

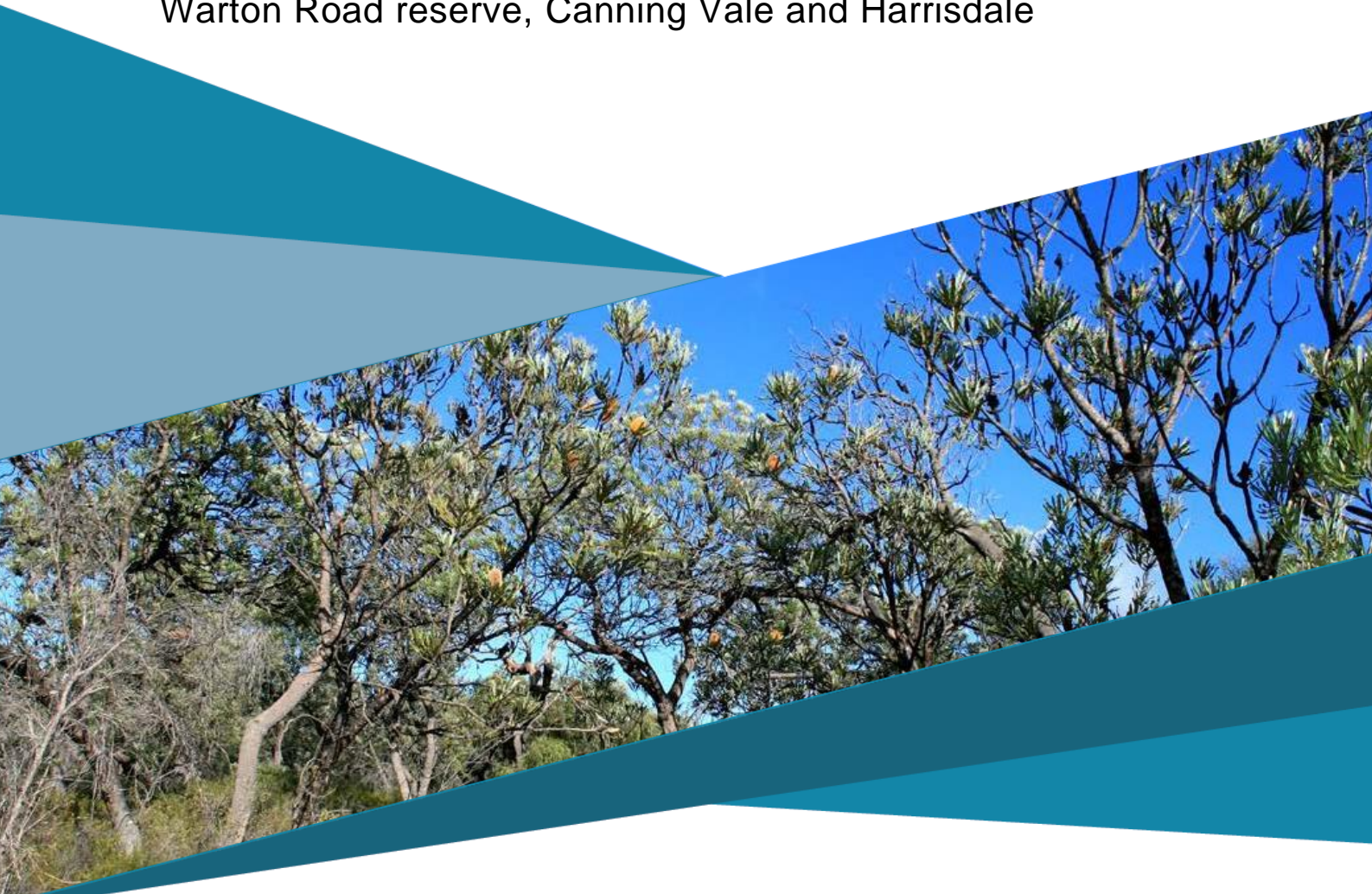


Government of **Western Australia**  
Office of the **Appeals Convenor**  
Environmental Protection Act 1986

# Appeals Convenor's Report to the Minister for Environment

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Appeal objecting to Grant of Clearing Permit CPS 9257/1  
Warton Road reserve, Canning Vale and Harrisdale



<b>Appellant</b>	Urban Bushland Council WA Inc
<b>Permit holder</b>	City of Gosnells
<b>Authority</b>	Department of Water and Environmental Regulation (DWER)
<b>Appeal No.</b>	047 of 2021
<b>Date</b>	April 2022

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Cover image: [Banksia Woodlands of the Swan Coastal Plain: a nationally protected ecological community](#) (DotEE 2016)

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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

The City of Gosnells (the permit holder) holds a permit to clear 0.69 hectares (ha) of native vegetation within the Warton Road reserve, Canning Vale and Harrisdale, for the purposes for road construction and upgrade (Figure 1).

DWER granted the permit (CPS 9257/1) under section 51E (5) of the *Environmental Protection Act 1986* (EP Act) on 15 October 2021.



**Figure 1** Clearing of native vegetation authorised by CPS 9257/1 (yellow) <sup>1</sup>

<sup>1</sup> DWER, Clearing Permit CPS 9257/1, 15 October 2021

## 1.2 Grounds of appeal and appellant concerns

On 29 October 2021, the Urban Bushland Council WA Inc (the appellant) lodged an appeal against the grant of this clearing permit.

In summary, the appellant opposes the clearing based on the environmental values present in the application area and the likely impact on neighbouring bushland. The appellant contends that clearing of vegetation at this location is unacceptable. The concerns as raised in the appeal are set out in Table 1 below.

**Table 1** Grounds of appeal

Ground	Main concerns the appellant submitted
Extent of clearing	The width of the clearing (15 metres) is excessive. The actual area cleared will be greater than authorised by CPS 9257/1.
Environmental values	The clearing will impact mature significant trees and Priority Ecological Communities, which provide habitat for fauna. The proposed clearing will contribute to habitat loss for Carnaby's cockatoo. The proposed clearing is at variance to clearing principles related to endangered species. The vegetation in the application area represents Southern River Complex, which is already over-cleared.
Suitability of clearing Bush Forever	Bush Forever policy includes a presumption against clearing. Clearing of native vegetation within a Bush Forever area is unacceptable. Bush Forever is supposed to conserve and protect vegetation, without incursion from clearing.

The appellant also raised concerns about firebreaks and street lighting, which are outside of the scope of the appeal. These have been briefly addressed in section 2.3 as 'Other matters'.

## 1.3 Key issues and conclusions

The question for the Minister on appeal is whether, based on the concerns raised by the appellant, this permit should be granted.

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 EP Act, including the clearing principles, planning instruments, and other relevant matters. Also relevant is the extent to which – if the clearing is approved – conditions can be applied to the permit to ensure potential environmental effects are avoided, minimised or offset.

These issues are summarised below. Section 2 provides our further details about our reasons and supporting information is provided in Section 3.

### The proposed clearing at variance with clearing principles

The proposed clearing of 0.69 ha of native vegetation will result in removal of foraging habitat for black cockatoo species - *Calyptorhynchus latirostris* (Carnaby's cockatoo) - listed as endangered. Given clearing of foraging habitat is an identified major threat to the species, we find that the clearing is inconsistent with clearing principle (b) which provides that native vegetation should not be cleared if it forms part of a habitat significant for fauna.

The proposal will also involve the clearing of the Commonwealth-listed Threatened Ecological Community '*Banksia woodlands of the Swan Coastal Plain*' listed as endangered. 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 threatened ecological community. While we accept that prior to October 2021 this related to State-listed TEC only, in October 2021 the EP Act was amended to apply this principle to Commonwealth-listed TEC as well. We therefore find that the clearing is inconsistent with clearing principle (d).

Having arrived at this conclusion, the question is whether the clearing should be authorised having regard to relevant planning instruments and other matters, and if the clearing is authorised, whether the residual impacts of the clearing can be managed via conditions.

### **The clearing is consistent with relevant planning instruments**

The proposed clearing is located entirely within the gazetted Warton Road reserve. The clearing is for the purpose of road widening and road duplication, to improve the safety of road users, cyclists and pedestrians and accommodate the modelled increase in vehicle traffic. This outcome is consistent with the purpose of the Warton Road reserve.

While the clearing is entirely within the road reserve, a small portion - approximately 0.05 ha - also falls within the boundaries of Bush Forever area 253. The remainder of the clearing is immediately adjacent to Bush Forever area 253.

State Planning Policy 2.8 *Bushland policy for the Perth Metropolitan Region* (SPP 2.8) therefore applies to this portion of the proposed clearing. SPP 2.8 includes a general presumption against the clearing of Bush Forever areas unless there is an improved environmental outcome.

