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Ms Lee McIntosh
Acting Chair Environmental Protection Authority
By email: registrar@dwer.wa.gov.au

9th July 2024

Third-party Referral for Assessment: Alcoa Clearing Permit Application to clear native vegetation (CPS 10626/1)

Dear Ms McIntosh,

On behalf of Jarrahdale Forest Protectors Inc. I am writing to formally refer for assessment under Section 38 of the Environmental Protection Act 1986 the proposal contained in Alcoa's recent application for a clearing permit (CPS 10626/1). The clearing permit application is for work related to a current assessment by the EPA entitled *Pinjarra Alumina Refinery Revised Proposal* (Assessment number: 2253).

The proposal is an assessable 'proposal' as defined by section 3 of the EP Act. Jarrahdale Forest Protectors (JFP) believes the proposal is likely to produce significant direct and indirect impacts on the environment which require assessment under Part IV of the Environmental Protection Act 1986 (**the EP Act or the Act**).

To our understanding, this proposal has not been referred to the EPA by any other party.

1. Summary of the Proposal

The proponent has applied for a clearing permit (CPS 10626/1) to DEMIRS with the purpose of conducting geotechnical investigations in 46 defined areas in the proposed Myara North Mining Area¹ to clear "*up to 20 hectares*" in an envelope of "*approximately 20 hectares*". The geotechnical work entails the following

- excavation and backfill of 100 test pits; and
- installation of 16 groundwater monitoring bores.

The proponent's supporting information for the permit application is found on the DEMIRS FTP website [here](#)

Further background and description can be found in JFP's public submission which is found in Appendix 1.

2. Grounds for Referral

2.1 Background

1. The proposal to clear is for work related to the *Pinjarra Alumina Refinery Revised Proposal* (Assessment number: 2253) and is of a nature that it "*would not need to be done if the implementation of the referred proposal did not proceed.*"²

¹ See Figure 1 of our public submission to DEMIRS in Appendix 1 at the end of this letter.

² This is a quote from Section 51F(4) of the EP Act. Section 51F deals with the **Effect of referred proposals on decisions about clearing**

2. The proponent has stated on page 4 of its supporting information that *“The Department of Water and Environmental Regulation has advised that no approval under Part IV of the EP Act is required for the geotechnical investigation.”*
3. However as the matter is related to a referred proposal it falls under Section 41A(1) of the EP Act. And although it was not explicitly stated the proponent is taking a position that the works are **minor or preliminary** works and can therefore proceed with the Authority’s consent under Section 41A(3)³ of the Act
4. JFP have argued in our public comments on CPS 10626/1 (See Appendix 1) that the works are **neither minor or preliminary**. We further argued that the precautionary principle (Section 4A(1) of the EP Act) must be taken into account when considering the prospect of “serious and irreparable harm” that may be caused by small cumulative impacts on threatened species of fauna that are known to forage and live in the area. In our comments we said that a fair and proportionate use of the precautionary principle would be to reject the permit until such time as a decision on the *Pinjarra Alumina Refinery Revised Proposal* was issued in late 2025 so that the application could be assessed in full context. In our view the proponent’s intention to commence clearing and geotechnical work in July 2024, shows undue haste for a design and construction schedule that is planned to end in 2028.
5. On Thursday the 27th June we received advice that the presence of threatened species raises a consideration that the proposal may also meet the criteria for classification as a *“significant proposal”* as defined under Section 37B(1) in the EP Act

Unfortunately, we did not raise that argument in our submission. If we had, then assuming the argument was accepted DEMIRS would be required to refer the application as a *significant proposal* to the EPA as required under Section 38(4) of the Act.

For this reason, we are now respectfully making that argument as a third-party referral to the EPA as outlined in Section 2.2 below

2.2 Specific grounds of referral - The proposal is a Significant Proposal

We have based our grounds of referral on the argument that the proponent should not be seeking a simple clearing and works permit but that the proposal satisfies the criteria for being a *significant proposal*.

We have two reasons to support our argument as outlined in Sections 2.2.1 and 2.2.2 below

2.2.1 The precautionary principle –requires the classification of “*Significant Proposal*” as a measure to prevent environmental degradation

The presence of threatened species that are likely to be impacted by the clearing operations and the uncertainty of the consequences of small cumulative impacts on those threatened species invokes the precautionary principle⁴ which requires that “... *lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*”

³ Please note that JFPS public comment provided in Appendix 1 incorrectly stated that the relevant section of the EP Act is 41A(4). The correct reference is 41A(3) as stated here.

