



APPROVAL

Vasse Diversion Drain Upgrade, Busselton, Western Australia (EPBC 2017/7932)

This decision is made under sections 130(1) and 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. Note that section 134(1A) of the **EPBC Act** applies to this approval, which provides in general terms that if the approval holder authorises another person to undertake any part of the action, the approval holder must take all reasonable steps to ensure that the other person is informed of any conditions attached to this approval, and that the other person complies with any such condition.

Details

Person to whom the approval is granted (approval holder)	Water Corporation WA
ACN or ABN of approval holder	ABN: 28003434917
Action	To upgrade the Vasse diversion drain within the City of Busselton approximately 220 km south of Perth, WA (EPBC 2017/7932) subject to the variation of the action accepted by the Minister under section 156B of the EPBC Act on Wednesday, 18 July 2018.

Approval decision

My decision on whether or not to approve the taking of the action for the purposes of the controlling provision for the action is as follows.


Controlling Provisions

Listed Threatened Species and Communities	
Section 18	Approve
Section 18A	Approve

Period for which the approval has effect

This approval has effect until 28 July 2035

Decision-maker

Name and position	Kylie Calhoun Assistant Secretary Environment Assessments West (WA, SA, NT) Branch Department of Agriculture, Water and the Environment
Signature	
Date of decision	24 September 2020

Conditions of approval

This approval is subject to the conditions under the EPBC Act as set out in ANNEXURE A.

ANNEXURE A – CONDITIONS OF APPROVAL

Part A – Conditions specific to the action

1. To minimise impacts to **EPBC Act listed species**, the approval holder must:
 - a. **clear** no more than 2.16 hectares (ha) of **Western Ringtail Possum habitat** within the **project area** (hatched yellow in Attachment A and Attachment B);
 - b. comply with and implement the conditions of the **clearing permit CPS 8191/1** or as varied from time to time; and
 - c. notify the **Department** in writing of any variations of the conditions of **clearing permit CPS 8191/1** within 10 business days of such a change being approved by the **State Government**.
2. To avoid and mitigate impacts to the **Western Ringtail Possum**, the approval holder must:
 - a. implement condition 14 of the **clearing permit CPS 8191/1** by installing a minimum of six rope bridges. The installation of the rope bridges must be in accordance with advice from a **suitably qualified ecologist**;
 - b. implement condition 15 of the **clearing permit CPS 8191/1** by installing a minimum of 12 nest boxes suitable for **Western Ringtail Possum**. If the **action** results in the removal of more than six **dreys**, the **approval holder** must install two nest boxes for each additional **drey** being removed. Installation of the nest boxes must be in accordance with advice from a **suitably qualified ecologist**; and
 - c. reposition rope bridges and nest boxes in accordance with advice from a **suitably qualified ecologist** if they are not being utilised by **Western Ringtail Possum** within six months of installation.
3. The approval holder must maintain the following records and provide them to the **Department** within two months of the installation or repositioning of rope bridges and nesting boxes:
 - a. the date(s) and the **location** where the rope bridges and nest boxes for **Western Ringtail Possum** (conditioned under 2 and the **clearing permit CPS 8191/1**) were installed or repositioned;
 - b. an in-situ photograph of each rope bridge and nest box installed or repositioned;
 - c. evidence that a **suitably qualified ecologist** has approved the design and placement of each rope bridge and nest box; and
 - d. provide the **Department** with an annual monitoring and maintenance report for the installed and repositioned rope bridges and nest boxes for at least ten years from the date of approval.
4. The approval holder must notify the **Department** within two **business days** if any **Western Ringtail Possum** is killed as a result of the **action**.
5. To minimise impacts to the **Carbunup King Spider Orchid**, the approval holder:
 - a. must implement condition 9 of the **clearing permit CPS 8191/1**. The **targeted flora survey** as required by condition 9 (a) of the **clearing permit CPS 8191/1**, must be conducted between September and October 2020;
 - b. must not **clear** any **Carbunup King Spider Orchid** individuals identified through the **targeted flora survey** required by condition 5a; and
 - c. develop and implement a **translocation proposal** for all **Carbunup King Spider Orchid** individuals identified through the **targeted flora survey** required under condition 5a located within the **clearing area**. This **translocation proposal** must be endorsed in writing by a **suitably qualified biologist** as appropriate to ensure the successful survival of the translocated individuals without posing a risk to the receiving area(s) prior to implementation

of the proposal. The **translocation proposal** must be implemented once endorsed by a **suitably qualified biologist** as appropriate.

