



WILDFLOWER SOCIETY OF WESTERN AUSTRALIA (Inc)

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Office of the Appeals Convenor

Level 22 Forrest Centre

221 St Georges Terrace

PERTH WA 6000

Email: admin@appealsconvenor.wa.gov.au

Bunbury Outer Ring Road (Southern Section)

The Wildflower Society of WA (WSWA) makes this appeal on the Environmental Protection Authority's (EPA's) Report No. 1714 regarding a proposal by Main Roads Western Australia (MRWA) for the construction and operation of the southern section of the Bunbury Outer Ring Road (BORR). WSWA believes the EPA has taken into consideration items that are outside its scope of assessment and that this has influenced its decision in relation to the potential alternatives available to MRWA in its route selection for this road section.

1. Compliance with the Environmental Protection Act (EP Act)

The EPA have not adequately considered:

- The Precautionary Principle
- The Principle of Intergenerational Equity
- The Principle of the Conservation of Biological Diversity and Ecological Integrity.

The requirement to avoid and minimise clearing has not been adequately taken into account by the EPA when conducting its assessment. An alternative route is available where less clearing is required. This should carry much more weight than it has been accorded, especially when the proponent acknowledges that this is the case. The EPA should thus have required the proponent to change the alignment.

In consideration of economic factors, the EPA has erred in failing to recognise the scope of its assessment as defined within the EP Act (see *Coastal Waters Alliance of Western Australia Incorporated v Environmental Protection Authority; Ex parte Coastal Waters Alliance* (1996) 90 LGERA 136). These economic factors are the supposed impact of the alternative route on mining and farming. This is shown in the EPA's statement on p4 of the EPA's Report which stated:

"...while the alternative alignment may have a larger impact on agricultural businesses, properties containing basic raw material sand mining tenements."



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Not only does the EPA Report on this BORR project reference economic impacts, which is not within the EPA's remit to consider, but it also states that the alternative alignment only "may" have a larger impact. This is distinctly different to the statement regarding the referred alignment where there "would" be an impact:

"The referred alignment would potentially have greater impacts on social surroundings in the context of visual amenity and noise to the surrounding residents of Gelorup"

One would have thought that in applying the Precautionary Principle and the Principle of Intergenerational Equity, the EPA would have given much more weight to a "certain" impact than a "may be/possible" impact in deciding which route would be environmentally acceptable.

That is not to say that broad commercial or economic factors are irrelevant to the final decision as to whether a proposal should or should not be implemented. On the contrary; the EP Act as a whole clearly recognises that environmental impacts may be outweighed by the social or economic benefits to be gained by the implementation of a proposal. However, the EP Act recognises that the weighing of those competing factors is to be carried out by the Environment Minister (or the Governor in Council). Environmental issues should not be "balanced" against economic, social and cultural concerns, but should be integrated to achieve a positive outcome for all spheres i.e there should be a "sustainable" outcome.

The WSWA therefore appeals against the approval of this project on the basis of non-compliance with the Principles embodied in the Environmental Protection Act, as well as on the basis that the EPA has exceeded its power, by considering factors that were not "environmental".

2. Native Vegetation Policy

The Government is currently considering and preparing a Native Vegetation Policy whose purpose is (amongst others):

to "achieve conservation and restoration of native vegetation while also delivering other state priorities like regional prosperity, Aboriginal wellbeing and a strong economy".

While it is acknowledged that the Native Vegetation Policy has not been finalised and adopted, we submit that an alternative alignment is available that equally or better achieves that purpose than the referred alignment on all issues (especially with respect to Threatened species and communities and Aboriginal cultural heritage (trees)) and better provides for the long-term transport requirements in the Greater Bunbury region.



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We therefore submit that the EPA erred in its approval of the referred proposal and appeal against the approval of this project on the basis of not adequately considering government policy.

3. Alternative

The WSWA notes the following:

- the referred alignment constraints are native vegetation and terrestrial fauna
- the alternative alignment constraints are wetlands and aquatic fauna
- the alternative alignment has higher impacts on property severance, restricted access, land acquisition required, rural community amenity and impact on agricultural enterprises including loss of productive land and reducing carrying capacity
- MRWA studies apparently show little overall advantage for any alignment.

