



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

Appeals Convenor's Report to the Minister for Environment

Appeals against amendments of clearing permits
CPS 7140/2 and CPS 7141/2, Mining Lease 70/776,
City of Swan



Appellant	Murdoch University Black Cockatoo Conservation Management Project
Permit holder	Hanson Construction Materials Pty Ltd
Authority	Department of Mines, Industry Regulation and Safety (DMIRS)
Appeal numbers	038 of 2021 and 039 of 2021
Report date	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

Carly Bishop

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 by Tony Kirkby from [WA Museum website](#)

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

1	Executive summary	1
1.1	Decisions under appeal	1
1.2	Grounds of appeal and appellant concerns	2
1.3	Conclusions	3
1.4	Recommendation to the Minister	4
2	Reasons for recommendations	5
2.1	What are the environmental values of the vegetation?	5
2.2	What planning instruments or other matters are relevant to the proposal?	8
2.3	Should the amendments have been granted, and if so, are conditions adequate?	9
3	Supporting information	12
Appendix 1	Appeal process	13

1 Executive summary

1.1 Decisions under appeal

The Murdoch University Black Cockatoo Conservation Management Project (the appellant) submitted appeals for two adjacent clearing permits granted within the Gngangara-Moore River State Forest. As the clearing permits are interlocking, the appeal grounds similar and the appellant the same, we have combined our findings in this report.

The appeals are against the amendments to clearing permits CPS 7140/2 and CPS 7141/2 (the permits) which were granted by the Department of Mines, Industry Regulation and Safety (DMIRS) to facilitate sand mining. The clearing permits relate to the Tick Road Sand Mine and Gngangara Mine Site Project respectively, both of which are located on Mining Lease 70/776 approximately 22 kilometres (km) north of Perth (Figure 1).

On 16 July 2021, Hanson Construction Materials Pty Ltd (the permit holder) lodged applications to DMIRS to amend the above clearing permits by extending their duration by 10 years. The application areas were unchanged at 93.78 hectares (ha) and 23.55 ha respectively (Figures 2 and 3).

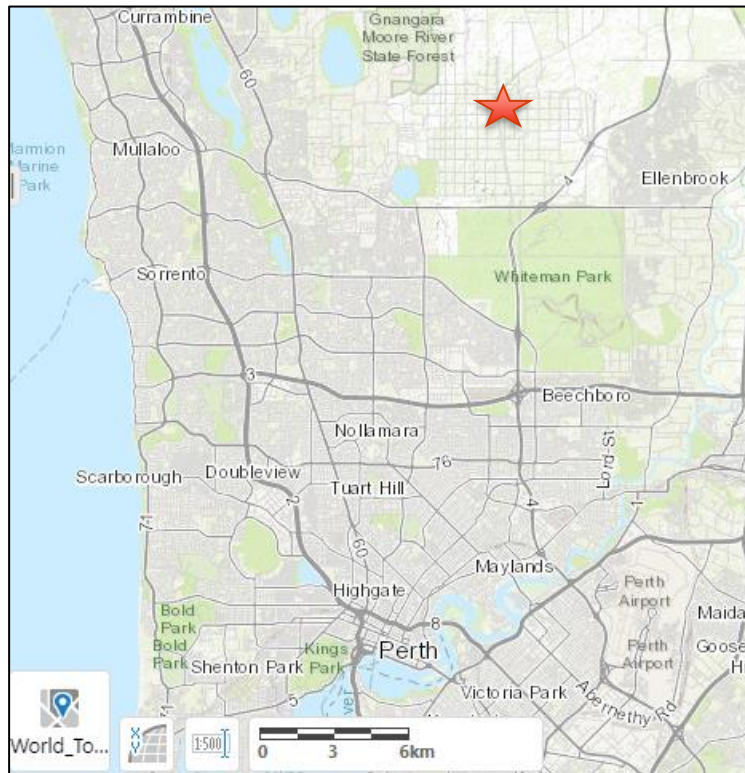


Figure 1 Location of the clearing permits under appeal (red star)