⁴ Please refer to Section 4a(1) of the EP Act.

The precautionary principle requires preventative measures to be examined at an early stage and reclassification from clearing permit application to *significant proposal* is one such measure that can provide an added level of review and environmental protection appropriated for threatened species.

The evidence supporting the presence of threatened species foraging and living in the area and the likely impacts are discussed in greater detail in our submissions to DEMIRS in Appendix 1.

3 Considerations of Significance

The EPA uses its [Statement of Environmental Principles, Factors and Objectives](#) to assess significance.

We address these factors below

a. values, sensitivity and quality of the environment which is likely to be impacted

A large number of the test pit locations are clustered in an area around the Southern end of Balmoral Road which is the road leading to the reservoir protection zone (RPZ) of Serpentine Dam. (See Figures 1 and 2 in Appendix 1). This area is one of the few stands of mature Jarrah Forest in the Darling Range and much loved as a recreational area for picnics and bushwalks by residents and visitors to Jarrahdale⁵. It has a high level of biodiversity and the proponent has not yet demonstrated the cumulative impact of their operations on endangered species in mined sites to the South of Serpentine Dam compared to the proposed Myara North area particularly in the RPZ and areas close to it.

If the proponent wishes to jump ahead of these considerations already taking place under (Assessment: 2253) then the proposal needs to be treated separately as a *significant proposal* in its own right.

b. extent (intensity, duration, magnitude and geographic footprint) of the likely impacts

The proponent intends to conduct work with heavy machinery for a period of two months in July and August 2024 over 46 sites throughout Myara North, The geographic footprint is discussed in greater detail in our submission to DEMIRS in Appendix 1.

c. consequence of the likely impacts (or change)

The impact of loud machinery and disturbance of understory vegetation on cockatoo habitat, not to mention the risk of spreading dieback is much larger than the 20 hectares of footprint defined in the application. As argued in Appendix 1 even a small cumulative impact on endangered and vulnerable species is often uncertain, and often discussed in terms of asserted opinion and unverified observations.

It is noted also without further comment that despite intentions to dig 100 test pits to a depth of 3m and 16 test bores, the proponent has not carried out any subterranean fauna surveys.

We believe the precautionary principle applies in this case – especially as the works are seeking to proceed ahead of a determination by the EPA on a related referral (Assessment number 2253). In this case the precautionary principle implies that the proposal should therefore be treated as a *significant proposal*.

⁵ Please see also see section 3g. below with regard to social impacts that this operation has on forest picnic areas etc.

d. resilience of the environment to cope with the impacts or change

The area where these operations are occurring is part of one of the world's 36 biodiversity hotspots, an area of unique biodiversity with plant and animal species found nowhere else in the world. World biodiversity hotspots in total occupy just 2.5% of the world's surface and contain 60% of the plant, bird, mammal, reptile, and amphibian species⁶.

However, it is a serious mistake to consider this area as resilient. The endangered animals in the proponent's survey are threatened species because they are at risk of extinction. In fact, to qualify as a World Biodiversity hotspot, the area must have also suffered a 70% loss of its primary vegetation and this is the result of 150 years of logging, clearing and extractive industries.

In this context work permits in the forest for infrastructure operations that have not even received a determination by the EPA under Section IV of the EP Act, and would not be undertaken if permission to mine Myara North⁷ were refused should be treated as a *significant proposal*.

e. cumulative impact with other existing or reasonably foreseeable activities, developments and land uses connections and interactions between parts of the environment to inform a holistic view of impacts to the whole environment

The cumulative impact of mining in this area would be disastrous for the environment. However as argued above, owing to the fragile circumstances of endangered species like the Baudin's Cockatoo the cumulative impact of even small disturbances to range, nesting and foraging have the potential to have severe consequences. In this case the precautionary principle applies, and the Authority needs to treat the matter as a *significant proposal* not just a clearing permit application.

f. level of confidence in the prediction of impacts and the success of proposed mitigation

The proponent has always said they have preserved habitat trees, and ensured endangered species are not disturbed. Their published data is in our view always selective and does not provide comprehensive surveys of before and after impacts of their operations. We could only have confidence in the proponent's assurances if they were measuring biodiversity index before and after operations rather than species richness. In the circumstances, we doubt that the same mitigations used on their heavy machinery in this operation to obtain geotechnical data will be sufficiently effective in lowering the risk of animal deaths and spread of die back in an operation that is not necessary at this time.

