree, Peppermint, Warren River Cedar) already have signs of waterlogging, pugging and water erosion ... and downstream areas [Gardner River] are likely to experience increased erosion, waterlogging and nutrient loading. Clearing is required to gain access to and to control/eradicate significant blackberry infestations but broadscale clearing should be discouraged.<sup>39</sup>

From this, it is taken that selective clearing to allow access to areas where blackberry infestations occur was assessed by DWER as being acceptable, noting that any such clearing would be selective and for the overall environmental benefit of blackberry control.

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<sup>36</sup> Weeds Australia, European blackberry profile page: <https://profiles.ala.org.au/opus/weeds-australia/profile/Rubus%20fruticosus%20aggregate>, accessed 23 May 2022.

<sup>37</sup> Department of Water and Environmental Regulation (2021b), page 12.

<sup>38</sup> Department of Water and Environmental Regulation (2021b), page 13.

<sup>39</sup> Department of Water and Environmental Regulation (2021b), page 15.

The second type of clearing authorised within the areas cross-hatched red in Figure 1 is clearing that is incidental to the removal of blackberry. In response to the appeal, DWER stated that 'broadscale' clearing within the areas cross-hatched red in Figure 1 is prohibited and:

... is limited to the extent necessary to facilitate access to control blackberry, and the incidental clearing caused by the removal or killing of blackberry using low impact clearing methods where practicable. Incidental clearing is defined as the death of native vegetation from the spraying and mechanical removal of blackberry.<sup>40</sup>

While 'broadscale' is not defined in either the clearing permit or the decision report, it is taken to mean clearing that will result in the complete and permanent removal of native vegetation for another land use, such as pasture. Thus, the clearing permit limits clearing within the areas cross-hatched red in Figure 1 to only that which is unavoidable for the control of blackberry.

### **Permit justified but condition amendments recommended to ensure 'low impact'**

We agree with DWER that selective clearing to facilitate access for blackberry control and then any incidental clearing as a result of blackberry control is acceptable in the context of this proposal.

However, noting some of the vegetation associated with blackberry control is part of a significant habitat for threatened fauna species, and the existing riparian vegetation has been identified by the Commissioner of Soil and Land Conservation as important for preventing land degradation, we recommend the conditions be amended to confirm the impacts of the clearing reflect the intent of the decision: first, it is recommended that condition 3(b) be amended to clarify that clearing to access blackberry infestations is only to the extent necessary using the least invasive access method. For example, an isolated blackberry plant growing in mature riparian vegetation could be accessed by foot rather than a front-end loader.

Secondly, for clearing that is incidental to blackberry control, the clearing permit should be modified to clarify that clearing is only authorised if it is an unavoidable consequence of blackberry control. For chemical control, this should include a requirement that herbicide application is in accordance with the product label and relevant best practice guidance for blackberry control in WA (for example, as published by the Department of Primary Industries and Regional Development). To ensure the permit holder is not unintentionally prevented from using hand control of blackberry, the words 'mechanical removal' in Table 2 of the clearing permit should be deleted and replaced with 'physical removal'.

Consistent with the above modifications, condition 5 is amended to include keeping of records about the dates of herbicide application or physical controls referred to under condition 3(b).

One further minor change to the conditions to reflect the intent of the approval and for consistency with other recent appeals is for condition 2(a) to be amended by deleting 'earth-moving machinery' and inserting 'vehicles or equipment used for the clearing.' This change clarifies that all vehicles (not just earth-moving machinery) used as part of the clearing should meet the same dieback and weed control standards.

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<sup>40</sup> Department of Water and Environmental Regulation response to Appeal 002/22, 4 February 2022, page 7.

## 2.3 Should DWER have required an offset?

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The appellant submitted that the proposed clearing within areas 'A' and 'D' (1-2) will remove many trees and result in a net loss of vegetation. The appellant submitted that revegetation in other parts of the property not targeted for clearing would compensate for this net loss, and sought for an additional condition on the clearing permit to this effect. The appellant also sought for area 'B' to be extended across to meet area 'A' and the adjoining State Forest to create a vegetated linkage for the benefit of fauna.

Our conclusion is that an offset is not required in this case, as the proposed clearing would not result in a significant residual impact. We explain our reasoning below.

