

DEPARTMENT OF TREASURY

# HAMMOND PARK SUBMISSIONS REPORT

AUGUST 2017



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## Hammond Park Submissions Report

Department of Treasury

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	NAME	DATE	SIGNATURE
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# 1 BACKGROUND

The Department of Education (DoE) Western Australia is proposing to build a new secondary school and associated facilities in Hammond Park, Western Australia. The Department of Treasury (Strategic Projects and Asset Sales) is handling the project, including approvals, on behalf of the DoE. The site is situated within a developing urban residential area and is bounded to the east and south by planned residential development, in the north by predominantly existing residential development and to the west by the Hammond Park Catholic Primary School.

## REFERRAL

On 11 July 2016, the proposed development was referred to the (then) Commonwealth Department of Environment in relation to the proposed clearing of native vegetation on the site. The referral documentation identified impacts on Matters of National Environmental Significance (MNES) through the clearing of Black Cockatoo habitat. In their Referral Decision of 30 September 2016 (EPBC Ref: 2016/7741) the Department of Environment and Energy (DoEE) decided that the proposed action “is a controlled action and, as such, it requires assessment and a decision about whether approval for it should be given under the EPBC Act”. The DoEE based their decision on the likely impacts of the action on the following MNES:

- Carnaby’s Black Cockatoo (*Calyptrorhynchus latirostris*) – endangered
- Forest red-tailed black cockatoo (*Calyptrorhynchus banksii naso*) – vulnerable
- Banksia woodlands of the Swan Coastal Plain Threatened Ecological Community (TEC)– endangered (This TEC was only listed under the EPBC Act on 16 September 2016).

## CLEARING PERMIT APPLICATION (CPS 7617/1)

On 25 May 2017 Department of Education made an application for a Clearing Permit (Environmental Protection Act 1989, § 51E) and simultaneous application for the clearing permit to be assessed as a Commonwealth Environment EPBC Act Accredited Process under the WA Assessment Bilateral Agreement of January 2015.

On 19 June 2017, the Department of Water and Environmental Regulation (DWER) advised that the clearing application has been published for public comment. On 17 and 19 July 2017, the DWER provided the Department of Treasury with two submissions that were received within the comment period. The names of the submitters were withheld.

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## 1.1 PURPOSE OF THIS REPORT

This report documents the content of the submissions and provides responses to each of the issues raised in the submissions as requested by the DWER’s letter of 17 June 2017. The submissions and responses are provided in Section 2 - “Responses”, of this report.

As the submissions, did not follow a consistent numbering format, issue numbers were allocated in the table by issue and/or paragraph. Some of the issues raised in the submissions relate to matters of environmental policy and regulation or to interpretation of the clearing principles by the regulator. A response to these issues should preferably be provided by DWER.



## 2 RESPONSES

ISSUE NO.	ENVIRONMENTAL FACTOR	ISSUE	RESPONSE
<b>SUBMISSION DATED 11 JULY 2017</b>			
1	General	We are writing regarding the Clearing Permit application in which the Department of Education has applied to clear 10.9 ha off Barfield Road for a school. Note that in the DER newspaper advertisement and electronic notification the location was listed as the Shire of Waroona, not the City of Cockburn, which has resulted in some confusion.	DWER to address (As per DWER letter dated 17 July 2017)
2	General	The Department of Water and Environment Regulation Clearing Permit website relevant to this clearing permit does not list the Pl parcel for Lot 47 as being part of CPS 7617/1, despite this lot being shown on the accompanying electronic and printed map as being proposed to be cleared. This is potentially a flaw in the application which does not allow it be processed.	DWER to address (As per DWER letter dated 17 July 2017)

