



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

Appeals Convenor's Report to the Minister for Environment

Appeal objecting to the grant of Clearing Permit CPS 9856/1,
Craigie Leisure Centre, City of Joondalup



Appellant	Mr Mitch Sideris
Permit holder	City of Joondalup
Authority	Department of Water and Environmental Regulation (DWER)
Appeal No.	041 of 2022
Date	February 2023

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Cover image: City of Joondalup (2022) *Application for new permit or referral to clear native vegetation*. Permit holder's application for an 'area' permit, 18 August 2022. Supporting information.

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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.

Contents

1	Executive summary	1
1.1	Decision under appeal	1
1.2	Grounds of appeal	2
1.3	Key findings	2
1.4	Recommendation	3
2	Reasons for recommendation	4
2.1	What are the environmental values of the vegetation proposed to be cleared?	4
2.2	What planning instruments and other matters are relevant?	7
2.3	Should the clearing permit have been granted, and if so, are the conditions appropriate?	10
2.4	Other matters	11
3	Supporting information	13
3.1	DWER's assessment of the clearing application	13
	Appendix 1 Appeal process	14

1 Executive summary

1.1 Decision under appeal

This report relates to an appeal against the decision of the Department of Water and Environmental Regulation (DWER) to grant clearing permit CPS 9856/1 to clear 0.005 hectares of native vegetation for the purpose of installing a new groundwater pipeline to provide geothermal heated water for pools at the Craigie Leisure Centre. The clearing permit applicant is the City of Joondalup.

The area approved to be cleared is located to the east of the Leisure Centre and is within an area set aside as part of a Bush Forever site (Figure 1).



Figure 1 Area authorised to be cleared under the clearing permit (cross-hatched yellow)¹

¹ Department of Water and Environmental Regulation (2022) *Clearing Permit granted under section 51E of the Environmental Protection Act 1986: Purpose Permit Number CPS 9856/1 and Decision Report*. 24 November 2022. Clearing permit, Schedule 1 Figure 1.

1.2 Grounds of appeal

The appeal is lodged by Mr Mitch Sideris (appellant) and is against the grant of the clearing permit.

In support of his view that the proposed clearing should not be approved, the appellant drew specific reference to the status of the vegetation as part of a Bush Forever site, and raised the following concerns:

- environmental values of the vegetation are high, as reflected in its status as part of Bush Forever site 303
- lack of evidence that avoidance of clearing was properly considered, including alternatives such as directional drilling
- if the proposed clearing is approved, conditions need to be added to require revegetation be in accordance with the *Craigie Bushland Management Plan*² and be overseen by the local Friends of Craigie Bushland Group.

The appellant also raised process issues related to the decision, including questioning why a flora survey conducted for the proposal is not available to the public.

1.3 Key findings

The appeal relates to whether DWER's decision to approve the proposed clearing was justified. To address the concerns raised by the appeal, we consider three questions: what environmental values are likely to be impacted by the proposed clearing; is the proposed clearing consistent with planning instruments and other relevant matters; and considering the above, should the clearing permit have been granted and if so, are the conditions appropriate to manage impacts?

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

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

A key consideration in this appeal is the status of the vegetation as being within a Bush Forever site. A central objective of Bush Forever is to protect at least 10 per cent of the original extent of each vegetation complex within the Perth portion of the Swan Coastal Plain. The *State Planning Policy 2.8: Bushland Policy for the Perth Metropolitan Region*³ (SPP 2.8) supports a strong expectation that native vegetation within Bush Forever sites should not be cleared unless there is sound justification to the contrary, and sets out offset requirements for clearing that cannot be avoided within Bush Forever sites.

We conclude that DWER had regard for the environmental values of the clearing footprint, including the fauna, flora and vegetation values, and generally assessed the impacts of the proposed clearing (including the contribution to climate change) in accordance with its *A guide to the assessment of applications to clear native vegetation*⁴ (Guide to Assessment). We consider, however, that based on the available information, the proposed clearing 'is at variance' with clearing principles (b), (d) and (h).

² City of Joondalup (2018) *Craigie Bushland Management Plan*.

³ Western Australian Planning Commission (2010) *State Planning Policy 2.8: Bushland Policy for the Perth Metropolitan Region*. Prepared under section 26 of the *Planning and Development Act 2005*. 22 June 2010.

⁴ Department of Environment Regulation (2014) *A guide to the assessment of applications to clear native vegetation under Part V Division 2 of the Environmental Protection Act 1986*. December 2014.

