REPORT TO THE
MINISTER FOR ENVIRONMENT

APPEAL IN OBJECTION TO THE DECISION OF THE DEPARTMENT OF WATER AND ENVIRONMENTAL REGULATION TO GRANT A CLEARING PERMIT

CLEARING PERMIT CPS 8195/1:
EASTERN LINK, BUSSELTON

APPLICANT: CITY OF BUSSELTON

Appeal Number 030 of 2019

September 2019
Appeal Summary

This report relates to an appeal lodged by Mr Vernon Bussell (appellant), in objection to a decision of the Department of Water and Environmental Regulation (DWER) to grant Clearing Permit CPS 8195/1 to the City of Busselton (applicant) to clear 0.49 hectares (ha) of native vegetation within various land parcels including Crown and road reserves, in the City of Busselton, for the purpose of constructing the Eastern Link road project.

On the basis of its assessment of clearing impacts having regard to the available information, DWER identified that the proposed clearing is at variance to clearing principles (b) significant habitat for fauna, (e) significant remnant in an extensively cleared area, and (f) associated with a watercourse or wetland; may be at variance to clearing principle (h) environmental values of nearby conservation areas; and is not likely to be at variance to the remaining clearing principles. DWER took into consideration the purpose of the proposed clearing, and determined to grant a clearing permit subject to avoid and minimise, fauna management, dieback and weed management, reporting and offset conditions.

In summary, the appellant submitted that significant environmental values would be impacted by the proposed clearing, and that alternative options should have been considered to avoid these impacts. The appellant sought for the clearing permit not to be granted.

DWER’s assessment findings indicate that it appears to be common ground that the proposed clearing of 0.49 ha, including seven mature Agonis flexuosa (peppermint) trees and samphire vegetation, will impact on wetlands, the Commonwealth-listed threatened ecological community ‘Subtropical and Temperate Coastal Saltmarsh’ (Coastal Saltmarsh TEC), riparian vegetation, and the threatened fauna western ringtail possum (Pseudocheirus occidentalis) and Carter’s freshwater mussel (Westralunio carteri). Notwithstanding, DWER concluded that the impacts of the proposed clearing could be managed through the conditions placed on the clearing permit relating to fauna management, rehabilitation and offsets, as well as avoid/minimise impacts, dieback and weed control, record-keeping and reporting.

For the reasons stated in this report, the Appeals Convenor considered that DWER’s conclusions about the environmental values of the application area, specifically in relation to wetlands, Coastal Saltmarsh TEC, western ringtail possum and Carter’s freshwater mussel, were supported by the available information, and that its decision to grant the permit subject to conditions was generally reasonable.

Notwithstanding, the Appeals Convenor considered that the installation of rope bridges should occur sooner than within 12 months of the commencement of clearing in order to ensure minimal disruption to the movement of western ringtail possum individuals through the surrounding area, and for consistency with the Commonwealth approval.

Recommendation

The Appeals Convenor recommended that the appeal be allowed to the extent that condition 11 on the clearing permit is amended to require the installation of rope bridges within six months of the commencement of clearing.
INTRODUCTION

This report relates to an appeal lodged by Mr Vernon Bussell (appellant), in objection to a decision of the Department of Water and Environmental Regulation (DWER) to grant a clearing permit (CPS 8195/11) to the City of Busselton (applicant) to clear 0.49 hectares (ha) of native vegetation for the purpose of constructing a new road over the Vasse River in Busselton known as ‘the Eastern Link’. The location and extent of the application area are shown in Figure 1.

Figure 1: Location map and application area (indicated by yellow hatching)
Background

On 14 September 2018, the applicant lodged an application with DWER to clear 0.49 ha of native vegetation within a 1.25 ha footprint (application area) for the purpose of constructing the Eastern Link project.

The application was advertised for a 21-day public comment period. The decision report documents that seven public submissions were received in respect to, among other things, the potential environmental impacts of the proposed clearing, consideration of alternatives, cost, consultation, public opposition, historical clearing and impacts to heritage values. DWER concluded that ‘the public submissions received have not raised any issues that would warrant refusal of the application’.