### Offset policy context

Under the *WA Environmental Offsets Policy* and *WA Environmental Offsets Guidelines*<sup>41</sup>, environmental offsets are not appropriate for all projects and are not appropriate in all circumstances, and their applicability is considered on a project-by-project basis after avoidance and mitigation options have been pursued.

Principle 2 of the *WA Environmental Offsets Policy* states 'While environment offsets may be appropriate for significant residual environmental impacts, they will not be applied to minor environmental impacts'. In other words, where a residual impact is not considered to be 'significant', an offset would not be required.

DWER advised that it assessed the clearing application against the 10 clearing principles set out in Schedule 5 of the EP Act, and in the context of the *WA Environmental Offsets Policy*<sup>42</sup> and the *Clearing of Native Vegetation Offsets Procedure*<sup>43</sup>. DWER advised that offsets are required when it determines a clearing application to be at variance with one or more of the biodiversity-related clearing principles (being (a)-(f) and (h)) and a significant residual impact remains following application of the mitigation hierarchy.<sup>44</sup>

Of the biodiversity-related clearing principles, the decision report states that DWER's assessment found that the proposed clearing 'is at variance' with clearing principle (f) because it will impact on riparian vegetation. By our finding under the previous ground, we consider that, in addition, the proposed clearing 'is at variance' with clearing principle (b).

In relation to clearing principle (f), DWER advised that this relates to areas 'B' and 'C' (1-3) within which blackberry control along watercourses is proposed, and not to the broadscale clearing proposed within areas 'A', 'D' (1-2), and between 'B' and 'C1' for a creek crossing:

Within Area B and Areas C1, C2, and C3, Permit conditions ... stipulate that broadscale clearing of native vegetation is prohibited, and clearing within these areas is limited to the extent necessary to facilitate access to control blackberry, and the incidental clearing caused by the removal or killing of blackberry using low impact clearing methods where practicable. Incidental clearing is defined as the death of native vegetation from the spraying and mechanical removal of blackberry. A hygiene condition has also been applied to the

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<sup>41</sup> Government of Western Australia (2014) *WA Environmental Offsets Guidelines*. Government of Western Australia, August 2014. Available from: <https://www.epa.wa.gov.au/policies-guidance/wa-environmental-offsets-policy-2011-and-guidelines>

<sup>42</sup> Government of Western Australia (2011) *WA Environmental Offsets Policy*. Government of Western Australia, September 2011. Available from: <https://www.epa.wa.gov.au/policies-guidance/wa-environmental-offsets-policy-2011-and-guidelines>

<sup>43</sup> Government of Western Australia (2014) *Guideline: Clearing of native vegetation Offsets procedure under the Environmental Protection Act 1986*. Dated August 2014. Department of Environment Regulation, Perth, Western Australia. Available from: <https://www.der.wa.gov.au/our-work/clearing-permits/48-guidelines-clearing-permits>

<sup>44</sup> Department of Water and Environmental Regulation response to Appeal 002/22, 4 February 2022, pages 6-7.

Permit to ensure the clearing does not result in unintended spread of blackberry or other weeds, or dieback (for example, through the movement of machinery).

Having considered the reduction of clearing areas, the condition of the vegetation, the objectives of the clearing (to remove weeds), and the Permit conditions applied to mitigate impacts, no significant residual impacts to native vegetation growing in association with an environment associated with a watercourse were identified, and an offset was not required.<sup>45</sup>

### **Proposed clearing is at variance to clearing principle (b)**

We found above that the proposed clearing will impact on habitat for specially protected or threatened fauna. Conservation significant species may utilise riparian vegetation within the clearing footprint, and that at least one species (Baudin's cockatoo) was observed, and three riparian vegetation types are described as being of 'moderate' habitat value for conservation significant fauna.

We consider that the conditions applied on the clearing permit, subject to our recommended changes, are appropriate to mitigate impacts on riparian vegetation, fauna habitats and adjacent vegetation (including the Gardner State Forest) to the extent that the residual impacts from the proposed clearing are not significant, and that an offset is not warranted for the proposed clearing.

