

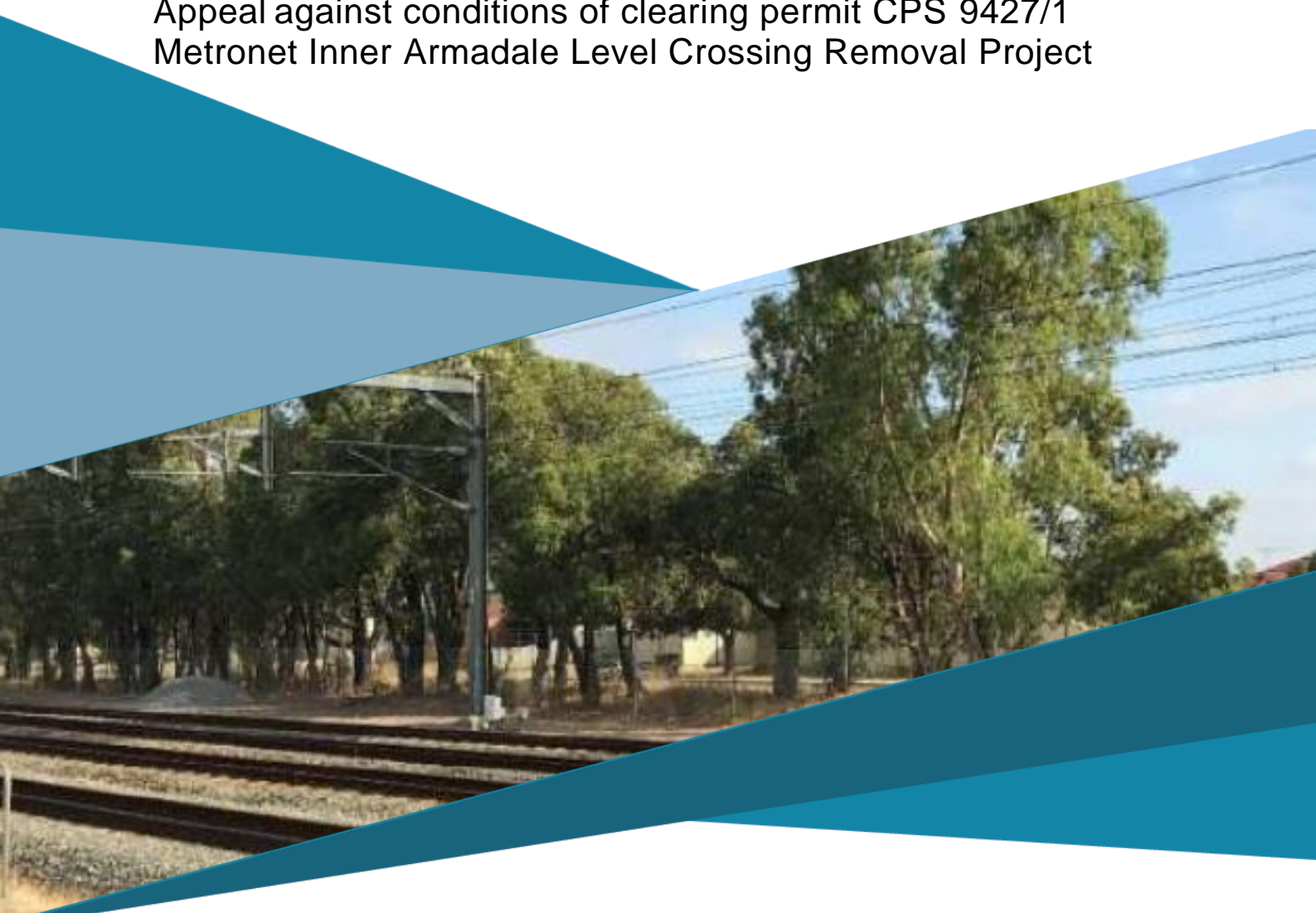


Government of **Western Australia**  
Office of the **Appeals Convenor**  
Environmental Protection Act 1986

## Appeals Convenor's Report to the Minister for Environment

---

Appeal against conditions of clearing permit CPS 9427/1  
Metronet Inner Armadale Level Crossing Removal Project



<b>Appellant</b>	Wildflower Society of Western Australia (Inc.)
<b>Permit holder</b>	Public Transport Authority of Western Australia
<b>Authority</b>	Department of Water and Environmental Regulation (DWER)
<b>Appeal No.</b>	007 of 2022
<b>Date</b>	April 2023

---

**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 Officer**

Michael Power

---

**This report**

© 2023 Office of the Appeals Convenor, Western Australia.

All rights reserved. This material may be reproduced in whole or in part provided the source is acknowledged.

Cover image: PGV Environmental, Perth to Armadale Rail Line Flora and Vegetation Survey, 20 March 2020.

Please contact us if you need the report in a different format.

