



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

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**REPORT TO THE  
MINISTER FOR ENVIRONMENT**

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**APPEAL AGAINST DECISION TO GRANT A CLEARING PERMIT**  
**CPS 8424/1: WONNERUP SOUTH ROAD RESERVE**  
**YALYALUP, CITY OF BUSSELTON**

**PROPONENT: CITY OF BUSSELTON**

Appeal Number 028 of 2020

**July 2020**

## Appeal Summary

This report relates to an appeal lodged by Ms Julia Avery (the appellant) in objection to the decision of the Department of Water and Environmental Regulation (DWER) against the grant of clearing permit CPS 8424/1 to the City of Busselton. The clearing permit authorises the removal of no more than three native trees (including two flooded gums and one paperbark) on the Wonnerup South Road reserve. The clearing is for the purpose of road widening and maintenance.

In summary, the appellant submitted that the proposed clearing of the three trees will impact on an essential fauna corridor and fauna habitat in the local area. The appellant included a list of conservation significant fauna identified as utilising the area and a photograph of south-western brush-tailed tailed phascogale in support of her appeal.

A fauna survey was undertaken as the local area is known to support black cockatoo and the western ringtail possum (WRP) habitat. Although the two flooded gums are habitat trees for black cockatoos, none of the trees proposed for clearing contained hollows and no evidence of black cockatoo roosting was observed during the survey. Also noting the lack of key foraging species for black cockatoos within the application area, DWER was of the view that the clearing of the three trees is unlikely to cause significant impact to black cockatoo habitat.

The fauna survey made observations of WRP presence within 120 metres of the application area where *Agonis flexuosa* (the preferred WRP habitat) was a dominant component of the mid storey vegetation. On the basis that the scale of clearing is small and no hollows were identified in the three trees proposed for clearing, DWER considered that the removal of the three trees is unlikely to significantly reduce WRP habitat.

However, noting the small homeland range for WRP and that this species may utilise the application area as a connected canopy for transport, DWER applied a fauna management condition to the permit to avoid direct impacts to the WRP during clearing.

In relation to the south-western brush-tailed tailed phascogale, DWER advised that this species are observed in dry sclerophyll forests and open woodlands that contain hollow bearing trees. No individuals were identified during the day or night surveys and as mentioned none of the three trees approved to be cleared contain hollows. Noting that 416 potential habitat trees identified in the area during the fauna survey will be retained, DWER was of the view that the clearing is unlikely to remove important habitat for this species.

DWER also considered the ecological linkage value of the application area in its assessment and concluded that the proposed clearing is unlikely to have a significant impact on the overall function of the ecological linkage.

For the reasons stated in this report, the Appeals Convenor considered that DWER's conclusions in relation to the impact of the clearing of the three trees on fauna habitat and the ecological linkage were supported and the conditions to manage direct impacts to the WRP are appropriate. It was therefore recommended that the appeal be dismissed.

### Recommendation

The Appeals Convenor recommended that the appeal be dismissed.

## INTRODUCTION

This report relates to an appeal lodged in objection to a decision of the Department of Water and Environmental Regulation (DWER) to grant a clearing permit to the City of Busselton (the permit holder) to clear no more than three native trees (two *Eucalyptus rudis* – flooded gums and one *Melaleuca raphiophylla* – paperbark) within the Wonnerup South Road Reserve. The clearing is for the purpose of road widening and maintenance.

The location of the trees approved to be cleared is showing in Figure 1 below.



**Figure 1 – Location and extent of clearing CPS 8424/1**

(Source: City of Busselton Appeal Response Ref: Wonnerup Sth: GoogleMaps10/7/20)

On 19 March 2019, the permit holder applied for a Purpose Permit to clear one hectare (ha) of native vegetation within a 10.5 ha<sup>1</sup> footprint within the Wonnerup South Road reserve. The application was advertised on 30 April 2019 for a 21-day public comment period and no public submissions were received.