DWER granted the clearing permit (CPS 8195/1) on 17 May 2019, authorising the applicant to clear up to 0.49 ha (including no more than seven mature Agonis flexuosa (peppermint) trees), subject to conditions. 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 (Minister) under section 109(3) of the Environmental Protection Act 1986 (EP Act).

Commonwealth approval

The Eastern Link project was referred to the Commonwealth Department of the Environment and Energy (DotEE) in February 2018, in relation to impacts to matters of national environmental significance under Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) and deemed to be a controlled action in March 2018. On 7 July 2019, DotEE approved the project subject to conditions to manage impacts to the critically endangered western ringtail possum (Pseudocheirus occidentalis) and vulnerable Carter’s freshwater mussel (Westralunio carteri).

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 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 sought for the clearing permit not to be granted.

GROUND OF APPEAL – IMPACTS TO ENVIRONMENTAL VALUES

The appellant submitted that the clearing permit should not have been granted due to the environmental values that would be impacted by the proposed clearing, including wetlands providing habitat to waterbirds and other species including Carter’s freshwater mussel, unique flora including rare samphire/saltbush, ‘Old Man’ tea-trees and large paperbarks, and healthy mature peppermint trees which are home to colonies of western ringtail possum. The appellant submitted that alternative routes should have been considered to avoid these impacts.

Consideration

DWER advised that in its assessment and decision-making, it took into account the clearing principles,\(^3\) planning instruments and other matters in accordance with section 51O of the EP Act, the findings of a site inspection undertaken by DWER officers, and information provided by the applicant and obtained from other sources including the Department of Biodiversity, Conservation and Attractions (DBCA).

In addition, it is understood that the applicant provided a number of flora, vegetation and fauna surveys in support of the application:\(^4\)

- **Reconnaissance Flora, Vegetation and Fauna Survey – Busselton Strategic Network Corridors** (Ecosystem Solutions, 2017),\(^5\) which identified that four vegetation types, the western ringtail possum and potentially the Commonwealth-listed threatened ecological community ‘Subtropical and Temperate Coastal Saltmarsh’ (Coastal Saltmarsh TEC) occur within the application area;

- **Baseline assessment of Carter’s Freshwater Mussel, Westralunio carteri, at proposed bridge construction sites on the Lower Vasse River** (Murdoch University, 2017),\(^6\) which recommended temporary translocation of affected individuals to suitable upstream habitat during construction;

- **Assessment of the Western Ringtail Possum along the Vasse River for the Busselton Eastern Link Project** (Bamford Consulting Ecologists, 2019),\(^7\) which confirmed the presence of western ringtail possum within the application area and considered potential translocation sites; and

- **Detailed Flora and Vegetation Survey – Eastern Link** (Strategen Environmental, 2017),\(^8\) which recorded 21 native and 25 introduced flora taxa and four vegetation types in the application area.

Table 1 below contains a summary of the vegetation types and condition within the application area, as determined by the above surveys.

<table>
<thead>
<tr>
<th>Vegetation type (VT)</th>
<th>Description</th>
<th>In application area</th>
<th>Vegetation condition(^9)</th>
</tr>
</thead>
</table>
| VT1                  | Agonis flexuosa (peppermint) low woodland over grasses (managed "Cynodon dactylon (couch)"
|                      |                                                  | 0.1 ha              | D-CD                      |
| VT2                  | Eucalyptus rudis (flooded gum), Eucalyptus comuta (yate) and Melaleuca rhaphiophylla (swamp paperbark), and/or peppermint, (and planted Eucalyptus spp.) low woodland; over Callistemon spp. and/or Acacia spp. shrubland; over Bolboschoenus caldwellii (marsh club-rush) and grasses (*Cenchrus clandestinus (kikuyu)) | 0.08 ha | G-D |
| VT3                  | Swamp paperbark, Melaleuca teretifolia (banbar) and Melaleuca preissiana (moonah) low open forest; over Melaleuca viminea (mohan) shrubland; over grasses (couch and kikuyu) | 0.08 ha | |

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\(^3\) As listed in Schedule 5 of the EP Act and in accordance with section 51O of the EP Act.