Under SPP 2.8, the general presumption against clearing can be set aside for several other reasons, including that the clearing is reasonably justified with regard to wider social needs. Having established the purpose of the clearing above, the planning context of the application area supports the decision to grant the permit.

### **Additional conditions requiring an offset are not required in this instance**

The WA Environmental Offsets Guidelines (2014) says that where clearing is at variance to the biodiversity-related clearing principles, offsets to counterbalance the impacts of the clearing should be considered after all other measures to avoid and reduce impacts.

In addition, as noted above, a portion of the proposal is within Bush Forever area 253. The provision setting aside the presumption against clearing also includes the requirement that impacts are offset where reasonable and practical.

In discussions with representatives of the permit holder, we understand it is undertaking several environmental restoration activities within its local government area (LGA) to increase habitat availability for native species, including the endangered cockatoo species impacted by this proposal. The permit holder advised that it is undertaking revegetation and planting within a nearby Bush Forever area, including the recent planting of approximately 130 advanced trees suitable for breeding, foraging and roosting of Carnaby's cockatoos. Specific to this proposal, the permit holder has also committed to the installation of an artificial hollow and is required by the permit to implement a 5-year program of maintenance and management of the 20 m buffer within Bush Forever area 253. These measures are acknowledged and supported.

Based on the information available on appeal, we consider that the decision to grant the permit in this case was justified based on the size of the clearing, the planning context and the public benefit of the proposal.

While we have found that the clearing is at variance to clearing principles (b) due to the removal of foraging habitat for threatened species and (d) due to the clearing of a TEC; and that a small portion of the clearing is within a Bush Forever area, we do not consider an offset is required in this instance. We reached this conclusion in the context of the permit holder's published commitments to increase foraging habitat across its LGA and its undertaking to revegetate Bush Forever areas.

#### **1.4 Recommendation to the Minister**

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We conclude that the decision to grant the permit was justified and recommend that the appeal be dismissed.



## 2 Reasons for recommendation

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It is DWER's role to assess the proposed clearing including the identification of environmental values and the potential significance of impacts from clearing, and its consistency with relevant planning instruments and any other relevant matters.

In this case, we agree with the appellant that Jandakot Regional Park, and Bush Forever Area 253 specifically, has high conservation values, and protection of these values is important. We also agree that the application area contains environmental values, and that the clearing is inconsistent with the protection of Threatened Ecological Communities and fauna habitat, as set out in clearing principles (b) and (d).

Despite the values identified, we find that the proposed clearing is consistent with relevant planning instruments.

The application area is entirely within the Warton Road reserve, and therefore the construction of a duplicated road lane is consistent with this reserve.

We agree with the appellant that *State Planning Policy 2.8 Bushland policy for the Perth Metropolitan Region* (SPP 2.8) is a relevant consideration due to the clearing being partially within the boundaries of a Bush Forever site, and that SPP 2.8 includes a presumption against clearing. However, this general presumption can be put aside for broader social benefits and given the purpose of the works is to improve road safety, we consider that the grant of the permit is not inconsistent with SPP 2.8.

Both the finding that the proposal may be at variance to one or more clearing principles, and the clearing location within the boundaries of a Bush Forever area, indicate that an offset could be contemplated.

In this regard, we note DWER's advice that in its view, the clearing is not likely to have a significant residual impact on the Bush Forever area, and therefore an offset is not required in this instance. In our consideration, we note the committed and ongoing works undertaken by the permit holder to increase and protect fauna habitat in the local government area, and the measures required by the permit that will mitigate the impacts of the clearing and allow for an improved environmental outcome by reducing edge effects on the new boundary.

Based on the above, we consider that DWER's decision to grant the clearing permit is justified, and no further conditions are required on the permit. Further explanation of the reasons for our conclusion is below.

### 2.1 The application area comprises of environmental values

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The appellant submitted that there are significant environmental values in the application area and surrounding bushland, and the proposed clearing presents a risk to Carnaby's cockatoo, Priority Ecological Communities (PEC) and a conservation area. The appellant contends that DWER did not adequately consider the values in its decision, specifically the existence of a Commonwealth-listed Threatened Ecological Community (TEC) and Southern River Complex. The appellant also claimed that the clearing will impact these values, and those of the adjacent vegetation.

Based on our investigation, we agree that the application area contains significant environmental values, and the proposed clearing is likely to impact these values.



The appellant also raised concerns regarding the extent of the clearing, which we will address first, followed by an examination of the values present and potential impacts of the clearing.

### **CPS 9257/1 defines the extent of the clearing**

The appellant raised concerns about the extent of the clearing, contending that the 15 metre (m) width is excessively large, and that the actual clearing will be greater than the authorised area. The appellant submitted that more should be done to avoid and minimise clearing.

During the investigation, the permit holder provided information on the design of the additional carriageway which it contends will minimise the extent of the works, limit encroachment into the adjacent Regional Park, and reduce clearing to the smallest required extent, through the following measures:

- the width of the median will be 2 m, which is the minimum width required by Western Power for installation of street lighting
- taper widening will be minimised within Austroads/MRWA guidelines at each end of the new carriageway
- kerbing to the median and retaining walls in high cut areas will be minimised, with outfall captured by planted swale drains
- where level differences require battering into the Regional Park, retaining walls within the road reserve will be installed instead
- where the verge is narrow, linear biofiltration drains will be installed instead of table drains.<sup>2</sup>

While DWER considered these measures in its assessment, it advised that it is ultimately the permit holder's responsibility to determine the most appropriate design of the works and therefore the extent of the clearing required:

The Department considers that the Permit Holder has the relevant expertise and experience to determine the technical options, solutions, and engineering standards of the proposed road widening works and is responsible for its specifications.

Regarding its role, DWER advised:

The Department's role is to conduct an assessment of the proposed clearing, including the identification of environmental values and the potential significance of impacts from clearing, and consider whether the mitigation hierarchy has been reasonably applied in the context of these impacts and the purpose of the proposed clearing.

In this way, the permit holder identified the required vegetation proposed to be cleared for the purposes of road widening, which consists of multiple small patches within an approximately 15 m-wide, 1.7km-long corridor, totalling 0.69 ha.

CPS 9257/1 therefore defines the area authorised to be cleared and states that the permit holder "*must not clear more than 0.69 hectares of native vegetation within the areas cross-hatched yellow in Figures 1 - 3 of Schedule 1*" (as illustrated in Figure 1).

While we acknowledge the appellant's concerns, DWER has accepted that the permit holder has reduced its footprint as much as possible, and the permit holder is not authorised to clear any additional native vegetation (apart from a fire break which is discussed in Section 2.3).

Having defined the authorised clearing area, the investigation now turns to whether DWER adequately assessed the impacts related to the clearing 0.69 ha native vegetation.

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<sup>2</sup> City of Gosnells, Letter in response to appeal, 26 November 2021

## Environmental values will be impacted

DWER's Decision Report details its assessment of the proposed clearing against the clearing principles and other relevant matters.

DWER advised that the vegetation to be cleared varies in its condition, ranging from 'very good' to 'completely degraded', as follows:

- 0.1957 ha very good
- 0.1761 ha good
- 0.2787 ha degraded
- 0.0469 ha completely degraded.

The vegetation survey states that the 'degraded' and 'completely degraded' areas contain tracks, bare ground and scattered native trees and shrubs over non-native grasses and herbs. The best condition vegetation within the application area – in 'very good' to 'excellent' condition – occur within the previous boundaries of Jandakot Regional Park.<sup>3</sup>

### *Ecological biodiversity and conservation areas*

DWER's assessment identified values relevant to ecological communities and nearby conservation areas, and found that the clearing 'may be at variance' to clearing principles (a) and (h), and was 'not at variance' to principle (d).

Based on the information available, we accept DWER's assessment of (a) and (h), however, we consider that the proposed clearing *is* at variance to principle (d). We explain our reasoning below.

The application area contained vegetation representing the following (see Figure 3 for distribution):

- a Commonwealth-listed TEC – '*Banksia woodlands of the Swan Coastal Plain*' listed as endangered
- two state-listed PEC - banksia woodlands as above; and '*low lying Banksia attenuata woodlands and shrublands*' which is a Priority 3 state listed PEC
- part of a recognised Regional Ecological Linkage across the Swan Coastal Plain
- a portion of the Harrisdale Lake Bush Forever Area (BFA 253) within the Jandakot Regional Park.<sup>4</sup>

Consequently, DWER determined that the application will clear conservation significant vegetation and may result in the deterioration of adjacent vegetation within BFA 253 that comprises TEC and PEC vegetation communities and forms part of a Regional Ecological Linkage between remnant vegetation and conservation areas.