ISSUE NO.	ENVIRONMENTAL FACTOR	ISSUE	RESPONSE
3	Biodiversity	The site comprises 8.4 ha of the recently EPBC Act listed threatened Ecological Community Banksia woodlands of the Swan Coastal Plain. This is not indicated in the report of the flora survey undertaken for the project in 2013 as this vegetation community was not listed as Threatened till 2016.	<p>The submitter correctly notes that the <i>Banksia woodland of the Swan Coastal Plain</i> TEC was not specifically assessed in the 2013 flora and vegetation survey. This TEC was only listed under the EPBC Act on 16 September 2016. EPBC Referral 2016/7741 was lodged on 11 July 2016.</p> <p>In their decision on the referral of 30 September 2016, the Department of Environment and Energy retroactively considered this listing, together with the conservation status of black cockatoos, to arrive at a controlled action decision.</p> <p>However, the referral documentation specifically identified the vegetation association “Medium very sparse woodland; jarrah, with low woodland; banksia &amp; casuarina (association 1001, Bassendean)”, which includes the following vegetation types:</p> <ul style="list-style-type: none"> <li>— VT1: Low Open Forest of Banksia spp. and <i>Allocasuarina fraseriana</i> (6.3ha)</li> <li>— VT2: Low Woodland of Banksia spp. over Open Low Heath of <i>Scholtzia involucreta</i> (0.9ha)</li> <li>— VT3: Low Open Woodland of <i>Melaleuca raphiophylla</i> (0.9ha)</li> <li>— VT4: Low Open Forest of Eucalypts marginate and Banksia spp. (2.0ha).</li> </ul> <p>VT1, VT2 and VT4 align with the <i>Banksia woodland of the Swan Coastal Plain</i> TEC. In effect, the 2013 flora survey did assess the TEC, albeit under a different conservation rating and then more specifically related to cockatoo habitat.</p>

4	Biodiversity	None of the vegetation in the Threatened Ecological Community Banksia woodlands of the Swan Coastal Plain on this site should be cleared.	<p>Although the application for a clearing permit (Attachment 1 Form Annex C7 Hammond Park) identified that the application is likely to be at variance with Principle (d) of the Clearing Principles, the application documentation also submitted that a feasible alternative to clearing could not be identified.</p> <p>As part of the City of Cockburn Town Planning Scheme No3 approval process, the EPA assessed whether the Scheme would permit any types of development that would lead to unacceptable environmental impacts. Based on the approval of the above-mentioned Town Planning Scheme No3, the site was earmarked for development as a High School in the Southern Suburbs District Structure Plan – Stage 3, Hammond Park/Wattleup (SSDSP3), adopted by the City of Cockburn on 13 September 2013. On that basis the sites comprising the application have been identified in approved Local Structure Plans as “Public Purpose – High School” and are subject to acquisition by the Department of Education (DoE). The DoE, Strategic Asset Plan 2012-2022 forecast the demand for a high school at this location to service the high growth of urban residential development in this locality.</p> <p>The DoE has entered a Public-Private-Partnership with the Eduwest consortium to construct the Hammond Park High School as part of a package of eight schools to be built in the Perth-Peel Metropolitan area. The planning and design of the high school is well advanced for this site, with construction scheduled to commence in early 2018, DoE will be in breach of contract if it fails to proceed with the development at this stage and will create an undesirable precedent regarding the legal certainty attached to planning tools that have in the past been approved by the EPA.</p> <p>Due to the size of the school in relation to the available land, almost all native vegetation will be cleared during construction. The application of environmental offsets in accordance with the WA Offsets Policy (2011) and Guidelines (2014) is the only feasible alternative to mitigate the impact on the TEC.</p>
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ISSUE NO.	ENVIRONMENTAL FACTOR	ISSUE	RESPONSE
5	Alternatives	<p>If a school must be built in this area, there are 2 alternatives:</p> <ul style="list-style-type: none"> <li>— the school should be built on an adjacent cleared site, such as Lot 48 and Lot 49 Frankland Avenue, which appear to be suitable in size</li> <li>— the school could be built on Lots 31, 32, 33 and 47 Barfield Road in areas that are already cleared or heavily degraded, leaving the bushland that is in good or better condition uncleared</li> </ul>	<p>In response to point one:</p> <p>The Hammond Park High School was identified as a school site through the strategic and local planning processes undertaken by the City of Cockburn and the Western Australian Planning Commission. These processes designated land for the school site and the surrounding residential land uses. The clearance of Lots 48 and 49 has been undertaken by private land developers to construct residential lots in accordance with the approved strategic and local structure plans. Both lots have received subdivision approval to create numerous individual residential lots, with developments well advanced including designs and installation of services and utilities. Both sites are held in separate private ownership over which the Department of Education has no control, Notwithstanding the planning restrictions, the area of Lots 48 and 49 is approximately 4 hectares which is inadequate to accommodate the proposed high school which requires a site of approximately 10 hectares ,</p> <p>In response to point two:</p> <p>The high school has been designed on the basis of the Department of Education Design Brief for High Schools which necessitates the school and ancillary facilities occupy a site of approximately 10 hectares, with a plan of the school layout extending over the 10 hectares included with the referral to DER. Restricting the school to limited areas of the site which would be less than 10 hectares would compromise the feasibility of a high school at this location. The Portions of Lot 33 (in private ownership) which have already been cleared are currently being developed for residential lots with roads and utilities already installed.</p>