---

**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.

---

## Contents

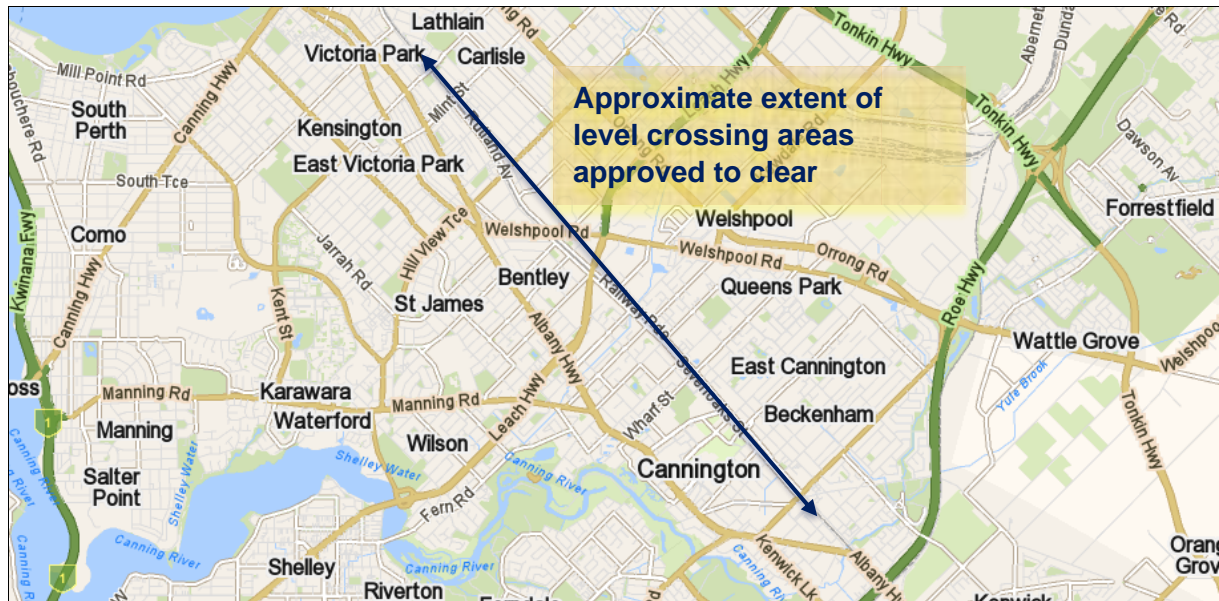
---

<b>1</b>	<b>Executive summary</b>	<b>4</b>
1.1	Decision under appeal	4
1.2	Grounds of appeal and appellant concerns	4
1.3	Key issues and conclusions	5
<b>2</b>	<b>Reasons for recommendation</b>	<b>8</b>
2.1	What are the environmental values of the vegetation approved to be cleared?	8
2.2	Are planning instruments or other matters relevant to the permit conditions?	12
2.3	Is an offset required to counterbalance the impacts of clearing?	13
<b>3</b>	<b>Supporting information</b>	<b>17</b>
3.1	DWER considers that an offset is not required	17
3.2	Rationale for offset calculator scores	18
<b>Appendix 1</b>	<b>Appeal process</b>	<b>19</b>

## Executive summary

### Decision under appeal

Clearing permit CPS 9427/1 (permit) was granted to the Public Transport Authority of Western Australia (permit holder) by the Department of Water and Environmental Regulation (DWER). The permit authorises the permit holder to clear up to 1.06 hectares (ha) of native vegetation for the purpose of removing six level crossings along the Armadale rail line for the Metronet Inner Armadale Level Crossing Removal Project (see Figure 1).



(Source: Whereis.com)

**Figure 1** Approximate extent of level crossing areas approved to clear along the Armadale rail line

DWER granted the permit subject to conditions on 20 January 2022.

The permit conditions include requirements to:

- avoid, minimise and reduce impacts and extent of clearing (condition 5)
- manage weeds and dieback (condition 6)
- plant black cockatoo foraging trees (condition 7)
- keep records and report (conditions 8 and 9).

It was from this decision that the appeal was received.

### Grounds of appeal and appellant concerns

In February 2022, the Wildflower Society of Western Australia (Inc.) (the appellant/WSWA) lodged an appeal against the conditions of the permit.

In summary, the appellant submitted that the conditions do not adequately specify the ratio of tree replacement, planting location of replacement trees or their protection from future clearing. These concerns are set out in Table 1 below.

**Table 1** Grounds of appeal

Ground	Main concerns the appellant submitted
1. Ratio of tree replacement	A 1:1 ratio is not adequate to ensure the long-term replacement of jarrah and marri trees which will be cleared. Seedlings do not replace the ecosystem function of mature trees and the WSWA considers that a ratio of 10 seedlings per tree removed would assist in replacing the ecosystem function lost.
2. Location of tree planting and protection from future clearing	Planting trees at 'suitable locations' in public open space within 5 kilometre (km) of the application area will not guarantee that planted trees will not be cleared in the future, which would result in a net loss of native vegetation. The permit must ensure the persistence of planted trees.

## Key issues and conclusions

For an appeal lodged against the conditions of a clearing permit, the permit is deemed to have been granted. The decisions available to the Minister on this type of appeal are to dismiss the appeal, or to allow the appeal in full or part by changing or amending conditions applying to the clearing permit.

To address the appeal, we will consider the environmental values of the vegetation approved to be cleared, planning instruments and other relevant matters, and in that context, the adequacy of the conditions applied by DWER.

We summarise our conclusions for these issues below. Section 2 of this report then details our reasoning and Section 3 provides supporting information.

### What are the environmental values of the vegetation approved to be cleared?

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 consider any other matters deemed relevant to the assessment.

In assessing the application, DWER found the clearing 'may be at variance' to clearing principles (b) fauna habitat, (e) important remnant and (f) watercourse, and not likely to be at variance to the other principles.

The proposed clearing of 1.06 ha of native vegetation will result in removal of foraging habitat for threatened black cockatoo species:

- *Calyptorhynchus banksii* subspecies *naso* (forest red-tailed black cockatoo) – vulnerable
- *Zanda baudinii* (Baudin's cockatoo) – critically endangered
- *Zanda latirostris* (Carnaby's cockatoo) – endangered.

During the appeal investigation, the permit holder's consultant undertook additional vegetation surveys within the application area, which identified a total of 316 native trees, shrubs and grass trees of preferred foraging habitat for black cockatoo.



Given clearing of foraging habitat is an identified major threat to these species<sup>1</sup>, we find that the clearing is inconsistent with clearing principle (b) which provides that native vegetation should not be cleared if it forms part of a habitat significant for fauna.

During the appeal investigation, DWER agreed with this finding and revised its assessment of principle (b) to 'at variance'.