### **Planning scheme identifies 'no net loss of vegetation'**

The land in this case is zoned as 'priority agriculture' under the Shire of Manjimup's (Shire) Local Planning Scheme No. 4 (Scheme). The purpose of this zone is to:

... provide for the sustainable use of high quality agricultural land, particularly where water resources exist, preserving existing agricultural production and allowing for new agricultural production by securing suitable land and water resources.<sup>46</sup>

The objectives for the zone include the 'protection and enhancement of bio-diversity of these areas'.<sup>47</sup> This is also reflected in the aims of the Scheme which includes the following aims:

- (xiii) conserve, protect and enhance the biodiversity (genetic, species and ecosystem diversity, environmental values and natural heritage) of the Scheme Area and its environs by ensuring that land use and development is undertaken in a sustainable manner with biodiversity values at the fore-front of decision-making;
- (xiv) recognise and, where possible, take account of the adverse cumulative impacts on biodiversity and environmental and heritage values...<sup>48</sup>

In the zoning table for the Scheme, intensive and extensive agriculture are identified as a 'P' use, which means:

... the use is permitted by the Scheme providing the use complies with the relevant development standards and the requirements of the Scheme.<sup>49</sup>

In the Local Planning Strategy (Strategy), the Shire states:

Clearing of native vegetation has been a major contributor to reduced water quality in streams and wetlands, and has brought about a loss of flora and fauna habitat. Clearing has also led to raised water tables, salinisation and increased export of nutrients within some catchments.

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<sup>45</sup> Department of Water and Environmental Regulation response to Appeal 002/22, 4 February 2022, page 7.

<sup>46</sup> Shire of Manjimup, Local Planning Scheme No. 4, amended to 22 March 2022, clause 4.4.1.

<sup>47</sup> Shire of Manjimup, Local Planning Scheme No. 4, amended to 22 March 2022, clause 4.4.2 (v).

<sup>48</sup> Shire of Manjimup, Local Planning Scheme No. 4, amended to 22 March 2022, clause 1.7.

<sup>49</sup> Shire of Manjimup, Local Planning Scheme No. 4, amended to 22 March 2022, clause 4.19.2.

Planning processes should therefore be used as far as possible to protect and enhance the remaining areas of native vegetation within freehold areas, particularly within strategically important locations such as riparian zones and groundwater recharge areas.<sup>50</sup>

Clause 5.7.4 of the Scheme provides:

Where native vegetation is cleared pursuant to implementation of an approved development or land use, it is a requirement of the Scheme that, unless otherwise approved, an equivalent area of land be revegetated with native vegetation indigenous to the locality on the land the subject of the application or on public land managed by the local government or with the consent of the land owner(s) on other land in their ownership to ensure that there is no net loss of native vegetation to the local government.<sup>51</sup>

Noting agricultural land use is permitted in the priority agriculture zone, it is possible the above requirement applies to any clearing undertaken by the permit holder for that activity (i.e. as an approved land use). Unlike the *WA Environmental Offsets Policy* which requires consideration of the 'significance' of the residual impacts of clearing, the Shire's Scheme appears to require no net loss of native vegetation within the Shire. That is, it appears to be based on maintaining the extent of native vegetation within the Shire's boundaries, irrespective of the scale of the clearing.

The application of the revegetation requirement to the land in question is ultimately a matter for the permit holder and the Shire and is not considered determinative in this appeal. On the Scheme and Strategy more generally (both of which are relevant considerations as 'planning instruments' under section 51O(4) of the EP Act), the instruments support the finding that riparian vegetation is important which is consistent with our finding that clearing in these areas (being the areas cross-hatched red in Figure 1) should be strictly limited.

### **Revegetation of linkage not required**

In relation to the appellant's request for revegetation between areas 'A' and 'B' and the adjoining State Forest to create a vegetated linkage for the benefit of fauna, DWER provided advice about its assessment of the proposed clearing under clearing principle (h).

DWER noted that this matter relates to the proximity of area 'A' to the Gardner State Forest (adjacent, separated by a road reserve; refer Figure 7):

Native vegetation of the northern portion of the Application Area (Area A) in proximity to the Gardner State Forest is in a Completely Degraded condition, and separated from conservation areas by a 20 metre wide road reserve. A hygiene condition has been applied to the Permit to ensure that clearing does not result in the unintended spread of weeds or dieback, for example through the movement of machinery. The risk of spreading weeds and dieback from clearing Area A, or any other impacts to the Gardner State Forest, is considered low.