The alternative alignment has the following distinct advantages over the referred route:

- most (94.6%) of the vegetation is degraded or completely degraded
- has much lower impacts on peri-urban areas and homeowners
- is more future proofed in that there is more scope for widening of the road carriageway without significant additional impact
- the proposed route is likely to be superfluous and inadequate
- some other route to the east of the proposed route will be needed within a medium to long term horizon.

We submit that the alternative alignment is superior to the referred alignment on numerous grounds, especially conservation of native vegetation, flora and fauna, protection of heritage (especially significant trees) and social impact. We also submit that the postulated impacts of the alternative alignment on wetlands could probably be much reduced or avoided or much less significant than presumed if/once a full design of the road along the alternative alignment was proposed.

We submit that the following reasons for not proceeding with the alternative alignment (as given in the EPA Report) are not relevant factors for the EPA to consider in its assessment report:

- the referred alignment through the Gelorup route is historically zoned as Primary Regional Road in the Greater Bunbury Region Scheme
- MRWA has expended significant financial and other resources in designing the referred alignment
- project costs and reduced network efficiency.



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Therefore, we submit that the EPA erred in approving the project along the referred route, and appeal against the approval of this project on the basis that EPA should not approve a project if there is an alternative that has lower impact. EPA claims that it can only assess a project referred to it (under Section 38 of the EP Act). Yet, proponents must supply EPA with details of alternatives, under the guidelines provided by the EPA and the guidelines associated with the Clearing Regulations. What is the point of doing so if the EPA cannot then decide that the referred project is not acceptable because there is no alternatives offered, and then suggest the proponent submit an alternative proposal?

4. Avoid clearing

The mitigation hierarchy of avoidance, minimisation, rehabilitation, and offsetting, as the last step in the clearing alternative sequence, are referenced in the EPA's assessment report.

Our interpretation of this hierarchy is that the proponent needs to demonstrate the absolute need for the clearing proposed, and with documented attempts to avoid and minimise clearing to the maximum extent possible, clearing only if it is absolutely unavoidable and there no viable alternative.

In this case, there is a viable alternative, and in fact one which has less impact on native vegetation.

Further, the WSWA submits that there should be no further clearing in the Swan Coastal Plain, including in the Bunbury region, within which this road project falls, because the extent of native vegetation in this region is below 30% of the pre-clearing extent of each ecological community which is necessary to be retained if Australia's biological diversity is to be protected. In some areas, the extent of native vegetation cover is below 10% of the pre-clearing extent at which point the number of woodland-dependent bird species have been shown to decrease dramatically and continue to fall as vegetation cover decreases further.

The fact that the southern section of the BORR remains as the only intact vegetation in the immediate vicinity of the project area reflects on the land use planning system and its inability to set aside sufficient area for conservation (i.e. at least 30% of the pre-European clearing extent) when developing the Local Area Planning Scheme when the road corridor was put into the local area planning 30 years ago. This failure reinforces the need to relocate the road corridor to another alignment to enable the conservation of intact habitat for future generations and the future of the fauna and heritage within it.



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5. Threatened Species and Communities

The project would result in the clearing of the following:

- 23.4ha of vegetation representative of the Banksia Woodlands of the Swan Coastal Plain
- 4.4ha of vegetation representative of both Tuart (*Eucalyptus gomphocephala*) woodlands and forests of the Swan Coastal Plain ecological community and Southern Swan Coastal Plain *Eucalyptus gomphocephala* – *Agonis flexuosa* woodlands
- 4.5ha of vegetation representative of the Southern Swan Coastal Plain *Eucalyptus gomphocephala* - *Agonis flexuosa* woodlands.

These ecological communities are only recognised by the WA EPA as a Priority Ecological Community (PEC). However, the Banksia Woodlands of the Swan Coastal Plain ecological community was listed as endangered under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), on 16 September 2016 as a Threatened Ecological Community (TEC). Further the Tuart (*Eucalyptus gomphocephala*) Woodlands and Forests of the Swan Coastal Plain was listed as critically endangered under the EPBC Act on 4 July 2019 as a TEC.

Under recent or proposed changes to the WA Biodiversity Conservation Act and Regulations, these two ecological communities are also recognised (or should be recognised) as Threatened Ecological Communities (TEC). The WA EPA needs to use the current listing, not the listing in existence at the time of project referral. Further, if the WA EPA is undertaking the assessment of this project under the bilateral agreement between the Commonwealth of Australia and Western Australia relating to environmental assessment, the WA EPA needs to recognise and assess the impact on these ecological communities as impacts on a TEC, not just a PEC.

