



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 against grant of Clearing Permit CPS 9210/1 Various  
lots, Leeuwin Road widening, Leeuwin



<b>Appellant</b>	Wildflower Society of Western Australia (Inc)
<b>Applicant</b>	Shire of Augusta Margaret River
<b>Authority</b>	Department of Water and Environmental Regulation (DWER)
<b>Appeal No.</b>	025 of 2021
<b>Date</b>	October 2021

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**This report**

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Cover photo: Leeuwin Road vegetation reprinted with permission of the Shire of Augusta Margaret River

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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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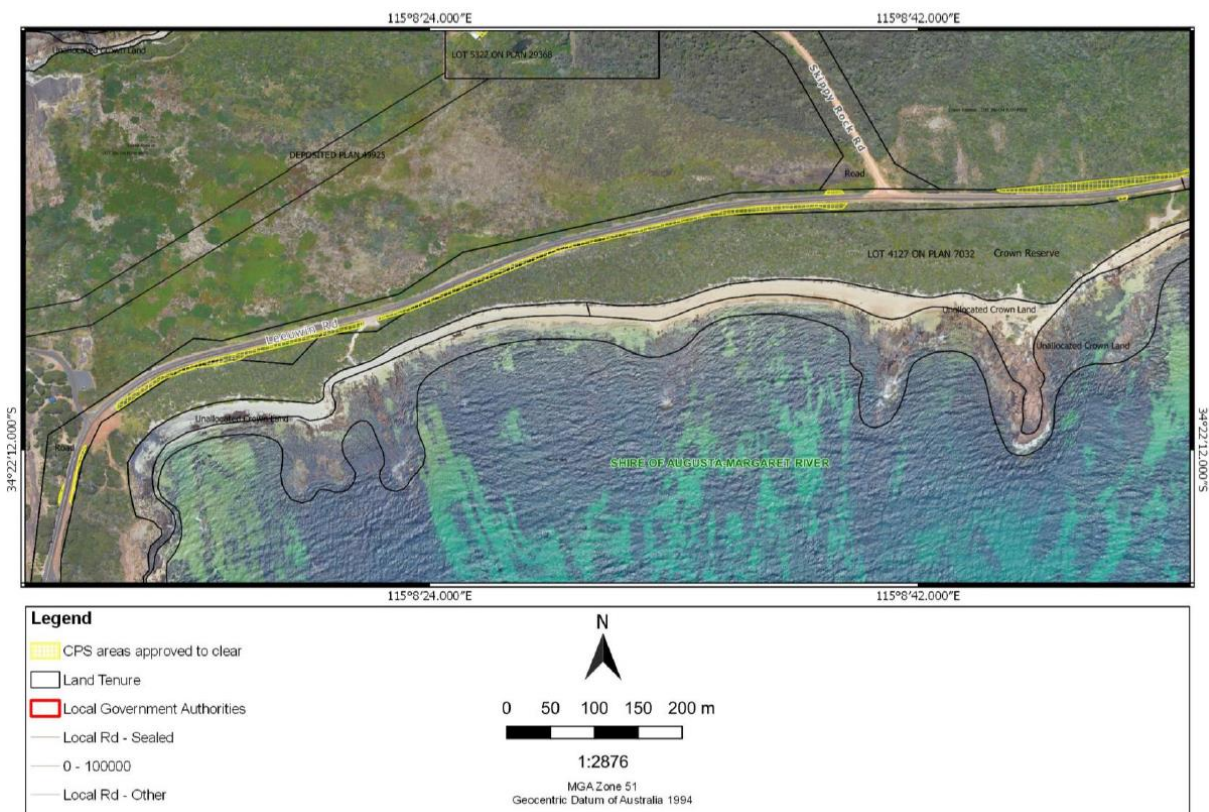
# 1 Executive summary

## 1.1 Decision under appeal

Clearing Permit CPS 9210/1 was granted to the Shire of Augusta Margaret River (the applicant) for the purpose of widening and reconstruction of Leeuwin Road. The clearing is authorised in Leeuwin Road reserve (PINs 11607702, 11607703), unnamed road reserve (PIN 11622189) and Lot 4127 on Plan 7032 (Crown reserve 25141), Leeuwin.

The permit authorises the applicant to clear up to 0.4 hectares (ha) of native vegetation within the area cross-hatched yellow in Figures 1 and 2 below<sup>1</sup>.