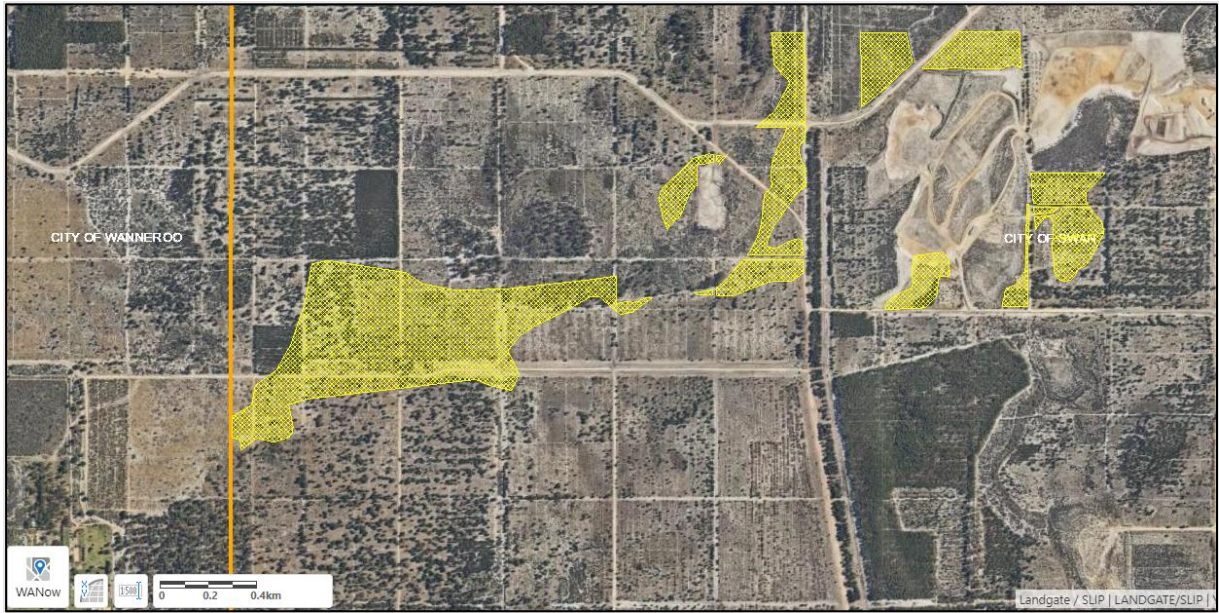


Figure 2 Area approved to clear for CPS 7140/2 (97.78 ha)¹

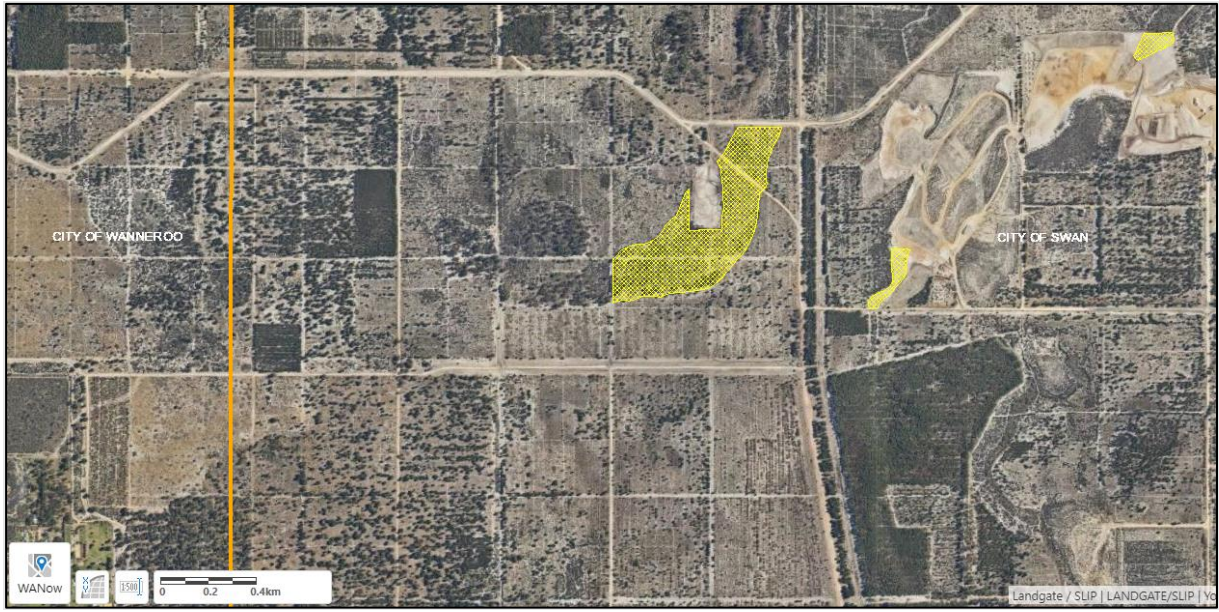


Figure 3 Area approved to clear for CPS 7141/2 (23.55 ha)²

1.2 Grounds of appeal and appellant concerns

On 13 October 2021, an appeal was lodged against the amendment of each clearing permit. The appellant’s key concerns relate to the absence of a black cockatoo habitat assessment and deficiencies with DMIRS’ assessment of impacts. The grounds of the appeals are outlined below.