In relation to principle (e), vegetation mapping data indicated that the application area includes 0.63 ha of the poorly represented and reserved Guildford vegetation complex, of which only 5.09 per cent of the original extent remains<sup>2</sup>. The applicant's biological survey found that the area mapped as Guildford complex comprised exotic and non-endemic tree species and was not representative of any vegetation complex.

Given this, DWER's assessment found that the application area is not significant for the ongoing maintenance of the Guildford complex, and that the proposed clearing will not significantly reduce its pre-European extent. Based on the available information, we agree with this conclusion.

DWER noted however, that the clearing has the potential to spread weeds and dieback into nearby remnant native vegetation. As a result, DWER determined that the proposed clearing may be at variance to principle (e) and applied condition 6 (Weed and dieback management) to mitigate the risk.

### **Are planning instruments or other matters relevant to the permit conditions?**

We note the clearing is within gazetted rail and road reserves, and the clearing purpose is consistent with this reservation.

Local planning strategies of the Town of Victoria Park, City of Canning and City of Gosnells, which the project traverses, support the retention and enhancement of native vegetation and biodiversity values.

In relation to transport, the local planning strategies aim to improve public transport infrastructure and services. We accept that the clearing will have a public benefit through improved public rail transport.

Based on the above, we consider the planning instruments provide relevant context to the setting of conditions on the permit that maintain and enhance the environmental qualities of the landscape. In particular, the adequacy of any offset requirement to counterbalance significant residual environmental impacts.

### **Is an offset required to counterbalance the impacts of clearing?**

We have concluded that the application area contains native vegetation that is foraging habitat for threatened black cockatoo and therefore we consider that the proposed clearing is 'at variance' to clearing principle (b). As noted above, DWER subsequently agreed that the clearing is at variance to principle (b).

DWER advised, that given mitigation planting by the permit holder required through condition 7 of the permit, the clearing is not likely to have a significant residual impact on black cockatoo foraging habitat, and therefore an offset is not required in this instance.

---

<sup>1</sup> Department of Agriculture, Water and the Environment (DAWE) (2022) *Referral guideline for 3 WA threatened black cockatoo species*. Commonwealth of Australia, Canberra.

<sup>2</sup> DWER, Clearing Permit Decision Report CPS 9427/1, 20 January 2022, page 19.

Based on our review of the available information, and noting that the clearing will remove foraging habitat for threatened black cockatoo protected under both the *Biodiversity Conservation Act 2016* (BC Act) and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the *WA Environmental offsets guidelines*<sup>3</sup> (Offsets Guidelines) establishes that the clearing is likely to result in a significant residual impact that should be offset. Refer to section 2.3 for more information.

We invited the permit holder to provide an offset to counterbalance the identified significant residual impacts. In response, the permit holder proposed a revegetation offset in landscaped areas of the project footprint within road and rail reserves in proximity to the areas proposed to be cleared.

The offset proposal is based on the clearing of 316 individual black cockatoo foraging native trees and shrubs, which includes 194 grass trees. The permit holder proposes to salvage and translocate the 194 grass trees and replant them in the offset area. Under the proposed offset, a total of 413 foraging trees, shrubs and grass trees will be planted, in addition to the 194 translocated grass trees.

We reviewed the proposed offset in the context of the *WA environmental offsets calculator*<sup>4</sup> (State calculator) and *Environmental offsets metric: Quantifying environmental offsets in Western Australia*<sup>5</sup> (State calculator guidance) and consider the proposed offset can counterbalance the residual impact resulting from the clearing. Refer to Section 3.2 for the rationale of the scores applied in State calculator to determine the offset.

Consistent with the *WA Environmental Offsets Policy*<sup>6</sup> (Offsets Policy), we consider the proposed revegetation offset, established within road and rail reserves, to be secure as native vegetation under the *Environmental Protection Act 1986* (EP Act).

## Recommendation to the Minister

We recommend that the appeal be allowed to the extent that condition 7 be replaced with an offset requirement (with completion criteria) for the loss of 316 native trees, shrubs and grass trees of preferred foraging habitat for black cockatoo, in accordance with the requirements of the Offsets Policy and Offsets Guidelines. If the completion criteria are not met, the permit duration is to be extended to allow for contingency measures.

The minimum revegetation offset required to counterbalance the significant residual impact in this case is the planting of 413 black cockatoo foraging trees, shrubs and grass trees, in addition to translocating 194 grass trees from the application area to the offset area. Completion criteria of at least 80 per cent survival of translocated grass trees to be included.

Consistent with the Offsets Guidelines, the offset details should be recorded in the WA Environmental Offsets Register.

<sup>3</sup> Government of Western Australia, *WA environmental offsets guidelines*, August 2014.

<sup>4</sup> Government of Western Australia (2021a) *WA environmental offsets calculator*. Department of Water and Environmental Regulation, October 2021.

<sup>5</sup> Government of Western Australia (2021b) *Environmental offsets metric: Quantifying environmental offsets in Western Australia*. Department of Water and Environmental Regulation, October 2021.

<sup>6</sup> Government of Western Australia (2011) *WA Environmental Offsets Policy*. September 2011.

## Reasons for recommendation

---

### What are the environmental values of the vegetation approved to be cleared?

---

Our conclusion is that the proposed clearing is inconsistent with clearing principle (b) as the application area contains significant foraging habitat for threatened black cockatoo. We explain our reasoning below.

### Biological survey information

DWER advised that its assessment took into account:

... the site characteristics of the Application Area as informed by biological surveys commissioned by the Permit Holder ... and relevant datasets, the Clearing Principles set out in Schedule 5 of the EP Act, and planning instruments and other matters considered relevant (section 51O of the EP Act).<sup>7</sup>

The application included the following biological surveys:

- *METRONET Oats Street Level Crossing – Flora and Vegetation Survey*<sup>8</sup>
- *Perth to Armadale Rail Line – Flora and Vegetation Survey*<sup>9</sup>
- *Fauna Habitat Assessment, Armadale Train Line*, which included a reconnaissance fauna survey and targeted black cockatoo habitat assessment within the application area<sup>10</sup>.