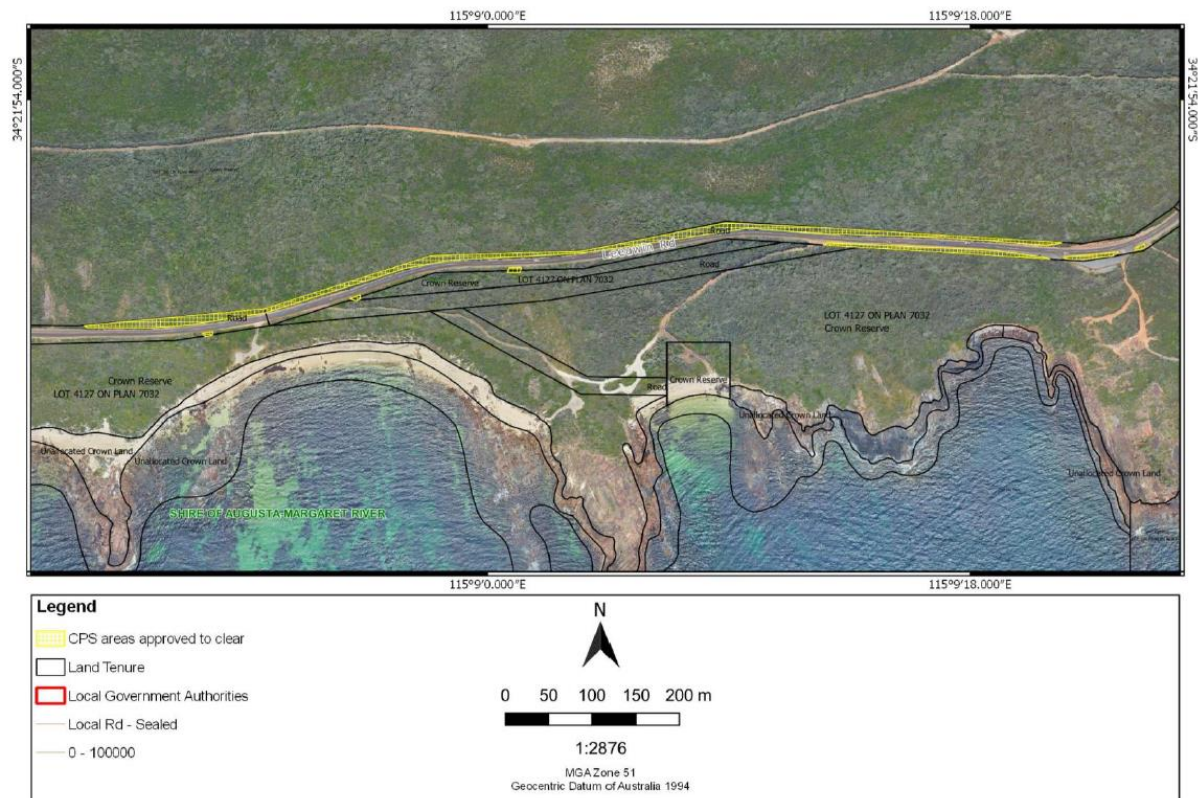
This appeal is against the grant of Clearing Permit CPS 9210/1.



**Figure 1** Western section of application area (yellow)

<sup>1</sup> DWER (2021) decision report for clearing Permit CPS 9210/1





**Table 1** Grounds of appeal

Ground	Main concerns the appellant submitted
1 Impacts to flora, fauna and vegetation	<p>The clearing is not acceptable due to the impacts to many environmental values. This includes a grove of <i>Melaleuca lanceolata</i> Priority Ecological Community (Priority 2), Chuditch (<i>Dasyurus geoffroyi</i>) and Cape Leeuwin freshwater snail (<i>Austroassiminea letha</i>) habitat.</p> <p>Impacts may also occur to the endangered <i>Kennedia lateritia</i> which occurs locally.</p> <p>Increased foot traffic will impact breeding habitat of the Hooded plover (<i>Thinornis rubricollis</i>) which is below the application area.</p> <p>Unmapped wetland communities should be documented.</p>
2 Indirect impacts	<p>There will be indirect effects of clearing on the adjacent Leeuwin-Naturaliste National Park and coastal habitat, including weed encroachment and wind erosion. A weed management plan should be required.</p> <p>The site is exposed to the southern and western oceans which bring strong winds, salt spray and harsh summer conditions making any rehabilitation success unlikely.</p>
3 Cumulative impacts	<p>The impacts of the road widening, and the future planned walk/cycle track should be assessed together to determine the cumulative impacts to an area of high conservation and tourism value.</p>

### 1.3 Key issues and conclusions

This report relates to an appeal against the grant of the permit. The key question for the appeal investigation is - should the permit have been granted and if so, are the conditions adequate and appropriate to mitigate against impacts to the environment?