g. public interest about the likely effect of the proposal, if implemented, on the environment, and public information that informs the EPA's assessment

The public interest in this proposal is extremely high. There have been controversial approvals of the proponents mining plans, to the South of Serpentine Dam in December 2023 and now the proponent is applying to commence clearing works 4

⁶ https://en.wikipedia.org/wiki/Biodiversity_hotspot

⁷ Of course those mining operations entail 8,323 hectares of clearing in Myara North and Holyoake mines over the next 10 years and would effectively destroy the entire area.

years before the planned commencement of operations in Myara North in 2028 while jumping ahead of an appropriate determination by the EPA on a related proposal under assessment. This too has not been well received by the community who feel that Alcoa act as if they can use the forest and environmental laws to suit themselves.

Twenty hectares of clearing is not minor work, and the local community are also upset by Alcoa's announcements and intentions. On Tuesday 25th June Alcoa announced in a community meeting in Jarrahdale that they intended to close Balmoral Rd for two months and fence off the forest recreational areas mentioned in Section 3a. above. This may well be after a permit is issued but it has upset many residents and visitors who use the area and expected all would be decided after the EPA had undertaken a full Public Environmental Review. For these reasons reclassifying the permit application as a *significant proposal* would significantly address the public's concerns that Alcoa is acting before a decision has been made, while playing down their own evidence that MNES species forage and live in the area.

Outcomes Sought

Based on the considerations above we believe the proponent's application for a clearing permit should either be refused or if it is to be considered at all must be reclassified as a *significant proposal* and referred for assessment to the EPA. Our reasons are based on

- (a) The application of the precautionary principle in the context of endangered species known to forage and live in the proposed work area and uncertainties regarding the effect of cumulative impact on those species, and
- (b) Considerations of Significance as outlined in the EPA's Statement of Environmental Principles, Factors and Objectives discussed in Section 2.2.2 above.

Based on the concerns raised in this referral, we believe that assessment of the Proposal under Part IV of the Environmental Protection Act 1986 is justified.

Thank you for your attention to this matter. Please don't hesitate to contact me directly if you have any questions about this referral.

Yours sincerely



Dr Jeff Bremer BE(Hons), PhD, FIEAust
Deputy Chair - Jarrahdale Forest Protectors



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APPENDIX 1

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To the Resource and Environmental Compliance Division,
Department of Energy, Mines, Industry Regulation and Safety
100 Plain St, EAST PERTH WA 6004
By email: nvab@dmirs.wa.gov.au

21st June 2023

Submission Regarding Clearing Permit Application CPS 10626/1 for Public Comment

Dear Sir / Madam,

Jarrahdale Forest Protectors (JFP) is a community-based organisation with a charter to conserve and protect the Northern Jarrah Forest (NJF) in the Shire of Serpentine-Jarrahdale and beyond in the Darling Range. The basis of our submission regarding application CPA 10626/1 is set out below.

1. Background

1.1. The Northern Jarrah Forests

The Northern Jarrah Forest is the most biodiverse temperate forest on earth containing 800 endemic plants and ten endangered species of fauna found nowhere else in the world. It is under threat from bauxite mining by both Alcoa and South32 with 800 hectares (8 square kilometres) of mature forest being destroyed annually by Alcoa. That yearly destruction entails the loss of 60,000 mature tree, and all the native animals that once lived there. A satellite image showing the scars of the last 15 years of mining in Alcoa's Huntly mine is shown in Figure 1. Huntly mine is the world's second largest bauxite mine, and if put together with their Willowdale mine further south, it is the largest. In the last 12 years Huntly mine has moved its operations into the Reservoir Protection Zone (RPZ) to the South of both the Serpentine and Pipehead dams (see Figure 1) and now poses a threat to Perth's drinking water supply¹. This risk in addition to the fact that the mine occupies the majority of the southern catchment has been opposed by both DWER and Water Corporation since 2021².

1.2. Application Area is Subject to a Current Referral to the EPA

Alcoa has a current referral with the EPA entitled *Pinjarra Alumina Refinery Revised Proposal* (Assessment number: 2253) which seeks to extend the Huntly mining operations to the North of Serpentine dam into the proposed Myara North mining area near the town of Jarrahdale, (see Figure 1) and also to the proposed Holyoake mining area (not shown) near the town of Dwellingup. The total operation will entail 8,323 ha of cleared forest over 10 years of which approximately 50% is estimated to occur in Myara North which will have a mine footprint of 15,403 hectares³. All of that area will be impacted with effects on both ground and surface water hydrology as well as the ecosystems and biodiversity of both destroyed and remanent forest that is left behind.