What planning instruments and other matters are relevant?

We conclude that DWER had regard for relevant planning instruments and other matters, including the Bush Forever status of the clearing footprint. We note the permit holder's advice that the purpose of the proposed clearing is classified as a 'public work' and is exempt from the need for development approval. We also note that, while the proposed clearing is within a Bush Forever site, SPP 2.8 makes a provision for clearing that can be reasonably justified with regard to wider social needs.

Should the clearing permit have been granted, and if so, are the conditions appropriate?

Noting DWER accepted the City's advice about alternative options, including engineering advice that underground installation was not viable, and noting the works are for a public purpose, we consider that there are sufficient grounds to approve the proposed clearing despite the high values identified. We note the permit holder's commitment to revegetate a nearby area is consistent with the offset criteria in SPP 2.8 and that a ratio of at least 2:1 is proposed. In that regard, we note that the City has committed to undertaking the restoration works in accordance with the *Craigie Bushland Management Plan* and have agreed to engage with local groups to ensure the restoration is undertaken to a high standard.

1.4 Recommendation

We recommend that the appeal be dismissed.

2 Reasons for recommendation

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

This section examines the concerns raised by the appellant that DWER failed to adequately consider the environmental values of the proposed clearing. In summary, we agree with the appellant that the values of the vegetation are higher than reflected in DWER's Decision Report, and that the proposed clearing should be regarded as being at variance to clearing principles⁵ (b), (d) and (h). We explain our reasoning below.

The proposed clearing will impact on significant habitat for fauna

We find that the native vegetation proposed to be cleared forms part of a habitat significant for two threatened cockatoo species and as such ought to have been found to be at variance to clearing principle (b).

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.

In its assessment of the application, DWER identified the vegetation proposed to be cleared as likely to contain habitat for Carnaby's cockatoo (*Calyptorhynchus latirostris*; endangered), forest red-tailed black cockatoo (*Calyptorhynchus banksii* subsp. *naso*; vulnerable) and quenda (*Isoodon fusciventer*; priority 4).

In relation to the two black cockatoo species, DWER noted that both:

... may utilise the *Allocasuarina* cones, as well as the seeds, flowers and nectar of the slender Banksia (DAWE, 2022). Taking into consideration that the City are [sic] proposing to only clear one of each of these tree species, are revegetating at a ration [sic] of 2:1 on the same property, and the fact that it is unlikely that these trees provide a critical food source, noting the adjacent conservation bushland providing them with a more suitable habitat, it is unlikely that the clearing will have a significant residual impact on black cockatoos.⁷

In relation to the quenda, DWER similarly advised that given the absence of significant understorey vegetation, the application area is not likely to contain essential habitat for the species, especially noting the available adjacent conservation bushland which is a much more suitable habitat.⁸

Overall, DWER's assessment concluded that the proposal was not at variance to clearing principle (b) on the basis that:

... the application area is unlikely to be significant for the survival of indigenous fauna or be necessary for the maintenance of significant habitat.⁹

In response to the appeal, DWER revised its position in relation to clearing principle (b), but remained of the view the impacts are not significant:

On review, the Department considers that the clearing should have been assessed as being 'at variance' with clearing principle (b) due to the presence of habitat for conservation significant fauna. It should be noted that notwithstanding this 'at variance' finding, the Department remains of the view that the proposed clearing does not represent a significant impact for black cockatoos.¹⁰

⁵ 'Clearing principles' means the principles set out in Schedule 5 of the EP Act.

⁷ Department of Water and Environmental Regulation (2022), Decision Report, page 7.

⁸ Ibid.

⁹ Ibid, page 8.

¹⁰ Department of Water and Environmental Regulation response to Appeal 041/22 (17/01/23), page 3.

The Guide to Assessment sets out DWER's approach to assessing applications to clear native vegetation under the *Environmental Protection Act 1986* (EP Act). In relation to clearing principle (b), the Guide states that 'clearing of native vegetation that is habitat for specially protected or threatened fauna' is 'likely to be at variance with this principle'.¹² Given both black cockatoo species relevant to this appeal are listed as threatened, the Guide to Assessment supports a finding that the proposed clearing at variance with principle (b).