We summarise our conclusions for the appellant's grounds of appeal below and Section 2 of the report details our reasoning for the recommendation.

#### Are the impacts to the environment significant?

Our conclusion is that the proposed clearing is unlikely to have significant impacts to the environment, subject to the clearing permit conditions.

Earlier road designs and plans involved a larger clearing area and subsequently greater impacts to the environment. Based on the results of successive biological surveys, the applicant identified the key impacts of concern and iteratively modified the project design from ~1.6 ha of clearing to 0.4 ha.

The applicant advised that the 0.4 ha application area avoided and minimised disturbance to areas of high conservation value, as much as practically possible while still meeting current road safety standards.

DWER's assessment included consideration of the clearing principles so far as they were relevant to the application and included consideration of potential impacts to conservation significant flora, fauna and ecological communities as well as wetlands and restricted habitats. DWER concluded the local impacts to the environment are considered acceptable

and are unlikely to change the conservation status of any species or ecological community. We agree with DWER's assessment.

### **Does the permit appropriately manage indirect effects?**

We consider that indirect effects on the surrounding Leeuwin-Naturaliste National Park and coastal habitat were adequately considered, with appropriate permit conditions included to manage the potential impacts. DWER identified that because of the long linear shape of the application area and being adjacent to a national park, weed incursion and wind erosion were of concern.

We consider that the weed and dieback management (condition 5) and temporary fencing requirements (condition 8) are sufficient to limit indirect impacts to vegetation adjacent to the application area.

Regarding the spread of weeds, the applicant has advised<sup>2</sup> that it will prepare a Weed Management Plan as part of the broader Construction Environmental Management Plan. The applicant has committed to best practice weed and dieback hygiene measures and is required to control weeds (at least) annually along the road reserve for a period of five years after road construction.

To minimise the risk of wind erosion the applicant has submitted that roadworks will commence immediately after clearing is undertaken. Additional measures will be implemented to minimise erosion along the road edge and banks adjacent to the national park, including adoption of a lower batter angle, and use of geostabilising materials and rock armour, if required.

Revegetation is not required as the cleared areas will become road, or in the case of road banks, be physically stabilised.

Given the above, the indirect effects have been appropriately considered and managed by the permit conditions. Additionally, the applicant has committed to continued consultation with the Department of Biodiversity, Conservation and Attractions (DBCA), which will be invited to inspect the site at any stage of the project.

### **Were the impacts of future projects considered?**

We consider that DWER's assessment of the application appropriately considered cumulative impacts through its consideration of the clearing principles, as above, and this approach is consistent with current guidance<sup>3</sup>.

DWER<sup>4</sup> is aware that the Shire of Augusta Margaret River proposes to construct a walk and cycle path as part of the Cape Leeuwin Trail. However, neither DWER nor the EPA have yet to receive a referral for assessment.

The applicant<sup>5</sup> acknowledges that a cumulative assessment of planned works along Leeuwin Road would have been preferred. However, due to project timelines, approvals and budgetary constraints, it was unable to submit a clearing permit application. The road widening was chosen as the priority project due to road safety issues associated with an increase in tourism pressure on the 30 year old Leeuwin Road.

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<sup>2</sup> Applicant response to appeal 025/21, 10 August 2021.

<sup>3</sup> DWER (2014) [A guide to the assessment of applications to clear native vegetation](#); DWER (2019) [Procedure - Native vegetation clearing permits](#)

<sup>4</sup> DWER response to appeal 025/21, 3 September 2021.

<sup>5</sup> Applicant response to appeal 025/21, 10 August 2021.

Ongoing planning and management for tourism and conservation is incorporated in the Taalinup Boya Healthy Country Plan<sup>6</sup> which is currently under development by the Undalup Association. Commissioned by the applicant, the Undalup Association is a local Indigenous organisation representing Wadandi people and culture.

The Healthy Country Plan and associated works program will include strategies to provide protection for conservation significant flora, fauna and vegetation in the area, as well as ongoing planning and management for tourism and conservation along the Leeuwin Road reserve.