¹ DMIRS (2021) [CPS 7140/2](#) clearing permit decision report, 23 September 2021.
² DMIRS (2021) [CPS 7141/2](#) clearing permit decision report, 23 September 2021.

Table 1 Grounds of appeal

Ground	Main concerns of appellant
Black cockatoo habitat assessment not undertaken	<p>The 2009 flora survey DMIRS relied on for the amendments is outdated and was only a Level 1 flora survey.</p> <p>The RPS survey DMIRS relied on for the amendments was a single “walk over” of (remarkably) the entire 93.78ha in a single day in 2014.³</p> <p>There was no flora and fauna assessment, or a black cockatoo habitat assessment.</p>
DMIRS assessment approach outdated	<p>Several relevant values were overlooked in DMIRS assessment:</p> <ul style="list-style-type: none"> the proposed clearing area is within 15km (Joondalup) of one of the last Carnaby’s cockatoo breeding sites in Perth, Great Cocky Count data identifies around 12 known roosts within a few kilometres of this site. This was not in DMIRS report, cumulative impacts of foraging habitat loss across the Swan Coastal Plain have not been considered, vegetation condition does not equal forage quality, the importance of pines as foraging habitat was not considered.
Time lag in provision of foraging habitat is detrimental	<p>Mitigation measures are inadequate due to the time-lag in replacing foraging resources. Foraging habitat needs to be replaced within the range-area of the affected flocks, which can be achieved by purchasing land vegetated with pines. Rehabilitation does not provide ‘no net loss’ of food in the immediate or short term.</p>

The appellant sought for a black cockatoo habitat survey to be undertaken and for the provision of a local offset (e.g. purchase of existing pine plantation).

1.3 Conclusions

This appeal relates to whether the decision to amend the permit was justified. To answer this question, it is necessary to consider the grounds of the appeal in the context of the relevant considerations set out in section 51O of the *Environmental Protection Act 1986* (EP Act), including the clearing principles, planning instruments, and other relevant matters.

We summarise our conclusions for these issues below, and section 2 of this report details the reasoning behind our recommendations.

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

During the appeal investigation, the permit holder undertook a black cockatoo habitat assessment to quantify the impact to the species. From this the permit holder identified 0.7 ha of native vegetation to be cleared that is foraging habitat for Carnaby’s cockatoo (*Zanda latirostris*) and approximately 107 ha of pine re-growth. This included 0.5 ha of forage for clearing permit CPS 7140/2 and 0.2 ha of forage for clearing permit CPS 7141/2.

The permit holder also identified 3.6 ha of the native vegetation that it proposed to retain. This includes 2.6 ha from clearing permit CPS 7140/2 and 1 ha from clearing permit CPS 7141/2.

³ RPS (2014) Tick Road Sand Mine (Tenement M70/776). Native Vegetation Clearing Application Supporting Document. Report prepared for Rocla Quarry Products Limited, by RPS Consulting, November 2014.

Given the permit holder proposes to clear 0.7 ha of native foraging habitat for a threatened species, we consider that the proposed clearing is 'at variance' with clearing principle (b), which provides that *native vegetation should not be cleared if it comprises the whole or part of a habitat significant for fauna*.

Regarding cumulative impacts, these are generally considered in a clearing permit assessment under the biodiversity-related clearing principles, including clearing principle (e). While partially considered by DMIRS, we found that both the mapped vegetation complex and remnant vegetation within the local area (10 km radius) are both above the state government's policy threshold of 30% remaining. Given this, we consider that the proposed clearing is consistent with clearing principle (e).

While we agree with the appellant that the Gngangara pines area is a key food source for Carnaby's cockatoo, the EP Act applies only to native vegetation. Given this, our report focuses on the impacts to native vegetation.

The clearing is consistent with the intent and purpose of planning instruments

The clearing will facilitate access to a sand resource which is mapped as a 'significant geological supply' under *State Planning Policy 2.4 Basic Raw Materials* (SPP 2.4) and note that the resource has been identified as a high priority extraction area due to its strategic location and size (with provision for long-term supply).

Amending the permits was justified

While we agree that contemporary surveys should have been required by DMIRS to inform its assessment, noting the surveys undertaken during the appeal investigation, we conclude that the decision to amend the permits was justified. However, further amendments are required to ensure those areas that are planned to be retained are specified in the permit.

We note that the permit holder has committed to rehabilitate the clearing areas with ~117 ha of banksia woodland (as proposed in its Mine Closure Plan and supporting Environmental Management Plan). Through the application of the offsets metric, the impact to 0.7 ha of Carnaby's cockatoo foraging habitat is clearly counterbalanced by the proposed rehabilitation program which is based on restoration techniques developed and refined in conjunction with Kings Park Science.