- d. documentary evidence of the endorsement of the **translocation proposal** and implementation of the **translocation proposal** must be provided to the **Department** within 14 business days of the endorsement.
6. Within two months of conducting a **targeted flora survey** for **Carbunup King Spider Orchid** and as required by condition 5a, the approval holder must provide the **Department** the results of the **targeted flora survey** which must contain the following information:
 - a. the date(s) **targeted flora survey** was conducted and the methodology used; and
 - b. a photograph of each individual of **Carbunup King Spider Orchid** identified during the **targeted flora survey** and map/s showing their **location**.
7. Prior to the **commencement of the action**, the approval holder must implement the weed management and soil hygiene management measures as mentioned in the **Construction Environmental Management Framework** provided to the **Department** on 2 July 2020.
8. The approval holder must implement the **fauna management plan** provided to the **Department** on 10 September 2020.
9. The approval holder must implement a **flora management plan** as required by condition 10 of the **clearing permit CPS 8191/1**.
10. To compensate for the **residual significant impacts** on the **Western Ringtail Possum**, the approval holder must implement condition 17 of the **clearing permit CPS 8191/1**.

Part B – Standard administrative conditions

Notification of date of commencement of the action

11. The approval holder must notify the **Department** in writing of the date of **commencement of the action** within 10 **business days** after the date of **commencement of the action**.

Compliance records

12. The approval holder must maintain accurate and complete **compliance records**.
13. If the **Department** makes a request in writing, the approval holder must provide electronic copies of **compliance records** to the **Department** within the timeframe specified in the request.

Note: **Compliance records** may be subject to audit by the **Department** or an independent auditor in accordance with section 458 of the **EPBC Act**, and or used to verify compliance with the conditions. Summaries of the result of an audit may be published on the **Department's** website or through the general media.

Preparation and publication of plans

14. The approval holder must:
 - a. submit **plans** electronically to the **Department** for approval by the **Minister**;
 - b. publish each **plan** on the **website** within 20 **business days** of the date the **plan** is approved by the **Minister** or of the date a revised action management plan is submitted to the **Minister** or the **Department**, unless otherwise agreed to in writing by the **Minister**;
 - c. exclude or redact **sensitive ecological data** from **plans** published on the **website** or provided to a member of the public; and
 - d. keep **plans** published on the **website** until the end date of this approval.

15. The approval holder must ensure that any **monitoring data** (including **sensitive ecological data**), surveys, maps, and other spatial and metadata required under condition 5 of this approval, is prepared in accordance with the **Department's Guidelines for biological survey and mapped data** (2018) and submitted electronically to the **Department**.

Annual compliance reporting

16. The approval holder must prepare a **compliance report** for each 12 month period following the date of **commencement of the action**, or otherwise in accordance with an annual date that has been agreed to in writing by the **Minister**. The approval holder must:
- publish each **compliance report** on the **website** within 60 **business days** following the relevant 12 month period;
 - notify the **Department** by email that a **compliance report** has been published on the **website** and provide the weblink for the **compliance report** within five **business days** of the date of publication;
 - keep all **compliance reports** publicly available on the **website** until this approval expires;
 - exclude or redact **sensitive ecological data** from **compliance reports** published on the **website**; and
 - where any **sensitive ecological data** has been excluded from the version published, submit the full **compliance report** to the **Department** within 5 **business days** of publication.

Note: **Compliance reports** may be published on the **Department's** website.

Reporting non-compliance

17. The approval holder must notify the **Department** in writing of any: **incident**; non-compliance with the conditions; or non-compliance with the commitments made in **plans**. The notification must be given as soon as practicable, and no later than two **business days** after becoming aware of the **incident** or non-compliance. The notification must specify:
- any condition which is or may be in breach;
 - a short description of the **incident** and/or non-compliance; and
 - the location (including co-ordinates), date, and time of the **incident** and/or non-compliance. In the event the exact information cannot be provided, provide the best information available.
18. The approval holder must provide to the **Department** the details of any **incident** or non-compliance with the conditions or commitments made in **plans** as soon as practicable and no later than 10 **business days** after becoming aware of the **incident** or non-compliance, specifying:
- any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future;
 - the potential impacts of the **incident** or non-compliance; and
 - the method and timing of any remedial action that will be undertaken by the approval holder.

