



**Appeals Convenor**  
**Environmental Protection Act 1986**

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**REPORT TO THE  
MINISTER FOR ENVIRONMENT**

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**APPEAL IN OBJECTION TO THE DECISION OF THE DEPARTMENT OF WATER  
AND ENVIRONMENTAL REGULATION TO GRANT**

**CLEARING PERMIT CPS 7388/1: MARTIN ROAD RESERVE,  
WATERHOUSE ROAD RESERVE, ROWE ROAD RESERVE AND  
MAYA NATURE RESERVE, SHIRE OF PERENJORI**

**PROPONENT: SHIRE OF PERENJORI**

Appeal Number 024 of 2019

**August 2019**

## Appeal Summary

This report relates to an appeal lodged by the Wildflower Society of Western Australia Inc. (appellant) against the decision of the Department of Water and Environmental Regulation (DWER) to grant Clearing Permit CPS 7388/1 to the Shire of Perenjori (applicant). The clearing permit authorises the clearing of 4.54 hectares (ha) of native vegetation for the purpose of road repairs and reconstruction.

In summary, the appellant submitted that the clearing permit should not have been granted based on the environmental values identified within the application area. The appellant raised concerns that a flora and vegetation survey considered by DWER was not conducted at an appropriate time, that impacts to a threatened ecological community and priority flora are unacceptable, that further actions to avoid and minimise are required, and that the offset and other conditions of the clearing permit are not adequate. The appellant is seeking for the Minister to overturn DWER's decision to grant the clearing permit or strengthen the conditions.

DWER's assessment had regard for the applicant's avoidance and minimisation measures, in particular the reduction in the size of the application area and extent of the proposed clearing. DWER concluded that the amended application area is not likely to contain the Commonwealth-listed *Eucalypt Woodlands of the Western Australian Wheatbelt* threatened ecological community.

In response to the appeal, DWER acknowledged that the timing of the flora and vegetation survey meant that the presence of many species could not be ruled out with certainty, however, based on subsequent investigations and advice from the Department of Biodiversity, Conservation and Attractions (DBCA) DWER determined that most species were either unlikely to be present, or that impacts to them, if present, would not be significant to the conservation of the species

With regard to *Westringia ophioglossa* (Priority 1), DWER applied condition 7 to the clearing permit which prohibits clearing within 10 metres of this species. Noting that there are only three known population of this species, DWER recommended that this condition be strengthened and that the 10 metre buffer be increased to 50 metres around occurrences of this species, as well as clear demarcation of individual plants and their buffers. DWER advised that this would provide a more appropriate level of protection from indirect impacts.

The Appeals Convenor considered that DWER's assessment of the clearing application and conclusions formed in relation to the potential impacts to conservation-significant species and communities were supported by the available information. The Appeals Convenor also considered that DWER's decision to grant the permit subject to conditions was justified, and that the conditions applied to address the impacts of the proposed clearing were generally reasonable.

### Recommendation

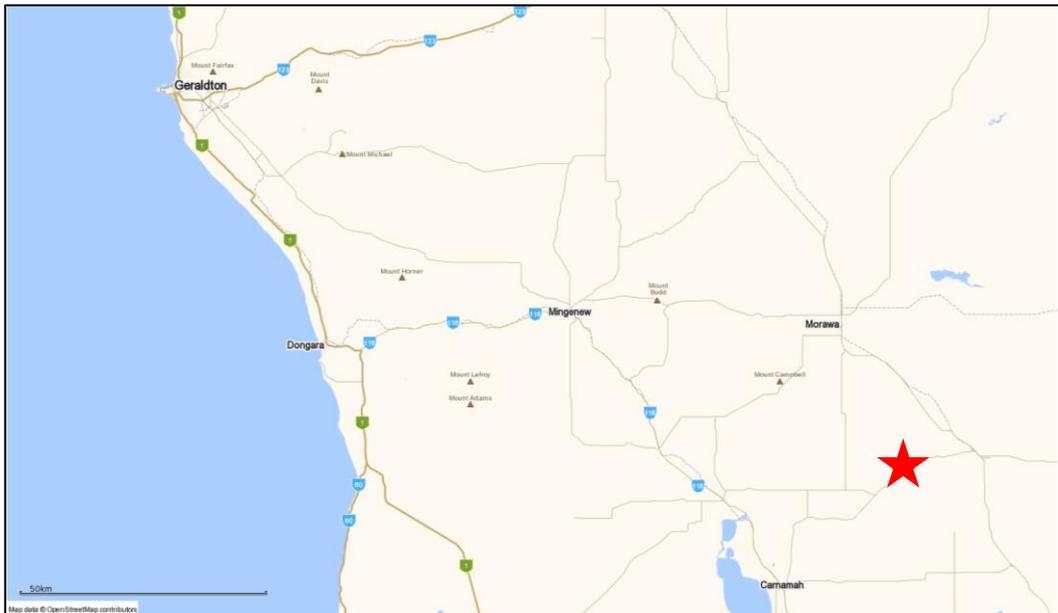
The Appeals Convenor recommended that the appeal be allowed to the extent that condition 7 of the clearing permit is amended to require the retention of a 50 metre buffer around occurrences of *Westringia ophioglossa* (Priority 1), and clear demarcation of individual plants and their buffers.