In this case, DWER's assessment included consideration of potential cumulative effects through its consideration of the clearing principles and this is appropriate and consistent with relevant guidance.

## **1.4 Recommendation to the Minister**

We conclude that DWER's decision to grant the permit was justified and the conditions are appropriate to manage the potential impacts to the environment.

We recommend that the appeal be dismissed.

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<sup>6</sup> Media release (July 2021) - [Community Information Session on Dead Finish to Cape Leeuwin Taalinup Boya Healthy Country Planning in Augusta](#).



## 2 Reasons for recommendation

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### 2.1 Clearing is unlikely to result in significant environmental impacts

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Our conclusion is that the clearing is unlikely to result in significant environmental impacts nor change the conservation status of any flora, fauna or ecological community recorded in the application area. We explain our reasoning below.

The appellant submitted that a range of environmental values would be impacted by the proposed clearing. These include:

- Threatened flora *Kennedia lateritia* known to occur locally
- a grove of *Melaleuca lanceolata* priority ecological community (PEC) which is well adapted to the steep land drop on the seaside of the existing road. The PEC will be damaged by construction work over 0.1 ha in the zone of disturbance
- unmapped wetland communities require further research
- chuditch (*Dasyurus geoffroii*) has been reported in the area
- the Cape Leeuwin Freshwater Snail (*Austroassiminea lethra*), restricted to this area as one of only two locations in Australia, is living near the freshwater seepage
- the fringing beaches and rocky outcrop have allowed sea birds including the vulnerable Hooded plover (*Thinornis rubricollis*) to use this site for breeding

The appellant raised concern that an increase in human foot traffic would impact on the breeding habitat of the Hooded plover.

DWER's assessment of impacts to environmental values resulting from the proposed clearing included consideration of flora and vegetation surveys<sup>7</sup>, a fauna and habitat assessment<sup>8</sup>, and a targeted fauna survey for the Cape Leeuwin Freshwater Snail<sup>9</sup>.

#### Avoidance and minimisation

In response to the appeal, the applicant<sup>10</sup> described the iterative process that was used to avoid and minimise impacts to the environment, noting that earlier road designs and plans involved a larger clearing area and impact to the environment. From the results of the biological surveys, the applicant identified the key impacts of concern and modified the project design and implemented mitigation strategies.

The initial project footprint was ~1.6 ha but due to a number of environmental values identified from the biological surveys, the design was refined down to 0.4 ha<sup>11</sup>. The surveys identified Cape Leeuwin Freshwater Snail habitat (freshwater wetlands), a *Melaleuca lanceolata* PEC occurrence and Western ringtail possum habitat.

Following a targeted survey for the snail, the road design was further revised with the clearing footprint moved to the south of the road away from potential snail habitat on the north of the road. This removed all clearing in the vicinity of the snail habitat, and minimised clearing of the *Melaleuca lanceolata* PEC.

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<sup>7</sup> Litoria Ecoservices, December 2019, Flora and Vegetation Assessment Cape Leeuwin Trail: Dead Finish to Cape Leeuwin for the Shire of Augusta Margaret River; Litoria Ecoservices, May 2021 Cape Leeuwin Rd Supplementary Flora And Vegetation Assessment.

<sup>8</sup> Litoria Ecoservices, December 2019, Fauna and Habitat Assessment Cape Leeuwin Trail, Dead Finish to Cape Leeuwin for the Shire of Augusta Margaret River.

<sup>9</sup> Targeted fauna survey for Leeuwin Road upgrade works – Cape Leeuwin Freshwater Snail, January 2021, Ottelia Ecology

<sup>10</sup> Applicant response to appeal 025/21, 10 August 2021.

<sup>11</sup> Applicant response to appeal 025/21, 14 September 2021.

## Threatened flora and a Priority Ecological Community

### *Kennedia lateritia*

DWER recognises that the application area may provide suitable habitat for the Threatened flora *Kennedia lateritia*. However, no occurrences were recorded in the detailed or targeted flora surveys<sup>12</sup> conducted over the application area.

The flora and vegetation assessment noted that it is possible that *Kennedia lateritia* is present within the soil seed bank of the site and has the potential to germinate following fire or disturbance, but that this is unlikely noting part of the site had been subject to a fire in April 2019.

Based on the findings of the flora and vegetation assessments, DWER concluded that impacts to *Kennedia lateritia* were unlikely to result from the proposed clearing.