In addition, the *Carnaby's Cockatoo (Calyptorhynchus latirostris) Recovery Plan*¹³ states:

Habitat critical to survival of Carnaby's cockatoo reflects the distinct, but equally important, behavioural components during the breeding and non-breeding seasons. The long-term survival of a robust population of Carnaby's cockatoos depends on the availability of suitable woodland breeding habitat and tree hollows, **and foraging habitat** capable of providing enough food to sustain the population.¹⁴ [emphasis added]

For the forest red-tailed black cockatoo, the relevant Recovery Plan¹⁵ provides that 'habitat critical to survival [includes] areas of natural vegetation in which the cockatoos nest, feed and roost'.

Based on the above, and having regard to the precautionary principle, the proposed clearing is considered to be at variance to clearing principle (b) as the application area includes vegetation that includes critical habitat for two species of threatened fauna (that is, the vegetation forms 'part of ... a habitat significant for fauna').

In relation to the quenda, as the species is not listed as threatened and there is no current recovery plan that suggests any remaining habitat for the species is 'critical', we do not find that vegetation proposed to be cleared is part of a significant habitat for the species.

The proposed clearing will impact on two threatened ecological communities

We find that the native vegetation proposed to be cleared likely forms part of two threatened ecological communities (TECs) and as such ought to have been found to be at variance to clearing principle (d).

Clearing principle (d) 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 TEC.

A TEC is defined in clause 2 of Schedule 5 of the EP Act as including those defined in the *Biodiversity Conservation Act 2016* or listed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

DWER identified that the clearing footprint is within mapped (overlapping) occurrences of the following conservation significant ecological communities:

- 'Tuart (*Eucalyptus gomphocephala*) woodlands and forests of the Swan Coastal Plain' (Tuart Woodlands), listed as a 'Priority 3(iii)' priority ecological community (PEC) by the Department of Biodiversity, Conservations and Attractions (DBCA), and as a component of the critically endangered TEC of the same name under the Commonwealth EPBC Act
- 'Banksia Dominated Woodlands of the Swan Coastal Plain IBRA Region' (Banksia Woodlands), listed as a 'Priority 3(i)' PEC by DBCA, and as a component of the

¹² Ibid, page 11.

¹³ Department of Parks and Wildlife (2013) *Carnaby's Cockatoo (Calyptorhynchus latirostris) Recovery Plan*. Wildlife Management Program No.52. Department of Parks and Wildlife, Perth, Western Australia.

¹⁴ Ibid, page 12.

¹⁵ Department of Conservation and Land Management (2008) *Forest Black Cockatoo (Baudin's Cockatoo Calyptorhynchus baudinii and Forest Red-tailed Black Cockatoo Calyptorhynchus banksii naso) Recovery Plan*.

endangered 'Banksia Woodlands of the Swan Coastal Plain ecological community' TEC under the EPBC Act.

The Tuart Woodlands TEC has undergone a decline of about 85 per cent in its extent since European settlement,¹⁷ while the Banksia Woodlands TEC has undergone a decline of about 60 per cent.¹⁸ The primary threats to both include clearing and fragmentation.¹⁹

In its assessment of the proposal, DWER concluded that because the:

... proposed clearing occurs on the edge of large patches of Tuart Woodlands TEC and Banksia Woodlands TEC [the] removal of 0.005 hectares will not significantly reduce the occurrence of the abovementioned TECs, nor result in a significant residual impact.²⁰

The Guide to Assessment provides examples of clearing likely to be at variance to this principle, which includes 'clearing of native vegetation in which threatened ecological communities are present'.²¹ Based on this example, as the proposed clearing here is of vegetation that is mapped as two separate TECs, the proposed clearing ought to have been found to be at variance to clearing principle (d).

The proposed clearing will impact on the values of a conservation area

We find that because the land is protected as a Bush Forever site and is reserved for parks and recreation, the proposed clearing will impact on the values of a conservation reserve and as such, ought to have been found to be at variance to clearing principle (h).

Clearing principle (h) provides that native vegetation should not be cleared if the clearing is likely to have an impact on the environmental values of any adjacent or nearby conservation area.

'Conservation area' is defined in the EP Act as:

... a conservation park, national park, nature reserve, marine nature reserve, marine park or marine management area within the meaning of the *Conservation and Land Management Act 1984* or any other land or waters reserved, protected or managed for the purpose of, or purposes including, nature conservation.²²

The land in this case land is zoned as 'parks and recreation' under the Metropolitan Region Scheme (MRS) and *City of Joondalup Local Planning Scheme No. 3*²³. In addition, the land is identified in the MRS as a Bush Forever site. The planning context and the implications of the Bush Forever status of the land is considered further below.

