



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

Appeals Committee Report to the Minister for Environment

Appeal against grant of clearing permits CPS 10049/1,
10265/1 and 10197/1, Shire of Yilgarn



Appellant	Wildflower Society of Western Australia (Inc)
Proponent	Shire of Yilgarn
Authority	Department of Water and Environmental Regulation
Appeal No.	053, 055 and 056 of 2023
Date	February 2024

Office of the Appeals Convenor

08 6364 7990 or TTY 13 36 77 (National Relay Service)

admin@appealsconvenor.wa.gov.au

www.appealsconvenor.wa.gov.au

221 St Georges Terrace
Perth WA 6000

Appeals Committee

Dr Garry Middle

This report

© 2024 Office of the Appeals Convenor, Western Australia.

All rights reserved. This material may be reproduced in whole or in part provided the source is acknowledged.

Cover image: View of a section of the proposal site (Garry Middle)

Acknowledgement of Country

The Office of the Appeals Convenor and the Appeals Committee acknowledge 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 and present.

Contents

1	Executive summary	1
1.1	Decisions under appeal	1
1.2	Appeal investigation process	2
1.3	Grounds of appeal and appellant concerns	2
1.4	Key issues and conclusions	4
1.5	Recommendation to the Minister	8
2	Reasons for recommendation - CPS 10197/1 - Appeal 056/23	9
2.1	Details of the clearing	9
2.2	Appeal ground 1 – The clearing would impact on Environmentally sensitive areas (ESAs)	10
2.3	Appeal ground 2 – Impact on the Wockallary Nature Reserve	14
2.4	Appeal Ground 3 – Clearing will cause significant hydrological impacts	15
3	Reasons for recommendation - CPS 10265/1 - Appeal 055/23	17
3.1	Details of the clearing	17
3.2	Appeal ground 1 – Inadequate assessment of the biodiversity of the vegetation to be cleared	18
3.3	Appeal ground 2 – Inadequate assessment of the impact on fauna	19
3.4	Appeal ground 3 – Additional clearing within the Merredin IBRA sub-region should not occur	19
3.5	Appeal ground 4 – The proposed clearing is at variance to Clearing Principles (i) and (j)	20
4	Reasons for recommendation - CPS 10049/1 – Appeal 053/23	22
4.1	Details of the clearing	22
4.2	Appeal ground 1 – The level of investigation into impact significant flora is inadequate to correctly assess the proposal against the Clear Principles	23
4.3	Appeal Ground 2 – DWER’s assessment of the impacts on Threatened species <i>Banksia dolichostyla</i> , is incorrect	24
4.4	Appeal ground 3 – the proposed clearing is at variance to Clearing Principles (f), (g) and (i)	25
4.5	Appeal ground 4 – The impact on the vegetation in the Jilbadji Nature Reserve has not been properly assessed	25
4.6	Appeal ground 5 - Environmentally Sensitive Areas occur along the road alignment and the project should be referred to the EPA	26
4.7	Appeal ground 6 – Information not provided as to where the road construction material will be sourced	26
5	Supporting information	28
5.1	The approved clearing	28
6	Further advice	30

Appendix 1	Appeal process	31
Appendix 2	Further references	32

1 Executive summary

1.1 Decisions under appeal

This is a report on the appeals by the Wildflower Society of Western Australia (Inc) (the appellant) against the grant of three related clearing permits CPS 10049/1, 10265/1 & 10197/1 under Part V of the *Environmental Protection Act 1986* (EP Act). The purpose permits were granted by the Department of Water and Environmental Regulation (DWER) to the Shire of Yilgarn as the applicant (the Shire) for the purpose of road construction and sourcing of construction material.

Figure 1 below shows the location of the three permits.

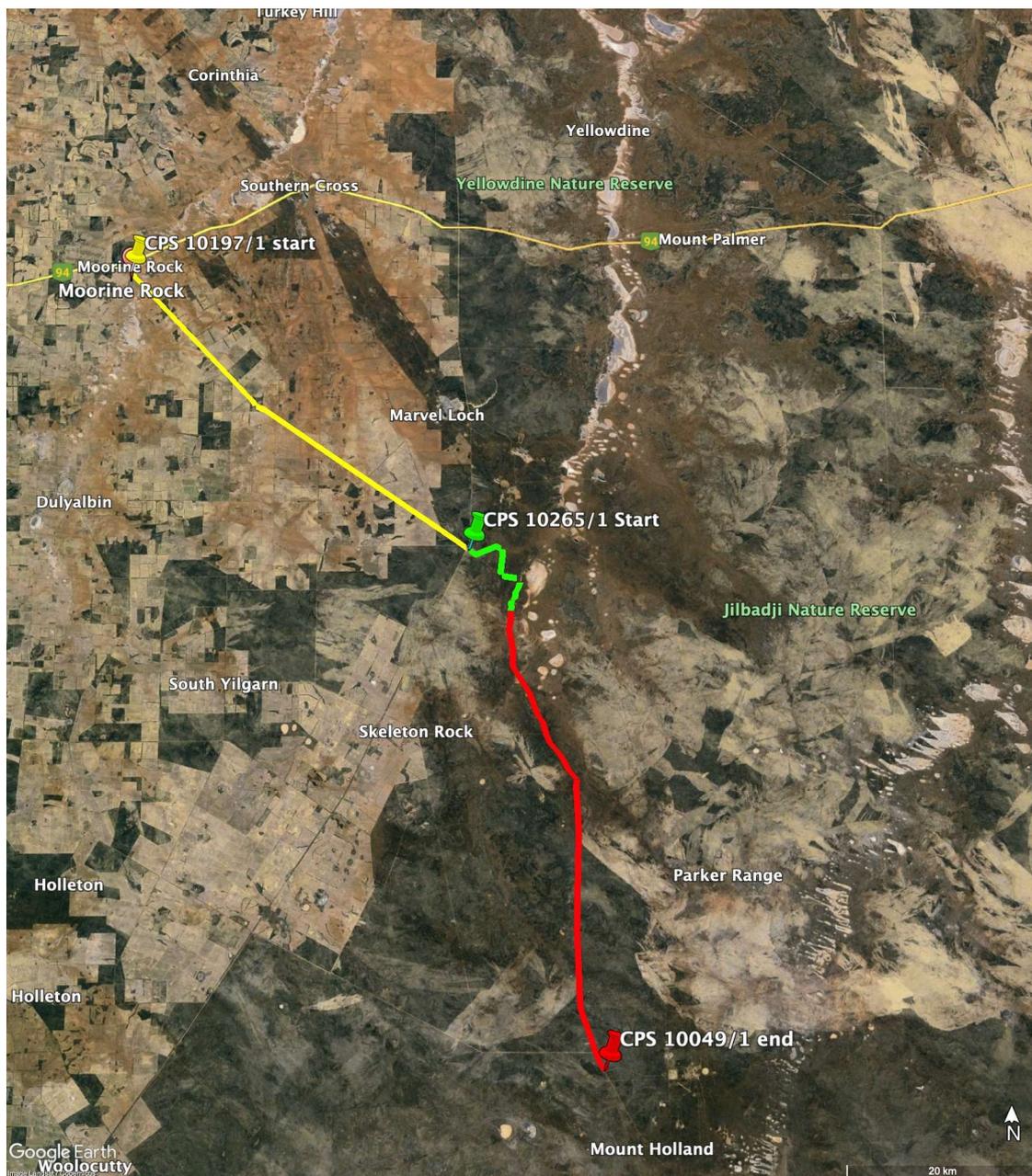


Figure 1 Location of the three clearing permits the subject of this report

The roads in question are public roads, and the work will provide an upgraded road link between Mount Holland Covalent Lithium mine to Great Eastern Highway, and will cater for the truck movements to and from the mine.

CPS 10197/1 allows for the clearing of up to 9.9 hectares (ha) of native vegetation and is subject to appeal 056/23.

CPS 10265/1 allows for the clearing of up to 4.02 ha of native vegetation and is subject to appeal 055/23.

CPS 10049/1 allows for the clearing of up to 24.9 ha of native vegetation and is subject to appeal 053/23.

Whilst each appeal raises some issues that are common to others, each appeal is dealt with separately.

1.2 Appeal investigation process

The Committee’s investigation into the appeal involved the following:

- A meeting with officers from the Shire;
- A meeting with representatives of the Wildflower Society of Western Australia; and
- A site visit.

As well, the Committee took into account the following documents:

- The appellant’s appeal letters;
- DWER’s three Purpose Permit with Plan and Decision Report and attachments;
- DWER’s s106 of the EP Act response to the appeals and attachments;
- The Shire’s response to the appeals;
- DWER’s A guide to the assessment of applications to clear native vegetation (Department of Environment Regulation 2014);
- *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*;
- WA Environmental Offsets Policy (Government of Western Australia 2011); and
- WA Environmental Offsets Guidelines (Government of Western Australia 2014).