¹ [Alcoa was warned for years about Perth water threats, so why is our biggest dam at risk?](#) WA Today Feb 2023

² Alcoa's 2021-2026 Mine Management Plan (MMP) was never approved because it was not endorsed by both DWER and Water Corporation. Similarly the 2023-2027 MMP was also opposed but overruled by a WA Cabinet decision in December 2023. Also [See FOI document published in The Sydney Morning Herald 6th May 2024](#),

³ While a [modified clearing footprint](#) of 8,323 ha of clearing was referred to the EPA in November 2023, we do not have separate estimates for vegetation clearing in the Myara North and Holyoake Mines

1.3. Clearing Permit Application CPS 10626/1

Alcoa proposes to conduct geotechnical investigations in a range of areas in Myara North encompassing clearing in a footprint area of “approximately 20 Hectares”. The investigation will entail

- excavation and backfill of 100 test pits; and
- installation of 16 groundwater monitoring bores.

in 46 different areas distributed throughout Myara North. These areas are shown as white regions in Figure 1. It is noted that a large majority of the disturbance footprints are located near the southern end of Balmoral Road where future infrastructure and a large pit is planned.

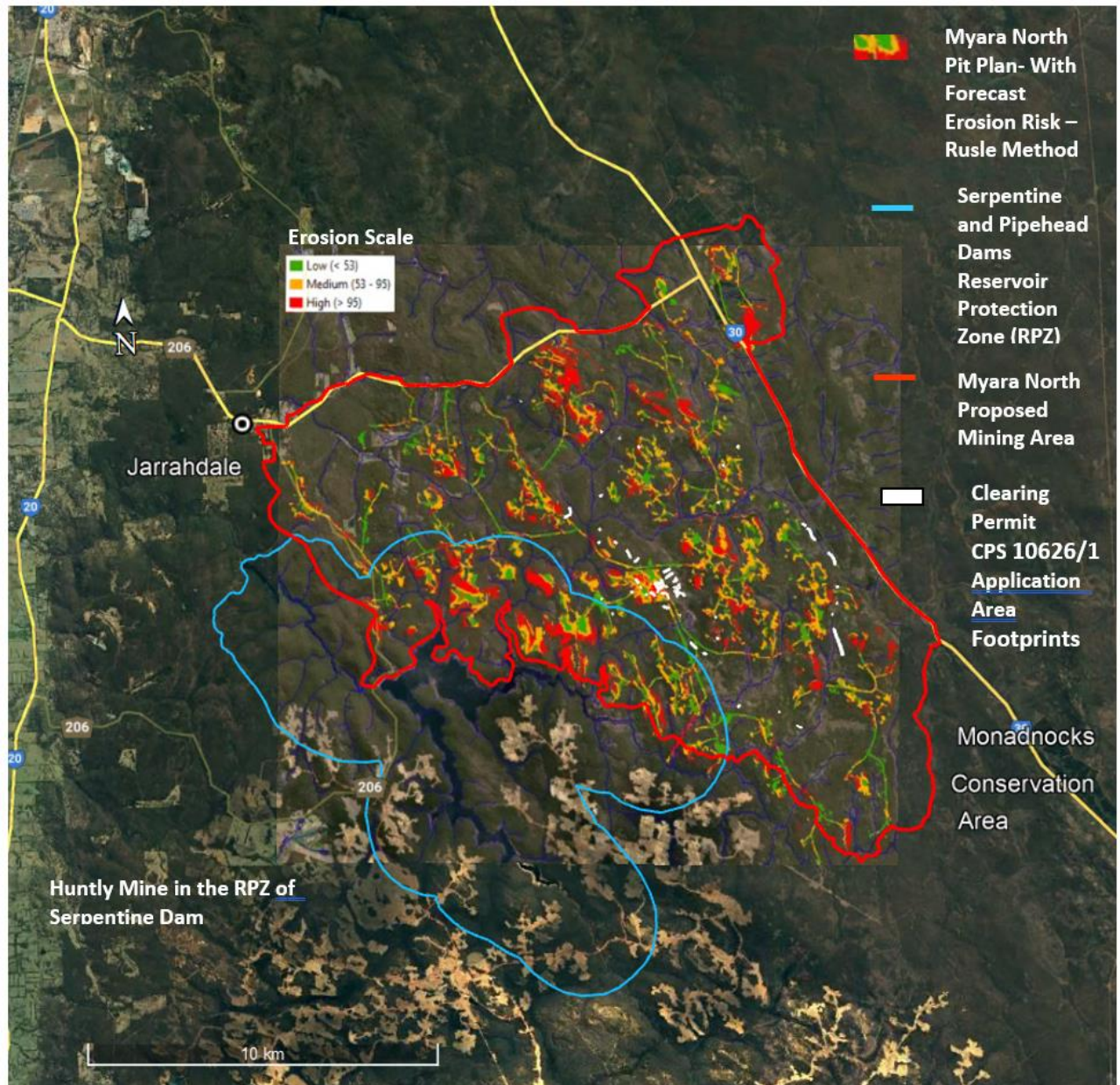


Figure 1 – Overlay of Alcoa’s Future Pit Plan in Myara North with Estimated Erosion Risk-Rusle Method⁴

⁴ Alcoa’s pit plan and the overlay of estimated erosion risk was found in Alcoa’s 2023-2027 Mining Plan, [Appendix 13](#) Page 556 Figure H.4. The image was digitally fitted as an overlay to the Myara North footprint and serpentine dam outline to produce Figure 1. Please note that the Myara North development envelope and pit plan is based on boundaries that were current in November 2023 but have since been [modified](#).

Flora and fauna surveys were carried out by the applicant and details can be found in the supporting document. The following findings are amongst the most important:

- 13 conservation significant species found to be occurring or likely to occur within the region.
- The targeted pre-clearance survey recorded six significant fauna species:
 - Baudin's and Forest Red-tailed Black Cockatoos (Endangered and Vulnerable respectively under the EPBC Act and BC Act);
 - Chuditch (Vulnerable under the EPBC Act and BC Act);
 - Quenda (Priority 4);
 - Western Bush Wallaby (Priority 4); and
 - South-Western Brush-Tailed Phascogale (Conservation Dependent as per DBCA)
- The geotechnical work will occur in both dieback and non-dieback areas.
- 17 threatened and 49 priority flora species are found in the Myara North area of which 2 priority species were found in the preclearance survey as close as 50m to planned work areas.