The Guide to Assessment does not contain specific examples of when clearing might be at variance to clearing principle (h), but it cites Bush Forever as a source of information relevant to the principle. The Guide also focuses on the linkage value of the vegetation the subject of the application.²⁴

DWER did not find the proposed clearing to be at variance with clearing principle (h) on the following grounds:

¹⁷ Department of the Environment and Energy (2019) *Tuart Woodlands and Forests of the Swan Coastal Plain: A Nationally Significant Ecological Community*. Department of the Environment and Energy, Canberra.

¹⁸ Department of the Environment and Energy (2016) *Banksia Woodlands of the Swan Coastal Plain: a nationally protected ecological community*. Commonwealth of Australia, Canberra.

¹⁹ Department of the Environment and Energy (2016), (2019).

²⁰ Department of Water and Environmental Regulation (2022), Decision Report, page 6.

²¹ Department of Environment Regulation (2014), page 16.

²² *Environmental Protection Act 1986*, Schedule 5 clause 2.

²³ Department of Planning, Lands and Heritage (2022) *City of Joondalup Local Planning Scheme No. 3*. 26 July 2022 (as amended).

²⁴ Department of Environment Regulation (2014), pages 30-31.

- the extent of the proposed clearing, and the composition and condition of the vegetation proposed to be cleared
- unlikely the proposed clearing will sever connectivity within the bushland corridor
- revegetation of a nearby area at a ratio of 2:1
- introduction and spread of weeds and dieback into adjacent vegetation can be managed.

As the vegetation proposed to be cleared is identified as part of an area of land that is 'protected or managed for ... purposes including, nature conservation', and the proposed clearing will permanently remove vegetation at the location of the proposed clearing, we consider it to be at variance to clearing principle (h).

2.2 What planning instruments and other matters are relevant?

Development approvals, planning instruments and other matters

Section 51O of the EP Act sets out the principles and instruments that DWER shall have regard to when making decisions about clearing applications, which include: the clearing principles so far as they are relevant to the matter under consideration; and any development approval, planning instrument, or other matter, that the CEO considers relevant.

The Guide to Assessment sets out how planning instruments and other matters should be considered:

When assessing planning instruments, relevant local and regional level planning strategies, by-laws and policies should be considered as part of the recommendations to the CEO. Examples of these include local biodiversity guidelines and related local biodiversity plans prepared by local government, or regional planning strategies dealing with public infrastructure ...

'Other matters' are not defined in the EP Act, and consequently are any matters the CEO considers relevant. Other matters are generally environmental issues not directly within the scope of the clearing principles, but within the object and principles of the Act.²⁵

Note that the Guide to Assessment was published in 2014, it does not include reference to 'development approval' which was added to section 51O(4) in 2022. This phrase is defined in the EP Act to mean an approval given under a planning scheme or scheme Act.

Public works exempt from planning approval; but must have regard to intent etc of planning scheme

In this case the proposed clearing is for the purpose of a pipeline to provide heated water for a public recreational facility. As noted earlier, the land on which the clearing is proposed is reserved as 'parks and recreation' under the MRS and local scheme.²⁶

In relation to the use or development of reserved lands, clause 16(1) and (1a) in the MRS states:

- (1) Reserved land owned by or vested in a public authority may be used without the written approval of the Commission referred to in Clause 13 if the land is used:
 - (a) for the purpose for which it is reserved under the Scheme;
 - (b) for any purpose for which it was lawfully used before the coming into force of the Scheme; or
 - (c) for any purpose for which the land may be lawfully used by the public authority.

²⁵ Ibid, page 39.

²⁶ Available from: <https://www.wa.gov.au/organisation/department-of-planning-lands-and-heritage/metropolitan-region-scheme>

- (1a) Development on reserved land owned by or vested in a public authority may be commenced or carried out without the written approval of the Commission if the development is –
- (a) permitted development that does not involve the clearing of regionally significant bushland in a Bush Forever area; or
 - (b) expressly authorized under an Act to be commenced or carried out without the approval of the Commission.

