



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 conditions of clearing permit: CPS 8832/1  
Various lots, Goomalling-Meckering Road reserve,  
Cunjardine and Hulongine, Shire of Goomalling



<b>Appellant</b>	Wildflower Society of Western Australia (Inc.)
<b>Applicant</b>	Shire of Goomalling
<b>Authority</b>	Department of Water and Environmental Regulation (DWER)
<b>Appeal number</b>	020 of 2021
<b>Date</b>	October 2021

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Photo: [Fauna notes – Artificial hollows for Carnaby's cockatoo](#) (Department of Parks and Wildlife 2015)

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

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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 is a report on an appeal against the conditions of clearing permit CPS 8832/1 which was granted to the Shire of Goomalling (the applicant) for the purpose of road widening. The permit was granted on 6 May 2021 and authorises clearing in Lot 121 on Deposited Plan 406131, Goomalling-Meckering Road reserve (PINs 11719167, 11719169, 11719181, 11719183, 11719184, 11719186 and 11719247) in Hulongine and Cunjardine.

The permit authorises the applicant to clear up to 2.8 hectares (ha) of native vegetation within a 27.1 ha clearing footprint (application area). The application area (yellow) is shown in Figure 1 below.



**Figure 1** Application Area (27.1 ha) along the Goomalling-Meckering Rd

## 1.2 Appeal submission

The Wildflower Society of Western Australia (Inc) (the appellant) lodged an appeal against the conditions of clearing permit CPS 8832/1. The appellant questioned the adequacy of the conditions to manage impacts to Priority 1 flora, black cockatoo nesting habitat and the adequacy of the offset condition regarding revegetation. Table 1 lists these grounds of appeal and the outcomes sought by the appellant.

**Table 1** Grounds of appeal

Ground	Main concerns the appellant submitted
1 Priority flora buffers	All Priority flora buffers should be demarcated to prevent impact. Currently this is only required if practicable.
2 Black cockatoo hollows	The conditions for the installation of artificial black cockatoo hollows are ambiguous. It is unclear whether 11 or 33 hollows are required. Thirty-three artificial hollows should be required to counterbalance the loss of 11 natural hollows from the clearing.
3 Offset revegetation	Vegetation and topsoil from the clearing should be used in revegetation of the offset sites. The 5 year monitoring period should be deleted, so that the applicant is required to monitor completion criteria until they have been met and maintained for 2 years.

## 1.3 Key issues and conclusions

We have concluded that the permit conditions are generally appropriate but do require some clarification and strengthening to ensure that impacts to the environment are appropriately managed. In summary, the investigation recommends Ground 1 be allowed in part, Ground 2 requires the black cockatoo condition to be clarified; and Ground 3 requires the offset condition to be strengthened.

## 1.4 Recommendation to the Minister

Allow the appeal in part amending the permit to require the following:

1. Revision of condition 14 to include an additional requirement to record actions taken to avoid and minimise indirect impacts to priority flora species.
2. Clarification that a total of 11 artificial black cockatoo nesting hollows are to be installed (condition 10(i)).
3. Vegetative material and topsoil retained under condition 11(a) be used at the offset sites.
4. Revegetation completion criteria be achieved within 5 years; and then maintained for a period of 2 years (condition 11(l)).

Otherwise dismiss the appeal.

## 2 Reasons for recommendations

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We summarise our conclusions for the appellant's grounds of appeal below and provide our reasons for the recommendations.

### 2.1 The Priority flora condition is adequate

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Our conclusion is that condition 9 is appropriate to protect Priority flora within the application area.

The appellant raised concern that condition 9(b) is inadequate to protect Priority flora as demarcation of the 20m buffer is only required if practicable. The appellant sought for a buffer of at least 20m around Priority flora records.

DWER<sup>1</sup> advised that:

...the retention of these buffers may not be possible for individuals recorded in close proximity to the existing Goomalling – Meckering Road, and therefore [it] required the Permit Holder to engage an environmental specialist to demarcate individuals of *A. trinalis* in cases where a buffer could not be applied. To ensure that no *A. trinalis* are directly impacted by the proposed clearing, the Department did not authorise the Permit Holder to clear any individuals of priority flora.

...

While condition 9 of the Permit is intended to mitigate the potential negative impacts on priority flora, the Department acknowledges that the permit conditions could be further strengthened, to ensure that the Permit Holder has regard to indirect impacts to priority flora when undertaking clearing. It is the Permit Holder's responsibility to ensure that any clearing undertaken is compliant with the EP Act. Direct or indirect destruction of native vegetation not authorised for clearing would constitute unauthorised clearing, which is an offence under the EP Act.