- One Priority Ecological Community (PEC) was identified: granite communities of the northern jarrah forest.
- Some of the geotechnical test locations and access routes have not been subject to targeted surveys for conservation-significant species likely⁵ to occur within the Myara North region.

2. JFP's Objection to Permit Application CPS 10626/1

Our objections are as follows

2.1. The proposed clearing will impact negatively on threatened species

It is already established that there are 13 conservation significant species that may be affected by the clearing proposal and not all the 46 clearing locations have been subject to flora and fauna surveys.

However, of greatest importance is that the work will disturb and affect both the nesting and foraging habitat of Baudin's and Forest Red-tailed Black Cockatoos (Endangered and Vulnerable respectively). Baudin's Cockatoo is particularly vulnerable as it is totally dependent on forest habitat for its food and nesting and its plummeting populations in the wild are a direct result of intensive forest clearing operations. In these circumstances, considering the conservation status of these animals, any decision to approve or deny a clearing permit must account for the cumulative impact on their survival under both the EPBC Act and the Environmental Protection Act⁶ 1986 (the EP Act).

The impact of loud machinery and disturbance of understory vegetation in the area of cockatoo habitat, not to mention the risk of spreading dieback is much larger than the 20 hectares of footprint defined in the application. Considering their conservation status, negative impacts on black cockatoos and the Chuditch, means permission to clear must be balanced in the context of the purpose and necessity for the clearing operation itself. These factors must also be considered in terms of the legislative requirements outlined Sections 2.2 and 2.3 below.

⁵ See page 11 of the applicants supporting information document.

⁶ Refer Section 3(1B) of The Environmental Protection Act 1986

2.2. The Precautionary Principle

When considering cumulative impact Section 3A(1B) of the Environmental Protection Act 1986 (**the Act, or the EP Act**)), requires the regulator to apply the precautionary principle. This is outlined in Section 4A of Act that states

1. **The precautionary principle**

Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, decisions should be guided by —

(a) careful evaluation to avoid, where practicable, serious or irreversible damage to the environment; and

(b) an assessment of the risk-weighted consequences of various options.