The City advised that the geothermal bore project is classified as a ‘public work’ (rather than a ‘development’), and as such is exempt from the need for development approval under the MRS.²⁷

From the above, we accept the City’s advice that the proposed clearing is for public works, and as such, are exempt from the requirement to obtain development approval.²⁸ However, while the City has advised that development approval is not required, it must nonetheless have regard to:

- the purpose and intent of any planning scheme that has effect in the locality where, and at the time when, the public works are undertaken
- the orderly and proper planning, and preservation of amenity, of the locality at that time.²⁹

Proposed clearing is within a Bush Forever site

As noted earlier, the application area is entirely within a site identified as being regionally significant bushland under the Bush Forever policy. Bush Forever seeks to protect at least 10 per cent of the original extent of each vegetation complex within the MRS portion of the Swan Coastal Plain.^{31,32}

Section 5.5 of *State Planning Policy 2.0: Environment and Natural Resources Policy*³³ (SPP 2.0) states that planning strategies, schemes and decision-making should consider mechanisms to protect areas of high biodiversity and/or conservation value, including regionally significant vegetation as identified in Bush Forever.

SPP 2.8 is a supplementary policy to SPP 2.0, and aims to provide an implementation framework to ensure bushland protection and management issues in the MRS area are appropriately addressed and integrated with broader land use planning and decision-making.

The three key objectives of SPP 2.8 are to:

- establish a conservation system at the regional level that is, as far as is achievable, comprehensive, adequate and representative of the ecological communities of the Swan Coastal Plain portion of the MRS
- seek to protect and manage significant bushland through a range of implementation mechanisms
- provide a policy and implementation framework for significant bushland areas to assist conservation planning, planning assessment and decision-making processes.³⁵

²⁷ City of Joondalup response to Appeal 041/22 (09/01/23), page 1.

²⁸ *Planning and Development Act 2005*, section 6(1).

²⁹ *Ibid*, section 6(2).

³¹ Government of Western Australia (2000) *Bush Forever Report: Volume 1 Policies, Principles and Processes / Volume 2 Directory of Bush Forever Sites*. Department of Environmental Protection, December 2000.

³² Western Australian Planning Commission (2010) *State Planning Policy 2.8: Bushland Policy for the Perth Metropolitan Region*. Prepared under section 26 of the *Planning and Development Act 2005*. 22 June 2010.

³³ Western Australian Planning Commission (2003) *State Planning Policy 2.0: Environment and Natural Resources Policy*. Prepared under section 5AA of the *Town Planning and Development Act 1928*. 10 June 2003.

³⁵ Adapted from: Western Australian Planning Commission (2010).

Presumption against clearing Bush Forever but exceptions identified

SPP 2.8 provides that for Bush Forever sites, decision-making should (among other things):

- (i) Support a general presumption against the clearing of regionally significant bushland, or other degrading activities, except where a proposal or decision –
 - (a) is consistent with existing approved uses or existing planning/environmental commitments or approvals; or
 - ...
 - (e) is consistent with the overall purpose and intent of an existing Crown reserve or can be reasonably justified with regard to wider environmental, social, economic or recreational needs, and all reasonable alternatives have been considered in order to avoid or minimise any direct loss of regionally significant bushland, and reasonable offset strategies are secured to offset any loss of regionally significant bushland, where appropriate and practical.

The exception set out in (e) above contemplates that clearing may occur where it is consistent with the intent of the reserve, has wider benefits, all reasonable alternatives have been considered and offsets have been applied.

In this case, the land is reserved for parks and recreation, and the proposal is to provide heated water for public swimming facilities. As such, the proposal is considered to be broadly consistent with the intent of the reserve and (being a public facility) provides broad benefits in terms of use of pool facilities at the Leisure Centre.

Alternatives were considered by DWER

The appellant submitted that the proposed clearing could be avoided by a different alignment or placing the pipes underground using horizontal drilling techniques.

DWER advised that it was guided by the information provided by the City during the assessment process. DWER advised that it assesses all applications it receives on a case-by-case basis, and considers that the permit holder and the subject matter experts for the design of this proposal employed its Guide to Assessment to determine the technical options, solutions and engineering standards of the pipeline.³⁶

On underground drilling specifically, the Decision Report includes advice of the City's consultant (Melchor) that this option was not practical:

... as it has several technical issues and risks [including that] the soil we would be tunnelling into could consist of different soil types and densities that could affect the feasibility of carrying out [horizontal direct drilling]. If we struck gravel the process would have to be aborted and further construction measures would have to be put in place and therefore significant unanticipated costs could arise.³⁷

Melchor concluded that the use of direct drilling is not recommended based on their prior experiences.

For its part, the City advised that it:

... minimised clearing of vegetation with careful and considered selection of the location and alignment of the pipeline. Melchor assessed two pipeline alignment options initially, selecting the route which required less native vegetation (0.0052ha) to be removed. The expected cost of installation for the selected pipeline alignment option is approximately \$35,000.