In response to the appeal, DWER recommended that the applicant be required to develop a flora management plan in consultation with DBCA which is to be submitted to DWER prior to clearing. DWER further recommended reporting of avoidance and minimisation measures.

In response to the appeal the applicant<sup>2</sup> advised that:

We have arranged for environmental consultants to be on-site during any clearing or associated operations to ensure that we comply with the existing requirements of the permit. Under condition 9 we are required to have a specialist on site anyway and so we believe this would provide a similar if not better result than producing another costly plan... We would be happy to have a representative of DBCA on-site as well to monitor our actions. The idea behind having the consultant present was to ensure that buffers and particular plants are identified on the day in particular and that we attain compliance with the conditions as they currently stand.

While we note DWER's recommendation to develop a flora management plan, we consider that the plan is not required due to existing measures. Under the permit, the applicant is not authorised to clear Priority flora. Furthermore, the applicant will have an environmental consultant on site during clearing activities. Given this, we consider that the 20m buffer and demarcation where practicable is adequate and that no plan is required. However, we recommend that condition 14 be revised to include an additional requirement for the

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<sup>1</sup> DWER response to appeal, 19 August 2021.

<sup>2</sup> Applicant response to appeal, 14 September 2021.

applicant to record avoidance and minimisation measures relating to the indirect impacts to priority flora.

This ground of appeal should be allowed in part.

## **2.2 The black cockatoo condition is unclear**

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Our conclusion is that condition 10 requires clarification to state that 11 artificial black cockatoo hollows require installation to mitigate against losses from clearing.

The appellant raised concern that the conditions relating to installation of artificial black cockatoo nest hollows, when read together, are ambiguous. The appellant considers it unclear whether the applicant is required to install 11 artificial hollows across the 3 reserves or 11 artificial hollows at each of the reserves.

The appellant sought for the condition to be strengthened to require the installation of 33 artificial black cockatoo hollows.

DWER requires applicants to counterbalance the loss of nesting hollows at a ratio of 1:1; that is, one artificial nesting hollow for each suitably sized nesting hollow for black cockatoo that is cleared.

In line with the EPA's published advice<sup>3</sup> and the current practices, DWER imposed a black cockatoo management condition on the clearing permit (condition 10). During a site visit in July 2020, the suitable nesting hollows had no evidence of use by black cockatoos<sup>4</sup>. Given breeding may have since occurred, pre-clearance surveys are required to be undertaken. If evidence of black cockatoo use is found, the hollow is not authorised to be cleared until migration occurs.

Under condition 10(g), the applicant is required to install an artificial black cockatoo nesting hollow for each suitably sized hollow that cannot be avoided. The clearing will impact 11 suitable nesting hollows for black cockatoo in 10 trees<sup>5</sup>. DWER<sup>6</sup> acknowledged that condition 10 of the clearing permit is unclear regarding the number of artificial hollows required to be installed.

Given the above, this ground of appeal should be upheld. Condition 10 should be amended to clearly state that a total of 11 artificial black cockatoo nesting hollows are required to counterbalance the impacts on potential black cockatoo nesting habitat within the application area.

## **2.3 The offset condition requires strengthening**

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We consider that the offset condition requires strengthening to achieve its intent of counterbalancing the residual impacts of the clearing. This includes the requirement for topsoil and vegetative material to be used at the offset sites, and clarification regarding completion criteria monitoring.

### **Use of topsoil and vegetative material from clearing**

The appellant submit that the vegetative material and topsoil removed during clearing should be used in revegetation at the offset sites.

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<sup>3</sup> EPA Advice 2019: Carnaby's Cockatoo in Environmental Impact Assessment in the Perth and Peel Region.

<sup>4</sup> Natural Area consulting management services, Additional information – CPS 8832/1, 22 July 2020.

<sup>5</sup> DWER decision report, 6 May 2021.

<sup>6</sup> DWER response to appeal, 19 August 2021.

DWER<sup>7</sup> determined that the clearing will result in the following significant residual impacts:

- Loss of 2.8 ha of native vegetation considered significant in an extensively cleared landscape (contains Wheatbelt TEC and vegetation considered important for fauna movement)
- Loss of suitable nesting habitat for Carnaby's cockatoo, comprising 10 trees with 11 suitably sized hollows.

DWER<sup>8</sup> noted that aerial imagery indicates that the application area functions as an ecological linkage between areas of remnant vegetation in the local area, and is likely to facilitate landscape connectivity and contribute to fauna dispersal between larger isolated bushland fragments in an extensively cleared landscape. While it is noted that the proposed clearing will occur on the western side of the road, given the context of the landscape, DWER considered that the application area may be important for the movement of fauna species within the local and broader region.

Using the Commonwealth offsets calculator, DWER calculated that an offset of approximately 5.11 ha of native vegetation in "good" condition will sufficiently counterbalance the significant residual impacts of the clearing.