The determination of “serious and irreparable harm” must always be made in context and where an impacted species is abundant then cumulative impacts must be large in order to trigger a concern. Conversely in the case of a threatened species what may be casually considered a small cumulative impact can in the context of many other small impacts elsewhere have the potential to cause serious harm and a risk-based assessment under limb 1(b) of the precautionary principle is appropriate.

2.1.1 Risk of early approval prior to a decision by the EPA needs to be considered

Alcoa have applied for their clearing permit on the 31/5/2024 and as far as we understand it, want to commence clearing and geotechnical work in July 2024. However, according to their own community news sheets, they do not intend to commence mining in Myara North until 2028 and are expecting a decision from the EPA in late 2025. i.e. There is more than enough time to do preliminary works if the Myara North mine is approved.

In these circumstances where an assessment is pending Section 51F of the EP Act also requires the regulator to consider the issue of harm that “*would not need to be done if the implementation of the referred proposal did not proceed*”

Considering the precautionary principle and responsibility it implies to protect endangered species we believe it is fair and proportionate that the regulator refuse approval until such time as the EPA makes their decision as required under Part IV of the EP Act.

2.3. Minor and preliminary works under Section 41A(4) of the EP Act (Part IV)

The clearing permit application is related to an Environmental Assessment by the EPA and can only be approved under Section 41A which states

41A. Proposal not to be implemented before action under s. 45 taken

(1) If a decision of the Authority that a proposal is to be assessed has been set out in the public record under section 39, a person who does anything to implement the proposal before a statement is published under section 45(8)(b) or a notification is given under section 45(13) commits an offence.

(2) <subsection 2 omitted for clarity>

(3) <Subsection 3 omitted for clarity>

(4) Subsection (1) does not apply to minor or preliminary work done with the Authority’s consent.

Under subsection (4) the key words are “minor or preliminary work” and we argue that the works are neither minor or preliminary.