The Decision Report summarises the condition of the vegetation within the application area as follows:

... the vegetation within the proposed clearing area consists of scattered native vegetation interspersed with non-native or planted vegetation, described by location:

- Oats Street, East Victoria Park to Welshpool Road, Welshpool – *Xanthorrhoea preissii*, Exotic Trees and Shrubs intermixed with *Xanthorrhoea preissii*, *Eucalyptus marginata* / *Corymbia calophylla* intermixed with Exotic Trees and Shrubs. This area also contains other potentially local native species such as *Adenanthos cygnorum*, *Jacksonia furcellata*, *Xanthorrhoea preissii*, *Gompholobium tomentosum*, *Scholtzia involucreata* and *Stirlingia latifolia*. It is unclear if these specimens were planted or have naturally regenerated,
- Gerard Street, Cannington to William Street, Beckenham – scattered *Corymbia calophylla* and *Corymbia calophylla* intermixed with Exotic Trees and Shrubs, and
- South of William Street, Beckenham – a line of dense remnant *Corymbia calophylla* over cleared or maintained grass understorey with planted *Grevillea* shrubs ...<sup>11</sup>

The Decision Report states that the permit holder's flora and vegetation surveys indicate that the vegetation within the application area is completely degraded (Keighery 1994).

---

<sup>7</sup> DWER, Response to the appeal, 16 March 2022, page 1.

<sup>8</sup> PGV Environmental, *METRONET Oats Street Level Crossing – Flora and Vegetation Survey*, 2019.

<sup>9</sup> PGV Environmental, *Perth to Armadale Rail Line – Flora and Vegetation Survey*, 20 March 2020.

<sup>10</sup> Harewood, G., *Fauna Habitat Assessment, Armadale Train Line*, April 2020.

<sup>11</sup> DWER, Clearing Permit Decision Report CPS 9427/1, 20 January 2022, pages 15 to 16.



## Significant environmental values of the application area

### Black cockatoo habitat

DWER's assessment identified that the application area contains 1.06 ha of foraging habitat for all three black cockatoo species within foraging distance to breeding and roost sites. Being 0.89 ha of primary foraging habitat consisting of marri and jarrah trees and 0.17 ha of secondary foraging habitat consisting of grass trees.

Clearing principle (b) provides that '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'.

The assessment determined that based on the condition and location of the vegetation proposed to be cleared, along with fauna habitat preferences, the application 'may be at variance' to clearing principle (b).

From our review of the available information, we note:

- DWER's assessment found that the application area is within the modelled breeding range for forest red-tailed and Carnaby's cockatoo, but not for Baudin's cockatoo
- the targeted black cockatoo habitat assessment identified 25 native trees of suitable diameter at breast height to provide breeding habitat for black cockatoo, but only two of the trees (both marri) contained hollows. The hollows in both trees were assessed as being too small for black cockatoo use
- the closest confirmed active black cockatoo roost site is approximately 250 metres from the application area. The targeted black cockatoo habitat assessment found no evidence of roosting by black cockatoo within the application area
- the targeted black cockatoo habitat assessment recorded evidence of foraging by all 3 black cockatoo species within the survey area along the Armadale rail line, extending 27 km from Perth to Armadale. The Decision Report states that it unclear exactly where black cockatoo foraging was recorded within the survey area, and therefore DWER assumed that the application area may currently be used by black cockatoo for foraging
- DWER's assessment did not consider the clearing of foraging habitat significant due to its small area and the availability of large areas of foraging habitat nearby.

In response to the appeal, DWER advised that:

... the Department determined that the proposed clearing is unlikely to represent a significant loss of foraging resources for black cockatoo species, given the extent and location of the proposed clearing and the existence of better-quality foraging habitat in the vicinity. The Department determined that the loss of the foraging habitat within the Application Area was therefore, unlikely to represent a significant residual impact to the ongoing maintenance of black cockatoo species. The Department considered that the impacts of the proposed clearing were more likely to be minor, localised impacts to individual black cockatoos currently utilising the application area for foraging, which would be expected to utilise the readily available alternative resources in the local area in the event the proposed clearing occurred.<sup>12</sup>

During the appeal investigation, the permit holder provided additional information on black cockatoo habitat within the application area, based on further advice from Greg Harewood – author of the *Fauna Habitat Assessment, Armadale Train Line*.

In summary, the permit holder advised:

---

<sup>12</sup> DWER, Response to the appeal, 16 March 2022, page 3.

- the application area intersects approximately 7 km of the survey area of the targeted black cockatoo habitat assessment
- foraging evidence, in the form of chewed marri nuts, was recorded at two locations within the application area. Both foraging occurrences were recorded within the road reserve near Beckenham Station. The evidence was attributed to forest red-tailed black cockatoos. There was no evidence of foraging by Carnaby's or Baudin's black cockatoo within the application area
- There were 54 potential breeding habitat trees (native and non-endemic species) in the application area. This included 25 marri trees, two tuart trees and one jarrah tree. The remaining potential habitat trees comprised 25 trees of non-endemic species and one dead tree of unknown species. Of the potential habitat trees in the application area two marri trees were found to contain hollows. The hollows were deemed unsuitable for black cockatoo breeding due to their small size and use of the hollows by bees. The survey did not identify any evidence of black cockatoo breeding or breeding habitat.