As well, the Committee took into account the objects and principles under section 4A of the EP Act.

1.3 Grounds of appeal and appellant concerns

The appellant considers that the permits should not have been granted, and raised several concerns, including: incomplete or incorrect assessment by DWER; loss of significant vegetation; impact on hydrology; and, impact on Nature Reserves.

Table 1 Grounds of appeal - CPS 10197/1

Ground	Main concerns the appellant submitted
1. The clearing would impact on Environmentally sensitive areas (ESAs)	The appellant contended that there were three ESAs along the road, in particular a threatened ecological community (TEC), which would be directly impacted. As well, the appellant was concerned that not enough

Ground	Main concerns the appellant submitted
	information is provided on where the road construction material will be sourced from.
2. Impact on the Wockallarry Nature Reserve	The appellant raised concerns about the impacts on Wockallarry Nature Reserve and the proposed clearing within the Reserve.
3. Clearing will cause significant hydrological impacts	The appellant contended that the removal of any deep rooted vegetation in the Wheatbelt would result in localised rises in the water table, and would be at variance with Clearing Principle (f).

Table 2 Grounds of appeal - CPS 10265/1

Ground	Main concerns the appellant submitted
1. Inadequate assessment of the biodiversity of the vegetation to be cleared	The appellant contended that the original flora survey report is lacking critical information to able DWER to confidently assess the impacts of the proposal. Consequently, DWER's assessment is flawed and the proposed clearing it as variance with Principle (a), and no assessment can be made against Principle (c).
2. Inadequate assessment of the impact on fauna	The appellant noted that no fauna survey was provided. It is unacceptable for this clearing permit to proceed when vital information relevant to the assessment is not present.
3. Additional clearing within the Merredin IBRA sub-region should not occur	The appellant argued that the Merredin IBRA sub-region has been extensively cleared with only 20.96% of its pre-European vegetation remaining, which is well below the threshold to maintain biodiversity levels, and thus any further clearing should not be permitted, or if allowed, an offset should be required.
4. The proposed clearing is at variance to Clearing Principles (i) and (j)	The appellant contended that the clearing would lead to land degradation, notably a rising water table, due to the removal of deep-rooted vegetation. This would lead to increased salinity at a local scale, but also extending to a larger, regional scale, causing further land degradation and indirectly impacting critical habitat for significant flora.

Table 3 Grounds of appeal - CPS 10049/1

Ground	Main concerns the appellant submitted
1. The level of investigation into impact significant flora is inadequate to correctly assess the proposal	The appellant argued that the information contained in the applicant's flora survey is insufficient to assess the proposal correctly and that it is likely to be at variance with some of the Clearing Principles.

Ground	Main concerns the appellant submitted
against the Clearing Principles	
2. DWER's assessment of the impacts on Threatened species <i>Banksia dolichostyla</i> , is incorrect	The appellant argued that the clearing will either directly or indirectly impact on Threatened species <i>Banksia dolichostyla</i> . DWER did not assess this impact correctly and is fact at variance with Clearing Principle (c).
3. The proposed clearing is at variance to Clearing Principles (f), (g) and (i)	The appellant contended that the clearing would lead to land degradation, notably a rising water table, due to the removal of deep-rooted vegetation. This would lead to increased salinity at a local scale, but also extending to a larger, regional scale, causing further land degradation and indirectly impacting critical habitat for significant flora.
4. The impact on the vegetation in the Jilbadji Nature Reserve has not been properly assessed	The appellant argued that there will be a direct loss of vegetation in the Jilbadji Nature Reserve and the proposed clearing should have been assessed as being at variance with Clearing Principle (h).
5. ESAs occur along the road alignment and the project should be referred to the Environmental Protection Authority (EPA)	The appellant contended that ESAs occur along the road alignment, notably the TEC/ priority ecological Communities (PEC) "Eucalypt Woodland of the Western Australian Wheatbelt", the proposed clearing should have been referred to the EPA for consideration of assessment under Part IV and not Part V of the EP Act.
6. Information was not provided as to where the road construction material will be sourced	The appellant was concerned that not enough information was provided on where the road construction material will be sourced and, therefore, the significance of any vegetation that would need to be cleared.

1.4 Key issues and conclusions

The conclusions and finding of the Appeals Committee are summarised below, with Sections 2, 3 and 4 providing the details and reasoning behind the Committee's recommendation to the Minister for Environment. Section 5 gives the full details of the proposal and important context information. Section 6 provides additional advice to the Minister.

1. Grounds of appeal - CPS 10197/1

The clearing would impact on Environmentally sensitive areas

The Committee finds that most of the concerns raised by the appellant were based on the original proposed clearing and that the additional survey work required by DWER was not available to the appellant. The Committee notes that the TEC will not be directly impacted by the clearing and that adequate conditions have been placed on the permit holder to manage

and reduce any possible indirect impacts on the TEC and PEC. With respect to the request to refer the proposed clearing to the EPA, the modified proposal will not have any direct impacts on a TEC or PEC, and, therefore, a referral is not required. The Committee also notes the advice from the Shire that borrow pits were not included in the permit application as the sites for the pits are on already cleared land.

With respect to the view of the appellant that an offset should be required for the clearing in the local highly cleared landscape, the Committee examined the existing offsets policy framework, DWER's advice, and further commitments by the Shire. The Committee concluded that based on DWER's interpretation of Residual Impact Significance as described in Figure 3 of the WA Environmental Offsets Guidelines, that significant impacts are to be based on vegetation associations and not total vegetation remaining, and further mitigation measures proposed by the Shire, the proposed loss of vegetation do not represent a significant cumulative impact. For these reasons, an offset is not required.

For all the reasons discussed above, it is recommended that this appeal ground should be dismissed.

However, the Committee is of the view that DWER's interpretation of Residual Impact Significance as described in Figure 3 of the WA Environmental Offsets Guidelines needs to be clarified as it appears to the Committee that it may not be being applied consistently. For this reason, the Committee has provided some additional advice to the Minister.

Impact on the Wockallarry Nature Reserve

The Committee appreciates the appellant's concerns regarding the loss of vegetation within the Nature Reserve, but noted the 3.49 ha of the proposed clearing that directly intersects the Wockallarry Nature Reserve is for widening a section of the road that has already been constructed and is outside the road reserve. It is not clear how this error occurred.

The Committee noted the Shire's advice that the total of the existing and proposed clearing would be of a width which is less than the width of the existing road reserve.

Taking into account that the total width of the clearing for the road and the width of the existing road reserve, the Committee considers that if the road had been constructed within the road reserve, no clearing would be required within the Nature Reserve and that such clearing would ultimately be approved through Part V of the EP Act. There would be no environmental benefit in realigning this section of the road to be within the road reserve and rehabilitating the existing alignment. For these reasons, the Committee finds that the clearing in the Nature Reserve is reasonable and should proceed, provided that the existing uncleared road reserve remains uncleared. There is no reason to construct a new road within the road reserve now.

For this reason, the Committee recommends that this appeal ground be dismissed.

Clearing will cause significant hydrological impacts

The Committee noted the appellant's concern that clearing of deep-rooted vegetation in an already highly cleared landscape had the potential to raise the water table and cause other impacts. However, the Committee found that DWER had assessed correctly the potential impact on surface hydrology and agrees with DWER that it is unlikely to lead to a rise in the water table and impact on surface water hydrology.

For this reason, it is recommended that this appeal ground be dismissed.

2. Grounds of appeal - CPS 10265/1

Inadequate assessment of the biodiversity of the vegetation to be cleared

The Committee recognises that the concerns raised by the appellant were based on the original proposed clearing and the original flora survey, and that the additional survey work carried out as required by DWER was not available to the appellant. The Committee notes that the TEC will not be directly impacted by the clearing and that adequate conditions have been placed on the permit holder to manage and reduce any possible indirect impacts on the TEC. The Committee agrees with DWER in its assessment of the impact on the PEC and significant flora that it is unlikely to be regionally significant, nor likely to impact the conservation status of the impacted species.

For these reasons, the Committee recommends that this appeal ground be dismissed.

Inadequate assessment of the impact on fauna

The appellant noted that no fauna survey and assessment has been supplied in the supporting documents for this clearing permit.

The Committee finds that the assessment of DWER with respect to Clearing Principle (b), Biological value – Fauna, is adequate and that the condition requiring directional clearing 7(b) will allow any fauna present during clearing to move away from the works and avoid being directly affected.