### *Melaleuca lanceolata* Priority Ecological Community (PEC)

The flora and vegetation assessments identified that the western-most extent of the application area intersect two patches of vegetation that is representative of the *Melaleuca lanceolata* PEC. Within these patches, a total of 0.014 ha of vegetation that is representative of the *Melaleuca lanceolata* PEC is proposed to be cleared.

DWER's assessment considered that the proposed clearing was not likely to significantly impact the extent of the *Melaleuca lanceolata* PEC in the local area. This was due to:

- the maximum extent of the *Melaleuca lanceolata* PEC proposed to be cleared is 0.014ha which represents approximately two per cent of its mapped extent along Leeuwin Road reserve
- the assertion of the flora and vegetation assessments that occurrences of the *Melaleuca lanceolata* PEC are likely to extend beyond Leeuwin Road reserve and into the adjacent Leeuwin-Naturaliste National Park
- that other mapped occurrences of the *Melaleuca lanceolata* PEC in the Leeuwin-Naturaliste region occur within secure conservation estate in the Leeuwin-Naturaliste National Park.

Based on the findings of the flora and vegetation assessments, the extent of the proposed clearing and the applicant's avoidance and mitigation measures, we agree that the clearing is unlikely to result in significant impacts to the local occurrence of the *Melaleuca lanceolata* PEC or to impact the conservation status of the PEC.

We consider that the weed and dieback management and temporary fencing conditions placed on the permit would be sufficient to limit any indirect impacts and edge effects to the occurrence of the *Melaleuca lanceolata* PEC adjacent to the application area.

## Unmapped wetland communities

The flora and vegetation assessments<sup>13</sup> did not identify distinctive wetland vegetation or wetland characteristics that would indicate the presence of unmapped wetlands within or adjacent to the application area. Given this, we consider it unlikely that the application area includes any unmapped wetland systems.

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<sup>12</sup> Litoria Ecoservices (December 2019) Flora and Vegetation Assessment Cape Leeuwin Trail: Dead Finish to Cape Leeuwin for the Shire of Augusta Margaret River; Litoria Ecoservices (May 2021) Cape Leeuwin Rd Supplementary Flora And Vegetation Assessment.

<sup>13</sup> Litoria Ecoservices (December 2019) Flora and Vegetation Assessment Cape Leeuwin Trail: Dead Finish to Cape Leeuwin for the Shire of Augusta Margaret River; Litoria Ecoservices (May 2021) Cape Leeuwin Rd Supplementary Flora And Vegetation Assessment.

## Fauna

### *Chuditch*

DWER<sup>14</sup> acknowledges that a chuditch was sighted 100m outside of the application area and that the species may utilise the application area. Given the application area is contiguous with expansive tracts of native vegetation including Leeuwin-Naturaliste National Park and comprises less than 0.001 per cent of remnant vegetation in the local area, the proposed clearing is unlikely to result in the loss of significant habitat for chuditch. Local impacts are unlikely due to the species being highly mobile with the ability to disperse into adjacent habitat.

DWER also considers that as the extent of proposed clearing is 0.4 ha within a 1.04 ha linear footprint over approximately 2.4 kilometres (km), any chuditch present at the time of the clearing would be able to disperse into adjacent habitat, including within the Leeuwin-Naturaliste National Park.

### *Cape Leeuwin Freshwater Snail*

The closest confirmed record of the Cape Leeuwin Freshwater Snail (the snail) is near Ringbolt Bay, approximately 180m south of the eastern end of the application area.

DWER<sup>15</sup> acknowledges that the application area contains 0.006 ha of suitable habitat for the snail. Despite suitable habitat being present, a targeted survey<sup>16</sup> for the snail recorded no dead or living shells within the application area. The survey report noted that the habitat of the Cape Leeuwin System wetland had changed over time, due to changes in hydrology and the impact of a fire in April 2019, and that the local snail population may no longer extend to habitat on higher ground such as that on the roadside.

The applicant indicated to DWER that the proposed clearing at the western-most extent of the application area had been limited to vegetation to the south of Leeuwin Road reserve to minimise impacts to suitable snail habitat. The impact was reduced to 0.006 ha (60 m<sup>2</sup>) of suitable snail habitat that could not be avoided.

Based on the extent of the proposed clearing and the findings of the targeted survey, DWER determined that the proposed clearing is unlikely to result in significant impacts to the local snail population or habitat for this species.