**VT4**

<table>
<thead>
<tr>
<th>Species</th>
<th>Area (ha)</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salicornia quinqueflora (beaded glasswort), Tecticornia indica subsp. bidens and Salicornia blackiana, and/or Suaeda australis (seablite), Juncus kraussii (sea rush) and Juncus pallidus (pale rush), low samphire shrubland</td>
<td>0.11</td>
<td>G</td>
</tr>
<tr>
<td><em>Carex divisa</em> (divided sedge) closed sedgeland; over <em>Stenotaphrum secundatum</em> (buffalo grass) low open grassland</td>
<td>0.19</td>
<td>D</td>
</tr>
<tr>
<td>Cleared or manicured grass</td>
<td>0.34</td>
<td>CD</td>
</tr>
<tr>
<td>Open water</td>
<td>0.35</td>
<td>CD</td>
</tr>
</tbody>
</table>

* Indicates that the species is considered to be alien to Western Australia (weed or naturalised).

DWER's assessment concluded that the proposed clearing is at variance to clearing principles (b) significant habitat for fauna, (e) significant remnant in an extensively cleared area, and (f) vegetation associated with a watercourse or wetland; and may be at variance to clearing principle (h) environmental values of nearby conservation areas.

DWER subsequently granted the clearing permit subject to conditions, including to avoid, minimise and reduce the impacts and extent of clearing; take steps to minimise the risk of the introduction and spread of dieback (*Phytophthora* sp.) and weeds; fauna management in relation to Carter’s freshwater mussel and western ringtail possum; on-site impact mitigation by revegetation within 24 months of clearing; provide specified offsets within 12 months of clearing; and keep records and report as required on the specified activities.

### Threatened fauna

The appellant submitted that the proposed clearing will impact on western ringtail possum and Carter’s freshwater mussel and their habitats.

From the decision report and available information, it is noted that:

- approximately 0.25 ha of the application area comprises habitat for western ringtail possum, being seven mature peppermint trees on the north side of the Lower Vasse River corresponding with vegetation type V1, and approximately 0.16 ha of paperbark and eucalypt woodland on the south side corresponding with vegetation types VT2 and VT3; and
- riparian vegetation impacted by the proposed clearing may provide habitat and shading for Carter’s freshwater mussel.

In relation to western ringtail possum, the decision report notes that the species is listed as ‘critically endangered’ (under State and Commonwealth law). In the earlier appeal against the decision of the EPA not to assess the proposal, the reason for the species’ status was described as follows:

> In recommending the threat category be changed and upgraded to critically endangered under the EPBC Act, the Threatened Species Scientific Committee (TSSC) cited expert opinion to conclude that the population of adult individuals (estimated at 18,000 in 2006 to 3,400 in 2015) declined by 80% or more in 10 years. The significant decline in population has been attributed to a number of factors, including habitat loss and fragmentation, predation, climate change, competition for tree hollows and habitat tree decline. Habitat loss and fragmentation from urban development are considered the most important and immediate threatening processes in coastal and near-coastal populations in the Swan Coastal Plain and South Coast zones. The TSSC recommended that development approvals seek to retain and protect habitat (particularly older growth peppermint trees), and where this is not achievable, ensure environmental offsets reduce the net impact on the species.\(^{10}\)

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\(^{10}\) Appeals Convenor report on appeal 010/18 dated August 2018, pages 3 to 4. Available at: [https://www.appealsconvenor.wa.gov.au/busselton-eastern-link-project](https://www.appealsconvenor.wa.gov.au/busselton-eastern-link-project)
It is noted that as part of its application, the applicant provided results from a survey for western ringtail possum that was undertaken over two nights in August 2017 (Ecosystem Solutions, 2017) over an extended area. It is understood that the survey recorded four individuals on the first night and three on the second night, as well as one drey. At least one individual and the drey were recorded within the application area.