For this reason, the Committee recommends that this appeal ground be dismissed.

Additional clearing within the Merredin IBRA sub-region should not occur

The Committee agreed with the appellant that the Merredin IBRA sub-region has been extensively cleared with only 20.96% of its pre-clearing vegetation remaining, which is below the National objectives to maintain biodiversity levels.

The Committee noted that the 4.02 ha to be cleared for this proposal represents 0.0003% of the remaining vegetation in the sub-region. Whilst it is acknowledged that any clearing of vegetation in this sub-region would further reduce the area of vegetation remaining below the national objectives and targets for biodiversity conservation in Australia, this loss can be considered as insignificant.

For this reason, the Committee recommends that this appeal ground be dismissed.

The proposed clearing is at variance to Clearing Principles (i) and (j)

The appellant contended that the clearing would lead to land degradation due to the removal of deep-rooted vegetation, which is the same argument made in appeal ground 3 against permit CPS 10197/1.

The Committee agrees with DWER that the small size of the clearing is unlikely to impact further on groundwater quality and surface water quality and any potential impacts can be controlled through conditions set in the permit. The Committee finds that the clearing is not likely to be at variance to this Clearing Principle.

For this reason, the Committee recommends that this appeal ground be dismissed.

3. Grounds of appeal - CPS 10049/1

The level of investigation into impact significant flora is inadequate to correctly assess the proposal against the Clear Principles

The Committee notes the appellant's argument that the information contained in the applicant's original flora survey is insufficient to assess the proposal correctly and that it is likely to be at variance with some of the Clearing Principles.

The Committee finds that the concerns raised by the appellant were based on the original proposed clearing and the original flora survey, and that the additional survey work carried out for DWER was not available to the appellant. The Committee finds that the assessment carried out by DWER against the Clearing Principles is adequate and agrees with DWER that impacts on biodiversity are not likely to be significant and can be managed through conditions placed on the clearing permits.

For these reasons, the Committee recommends that this appeal ground be dismissed.

DWER's assessment of the impacts on Threatened species *Banksia dolichostyla*, is incorrect

The Committee agreed with the appellant that the original permit would allow the clearing that would either directly or indirectly impact on Threatened species *Banksia dolichostyla*.

The Committee notes that the clearing has now been modified so that of the 26,346 plants of *Banksia dolichostyla* (T) within the survey area, only 73 individual plants will not have the recommended 50 metres buffer from the proposed clearing, and no individual plants will be directly cleared. The Committee notes that the permit contains conditions to manage dust, weeds and erosion and concludes that this is adequate to protect the plants of *Banksia dolichostyla* (T) adjacent to the clearing. The Committee also notes that considerable dust is generated as trucks use the road in its existing unsealed state and that there is likely to be a net reduction in amount of dust generated when the road is sealed.

For these reasons, the Committee recommends that this appeal ground be dismissed.

The proposed clearing is at variance to Clearing Principles (f), (g) and (i)

The appellant contended that the clearing would lead to land degradation due to the removal of deep-rooted vegetation. This is the same matter as covered in Appeal Ground 4 in appeal 055/23.

For the same reasons, the Committee recommends that this appeal ground be dismissed.

The impact on the vegetation in the Jilbadji Nature Reserve has not been properly assessed

The Committee agrees that there will be a direct loss of vegetation in the Jilbadji Nature Reserve. However, the Committee agrees with DWER that whilst there will be some direct loss of vegetation within the Reserve, this loss is insignificant with respect to the total size of the Reserve. Further, the existing clearing for the road already fragments the Reserve and the additional clearing does not add to this fragmentation.

For these reasons, the Committee recommends that this appeal ground be dismissed.

ESAs occur along the road alignment and the project should be referred to the EPA

The Committee agrees with the appellant that ESAs occur along the road alignment, notably the TEC/PEC “Eucalypt Woodland of the Western Australian Wheatbelt”, but notes that the design of the road now avoids any impact on the TEC.

For this reason, the Committee finds that referral to the EPA is not required and recommends that this appeal ground be dismissed.

Information not provided as to where the road construction material will be sourced

The Committee agrees with the appellant that the original document did not have enough information on where the road construction material will be sourced from and, therefore, the significance of any vegetation that would need to be cleared. However, the Committee notes the advice from the Shire that all borrow pits are in either cleared farmland areas or in areas already disturbed adjacent to the road. This was confirmed during the site visit.

For this reason, it is recommended that this appeal ground be dismissed.

1.5 Recommendation to the Minister

The Committee recommends that the appeals against the three clearing permits be dismissed.

However, the Committee notes that, with respect to appeal ground 1 in appeal 056/23 against CPS 10197/1, DWER’s policy position regarding whether a significant cumulative impact occurs when vegetation is cleared in a bioregion with less than 30% vegetation remaining uncleared has been interpreted in a different way in another clearing permit application and that clarity on this is needed. The Committee has made a recommendation with respect to this matter.

2 Reasons for recommendation - CPS 10197/1 - Appeal 056/23

2.1 Details of the clearing

The clearing is for widening the cleared area for the existing Parker Range Road, most of which is within existing road reserves, some Unallocated Crown Land, and freehold lots in the Moorine Rock area. There is one section that is not within a road reserve but within the Wockallary Nature Reserve – see Appeal Ground 2. Of the up to 9.9 ha of clearing that has been approved, 3.49 ha would be within the Nature Reserve.

Figure 2 below shows the location of the clearing.



Figure 2 Location of clearing for CPS 10197/1

2.2 Appeal ground 1 – The clearing would impact on Environmentally sensitive areas (ESAs)

Relevant information

The appellant noted that the documentation available indicated that there were three ESAs along the road, in particular a threatened ecological community (TEC):

As such this project should be referred to the EPA as per the EPA referral guidelines. Areas of the roadside vegetation are also described as TEC/PEC “Eucalypt Woodland of the Western Australian Wheatbelt” and have protection under Federal and State legislation. The Federal Conservation Advice requires retention of the TEC be a priority action. Advice of protection of the TEC should be sought from DCCEEW prior to making any decision on this permit.

As well, the appellant was concerned that not enough information was provided on where the road construction material will be sourced from and, therefore, the significance of any vegetation that would need to be cleared.

The Society notes that the level of detail provided in CPS 10197/1 is inadequate to assess the impact of the sites proposed for sourcing road construction materials, as there is no information provided.

And

An operating plan for the material source should be prepared for each disturbed area ...

The appellant contended that, based on the information in the Western Botanical report (the original flora survey), the clearing would be at variance Clearing Principles (a), (d) and (e).

In response to the appeal, DWER advised as follows:

The Department’s preliminary assessment of the Applications determined that the supporting Flora and Vegetation survey reports provided (Attachments 4, 5 and 6) were insufficient for the requirements of the assessment and further information was required. On request from the Department, the Permit Holder provided additional targeted flora and vegetation survey information (shapefiles and Attachment 8).

The additional information identified that the proposed clearing was likely to lead to impacts on:

- *conservation significant flora;*
- *vegetation representative of two Priority Ecological Communities (PECs);*
- *vegetation representative of a Threatened Ecological Community (TEC); and*
- *habitat for conservation significant fauna.*

Upon request from the Department to consider further avoidance and mitigation measures, the Permit Holder reduced the proposed clearing area to remove impacts to the Eucalypt Woodlands of the Western Australian Wheatbelt Region (Wheatbelt Woodlands) TEC and reduce impacts to conservation significant flora, fauna and ecological communities.

DWER’s assessment report noted that Priority 3 PEC Plant Assemblages of the Parker Range System occurs adjacent to but not within the area to be cleared, although DWER recognised the potential for indirect impacts on the PEC. DWER considered that conditions

requiring the implementation of weed and land management measures adequately deal with the threat to the PEC due to any possible indirect impacts.

With respect to any clearing required for the borrow pits, the Shire advised as follows:

There are no vegetated borrow pits to source road construction materials included as part of the clearing application. All borrow pits associated with the road upgrade are in either cleared farmland areas or in areas already disturbed adjacent to the road.

In a meeting with the appellant, it was further argued that a majority of the vegetation to be cleared was within a highly cleared landscape and that the vegetation in the road reserve is important within that landscape and acts as an important ecological corridor. The appellant referred to the following point made in the appeal against CPS 10265/1:

The Merredin IBRA sub-region has been extensively cleared and now extremely under represented with only 20.96% of its pre-European vegetation, which is well below the threshold to maintain biodiversity levels, thus any further clearing cannot possibly be considered to not effect biodiversity levels. The Society disputes WB's assessment of Clearing Principle (e) concluding it's at "variance with this principle though to a relatively minor extent"; clearing permits with 'minor impacts' have caused deep destruction of the now heavily cleared Wheatbelt through cumulative impacts.