The appellant's concern regarding the lag in the provision of foraging habitat is noted. However, the permit holder's rehabilitation program will provide native foraging habitat in the medium to long term, and we consider that this is a substantially improved outcome compared to the currently unmanaged pine re-growth.

1.4 Recommendation to the Minister

We recommend that the Minister allow the appeals in part, to:

- exclude 2.6 ha of native vegetation within the application area for CPS 7140/2
- exclude 1 ha of native vegetation within the application area for CPS 7141/2
- authorise the clearing of up to 0.5 ha of Carnaby's foraging habitat for CPS 7140/2
- authorise the clearing of up to 0.2 ha of Carnaby's foraging habitat for CPS 7141/2

Otherwise dismiss the appeals.

2 Reasons for recommendations

2.1 What are the environmental values of the vegetation?

A black cockatoo habitat assessment should have been required by DMIRS

In its assessments⁴, DMIRS had regard to 'A guide to the assessment of applications to clear native vegetation Under Part V Division 2 of the Environmental Protection Act 1986⁵ and information within available datasets.

DMIRS' assessment of impacts to black cockatoos was considered under clearing principle (b) which states 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 found the proposed clearing was not likely to be at variance to clearing principle (b). DMIRS' decision report concluded that:

Thirty three fauna species of conservation significance have been recorded within the local area, the majority of which are migratory species (DPaW, 2016). Faunal habitat for the remaining species is limited due to the lack of vegetative cover, landform features and the existing level of disturbance (RPS, 2014; GIS Database).⁶

DMIRS reached the above conclusion based on its review of the available GIS layers, a 2009 vegetation survey and a 2014 walk of the site.

In response to the appeals, DMIRS⁷ advised that:

The amendment decision was based on current standard practices and procedures. DMIRS acknowledges that it would have been desirable for the survey information supporting the amendment application to have been of a more recent nature. However, the amendment decision was not solely based upon the surveys from 2009 and 2014, with DMIRS utilising several available databases, departmental records and aerial imagery. DMIRS has utilised the available older information to inform the recent assessment; however, has not solely relied on this to make the amendment decision.

As part of the appeal investigation, the permit holder was requested to consider the need for further survey effort and provided the results of a black cockatoo habitat assessment on 28 March 2023. The survey identified that 0.7 ha of native vegetation within the permit areas is foraging habitat for Carnaby's cockatoo (*Zanda latirostris*) and approximately 107 ha is pine re-growth.

The permit holder advised that it proposes to retain an additional 3.6 ha of native vegetation within the application areas. This includes 2.6 ha for clearing permit CPS 7140/2 and 1 ha for clearing permit CPS 7141/2. Mapping of these areas is provided in section 3 of this report.

⁴ DMIRS (2021) Decision report for Clearing Permit [CPS 7140/1](#), 23 September 2021; DMIRS (2021) Decision report for Clearing Permit [CPS 7141/1](#), 23 September 2021.

⁵ Department of Environment Regulation (DER) (2014). [A guide to the assessment of applications to clear native vegetation](#). Perth.

⁶ DMIRS (2021) Decision report for Clearing Permit [CPS 7140/1](#), 23 September 2021; DMIRS (2021) Decision report for Clearing Permit [CPS 7141/1](#), 23 September 2021.

⁷ DMIRS responses to appeals 038/21 and 039/21, received 16 November 2021, p. 3.

The table below outlines the vegetation types proposed to be cleared.

Table 2 Vegetation proposed to be cleared

Vegetation	CPS 7140/2 (ha)	CPS 7141/2 (ha)	Total to be cleared (ha)
Pine re-growth	84.8	22.3	107.1
Black cockatoo forage - native	0.5	0.2	0.7
Total	85.3	22.5	107.8

‘Degraded’ vegetation can still provide valuable foraging habitat

In response to the appeals, DMIRS advised that it did not consider there was a significant impact to black cockatoos, due partly to the condition of the vegetation within the application area. Based on the vegetation survey undertaken in 2009 and the 2014 site walk through, DMIRS advised that:

The condition of the vegetation under application ranges from ‘degraded’ to ‘completely degraded’ (Keighery, 1994; GIS Database). It is acknowledged that Black Cockatoos forage in the Gngalara area. However, based on the above it is considered unlikely that native vegetation within the application area would be considered an important feeding source due to its degraded nature.⁸

The Keighery⁹ vegetation condition scale is used to categorise and rank the level of disturbance relative to human activities. The rating refers to the degree of change in a vegetation community (vegetation structure, density and species present) and rates the degree of disturbance and ability of the vegetation community to regenerate.