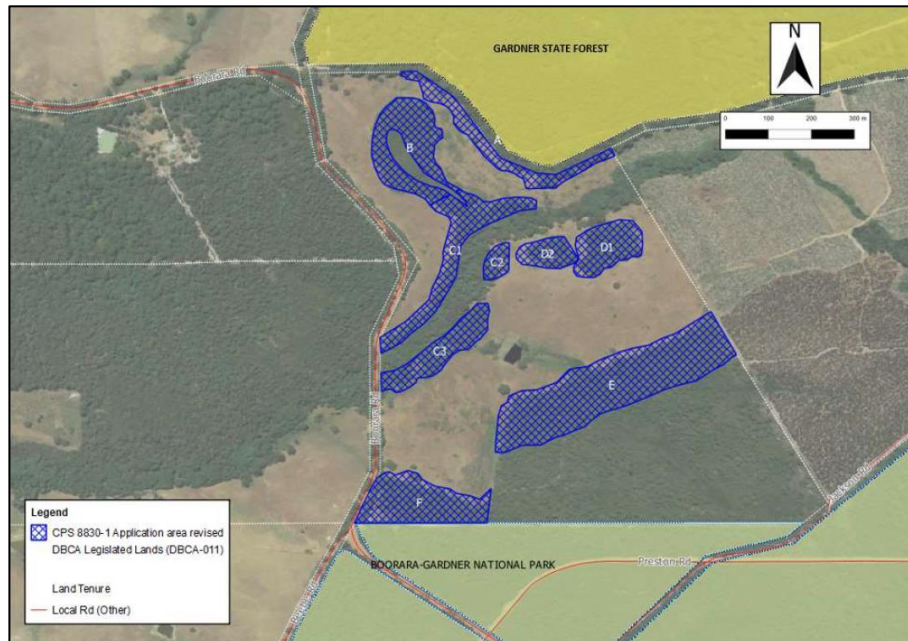
Having considered the reduction of clearing areas, the condition of the vegetation, and the Permit conditions applied to mitigate impacts, no significant residual impacts to adjacent or nearby conservation areas were identified and an offset, or commensurate replanting in other parts of the property to compensate for the net loss of vegetation, was not required.<sup>52</sup>

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<sup>50</sup> Shire of Manjimup, Local Planning Strategy, August 2003, paragraph 4.3.5.3.

<sup>51</sup> Shire of Manjimup, Local Planning Scheme No. 4, amended to 22 March 2022, clause 5.7.4.

<sup>52</sup> Department of Water and Environmental Regulation response to Appeal 002/22, 4 February 2022, pages 7-8.



**Figure 7** Conservation areas adjacent to the clearing footprint<sup>53</sup>

To mitigate potential impacts to the adjacent conservation area (as well as other adjacent vegetation), DWER applied condition 2 on the clearing permit, which states:

When undertaking any clearing authorised under this permit, the permit holder must take the following measures to minimise the risk of 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 known 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.

In response to the appellant's statement on vegetated linkages, DWER noted the extent of vegetation remaining in the local area (about 72 per cent), and advised that the proposed clearing is not located within any recognised ecological linkage. DWER further advised:

The benefit of extending Area A to Area B to create a vegetated linkage is therefore not likely to be material at a landscape scale. Furthermore, Area A is in a Completely Degraded condition, and separated from conservation areas by a 20 metre wide road reserve, and Area B consists of tea-tree low woodland with Bracken Fern, sedges and a significant blackberry infestation. Any proposed ecological linkage combining Area A with Area B would therefore be compromised by the vegetation condition and separation distance to adjoining State Forest.