However, it advised that the regarding the application area, the extent is small (approximately 0.7 ha) relative to the surround vegetation:

The area proposed to be cleared is small in relation to the extent of TEC/PEC vegetation types present in the adjacent BFA 253 and broader Jandakot Regional Park in larger, intact patches and in better condition than the vegetation proposed to be cleared. Considering the size, shape and linearity of the area proposed to be cleared, as well as the highly disturbed, fragmented and significantly altered condition of the vegetation..., the proposed clearing is unlikely to have an appreciable impact on the function of the ecological linkage. <sup>5</sup>

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<sup>3</sup> Emerge, Flora and Vegetation Survey and Monitoring Report, March 2021, page ii

<sup>4</sup> DWER, Decision Report CPS 9257/1, page 5

<sup>5</sup> *ibid*, page 5

The appellant raised specific concerns related to principle (h), that the clearing will expose a new reserve perimeter to potential “edge effects” from the widened road, and on this point DWER agrees:

The assessment identified that the proposed clearing will result in increased disturbance and edge effects to adjacent vegetation, including possible unauthorised access and litter, introduction and spread of weeds and dieback. This could reduce the quality of the vegetation within Bush Forever Area 253 (a component of Jandakot Regional Park), that contains ecological communities of conservation significance and is part of a Regional Ecological Linkage.<sup>6</sup>

However, DWER considered that the risk of edge effects can be managed by the maintenance and monitoring program required by the permit (see Section 2.2).

Regarding the appellant’s concern about the remaining extent of Southern River vegetation complex, DWER advised that the application area represents 0.01 per cent of all mapped vegetation of this complex. The vegetation comprises of fragmented portions subject to ongoing disturbance, and therefore in its view, the application area is unlikely to be a significant remnant that is representative of the Southern River Complex.

We accept that the application area is small relative to the entire mapped complex, however we are also mindful that incremental clearing across metropolitan Perth is having an enduring impact on urban bushland. We encourage any endeavours to consider the cumulative impact of clearing permits across the landscape in these decisions.

Principle (d) 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 threatened ecological community.*

Under this principle, DWER’s *Guide to assessment of applications to clear native vegetation* (Assessment Guide) provides for the protection of threatened species under the EP Act and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), and protection of habitat necessary for the maintenance of these TEC. This principle also considers the buffer necessary to protect the ecological communities.

Examples provided in the Assessment Guide of scenarios likely to be at variance with this principle include:

- clearing of native vegetation in which threatened ecological communities are present.
- clearing of native vegetation if habitat necessary for the maintenance of threatened ecological communities is present.<sup>7</sup>

The vegetation proposed to be cleared contains two state-listed priority ecological communities and a Commonwealth-listed TEC listed as Endangered. DWER’s assessment concluded that the clearing was not at variance to this principle because it is unlikely to contain a state-listed TEC. DWER also had regard for the size, shape and condition of the TEC in their assessment of other principles.

The addition of the Commonwealth-listed TEC to this principle occurred through EP Act amendments in October 2021. We accept that DWER’s assessment likely occurred prior to this amendment. Nonetheless, from the above and having regard for the Act Amendment, we find that the clearing is at variance to clearing principle (d).

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<sup>6</sup> DWER, Decision Report CPS 9257/1, page 2

<sup>7</sup> DWER, *A guide to assessment of applications to clear native vegetation - Under Part V Division 2 of the Environmental Protection Act 1986*, December 2014, page 16

### *Fauna habitat*

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.*

DWER's assessment of the application area identified values for fauna habitat related largely to habitat for the endangered Carnaby's cockatoo including:

- a potential breeding tree
- foraging habitat
- roosting habitat.

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

Based on the information available, we consider that the proposed clearing *is* at variance to this principle. We explain our reasoning below.

### Breeding

Carnaby's cockatoos breed in hollows of live or dead eucalypts, where hollows are of a suitable depth and diameter, and within 12 kilometres (km) of feeding and watering sites. Within 12 km of the application area there are numerous fresh water sources and significant areas of feeding habitat, including the vegetation proposed to be cleared.

DWER's assessment considered that it was possible for Carnaby's to breed in the area, if a suitable hollow existed.<sup>8</sup>

The permit holder's hollow assessment identified 12 significant trees within the application area, defined as trees with a breast height diameter of 500 millimetres or more. One of these trees (a dead tree), contains a large hollow with a suitable opening and orientation for breeding by black cockatoo, however, it is considered likely to be too shallow to be currently suitable. Additional surveys by the permit holder determined that the hollow is not currently being used for nesting.<sup>9</sup>

Based on the above, DWER considered that the application area does not currently comprise of breeding habitat for Carnaby's. However, in response to the appeal it acknowledged that the hollow may develop into a suitable breeding hollow in the future. For this reason, the permit holder has committed to installing an artificial nesting box in a nearby tree to compensate for the loss of the identified hollow (conditions and mitigation measures are discussed further below).

### Foraging

Banksia woodlands of the Swan Coastal Plain represent significant foraging habitat for Carnaby's cockatoo and are vital to support populations of the species. DWER acknowledged that the application area includes suitable foraging habitat for Carnaby's cockatoo within foraging distance to numerous roost sites.

DWER also considered that within the context of the broader landscape (10 km radius) which contains 6,256 ha of mapped potential foraging habitat, the proposed clearing was unlikely to represent a significant loss of foraging resources. In coming to this conclusion, DWER had regard for:

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<sup>8</sup> DWER, Decision Report CPS 9257/1, page 6

<sup>9</sup> Barton, Hollow survey for Black Cockatoo breeding activity, October 2021



- The application area comprises 0.01 per cent of mapped (potential) foraging habitat in the local area.
- The application area consists of fragmented foraging plants subject to ongoing disturbance.
- The application area is adjacent to a larger remnant of better-quality foraging habitat.<sup>10</sup>

From the above, we conclude that while the area may be relatively small compared to surrounding potential foraging habitat, it does nonetheless provide foraging habitat for endangered fauna.

### Roosting

Black cockatoo roosting occurs within suitable trees, close to an important water source, and within an area of quality foraging habitat. Carnaby's cockatoo night roost sites typically have tall, dense canopied trees, are close to water and food trees. The roost trees are usually clumped and, at larger roosts, cover an area of at least five hectares.

DWER found that the proposed clearing is unlikely to represent a significant loss of Carnaby's cockatoo night roosting habitat as the area proposed to be cleared is unlikely to represent a suitable Carnaby's cockatoo night roost site due to the distance to standing water sources, lack of clumps of trees with typical roost features and no signs of use.

DWER's Assessment Guide states that the aim of clearing principle (b) is:

... to maintain indigenous fauna species and assemblages of species in their local natural habitat. This principle protects habitat for threatened fauna and significant habitat for meta-populations of fauna.

... Under this principle, a clearing proposal where only widespread fauna species are present, which are supported by the surrounding extensive, intact vegetation would not be at variance with this principle. An example could be common, widespread species of the Pilbara within extensive and intact Pilbara habitat.<sup>11</sup>

From the above, the Assessment Guide appears to distinguish between the relative importance of habitat for threatened fauna compared to other fauna. This is reflected in the examples of where proposed clearing is likely to be at variance to clearing principle (b), including:

- habitat for specially protected or threatened fauna, or meta-populations of fauna
- native vegetation that is necessary for the maintenance of habitat of priority, migratory, specially protected or threatened fauna, or meta-populations of fauna.<sup>12</sup>

As noted above, DWER found that the application area contains one hollow that may be suitable for breeding in the future and suitable foraging habitat for black cockatoos.

DWER's view is that the existence of extensive, better-quality habitat within the vicinity implies that the proposed clearing is unlikely to represent a significant loss.

The Assessment Guide suggests that clearing of habitat for specially protected or threatened fauna would likely be at variance to clearing principle (b), and DWER identified the area is likely to represent Carnaby's cockatoo habitat.

<sup>10</sup> DWER, Response to Appeal, CPS 9257/1, page 4

<sup>11</sup> DWER, *A guide to the assessment of applications to clear native vegetation – Under Part V Division 2 of the Environmental Protection Act 1986*. December 2014, page 10

<sup>12</sup> Ibid, page 11

On the basis of Carnaby's cockatoo being a threatened species; the vegetation contains foraging habitat for the species and is within the vicinity of breeding habitat; and the application area is otherwise within the known range of the species, we consider that the proposed clearing is at variance to clearing principle (b).

### **Variance to clearing principles does not prevent the grant of a permit**

Schedule 5 of the EP Act says that native vegetation should not be cleared if the clearing is at variance with one or more of the clearing principles. It follows that having found that the clearing is at variance to principles (b) and (d), there is a presumption that the vegetation should not be cleared.

However, in making a decision on whether to grant a permit, there are a number of additional factors to be considered, including the scale of the residual impact and whether this can be managed via conditions, the purpose of the proposed clearing, and the consistency with relevant planning instruments. These additional considerations are discussed below.