Consideration

The Committee finds that most of the concerns raised by the appellant were based on the original proposed clearing and that the additional survey work required by DWER was not available to the appellant. The Committee notes that the TEC will not be directly impacted by the clearing and that adequate conditions have been placed on the permit holder to manage and reduce any possible indirect impacts on the TEC and PEC. With respect to the request to refer the proposed clearing to the EPA or the Department of Climate Change, Energy, Environment and Water (DCCEEW), the modified proposal will not have any direct impacts on a TEC or PEC, and, therefore, a referral to either agency is not required. The Committee also notes the advice from the Shire that borrow pits were not included in the permit application as the sites for the pits are on already cleared land.

With respect to the view of the appellant that an offset should be required for the clearing in the local highly cleared landscape, the Committee examined the existing offsets policy framework, DWER's advice and further commitments by the Shire.

Figure 2 above show the proposed clearing allowed by this permit, and as can be seen, the majority is within a local highly cleared landscape.

The Digital Atlas of Australia shows that the road is within the Avon-Wheatbelt bioregion, on the eastern edge

(https://digital.atlas.gov.au/datasets/fd39705085b348e88810eb935a663704_0/explore?location=-31.419616%2C119.626022%2C10.59).

In response to the appeal, DWER advised that:

... the Avon-Wheatbelt bioregion only retains 18.51 per cent, and is therefore not consistent with the national objectives and targets.

The WA Environmental Offsets Policy has six principles, and the relevant ones are discussed below with respect to the clearing in this permit in the local highly cleared landscape.

Principle 1 - Environmental offsets will only be considered after avoidance and mitigation options have been pursued. In this case, the Shire further avoided clearing and the proposed conditions should further mitigate impacts.

Principle 2 - Environmental offsets are not appropriate for all projects. The policy notes that “While environment offsets may be appropriate for significant residual environmental impacts, they will not be applied to minor environmental impacts.” Whilst the loss of 6.4 ha of vegetation in this landscape could be seen as a minor impact at a regional level, it could be argued that at a local scale in a highly cleared landscape, this is a significant residual impact.

The application of Principle 2 is particularly relevant here. The WA Environmental Offsets Guidelines provide further guidance on what is a significant residual environmental impact.

In general, significant residual impacts include those that affect rare and endangered plants and animals (such as declared rare flora and threatened species that are protected by statute), areas within the formal conservation reserve system, important environmental systems and species that are protected under international agreements (such as Ramsar listed wetlands) and areas that are already defined as being critically impacted in a cumulative context. Impacts may also be significant if, for example, they could cause plants or animals to become rare or endangered, or they affect vegetation which provides important ecological functions. (p8) (underlining added).

As already noted, the vegetation to be cleared for this permit is not significant flora, but is in an area that is “already defined as being critically impacted in a cumulative context”.

The Guidelines contain a Figure that sets out a model for Residual Impact Significance, and when an offset is required taking into account the Clearing Principles. – Figure 3 below.

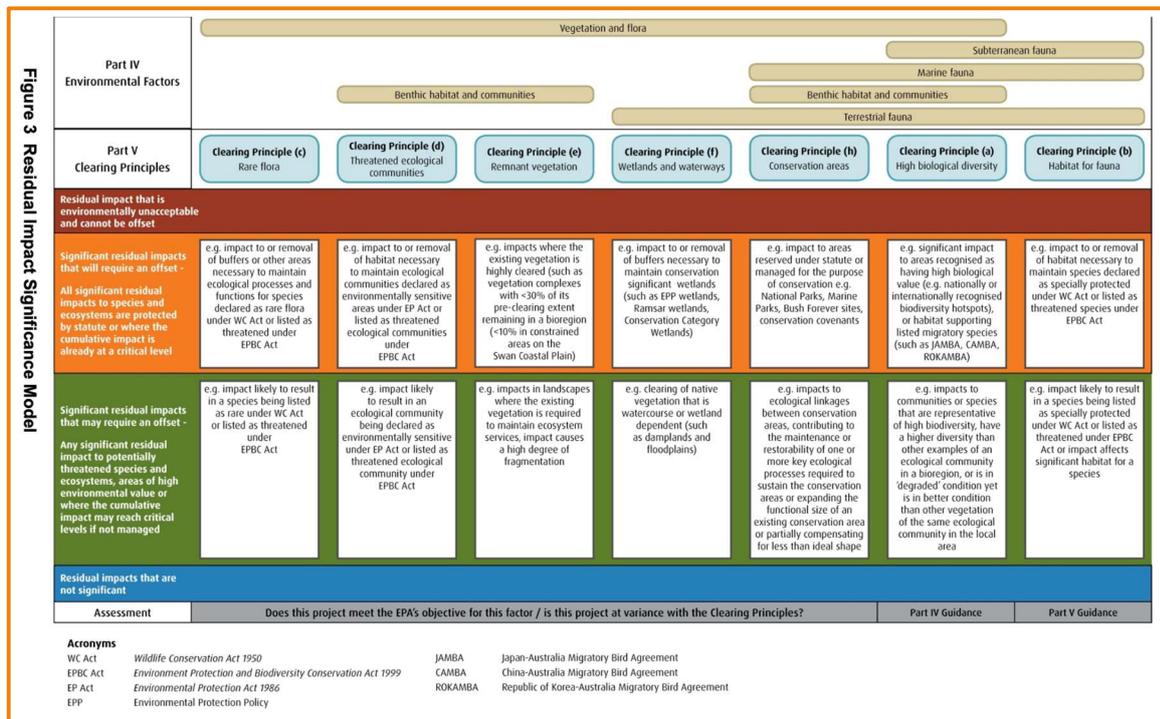


Figure 3 Model to determine residual impacts significance (Source: Government of Western Australia 2014)

Clearing Principle (e) is most relevant here, and the example given in the Figure is pertinent. It states “e.g. impacts where the existing vegetation is highly cleared (such as vegetation complexes with <30% of its pre-clearing extent remaining in a bioregion...)”.

In responding to this matter, DWER advised as follows:

The proposed clearing areas are located within the Avon Wheatbelt and Coolgardie IBRA regions. While the Coolgardie retains 97.96 per cent of its pre-European extent, the Avon-Wheatbelt bioregion only retains 18.51 per cent, and is therefore not consistent with the national objectives and targets. In addition, the Department’s assessment identified one restricted vegetation association mapped within the proposed clearing areas, Vegetation Association (VA) 8.

As outlined in the Decision Report, the VA 8 is mapped over the proposed clearing area of CPS 10197/1 and retains less than 30 per cent of its original extent and is therefore below with the national threshold (section 3.2.1 of the Decision Report). The broad description of the vegetation association is largely consistent with the ‘tall eucalypt woodland’ vegetation type mapped by Western Botanical (Attachment 5).

As outlined in response to Appellant Ground 1, the Permit Holder revised the proposed clearing area to avoid impacts to the Wheatbelt Woodlands TEC. This in turn reduced the clearing of the ‘tall eucalypt woodland’ vegetation type and, subsequently, the clearing of vegetation representative of VA 8 was significantly reduced. Specifically, of the 23.17 ha of ‘tall eucalyptus woodland’ mapped across the survey area, approximately 0.06 ha occur within the proposed clearing area. The remaining VA’s within the clearing area (VA 1413 and VA 1068) are not deemed to be extensively cleared as they retain approximately 98 and 50 per cent respectively.

The Department’s assessment concluded that given the extent of impact, the proposed clearing is unlikely to result in a significant, long-term reduction in the extent of native vegetation within the authorised clearing area, local area, or bioregion, and therefore did not represent a significant cumulative impact.

In summary, DWER acknowledged that clearing would occur in a bioregion with less than 30% vegetation remaining, but assessed the need for an offset based on % remaining of individual vegetation associations (equivalent to vegetation complexes in the Guidelines), of which there are three, with only VA 8 being less than the 30%. DWER noted that of the total area of vegetation to be cleared, 0.06 ha would be VA 8. Consequently, DWER determined that this small loss does not represent a significant cumulative impact.

The Shire further advised during the appeals process that the detailed design of the road involves identifying and flagging individual trees included as part of the area to be cleared and at the edge of that proposed clearing which would now not be cleared, and earth works for the road construction will be modified accordingly. As a result, the total area of VA 8 to be cleared will now be less than 0.06 ha.

The Committee finds that, based on DWER’s interpretation of Residual Impact Significance as described in Figure 3 of the Guidelines, that significant impacts are to be based on vegetation associations and not total vegetation remaining, and further mitigation measures proposed by the Shire, the proposed loss of vegetation does not represent a significant cumulative impact. For these reasons, an offset is not required.