The project will also have the following direct impact on threatened fauna species that depend on this habitat:

- 60.9 ha of Western Ringtail Possum (listed as Threatened – Critically Endangered) habitat
- 60.9 ha of Carnaby's, Baudin's and Forest Red-tailed Black Cockatoo (listed as Threatened – either Endangered or Vulnerable) habitat
- 1,088 black cockatoo trees with potential nesting hollows
- 11 black cockatoo trees with suitable nesting hollows (two with signs of use)
- 39.2 ha of South-western Brush-tailed Phascogale (listed as Conservation Dependent) habitat.



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The EPA has acknowledged that the key threatening processes from the proposed road construction, and the ones impacting the Western Ringtail Possum and Black Cockatoos the most, are habitat loss and fragmentation. In its Report (Report 1714), the EPA has also acknowledged that it is these threats and pressures that have ultimately led to these species having their current Threatened species conservation status listings. The EPA therefore states that it considers that the significant residual impacts on this species from habitat loss need to be adequately offset to ensure an environmental outcome that is likely to be consistent with the EPA factor objective is achieved.

However, the first rule in trying to protect a Threatened species or community is to preserve the remaining individuals of the species and their habitat, or instances of the ecological community. The first rule is not to allow clearing and then to try to offset the impact. So why are EPA allowing the situation to get worse, allowing the clearing/removing of habitat/community and fragmentation of the remaining habitat/community so that connectivity and breeding is compromised, when there is an alternative alignment that doesn't affect these species/communities to anywhere the same extent?

Just like climate change, we as a community shouldn't wait till the last individual of a species or instance of an ecological community is about to be extirpated before we take the action that we should have taken 20 years ago. We all, including the EPA, know that the future of the Ringtail Possum and the Black Cockatoos, and of the Banksia and Tuart Woodlands, is bleak, as this project is not the only and last project that will impact them and their habitat (within 20 kms of this site road construction is taking place which is also depleting both the TEC and the habitat of these Threatened species). It is time to draw the line, and not to pass on the extinction debt to future generations.

It is time for the EPA to say NO. It is time for roads to be built in the right place and provide for long-term needs, not the wrong place and only meet interim requirements. It is time for us to pay the price of poor planning and development (if indeed there is or needs to be a price), not the plants and animals.

We therefore appeal against the approval of this project on the basis that the referred proposal does not avoid clearing of native vegetation, especially of Threatened Ecological Communities (TEC), and impacting Threatened species, when there is an alternative, and Threatened Species/Communities action plans are clear regarding what actions are required to save the species/community from extinction.



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6. Flora

The project would result in the removal of 104 *Caladenia speciosa* P4 out of >3,900 individuals (2.7% of the population). The EPA has not assessed this as environmentally significant, whereas the Wildflower Society of WA argues that it **is** environmentally significant. The WSWA's criteria of when clearing should be considered significant are as follows:

- clearing/removal of > 0.05% of individuals of the total known population;
- clearing where $\leq 10\%$ of the original extent of the TEC/PEC remains;
- clearing > 0.05% of a population of a known critical species or an area of a remnant critical ecosystem.

Under these criteria, the removal of 104 *Caladenia speciosa* **is significant** and needs to be considered explicitly by the EPA.

The project would also impact on a large population of the uncommon Curled-tongue Shell Orchid, *Pterostylis rogersii*, which was not found during MRWA's flora survey but found by the WSWA while undertaking a tree survey. The impact on this population is also significant.

The project would also result in the removal of 2 *Nuytsia floribunda* trees on the National Registry of Big Trees (it is not clear whether they are the Ancient Moodja and the Victory Moodja). These individuals are unique and irreplaceable. Their removal would be equivalent to removing or losing an iconic building such as Wonnerup House north of Busselton or Ellensbrook Homestead at Mokidup near Margaret River. That is not something that would be countenanced.

These are further reasons why this project should not proceed on the proposed alignment when there is an alternative, and why the WSWA appeals against the approval of this project.

7. Threatened Fauna

Despite many bold initiatives to rescue, rehabilitate and release Western Ring-tailed Possums, the provision of structures to allow them to move across the proposed road alignment, and the revegetation of offset sites, the WSWA is not convinced that the measures proposed to safeguard Western Ring-tailed Possums will be effective or adequate. There is no scientifically based evidence to establish beyond reasonable doubt that such strategies are effective.