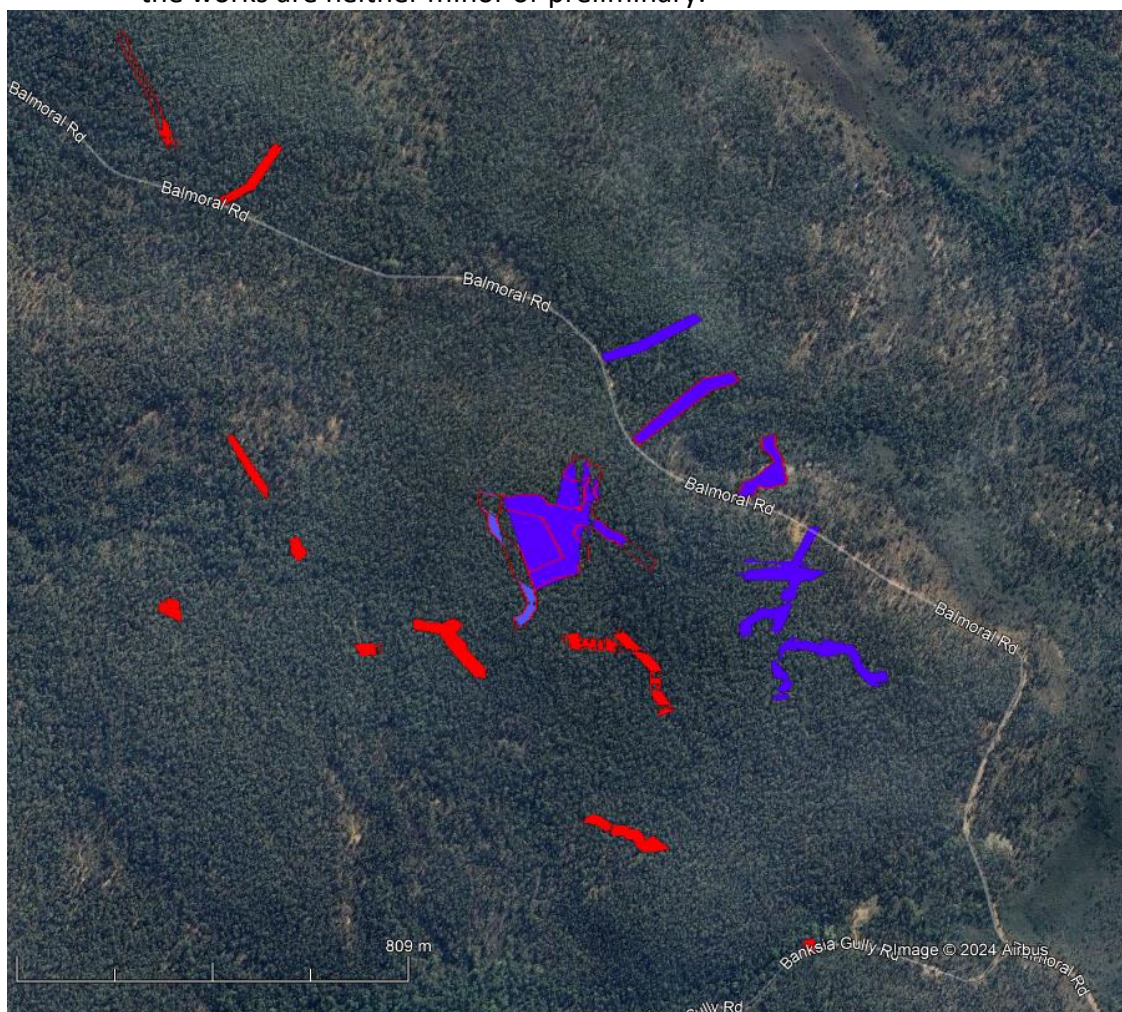


Figure2 Mapping of some of the Proposed Clearing Areas Near Balmoral Rd. For Permit Application 1026/1

2.3.1. Not Minor Works

Regardless of whether the applicant clears or just impacts 20 hectares of native forest there are no circumstances where 20 hectares (about 27 football fields) are minor work. Alcoa intends to clear and mine 8,323 hectares (83 square kilometres) of forest in the next 10 years and may well consider their permit application minor work, but that’s not the context being applied and the regulator must consider the clearing actions in their own right and balance the risk of approving the clearing to the harm that *“would not need to be done if the implementation of the referred proposal did not proceed”*.

As mentioned above, the “hub area” around Balmoral Road has a cluster of clearing footprints within a 300 m radius that account for 6.4 hectares (See blue shaded areas in Figure 2) or the equivalent of 9 football fields of disturbance. That in itself is a major disruption to the native animals that live there not to mention the local community, and recreational users of the forest.

2.3.2. Not Preliminary Works

Alcoa does not anticipate a decision from the EPA until the end⁷ of 2025 and mining in Myara North will not commence until 2028. It is unlikely their mining and infrastructure

⁷ <https://www.alcoa.com/australia/en/sustainability/pinjarra-huntly-environmental-assessment/assessment-process>

plans would be upset in that time frame and they would have at least two years to accommodate geotechnical data into their designs if they waited until after an EPA approval. Furthermore Alcoa already has extensive geological knowledge of the area as indicated by their pit plan and extensive analysis in their published [2023-2027 Mining Management Plan](#) so it is highly unlikely that waiting for geotechnical data in 2026 would greatly upset their designs or construction schedule.

Rather than preliminary, the works are in our opinion premature, and appear to have more to do with the politics of Myara North. Regardless of our opinion, a clearing approval would set a worrying precedent for further minor and preliminary works applications over the next 18 months.

We certainly believe that the applicant can wait for the EPA decision without suffering undue harm and for this reason the meaning and intent of Section 41 of the Act should be upheld and the application refused.

2.4. Possibly Invalid Application Form?

While this may be a minor point it is none the less important with regard to openness and process. Alcoa have stated that they will clear “up to 20 hectares in an envelope of approximately 20 hectares”

This is at odds with the applicant’s description of a “minimal impact” on the forest by vehicles using rubber tyres etc and DEMIRS guidelines for permit applications⁸ that require the applicant to state the clearing size in relation to the size of the footprint. For example, “5 hectares of clearing within a 10-hectare footprint”.

We ask what is the point of saying “up to 20 hectares” except to reserve the right to clear 20 hectares during the 5 year life of the permit. If that is the case we think DEMIRS should request that the applicant alters the numbers in the form to reflect their intention and if not/ treat the application as one that truly intends to clear 20 hectares as stated.

Outcomes Sought

Based on the above we do not believe that the conditions set out in the EP Act for permitting clearing applications which are under assessment by the EPA have been met and therefore wish to see the application for a clearing permit rejected until such time that there is a decision issued by the EPA and the matters regarding clearing permission can be assessed in context

We thank you for this opportunity to make a submission and please don’t hesitate to contact Jarrahdale Forest Protectors should you wish to discuss any aspect of our submission.