## **2.2 The clearing is consistent with relevant planning instruments**

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The appellant submits that the application area is within bushland identified as BF 253, which should be conserved and protected without incursions by clearing. The appellant contends that DWER did not consider the status of the area as Bush Forever. The appeal states:

The presumption that there should be no further clearing on the eastern side of the Swan River Plain is Bush Forever policy and applies to this site.<sup>13</sup>

As identified in Section 2.1, BF 253, and more broadly, Jandakot Regional Park, represent significant conservation values with the existence of a TEC and PECs, provides a linkage with other remnant vegetation, and consists of habitat for threatened fauna. The values present are therefore not in dispute.

Similarly, the appellant claims and DWER agrees, that the clearing may impact these values, through direct clearing and indirect edge effects.

Below is therefore a discussion on whether clearing in this location is appropriate in the context of relevant planning policy and guidance, and whether DWER was justified in granting the permit to clear vegetation identified as Bush Forever.

In summary, we found that the application area is within a gazetted road reserve and therefore we consider that the proposal to build a road is consistent with the purpose of this reserve.

In regard to SPP 2.8, the application area does include approximately 0.1 ha of vegetation within the boundaries of BF 253 (including the area of vegetation cleared for a firebreak and exempt from a clearing permit) and therefore SPP 2.8 is a relevant consideration in the grant of the permit.

We agree with the appellant that SPP 2.8 includes a presumption against clearing within Bush Forever areas. However, we note that the policy also makes allowances for clearing for wider social benefits. The purpose of the clearing is for road safety, and the permit holder has minimised the clearing footprint and committed to protecting and/or replacing the values. SPP2.8 also requires the consideration of an offset for any unavoidable impact to vegetation within a Bush Forever area. On this point we accept that while it is not evident in the Decision Report, DWER has contemplated the need for an offset.

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<sup>13</sup> UBC, Appeal letter CPS 9257/1, page 3.

Our conclusion that an offset is not required in this instance has regard for the proponent's mitigation measures and the conditions on the permit, along with the ongoing efforts of the permit holder to restore fauna habitat in the local area.

Our reasoning is further explained below.

### **The entire application area is within road reserve**

The total clearing footprint for the project is approximately 0.7 ha with the majority within the existing Warton Road reserve. Prior to 2020, two parcels (300m<sup>2</sup> and 200m<sup>2</sup>) within the application area of 0.7 ha were still within the boundaries of Jandakot Regional Park. We understand that in 2020, the permit holder<sup>14</sup> had these two parcels excised from Jandakot Regional Park and transferred to Road Reserve. The total area of the 'land take' was approximately 0.05 ha (DWER states 0.044 ha).

The purpose of a road reserve is to provide a transport and service corridor, and therefore the proposed works to duplicate and improve Warton Road is consistent with this.

### **A portion of the proposed clearing is within Bush Forever boundaries**

DWER agrees with the appellant that the area of bushland to the east of Warton Road is BF 253 (Figure 2 and 3), otherwise known as Harrisdale Swamp.

As such, the 'land take' areas described above, while now classified as road reserve, are still within the boundaries of the area identified as BF253. The permit holder will clear an additional 0.0477 ha for 3 m-wide firebreaks along the new park boundary, which is exempt from a clearing permit. This is to replace the existing firebreaks removed for the road duplication project.

In total, approximately 0.1 ha of vegetation mapped as BF 253 will be cleared as part of this proposed clearing (both authorised and exempt).

BF 253 is described as 98.4 ha of bushland, representing Southern River Complex vegetation and wetland. The environmental values present in this area are covered in section 2.1.

Areas identified as Bush Forever are defined under SPP 2.8 and are given statutory effect through the Metropolitan Region Scheme (MRS). An MRS amendment is required to make any boundary changes to Bush Forever areas.

Bush Forever is not identified as a zone or Reserve on the MRS but shown as an overlay with the purpose of alerting landowners, the community, and decision-makers that a land parcel is a Bush Forever area, and this must be taken into consideration if there is a proposal to clear regionally significant bushland, or other degrading activities, to facilitate development or land management.<sup>15</sup>

While SPP 2.8 supports the general presumption against clearing within Bush Forever areas, clearing native vegetation within a Bush Forever area can occur, but a clearing permit granted under the EP Act is required.

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<sup>14</sup> As one of these 2 parcels is located within the City of Armadale, the City of Armadale was responsible for applying to Landgate for this transferral

<sup>15</sup> Government of Western Australia, Fact Sheet – Bush Forever <https://www.wa.gov.au/system/files/2021-06/FS-Bush-Forever.pdf>



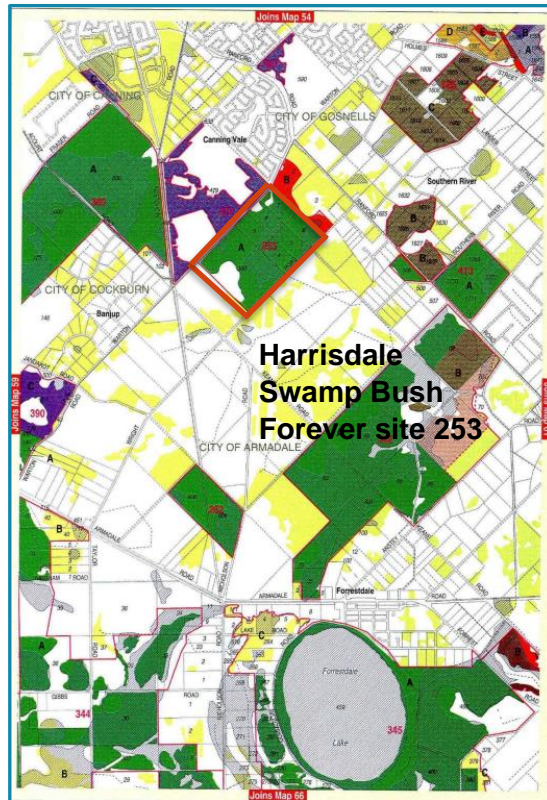


Figure 2 Bush Forever site number 253<sup>16</sup>

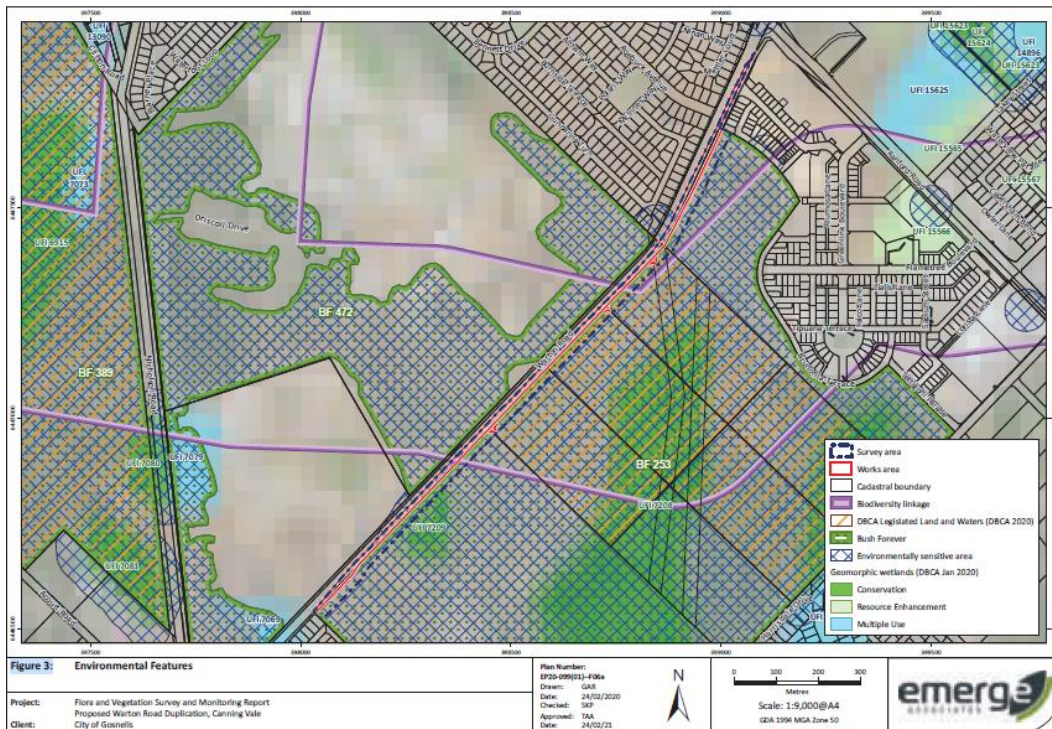


Figure 3 Boundaries of Bush Forever Area 253 overlapping the application area<sup>17</sup>

<sup>16</sup> WAPC, Bush Forever Volume 1 Maps, 2000, map sheet 60, page 168.