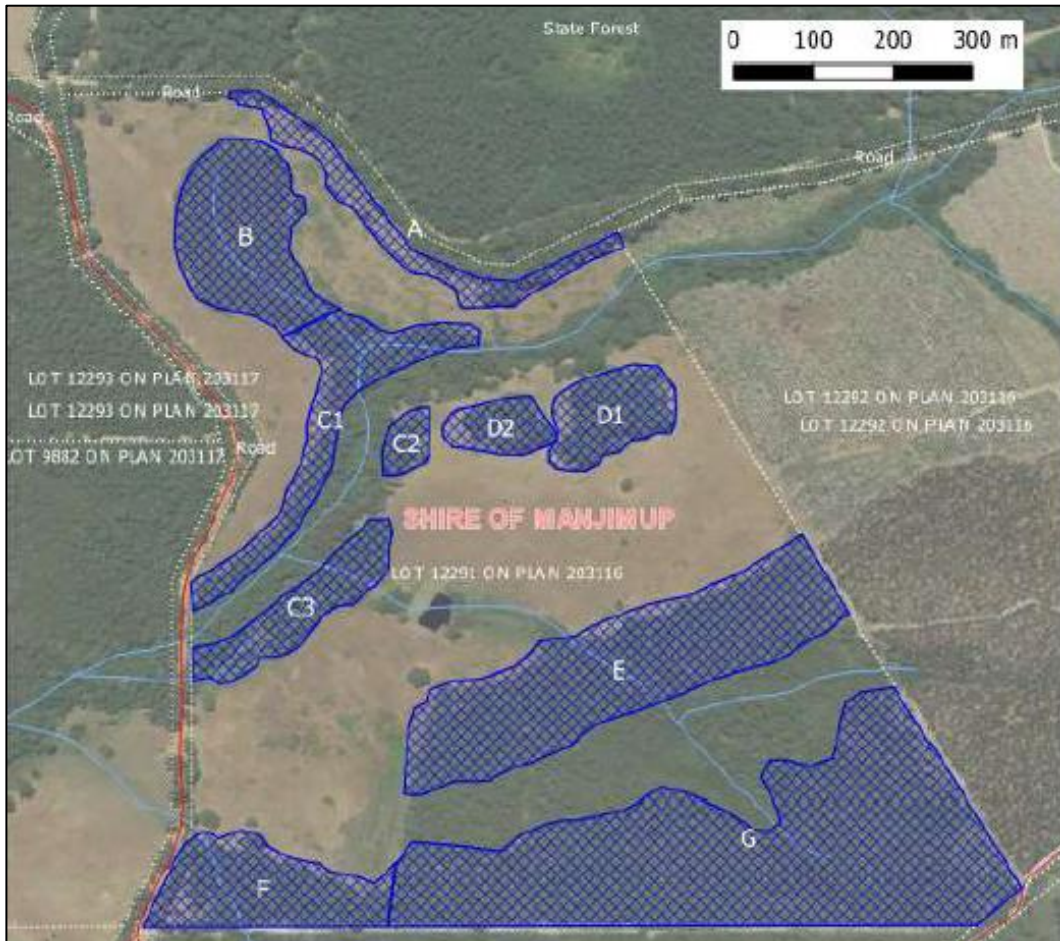
With regard for the proposed broadscale clearing of area 'A' and its separation from the Gardner State Forest by a road reserve, and noting DWER's advice about ecological/ vegetated linkages, we agree with DWER's view that creating a vegetated linkage between areas 'A' and 'B' would have little ecological benefit at the landscape or local scale.

<sup>53</sup> Department of Water and Environmental Regulation (2021b), page 10 Figure 1. Note: area 'F' and the majority of area 'E' are not included in the authorised clearing

### 3 Supporting information

#### 3.1 DWER's assessment of the clearing permit application

On 3 March 2020, the permit holder applied to DWER for an 'area' permit under section 51E of the EP Act to clear 27.39 ha of native vegetation Lot 12291 on Plan 203116, Boorara Brook (Figure 8), for the purpose of re-establishing the property for primary production.



**Figure 8** Area applied to be cleared (27.39 ha; cross-hatched blue)<sup>54</sup>

The proposed clearing is to facilitate the expansion of farming operations primarily for the raising of beef cattle, but also with the potential for blue gum (*Eucalyptus globulus*) plantations. In riparian areas, the objective is to control non-native blackberry (*Rubus* sp.) growing amongst native understorey species including bracken fern (*Pteridium esculentum*).

The application was advertised for public comment for 21 days on 19 March 2020. No public submissions were received.

DWER assessed the clearing application against the 10 clearing principles set out in Schedule 5 of the EP Act. DWER's assessment found the proposed clearing is at variance with clearing principles (f) and (g), may be at variance with clearing principles (h) and (i), and is not likely to be at variance with clearing principles (a), (b), (c), (d), (e) or (j).