... An above ground pipeline was not deemed to be feasible as clearing of native vegetation would still be required and the pipeline would be subject to greater threats of vandalism, safety issues, damage risks and installation costs from \$75,000 to \$100,000 ...

³⁶ Department of Water and Environmental Regulation response to Appeal 041/22 (17/01/23), page 2.

³⁷ Melchor, Memo to City of Joondalup, 7 September 2022.

An underground pipeline installed by Horizontal Directional Drilling was not deemed to be practical due to the risks from striking subsurface materials, damage risks and environmental risks such as Frac-out and collapse of trench ... The cost of installing the geothermal pipeline through a Horizontal Directional Drilling methodology is expected to range between \$50,000 to \$100,000...³⁸

Noting the above and the intent of SPP 2.8 we consider it was open to DWER to find the proposed clearing to be unavoidable. However, although potentially more costly, we also accept that horizontal direct drilling is a proven technology and is applied in similar settings to the proposal in this case.

2.3 Should the clearing permit have been granted, and if so, are the conditions appropriate?

Despite values, decision to grant permit justified

We conclude that, on the available information, DWER's decision to grant the clearing permit was justified based on:

- the works are for a public benefit and are consistent with the reservation status
- the clearing footprint being relatively small, and the native vegetation proposed to be cleared being in lesser condition than nearby vegetation
- alternatives to the proposed clearing were considered by DWER.

Offset essential if clearing approved

Consistent with SPP 2.8, an offset is required to counterbalance the impacts. In its Decision Report, DWER concluded that a formal 'offset' was not required as a condition of the clearing permit partly on the basis of the 'City's proposed 2:1 revegetation of an unused portion of the property (resulting in no net impact to the Bush Forever area once established)'.³⁹

While not characterised as an offset in the clearing permit, the clearing permit includes a requirement for the City to revegetate the area proposed as an offset under Bush Forever.

Revegetation offset to counterbalance impacts to Bush Forever

We also broadly support the appellant's suggestion that site revegetation should be in accordance with the *Craigie Bushland Management Plan*⁴⁰ and be overseen by the local Friends of Craigie Bushland Group.

In response to this issue, DWER advised:

The Department agrees with the Appellant that the Permit Holder could use input from the Craigie Bush Management Plan and the local Friends of Craigie Bushland Group for revegetation and the selection of locally sourced seeds. However, the Department remains of the view that the definition of local provenance is sufficient and appropriate to ensure that the seeds used for revegetation are locally sourced and suitable for the soil type of the clearing area.

Given the inclusion of management conditions and a definition of rehabilitation, revegetation and local provenance, the Department considers that the Permit ensures an appropriate revegetation outcome.⁴¹

³⁸ City of Joondalup response to Appeal 041/22 (09/01/23), pages 2-3 and Attachment 1 pages 4-8.

³⁹ Department of Water and Environmental Regulation (2022), Decision Report, page 9.

⁴⁰ City of Joondalup (2018) *Craigie Bushland Management Plan*.

⁴¹ Department of Water and Environmental Regulation response to Appeal 041/22 (17/01/23), page 4.

The City similarly advised that it would use local provenance species for the revegetation area consistent with the *Craigie Bushland Management Plan*. The City further advised that the Friends of Craigie Bushland will be invited to participate in revegetation works.

We note that the *Craigie Bushland Management Plan* sets out an approach to revegetation, including the use of local provenance propagation material and undertaking weed control to improve the condition of degraded and completely degraded areas.

Condition 8 on the clearing permit sets out that the City must revegetate a 0.01 ha area about 230 metres north-west of, and within the same Bush Forever site as, the clearing footprint. Consistent with the *Craigie Bushland Management Plan*, the approach to this revegetation must use local provenance propagation material, establish and maintain planting to an average density of four stems per square metre, include species resistant to wind erosion, and undertake weed control as necessary to ensure success of the revegetation.

2.4 Other matters

Changes to original proposal raised

The appellant questioned DWER's assessment process in the context of approving a proposal that was very different from the original application. The appellant suggested that the original application ought to have been rejected rather than modified and approved.

In response to this issue, DWER advised that the:

... assessment of application CPS 9856/1 was processed in accordance with sections 51E and 51O of the EP Act. This included assessing the clearing proposal against the clearing principles set out in Schedule 5 of the EP Act, and using available datasets and available information. Where information was insufficient, the Department requested additional information from the Permit Holder. Additional information obtained during the assessment process has been included and discussed throughout the CPS 9856/1 Decision Report ...