<sup>17</sup> Emerge, Flora and Vegetation survey and monitoring report – proposed Warton Rd duplication, March 2021, Figure 3



## The purpose of the clearing is for road safety

DWER's response to the appeal acknowledges that its Decision Report did not reference SPP 2.8.<sup>18</sup> However, it advised that it noted the policy's presumption against clearing:

*State Planning Policy 2.8 Bushland Policy for the Perth Metropolitan Region (SPP 2.8) sets out that proposals and decision-making in respect of Bush Forever areas should support a general presumption against the clearing of regionally significant bushland or other degrading activities, except where a proposal or decision is consistent with the overall purpose and intent of the existing Crown reserve or can be reasonably justified with regard to wider environmental, social, economic or recreational needs (clause 5.1.2.1(i)(e))...*

*... the Department considers that the proposed clearing is consistent with the provisions of SPP 2.8.<sup>19</sup>*

Provision 5.1.2.3 of SPP 2.8, regarding Government-owned land states:

Proposals or decision-making should—

Seek to protect regionally significant bushland as a priority, except where a proposal or decision - ...

... (c) can be reasonably justified with regard to wider environmental, social and economic considerations (**in particular, future road (regional or local) and rail requirements**) and all reasonable alternatives have been considered to avoid or minimise any direct loss of regionally significant bushland, and reasonable offset strategies are considered to offset any loss of regionally significant bushland, where appropriate and practical.

In this regard, DWER advised that it had regard for the purpose of the clearing to facilitate increased traffic and maintain safety standards along Warton Road.

We note the advice of the permit holder that its justification for the project is primarily to improve road safety, due to the high speed limit (80 km/h), lack of central median, absence of dedicated cycle lanes and footpaths, and inadequate lighting (it is currently unlit) on Warton Road. Further, the average daily vehicle numbers are expected to increase from approximately 16,000 to 20,200 in 2026 and 23,200 in 2036.<sup>20</sup> As this section is the only part of Warton Road without dual carriageway, the permit holder advised that Austroads Road Design Guidelines require that for the current and future traffic volumes, the existing length of single carriageway should be duplicated to provide adequate capacity.<sup>21</sup>

While the appellant contends that clearing within Bush Forever is unacceptable and other measures should be implemented to improve road safety (such as reducing speed limits), we accept DWER's advice that it is the permit holder's responsibility for planning, building, and maintaining road networks in its jurisdiction, and that the permit holder has the relevant expertise to determine the most appropriate solutions to manage road safety.

We also note the advice of the permit holder that the project has received support from the landowner and land managers - WAPC; DBCA; and the City of Armadale. Further, the project has successfully received funding from the State Government's Metropolitan Regional Roads Group (MRRG) road improvement program, which assessed all aspects of the project to deem its necessity and suitability.

Having regard for these factors, DWER advised:

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<sup>18</sup> DWER, Appeal Report CPS 9257/1, page 6.

<sup>19</sup> DWER, Appeal Report CPS 9257/1, page 6.

<sup>20</sup> Main Roads traffic modelling

<sup>21</sup> City of Gosnells, Response to appeal, November 2021, page 2.

In considering the social need for the works to facilitate increased traffic and maintain safety standards along Warton Road, and noting that the Permit Holder has made a reasonable effort to avoid and minimise the extent of the proposed clearing, the Department considers that the proposed clearing is consistent with the provisions of SPP 2.8.<sup>22</sup>

From the above, we accept DWER's view that the clearing can be justified having regard for the wider social benefits, and is not inconsistent with SPP 2.8.

### **An offset should be considered**

In Section 2.1, we considered the proposed clearing in the context of the clearing principles and found that the clearing is at variance to several principles. This conclusion naturally leads to the contemplation of an offset to counterbalance the impacts to and loss of environmental values.

The WA Environmental Offset Guideline (offset guideline)<sup>23</sup> sets out that an offset should be contemplated if a clearing application is at variance to certain clearing principles, with the aim of counterbalancing impacts to biodiversity. This is determined on a case-by case basis, and offsets are not appropriate for all projects. One scenario that would normally require an offset, in accordance with the offset guideline, is where there is a significant and known cumulative impact such as loss of high conservation value wetlands on the Swan Coastal Plain, or native vegetation in the Wheatbelt. In these cases, the offset guideline expects DWER to consider if the cumulative impacts are significant and contemplate the application of an offset in its clearing permit decision report.

In the case of this proposed clearing, a portion of the application area falls within the boundaries of BF 253, and SPP 2.8 also requires the contemplation of an offset. Unavoidable adverse impacts on regionally significant bushland within a Bush Forever area should be offset at a ratio of at least 1:1 in habitat hectares.

SPP 2.8's general policy measures for all Bush Forever areas include the following guidance for impact assessment:

5.1 Proposals or decision-making should—

...(ii) Ensure that all reasonable steps have been taken to avoid, minimise or offset (in combination, generally meaning to mitigate) any likely adverse impacts on regionally significant bushland consistent with the requirements of this policy.<sup>24</sup>

We found that DWER's Decision Report does not mention consideration of an offset, and the consideration of an offset by the permit holder is limited to:

The City believes that given the avoidance and mitigation measures outlined above (maintenance and monitoring) that have been developed in consultation with the DBCA, an offset is not deemed required for clearing 0.6974 ha of fragmented roadside vegetation. In addition, as the below assessment will outline, proposed clearing is not likely to be at variance to any of the clearing principles, an offset is not deemed necessary.<sup>25</sup>

In response to the appeal, which queried DWER's consideration of SPP 2.8, DWER provided the following advice in regard to the need for an offset:

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<sup>22</sup> DWER, Appeal Report CPS 9257/1, page 6.

<sup>23</sup> Government of Western Australia, WA Environmental Offsets Guidelines, August 2014, page 9

<sup>24</sup> WAPC, SPP2.8, page 2747

<sup>25</sup> Emerge, Letter to DWER supporting clearing permit application for proposed duplication of Warton Road, 15 March 2021, page 3.

Given the extent of the proposed clearing within Bush Forever Area 253, the fragmented and significantly altered nature of the vegetation, and the mitigation and management measures proposed by the Permit Holder and conditioned on the Clearing Permit, the Department determined that the proposed clearing does not result in a significant residual impact and that such an offset is not required. The Department considered that the maintenance and monitoring program, permanent fencing, and weed and dieback management conditions will adequately mitigate significant impacts to Bush Forever Area 253, consistent with SPP 2.8.<sup>26</sup>

Additional advice was sought and received from DWER during the investigation. DWER confirmed its view that the clearing will not result in adverse impacts to BF 253:

...the 0.044 hectares in question comprises disjointed slivers of vegetation which primarily represent overhanging canopy from the vegetation to be cleared within the existing road reserve. Ground disturbance in the Bush Forever area will essentially be limited to the existing firebreak. The Delegated Officer considered this represented only a minor environmental impact, and not a significant or otherwise materially adverse impact to the Bush Forever area.<sup>27</sup>

DWER invoked the following provision from the *WA Environmental Offsets Policy* to support its argument that due to the minor nature of the impact, an offset is not required:

Environmental offsets are not appropriate in all circumstances. The applicability of offsets will be determined on a project-by-project basis. While environment offsets may be appropriate for significant residual environmental impacts, they will not be applied to minor environmental impacts.<sup>28</sup>

Notwithstanding the findings laid out in Section 2.1 above, we consider that in this case the clearing does not result in a significant residual impact as the grant and requirements of a permit must be considered in the context of a range of factors, including the purpose of the proposed clearing, the consistency with planning instruments and the ability of conditions to manage any residual impacts.

In contemplating the application of an offset, we consider that the management measures committed to by the permit holder and the application of management conditions on the permit are relevant considerations regarding the broader environmental outcome.

In accordance with CPS 9257/1, the clearing authorised is limited to 0.69 ha. Condition 5 of the permit requires the avoidance, minimisation or reduction in the impacts of clearing where possible, and the permit holder is required to keep records of actions taken to avoid, minimise and reduce the impacts and extent of clearing, to be reported to DWER.

To minimise and manage the potential impacts to significant vegetation, particularly the incursion into the Bush Forever boundaries and potential edge effects, the permit holder is required to undertake the following:

- A 5-year maintenance and monitoring program, within a 20-metre 'mitigation area' in the BFA 253, commencing immediately after clearing. This includes weed control and rubbish removal, completion criteria for native species cover, weed cover, vegetation health and condition, and incidence of rubbish. If monitoring indicates that the completion criteria has not been met for three consecutive monitoring periods, the Permit Holder is required to undertake revegetation that will result in the minimum

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<sup>26</sup> DWER, Appeal Report CPS 9257/1, page 6.

<sup>27</sup> DWER, Additional advice on offset requirements, 25 February 2022

<sup>28</sup> DWER, *WA Environmental Offsets Policy*, September 2011, page 3

targets specified on the permit. The permit holder has committed to a range of remediation works should monitoring show deterioration. This is expected to manage and minimise the potential edge effects along the new reserve boundary.