ISSUE NO.	ENVIRONMENTAL FACTOR	ISSUE	RESPONSE
6	General	The bushland on the southern part of Lot 33, and on Lot 47, appears to be in very good to excellent condition, and should not be cleared	<p>It is acknowledged that the land in question is in a very good to excellent condition. As indicated above, due to the size of the development in relation to the available land, it is not possible to retain any meaningful area of native vegetation without affecting the viability of the project. While the Department of Education may endeavour to retain as much of the vegetation or potential breeding trees as possible, small areas of retained vegetation are very susceptible to rapid degradation in high use urban areas and seldom achieve the desired conservation objective.</p> <p>The quality of the bushland in question will be considered when determining the extent of the environmental offset.</p>
7	Offsets	<p>If any of the EPBC Act listed Threatened Ecological Community Banksia woodlands of the Swan Coastal Plain on the site is cleared, compensation to the extent of 10 times the area cleared should be rehabilitated. Potentially suitable areas include the following:</p> <ul style="list-style-type: none"> <li>— around South Lake</li> <li>— around Lake Kogolup</li> <li>— adjacent to the Department of Parks and Wildlife Banksia Woodland Restoration Project revegetation area at Anketell Road</li> <li>— around Lake Thompson.</li> </ul>	<p>The DoE will be guided by the DWER on all matters relating to any required offsets. If required, liaison with the DWER will be undertaken to determine the nature and possible location of any offsets.</p>



ISSUE NO.	ENVIRONMENTAL FACTOR	ISSUE	RESPONSE
8	General	This Clearing Permit application should not be approved as presented. It should be modified as suggested in our comments above, and re-submitted.	Significant amendment of the application, as proposed by the submitter would mean that the project cannot proceed. The selection of the site for a school has been planned over a number of years and cannot be considered in isolation as the surrounding land has also formed part of the coordinated strategic planning which has occurred in this locality. A change to one area will required changes to other areas, with some of these areas already very well advanced in their development.
<b>SUBMISSION DATED 3 JULY 2017</b>			
1	General	[***] is opposed to the issuing of a clearing permit for the site. The proposal is a controlled action through referral to the federal Department of Environment and Energy.	Opposition noted and discussed in more detail in relation to specific issues, below.