The DWER's *A guide to the assessment of applications to clear native vegetation – Under Part V Division 2 of the Environmental Protection Act 1986* (Assessment Guide) provides that 'clearing of native vegetation that is habitat for specially protected or threatened fauna' is an example of clearing that is likely to be at variance to clearing principle (b).<sup>13</sup>

We sought further advice from DWER in relation to this matter, who advised that:

... noting new information from the *Referral guideline for 3 WA threatened black cockatoo species*<sup>14</sup> that outlines any native vegetation that is used for foraging by black cockatoos at any time is important for recovery, the Department considers that the foraging habitat may be more significant. This is further supported by the presence of both primary and secondary foraging resources within the application area with evidence of foraging by all three species of black cockatoo within the greater habitat survey area (as discussed in the Decision Report). Accordingly, the Department agrees that it is appropriate for the proposed clearing to be found to be at variance with clearing principle (b).<sup>15</sup>

Later in the appeal investigation, the permit holder engaged a consultant to undertake additional vegetation surveys within the application area, which identified a total of 316 native trees, shrubs and grass trees of preferred foraging habitat for black cockatoo.

Noting the above, we consider that the application area contains native vegetation that is foraging habitat for threatened black cockatoo and therefore conclude that the proposed clearing is 'at variance' to clearing principle (b).

### Significance as a remnant

Clearing principle (e) aims to maintain sufficient native vegetation in the landscape for the maintenance of ecological values. It also recognises the need to protect ecological communities that have been extensively cleared and to retain a representation of each ecological community in local areas throughout its pre-European range.

Principle (e) states that:

<sup>13</sup> DWER, *A guide to the assessment of applications to clear native vegetation – Under Part V Division 2 of the Environmental Protection Act 1986*, December 2014, page 11.

<sup>14</sup> DAWE (2022) *Referral guideline for 3 WA threatened black cockatoo species*. Commonwealth of Australia, Canberra.

<sup>15</sup> DWER, Supplementary advice on the appeal, 15 July 2022, page 2.

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 noted in section 1.3, DWER's assessment determined that the vegetation under application is not significant as a remnant of native vegetation within an area that has been extensively cleared.

### *Guildford vegetation complex*

DWER's Assessment Guide provides a range of examples where clearing is likely to be 'at variance' to clearing principle (e), including:

- a) clearing of native vegetation which contains habitat for a threatened fauna species and is below the national target and objective for biodiversity conservation
- b) clearing of biologically diverse remnant vegetation within an extensively cleared landscape.<sup>16</sup>

As noted in section 1.1, vegetation mapping data listed in the Decision Report indicates that the application area includes 0.63 ha of Guildford vegetation complex, of which only 5.09 per cent of the original extent remains<sup>17</sup>.

We note that the Guildford complex is a poorly represented and reserved vegetation complex on the Swan Coastal Plain. The EPA's *Environmental Guidance for Planning and Development* sets out that to protect biodiversity, ecological communities should be maintained above 30% of their original extent in a bioregion<sup>18</sup>, and above 10% in constrained areas such as the Perth Metropolitan Region on the Swan Coastal Plain.<sup>19</sup>

The Decision Report states that 16.95% of the original vegetation extent remains within the local area (10-km radius).

The *Perth to Armadale Rail Line – Flora and Vegetation Survey* states that the Guildford vegetation complex is mapped around the Cannington Station. However, the survey found no native vegetation in this area, and that the vegetation was comprised of exotic and non-endemic tree species such as Illawarra flame tree, jacaranda and *Casuarina cunninghamiana*. Given this, the vegetation was described as Completely Degraded (Keighery 1994).<sup>20</sup>

Noting this, DWER considered that the area mapped as Guildford complex near the Cannington Station was not representative of any vegetation complex.

In the Decision Report, DWER states that:

... unlikely that the application area is significant for the ongoing maintenance of the Guildford Complex or that the proposed clearing will significantly reduce the pre-European extent of the complex.<sup>21</sup>

Given the above information, we agree with this conclusion.

<sup>16</sup> DWER, *A guide to the assessment of applications to clear native vegetation*, December 2014, page 18.

<sup>17</sup> DWER, Clearing Permit Decision Report CPS 9427/1, 20 January 2022, page 19.

<sup>18</sup> <https://www.awe.gov.au/agriculture-land/land/nrs/science/ibra/australias-bioregions-maps>

<sup>19</sup> Environmental Protection Authority (2008) *Environmental Guidance for Planning and Development*. Guidance Statement No. 33, dated May 2008. Government of Western Australia, chapter A2 page 4.

<sup>20</sup> PGV Environmental, *Perth to Armadale Rail Line – Flora and Vegetation Survey*, 20 March 2020, page 35.

<sup>21</sup> DWER, Clearing Permit Decision Report CPS 9427/1, 20 January 2022, page 12.

## Are planning instruments or other matters relevant to the permit conditions?

---

We note the clearing is within gazetted rail and road reserves, and the clearing purpose is consistent with this reservation. Having regard for the necessity and purpose of the clearing, we consider that the clearing will have a public benefit through improved public rail transport. We consider that the local planning strategies provide relevant context to the setting of conditions on the permit that maintain and enhance remnant native vegetation and biodiversity values. We explain our reasoning below.

### 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.

### Metropolitan Region Scheme

The clearing application states that the project traverses the Town of Victoria Park, City of Canning and the City of Gosnells, and that the application area sits within the existing rail corridor and sections of road reserve<sup>22</sup>, which are reserved under the Metropolitan Region Scheme.

The purpose of rail and road reserves are to provide transport and service corridors, and therefore the Metronet Inner Armadale Level Crossing Removal Project is consistent with this.

### Local Planning Strategies

The Town of Victoria Park Local Planning Strategy, published in May 2022, identifies the importance of protecting and enhancing the natural environment and minimising the impacts of urban development on the environment. Through the Strategy, the Town aims to improve biodiversity and neighbourhood amenity by increasing tree canopy, increasing the diversity of endemic tree species and retaining existing significant trees. In relation to transport, the Strategy states that the Town will continue working with the Department of Transport, Public Transport Authority and other stakeholders to improve public transport services and sustainable transport options.<sup>23</sup>

The City of Canning Local Planning Strategy 2017 Direction for land-use planning, published in 2017, states that the objective for the environment is to protect and enhance the natural environment within the City. Strategy actions include vegetation retention and connectivity between fauna habitats within the regional and local ecological linkages in the City. The Strategy also includes requirements for revegetation where native vegetation clearing is unavoidable to facilitate permitted development. Strategy objectives for transport involve increasing accessibility and travel choices such as cycling, walking and public transport in an integrated transport network. The Strategy notes that Metronet will build new rail

---

<sup>22</sup> Public Transport Authority of Western Australia, Supporting documentation (CPS 9427/1), page 3.