- Installation and maintenance of a replacement permanent fence between the road reserve boundary and Bush Forever Area 253.
- Implementation of weed and dieback hygiene protocols, to further mitigate the risk of impacts to the adjacent vegetation.

To address the loss of a potential breeding hollow, the permit holder will install an artificial black cockatoo nest hollow in one of two nominated mature jarrah trees nearby to Tree 63, and within the 20-metre mitigation area in the BFA 253.

We also understand that the permit holder has committed to commissioning and adhering to a project-specific construction environmental management plan (CEMP), prepared by a suitably qualified environmental consultant, to recognise the sensitive environmental works that will be undertaken within BFA 253. The CEMP will be provided to Department of Biodiversity, Conservation and Attractions (DBCA) and Western Australian Planning Commission (WAPC) for comment as the land managers.

During the investigation the permit holder provided supporting information on its ongoing programs to promote and re-establish native vegetation, including suitable habitat for Carnaby's cockatoo throughout its local government area. This includes revegetation of nearby Bush Forever Areas and recent planting of 130 advanced trees suitable for breeding, foraging and roosting of Carnaby's cockatoos.

Based on the information provided, we consider that implementation of the ongoing monitoring and management program can mitigate the risk of edge effects to the new perimeter of the Regional Park, and the installation of an artificial hollow can counterbalance the loss of potential Carnaby's cockatoo breeding habitat. We support the permit holder's commitment to promote habitat and revegetate Bush Forever areas and consider that an improved environmental outcome can be achieved through programs of revegetation such as these.



## 2.3 Other matters

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### Firebreak

The appellant raised concerns about the extent of the clearing being greater than authorised and submitted that the extent of the 'exempt clearing for firebreaks' may increase the impact to be greater than the clearing proposed.

In this regard, DWER responded:

The Department acknowledges that supporting documentation provided by the Permit Holder indicates that an additional 0.0477 ha of native vegetation will be cleared for firebreaks as required by the City of Armadale's Fire Control Notice. The Department understands that this clearing may be exempt from requiring a clearing permit, pursuant to Schedule 6, Clause 1 of the EP Act. The Department acknowledges that exempt clearing contributes to the cumulative loss of native vegetation in an area, however, consideration of the impacts of the clearing allowed under exemption, where near this project or in the local area, is not a matter to be considered in the assessment of CPS 9257/1.

Notwithstanding, we acknowledge the appellant's concerns that this additional clearing does extend the potential impacts further into the reserve. As discussed in section 2.1 of this report, we consider that the edge effects can be managed through implementation of Condition 8 of the permit.

### Impact of street lighting on fauna

The appellant submitted that street lighting should not be permitted along the section of Warton Road adjacent to BF 253, as it will attract insects that are then predated upon, leading to loss of pollinators and diversity, vehicle strike of nocturnal birds that hunt the insects (such as tawny frogmouth and owl species) and disorientation in other fauna.

In response to this concern, DWER's advised:

While the Department acknowledges the potential for artificial light at night to impact native fauna, it notes that the Permit Holder is responsible for the planning, building, engineering and safety standards and specifications of road networks in its jurisdiction, including the requirement for street lighting. The Department also notes that the clearing provisions contained in Part V, Division 2 of the EP Act relate only to the direct impacts of clearing native vegetation and that it is outside of the scope of the Clearing Permit to assess any potential impacts of artificial light that may result from the final land use. The Department considers the ongoing use and management of artificial light within the road reserve to be the responsibility of the Permit Holder.

### 3 Supporting information

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#### Information used to inform the assessment

The assessment of CPS 9257/1 considered the following information:

- the site characteristics
- current GIS databases
- *Flora and Vegetation Survey and Monitoring Report*
- *Hollow Survey for Black Cockatoo Breeding Activity*.

DWER's Decision Report considered the information provided by the permit holder including the flora and vegetation survey. The flora and vegetation survey included a desktop assessment, field surveys, mapping, and data analysis, as well as a weed assessment, a significant tree survey, and an infrastructure assessment.

The condition of the vegetation was assessed using methods from Keighery (1994) as per EPA's *Technical Guidance – Flora and Vegetation Surveys for Environmental Impact Assessment* (EPA 2016). For vegetation in the survey area containing *Banksia* spp., the condition scale provided in the conservation advice for the 'Banksia Woodlands of the Swan Coastal Plain TEC' (TSSC 2016) was applied in addition to the Keighery scale.

During its assessment, DWER identified the presence of significant trees with hollows within the application area. DWER therefore requested further information on one tree and requested the permit holder undertake an internal inspection of Tree (stag) 63 for evidence of current or past use by black cockatoos, as well as suitability for future use. The permit holder provided a hollow survey in October 2021 concluding that Tree 63 contains no hollows suitable for breeding by black cockatoos at this time. This survey will inform and assist in the implementation of Management Condition 8. *Fauna Management – black cockatoo breeding habitat*.



# Mapping of conservation significant vegetation and trees

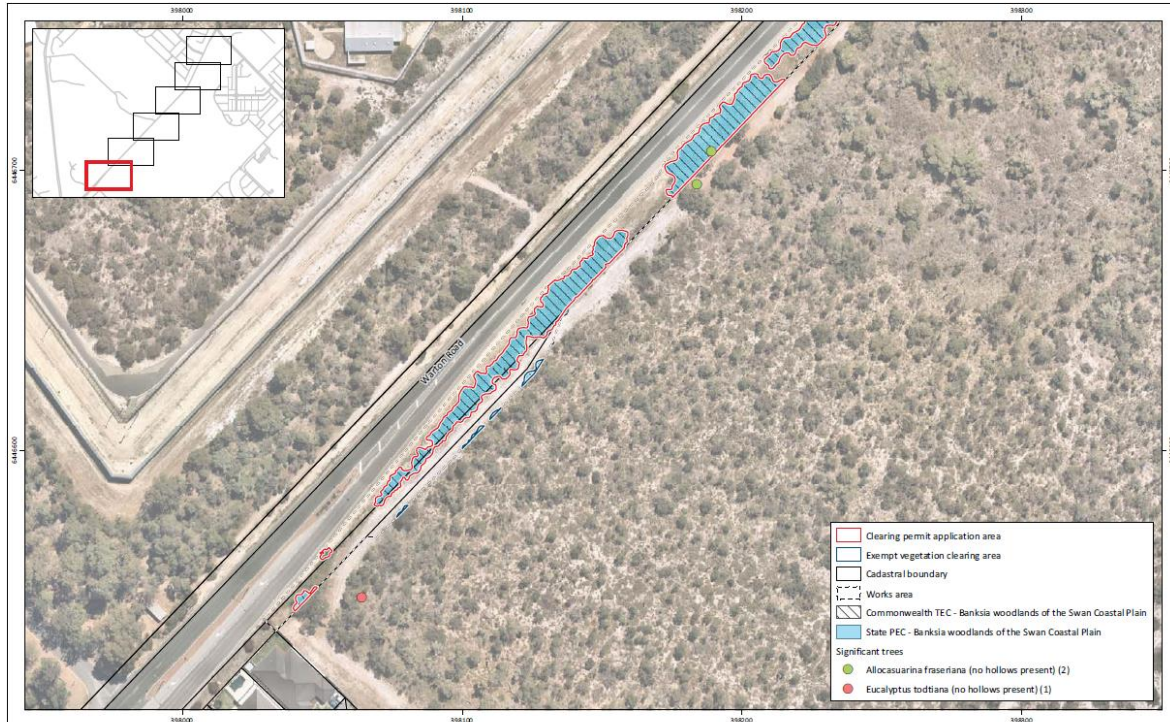


Figure 4: Conservation Significant Features - Map 1 of 6

Project: Letter addressing Environmental Protect Act 1986 clearing principles  
 Proposed Warton Road Duplication, Canning Vale  
 Client: City of Gosnells

Plan Number: EP20-099(02)-F18a  
 Drawn: GAR  
 Date: 03/03/2021  
 Checked: SKP  
 Approved: TAA  
 Date: 03/03/2021



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 Metres  
 Scale: 1:1,500@A4  
 GDA 1994 MGA Zone 50