## INTRODUCTION

This report relates to an appeal lodged by the Wildflower Society of Western Australia Inc. (appellant) in objection to the decision of the Department of Water and Environmental Regulation (DWER) to grant Clearing Permit CPS 7388/1 to the Shire of Perenjori (applicant) to clear 4.54 hectares (ha) of native vegetation within a 39.1 ha footprint on various land parcels for the purpose of road repairs and reconstruction.

The location and extent of the application area are shown in Figure 1 and 2.

**Figure 1 – Location map (indicated by red star)**



(Source: Whereis.com, May 2019)

**Figure 2– Application Area (indicated in blue)**



(Source: DWER CPS 7388/1 Decision Report)

## Background

The applicant applied for a purpose permit on 1 December 2016 to clear 10 ha of native vegetation within a 79.54 ha footprint within the Benton Road reserve, Wilder Road reserve, Taylor Road reserve, Martin Road reserve, Waterhouse Road reserve, Rowe Road reserve and Lot 6617 on Deposited Plan 226684 (being Maya Nature Reserve) within the Shire of Perenjori, for the purpose of undertaking road repairs and reconstruction.

The application was advertised for a 21-day public comment period on 2 January 2017 and no submissions were received.

On 20 June 2017, DWER provided the applicant with its preliminary assessment report. In response the applicant reduced the extent of the proposed clearing to 4.54 ha within a 39.1 ha footprint within the Martin Road reserve, Waterhouse Road reserve, Rowe Road reserve and Lot 6617 on Deposited Plan 226684 (application area).

DWER's assessment concluded that the proposed clearing is at variance to principles (a) biodiversity, (e) remnant in an extensively cleared landscape and (f) riparian vegetation, may be at variance to principles (b) fauna, (g) land degradation and (h) conservation area, and is not likely to be at variance to the remaining clearing principles.

DWER granted the clearing permit on 12 April 2019, subject to conditions including requirements to avoid, minimise and reduce the impacts and extent of clearing, to avoid clearing within 10 metres (m) of priority flora *Westringia ophioglossa* (Priority 1), to undertake clearing within three months of proposed works for wind erosion management, to undertake weed and dieback (*Phytophthora* sp.) control, and to offset significant residual impacts through land acquisition and conservation tenure. It was against DWER's decision to grant the clearing permit that the appeal was received.

This document is the Appeals Convenor's formal report to the Minister for Environment under section 109(3) of the *Environmental Protection Act 1986* (EP Act).

## OVERVIEW OF APPEAL PROCESS

In accordance with section 106 of the EP Act, a report was obtained from DWER in relation to the issues raised in the appeal. The applicant was also given the opportunity to address the matters raised in the appeal.

During the appeal investigation, the Appeals Convenor consulted the appellant and the applicant in relation to issues raised in the appeal. The appellant requested a copy of DWER's report on the appeal, and provided additional information in response which was considered during the appeal investigation.

The environmental appeals process is a merits-based process. For appeals in relation to a DWER decision to grant a clearing permit, the Appeals Convenor normally considers the environmental merits of the assessment by DWER based on principles as set out in Schedule 5 of the EP Act, as well as other environmental factors. Questions of additional information not considered by DWER, technical errors and attainment of relevant policy objectives are normally central to appeals.