After the original Application was received by the Permit Holder on 18 August 2022, the Application was validated by the Department's validations process. The Department determined that the Application complied with the requirements of the EP Act, including that it contained relevant documents and sufficient information to advertise for public comment (advertised on 28 September 2022) and to assess the potential impacts. There was no legal reason for the Department to reject the Application.⁴²

The above issue is considered to be a process issue for DWER rather than relevant to an appeal against the grant of a permit.

Failure to publish flora and vegetation survey

The appellant also raised concern that the City requested (and DWER agreed) that the *Craigie Bushland Flora Survey and Vegetation Condition Assessment* should be regarded as confidential and not released to the public.

On this issue, DWER advised that it:

... acknowledges the Appellant's concerns that the *Craigie Bushland Flora Survey and Vegetation Condition Assessment* ... was not made publicly available. Under Part 3 regulation 11 of the Clearing Regulations, there are provisions to enable applicants to request in writing to the CEO that information provided to the Department not be published if it contains confidential material and/or otherwise sensitive information of a kind listed under regulation 13 of the Clearing Regulations ... In the initial Application ... a request was

⁴² Department of Water and Environmental Regulation response to Appeal 041/22 (17/01/23), page 5.

submitted to keep confidential the *Craigie Bushland Flora Survey and Vegetation Condition Assessment* on the grounds of protecting the locations of threatened and conservation significant communities and species that were provided within. As a result, the Department used the information within the report in the assessment of the Application, however, it did not make the document publicly available. All of the relevant information contained within the survey was included in the Decision Report for CPS 9856/1.⁴³

The City advised:

The City's Clearing Permit application included a copy of the 'Craigie Bushland Flora Survey and Vegetation Condition Assessment'. The only redacted sections in the Report were regarding the locations of priority flora to protect these species from risks of being identified and removed from the bushland.⁴⁴

While this is a process issue and not considered to be relevant to the decision on appeal, we recommend DWER gives consideration to publishing the redacted report, if in doing so does not reveal the location of sensitive sites.

⁴³ibid, page 6.

⁴⁴ City of Joondalup response to Appeal 041/22 (09/01/23), page 9.

3 Supporting information

3.1 DWER's assessment of the clearing application

In August 2022, the permit holder applied to DWER for an 'area' permit under section 51E of the EP Act to clear 0.005 ha of native vegetation on Lot 14054 on Deposited Plan 220953, Craigie, for the purpose of installing a new underground groundwater pipeline to provide geothermal heated water for waterbodies at Craigie Leisure Centre.

On 28 September 2022, DWER advertised the application for a 21-day public comment period and one submission was received. The submission was from the appellant and raised similar concerns to those raised in the appeal.

DWER assessed the amendment application against the 10 clearing principles set out in Schedule 5 of the EP Act. DWER's assessment found the proposed clearing 'may be at variance' with clearing principles (a), (b), (d), (e) and (h), and 'is not likely to be at variance' or 'is not at variance' with the remaining clearing principles. DWER also considered the site characteristics, relevant datasets, information provided by the City of Joondalup, and other matters considered relevant to the assessment.

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

- the loss of native vegetation that:
 - comprises suitable habitat for black cockatoos and quenda
 - is wholly located within a conservation area (Bush Forever Site 303)
 - is within mapped (overlapping) occurrences of two Commonwealth-listed TECs
- potential impacts on the quality and habitat values of adjacent vegetation through the introduction and spread of weeds and dieback.⁴⁵

After consideration of the application and the avoidance and mitigation measures proposed by the permit holder, DWER determined that the potential impacts of the proposed clearing can be minimised and managed to be unlikely to lead to any long-term adverse impacts on the environment.

Clearing permit CPS 9856/1 was granted on 24 November 2022, authorising the clearing of up to 0.005 ha of native vegetation on Lot 14054 for the purpose of installing a new underground groundwater pipeline, subject to conditions. These requirements include a requirement to cease clearing on 18 December 2024, avoiding and minimising extent and impacts of clearing, weed and dieback management, revegetation to mitigate impacts on Bush Forever site 303, directional clearing for the benefit of fauna, keeping records of clearing and revegetation activities, and providing these records to DWER on request.

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

⁴⁵ Department of Water and Environmental Regulation (2022), Decision Report, page 2.