For all the reasons discussed above, it is recommended that this appeal ground should be dismissed.

However, the Committee is of the view that DWER’s interpretation of Residual Impact Significance as described in Figure 3 of the Guidelines needs to be clarified as it appears to the Committee that it may not be being applied consistently. For this reason, the Committee has provided some additional advice to the Minister.

2.3 Appeal ground 2 – Impact on the Wockallary Nature Reserve

Relevant information

The appellant raised concerns about the impacts on Wockallary Nature Reserve and the proposed clearing within the Reserve:

The Society understands that works within a Nature Reserve (in this case Wockallary Nature Reserve) requires consideration more extensive than that considered in a clearing permit.

In its response to the appeal, DWER noted that its assessment report did not identify that any clearing would occur in the Wockallary Nature Reserve. It corrected this and advised as follows:

3.49 ha of the proposed clearing for CPS 10197/1 directly intersects the Wockallary Nature Reserve.

DWER calculated that this clearing is 0.5% of the total area of the Nature Reserve.

Consideration

DWER’s assessment report has a series of maps showing the revised clearing footprint and a revised Map I that shows the clearing proposed within the Wockallary Nature Reserve. This is shown in Figure 4 below.

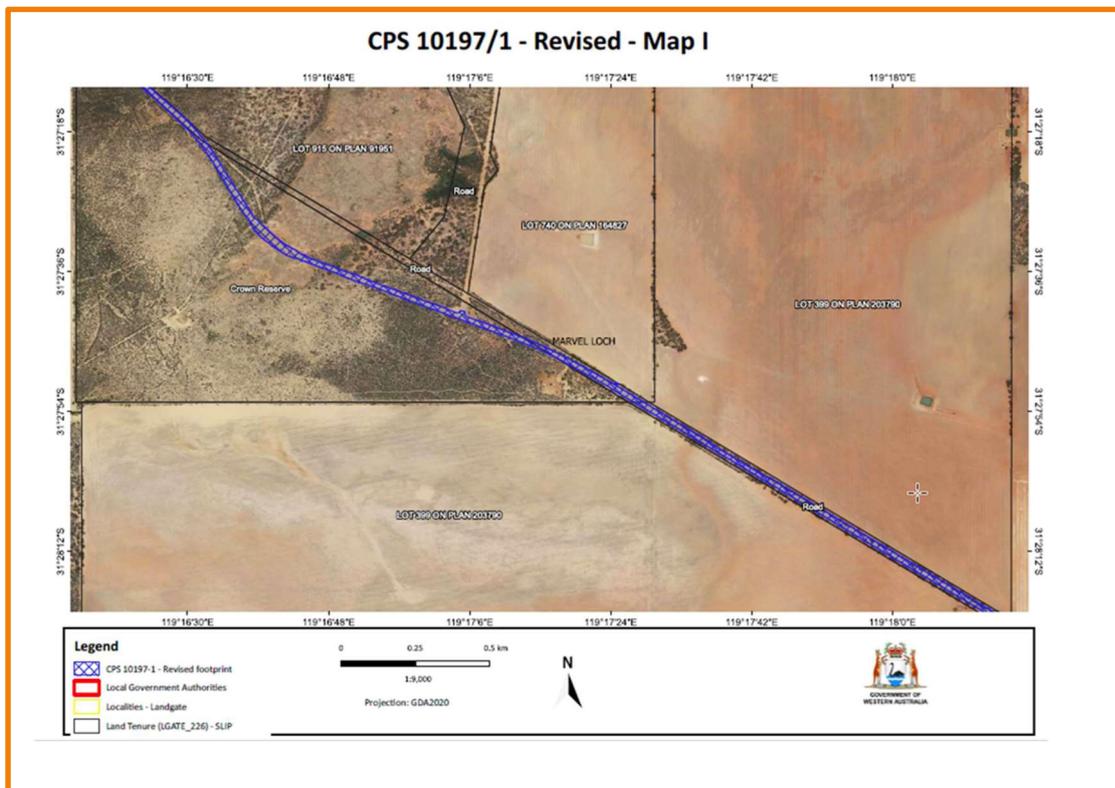


Figure 4 Revised map showing proposed clearing in the Wockallary Nature Reserve

As can be seen, the 3.49 ha of the proposed clearing that directly intersects the Wockallarry Nature Reserve is for widening a section of the road that has already been constructed and is outside the road reserve. It is not clear how this error occurred.

The Shire advised that the total of the existing and proposed clearing would be of a width which is less than the width of the existing road reserve.

Taking into account that the total width of the clearing for the road and the width of the existing road reserve, the Committee considers that that if the road had been constructed within the road reserve, no clearing would be required within the Nature Reserve and that such clearing would ultimately be approved through Part V of the EP Act. There would be no environmental benefit in realigning this section of the road to be within the road reserve and rehabilitating the existing alignment. For these reasons, the Committee finds that the clearing in the Nature Reserve is reasonable and should proceed, provided that the existing uncleared road reserve remains uncleared. There is no reason to construct a new road within the road reserve now.

For this reason, the Committee recommends that this appeal ground be dismissed.

2.4 Appeal Ground 3 – Clearing will cause significant hydrological impacts

Relevant information

The appellant contended “removal of any deep-rooted vegetation in the Wheatbelt results in localised (at least) rises in the water table”, and, therefore, the clearing in the section of the road in the highly cleared area would be at variance with Clearing Principle (f). The appellant also raised similar concerns regarding clearing in the Wockallarry Nature Reserve:

The Society believes that given the sensitivity to some of the features near the road to changes in surface hydrology, a more extensive examination of the works proposed and their impacts should be undertaken, through consideration of this proposal by the EPA, as these works are at variance with Clearing Principle H.

DWER, in its response to the appeal advised as follows:

Potential impacts to the quality of surface or underground water from the proposed clearing were assessed under Clearing Principle (i). As outlined in the Decision Reports (Attachment 1, 2 and 3), the proposed clearing areas are located within the Westonia Groundwater Area proclaimed under the Rights in Water and Irrigation Act 1914. The proposed clearing and road works are unlikely to intercept the groundwater level and, given the reduced clearing of ‘tall eucalyptus woodland’ vegetation, is considered unlikely to result in a rise in the water table. Given this, the Department considers that the proposed clearing is unlikely to impact groundwater quality.

As outlined in the Decision Reports and above, the Department considers impacts to surface water are expected to be minimal and short-term, with impacts only likely should a rainfall event occur during clearing works. Any potential impacts to surface water drainage from the proposed clearing and associated works can be managed by the construction of drainage along the road and conditions placed on the Clearing Permits.

Consideration

The Committee agrees with DWER that the impact on surface hydrology has been assessed correctly and finds that it is unlikely to lead to a rise in the water table and impact on surface water hydrology.

For this reason, it is recommended that this appeal ground be dismissed.

3 Reasons for recommendation - CPS 10265/1 - Appeal 055/23

3.1 Details of the clearing

The clearing would be for widening the cleared area for the existing road up to 4.02 ha within an existing road reserve, some unallocated Crown land and a freehold lot. Two sections of the existing road are newly constructed diversion roads around existing developments. Most of the surrounding land contains uncleared native vegetation.

Figure 5 below shows the location of clearing covered by CPS 10265/1.