## OUTCOME SOUGHT BY APPELLANT

The appellant is seeking for the Minister to overturn the grant of the clearing permit or to amend the conditions attached to the permit.

## GROUNDS OF APPEAL

In summary, the appellant submitted that on the basis of the environmental values identified within the application area, DWER should not have granted the clearing permit. The appellant is concerned that the vegetation and flora survey<sup>1</sup> considered by DWER was not conducted at an appropriate time, that further actions to avoid and minimise clearing are required, and that the offset and conditions of the permit are not adequate.

The appellant is seeking for:

- a spring flora survey to be undertaken;
- the clearing of the Commonwealth-listed *Eucalypt Woodlands of the Western Australian Wheatbelt* threatened ecological community (Eucalypt Woodlands TEC) not be allowed;
- further actions to avoid and minimise clearing to be implemented;
- the priority flora buffer be increased from 10 m to 50 m;
- a revised clearing permit to be submitted by the applicant; and
- if the clearing permit is allowed, for more stringent conditions to be applied.

### GROUND 1: IMPACTS TO A THREATENED ECOLOGICAL COMMUNITY

The appellant submitted that DWER's conclusion that the Eucalypt Woodlands TEC does not occur within the application area was incorrect and inconsistent with the flora and vegetation survey. The appellant submitted that no clearing of the TEC should be allowed.

#### Consideration

In response to this appeal ground, DWER acknowledged that Vegetation Type A1 mapped by the flora and vegetation survey within the Waterhouse Road and Martin Road reserves resembles the Eucalypt Woodlands TEC.

The Approved Conservation Advice for the Eucalypt Woodlands TEC<sup>2</sup> provides advice as to different values and functional attributes of an ecological community and their thresholds to be considered representative of this TEC, including the principle features of a woodland structure in which the minimum crown cover of the tree canopy in a mature woodland is 10 per cent, with the key canopy being of specified *Eucalyptus* species over a native understorey of variable composition. One of the thresholds to be considered is minimum patch size of vegetation meeting the key diagnostic criteria of this TEC, specifically:

- vegetation in Pristine, Excellent or Very Good condition should have a minimum patch size of two hectares (or five metres width in roadsides);
- vegetation in Good condition should have a minimum patch size of two hectares where mature trees are present or five hectares where mature trees are absent or at low density (or five metres width in roadsides); and
- vegetation in Good to Degraded condition should have a minimum patch size of five hectares (or five metres width in roadsides).

The Approved Conservation Advice also indicates that very degraded or modified patches are excluded from the Eucalypt Woodlands TEC.

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<sup>1</sup> One Tree Botanical (2017) *Perenjori Roads Project: Reconnaissance Flora and Vegetation Survey and Targeted Flora Survey (Limited)*. Unpublished report prepared for Greenfields Technical Services/Shire of Perenjori.

<sup>2</sup> Department of the Environment (2015) *Approved Conservation Advice (including listing advice) for the Eucalypt Woodlands of the Western Australian Wheatbelt*. Canberra: Department of the Environment. Available at: <http://www.environment.gov.au/cgi-bin/sprat/public/publicshowcommunity.pl?id=128&status=Critically+Endangered>

The decision report for the clearing permit documents that the flora and vegetation survey identified vegetation within the application area that potentially resembles the Eucalypt Woodlands TEC, and that the vegetation condition ranges from 'Very Good' to 'Degraded'. The decision report further documents that the overall width of the Waterhouse Road reserve is 23 m and the Martin Road reserve is 20 m, with approximately three to four metres of vegetation remaining on either side of the current road formation. It is understood that on this basis, DWER determined that the vegetation within the road reserves does not meet the minimum five metre width specified in the Approved Conservation Advice to be considered part of the Eucalypt Woodlands TEC.

The appellant submitted that where Vegetation Type A1 occurs within the application area, some portions extend beyond the road reserve into adjacent areas and therefore may exceed the five metre width specified in the Approved Conservation Advice.

On review of available aerial imagery<sup>3</sup> and the flora and vegetation survey report, it is noted that the largest of these portions is a patch of vegetation in Good to Degraded condition on Waterhouse Road, being approximately 20 m wide with a total area of approximately 0.5 ha. The Approved Conservation Advice states that the extent of roadside vegetation, when combined with adjacent vegetation, must have a minimum patch size of five hectares to be considered part of the Eucalypt Woodlands TEC. Noting this, it is considered that DWER's conclusion that the application area is not likely to contain the Eucalypt Woodlands TEC is reasonable.