We consider that the reference to vegetation condition using a measure such as the ‘Keighery Scale’ is largely irrelevant to arboreal foraging species, such as black cockatoos. This was also an outcome of appeal 034/20, where 1.22 ha of Carnaby’s cockatoo foraging habitat, predominantly mapped as in ‘degraded’ condition was determined to be a significant residual impact requiring an offset.¹⁰

Pines are outside the scope of a clearing permit assessment

The clearing areas, being 93.78 ha and 23.55 ha in total, are a mosaic of vegetation types including pine plantations and native vegetation. At the time the permit amendments were made, the extent of each vegetation type had not been adequately quantified. The permit holder’s black cockatoo habitat assessment provides greater clarity regarding the extent and location of habitat values which includes the 107.1 ha of pine plantation and the 0.7 ha of native foraging habitat.

The appellant submitted that the pines are a significant food source for Carnaby’s cockatoo and should have been considered in the DMIRS assessment. In this regard, DMIRS advised that:

⁸ DMIRS repose to appeal 038/21, received 16 November; DMIRS response to appeal 039/21, received 15 November 2021.

⁹ Keighery, B.J. (1994) Bushland Plant Survey: A Guide to Plant Community Survey for the Community. Wildflower Society of WA (Inc). Nedlands, Western Australia.

¹⁰ Minister for Environment, Minister’s Appeal Determination Appeal 034/20, 22 January 2021.

...*Pinus pinaster* may be an important food source for Black Cockatoo species; however, it is not considered native vegetation as defined in section 3 of the EP Act and therefore is outside the scope of this native vegetation clearing permit assessment.¹¹

We note that the clearing permits are within a Crown land tenement which forms part of the Gngangara-Moore River State Forest and is managed by the Department of Biodiversity, Conservation and Attractions (DBCA) under the Forest Management Plan 2014-2023.¹² As noted by the permit holder, the harvesting of mature pine plantations will be undertaken by the Forestry Products Commission (FPC) and does not fall within the scope of the clearing permits.¹³

While the significance of the pines as foraging habitat is not disputed, we agree with DMIRS that the clearing of up to 107.1 hectares of pine re-growth within the clearing areas (Table 2) is outside the scope of a clearing permit assessment.

Cumulative impacts were considered

In response to the appellant's concerns about the assessment of cumulative impacts, DMIRS¹⁵ advised that:

Cumulative impacts were not considered to be high due to the majority of the application area not being native vegetation'. DMIRS notes that the 93.78ha decision area is somewhat misleading, in that not the entirety of the permit area contains native vegetation.

We note that the assessment of cumulative impacts requires the consideration of incremental habitat loss both over time and across the landscape at a scale that is ecologically appropriate to the species under assessment.

Research specific to the Swan Coastal Plain notes that:

Biodiversity impact assessments under threatened species legislation often focus on individual development proposals at a single location, usually for a single species, leading to inadequate assessments of multiple impacts that accumulate over large spatial scales for multiple species. Regulations requiring ad-hoc assessments can lead to "death by a thousand cuts," where biodiversity is degraded by many small impacts that individually do not appear to threaten species' persistence.¹⁶

DMIRS generally assesses cumulative impacts under the collective consideration of the biodiversity-related clearing principles which includes clearing principle (e). 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.¹⁷

DWER's *Guide to the assessment of applications to clear native vegetation* states that:

The level of 30 per cent representation within a bioregion does not consider the effect of habitat fragmentation and isolation. Studies have shown that larger areas of native vegetation generally support a greater number and diversity of species than smaller areas (e.g. Kitchener *et al.*, 1980a; Kitchener *et al.* 1980b; Kitchener *et al.* 1982), and that smaller areas are more

¹¹ DMIRS repose to appeal 038/21, received 16 November; DMIRS response to appeal 039/21, received 15 November 2021.

¹² DataWA (2018) [Forest Management Plan 2014-2023](#) (DBCA-041).

¹³ Permit holder response to the appeals, received 18 October 2022.

¹⁵ DMIRS repose to appeal 038/21, received 16 November; DMIRS response to appeal 039/21, received 15 November 2021.

¹⁶ Whitehead, A.L., Kujala, H., Wintle, B.A. (2016). Dealing with cumulative biodiversity impacts in strategic environmental assessment: a new frontier for conservation planning. *Conservation Letters*. 10, 195–204.

¹⁷ Department of Environment Regulation (DER) (2014). [A guide to the assessment of applications to clear native vegetation](#). p. 18.

vulnerable to edge effects and other disturbances. Habitat fragmentation acts to reduce the area of available habitat. **Representation levels may need to be increased considerably above 30 per cent in already fragmented landscapes in order to maintain biodiversity** [emphasis added].