Independent audit

19. The approval holder must ensure that **independent audits** of compliance with the conditions are conducted as requested in writing by the **Minister**.
20. For each **independent audit**, the approval holder must:
- provide the name and qualifications of the independent auditor and the draft audit criteria to the **Department**;

- b. only commence the **independent audit** once the audit criteria have been approved in writing by the **Department**; and
 - c. submit an audit report to the **Department** within the timeframe specified in the approved audit criteria.
21. The approval holder must publish the audit report on the **website** within 10 **business days** of receiving the **Department's** approval of the audit report and keep the audit report published on the **website** until the end date of this approval.

Completion of the action

22. Within 30 days after the **completion of the action**, the approval holder must notify the **Department** in writing and provide **completion data**.

Part C - Definitions

In these conditions, except where contrary intention is expressed, the following definitions are used:

Approval holder means Western Australian Water Corporation.

Business day means a day that is not a Saturday, a Sunday or a public holiday in the state or territory of the action.

Carbunup King Spider Orchid means the **EPBC Act** listed critically endangered *Caladenia procera*.

Clear/Clearing means the cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting or burning of vegetation (but not including weeds – see the *Australian weeds strategy 2017 to 2027* for further guidance, or for the purpose of translocation under condition 5c).

Cleared area/s means an area/s (in hectares) within the **project area** where loss or long-term modification of habitat has occurred.

Clearing area means the area (in hectares) where loss or long term modification of habitat will occur within the **project area**.

Clearing permit CPS 8191/1 means the clearing permit granted on 3 July 2020 under section 51E of the *Environmental Protection Act 1986 (WA)*, and any subsequent versions.

Commencement of the action means the first instance of any specified activity associated with the action including clearing of vegetation and **construction** of any infrastructure. **Commencement of the action** does not include minor physical disturbance necessary to:

- i. undertake pre-clearance surveys or monitoring programs;
- ii. install signage and /or temporary fencing to prevent unapproved use of the project area;
- iii. protect environmental and property assets from fire, weeds and pests, including **construction** of fencing, and maintenance of existing surface access tracks;
- iv. install temporary site facilities for persons undertaking pre-commencement activities so long as these are located where they have no impact on the **protected matters**.

Completion data means an environmental report and spatial data clearly detailing how the conditions of this approval have been met. The **Department's** preferred spatial data format is **shapefile**.

Completion data should include, but not be limited to, information detailing the date and location of **clearing**; the actual total **cleared area/s** within the **project area** (in hectares); the total area and type of **Western Ringtail Possum** habitat **cleared** within the **project area** (in hectares); and the total area and type of **Western Ringtail Possum** habitat within **retention area/s** (in hectares). **Completion data** must also include information on the location of rope bridges and nest hollows installed under the conditions of this approval.

Completion of the action means all specified activities associated with the action have permanently ceased.

Compliance records means all documentation or other material in whatever form required to demonstrate compliance with the conditions of approval in the approval holder's possession or that are within the approval holder's power to obtain lawfully.

Compliance reports means written reports:

- i. providing accurate and complete details of compliance, **incidents**, and non-compliance with the conditions and the **plans**;
- ii. consistent with the **Department's Annual Compliance Report Guidelines (2014)**;
- iii. include a **shapefile** of any clearance of any **protected matters**, or their habitat, undertaken within the relevant 12 month period; and
- iv. annexing a schedule of all **plans** prepared and in existence in relation to the conditions during the relevant 12 month period.

Construction means the erection of a building or structure that is or is to be fixed to the ground and wholly or partially fabricated on-site; the alteration, maintenance, repair or demolition of any building or structure; preliminary site preparation work which involves breaking of the ground (including pile driving); the laying of pipes and other prefabricated materials in the ground, and any associated excavation work; but excluding the installation of temporary fences and signage.