As a result of further design work on the alignment and the results of a fauna survey, the permit holder reduced the application area to 0.015 ha within the road reserve. The only vegetation to be cleared included three native trees.

DWER assessed the application against the clearing principles and considered planning instruments and other relevant matters in accordance with Section 51O of the *Environmental Protection Act 1986* (EP Act). DWER concluded that the proposed clearing is at variance with clearing principle (e) and (f), and may be at variance to clearing principles (b) and (i), and is not likely to be at variance with the remaining principles.

<sup>1</sup> DWER confirmed that the original application total footprint area of 1.8 ha as stated in DWER's decision report for CPS 8424/1 is a typographical error and should read 10.5 ha.

On 11 May 2020, DWER granted the clearing permit to the permit holder, subject to conditions including avoid and minimise clearing and fauna management.

## **OVERVIEW OF APPEAL PROCESS**

In accordance with section 106 of the EP Act, two reports relating to the matters raised on appeal are required for the Minister for Environment to determine the outcome of the appeal: the Appeals Convenor's Report and a report from the decision making authority of the decision under appeal.

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

In order to properly advise the Minister for Environment, the Appeals Convenor conducted an investigation into the matters raised on appeal. The investigation included:

- a review of the appeal submitted by the appellant
- a review of the written response to the appeal provided by the permit holder
- a review of the section 106 report from DWER
- telephone call with the appellant on 8 July 2020
- a review of other information, policy and guidance as required.

The permit holder was invited to meet with Appeals Convenor, however no response to confirm a meeting was received.

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**

By her appeal, the appellant is seeking that the Minister overturn DWER's decision to grant the clearing permit. In subsequent correspondence, the appellant raised that she was not as concerned about two of the three trees being removed but it is understood that the appellant has concerns about the clearing of native vegetation in the area and its impact to fauna habitat.

## **GROUNDINGS OF APPEAL**

The appellant submitted that the three 'old growth' trees proposed to be removed provide an essential fauna corridor in the area. The appellant included a list of conservation significant fauna identified as utilising the area and a photograph of south-western brush-tailed phascogale in support of her appeal.

The appellant was also of the view that there are other options available to avoid the clearing of the trees. The appeal is addressed under the following two grounds:

1. Essential fauna habitat and corridor
2. Alternative options

## GROUND 1: ESSENTIAL FAUNA HABITAT AND CORRIDOR

The appellant submitted that the removal of three 'old growth' trees for road widening will impact on an essential fauna corridor and fauna habitat in the local area.

In support of her appeal, the appellant included a photograph of a tree suggesting that it was over 100 years old and referred to the findings of DWER's database search that a number of conservation significant fauna potentially utilise the application area, including the south-western brush-tailed phascogale.

### Consideration

The ground of appeal relates to clearing principle (b) the value of the vegetation for the maintenance of significant habitat for fauna and DWER's consideration of the clearing in relation to ecological linkages under clearing principle (e), significance as a remnant of native vegetation in an area that has been extensively cleared.

According to DWER's search of the available databases, 45 fauna species of conservation significance were recorded within the local area. Of these, the fauna species that may use the application area as habitat include the red-tailed black cockatoo, Baudin's cockatoo and Carnaby's cockatoo (black cockatoos) and the western ring tail possum (WRP).

As stated in DWER's decision report, the applicant engaged a zoologist to undertake fauna surveys of approximately 7.5 kilometre section of the original application area. The surveys included a Level 1 fauna survey in accordance with the *Environmental Protection Authority's Technical Guidance - Terrestrial Vertebrate Fauna Surveys* which was expanded to a Level 2 survey. The Level 2 survey was undertaken in accordance with the *Environmental Protection Authority's Technical Guidance – Sampling methods for Terrestrial Vertebrate Fauna* to include an assessment of the site's significance for black cockatoos and the WRP.