2	General	<p>[***] understands that the process to the current advertisement for a clearing permit appearing in the West Australian, 26 June 2017, under the assessment bilateral agreement for the Hammond Park High School in the City of Cockburn, has been a long one. We also note the statement in the proponent’s application that ‘Any application of approval for development that meets the requirements of the planning scheme previously assessed by the EPA is assumed to be environmentally acceptable, despite the presence of native vegetation.’ (page 8)</p> <p>Despite this, the fact remains that the proposed clearing is environmentally unacceptable. It is proposed that the clearing will be offset and ‘the availability of suitable measures to offset the impact’ has been investigated through the Department of Parks and Wildlife. The first principle of offsetting is ‘avoidance’. [***] considers that the proposal if implemented would have unacceptable impacts and no offset can be applied to reduce the impact. As the [***] has stated in various submissions; the end result is a net loss. As the WA Environmental Offsets Guidelines point out, the cumulative impacts may be significant. Our environmental estate is highly fragmented and the loss of 10.9 ha of Banksia woodland, if implemented, is part of this erosion.</p>	<p>We contend that there is a prima facie case to be made that development applications that meet the requirements of an EPA approved town planning scheme should be regarded as generally environmentally acceptable. If the EPA had considered any part of the environment affected by the scheme to require special protection, it would have imposed appropriate limiting or prohibitive conditions in its approval of the Scheme.</p> <p>In this case, Schedule 1 of the City of Cockburn Town Planning Scheme No 3 indicates that the Minister (of the Environment) did not impose any environmental conditions. Of course, this does not absolve a developer from adhering to the other environmental provisions of the Scheme and other applicable legislation.</p> <p>Based on the approved Town Planning Scheme, the site was earmarked for development as a High School in the Southern Suburbs District Structure Plan – Stage 3, Hammond Park / Wattleup (SSDSP3), and subsequently included in the approved Local Structure Plans as “Public Purpose – High School. Simultaneously, the DoE based it’s decision to acquire and develop the land in question by relying on the approved planning framework presented by the Planning Scheme.</p> <p>Re. “the fact remains that the proposed clearing is environmentally unacceptable”: The application for a clearing permit identified that the proposed clearing action is likely to be at variance with Clearing Principles, but also submitted that a feasible alternative to clearing could not be identified.</p> <p>The submitter correctly points out that the Western Australian Environmental Offsets Policy (2011) only applies once mitigation and avoidance measures have been pursued. We believe that avoidance or mitigation is not feasible in this case and that environmental offset is the only feasible option.</p> <p>Re: “As the [***] has stated in various submissions; the end result is a net loss”.</p> <p>This statement is aimed at the validity of the offsets policy and cannot be dealt with by the applicant.</p>
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ISSUE NO.	ENVIRONMENTAL FACTOR	ISSUE	RESPONSE
3	Biodiversity	<p><b>Black cockatoos-and clearing</b></p> <p>Three species of black cockatoo are facing extinction, possibly within our lifetimes. Virtually the whole of the proposed site is mapped as black cockatoo foraging habitat and potential breeding habitat. 18 trees (or 13 trees) have suitable hollows for breeding or have potential hollows suitable for breeding. The two species of black cockatoo, Carnaby's and Forest Red-tailed Black Cockatoo, are within the modelled distribution and there are recent records of Baudin's Cockatoo on the southern Swan Coastal Plain.</p>	<p>Noted. Information regarding the cockatoo habitat and the distribution of cockatoo species is included in the application documentation.</p>
4	General	<p><b>Controlled action under the EPBC Act 1999</b></p> <p>Because the proposal may risk/impact on black cockatoos in regards to feeding and breeding habitat as well as through indirect impacts, the proposal was referred to the federal Department of the Environment, Energy and was found to be a controlled action.</p>	<p>Noted. The proponent has elected for the application to be assessed under the WA Assessment Bilateral Agreement of January 2015.</p>

ISSUE NO.	ENVIRONMENTAL FACTOR	ISSUE	RESPONSE
5	Offsets	<p><b>Banksia Woodlands of the Swan Coastal Plain</b></p> <p>‘Banksia Woodlands of the Swan Coastal Plain’ is listed under the EPBC Act in the category - endangered.</p> <p><i>The conservation objective for this vegetation community is</i></p> <ul style="list-style-type: none"> <li>— <i>to mitigate the risk of extinction and</i></li> <li>— <i>help recover its biodiversity and function (p33 Conservation Advice 26 August 2016)</i></li> </ul> <p><i>To achieve these objectives three key approaches are advised:</i></p> <p><i>PROTECT the ecological community to prevent further loss of extent and condition;</i></p> <p><i>RESTORE the ecological community within its original range by active abatement of threats, re-vegetation and other conservation initiatives;</i></p> <p><i>COMMUNICATE WITH AND SUPPORT researchers, land use planners, landholders, land managers, community members, including the Indigenous community, and others to increase understanding of the value and function of the ecological community and encourage their efforts in its protection and recovery.</i></p> <p>The highest priorities include preventing further loss and ‘increasing the remaining extent condition and landscape scale connectivity’. Preventing further loss means no further clearing. The proposed clearing is the antithesis of this advice. Therefore the clearing should not be permitted as it is environmentally unacceptable. It cannot be ‘offset’ and the avoidance principle applies.</p>	<p>The Approved Conservation Advice (listed 16 September 2016) notes that the quoted approaches of “Protection”, “Restoration” and “Communication/Support” are overlapping in their application, and also stresses the need for cost-effective interventions. In this case protection (through avoidance) will effectively mean not developing the school on the site and will entail unacceptable cost to the taxpayer. On this basis we submit that the “restoration” option, in the guise of an offset will be the preferred option to improve the extent of quality black cockatoo habitat.</p>