Construction Environmental Management Framework means the document provided by Western Australian Water Corporation to the **Department** on 2 July 2020.

Department means the Australian Government's agency responsible for administering the **EPBC Act**.

Drey means a nest for the **Western Ringtail Possum** typically formed from a mass of twigs.

Dieback and weed management methods mean various methodologies applied to control dieback of Western Australian native vegetation from *Phytophthora* species and multiple **weeds**.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.

EPBC Act listed species Threatened fauna and flora listed under Section 178 of the **EPBC Act**.

Fauna management plan means a management **plan** for fauna species including **Western Ringtail Possum** occurring within the **project area** prepared by Western Australian Water Corporation.

Flora management plan means a management **plan** for flora species including **Carbunup King Spider Orchid** occurring within the **project area** prepared by Western Australian Water Corporation.

Incident means any event which has the potential to, or does, impact on one or more **protected matter(s)**.

Independent audit: means an audit conducted by an independent and **suitably qualified person** as detailed in the *Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines (2019)*.

Life of the approval means the period for which this approval has effect.

Location means the exact position recorded using a Global Positioning System (GPS) unit set to Geocentric Datum Australia 1994 (GDA 1994), expressing the geographical co-ordinates in decimal degrees.

Monitoring data means the data required to be recorded under the conditions of this approval.

Minister means the Australian Government Minister administering the **EPBC Act** including any delegate thereof.

Plan(s) means any of the documents required to be prepared, approved by the **Minister**, and/or implemented by the approval holder and published on the **website** in accordance with these conditions (includes action management plans and/or strategies).

Project area means all of the areas approved to clear overlain with yellow in Attachment A and Attachment B and areas subject to conditions overlain with yellow and blue in Attachment C.

Protected matter means a matter protected under a controlling provision in Part 3 of the **EPBC Act** for which this approval has effect.

Residual significant impacts mean the residual impacts on the protected matters that are still likely to occur after the proposed activities to avoid and mitigate all impacts are taken into account.

Sensitive ecological data means data as defined in the Australian Government Department of the Environment (2016) *Sensitive Ecological Data – Access and Management Policy V1.0*.

Shapefile means location and attribute information of the action provided in an Esri shapefile format. Shapefiles must contain '.shp', '.shx', '.dbf' files and a '.prj' file that specifies the projection/geographic co-ordinate system used. Shapefiles must also include an '.xml' metadata file that describes the shapefile for discovery and identification purposes.

State Government means the Government of Western Australia.

Suitably qualified biologist means a person who has professional qualifications and at least three years of work experience surveying for **Carbunup King Spider Orchid** and can give authoritative assessment, advice and analysis on performance relative to the subject matter using relevant protocols, standards, methods and/or literature. If the person does not have appropriate professional qualifications, the person must have at least five years of work experience related to the subject matter and can give authoritative assessment, advice and analysis on performance relative to the subject matter using relevant protocols, standards, methods and/or literature.

Suitably qualified ecologist means a person who has professional qualifications and at least three years of work experience surveying for **Western Ringtail Possum** and can give authoritative assessment, advice and analysis on performance relative to the subject matter using relevant protocols, standards, methods and/or literature. If the person does not have appropriate professional qualifications, the person must have at least five years of work experience related to the subject matter and can give authoritative assessment, advice and analysis on performance relative to the subject matter using relevant protocols, standards, methods and/or literature.

Suitably qualified person means a person who has professional qualifications, training, skills and/or experience related to the nominated subject matter and can give authoritative independent assessment, advice and analysis on performance relative to the subject matter using the relevant protocols, standards, methods and/or literature.

Targeted flora survey means a field-based investigation, including a review of established literature, of the biodiversity of flora and vegetation of the permit area, focusing on habitat suitable for **Carbunup King Spider Orchid** and carried out during the optimal time to identify the species, which is during the flowering period between September and October. Where target flora are identified in the or in close proximity to the permit area, the survey must also include a minimum of a 10 metre radius of the surrounding areas to place the permit area into a local context.

Translocation proposal means a written plan that details the deliberate, human-mediated movement of **Carbunup King Spider Orchid** from one area, with a release in another for the purpose of establishing, re-establishing or augmenting a population.