During the assessment DWER sought advice from DBCA in relation to impacts to the western ringtail possum from the proposed clearing. In response, DBCA advised:

... the most significant impact will be on the Western Ringtail Possum (WRP) and it is probable that a larger number of WRP's will be impacted than is indicated in the fauna survey report as not only will there be direct impact from the actual clearing, but WRP movement over the larger area will be altered. For example the value of the habitat between the two proposed roads (causeway and eastern link) will be reduced as it will lose connectivity with adjoining high quality habitat patches and become isolated as a result of this proposal. It is also noted that the night surveys ... were undertaken over a number of alternative road options ... and that every site was surveyed on the same two consecutive nights. With such large areas to be covered each night the actual survey effort that may have been given to this particular applied area is likely to have been limited. Furthermore the eastern most vegetation of the applied area would have been very difficult to survey at night, in that the wetland vegetation in this area is dense and as the surveys were undertaken in August when the surrounding waterbodies would have been inundated potentially limiting access to occupied WRP habitat.

The results of WRP surveys undertaken indicate that approximately four WRP's may be impacted by this application. Provided these animals are given a method of dispersal (ie: not stuck in isolated trees) the displacement of this number by in-situ movement is acceptable. Although for the reasons mentioned above [it is suspected] that the extent of WRP impact has been underestimated and as such [it is recommended] that if this proposal is to be considered for approval then additional night surveys need to be undertaken focussing solely on these two applied areas and the vegetation that is to be isolated by these applications. The results of these surveys should be provided to DBCA for comment. If a larger potential WRP population is recorded then a WRP translocation may need to be considered.11

As a result of DBCA’s advice and in response to DWER’s invitation to provide further information on the matter, the applicant commissioned a further survey for western ringtail possum over three nights in March 2019 (Bamford Consulting Ecologists, 2019). The results are indicated in Figure 2.

**Figure 2: Western ringtail possum survey area (Bamford Consulting Ecologists, 2019)**

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11 DBCA advice to DWER dated 17 December 2018, page 2.
The decision report summarises the results of the additional survey as follows:

… Four WRP individuals were recorded on the first night [yellow circles], 13 on the second night [red circles] and 17 on the third night [green circles]. Individuals were recorded from peppermint, *Eucalyptus* sp. and *Melaleuca* sp. trees. The survey concluded that a population very likely in excess of 17 animals over a total habitat area of 1.5 hectares occurs ... This equates to a density of approximately 11 WRP per hectare.

The targeted WRP survey also searched for dreys within the application area and vegetation immediately adjacent. A total of seven dreys were recorded, three within the application area and four within vegetation immediately west of the application area. Dreys were recorded within peppermint and *Melaleuca* sp. trees ...\(^\text{12}\)

In response to this new information, the applicant sought advice from DBCA as to whether the results of the additional survey indicated that translocation of western ringtail possum individuals was required, and if so, whether DBCA had any comments on the sites identified by the applicant’s consultant. A DBCA officer responded that:

- the relatively high density of individuals within a comparatively small survey area is consistent with results from other high quality habitat sites in the Busselton area during the low period of the annual breeding cycle;
- the habitat contained in the project/survey area is restricted in extent and fragmented, and there is an absence of consolidated habitat areas adjoining the survey area on either side of the river to which individuals could be expected to disperse into;
- translocation of individuals in this instance is regarded an appropriate mitigation action to address both the welfare concerns of individuals and ongoing feeding/territory stress on the local population utilising the retained vegetation;
- based on the survey results, a reduction of between four to six individuals would be useful to achieve residential population and habitat stability;
- of the five potential translocation sites identified by the applicant’s consultant, only one (Drainage Reserve 44757) presents a release site opportunity and should be further evaluated; and
- pending the outcome of further evaluation of Drainage Reserve 44757 finding no constraints to its suitability for translocation, and the applicant’s submission of an acceptable translocation plan, the proposed translocation would likely be supported by DBCA.

From the above, DBCA’s officer-level advice confirms that the density of western ringtail possum in the vicinity of the application area is ‘relatively high’, that the application area and immediate surrounds represent high quality habitat which is restricted and fragmented, and that there is there is limited opportunity for dispersal by displaced individuals.