ISSUE NO.	ENVIRONMENTAL FACTOR	ISSUE	RESPONSE
6	Offsets	<p><b>Bassendean Central and South Vegetation Complex</b></p> <p>Only 1.2% of Bassendean Central and South vegetation complex is secure for conservation in the Perth Peel region compared to the pre-European extent. Protection of at least 10% is the State target. And only 7% is reserved in region schemes, Parks and Recreation or Regional' Open Space. (EPA advice 'Perth and Peel @ 3.5 Million' July 2015). On these grounds alone, the clearing of this complex should not be permitted.</p> <p>The vegetation on the site is Low Open Forest of Banksia ssp and Allocasuarina fraseriana, Low Woodland of Banksia sp over Low Heath of Scholtzia involucrata and Low Open Woodland of Melaleuca raphiophylla. 76.5% of the total is rated as from Excellent to Good.</p>	<p>Our comments regarding the cost of complete avoidance versus the benefits that may be obtained from offsets also applies to the Bassendean Central and South Vegetation Complex.</p> <p>The site was earmarked for development as a High School through the relevant strategic and local planning frameworks including the Southern Suburbs District Structure Plan – Stage 3, Hammond Park / Wattleup (SSDSP3), and subsequently included in the approved Local Structure Plans as “Public Purpose – High School. On this basis, the DoE based it’s decision to acquire and develop the land in question by relying on the approved planning framework presented by the Planning Scheme.</p>
7	Biodiversity	<p><b>Linkages</b></p> <p>The clearing principle assessment notes that ‘the Study Area retains some linkages to conservation reserves and ‘Bush Forever sites, which form part of a regionally significant contiguous bushland/wetland linkage’. The remnant vegetation within the Study Area would provide corridors for fauna movement, in particular for the Quenda, as well as a considerable area of foraging habitat for Black Cockatoos and many other small bird species and insect pollinators.</p>	<p>Without defining its relative importance as a linkage, the applicant acknowledges that clearing of the site will remove this linkage function. Linkages exist at the nearby Catholic School, east of the proposed school site. The impact on terrestrial fauna such as the quenda and on avifauna due to the removal of this linkage is an integral part of the assessment by the DWER and will consider the conservation status of those species. That assessment will inform the Department’s consideration of offset or other requirements in accordance with current policy and guidelines.</p>



ISSUE NO.	ENVIRONMENTAL FACTOR	ISSUE	RESPONSE
8	Clearing Principles	<p><b>Comments on Assessment against the ten clearing principles</b></p> <p>[***] wishes to stress that each of the ten Clearing Principles state that ‘Native vegetation should not be cleared if...’ There is no equivocation in those principles so even if one Principle applies that indicates that a Clearing Permit for the proposal must not be granted. We are aware that there has been gross failure in governance and decision making according to these principles and this is totally unacceptable.</p>	<p>This comment addresses an interpretation of the clearing principles by the regulator and cannot be answered by the applicant.</p>
9	Clearing Principles	<p>The assessment against the ten clearing principles determined that the Proposal is likely to be at variance with Clearing Principle (b) and may be at variance with Principle (a) and (i).</p> <p>1.) Principle (d) ‘Native vegetation should not be cleared if it comprises the whole or part of/or is necessary for the maintenance of a threatened ecological community’.</p> <p>At the time the assessment was undertaken ‘Banksia Woodlands of the Swan Coastal Plain’ was not listed as a Threatened Ecological Community. As this community is now listed it must be considered in this proposal.</p>	<p><b>Re: Principle (d)</b> – An assessment against principle (d) has been included in Attachment 1 Form_Annex_C7_Hammond Park of the clearing permit application. It was assessed “Proposal likely to be at variance with this principle’. As noted before, the TEC was listed well after the studies were conducted and also after submission of the Referral.</p>