Website means a set of related web pages located under a single domain name attributed to the approval holder and available to the public.

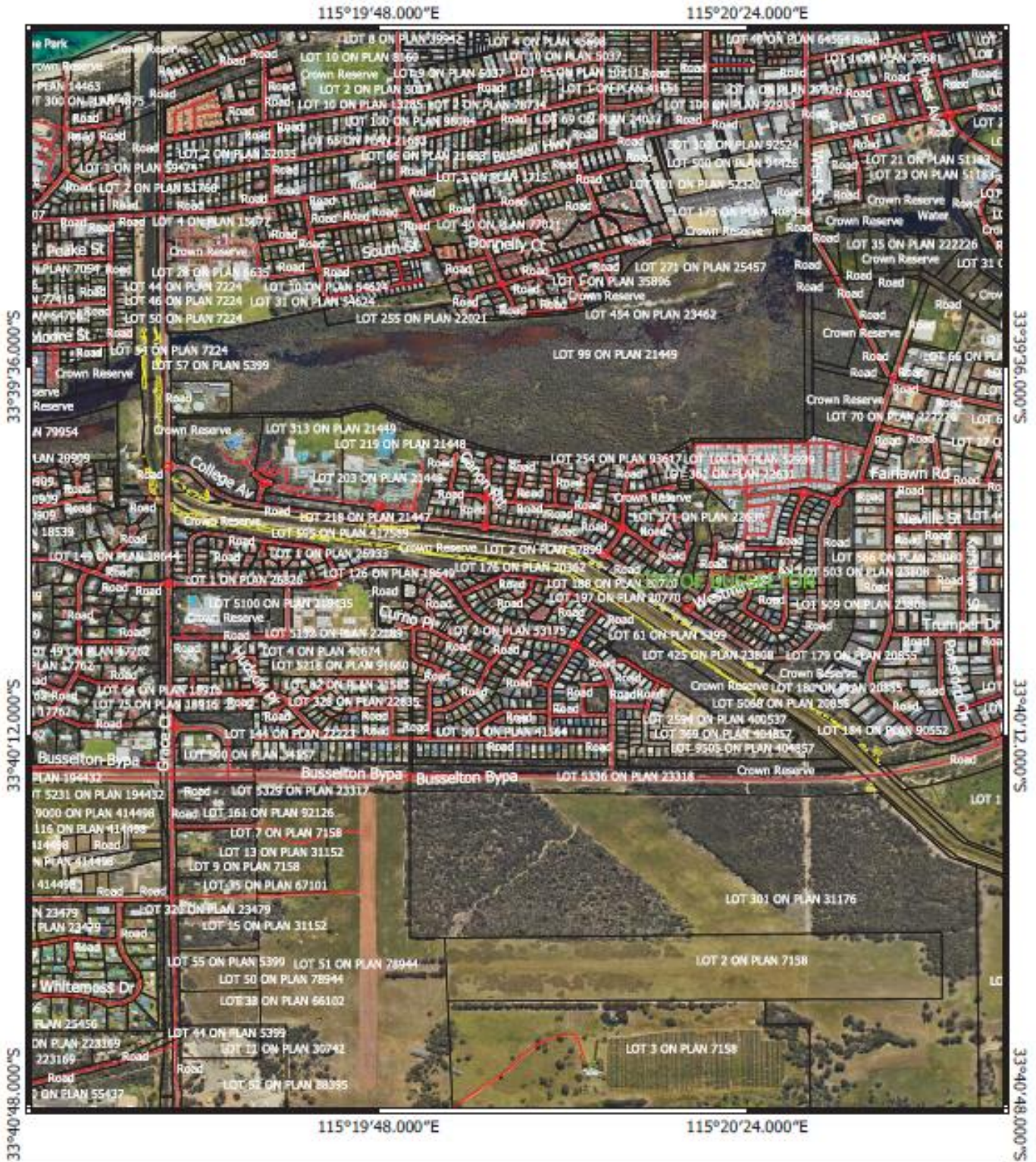
Weed/s means any plant species included in the Australian Government Weeds of National Significance or any other species defined as a weed in **clearing permit CPS 8191/1**.