The WSWA acknowledges that the proponent has proposed a total of 26 fauna connections to provide multiple pathways to reconnect fauna habitats. Since the PER



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was released, the proponent has proposed to construct two vegetated fauna land-bridges and two extra ringtail possum ropebridges.

Despite this best practice and the proposed additional connectivity measures, the Department of Biodiversity Conservation and Attractions (DBCA) itself has advised the EPA that disturbance and displacement of individuals and the fragmentation of habitat by the proposed road would likely result in a 2-8 year decline (representing 1-2 generations) in the Western Ringtail Possum population in Gelorup. This is totally against the Principle of the Conservation of Biological Diversity and Ecological Integrity which should have led the EPA to immediately declare that the proposed road alignment is totally environmentally unacceptable, especially since there is an alternative alignment that would not have this impact.

And this is if the proposed connectivity measures actually work, and do not become a predator trap. MRWA has constructed a number of fauna crossing/connection structures over the last 10-15 years, including in Busselton, along the Mandurah Entrance Road, along Forrest Highway and along Roe Highway. What is their assessment of the effectiveness, and especially the use of these structures by predators such as foxes and cats? MRWA's own studies have shown that some types of connectivity measures do result in greater use by exotic predators than native fauna species.

The EPA and DBCA have recommended and set conditions to undertake predator control at exits/entrances to fauna crossings prior to clearing, during construction and post-construction to assist with achieving the longer-term (10-15 years) desired, expected and required outcome of a ringtail possum population equivalent to pre-disturbance levels. The EPA has further advised that non-lethal methods of predator control are available to ensure non-target domestic dogs are not impacted.

The WSWA questions how effective this will be. What evidence does MRWA have from its 10-15 years' experience in Busselton, along the Mandurah Entrance Road, along Forrest Highway and along Roe Highway regarding feral animal control around fauna crossings? While the WSWA is aware of evidence of feral animal control in some areas, including in Perth, metropolitan and peri-urban areas, as well in country areas, fox and cat control is notoriously difficult and it has not been universally successful. Sometimes direct use of firearms is the only solution, but niches are rapidly filled by new arrivals, so that constant attention is required.

Therefore, the WSWA appeals against the approval of the road along the proposed alignment, as the evidence and the Precautionary Principle points to a poor outcome for the Western Ringtail Possum. This is not a proposal that should rely on



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an offset, and particularly a contingency offset (as listed as a condition of approval), to be approved to proceed.

8. Offsets

MRWA is offering an offset package of land acquisition and revegetation. These are designed to address the following likely (and potential) significant residual impacts:

- Impacts to 60.9ha of habitat for Ringtail Possum, displacement of individuals, and fragmentation of habitat
- Impacts to 60.9ha foraging and potential breeding habitat for black cockatoo species (Carnaby's and Baudin's cockatoos and Forest Red-tailed Black Cockatoo), including 1088 trees with the potential to develop nest hollows and 11 trees with suitable hollows
- Impacts to 39.2ha of habitat for phascogale
- Impacts to 23.4ha of Banksia Woodlands
- Impacts to 4.4ha of Tuart Woodlands
- Impacts to 4.5ha of Tuart-Peppermint Woodlands PEC.

MRWA should provide the EPA with an independent review of existing examples, where it has carried out similar works, to provide scientifically based evidence that it can mitigate the impacts identified over a 5-10 year period to a standard consistent with the ecological requirements of the Threatened species or the species composition of the Banksia woodland TEC or Tuart woodland TEC.

However, the offsets do not address the impacts on the following values:

- The removal of 104 *Caladenia speciosa*
- The removal of 2 *Nuytsia floribunda* trees (it is not clear whether they are the Ancient Moodja and the Victory Moodja)
- The removal of a large population of the uncommon Curled-tongue Shell Orchid, *Pterostylis rogersi*.

While the WSWA acknowledges MRWA's proposals to undertake revegetation of current Government-owned sites, some weed control and expanded Fox baiting, the WSWA appeals the adequacy of the offset conditions and submits that the following is required:

- The proponent and/or WA Government to spend \$1 on green infrastructure such as land acquisition, revegetation, weed control, feral animal control and mosaic, small-scale fire management within the Greater Bunbury region for every \$1 spent on the construction of the BORR and its associated works.