<sup>23</sup> Town of Victoria Park, *Local Planning Strategy*, May 2022, pages 15 to 17.

infrastructure and services within the City of Canning, and that public transport contributes on several different levels to the makeup of the City as a vibrant, mixed-use centre.<sup>24</sup>

The City of Gosnells Local Planning Strategy, published in July 2019, states that where possible and appropriate, the development of land should ensure the protection of environmental features such as remnant vegetation. In relation to transport, the Strategy involves providing safe, affordable and effective transport modes for all sectors of the community. The Strategy states that the City will work with the State Government for the staged removal of level crossings and upgrades to train stations on the Armadale Line.<sup>25</sup>

Based on the above, we consider that the local planning strategies provide relevant context to the setting of conditions on the permit that maintain and enhance remnant native vegetation and biodiversity values of the area. We also note that the local planning strategies aim to improve public transport infrastructure and services, and that the purpose of the clearing is consistent with the purpose of the existing rail corridor and road reserves.

### Other matters considered relevant

The Assessment Guide outlines 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**.<sup>26</sup>[emphasis added]

The Assessment Guide also states that in determining the necessity of the clearing, higher priority will be given to clearing for public use than private benefit or commercial gain.<sup>27</sup>

In its advice, the permit holder provided the following justification for the project:

The LXR [level crossing removal] Project will deliver multiple benefits for the community including improved public transport service and infrastructure, reduced traffic congestion, improved safety outcomes, the creation of 6.3 ha of new and enhanced public open space along the rail corridor, direct and indirect economic benefits and future development opportunities within the south-east corridor.<sup>28</sup>

Based on the above, we accept that the proposed clearing will have a public benefit through improved public rail transport.

### Is an offset required to counterbalance the impacts of clearing?

---

On the basis that the native vegetation proposed to be cleared is suitable foraging habitat for threatened black cockatoo, we consider the mitigated proposal to be a significant residual impact that requires an offset. We recommend that condition 7 be replaced with an offset requirement (with completion criteria) for the loss of 316 native trees, shrubs and grass trees of preferred foraging habitat for threatened black cockatoo.

The minimum revegetation offset required to counterbalance the significant residual impact in this case is the planting of 413 black cockatoo foraging trees, shrubs and grass trees, in

---

<sup>24</sup> City of Canning's *Local Planning Strategy 2017 Direction for land-use planning*, pages 14 to 16.

<sup>25</sup> City of Gosnells' *Local Planning Strategy*, July 2019, pages 17 to 24.

<sup>26</sup> DWER, *A guide to the assessment of applications to clear native vegetation*, December 2014, page 39.

<sup>27</sup> Ibid., page 40

<sup>28</sup> Public Transport Authority of Western Australia, Supplementary advice on the appeal, 16 May 2022, page 2.



addition to translocating 194 grass trees from the application area to the offset area. Completion criteria of at least 80 per cent survival of translocated grass trees to be included. The offset to be delivered to the satisfaction of DWER, in accordance with the requirements of the Offsets Policy and Guidelines.

We explain our reasoning below.

### **Impacts to habitat of ‘critically endangered’ fauna should be offset**

We have concluded that the application area contains native vegetation that is foraging habitat for threatened black cockatoo, including ‘critically endangered’ Baudin’s cockatoo, and therefore we consider that the proposed clearing is ‘at variance’ to clearing principle (b).

Section 51H(1) of the EP Act provides that DWER can apply a condition to a clearing permit requiring the loss of the vegetation to be offset. DWER’s Clearing of Native Vegetation Offsets Procedure<sup>29</sup> (Offsets Procedure) sets out that offsets are required when clearing is at variance with one or more of the biodiversity-related clearing principles<sup>30</sup> and a significant residual impact remains following application of the mitigation hierarchy.

This is consistent with Principles 1 and 2 in the Offsets Policy, which state that ‘Environmental offsets address environmental impacts that remain after on-site avoidance and mitigation measures have been undertaken’, and ‘While environment offsets may be appropriate for significant residual environmental impacts, they will not be applied to minor environmental impacts’, respectively. In other words, where a residual impact is not considered to be ‘significant’, an offset would not be required.

The Offsets Guidelines outlines the mitigation hierarchy as four steps: avoid, minimise, rehabilitate and offset:

When a project is first considered, it will have a predicted impact on the environment. Through the environmental impact assessment or clearing permit processes, a proponent or applicant should demonstrate how it has applied the mitigation hierarchy to its project. This may include reducing the footprint or changing the location of the footprint to avoid areas with high environmental values. It is expected that the first three steps of the mitigation hierarchy are to be applied to the greatest extent practicable before determining the residual impact and, if significant, any consideration of an offset.<sup>31</sup>

In this regard, the permit holder advised that:

The permit holder applied the mitigation hierarchy in developing the proposal and application to clear native vegetation, and considered avoidance, minimisation and mitigation. The project’s lead contractor is required to avoid and minimise clearing vegetation through appropriate design and construction methods.<sup>32</sup>

The mitigated proposal here is for the clearing of not more than 1.06 ha of native vegetation. As noted in section 1.3, during the appeal investigation the permit holder undertook additional vegetation surveys within the application area, which identified a total of 316 native trees, shrubs and grass trees of preferred foraging for black cockatoo.