As documented in the decision report, DWER concluded that the proposed clearing:

- has the potential to result in death of/injury to western ringtail possum individuals;
- will result in the loss of 0.25 ha of significant western ringtail possum habitat that is also significant as a remnant in an area that has been extensively cleared; and
- impacts vegetation that forms part of an ecological linkage between the Broadwater Nature Reserve and the Vasse-Wonnerup Estuary.

DWER applied conditions on the clearing permit to minimise and mitigate impacts on western ringtail possum resulting from the proposed clearing, and to counterbalance the significant residual impacts to this species, through the following:

- no more than seven peppermint trees may be cleared (condition 3);

\(^\text{12}\) DWER decision report for clearing application CPS 8195/1 dated 17 May 2019, page 5.
prior to clearing, the applicant is to provide a copy of the fauna licence obtained under the Biodiversity Conservation Act 2016 in respect to possible translocation (condition 9);

• immediately prior to and for the during of the clearing, the applicant is to engage a fauna specialist to inspect the application area, to cease clearing where individual/s are identified until they have been relocated to suitable habitat or have moved on, and keep records on identified individuals (condition 10);

• within 12 months of the commencement of clearing, the applicant is to install four rope bridges over the Eastern Link and the Lower Vasse River, and maintain these for the term of the clearing permit (condition 11);

• within 12 months of the commencement of clearing, the applicant is to offset the significant residual impacts of the clearing by revegetating:
  o 0.04 ha (hatched orange in Figure 1) by planting local provenance native understorey species to achieve a native vegetation cover of at least 75 per cent within three years, maintain this for the term of the clearing permit, and provide evidence of the change in reservation purpose to ‘Recreation and Conservation’ (condition 14);
  o 0.07 ha (hatched red in Figure 1) by planting local provenance native understorey species to achieve a native vegetation cover of at least 75 per cent within three years and by planting peppermint trees at a density of at least 400 stems/ha, maintain this for the term of the clearing permit, and provide evidence of a conservation covenant over this area (condition 15); and
  o 1 ha on Lot 509 on Deposited Plan 402933 (Barnard Park East) by planting local provenance native understorey species to achieve a native vegetation cover of at least 75 per cent within three years and by planting peppermint trees at a density of at least 400 stems/ha, and maintain this for the term of the clearing permit (condition 16); and

• within 24 months of the commencement of clearing, the applicant is to mitigate onsite impacts by revegetating:
  o 0.16 ha (hatched yellow in Figure 1) by planting flooded gum, peppermint, swamp paperbark, moonah, banbar and mohan at a combined density of at least 400 stems/ha, and maintain for term of approval (condition 12); and
  o underpasses (hatched green in Figure 1) by planting *Lepidosperma gladiatum* (sword sedge) to achieve a native vegetation cover of at least 75 per cent within five years, and maintain for term of approval (condition 13).

In response to this matter, DWER noted the discussion under clearing principle (b) in the decision report, and advised that it considers the pre-clearing inspection and translocation of western ringtail possum individuals, installation of rope bridges, revegetation within the vicinity of the application area, and change in the purpose of Lot 230 on Deposited Plan 222226 (being Crown Reserve 7442) from ‘Recreation’ to ‘Recreation and Conservation’, will mitigate and counterbalance impacts to western ringtail possum and an ecological linkage.

For its part, the applicant advised that, in addition to the measures specified in the clearing permit, it also proposes to use shuttered bridge lighting to reduce light spill.

It is noted that the applicant has contemplated the management of potential impacts to western ringtail possum to ‘minimise impacts to terrestrial fauna during construction as far as practicable’ in its Construction Environmental Management Plan (Strategen Environmental, 2018), including:

• induct all construction personnel in avoiding injury or harassment of native fauna during operation of vehicles or equipment, reporting all injured, abandoned or otherwise visibly distressed fauna, and prohibition on feeding fauna, hunting or keeping of firearms or pets on site;

engages qualified fauna spotter / catcher prior to and during clearing works to inspect vegetation and remove all threatened fauna species, with visual monitoring of clearing areas;

conduct clearing in a sequential manner and in a way that encourages escaping wildlife away from the activity into adjacent natural areas and not onto roads, trenches or other areas of threat, with visual monitoring of clearing areas, with visual monitoring of construction work areas;

ensure a qualified fauna spotter / catcher is on call during clearing works to handle any injured, abandoned or otherwise visibly distressed fauna – any such fauna observed when a wildlife handler/fauna spotter is not available to be reported to DBCA, with visual monitoring of construction work areas; and

check open excavations and trenches for fauna and remove any trapped animals by authorised fauna handlers, and ensure trenches remain open only for the time required for construction purposes and are backfilled as soon as they are no longer required, with visual monitoring of excavations and trenches.