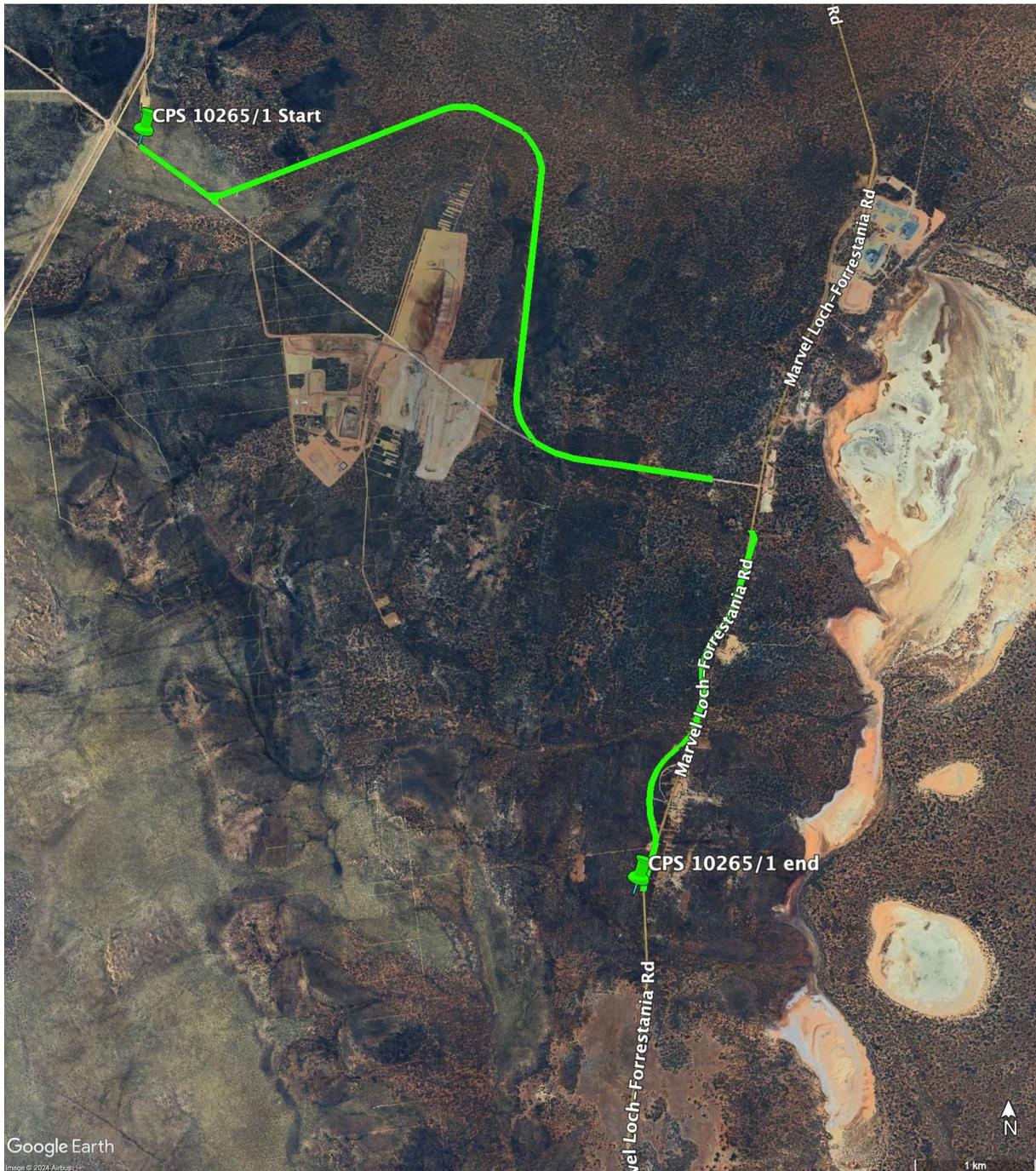


Figure 5 Location of clearing for CPS 10265/1

3.2 Appeal ground 1 – Inadequate assessment of the biodiversity of the vegetation to be cleared

Relevant information

The appellant contended that the information in the original flora survey (Western Botanical's report) and its assessment

... is not final and is lacking critical information to be able to confidently assess this proposal.

And

A proposal of such significance must have the appropriate information collected and presented for a comprehensive assessment to be made.

Consequently, the appellant argued that DWER's assessment is flawed and the proposed clearing it as variance with Principle (a), and no assessment can be made against Principle (c).

DWER's assessment of the proposed clearing was made on additional survey work carried out on its request. This survey works was not considered by the appellant. DWER concluded that:

- *The proposed clearing will clear four Priority 1 (P1), one Priority 2 (P2), two Priority 3 (P3), and four flora species of interest (SOI). The proportion of individuals to be removed to the total population known locally and regionally are considered low, that the impacts are unlikely to be significant locally or regionally. The impacts on the species conservation values are also considered insignificant...*
- *The proposed clearing will remove 2.04 ha of vegetation representative of the Plant Assemblages of the Parker Range Priority Ecological Community (PEC) (Priority 3). The clearing constitutes 0.004 percent of the total known area of the PEC, which is considered unlikely that the clearing would change the conservation status of the PEC...*
- *The proposed clearing will not remove any areas mapped or identified as the Eucalypt Woodlands of Western Australian Wheatbelt Region (Wheatbelt Woodlands) Threatened Ecological Community (TEC).*

DWER recognised the potential for indirect impacts on the surrounding Priority flora, the PEC and TEC but considered that conditions requiring the implementation of weed and land management measures adequately deal with the threat to these flora due to any possible indirect impacts.

In its appeal response, DWER advised that:

- *Impacts to conservation significant flora are unlikely to be regionally significant, nor likely to impact the conservation status of the impacted species.*
- *Impacts to PECs constitute less than 0.001 per cent of the total known area of the PECs and are therefore unlikely to be regionally significant.*
- *No vegetation of the Wheatbelt Woodlands TEC will be removed.*

Consideration

The Committee finds that the concerns raised by the appellant were based on the original proposed clearing and the original flora survey, and that the additional survey work carried out as required by DWER was not available to the appellant. The Committee notes that the TEC will not be directly impacted by the clearing and that adequate conditions have been

placed on the permit holder to manage and reduce any possible indirect impacts on the TEC. The Committee agrees with DWER in its assessment of the impact on the PEC and significant flora that it is unlikely to be regionally significant, nor likely to impact the conservation status of the impacted species.

For these reasons, the Committee recommends that this appeal ground be dismissed.

3.3 Appeal ground 2 – Inadequate assessment of the impact on fauna

Relevant information

The appellant contended that:

No Fauna Survey and Assessment has been supplied in the supporting documents for this Clearing Permit. This is a grave lack of essential information, and it is unacceptable for this clearing permit to proceed when vital information relevant to the public's response and assessment is not present.

DWER's assessment report notes that:

The vegetation within the application area and surrounds may contain suitable habitat for conservation significant fauna. However, the application area does not comprise significant or critical habitat for the fauna species recorded within the local area. Clearing of patches of vegetation scattered over the large linear footprint of more than 50 km is unlikely to impact on the survival, maintenance, and conservation of the fauna species. Potential impact on any fauna individuals that may be present during clearing can be mitigated by conducting clearing in slow and directional manner to allow any fauna individual present to move to adjacent vegetation ahead of clearing. This is placed as a management condition to the Permit.

Consideration

The Committee finds that the assessment of DWER with respect to Clearing Principle (b), Biological value – Fauna, is adequate and that the condition requiring directional clearing 7(b) will allow any fauna present during clearing to move away from the works and avoid being directly affected. Condition 7(b) requires the permit holder to:

allow a reasonable time for fauna present within the area being cleared to move into adjacent native vegetation ahead of the clearing activity.

For this reason, the Committee recommends that this appeal ground be dismissed.

3.4 Appeal ground 3 – Additional clearing within the Merredin IBRA sub-region should not occur

Relevant information

The appellant argued that:

The Merredin IBRA sub-region has been extensively cleared and now extremely under represented with only 20.96% of its pre-European vegetation, which is well below the threshold to maintain biodiversity levels, thus any further clearing cannot possibly be considered to not effect biodiversity levels.

The Merredin IBRA sub-region is one of two sub-regions of the Avon Wheatbelt IBRA region.

In response to the appeal DWER advised that:

... the Avon-Wheatbelt bioregion only retains 18.51 per cent, and is therefore not consistent with the national objectives and targets.

DWER did not address the potential loss of more vegetation in the Merredin IBRA sub-region nor did it confirm that the vegetation that would be cleared as a result of the clearing permit is part of that sub-region.

Consideration

Data from the DCCEEW website

(www.dcceew.gov.au/environment/land/nrs/science/capad/2010) indicates that in this sub-region 1,367,467 ha remain uncleared of which 218,907 ha are protected. The 4.02 ha to be cleared for this proposal represents 0.0003% of the remaining vegetation in the sub-region. Whilst it is acknowledged that any clearing of vegetation in this sub-region would further reduce the area of vegetation remaining below the national objectives and targets for biodiversity conservation in Australia, this loss can be considered as insignificant.

For this reason, the Committee recommends that this appeal ground be dismissed.

3.5 Appeal ground 4 – The proposed clearing is at variance to Clearing Principles (i) and (j)

Relevant information

The appellant contended that the clearing would lead to land degradation due to the removal of deep-rooted vegetation:

Deep-rooted species are strongly linked with the hydrology and soil type of the Wheatbelt, and as this proposal will result in the removal of deep-rooted Eucalyptus species, as demonstrated by Dr Tom Hatton's work, will lead to a rise in the water table. The alteration in water table levels subsequently leads to increased salinity at a local scale, but also extending to a larger, regional scale; causing further land degradation and indirectly impacting critical habitat for significant flora, TEC, and CE PEC woodland.

Consequently, the appellant argued that the clearing would be at variance to Clearing Principles (i) and (j).