The 0.7 ha of native vegetation proposed to be cleared is mapped as Bassendean Complex-North, which is low open forest and low open woodland of Banksia species and *Eucalyptus todtiana* (Pricklybark) to low woodland of melaleuca species and sedgeland which occupy the moister sites. As of 2018 there was 72% of this vegetation complex remaining on the Swan Coastal Plain.¹⁸

We identified that the local area (10km radius) has approximately 34% remnant vegetation remaining in December 2020.¹⁹

While we acknowledge the appellant's concerns about cumulative impacts of foraging habitat loss across the Swan Coastal Plain, in this case, given both the vegetation complex and remnant vegetation within the local area are above 30% we consider that the proposed clearing of 0.7 ha of native vegetation is not 'at variance' to clearing principle (e).

Furthermore, the impact will be counterbalanced in the medium to long-term by the permit holder's banksia woodland rehabilitation program, as discussed in section 2.3 of this report.

2.2 What planning instruments or other matters are relevant to the proposal?

Section 51O of the EP Act, sets out that in addition to the clearing principles, DMIRS must have regard to any development approval, planning instrument, or other matters where relevant to the decision on a clearing permit application.

The sand resource is a significant geological supply

The clearing areas is within mining tenement M70/776 and is held by Boral Resources (WA) Ltd with operations undertaken by the permit holder through a joint venture agreement.

The sand resource under the clearing areas is identified as a significant geological supply (SGS) under *State Planning Policy 2.4 Basic Raw Materials* (SPP 2.4) which has the intent to:

... ensure basic raw materials (BRM) and extractive industries matters are considered during planning and development decision-making, to facilitate the responsible extraction and use of the State's BRM resources.

Under the policy, a SGS is identified as the highest priority extraction areas for basic raw materials, and represent strategic, long-term supplies of basic raw materials requiring protection.

Given the above, the purpose of proposed clearing is consistent with the intention of SPP 2.4.

The proposal is not inconsistent with local planning

The City of Swan (the City) lists 'Protecting the environment' as one of five major features of its Local Planning Strategy (LPS).²⁰

¹⁸ Government of Western Australia. (2019). 2018 South West Vegetation Complex Statistics. WA Department of Biodiversity, Conservation and Attractions, Perth. <https://catalogue.data.wa.gov.au/dataset/dbca>

¹⁹ DataWA (2020) Swan Coastal Plain Remnant Vegetation 2020, available at: <https://catalogue.data.wa.gov.au/dataset/swan-coastal-plain-remnant-vegetation-2020>

²⁰ City of Swan, [Local Planning Strategy](#), August 2020, page 3.

The LPS (which is a planning instrument for the purposes of section 51O(4)) provides that:

The City of Swan contains some of Perth's most important environmental assets and is part of an internationally recognised 'biodiversity hotspot'. The City has prepared a Local Biodiversity Strategy to provide a framework for the protection of significant local natural areas in the City and the objectives of Local Biodiversity Strategy this strategy are to be integrated into the City's planning framework through the Local Planning Strategy. Rapid population growth can place significant pressures on the environment and the Local Planning Strategy contains strategies to ensure that the City accommodates this growth in a way that does not negatively impact on the environment and responds to the challenges of planning for climate change.²¹

The protection of biodiversity is noted as a strategic direction and the City promotes the protection of biodiversity through scheme provisions. Furthermore, the City has prepared a Local Biodiversity Strategy to provide clear targets and actions for conservation which will ensure the City's biodiversity values are effectively conserved, protected, retained and managed for the future.²²

Under the theme of 'Natural resource management and environmental protection', the LPS objective is to protect the City's natural resources, provide responsible environmental management and manage the impacts of climate change.

Regarding biodiversity protection, the City recognises that population growth will place considerable pressure on the local environment and present ongoing challenges associated with the development of environmentally sensitive and sustainable communities. The LPS notes that one such challenge is:

...the retention and enhancement of the City's Urban Forest which represents a significant challenge that threatens both the City's Biodiversity and Liveability objectives.²³

Based on the above, it appears that the LPS promotes the conservation, protection and retention of biodiversity assets.

Relevant to the permit, the Local Planning Scheme No. 17 aims to, among other things:

- (g) Promote the judicious management of natural resources of particular regional and local significance including bushland, water catchments, waterways, agricultural land and basic raw materials, and to promote the protection of air quality.
- (h) Protect objects and places of particular natural, historic, architectural, scientific and cultural significance.²⁴

Given the proposed banksia woodland restoration is intended to be black cockatoo foraging habitat (see section 2.3), there will be no net loss of native vegetation in the long term. On that basis, the proposed works appear consistent with the biodiversity aims of the Scheme and Strategy.

2.3 Should the amendments have been granted, and if so, are conditions adequate?

The decision to amend the permits was justified

While we agree that contemporary surveys should have been required by DMIRS to inform its assessment, we consider that the decision to grant the amendments was justified, due to:

²¹ City of Swan, [Local Planning Strategy](#), August 2020, page 3.