In addition to the requirements on the clearing permit and the applicant’s commitments as outlined in its Construction Environmental Management Plan, the Commonwealth approval requires the applicant to (among other things) to install four rope bridges within six months of the commencement of the action, and to undertake ongoing inspection and maintenance of the rope bridges for 25 years.

Noting the above, it is considered that in order to ensure minimal disruption to the movement of western ringtail possum individuals through the surrounding area, and for consistency with the Commonwealth approval, condition 11 on the clearing permit should be amended to require rope bridges to be installed within six months of the commencement of clearing.

In relation to Carter’s freshwater mussel, DWER advised that the impacts are likely to be minor given the small extent of clearing within an area in a degraded condition. DWER considered that planting of sedges under the proposed bridge and of local provenance understorey species along the northern bank of Lower Vasse River will assist in re-establishing habitat and shade for this species.

It is understood that this species may be affected by disturbance of the river bed, potential increased turbidity, and potential reductions in dissolved oxygen due to resuspension of anoxic sediments associated with the bridge construction phase. While the activity of clearing vegetation along the river bank may cause temporary localised turbidity and sedimentation, it is noted that these impacts are largely associated with the proposed land use (i.e. bridge construction and use).

Notwithstanding, it is noted that the applicant has contemplated the management of potential impacts to water quality and Carter’s freshwater mussel to ‘minimise impacts from acid sulfate soils, monosulfidic black ooze and site contamination as far as is practicable’ during bridge construction in its Construction Environmental Management Plan (Strategen Environmental, 2018), including:

- undertake excavation and dewatering in accordance with an Acid Sulfate Soil and Dewatering Management Plan approved by DWER;
- soil erosion and sediment controls, including silt curtains either side of bridge abutments during construction and until turbidity levels are visually determined to have returned to upstream background levels, silt fences at the base of embankments adjacent to waterways and wetlands, stabilise embankments and earth works to minimise erosion, and temporarily redirect surface runoff to sumps for sediment retention and infiltration;
- hazardous materials and waste management, including no fuel storage on-site, all scheduled or major maintenance of construction equipment to occur off-site, minimise on-site storage and handling of hazardous materials, no waste or hazardous material storage within 10 metres of waterways or wetlands, maintain spill response procedures and equipment, and provide floating absorbent booms at least 30 metres long;

As indicated in Murdoch University (2017).
sample and manage riverine sediments to be removed for abutment construction, in accordance with advice of DWER; and

- undertake temporary translocation of Carter’s freshwater mussel in accordance with a fauna licence and [DBCA] approved translocation proposal, which are to be returned once bridge construction is complete and water quality at the bridge location has returned to baseline levels.

It is understood that the proposed translocation site is located immediately downstream of the intersection of the Vasse River Diversion Drain (Drain) with the Vasse River. This site is in close proximity to a proposal by the Water Corporation to modify the offtake structure and spillway, which is likely to increase flow in the Lower Vasse River15 and which involves the proposed clearing of 4.31 ha of riparian vegetation (application CPS 8191/116). In any event, it is expected that the suitability of the proposed (or an alternative) translocation site would be determined in consultation with DBCA when the applicant applies for the translocation licence.

Condition 9 on the clearing permit requires that prior to clearing, the applicant is to provide a copy of the translocation licence for this species obtained under the Biodiversity Conservation Act 2016.

For its part, the applicant submitted that the proposed clearing in itself is localised (approximately 20 metres x 20 metres) and temporary, and would not directly impact on the species. The applicant advised that it is committed to the environmental mitigation measures outlined above.