In relation to black cockatoos, the fauna survey identified 334 habitat trees within the survey area, two of which are proposed for clearing (flooded gum). Based on the fauna survey, DWER noted that none of the identified habitat trees contained suitable hollows for black cockatoo nesting and no evidence of black cockatoo roosting was observed during the survey.

DWER, also noting the lack of key foraging species<sup>2</sup> within the application area, considered that the proposed clearing is unlikely to cause a significant impact on the foraging habitat of black cockatoo species.

In relation to the WRP, DWER's decision report noted that the proposed clearing area comprises a small part of the Swan Coastal Plain Management zone for WRP and is considered highly critical to the conservation of the species.

The fauna survey identified one WRP individual, scat and drey within 120 metres of the application area, with several other individuals and scats observed in the wider area. All observations were made where *Agonis flexuosa* (peppermint tree), a species crucial for the survival of the WRP, was a dominant component of the mid storey vegetation.<sup>3</sup>

On the basis that only three trees are to be cleared, with no suitable hollows, DWER was of the view that the applied clearing is unlikely to significantly impact the habitat for WRP.

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<sup>2</sup> Key foraging species referenced in DWER's Decision Report includes Jarrah and Marri woodlands and forest heathland and woodland dominated by proteaceous plant species such as *Banksia* sp., *Hakea* sp. and *Grevillea* sp.

<sup>3</sup> DWER Decision Report CPS 8424/1, page 6.

However, noting that WRP in the management zone are dependent on a connective canopy and have a variable and limited home range, DWER imposed a fauna management condition (condition 7) to avoid direct impacts to the WRP during clearing. The management measures include a requirement for a WRP specialist to inspect the area prior to clearing, and if any individuals are located, suspend clearing until they relocate or are removed by a specialist to a suitable habitat and submit a report to DWER on these activities.

In relation to the south-western brush-tailed phascogale, DWER advised that this is a small arboreal dasyurid that is often observed in dry sclerophyll forests and open woodlands that contain hollow bearing trees. No individuals were identified during the day or night surveys. Given that the three trees approved to be cleared do not contain hollows and 416 potential habitat trees identified during the fauna survey will be retained, DWER was of the view that the clearing is unlikely to remove important habitat for this species.

In relation to the value of the area as an ecological linkage, DWER's decision report identified that the application area is located 1.5 kilometres from and connected to the mapped South West Regional Ecological Linkage line, known as the Sabina River. DWER in its assessment of the clearing proposal, considered that the removal of three trees is unlikely to have a significant impact on the overall function of the mapped Sabina River ecological linkage.

## **GROUND 2: ALTERNATE OPTIONS**

The appellant submitted the following options to avoid the clearing of the three trees:

1. The property owner at 310 Wonnerup South Rd said he is willing to allow road widening closer to his property so it saves tree removal.
2. The speed limit can be lowered if the road has to remain narrower for the trees.

### **Consideration**

In response to this element of the appeal, DWER advised that the permit holder reduced the application area significantly from 1 ha within a 10.5 ha footprint to a total of three trees. During the application process, the permit holder modified the road design to include bends, narrowing the seal, and retaining trees on the road shoulder in order to reduce the need for native vegetation clearing.

In response to the appellant's recommendation for alternative options, DWER inferred that this would not be suitable as the property at 310 Wonnerup South Road is more than 100 metres from the location of the proposed clearing, and in any event, alternative options for road design and speed limits are matters for the City of Busselton to consider in its application.

DWER advised that in order to encourage the permit holder to further reduce clearing, where possible, it applied condition 6 to set an expectation that clearing should be further avoided, minimised and reduced, where possible.

## **CONCLUSION AND RECOMMENDATION**

Based on the information provided during the investigation, DWER's finding that the clearing of three trees will not significantly impact on fauna habitat or an ecological linkage and that the conditions on the permit are sufficient to manage potential impacts to the WRP is supported. It is therefore recommended that the appeal be dismissed.

Emma Gaunt  
APPEALS CONVENOR

**Investigating Officer:**  
Tonya Carter, Senior Appeals Officer