Noting that the applicant has committed to maintaining the existing surface drainage patterns of the application area and to ensuring that there is no runoff of water or sediment into the surrounding environment, DWER also considered that the proposed clearing is unlikely to result in changes to hydrology that may indirectly impact the local snail population and habitat to the south of the application area.

We agree that the applicant's avoidance and mitigation measures in conjunction with conditions placed on the clearing permit, including a requirement to erect temporary fencing between the application area and adjacent suitable habitat for the species, would be sufficient to mitigate indirect impacts to the Cape Leeuwin Freshwater Snail population.

### *Hooded plover*

DWER acknowledges that, the Hooded plover has been recorded within the application area and along the adjacent coastline. DWER notes that the Hooded plover is recognised as two

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<sup>14</sup> DWER response to appeal 025/21, 3 September 2021.

<sup>15</sup> DWER response to appeal 025/21, 3 September 2021.

<sup>16</sup> Ottelia Ecology (January 2021) Targeted fauna survey for Leeuwin Road upgrade works – Cape Leeuwin Freshwater Snail.

subspecies: *Thinornis rubricollis* subsp. *rubricollis* (eastern) and *Thinornis rubricollis* subsp. *tregellasi* (western). It is the Hooded plover (eastern) that is listed as Vulnerable with the Hooded plover (western) listed as a Priority 4 species by DBCA. The Hooded plover (western) is not listed as a threatened species at the State or Commonwealth levels.

DWER recognises that the 2019 fauna and habitat assessment identified that the beaches immediately south of the application area provide suitable nesting habitat for the Hooded plover (western) and may be significant as breeding habitat for the species.

DWER considers that, as the vegetation types within the application area comprise coastal forest, heath and scrub, the Hooded plover (western) is more likely to be transient within the application area as it moves between areas of suitable nesting habitat inland and adjacent coastal beaches. DWER notes that no suitable breeding habitat for the Hooded plover (western) exists within the application area itself and that no clearing of nesting habitat would result from CPS 9210/1. Given this, we consider that significant impacts to the Hooded plover (western) are unlikely to result from the proposed clearing.

While we acknowledge the appellant's concerns that the proposed upgrades to Leeuwin Road could result in increased human foot traffic which may impact on nesting birds, we consider that the ongoing management of the Shire-managed reserves and beach access to the south of Leeuwin Road is a matter for the applicant.

Given the above, this ground of appeal should be dismissed.

## 2.2 Indirect effects are appropriately managed

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Our conclusion is that potential indirect effects on the surrounding Leeuwin-Naturaliste National Park and coastal habitat were adequately considered, with conditions imposed to manage the potential impacts. We explain our reasoning below.

The appellant submitted that the application area is sensitive to edge effects due to its location and long linear shape, exposing a significant interface between native vegetation and the adjacent national park and coastline.

The appellant is of the view that given the location and linear nature of the application area, the spread of invasive species and weeds would occur. Additionally, concern was raised regarding rehabilitation success given the application area is exposed to strong winds, salt spray and harsh summer conditions.

### Weeds, dieback and wind erosion

DWER<sup>17</sup> acknowledges that the proposed clearing of 0.4 ha within a 1.04 ha linear footprint over approximately 2.4 km has the potential to expose adjacent vegetation along the length of the application area to edge effects, including vegetation within Leeuwin-Naturaliste National Park. DWER's assessment<sup>18</sup> recognised that the proposed clearing may facilitate the spread of weeds and dieback into adjacent vegetation, including the national park.

DWER determined that indirect impacts to the Leeuwin-Naturaliste National Park could be mitigated and managed through conditions applied to the clearing permit. This includes weed and dieback management, and temporary fencing between the application area and the national park.

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<sup>17</sup> DWER response to appeal 025/21, 3 September 2021.

<sup>18</sup> DWER decision report for clearing permit CPS 9210/1, 22 June 2021.

We note that the applicant is required under condition 5 of the permit to control weeds at least annually along the road reserve for a period of five years following road reconstruction. Additionally, the applicant will also prepare a Weed Management Plan as part of the broader Construction Environmental Management Plan<sup>19</sup>.

The boundary between the Leeuwin Road reserve and the Leeuwin-Naturaliste National Park will be demarcated (condition 8) to ensure access and disturbance do not extend beyond the application area.

DWER considered the applicant's commitment to maintaining the existing surface drainage patterns of the application area and to ensuring that there is no runoff of water or sediment into the surrounding national park. This in conjunction with dieback hygiene measures under condition 5 ensure the risk of dieback introduction and spread is minimised.