In relation to translocation generally, DWER advised that it considers DBCA has the relevant expertise and the lead role under the Biodiversity Conservation Act 2016 to assess and approve the methodology for translocation, and has therefore sought not to duplicate these requirements.

Noting the extent of the proposed clearing (up to 0.49 ha including no more than seven peppermint trees) and the mitigation and offset requirements set out in the clearing permit, and the provisions of the Biodiversity Conservation Act 2016 relevant to fauna translocation, it is considered that DWER’s conclusion that impacts to these species resulting from the proposed clearing can be managed and the significant residual impacts can be counterbalanced, is reasonable.

Wetlands and riparian vegetation

The appellant submitted that the proposed clearing will impact on wetlands providing habitat to waterbirds and other species, rare samphire/saltbush, and on mature tea-tree and paperbark trees.

In reference to rare samphire/saltbush, the appellant is presumed to be referring to the Coastal Saltmarsh TEC.

The decision report set out the following in relation to these values:

- approximately 0.3 ha of the application area is mapped as ‘Conservation’ category wetland within the Lower Vasse River, comprising approximately 0.2 ha of vegetation in ‘Completely Degraded’ condition and approximately 0.1 ha in ‘Good’ condition, with the majority of the remaining portion mapped as ‘Multiple Use’ category wetland within the Vasse Delta Wetlands;17


17 Management objectives for ‘Conservation’ category wetlands include preservation and protection of existing conservation values, and for ‘Multiple Use’ wetlands include ecologically sustainable development and best management practice. Available at: https://www.dpaw.wa.gov.au/management/wetlands
the southern side of the Lower Vasse River contains *Melaleuca* and *Eucalyptus* species riparian vegetation, corresponding with vegetation types VT2 and VT3; and

- on the basis of vegetation condition and extent of proposed clearing, waterbirds and other fauna are likely to utilise, but are unlikely to be dependent on, the habitats within application area.

It is understood that the primary concerns for long-term management of the Lower Vasse River, and the broader Vasse-Wonnerup Wetlands into which the Lower Vasse River and Vasse Delta Wetlands feed, relate to water quality and volume.\(^{18}\) It is noted that the proposed clearing may result in localised short-term changes in water quality. The decision report indicates that impacts in this regard are unlikely to be significant due to the vegetation condition and proposed clearing extent.

The Approved Conservation Advice for the Coastal Saltmarsh TEC\(^ {19}\) 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 mainly salt-tolerant vegetation (halophytes) including grasses, herbs, sedges, rushes and shrubs, generally of less than 0.5 metres in height, along with many non-vascular plants. The Approved Conservation Advice also indicates that patches or areas that contain greater than 50 per cent introduced species are excluded from the Coastal Saltmarsh TEC. As outlined in Table 1 and above, approximately 0.11 ha of the application area contains vegetation that is consistent with the Coastal Saltmarsh TEC.

During its assessment DWER sought advice from DBCA in relation to impacts on the Coastal Saltmarsh TEC from the proposed clearing. In response, DBCA advised:

> ... The proposed new road will clear part of the TEC and introduce fill to allow for road development. In all areas of the Busselton wetlands where saltmarsh TEC and fill interface weed proliferation from the fill bank results. This same weed problem will occur at this site irrespective of what-ever commitments are made by the proponent, as such the actual impact of this development on the TEC vegetation is expected to be larger than indicated in the application.\(^ {20}\)

To address this issue, condition 8 of the permit requires the applicant to take specified steps to minimise the risk of introduction and spread of weeds as a result of the proposed clearing activities.

In response to this element of the appeal, DWER advised that based on the small scale of the impact and the vegetation condition within the application area, it determined that the proposed clearing is unlikely to significantly impact on the values of these wetlands or the Coastal Saltmarsh TEC.

For its part, the applicant submitted that the paperbark and *Eucalyptus* species vegetation was planted approximately 20 years ago. The applicant acknowledged the broad ecological and amenity values, and advised that it has reduced the extent of the proposed clearing as far as is practical.