²² City of Swan, [Local Planning Strategy](#), August 2020, page 12.

²³ City of Swan, [Local Planning Strategy](#), August 2020, page 10.

²⁴ City of Swan, [Local Planning Scheme No. 17](#), February 2008, page 18.

- a habitat assessment being undertaken during the appeal investigation resulting in the permit holder identifying 0.7 ha of native vegetation that is foraging habitat for Carnaby's cockatoo (*Zanda latirostris*),
- the permit holder's proposal to retain 3.6 ha of native vegetation (2.6 ha for clearing permit CPS 7140/2 and 1 ha for clearing permit CPS 7141/2),
- the sand resource is within an area identified as the highest priority for extraction of basic raw materials, and represents a strategic, long-term supply; and
- the permit holder has committed to rehabilitate the clearing areas (~117 ha) with banksia woodland, including areas of pine re-growth (as proposed in its Mine Closure Plan and supporting Environmental Management Plan).

The proposed rehabilitation program counterbalances the impact

Noting that the proposed clearing will result in the removal of 0.7 ha of native vegetation that is foraging habitat for Carnaby's cockatoo, we consider that the permit holder's proposed rehabilitation program more than adequately counterbalances the impact.

Within the 2020 Mine Closure Plan²⁵ and 2016 Environmental Management Plan²⁶, the permit holder has proposed to undertake a staged banksia woodland rehabilitation program of the clearing areas. We also note that the rehabilitation will be undertaken using restoration techniques developed and refined in conjunction with Kings Park Science.

In response to the appeal, DMIRS advised that:

As part of their Mine Closure Plan commitments, Boral Resources (WA) Ltd (the registered tenement holder of Mining Lease 70/776) has committed to restoring the Banksia woodlands after the removal of the pines. As the quarry is operated by Hanson Australia Pty Ltd (Hanson), the rehabilitation will be physically undertaken by Hanson, under contractual arrangements with Boral. DMIRS considers a post mining land use of Banksia woodlands will result in a net benefit for Black Cockatoos in the medium to long term.²⁷

Through our application of the WA offsets metric and the provision of a rehabilitation credit, the proposed rehabilitation more than adequately counterbalances the impacts to the foraging habitat. Furthermore, the permit holder provided an offset calculation demonstrating the adequacy of the proposed ~117 ha banksia woodlands rehabilitation program which more than adequately counterbalances the 0.7 ha impact to native foraging habitat.²⁸

The permit holder advised that:

Proposed staged approach to clearing and rehabilitation Hanson's approved Mining Proposal and Mine Closure Plan for mining tenement M70/776 require the sand resource to be extracted in sequential stages over a long period of time. The mining timeframe for each 10 ha - 20 ha sand mining stage could be between four to ten years depending on market demand. This methodology will ensure that the 107.81 ha of harvested plantation area within the clearing permit areas (which excludes the 'Remnant Vegetation Area' and existing Pine Plantation area) will not be cleared at one time. To the extent that this 107.81 ha provides foraging habitat for Carnaby's cockatoos now, only a relatively small portion of that habitat will be unavailable at any given time.²⁹

²⁵ Revised Mine Closure Plan (2020) Ngarangara sand excavation M70/776, prepared for Boral Resources, 20 January 2020.

²⁶ Ngarangara Quarry (M70/776) Environmental Management Plan Prepared for: Boral Resources, 24 August 2016.

²⁷ Appeal 038/21 DMIRS s106 report, 16 November 2021; Appeal 039/21 DMIRS s106 report, 15 November 2021.

²⁸ Permit holder response to the appeals, received 28 March 2023.

²⁹ Permit holder response to the appeals, received 18 October 2022.

Noting the above, we consider the impacts to native foraging habitat will be adequately counterbalanced by the permit holder's extensive banksia woodland restoration project.

We acknowledge the appellant's concern that there will be a loss of foraging resources in the immediate to short term. However, the proposed rehabilitation, which will provide forage in the medium to long term, and is consistent with the WA offsets framework.