<sup>54</sup> Department of Water and Environmental Regulation (2021) *Clearing Decision Report: Permit Number CPS 8830/1*. Dated 20 December 2021. Page 3. Available from: <https://ftp.dwer.wa.gov.au/permit/8830>

DWER's assessment identified that the proposed clearing would result in:

- the removal of riparian vegetation
- potential water erosion, waterlogging and nutrient export
- the deterioration of surface water quality
- the potential introduction and spread of weeds and dieback to adjacent areas of remnant vegetation including nearby conservation areas
- potential impacts to ground-dwelling and arboreal fauna during the clearing activity.

DWER also took into account advice from the Commissioner of Soil and Land Conservation, relevant datasets, a fauna survey and habitat tree assessment, and site characteristics.

After consideration of the application and the avoidance and mitigation measures proposed by the permit holder, DWER determined that impacts over about 18.45 ha of the area applied for were unacceptable due to significant fauna values and land degradation issues. The clearing footprint was subsequently reduced to 8.94 ha, with the areas indicated in Figure 8 as 'G', 'F' and the majority of 'E' being removed.

In relation to areas 'A', 'B', 'C' (1-3), and 'D' (1-2), DWER considered that:

[T]he proposed clearing is unlikely to lead to appreciable land degradation or have long-term adverse impacts on adjacent remnant vegetation, conservation areas, or fauna, and can be managed by restricting broadscale clearing in riparian areas to the extent necessary to facilitate access for the control of blackberry infestations, minimising the risk of the introduction and spread of weeds and dieback, and implementing slow directional clearing to allow fauna to move into adjacent vegetation ahead of the clearing activity.<sup>55</sup>

Clearing Permit CPS 8830/1 was granted on 20 December 2021, authorising the clearing of up to 8.94 ha of native vegetation on Lot 12291 for the purpose of re-establishing the property for primary production, subject to conditions relating to avoidance and minimisation, weed and dieback management, directional clearing for the benefit of fauna, and keeping records of clearing activities and providing these to DWER on request.

The conditions also limit clearing to 3.27 ha for broadscale clearing in areas 'A', 'D' (1-2) and a small portion of 'E', and 5.67 ha for 'low impact' / 'incidental' clearing in areas 'B' and 'C' (1-33). The clearing permit defines 'low impact clearing' as 'grubbing, pruning, slashing, burning, or the use of appropriate herbicides', and 'incidental clearing' as 'the incidental death of native vegetation from the spraying and mechanical removal of blackberry'.

The decision to grant the clearing permit was published on DWER's website.

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<sup>55</sup> Department of Water and Environmental Regulation (2021) *Clearing Decision Report: Permit Number CPS 8830/1*. Dated 20 December 2021. Page 2. Available from: <https://ftp.dwer.wa.gov.au/permit/8830>



## 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.

For clearing permits, the Minister can overturn the original decision to grant the clearing permit if this was the basis of the original appeal submission. Alternatively, if the appeal submission was against the conditions of the clearing permit, the Minister may modify the conditions only.

The appeal investigation will consider the extent to which conditions can address the issues raised, as well as any new information that may not have been available at the time of the original decision.

While process issues can be raised in an appeal, the focus of investigations will be on the substantive environmental matters relevant to DWER's conditions.

### 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 *Environmental Protection Act 1986*, 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 DWER's decision and appeal reports
- meeting with the appellant
- reviewing DWER's response to the appeal
- reviewing other information, policy and guidance as needed.

**Table 3** Documents we reviewed in the appeals investigation

Document	Date
DWER response to Appeal 002/22	4 February 2022
Appeal submission	7 January 2022
Department of Biodiversity, Conservation and Attractions (2022) <i>Threatened and Priority Flora List 05 December 2018</i> . Available from: <a href="https://www.dpaw.wa.gov.au/plants-and-animals/threatened-species-and-communities/threatened-plants">https://www.dpaw.wa.gov.au/plants-and-animals/threatened-species-and-communities/threatened-plants</a>	2022
Western Australian Herbarium (1998–) <i>Florabase – the Western Australian Flora</i> . Department of Biodiversity, Conservation and Attractions. Available from: <a href="https://florabase.dpaw.wa.gov.au/">https://florabase.dpaw.wa.gov.au/</a>	2022
DWER clearing permit, plans and decision report for CPS 8830/1	20 December 2021
Harewood (2021) <i>Targeted Fauna Survey &amp; Habitat Tree Assessment of Proposed Clearing Areas (CS 8830/1) Lot 12291 Boorara Brook</i> . Version 1. Report prepared for Gems Brook Pty Ltd.	June 2021
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