It is noted that the applicant has contemplated the management of weeds and dieback to ‘minimise impacts to flora and vegetation outside of the development envelope as far as practicable’ in its *Construction Environmental Management Plan* (Strategen Environmental, 2018), including:

- ensure all imported fill, soil, mulch, plants and seedlings used on site are certified weed and dieback free, with reconciliation of earthworks and landscaping against delivery certification; and
- control all weed outbreaks within construction area using mechanical or chemical means – all use of herbicides to be approved by the City representative, with weekly inspection of construction area for weed infestation.

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\(^{20}\) DBCA advice to DWER dated 17 December 2018, page 2.
Noting the extent of the proposed clearing and the overall condition of the vegetation within the application area, it is considered that DWER’s decision to grant the permit was justified, and that for the reasons stated by DWER, impacts to wetlands, the Coastal Saltmarsh TEC and riparian vegetation resulting from the proposed clearing can be managed.

Alternatives to avoid impacts

The appellant submitted that the Eastern Link project would have an adverse impact on users of the adjacent Rotary Park and Railway Reserve walk trail, and would not overcome Busselton’s traffic congestion, and that alternative routes should have been considered to avoid environmental impacts.

In response to this element of the appeal, DWER advised that its function is to conduct an assessment of the proposed clearing area against the clearing principles, to identify the environmental values and potential impacts from clearing, and to impose conditions to mitigate and minimise these impacts.

For its part, the applicant advised that the Eastern Link is a component of a suite of proposed road upgrades, which includes the alternatives suggested by the appellant, collectively referred to as the Busselton Strategic Network Corridors project aimed at reducing traffic congestion.

It is understood that the decision to propose works at a specific location is a matter for the applicant as the manager of the local road network, and that DWER’s role under Part V of the EP Act is to assess the potential environmental impacts of clearing applications on a case by case basis.

CONCLUSION AND RECOMMENDATION

Having regard to the available information, the following key points are noted:

- DBCA was of the view that the most significant impact of the proposed clearing is on western ringtail possum, directly through the clearing of habitat and indirectly through disruption to an ecological corridor. DBCA was also of the view that the proposed clearing could lead to weed proliferation impacting on adjacent Coastal Saltmarsh TEC.
- The applicant’s Construction Environmental Management Plan outlines measures to minimise impacts to western ringtail possum and Carter’s freshwater mussel through translocation and on-site mitigation, and to manage weeds and water quality within the construction footprint.
- DWER considered that the direct and indirect impacts of the proposed clearing on western ringtail possum and Carter’s freshwater mussel can be managed through the conditions applied to the clearing permit, which include on-site mitigation measures (including installation of rope bridges and revegetation to minimise disruption to an ecological corridor), translocation of directly affected individuals, and revegetation offsets.
- DWER considered that the impacts on wetlands and the Coastal Saltmarsh TEC as a result of the proposed clearing are unlikely to be significant, and imposed a condition on the clearing permit requiring the applicant to manage the risk of the introduction or spread of weeds.
- The Commonwealth approval contains conditions relating to the management of impacts on western ringtail possum and Carter’s freshwater mussel similar to those in the clearing permit, and has effect until 30 June 2044.

For the reasons stated in this report, it is considered that DWER’s conclusions about the environmental values of the application area, specifically in relation to wetlands, Coastal Saltmarsh TEC, western ringtail possum and Carter’s freshwater mussel, were supported by the available information, and that its decision to grant the clearing permit subject to conditions was justified and that the conditions applied to manage, mitigate and counterbalance the impacts of the proposed clearing on the identified environmental values are generally reasonable.
Notwithstanding, it is considered that the installation of rope bridges should occur sooner than within 12 months of the commencement of clearing in order to ensure minimal disruption to the movement of western ringtail possum individuals through the surrounding area, and for consistency with the Commonwealth approval. Accordingly, it is recommended that the appeal be allowed to the extent that condition 11 on the clearing permit is amended to require the installation of rope bridges within six months of the commencement of clearing.

Emma Gaunt
APPEALS CONVENOR

Investigating Officer:
Emma Bramwell, Senior Environmental Officer