To manage the risk of wind erosion the applicant<sup>20</sup> has submitted that roadworks will commence immediately after clearing is undertaken. Additional measures will be implemented to minimise erosion along the road edge and banks adjacent to the national park, including adoption of a lower batter angle, and use of geostabilising materials and rock armour, if required.

Additionally, the applicant has advised that DBCA will be consulted during roadworks and invited to attend on site or to inspect the works during any stage of the project.

## Revegetation

DWER acknowledges that rehabilitation success in coastal vegetation can be inhibited by coastal conditions, including strong winds, salt spray and exposure.

DWER considered that revegetation and rehabilitation are not required for the proposed clearing. As such, DWER formed a view that rehabilitation success was not a relevant consideration for the assessment of the clearing permit application.

We confirmed during the investigation that where vegetation is cleared, the end land use will be the widened Leeuwin Road or in the case of road banks, be stabilised as previously described. In view of this, a permit condition for revegetation was not required.

Given the above, this ground of appeal should be dismissed.

## 2.3 DWER's assessment approach was appropriate

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Our conclusion is that DWER's assessment of the clearing permit application was appropriate and consistent with current DWER guidance documents<sup>21</sup>. We explain our reasoning below.

The appellant raised concern that the cumulative impacts of the proposed clearing and future clearing for a new, dual-use walk/cycle track alongside the same length of Leeuwin Road, would significantly impact a unique environment and range of environmental values.

DWER's assessment of the proposed road widening in accordance with *A guide to the assessment of applications to clear native vegetation* (2014) and *Procedure: Native vegetation clearing permits* (2019). DWER's assessment identified the impacts on multiple

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<sup>19</sup> Applicant response to appeal 025/21, 10 August 2021.

<sup>20</sup> Applicant response to appeal 025/21, 10 August 2021.

<sup>21</sup> DWER (2014) [A guide to the assessment of applications to clear native vegetation](#); DWER (2019) [Procedure - Native vegetation clearing permits](#)



environmental values at both the local and species (or community) scale. This is most evident in clearing principles (a) and (e) but also principle (b).

DWER<sup>22</sup> advised that neither it nor the Western Australian Environmental Protection Authority (EPA) has received a referral related to a new dual-use path along the length of Leeuwin Road in the application area. DWER is aware that such a project to construct a walk and cycle path from Dead Finish to the Cape Leeuwin Lighthouse is being developed.

In the absence of a finalised alignment, DWER advised that:

the Department cannot determine the cumulative impacts of such a proposal in conjunction with the clearing proposed under the Clearing Permit. The Department notes that, if the clearing proposed for a future dual-use path does not meet the specifications of an exemption under the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*, such a proposal would need to be assessed under the EP Act. The Department considers that cumulative impacts to the environmental values present in the Application Area would be considered during the assessment of such a proposal.

In relation to cumulative impacts of other known clearing in the local area, DWER notes that the nearest active permit is Clearing Permit CPS 8214/1, which authorises the clearing of no more than 0.86 ha of native vegetation for the purpose of constructing a dual-use pathway. Clearing Permit CPS 8214/1 is located approximately 650 m north of the application area and is valid to 10 January 2024.

DWER considers that future road upgrades along the same length of Leeuwin Road are unlikely in the near to medium term, given the applicant specified in its supporting documentation that the road widening and reconstruction under Clearing Permit CPS 9210/1 is the final stage of the Shire of Augusta Margaret River's broader reconstruction project for the Leeuwin Road reserve. Additionally, the applicant advised DWER that the northern and eastern sections of Leeuwin Road have previously been reconstructed without requiring any disturbance to native vegetation.

DWER<sup>23</sup> provided that the applicant's reconstruction project for the Leeuwin Road reserve is consistent with *State Planning Policy 6.1 Leeuwin-Naturaliste Ridge*, which includes a statement of intent to maintain and upgrade the existing road network of the Leeuwin-Naturaliste Ridge<sup>24</sup>. The proposed road upgrades are also considered consistent with the provisions of the *Leeuwin-Naturaliste capes area parks and reserves management plan* (the management plan), which includes a management action to "retain the roads and tracks outlined at Appendix 1 and shown on maps 3a and 3b for public vehicle access"<sup>25</sup>. DWER notes that Leeuwin Road and Skippy Rock Road are outlined in Appendix 1 and map 3b of the management plan.