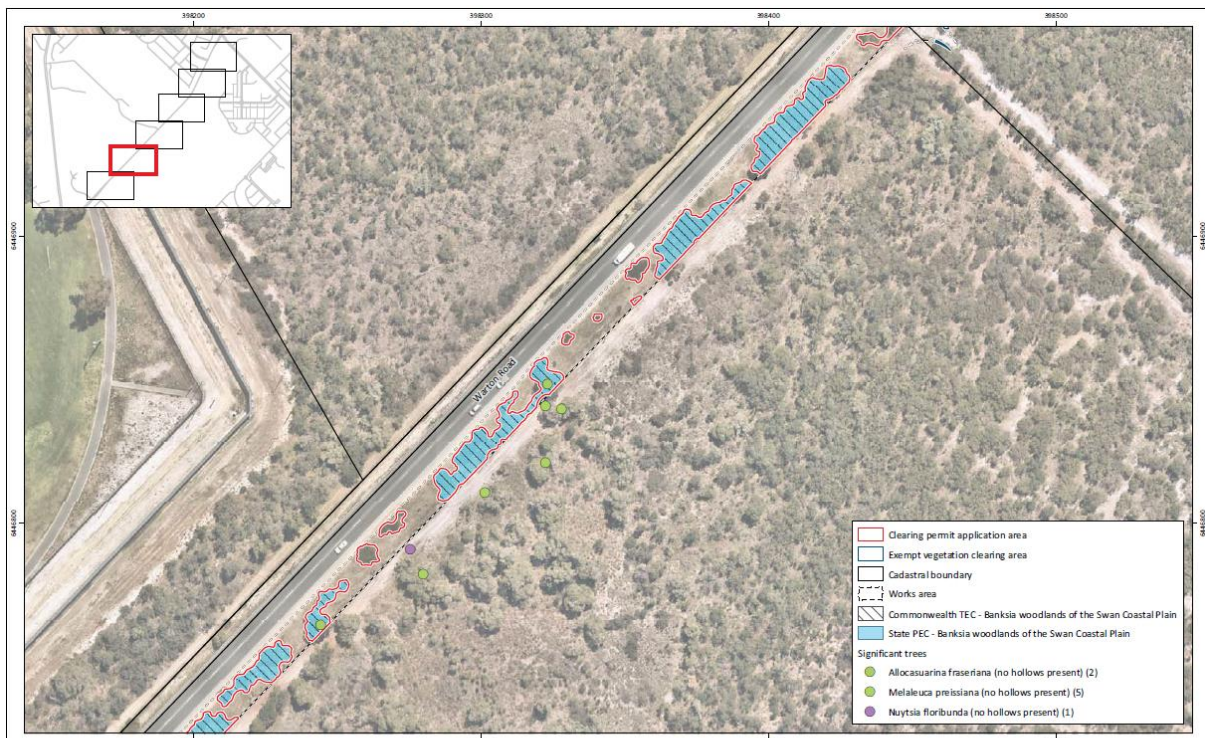


Figure 4: Conservation Significant Features - Map 2 of 6

Project: Letter addressing Environmental Protect Act 1986 clearing principles  
 Proposed Warton Road Duplication, Canning Vale  
 Client: City of Gosnells

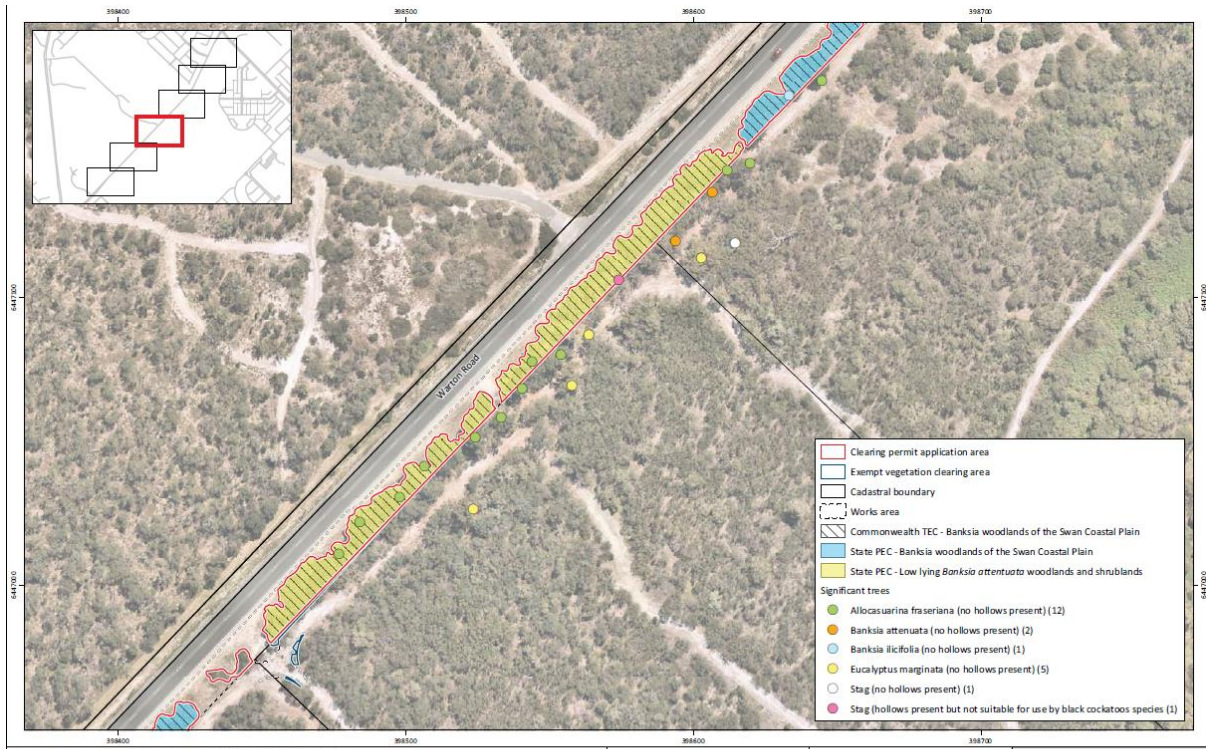
Plan Number: EP20-099(02)-F18a  
 Drawn: GAR  
 Date: 03/03/2021  
 Checked: SKP  
 Approved: TAA  
 Date: 03/03/2021