DWER<sup>9</sup> advised that given the offset sites are located between 1.3 and 14 km (aerial distance) from the application area, it was impractical to use the cleared material (topsoil and vegetative material) at the offset sites. Furthermore, informal DBCA advice had previously noted that the use of cleared material outside of the general location of the clearing, is not recommended. This is due to the potential spread of weeds and disease.

In response to the appeal, DWER considered that there may be benefit in using the cleared materials within the 27.1 ha application area to improve the quality and condition of the road reserve.

The applicant<sup>10</sup> submitted that the use of cleared materials within the application area was given consideration during its planning processes. However, it considered it was impractical due to the narrow nature of the road reserve and the high potential for wind erosion issues. Strong summer winds are likely to disperse the topsoil onto the road and adjacent cleared farmland and the installation of wind erosion measures would be cost-prohibitive.

The applicant noted that:

...Our initial thoughts were to negotiate with farmers in the vicinity with the view to assisting them with on-farm rehabilitation with this topsoil and vegetation matter. Otherwise, we would prefer to use the materials on the rehabilitation sites proposed originally. Given that we are required to manage weeds anyway, they would be a lesser problem and these sites are mainly cleared sites which will have watering and pest management in place as part of the revegetation program. These sites would benefit from the addition of topsoil.

...

Initially, it is more expensive for us to use the material at other locations but long term there will likely be greater expense in trying to manage the drainage and other hazards created by reintroduction of the materials [to the application area].

DWER's guidance on revegetation states that topsoil contains higher concentrations of organic matter, seeds and nutrients compared to the soil profile below. Due to these

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<sup>7</sup> DWER decision report, 6 May 2021.

<sup>8</sup> DWER decision report, 6 May 2021

<sup>9</sup> DWER response to appeal, 19 August 2021.

<sup>10</sup> Applicant response to appeal, 14 September 2021.



properties, its use in revegetation is widely known and accepted<sup>11</sup>. However, the preference is for topsoil to be weed free when used in revegetation projects.

In this case, the benefits to revegetation are likely to outweigh the risk when combined with appropriate weed management. The applicant is aware of the weed risk and is already required to manage weeds at the offset sites. Condition 11(k) of the permit requires the applicant to undertake weed control activities to maintain a minimum 80% weed free state by the end of the project maintenance period. Furthermore, the application of the retained vegetative material will also benefit the revegetation through the provision of nutrients from decomposition and as a physical barrier to wind erosion.

Given the above, we consider that the use of the topsoil and vegetative material on the offset sites to be a reasonable alternative to being used in the application area.

### **Revegetation monitoring period**

The appellant submits that the '5 year monitoring period' should be deleted to align with the requirements in the completion criteria table under condition 11(l). The table states that monitoring is to continue until the completion criteria have been 'met and maintained for two years (i.e. a minimum of 3 successive monitoring events)'.

In relation to the 5 year monitoring period, DWER<sup>12</sup> acknowledged that the completion criteria described in condition 11 of the clearing permit could be met and maintained for two years within five years of the commencement of revegetation activities. DWER also noted that the criteria could be met and maintained for two years at some time in the unforeseeable future. This would create a time lag between environmental benefits of the revegetation and significant residual impacts of the proposed clearing. The *WA Environmental Offsets Guidelines* (2014) notes that the lag becomes more significant when revegetation aims to replace the loss of native vegetation important for fauna.

Therefore, noting that the revegetation is to restore vegetation that supports fauna movement across the landscape, DWER required the applicant to achieve the revegetation completion no later than within a five-year monitoring period. This is a standard time period for achieving completion criteria requirements.

DWER did acknowledge that this requirement may be unclear and that the condition requires clarification. Given this, we recommend that condition 11 be clarified requiring that revegetation completion criteria be achieved no later than 5 years after the commencement of revegetation, and that once completion criteria are met, they are maintained for a period of 2 years. The 2 year maintenance period ensures the revegetation is self-sustaining in the long term to adequately offset the clearing in the application area.

We agree with DWER's recommendation that this ground of appeal should be upheld.

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<sup>11</sup> DWER 2018 A guide to preparing revegetation plans for clearing permits

<sup>12</sup> DWER response to appeal, 19 August 2021.

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

**Table 2** Documents reviewed in the appeals investigation

Document	Date
DWER clearing permit and decision report for CPS 8832/1	6 May 2021
Appeal submission	26 May 2021
DWER response to appeal 020/21	19 August 2021
Applicant response to appeal submission	14 September 2021
EPA Carnaby's Cockatoo in Environmental Impact Assessment in the Perth and Peel Region	2019
DWER Guide to preparing revegetation plans for clearing permits	2018