## Conclusion

Having regard for the available information and noting that the vegetation within the application area does not meet the key diagnostic criteria to be considered part of the Eucalypt Woodlands TEC, it is considered that DWER's conclusion that the application area is not likely to compromise the whole or part of, or be necessary for the maintenance of, a TEC was justified. It is recommended that this ground of appeal be dismissed.

## GROUND 2: ADEQUACY OF THE FLORA AND VEGETATION SURVEY

The appellant raised concerns over the timing (April 2017) and limitations of the flora and vegetation survey, and submitted that:

- due to the timing, a number of species may not have been identifiable and therefore not recorded as being present, including samphire species (*Tecticornia* spp.), small leaved Myrtaceae, a number of conservation significant species, and annual herbs;
- several species were identified that had range extensions, or were at the extremity of their known range, or comprised outlier populations, local or short-range endemics or a restricted distribution, which should have precluded the grant of the clearing permit;
- the flora and vegetation survey was not extensive enough to determine the full extent of the *Westringia ophioglossa* (Priority 1) populations within the application area, and therefore the extent of potential impacts on this species is not clear; and
- the absence of conditions reflecting the Department of Biodiversity, Conservation and Attractions' (DBCA) recommendation to avoid and minimise impacts to *Acacia nigripilosa* subsp. *latifolia* (Priority 1) and three Priority 3 species (*Acacia isoneura* subsp. *nimia*, *Acacia scalena* and *Grevillea granulosa*) should be addressed.

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<sup>3</sup> Accessed at: <https://cps.dwer.wa.gov.au/main.html>

The appellant considered that the clearing permit should not have been granted in the absence of an adequate survey, and requested that a comprehensive spring survey be completed in accordance with the Environmental Protection Authority's *Technical Guidance – Terrestrial Flora and Vegetation Survey for Environmental Impact Assessment*.<sup>4</sup>

## Consideration

The decision report documents that DWER sought advice from DBCA (formerly the Department of Parks and Wildlife (DPAW)) and the local DBCA flora officers. DBCA advised that the timing of the flora and vegetation survey limited its reliability, however considered that the high quality of the survey would partially mitigate the timing issue. DBCA also advised that if unidentified Myrtaceae and samphire species could be confirmed to not be conservation significant species, then an appropriately timed survey would not be required.

DWER's response to the appeal outlines that an analysis by specialists at the WA Herbarium of samples collected during the flora and vegetation survey concluded that the Myrtaceae and samphire species were not priority listed species. It is also noted that the reduction in the application footprint avoided known locations and potential habitat for flora species.

In relation to the individual species raised by the appellant, DWER advised that it considered information provided by DBCA on species listed in the flora and vegetation survey report together with internal expertise and advice from the WA Herbarium. DWER provided advice for each species as outlined in Table 1 below.

**Table 1: DWER advice on conservation significant flora species**

| Species   | Status               | DWER advice  |
|---|----------------------|--|
| <i>Goodenia perryi</i>                            | Potential Priority 3 | These species have potential habitat within the application area. As they are known from 14 and 26 records respectively and the application area is within their known range DWER determined that impacts from the proposed clearing are not likely to be significant at the species level.  |
| <i>Lechenaultia galactites</i> <sup>+</sup>       |                      |  |
| <i>Podotheca pritzelli</i>                        | Potential Priority 3 | These species occur within samphire flats. DWER's site visit did not identify any samphire or saline flats and as such it determined that these species are not likely to occur in the application area.   |
| <i>Podotheca uniseta</i>                          |                      |  |
| <i>Acacia isoneura</i> subsp. <i>nimia</i>        | Priority 3           | This species is known from 25 WA Herbarium collections. DBCA advised that recent population records have recorded plant counts between 2 and 20 plants. In June 2017 DBCA provided advice that though the proposed clearing may have an impact on the local occurrence of this species it is not likely to be significant at a species level.  |
| <i>Acacia nigripilosa</i> subsp. <i>latifolia</i> | Priority 1           | DBCA advised that a population of this species was identified in the Benton Road application area and any impacts to this population has the potential to be significant. In response to correspondence from DWER the applicant removed Benton Road reserve from the application area, thereby avoiding and reducing impacts to this species. Based on information provided in the flora and vegetation survey this species is now known from 12 populations and is present outside the application area. 104 of 110 plants found during the survey are located within the 79.54 ha survey area. DBCA advised that there are potentially additional plants in adjacent road side vegetation and larger areas of remnant vegetation adjacent to Benton Road. DBCA Geraldton observed a population 1.5 kilometres north of the application area in the Latham Nature Reserve, approximately 200 plants were identified but due to time constraints there is expected to be additional plants here. DBCA advised that given the size of this population and that the entire application area will not be cleared the impacts of the proposed clearing on this species |