Kind regards

Jeff Bremer BE(Hons), PhD, FIEAust



Deputy Chair - Jarrahdale Forest Protectors



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⁸ Which are written plainly on the application form.

APPENDIX A

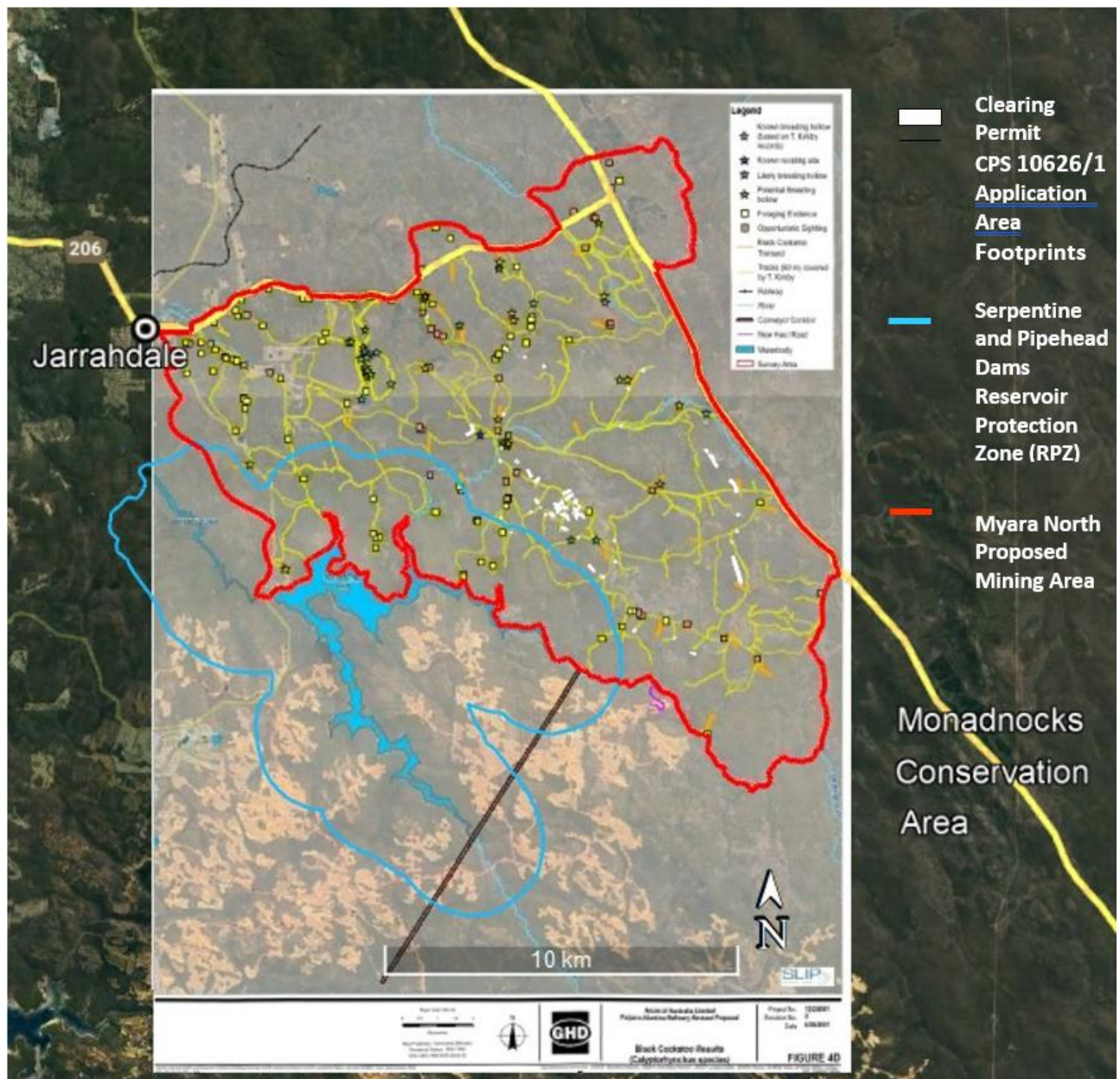


Figure A1 - Digital Overlay of Black Cockatoo Survey on Proposed Clearing Areas