DWER understand that the final alignment of the dual track is currently being developed as part of the Taalinup Boya Healthy Country Plan<sup>26</sup> (the plan). The aim of the plan is to identify the cultural and environmental values of the Shire-managed reserve south of Leeuwin Road and develop a prioritised and costed works program to protect and restore these values.

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<sup>22</sup> DWER response to appeal 025/21, 3 September 2021.

<sup>23</sup> DWER response to appeal 025/21, 3 September 2021.

<sup>24</sup> Western Australian Planning Commission (1998) [Statement of Planning Policy No. 61 Leeuwin-Naturaliste Ridge Policy](#). Government Gazette, WA

<sup>25</sup> Department of Parks and Wildlife (2015) [Leeuwin-Naturaliste capes area parks and reserves management plan 2015. Management plan number 81](#). Department of Parks and Wildlife, Perth.

<sup>26</sup> Media release (July 2021) - [Community Information Session on Dead Finish to Cape Leeuwin Taalinup Boya Healthy Country Planning in Augusta](#).

The applicant<sup>27</sup> has engaged a local Indigenous organisation (the Undalup Association) to develop the plan. DWER considers that the plan and associated works program will include strategies to provide protection for conservation significant flora, fauna and vegetation in the area, as well as ongoing planning and management for tourism and conservation along the Leeuwin Road reserve.

In response to the appeal, the applicant also advised that while concurrent assessment for the road widening and future dual-use track would be preferred, this is not an option due to project timelines, approvals, and funding. Road widening has been pursued first, given the existing road does not comply with current road safety standards due to being over 30 years since its original construction. The applicant has committed to continue working closely with the Undalup Association, DBCA and the local community to determine the best options for a walk or dual-use track that minimises impacts and maintains the natural amenity of the site.

Given the above, this ground of appeal should be dismissed.

## 2.4 Other concerns

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The appellant submitted that the current status of the site includes:

- cleared native plant material, pushed aside and left to decay at the entrance to the Lighthouse parking area where road verge clearing was done
- weeds growing in the scraped earth which appears to have been sprayed with pesticide
- vehicles parked outside two dedicated car parks, including on rough tracks and close to the water's edge
- rubbish which has been spread in the surrounding vegetation.

DWER<sup>28</sup> has no record of a clearing permit at the entrance to the Lighthouse parking area that could be related to the appellant's observation that native plant material has been cleared, pushed aside, and left to decay. Complaints in relation to suspected unauthorised clearing should be lodged directly with the DWER 24-hour Pollution Watch Hotline (1300 784 782) or its online reporting form for investigation. Enforcement of the conditions of a regulatory instrument is a matter for DWER as the regulator. Where appropriate, DWER will act in accordance with its Compliance and Enforcement Policy.

DWER considers the ongoing management of the greater Leeuwin Road reserve and adjacent Shire-managed reserves to be the duty of the applicant, with respect to weed management, unauthorised parking of vehicles and littering.

In relation to the application area itself, the applicant is required to record and report activities undertaken in accordance with the clearing permit to DWER, with respect to the authorised clearing activities and actions taken in line with conditions placed on the clearing permit, including weed and dieback management procedures.

The applicant<sup>29</sup> submitted that it has been working with DBCA and the Margaret River Busselton Tourism Association to enhance the existing Leeuwin Lighthouse carpark area. The lighthouse precinct itself, including the Water Wheel and access to the coast, is located on DBCA-managed land (Leeuwin-Naturaliste National Park). However, the lighthouse carpark is part of Leeuwin Road Reserve, managed by the applicant.

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<sup>27</sup> Applicant response to appeal 025/21, 10 August 2021.

<sup>28</sup> DWER response to appeal 025/21, 3 September 2021.

<sup>29</sup> Applicant response to appeal 025/21, 10 August 2021.

It is understood that DBCA is currently developing concepts to formalise and manage parking, paths and accessibility to the lighthouse and nearby attractions to better manage the increasing number of visitors and vehicles. The aim of this work is to prevent informal/overflow parking occurring in areas where it has negative environmental impacts. In the meantime, the applicant is investigating temporary options for minimising impacts from informal parking at the lighthouse, such as installing barricades to restrict vehicles from encroaching into roadside vegetation.

## 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 9210/1	June 2021
Appeal submission	July 2021
Applicant response to appeal submission	August 2021
DWER response to appeal 025/21	September 2021