<sup>4</sup> Environmental Protection Authority (2016) *Technical Guidance -Terrestrial Flora and Vegetation Survey for Environmental Impact Assessment*. December 2016. Government of Western Australia.

| Species                                   | Status      | DWER advice  |
|---|-------------|--|
|   |             | are unlikely to be significant. DWER determined that though some individuals will be impacted by the proposed clearing, the species will not be significantly impacted at the local or regional scale.   |
| <i>Acacia scalena</i>                     | Priority 3  | 38 records of this species are located at the WA Herbarium and it is noted that the populations on record are noted as occasional, abundant and fairly common. DBCA advised that the proposed clearing may impact the local occurrence but is not likely to be significant at a species level.   |
| <i>Angianthus micropodiodes</i>           | Priority 3  | DWER's site visit identified that no suitable habitat for this species was present making it unlikely that this species would occur in the application area. It is noted that there are 80 known records of this species across a broad range and therefore the proposed clearing was deemed not likely to be significant at a species level.  |
| <i>Calytrix plumulosa</i> <sup>+</sup>    | Priority 3  | The WA Herbarium analysed the Myrtaceous samples that were collected during the survey and determined that they are not representative of any conservation significant species. As such DWER determined that this species was not recorded in the survey and was not likely to be impacted by the proposed clearing.   |
| <i>Darwinia polychroma</i> <sup>+</sup>   | Priority 1  | This species was deemed by DBCA to be unlikely to occur within the application area as suitable habitat was not present.   |
| <i>Dasymalla axillaris</i> <sup>+</sup>   | Threatened  | DBCA advised that the results of the flora and vegetation survey discounted the presence of this species.  |
| <i>Gnephosis setifera</i> <sup>+</sup>    | Priority P1 | DBCA advised that one mapped vegetation community within the flora and vegetation survey (Broombrush shrublands fringing samphire on saline flats) would be suitable habitat for this species, which occurred in the Waterhouse Road reserve. DWER conducted a site visit including this mapped vegetation community but identified that saline flats were absent from the application area so it was determined that this species was not likely to occur as its preferred habitat is not present.  |
| <i>Gompholobium cinereum</i> <sup>+</sup> | Priority 3  | DWER noted that while suitable habitat for this species is present, there are 24 known records of this species and the application area is in the centre of the known range. As such DWER concluded that the proposed clearing is not likely to be significant at a species level.   |
| <i>Grevillea asparagoides</i>             | Priority 3  | DBCA advised that the proposed clearing has the potential to have a significant impact on a local scale but not at a species level. In June 2017 DBCA advised that there are 10 known locations of this species with abundance of between 6 to 20 plants. A population of this species is present within the Benton Road reserve however the applicant removed this area from the application. It is likely that this species would have been detected in the survey regardless of flowering times, on this basis DWER determined it is unlikely that this species will be impacted. |
| <i>Grevillea granulosa</i>                | Priority 3  | DBCA advised that the proposed clearing has the potential to be significant locally as it is the only record observed in this area, which is the southernmost extent of this species. However DBCA noted that in the context of the species it is considered that the taking of one plant by this application is not highly significant.   |
| <i>Melaleuca barlowii</i>                 | Priority 3  | WA Herbarium confirmed from survey samples that this species was not recorded in the survey. Therefore the proposed clearing is not likely to impact this species.   |
| <i>Mirbelia sp. cordifolia</i>            | Priority 1  | This species was recorded near Benton Road however the applicant removed this area from the application. DWER advised that the species is likely to have been detected irrespective of flowering times so considered that this species is not present in the application area.   |
| <i>Stylidium amabile</i> <sup>+</sup>     | Threatened  | DBCA advised that on review of the results of the flora and vegetation survey it discounted the presence of these species as no flora was observed that could have been this species.  |