0 25 50  
 Metres  
 Scale: 1:1,500@A4  
 GDA 1994 MGA Zone 50

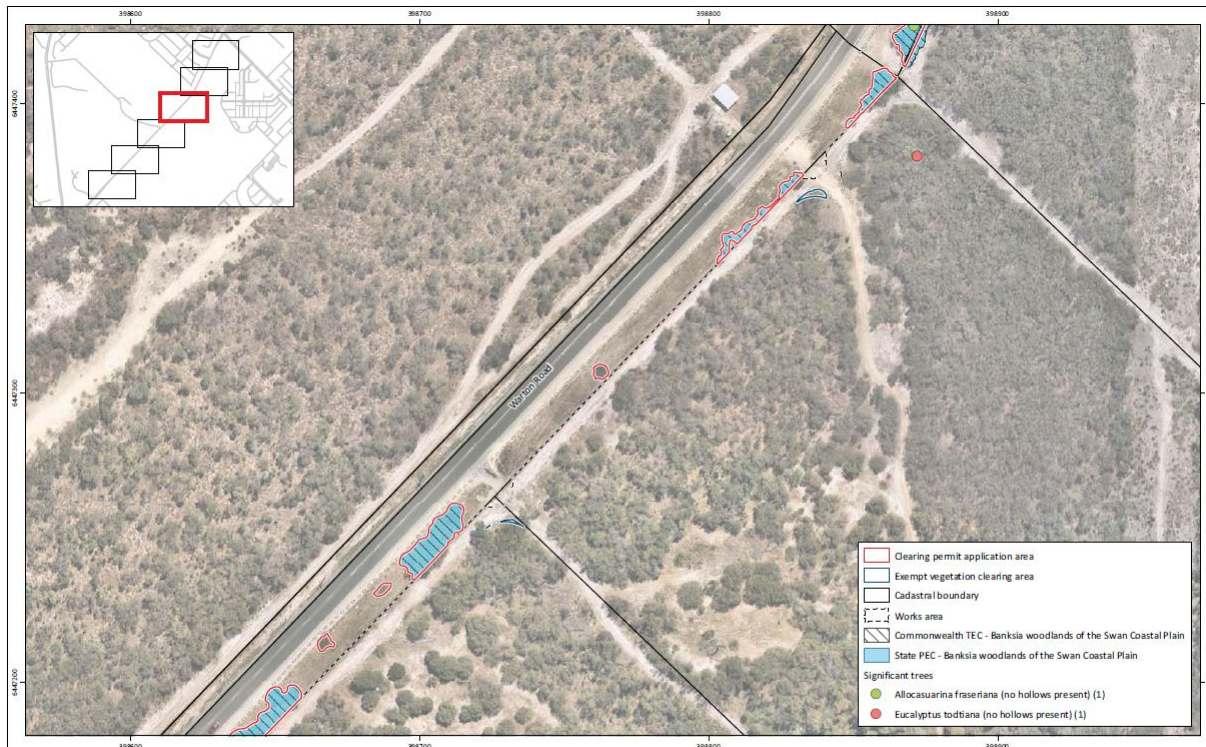







**Figure 4: Conservation Significant Features - Map 3 of 6**

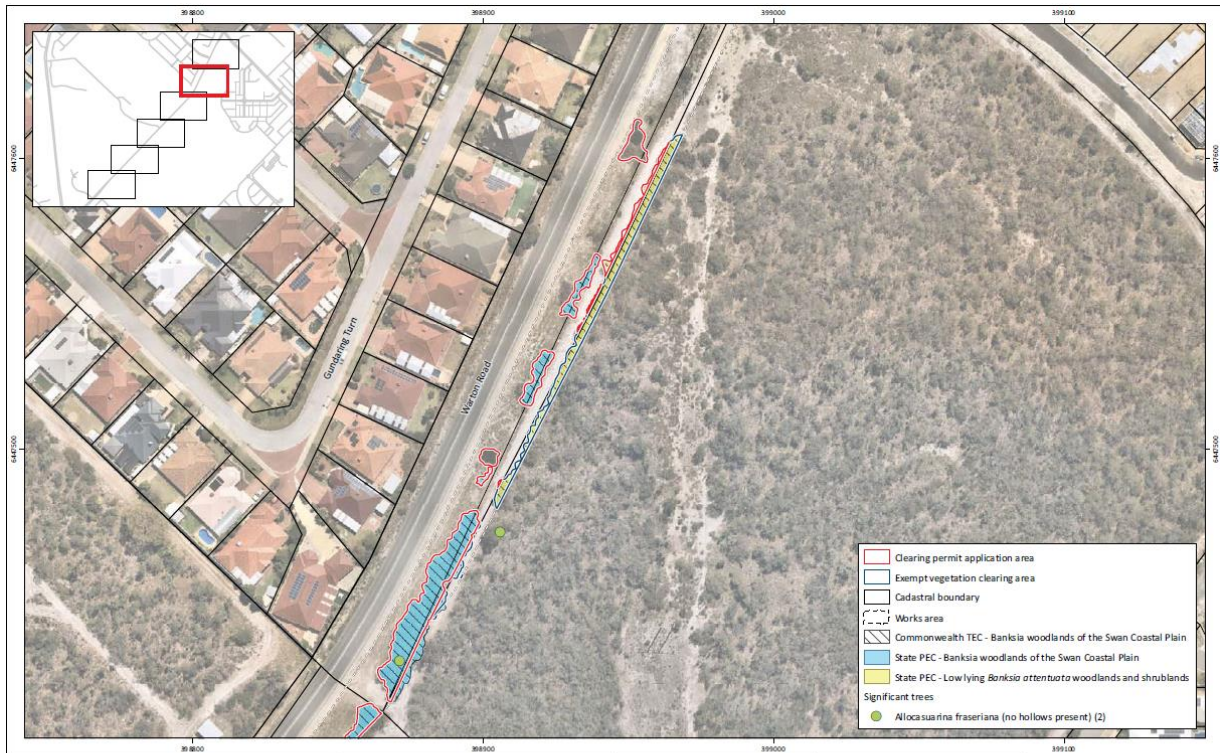
<b>Project:</b> Letter addressing <i>Environmental Protect Act 1986</i> clearing principles <b>Client:</b> Proposed Warton Road Duplication, Canning Vale City of Gosnells	<b>Plan Number:</b> EP20-009(02) - F18a <b>Drawn:</b> GAR <b>Date:</b> 03/03/2021 <b>Checked:</b> SJP <b>Approved:</b> TAA <b>Date:</b> 03/03/2021	  Scale: 1:1,500@A4 GDA 1994 MGA Zone 50	



**Figure 4: Conservation Significant Features - Map 4 of 6**

<b>Project:</b> Letter addressing <i>Environmental Protect Act 1986</i> clearing principles <b>Client:</b> Proposed Warton Road Duplication, Canning Vale City of Gosnells	<b>Plan Number:</b> EP20-009(02) - F18a <b>Drawn:</b> GAR <b>Date:</b> 03/03/2021 <b>Checked:</b> SJP <b>Approved:</b> TAA <b>Date:</b> 03/03/2021	  Scale: 1:1,500@A4 GDA 1994 MGA Zone 50	





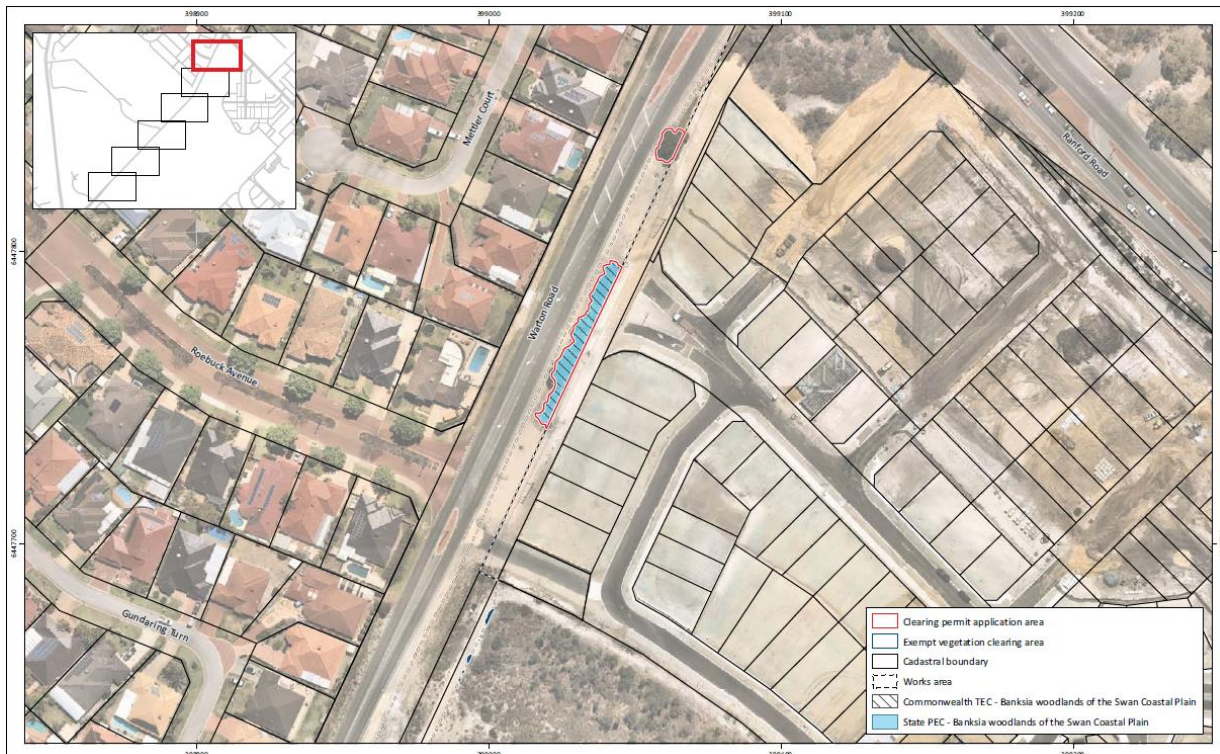
**Figure 4: Conservation Significant Features - Map 5 of 6**

Plan Number: EP20-099(02)-F18a  
 Drawn: GAR  
 Date: 03/03/2021  
 Checked: SKP  
 Approved: TAA  
 Date: 03/03/2021

Project: Letter addressing Environmental Protection Act 1986 clearing principles  
 Proposed Warton Road Duplication, Canning Vale  
 Client: City of Gosnells

Scale: 1:1,500@A4  
 GDA 1994 MGA Zone 50

**emerge ASSOCIATES**



**Figure 4: Conservation Significant Features - Map 6 of 6**

Plan Number: EP20-099(02)-F18a  
 Drawn: GAR  
 Date: 03/03/2021  
 Checked: SKP  
 Approved: TAA  
 Date: 03/03/2021

Project: Letter addressing Environmental Protection Act 1986 clearing principles  
 Proposed Warton Road Duplication, Canning Vale  
 Client: City of Gosnells

Scale: 1:1,500@A4  
 GDA 1994 MGA Zone 50

**emerge ASSOCIATES**

**Figure 4** Map 1-6: Location of proposed clearing that represents TEC, PEC and significant trees.

## Appendix 1 Appeal process

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### 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.

### 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 documents from DWER
- meeting with the permit holder on 7 April 2021
- meeting with the appellant on 16 April 2021
- further advice from DWER 25 February 2022

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

Document	Date
DWER, CPS 9257/1 and Decision Report	October 2021
DWER, Appeal Report for CPS 9257/1	December 2021
City of Gosnells, letter in response to appeal	November 2021
Emerge, Letter to DWER supporting proposed road duplication	March 2021
Emerge, Flora and vegetation survey and monitoring report	March 2021
Claire Bartron, Hollow survey for Black-cockatoo breeding	October 2021
Government of Western Australia, WA Environmental Offsets Guidelines	August 2014