ISSUE NO.	ENVIRONMENTAL FACTOR	ISSUE	RESPONSE
10	Clearing Principles	<p>2.) Principle (e) Native vegetation should not be cleared if it is significant as a remnant of native vegetation in an area that has been extensively cleared.</p> <p>[***] does not accept the opinions put by GHD to this clearing principle. GHD puts forward two points under this principle. The first point made is that even though the Bassendean complex Central and South is less than 30% at the State, IBRA Bioregion and IBRA Sub-region level, at the local level, (Beard vegetation association 1001 and Heddle) there is greater than 30% of the pre—European extent remaining, therefore ‘they are not considered to be critical assets.’ (p38 GHD)</p> <p>This is incorrect. The EPA Report on Perth and Peel at 3.5 Million, July 2015, has the Bassendean Complex Central and South at 26.1% remaining in the IBRA region as calculated in 2015. And only 1.2% remaining where the complex is secured for conservation. Therefore the GHD advice should be dismissed as it is incorrect.</p>	<p><b>Re: Principle (e):</b> The difference is noted, but it is submitted that the 26.1% of the EPA’s 2015 Interim Strategic Advice falls within what can reasonably be understood as “less than 30%”. The GHD report does not address the percentage of Perth and Peel Region reserved for conservation.</p>

ISSUE NO.	ENVIRONMENTAL FACTOR	ISSUE	RESPONSE
11	Clearing Principles	<p>The second point made by GHD under this clearing principle is that the Study Area is connected to remnant vegetation occurring within a larger block of semi-rural residential properties. Regionally, the Study Area retains some linkages to conservation reserves and Bush Forever sites which form part of a regionally significant contiguous bushland/wetland linkage. However, the Study Area does not provide any significant linkages to surrounding remnant vegetation or is considered a significant remnant.</p> <p>The clearing of over 10 ha of Banksia Woodland is a significant remnant and this wider area is one of high biodiversity. The linkage nodes and links that remain between highly significant areas such as Bush Forever sites (492, 263, 344) and Nature Reserves (Thompsons Lake Nature Reserve, BF 391, Harry Waring Marsupial Reserve, BF 392, Wandu Nature Reserve 347) are critical assets to the state and to future generations and the protection of the remaining and fragmented natural areas. Thus, it is essential that the area be retained and its connectivity is important.</p>	<p>Without defining its relative importance as a linkage, the applicant acknowledges that clearing of the site will remove this linkage function. Linkages exist at the nearby Catholic School, east of the proposed school site. The impact on terrestrial fauna such as the quenda and on avifauna due to the removal of this linkage is an integral part of the assessment by the DWER and will consider the conservation status of those species. That assessment will inform the Department's determination of the proposal and consideration of potential offset or other requirements in accordance with current policy and guidelines.</p>
12	Clearing Principles	<p>3.) Principle (g) Native vegetation should not be cleared if the clearing of the vegetation is likely to cause appreciable land degradation. This principle does not say '...is likely to cause appreciable land degradation to the surrounding land'. The clearing, if approved, will completely destroy the bushland.</p>	<p>Noted. However, Principle (g) concerns land degradation relating to "soil erosion, salinity, nutrient export, acidification, waterlogging and flooding that affect the present or future use of land" (<i>A guide to the assessment of applications to clear native vegetation</i>, DER, December 2014). This was correctly addressed in the GHD report.</p>

ISSUE NO.	ENVIRONMENTAL FACTOR	ISSUE	RESPONSE
13	Clearing Principles	<p>4.) Principle (h) Native vegetation should not be cleared if the clearing of the vegetation is likely to have an impact on the environmental values of any adjacent or nearby conservation area.</p> <p>GHD concludes comments on this principle thus ‘However, clearing of the Study area will result in a direct loss of native vegetation (albeit small) in a highly fragmented landscape.’ In a highly fragmented landscape where less than 30% vegetation remains, the site is not ‘small’ and should be retained. [***] would conclude that the Proposal is likely to be at variance with this principle rather than ‘is not’.</p>	<p>Noted. The GHD report also concludes that “Any clearing of the Study Area is not considered to significantly impact or further fragment these conservation area[s] or result in a significant loss of connectivity function between local and region linkages”. The significance of the area to be cleared in relation to the remaining extent of the vegetation type has been presented in the clearing permit application. This is a significant consideration which will be assessed by the DWER as part of their assessment.</p>
14	General	<p>[***] submits that this Clearing Permit under the Assessment Bilateral Agreement must not be granted as it is environmentally unacceptable on many grounds. It cannot be offset.</p>	<p>Noted. Our response to this concluding submission is addressed in detail above.</p>