Western Ringtail Possum means the **EPBC Act** listed critically endangered species *Pseudocheirus occidentalis*.

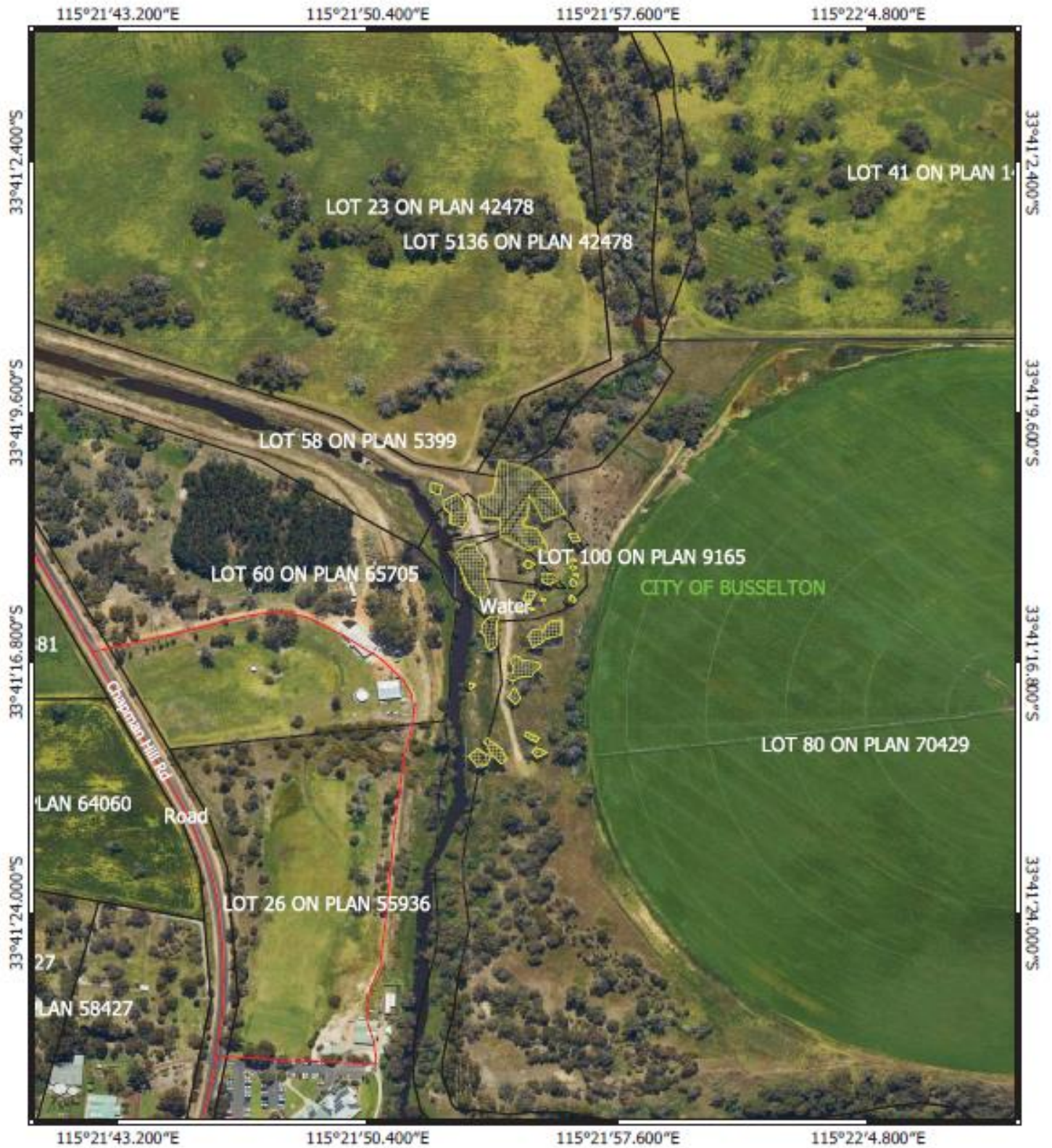
Western Ringtail Possum habitat means any areas where **Western Ringtail Possum** occurs naturally.

ATTACHMENTS

Attachment A



Attachment B



Attachment C