3 Supporting information

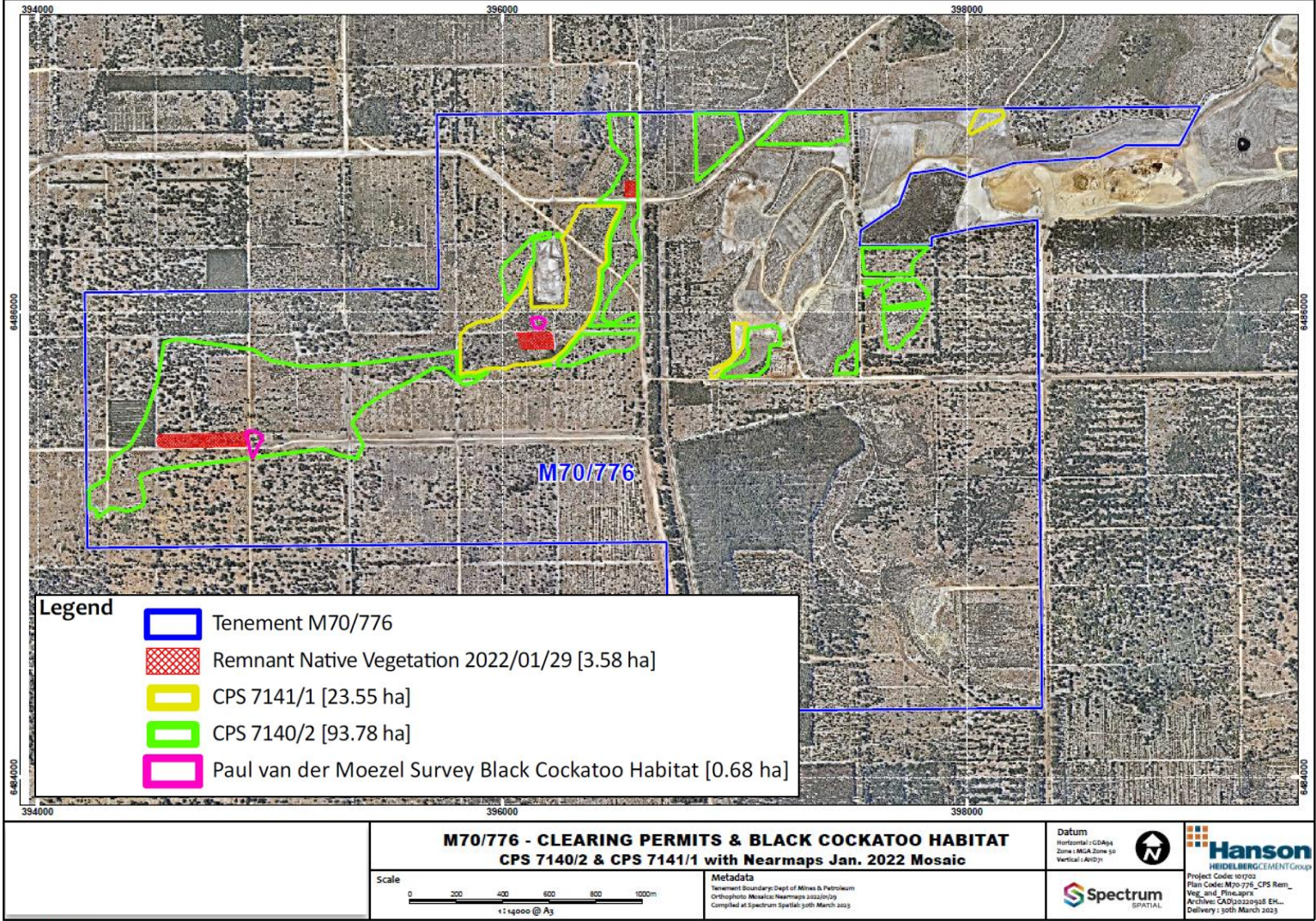


Figure 4: Black cockatoo habitat within clearing permit application areas (Supplied by permit holder 28/03/23)

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 appeals in relation to amendment of a clearing permit, the Appeals Convenor normally considers the environmental merits of the assessment by DMIRS, based on principles as set out in Schedule 5 of the EP Act, as well as other environmental factors. The appeals process considers environmental significance, additional information not considered by DMIRS, technical errors and attainment of policy objectives.

The Appeals Convenor reports to the Minister for Environment, as does the Minister for Mines

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, the investigation included:

- reviewing the appeal submissions
- reviewing documents from DMIRS
- reviewing the permit holder's response to the appeal
- meetings and correspondence with the permit holder between 1 February 2021 and 3 April 2023
- offer to meet with the appellant which was declined due to exceptionally detailed appeal submission
- reviewing other information, policy and guidance as needed.

Below lists documents considered in the appeals investigation.

Table 3 Documents reviewed in the appeals investigation

Document	Date
DMIRS decision report and permit for CPS 7140/2	23 September 2021
DMIRS decision report and permit for CPS 7141/2	23 September 2021
Appeal submission for CPS 7140/2	13 October 2021
Appeal submission for CPS 7141/2	13 October 2021
DMIRS appeal report to the Minister for Environment – CPS 7140/2	16 November 2021
DMIRS appeal report to the Minister for Environment – CPS 7141/2	15 November 2021
Permit holder response to appeals	19 November 2021