In response to the appeal, DWER advised as follows:

Clearing Principle (i)

Potential impacts to the quality of surface or underground water from the proposed clearing were assessed under Clearing Principle (i). As outlined in the Decision Reports (Attachment 1, 2 and 3), the proposed clearing areas are located within the Westonia Groundwater Area proclaimed under the Rights in Water and Irrigation Act 1914. The proposed clearing and road works are unlikely to intercept the groundwater level and, given the reduced clearing of 'tall eucalyptus woodland' vegetation, is considered unlikely to result in a rise in the water table. Given this, the Department considers that the proposed clearing is unlikely to impact groundwater quality.

As outlined in the Decision Reports and above, the Department considers impacts to surface water are expected to be minimal and short-term, with impacts only likely should a rainfall event occur during clearing works. Any potential impacts to surface water drainage from the proposed clearing and associated works can be managed

by the construction of drainage along the road and conditions placed on the Clearing Permits.

Clearing Principle (j)

The Department's assessment of Clearing Principle (j) determined that the proposed clearing is unlikely to contribute to increased incidence or intensity of flooding. This assessment was based on the mapped soils and topographic contours in the surrounding area that indicated the proposed clearing is unlikely to contribute to increased incidence or intensity of flooding. It is not considered that the removal of the proposed vegetation will lead to an increased incidence of flooding, especially with the amount of remaining vegetation adjacent to the majority of the clearing areas.

As outlined above, the Permit Holder has committed to the construction of drainage along the road to aid in surface water drainage. This has been conditioned on the Clearing Permits and is considered by the Department sufficient to mitigate the risk of flooding (condition 8 in Attachments 1, 2 and 3). The Department therefore remains of the view that the proposed clearing is not likely at to be variance to this Clearing Principle.

Consideration

The Committee agrees with DWER that the small size of the clearing is unlikely to impact further on groundwater quality and surface water quality and any potential impacts can be controlled through conditions set in the permit. The Committee finds that the clearing is not likely at to be variance to this Clearing Principle.

For this reason, the Committee recommends that this appeal ground be dismissed.

4 Reasons for recommendation - CPS 10049/1 – Appeal 053/23

4.1 Details of the clearing

The clearing would be for widening the cleared area of the existing road up to 24.9 ha within an existing road reserve, some unallocated Crown land and a freehold lot. Most of the surrounding land contains uncleared native vegetation.

Figure 6 below shows the location of the clearing for CPS 10049/1.



Figure 6 Location of clearing for permit CPS 10049/1

4.2 Appeal ground 1 – The level of investigation into impact significant flora is inadequate to correctly assess the proposal against the Clear Principles

Relevant information

The appellant argued that the information contained in the applicant's flora survey is insufficient to assess the proposal correctly and that it is likely to be at variance with some of the Clearing Principles. The appellant contended that:

The vegetation in this proposal is of high biodiversity value, with vegetation in predominantly 'Pristine' condition, contains State and Federally protected species and communities, and therefore it is imperative that the appropriate level of investigation and assessment is conducted.

And

Western Botanical has admitted to the lack of information available for proper assessment, and therefore their own decision for Clearing Principle A should be dismissed and reassessed. It seems unlikely that this proposal has been assessed using the recommended document, A guide to the assessment of applications to clear Native Vegetation, where it states "Priority flora and other significant flora such as uncommon or range-restricted species are another measure of biodiversity values and should be considered under this principle. Similarly, priority ecological communities provide a measure of biodiversity for ecological communities. The presence of significant flora or priority ecological communities is indicative of environmental values worthy of protection and a higher level of biological diversity than might typically be expected in an area."

In response, DWER advised that

Taking into consideration the advice received from DBCA, additional survey information provided, and the avoidance and mitigation measures undertaken by the Permit Holder, the Department's assessment determined the following:

- *Impacts to conservation significant flora are unlikely to be regionally significant, nor likely to impact the conservation status of the impacted species.*
- *Impacts to PECs constitute less than 0.001 per cent of the total known area of the PECs and are therefore unlikely to be regionally significant.*
- *No vegetation of the Wheatbelt Woodlands TEC will be removed.*
- *The fauna habitat proposed to be cleared is not considered critical habitat for conservation significant fauna recorded within the local area.*

Given the above, the Department determined that the impacts on biodiversity were not likely to be significant and could be managed through conditions placed on the Clearing Permits.

Consideration

The Committee finds that the concerns raised by the appellant were based on the original proposed clearing and the original flora survey, and that the additional survey work carried out for DWER was not available to the appellant. The Committee finds that the assessment carried out by DWER against the Clearing Principles is adequate and agrees with DWER that impacts on biodiversity are not likely to be significant and can be managed through conditions placed on the Clearing Permits.

For these reasons, the Committee recommends that this appeal ground be dismissed.

4.3 Appeal Ground 2 – DWER’s assessment of the impacts on Threatened species *Banksia dolichostyla*, is incorrect

Relevant information

The appellant argued that the clearing will either directly or indirectly impact on Threatened species *Banksia dolichostyla*:

Threatened Flora (TF) (a subset of Rare Flora) should have a buffer zone implemented as a minimum to protect these species from the proposal’s indirect impacts. The edging effect and erosion from road construction will affect the identified TF which is in close proximity to the proposed works. A condition should be added to the approval permit which includes a researched and appropriate buffer surrounding the Threatened individuals. It is important to note, that while the proponent may advise there are no plans to ‘take’ any TF individuals, the proposal is still to remove the habitat for TF, and in doing this drastically diminishing the area which TF can survive.

In response to the appeal, DWER advised as follows:

*According to the revised flora data provided by the Permit Holder (Attachment 8), a total 26,346 plants of *Banksia dolichostyla* (T) were recorded within the survey area. The population has been recorded either side of the current road alignment, and 73 individual plants are located within 50 metres of the proposed clearing area. As outlined in the Decision Report, the Department’s assessment concluded that the proposed clearing may indirectly impact individuals within close proximity to the proposed clearing area. No individuals of *Banksia dolichostyla* (T) are proposed to be removed by the clearing. In addition, the Department determined that the proposed clearing area contains suitable habitat for this species.*

DWER also agreed that its assessment against Clearing Principle (c) was in error:

On review, the Department considers the proposed clearing should have been assessed as ‘may be at variance’ with Clearing Principle (c) due to the presence of suitable habitat for threatened flora within the proposed clearing area.

DWER summarised its assessment as follows:

*The Department’s assessment took into consideration the advice received from DBCA and the Permit Holders’ avoidance and mitigation measures (section 3.1 of Attachment 1) and concluded that impacts to *Banksia dolichostyla* (T) from the proposed clearing are unlikely to be regionally significant nor likely to impact the conservation status of the species. The majority of the population identified during the surveys (26,273 plants) occur beyond 50 metres of the proposed clearing area. The Department remains of the view that indirect impacts on the surrounding habitat and neighbouring individuals can be managed with conditions imposed on the Permit and considers that a buffer surrounding the threatened flora individuals is not necessary.*

Consideration

The Committee notes that of the 26,346 plants of *Banksia dolichostyla* (T) within the survey area, only 73 individual plants will not have the recommended 50 metres buffer from the proposed clearing, and no individual plants will be directly cleared. The Committee notes that the permit contains conditions to manage dust, weeds and erosion and concludes that this is adequate to protect the plants of *Banksia dolichostyla* (T) adjacent to the clearing. The

Committee also notes that considerable dust is generated as trucks use the road in its unsealed state and that there is likely to be a net reduction in amount of dust generated when the road is sealed.

For these reasons, the Committee recommends that this appeal ground be dismissed.

4.4 Appeal ground 3 – the proposed clearing is at variance to Clearing Principles (f), (g) and (i)

Relevant information

The appellant contended that the clearing would lead to land degradation due to the removal of deep-rooted vegetation:

Work undertaken by Dr Tom Hatton demonstrated that removal of any deep-rooted vegetation in the Wheatbelt results in, as a minimum, localised rises in the water table. The alteration in water table levels has subsequent effects on the salinity in the region which will result in the creation of salt lakes, and further land degradation; thus this proposal is seen to clearly be at variance with Clearing Principle F; G and; I..

Consideration

This is the same matter as covered in Appeal Ground 4 in appeal 055/23 (Section 3.5).

For the same reasons, the Committee recommends that this appeal ground be dismissed.

4.5 Appeal ground 4 – The impact on the vegetation in the Jilbadji Nature Reserve has not been properly assessed

Relevant information

The appellant argued that there will be a direct loss of vegetation in the Jilbadji Nature Reserve and the proposed clearing should have been assessed as being at variance with Clearing Principle (h):

Clearing Principle H has been inadequately addressed in both WB1003 and the Decision Report. CPS 10049/1 directly intersects with Jilbadji Nature Reserve which supports a highly biodiverse ecosystem, yet very little concern has been given to the impact by this proposal. Western Botanical states that the proposal “should not impact directly on the Jilbadji NR” and therefore is not at variance. It is not stipulated that impacts resulting from a proposal’s activities must be ‘direct’ instead of ‘indirect’ to find it at variance with any Clearing Principles.