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- Offset the impacts on *Caladenia speciosa*, *Pterostylis rogersii* and heritage *Nuytsia floribunda* trees through translocation of impacted individuals, and/or acquisition of sites that have similar value for the impacted individuals, and/or plant at least 2 individuals for each impacted individual.
- Revegetate the final selected road reserve disturbed by construction with a high diversity of locally native plants including frangible shrubs and herbs on shoulder and back slope.
- Revegetate degraded areas in the remainder of the road reserve.
- Preserve large area of relatively unfragmented remnant vegetation between Calinup Road and Boyanup West Road, and incorporate them into a Regional Park.
- Undertake, with assistance from community, collection of material from plants destined to be destroyed/cleared/removed, for propagation or translocation.

9. Conditions

Under the EPA's recommended conditions, there are a series of measures (Conditions 4 and 5) designed to minimise the impacts of construction on fauna. However, the WSWA considers that these conditions are insufficient to protect the full range of fauna species likely to be present at the construction sites, as required under the Western Australian Animal Welfare Act (2002).

The WSWA therefore appeals these measures as inadequate and recommends that additional conditions are required to address the impact on non-threatened vertebrate fauna such as any bird, reptile and mammal, including bat, that has the potential to be injured or killed by the clearing process. This might include the following:

- passive relocation management actions
- searching hollows, dreys, ground debris, dense ground level vegetation, fallen timber and logs for all vertebrate fauna
- capturing fauna using bare hands, bags, cages, pits or trench traps
- removing live animals and eggs
- releasing all captured fauna, and/or incubating eggs at animal rescue centres for subsequent open range release, in suitable alternative areas.

These actions would need to be taken under the provisions of the Animal Welfare Act (2002). Areas to which fauna are proposed to be released should be surveyed to determine whether the habitat is suitable for the fauna and numbers (including for Ring-tailed Possums and Brush-tailed Phascogales) in question, and whether the released fauna would or would not fill an existing niche in (and therefore be able to occupy) the proposed location.



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The proponent (MRWA) has undertaken similar actions in the past eg Mandjoogordap Drive (Mandurah Entrance Road), Mandurah (2009), for which they were awarded an Engineering Excellence Award (2011), so should be familiar with the requirements.

The WSWA questions the written definition of “receival sites” in the EPA Report since as written, the first part of the definition seems to imply that captured Western Ringtail Possums can only be released into habitat outside the development envelope that contains home ranges of residential Western Ringtail Possums intersecting or adjoining the Category 1 Clearing Areas. The WSWA supports the release of captured Western Ringtail Possums as described in the second part of the definition, ie those in the dot points, but as written the requirement is confusing. The WSWA would also support release of captured Western Ringtail Possums into more distant offset sites, if the habitat is suitable, and where the released fauna would fill an existing niche.

10. Associated Projects

The EPA does not appear to have considered the environmental impacts associated with associated projects, such as sourcing the basic raw materials including limestone and sand to construct the proposed road, in its assessment. Such an assessment is crucial to understanding the cumulative impact of the proposal.

The EPA may be planning to assess these projects, but the EPA should have provided a list of these projects in its report. WSWA is aware that public consultation on some of these likely projects regarding the assessment level has already occurred.

The WSWA therefore appeals that no decision should be made on whether or not to approve this project until the EPA has assessed all projects associated with the proposal and assessed the cumulative impact of the entire suite of proposed projects.

11. Conclusion

WSWA believes the decision of the EPA in relation to the Bunbury Outer Ring Road Stage 3:

- Is inconsistent with the scope of assessment to be considered by the EPA;
- Is inconsistent with the objectives of the Environmental Protection Act;
- Has not met the requirement to consider alternative options to the selected proposal by requesting a discussion of available options;
- Did not adequately consider the status of the vegetation communities impacted by the project, and species within those communities;
- Failed to assess the ability of the proponent to deliver on commitments made within the PER; and



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- Did not adequately consider the cumulative impacts of the project.

On this basis, WSWA recommends the EPA revise its decision and find the proposal unacceptable on the basis that alternatives are available that are likely to have a lesser environmental impact than that of this proposal.

Yours faithfully,



<http://www.wildflowersocietywa.org.au/>