---

<sup>29</sup> Department of Environment Regulation (2014b) *Guideline: Clearing of native vegetation Offsets procedure under the Environmental Protection Act 1986*. August 2014.

<sup>30</sup> Being clearing principles (a), (b), (c), (d), (e), (f) and (h).

<sup>31</sup> Government of Western Australia, *WA environmental offsets guidelines*, August 2014, page 8.

<sup>32</sup> Public Transport Authority of Western Australia, Supplementary advice on the appeal, 16 May 2022, pages 7 to 9.

The Offsets Guidelines explains significant residual impacts as follows:

In general, significant residual impacts include those that affect rare and endangered plants and animals (such as declared rare flora and threatened species that are protected by statute), areas within the formal conservation reserve system, important environmental systems and species that are protected under international agreements (such as Ramsar listed wetlands) and areas that are already defined as being critically impacted in a cumulative context. Impacts may also be significant if, for example, they could cause plants or animals to become rare or endangered, or they affect vegetation which provides important ecological functions.<sup>33</sup>

The Offsets Guidelines go on to identify four levels of significance, noting that ‘In determining the significance of an impact, it is important to consider the impacts in the regional context. In isolation, a project may not be considered to have a significant impact’:

- unacceptable impacts (being impacts which are environmentally unacceptable or where an offset cannot be applied to reduce the impact)
- significant impacts requiring an offset (generally relating to impacts to species, ecosystems, or reserves or where cumulative impact is at a critical level)
- potentially significant impacts which may require an offset (impacts likely to result in a species or ecosystem requiring protection increasing cumulative impact to a critical level)
- impacts which are not significant (residual impacts that are not expected to have a significant impact on the environment and therefore do not require an offset).<sup>34</sup>

Examples from the Offsets Guidelines of residual impacts that are considered to be significant in relation to clearing principle (b) are copied in Table 2.

**Table 2** Residual impact significance model: Clearing principle (b)<sup>35</sup>

Significant impacts requiring an offset	Potentially significant impacts which may require an offset
Impact to or removal of habitat necessary to maintain species declared as specially protected under the BC Act or listed as threatened species under the EPBC Act.	Impact likely to result in a species being listed as specially protected under the BC Act or listed as threatened under the EPBC Act or impact affects significant habitat for a species.

When considered against Table 2, the proposed clearing meets the criteria of ‘significant impacts requiring an offset’ in relation to clearing principle (b), in that the native vegetation proposed to be cleared forms part of a habitat significant for fauna. In this case threatened black cockatoo, including the critically endangered Baudin’s cockatoo.

Given the above, we consider that the impact to 316 native trees, shrubs and grass trees of preferred foraging for threatened black cockatoo is a significant residual impact that requires counterbalancing.

## Quantifying the environmental offset

We invited the permit holder to provide an offset to counterbalance the identified significant residual impact. In response, the permit holder proposed a revegetation offset in landscaped

<sup>33</sup> Government of Western Australia, *WA environmental offsets guidelines*, August 2014, page 8.

<sup>34</sup> Ibid., page 9.

<sup>35</sup> Adapted from Ibid., Figure 3 on page 11.

areas of the project footprint within road and rail reserves in proximity to the areas proposed to be cleared.

The offset proposal is based on the clearing of 316 individual black cockatoo foraging native trees and shrubs, which includes 194 grass trees. The permit holder proposes to salvage and translocate the 194 grass trees and replant them in the offset area. Assuming a potential survival rate of 80 per cent, the permit holder estimates that 155 grass trees will survive the translocation process.

Under the proposed offset, a total of 413 foraging trees, shrubs and grass trees will be planted, in addition to the 194 translocated grass trees.

Based on the requirements of the *WA environmental offsets calculator*<sup>36</sup> (State calculator) and *Environmental offsets metric: Quantifying environmental offsets in Western Australia*<sup>37</sup> (State calculator guidance), we consider the proposed offset can counterbalance 100 per cent of the residual impact resulting from the clearing.

In the offset calculation, the 'feature' function in the State calculator was applied, given the significant residual impact relates to 316 individual native trees, shrubs and grass trees. The calculation identified that a minimum of 413 foraging trees, shrubs and grass trees would adequately counterbalance the proposed clearing of black cockatoo foraging habitat.

Refer to section 3.2 for the rationale of the scores applied in the State calculator to determine the offset.

Noting the above, we support the permit holder's proposed offset and recommend that condition 7 of the permit be replaced with a requirement for a revegetation offset. Completion criteria of at least 413 black cockatoo foraging trees, shrubs and grass trees should be included as an outcome-based condition on the clearing permit and if the completion criteria are not met, the permit duration should be extended to allow for contingency measures.

In addition, the permit holder should be required to salvage and translocate 194 grass trees located within the application area and replant them in the offset area. Completion criteria of at least 80 per cent survival of translocated grass trees to be included.

In relation to long term security of the offset, we note the Offsets Guidelines state:

Revegetation that is established as a requirement of a written law (e.g. revegetation required under a ... clearing permit as an offset) is considered to be native vegetation for the purposes of the EP Act and cannot be cleared without a permit or exemption.<sup>38</sup>

Given this we consider the proposed revegetation offset, established within road and rail reserves, to be secure as native vegetation under the EP Act.

Consistent with the Offsets Guidelines, the offset will be recorded in the publicly available WA Environmental Offsets Register.

---

<sup>36</sup> Government of Western Australia (2021a) *WA environmental offsets calculator*. Department of Water and Environmental Regulation, October 2021.

<sup>37</sup> Government of Western Australia (2021b) *Environmental offsets metric: Quantifying environmental offsets in Western Australia*. Department of Water and Environmental Regulation, October 2021.

<sup>38</sup> Government of Western Australia, *WA environmental offsets guidelines*, August 2014, page 18.

## Supporting information

---

### DWER considers that an offset is not required

---

As noted in section 1.3, DWER remained of the view that an offset is not required.