| Species                                   | Status     | DWER advice  |
|---|------------|--|
| <i>Urodon capitatus</i> <sup>+</sup>      | Priority 3 | DWER advised that suitable habitat may be present in the application area however there are 34 known records of this species, with the application area being in the centre of the known range for this species. Also the species grows up to 1.2 m high and as such DWER considers if the species had been present in the application area it would have been identified during the survey. Therefore the proposed clearing is not likely to be significant at a species level.   |
| <i>Wurmbea murchisoniana</i> <sup>+</sup> | Priority 4 | DWER did not identify suitable habitat during its site visit which makes it unlikely this species occurs within the application area. In addition there are 34 known records of this species in a broad range so DWER determined the proposed clearing is not likely to be significant at a species level.   |
| <i>Westringia ophioglossa</i>             | Priority 1 | DBCA identified that the <i>Westringia ophioglossa</i> was identified in 2012 from a single roadside population, consisting of five plants, and a search of the immediate vicinity did not locate any additional populations. Further to this the flora and vegetation survey completed in April 2017 for this application identified two additional populations, one within Taylor Road and one within Rowe Road both consisting of a single plant. DBCA provided advice that if either population was to be impacted or a suitable buffer was not applied, then further surveys would be required to determine if it is located elsewhere, and only if it is located elsewhere should impacting this species be considered. The population within Taylor Road will not be impacted as it is not within the application area. DWER determined that given DBCA's advice and as the species is only known from three populations these populations are considered highly significant and should not be impacted. The decision report states that a 10 m buffer was to be applied to occurrences of <i>Westringia ophioglossa</i> within the application area to ensure that the population and supporting habitat is not impacted (discussed further under Ground 4). |

<sup>+</sup> Species specifically raised on appeal.

In response to the appeal DWER advised that:

Taking into consideration the reduced Application Area, the advice from DPaW and internal expertise, the Department was satisfied that no unacceptable impacts to flora species would occur as a result of the proposed clearing.

...While the Department acknowledges that the timing of the flora and vegetation survey meant that the presence of many species could not be ruled out with certainty, subsequent investigations and advice from DPaW provided sufficient basis on which to determine that these species were either unlikely to be present, or that impacts to them, if present, would not be significant to the conservation of the species.

## Conclusion

Noting the advice from DWER, DBCA and the WA Herbarium and the outcomes of DWER's site visit, it is considered that DWER's conclusion that there would be no unacceptable impacts to priority flora species as a result of the proposed clearing and that no further surveys are required was supported by the available evidence. Therefore it is recommended that this ground of appeal be dismissed.

## GROUND 3: OPTIONS TO AVOID AND MINIMISE CLEARING

The appellant submitted that the clearing permit should not have been granted in the absence of the applicant demonstrating the measures taken to avoid impacts to the Eucalypt Woodlands TEC.

The appellant also submitted that the extent of the proposed clearing on both sides of the road is excessive, and that the applicant should consider other options to further avoid and minimise

the clearing. The appellant recommended the following alternatives to avoid and minimise clearing:

- re-construct the road in adjacent mostly cleared land;
- widening the running surface of the road without widening the entire formation and hence increasing the cleared footprint;
- installing guideposts (reflective delineation), especially adjacent to trees close to the road;
- placing safety barriers, such as protective bollards, railing or wire rope at sensitive and significant areas or trees;
- installing signs indicating that trees are close to the road (if there are any);
- placing reflectors on trees that are close to the road; and
- clearing on one side of the road, the side with the least vegetation not on both sides as proposed.

### Consideration

In response to this ground of appeal, DWER advised that it encourages applicants to avoid and minimise impacts of clearing where possible. Section 2 of the decision report outlines the applicant's avoidance and minimisation measures, including the reduction in the extent of proposed clearing from 10 ha to 4.54 ha. This reduction included the removal of several roads/sections from the application area, thereby minimising impacts to:

- vegetation that is consistent with the Eucalypt Woodland TEC;
- suitable habitat and potential occurrences of threatened flora;
- suitable habitat and potential occurrences of priority flora;
- vegetation that has value as a linkage, contributing towards landscape fragmentation and limitations in fauna dispersal; and
- vegetation that is significant as a remnant within a highly cleared landscape, including under-represented vegetation associations.