In response to the appeal, DWER advised as follows:

The Department’s assessment of the potential impacts on the Reserves from the proposed clearing considered the following:

According to the revised vegetation mapping provided by the Permit Holder (shapefiles), approximately 50 per cent of the proposed clearing areas intersecting the Jilbadji Nature Reserve is in completely degraded condition with the remainder in very good to pristine...

- *The two Reserves are fragmented by the presence of the current roads and will not be further fragmented by the proposed clearing.*

- *The extent of the proposed clearing is relatively small in consideration of the large extent of the two Reserves, with the proposed clearing within the Jilbadji Nature Reserve ... equating to an impact of less than 0.003 per cent.*

Consideration

The Committee agrees with DWER that whilst there will be some direct loss of vegetation within the Jilbadji Nature Reserve, this loss is insignificant with respect to the total size of the Reserve. Further, the existing clearing for the road already fragments the Reserve and the additional clearing does not add to this fragmentation.

For these reasons, the Committee recommends that this appeal ground be dismissed.

4.6 Appeal ground 5 - Environmentally Sensitive Areas occur along the road alignment and the project should be referred to the EPA

Relevant information

The appellant contended that as ESAs occur along the road alignment, notably the TEC/PEC “Eucalypt Woodland of the Western Australian Wheatbelt”, the proposed clearing should have been referred to the EPA for consideration of assessment under Part IV and not Part V of the EP Act.

It was argued that:

It is evident throughout Western Botanical’s report that their assessment is not final and is lacking critical information to be able to confidently assess this proposal. “At this stage, there is insufficient representation of quadrats to enable a meaningful statistical analysis to be undertaken” (WB1003, S3.2.5.), and acknowledging that the report submitted for public consultation and assessment was an interim report; “Ten quadrats had not been assigned to a Vegetation Association at time of preparation of this Interim report.” (WB1003, S3.2.4.). A proposal of such significance must have the appropriate information collected and presented for a comprehensive assessment to be made, the Society requests that this proposal is referred to the EPA for review where this information must be submitted.

Consideration

This is the same matter as covered in Appeal Ground 1 in appeal 056/23 (Section 2.2).

For the same reasons, the Committee finds that referral to the EPA is not required and recommends that this appeal ground be dismissed.

4.7 Appeal ground 6 – Information not provided as to where the road construction material will be sourced

Relevant information

The appellant is concerned that not enough information is provided on where the road construction material will be sourced from and, therefore, the significance of any vegetation that would need to be cleared. It was argued that:

However, it is not evident in any attached documents where any sourcing of construction materials is proposed. This information is a necessity to proceed with the assessment on environmental values and must be provided. The Society rejects the proposal that any road construction materials are sourced from

vegetated areas, and must be sourced from the surrounding, highly cleared most likely rated as 'Completely Degraded' agricultural land. Further clearing of native vegetation should not be permitted to source materials for this project.

With respect to any clearing required for the borrow pits, the Shire advised as follows:

There are no vegetated borrow pits to source road construction materials included as part of the clearing application. All borrow pits associated with the road upgrade are in either cleared farmland areas or in areas already disturbed adjacent to the road.

Consideration

The Committee notes that the matter of where the construction material will be sourced was not made clear in the application of DWER's assessment report, but notes the advice from the Shire that all borrow pits are in either cleared farmland areas or in areas already disturbed adjacent to the road. This was confirmed during the site visit.

For this reason, it is recommended that this appeal ground be dismissed.

5 Supporting information

5.1 The approved clearing

There are three clearing permits and the appeal against each permit are covered in this report. The Shire of Yilgarn is the permit holder for all three permits. The purpose for each permit is for road construction and sourcing construction materials.

The three permits will provide an upgraded road link on public roads between Mount Holland Covalent Lithium mine to Great Eastern Highway.

The photographs below show the extent of clearing to be carried out on a section of Parker Range Road – the pegs show the edge of the clearing.



The Shire submitted the applications that became permits CPS 10049/1 and 10197/1 on 18 January 2023 and on 6 June 2023 submitted an application to clear that became CPS 10265/1.

In its response to the appeals, DWER advised that

The Department's preliminary assessment of the Applications determined that the supporting Flora and Vegetation survey reports provided (Attachments 4, 5 and 6) were insufficient for the requirements of the assessment and further information was required. On request from the Department, the Permit Holder provided additional targeted flora and vegetation survey information (shapefiles and Attachment 8).

And

Upon request from the Department to consider further avoidance and mitigation measures, the Permit Holder reduced the proposed clearing area to remove impacts to the Eucalypt Woodlands of the Western Australian Wheatbelt Region (Wheatbelt Woodlands) TEC and reduce impacts to conservation significant flora, fauna and ecological communities.

Subsequently, the reduced clearing for the three permits were approved on 29 November 2023 (CPS 10049/1), 6 December 2023 (CPS 10197/1) and 13 December 2023, (CPS 10265/1).

6 Further advice

As noted in Section 2.2 in discussing whether the some of clearing for CPS 10197/1 should require an offset, the Committee formed the view that DWER's interpretation of Residual Impact Significance as described in Figure 3 of the Guidelines needs to be clarified as it appears to the Committee that it may not be being applied consistently.

The matter here is about the application of Clearing Principle (e) and determining Residual Impact Significance when the clearing is in a bioregion with less than 30% pre-clearing vegetation remaining. To summarise, the text in the Figure states "e.g. impacts where the existing vegetation is highly cleared (such as vegetation complexes with <30% of its pre-clearing extent remaining in a bioregion...)".

DWER acknowledged that clearing would occur in a bioregion with less than 30% vegetation remaining, but assessed the need for an offset based on % remaining of individual vegetation associations (equivalent to vegetation complexes in the Guidelines), of which there are 3, with only VA 8 being less than the 30%. DWER noted that of the total area of vegetation to be cleared, 0.06 ha would be VA 8. Consequently, DWER determined that this small loss does not represent a significant cumulative impact.

The Committee notes that in assessing clearing permit CPS 9349/1, Mount Barker Shire of Plantagenet, DWER required that an offset was required. The permit allowed for clearing up to 1.29 ha for the purpose of walking trail, bike trail network and car park.

DWER concluded that "no impact to conservation significant flora species would occur as a result of the proposed clearing." In assessing the application against Clearing Principle (e), DWER found that

... the application area provides suitable habitat for conservation significant flora and fauna respectively. Noting this, and that the local area has been extensively cleared, the native vegetation proposed to be cleared is considered as a significant remnant in an area that has been extensively cleared.

DWER noted that in the local area only 23.28% of the native vegetation remains uncleared.

DWER concluded that:

For the reasons set out above, it is considered that the impacts of the proposed clearing on significant remnant of native vegetation in an area that has been extensively cleared cannot be mitigated by the applicant's avoidance and minimisation strategies and an offset is required to counterbalance the significant residual impact remaining in consistent with the Government of Western Australia's Environmental Offsets Policy and Environmental Offsets Guidelines.

In this case, DWER used the total extent of the native vegetation remaining and made no reference to vegetation complexes or associations.

It appears to the Committee that there is an inconsistency in interpreting what is Residual Impact Significance when the clearing is in a bioregion with less than 30% pre-clearing vegetation remaining – is it assessed using the loss of any of the vegetation or is it assessed based on individual associations/complexes with a focus on those with less than 30% pre-clearing remaining?

It is recommended that you write to DWER seeking clarity on this matter and that DWER update its policy framework accordingly.

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

For clearing permits, the Minister can overturn the original decision to grant the permit if this was the basis of the appeal. Alternatively, if the appeal was against the conditions of the permit, the Minister may modify the conditions only. The appeal investigation will consider the extent to which conditions can address the issues raised, as well as any new information that may not have been available at the time of the original decision.

While process issues can be raised in an appeal, the focus of investigations will be on the substantive environmental matters relevant to DWER's conditions.

The Committee reports 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 Committee [see section 109(3) of the EP Act], and
- The authority that originally made the decision under appeal [see section 106(1)].

Appendix 2 Further references

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. Perth, Western Australia, Government of Western Australia.

Government of Western Australia (2011). WA Environmental Offsets Policy. Perth, Western Australia, Environmental Protection Authority.

Government of Western Australia (2014). WA Environmental Offsets Guidelines. Perth, Western Australia.