We note DWER's advice that:

... the Department determined that a requirement for restoration of foraging habitat through mitigation planting by the Permit Holder, within the project area and in reserves within a five kilometre radius, would ensure that the impacts were addressed within the mitigation hierarchy prior to the consideration of offsets. The Department considered that while the initial impact of the proposal may be significant, following the required mitigation planting any remaining residual impact would not be likely to be significant.

Given that the residual impact was not expected to be significant, and in accordance with the *Clearing of native vegetation Offsets procedure* and WA Environmental Offsets framework, the Department determined not to require an offset. The Department remains of the view that this is an appropriate outcome.

The Department acknowledges, however, that this position depends on the initial impacts being effectively mitigated. In retrospect, the Department considers that its consideration of the value of the mitigation planting could have been improved by better accounting for the time lag between initial establishment of the mitigation planting and its delivery of foraging value for black cockatoos, as well as by better accounting for the element of uncertainty associated with any revegetation project.

The rehabilitation credit step in the *WA Environmental Offsets Calculator* provides a method to account for these variables. In this case, a 'feature' rehabilitation credit calculation for an 'endangered' species estimates 1.5 foraging trees should be planted to effectively mitigate the impact of clearing one foraging tree ...

Given the above, the Department recommends that Condition 7 of the Clearing Permit is strengthened to require the Permit Holder to undertake mitigation planting at a ratio of 1.5 mitigation trees to every foraging tree cleared. This will give greater confidence that the mitigation planting will be effective in maintaining the availability of local foraging habitat over time.<sup>39</sup>

As noted in section 2.3, the clearing will remove foraging habitat for threatened black cockatoo protected under both the BC Act and the EPBC Act. We find that the proposed clearing meets the criteria of 'significant impacts requiring an offset' under the Offsets Guidelines.

---

<sup>39</sup> DWER, Supplementary advice on the appeal, 15 July 2022, page 2.

## Rationale for offset calculator scores

**Table 3** Rationale for scores applied in Offsets Calculator

Environmental value to be offset		
Calculation	Score (Feature)	Rationale
<b>Conservation significance</b>		
Description	Clearing of foraging habitat for 3 species of threatened black cockatoo	
Type of environmental value	Species (flora/fauna)	Fauna foraging habitat
Conservation significance of environmental value	Critically endangered Baudin's cockatoo	
Landscape-level value impacted	yes/no	
<b>Significant impact</b>		
Description	Baudin's cockatoo foraging trees, shrubs and grass trees	Based on PGV mapping, Harewood and ALUA arborist data
Significant impact (hectares) / Type of feature	Foraging trees, shrubs and grass trees	
Quality (scale) / Number	316.00	316 foraging plants comprising 194 grass trees and 122 foraging trees (marri, jarrah, etc.). Four of the 122 are native species that have been planted. These have been retained in the calculation. Data sourced from ALUA master spreadsheet intersected with PGV native vegetation mapping.
<b>Rehabilitation credit</b>		
Description	Assumed 80% survival of 194 potential translocated grass trees	Assumed 80% survival of translocated grass trees
Proposed rehabilitation (area in hectares)	N/A	
Current quality of rehabilitation site / Start number (of type of feature)	0.00	
Future quality WITHOUT rehabilitation (scale) / Future number WITHOUT rehabilitation	0.00	
Future quality WITH rehabilitation (scale) / Future number WITH rehabilitation	155.00	155 translocated grass trees survive
Time until ecological benefit (years)	1.00	No time lag as grass trees are being translocated elsewhere in the project footprint.
Confidence in rehabilitation result (%)	0.8	Some loss of grass trees may occur. This is mitigated by using reputable operators and application of best practice.
<b>Offset</b>		
Description	0	Planting of foraging plants, including jarrah and marri.
Proposed offset (area in hectares)	N/A	
Current quality of offset site / Start number (of type of feature)	0.00	No foraging plants present in the areas to be planted.
Future quality WITHOUT offset (scale) / Future number WITHOUT offset	0.00	
Future quality WITH offset (scale) / Future number WITH offset	412.37	413 foraging trees, shrubs and grass trees to be planted in landscaped areas in the project footprint.
Time until ecological benefit (years)	10.00	It is acknowledged that newly planted vegetation will start to provide some foraging value from approximately 7 years.
Confidence in offset result (%)	0.8	Use of best practice measures during planting, appropriate species selection. The risk is moderated through contractual requirements for the Alliance to achieve planting survival targets and implement infill planting.
Duration of offset implementation (maximum 20 years)	N/A	
Time until offset site secured (years)	N/A	
Risk of future loss WITHOUT offset (%)	N/A	
Risk of future loss WITH offset (%)	N/A	
Offset ratio (Conservation Area only)	N/A	
Landscape level values of offset?	N/A	



## 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, legislation 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 permit if this was the basis of the original appeal submission. Alternatively, if the appeal submission was against the conditions of the 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.

### Appeals Convenor and DWER report to the Minister

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 the appeal and supporting documents from the appellant
- reviewing DWER's response to the appeal and supplementary advice, and attachments
- meetings with the permit holder
- meeting with the appellant
- review of the permit holder's response to the appeal and additional information provided during the investigation.

**Table 4** Documents we reviewed in the appeal investigation

Document	Date
DWER, CPS 9427/1 Clearing Permit and Decision Report	20 January 2022
DWER, Response to the appeal	16 March 2022
DWER, Supplementary advice on the appeal	15 July 2022
Harewood, G., Fauna Habitat Assessment, Armadale Train Line	April 2020
PGV Environmental, Perth to Armadale Rail Line – Flora and Vegetation Survey	20 March 2020
Public Transport Authority of Western Australia, Supporting documentation (Clearing application CPS 9427/1)	Undated
Public Transport Authority of Western Australia, appeal response	9 March 2022
Public Transport Authority of Western Australia, Supplementary advice on the appeal	16 May 2022