Condition 6 of the permit requires the applicant to document its efforts to avoid and minimise clearing and to reduce the impact of clearing on any environmental values. DWER advised that this condition indicates a clear intent that the applicant should balance the need for the proposed clearing with other options.

Sections 51E and 51O of the EP Act outline the considerations to be made by DWER when assessing a clearing matter. The *Guide to assessment of applications to clear*<sup>5</sup> outlines these considerations in more detail.

During its assessment DWER took into consideration the purpose of the application, stated on the application form<sup>6</sup> as 'To allow for road repairs and reconstruction due to declared flood damage.' It is understood that the decision to propose works at a specific location is a matter for applicants to determine, and that DWER's role is to assess the potential environmental impacts of clearing applications on a case by case basis.

For its part the applicant advised that the works were necessary as heavy rains caused local flooding and the installation of drains was required to avoid potential future flooding issues. The applicant advised that it would be able to carry out a large portion of the original proposed works without needing to clear native vegetation, which resulted in the reduction in the size of the application area and the extent of clearing proposed. In this regard, the applicant amended the application by removing Wilder Road reserve, Taylors Road reserve, Benton Road reserve and a portion of Rowe Road reserve.

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<sup>5</sup> Department of Water and Environmental Regulation (2014) *A guide to the assessment of applications to clear native vegetation under Part V of the Environmental Protection Act 1986*. Government of Western Australia.

<sup>6</sup> Available at: <ftp://ftp.dwer.wa.gov.au/permit/7388/>

The applicant advised that clearing was required to the top of the backslope for the remaining roads (being the subject of the amended application), as vegetation overhanging the road and growing within the drains would be removed to improve the safety of road users and the functionality of the drains. The applicant also advised that the proposed clearing would be up to 1.5 m from the road formation.

## Conclusion

Noting the information provided in regard to this ground of appeal it is considered that DWER had regard for the applicant's avoidance and minimisation measures. Therefore it is deemed that this ground of appeal should be dismissed.

## GROUND 4: SUITABILITY OF PERMIT CONDITIONS (INCLUDING OFFSETS)

The appellant raised concerns with the offset applied to the permit and submitted that it is not 'like-for-like' as it does not offset priority flora species. The appellant also submitted that the clearing contains fauna corridors and potential priority fauna in residence that have not been addressed by the offset.

The appellant also submitted that the requirement to retain a 10 m buffer around *Westringia ophioglossa* (Priority 1) within the Rowe Road reserve is not sufficient and should be increased to a 50 m buffer.

## Consideration

### Offsets

The WA Environmental Offsets Policy and Guidelines provide that offsets may be applied to counterbalance significant residual impacts that remain after avoidance and mitigation measures have been undertaken, but are not appropriate for all projects (determined on a case-by-case basis).

In this case, it is understood DWER invited the applicant to demonstrate how the environmental impacts of the application would be avoided or minimised. Consequently, DWER considered the applicant's avoidance and mitigation measures and the acceptability of the remaining environmental impacts, as discussed in the decision report, prior to assessing the suitability of the proposed offset. The decision report identified that the application area occurs in an area with less than 30 per cent of the pre-1750 vegetation extent, with the Beard vegetation associations 352 and 435 to be cleared having 17 and 11.5 per cent vegetation remaining respectively. Aerial imagery identified that the local area retains approximately 15 per cent native vegetation cover which DWER advised means the application area is within an extensively cleared landscape. Therefore DWER determined that the significant residual impacts of the proposed clearing included the loss of native vegetation that is significant as a remnant in an area that has been extensively cleared, comprises under-represented vegetation associations, and provides an ecological linkage for fauna species.

To counterbalance these significant residual impacts, DWER applied condition 10 to the clearing permit requiring an offset through land acquisition and conservation tenure. Condition 10 also requires the applicant to provide evidence of the conservation tenure prior to undertaking clearing.

As discussed under Ground 2, DWER concluded that there would be no unacceptable impacts to priority flora species as a result of the proposed clearing, and therefore an offset to counterbalance significant residual impacts was not considered necessary in this regard.