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, legal and policy aspects of the decision and decide whether it was correct and preferable.

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

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

While process issues can be raised in an appeal, the focus of investigations will be on the substantive environmental matters relevant to the clearing permit.

We report to the Minister, as does the decision-making authority

To decide an appeal's outcome, the Minister for Environment must have a report from both:

- the Appeals Convenor (see section 109(3) of the 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 report and response to the appeal
- consultation with the appellant and the permit holder
- reviewing other information, policy and guidance as needed (Table 1).

Table 1 Documents we reviewed in the appeals investigation

Document	Date
Department of Water and Environmental Regulation response to Appeal 041/22	17 January 2023
City of Joondalup response to Appeal 041/22	9 January 2023
Department of Water and Environmental Regulation (2022) <i>Clearing Permit granted under section 51E of the Environmental Protection Act 1986: Purpose Permit Number CPS 9856/1 and Decision Report</i> . Available from: https://ftp.dwer.wa.gov.au/permit/9856/	24 November 2022
City of Joondalup (2022) <i>Application for new permit or referral to clear native vegetation</i> . Permit holder's application for an 'area' permit. Available from: https://ftp.dwer.wa.gov.au/permit/9856/	18 August 2022
Department of Planning, Lands and Heritage (2022) <i>City of Joondalup Local Planning Scheme No. 3</i> . (as amended). Available from: https://www.wa.gov.au/government/document-collections/city-of-joondalup-planning-information	26 July 2022
Department of the Environment and Energy (2019) <i>Tuart Woodlands and Forests of the Swan Coastal Plain: A Nationally Significant Ecological Community</i> . Department of the Environment and Energy, Canberra. Available from: https://www.awe.gov.au/environment/biodiversity/threatened/publications/tuart-woodlands-forests-swan-coastal-plain-guide	2019

Document	Date
City of Joondalup (2018) <i>Craigie Bushland Management Plan</i> . Available from: https://www.joondalup.wa.gov.au/craigie-bush-management-plan	2018
Department of the Environment and Energy (2016) <i>Banksia Woodlands of the Swan Coastal Plain: a nationally protected ecological community</i> . Commonwealth of Australia, Canberra. Available from: https://www.awe.gov.au/environment/biodiversity/threatened/publications/banksia-woodlands-swan-coastal-plain-guide	2016
Department of Environment Regulation (2014) <i>A guide to the assessment of applications to clear native vegetation under Part V Division 2 of the Environmental Protection Act 1986</i> . Available from: https://www.der.wa.gov.au/our-work/clearing-permits/48-guidelines-clearing-permits	December 2014
Department of Parks and Wildlife (2013) <i>Carnaby's Cockatoo (Calyptorhynchus latirostris) Recovery Plan</i> . Wildlife Management Program No.52. Department of Parks and Wildlife, Perth, Western Australia. Available from: https://www.awe.gov.au/environment/biodiversity/threatened/recovery-plans/calyptorhynchus-latirostris-recovery-plan	2013
Western Australian Planning Commission (2010) <i>State Planning Policy 2.8: Bushland Policy for the Perth Metropolitan Region</i> . Prepared under section 26 of the <i>Planning and Development Act 2005</i> . 22 June 2010. Available from: https://www.wa.gov.au/government/publications/state-planning-policy-28-bushland-policy-the-perth-metropolitan-region	22 June 2010
Department of Conservation and Land Management (2008) <i>Forest Black Cockatoo (Baudin's Cockatoo Calyptorhynchus baudinii and Forest Red-tailed Black Cockatoo Calyptorhynchus banksii naso) Recovery Plan</i> . Available from: https://www.dcceew.gov.au/environment/biodiversity/threatened/recovery-plans/forest-black-cockatoo-and-forest-red-tailed-black-cockatoo-2008	2008
Western Australian Planning Commission (2003) <i>State Planning Policy 2.0: Environment and Natural Resources Policy</i> . Prepared under section 5AA of the <i>Town Planning and Development Act 1928</i> . 10 June 2003. Available from: https://www.wa.gov.au/government/publications/state-planning-policy-20-environment-and-natural-resources-policy	10 June 2003
Government of Western Australia (2000) <i>Bush Forever Report: Volume 1 Policies, Principles and Processes / Volume 2 Directory of Bush Forever Sites</i> . Department of Environmental Protection, December 2000. Available from: https://www.wa.gov.au/organisation/department-of-planning-lands-and-heritage/metropolitan-region-scheme	December 2000