As outlined in the decision report, DWER assessed the suitability of the proposed offset using the Commonwealth *Offsets Assessment Guide*,<sup>7</sup> and determined that the acquisition of 21 ha of vegetation within Lot 11902 on Deposited Plan 134847 (being Crown Reserve 12305) and change in the land tenure from 'Gravel' to 'Conservation' would adequately counterbalance the significant residual impacts outlined above. DWER advised that the proposed offset site contains Beard vegetation association 352, which is also present within the application area.

In relation to impacts to an ecological linkage, it is noted that approximately two to three metres of native vegetation would remain within each side of the road reserves. On this basis the ecological linkage will not be entirely severed as a result of the proposed clearing.

DWER acknowledged that the offset does not counterbalance the loss of this ecological linkage, and advised that it:

...notes that Principle 3 of the *WA Environmental Offsets Policy* (2011)<sup>8</sup> states that offsets should be related to the environmental value that is being impacted, and that it may be necessary to offset a value with a similar, but not identical, value. In this instance, the Department considered that it was not practical to require an offset which addressed the impacts of the proposed clearing on the ecological linkage values of the road reserves.

It is understood that the details of the offset requirements for this application will be published on the *WA Environmental Offsets Register*.<sup>9</sup>

#### Priority flora buffer

On review of the appellant's concerns regarding the 10 m buffer applied in condition 7 of the clearing permit, DWER advised that as there are only three known populations of *Westringia ophioglossa* (Priority 1), it recognises the importance of the occurrence within the application area and advised that, upon review of the known populations, a 50 m buffer would provide a more appropriate level of protection from indirect impacts. In addition, DWER considered that by requiring the applicant to clearly demarcate individual plants and the location of the buffer, impacts to this species will be avoided.

It is noted that DWER's recommendation in this regard is consistent with advice provided by DBCA. In addition DWER proposes to change condition 7 of the current permit to reflect these measures.

The appellant raised in the appeal investigation that if condition 7 changed in the permit then it suggests the clearing limit should also be lowered as there will be a 100 metre or more section of the application area that will not be cleared. Given that the permit includes condition 6, which relates to the avoidance, minimisation and reduction of the clearing, reducing the approved clearing area is not necessary as condition 6 indicates a clear intent that the applicant should balance the need for the proposed clearing with other options.

#### **Conclusion**

It is considered that DWER's conclusion that an offset was necessary to counterbalance the significant residual impacts of the proposed clearing resulting from the loss of vegetation that represents a significant remnant in an extensively cleared landscape, under-represented vegetation associations, and an ecological linkage for fauna species was supported by the available evidence.

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<sup>7</sup> Available at: <http://www.environment.gov.au/epbc/publications/epbc-act-environmental-offsets-policy>

<sup>8</sup> Available at: <http://www.epa.wa.gov.au/policies-guidance/wa-environmental-offsets-policy-2011-and-guidelines>

<sup>9</sup> Available at: <https://offsetsregister.wa.gov.au/public/home/>

It is also considered that, in accordance with DWER's recommendation, condition 7 of the clearing permit should be strengthened increasing the buffer applied to *Westringia ophioglossa* (Priority 1) from 10 to 50 m, and clear demarcation of individual plants and their buffers.

## CONCLUSION AND RECOMMENDATIONS

For the reasons stated in this report, it is considered that DWER's assessment of the clearing application and conclusions formed in relation to the potential impacts to conservation-significant species and communities were supported by the available information. It is also considered that DWER's decision to grant the clearing permit subject to conditions was justified, and that the conditions applied to address the impacts of the proposed clearing are generally reasonable. However, it is considered that the required buffer (10 m) around occurrences of *Westringia ophioglossa* (Priority 1) should be increased to 50 m, and that there should be clear demarcation of individual plants and their buffers.

It is therefore recommended that the appeal be allowed to the extent that condition 7 of the clearing permit is amended accordingly. It is otherwise recommended that the appeal be dismissed.

The final wording of the condition is a matter for DWER in giving effect to the Minister's decision under section 110 of the EP Act.

Emma Gaunt  
APPEALS CONVENOR

**Investigating Officer:**  
Emma Fitzgerald, Appeals Officer