



Environmental Protection Act 1986

Hon Stephen Dawson MLC
Minister for Environment

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST GRANT AND CONDITIONS OF CLEARING PERMIT CPS 7898/1 ALBANY HIGHWAY – SLK 254.9 TO 266 – KOJONUP SOUTH

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 101A(4) of the *Environmental Protection Act 1986* in objection to the grant and conditions of Clearing Permit CPS 7898/1. This document is produced by the Office of the Appeals Convenor for the Minister but is not the Appeals Convenor's own report, which can be downloaded from the Appeals Convenor's website at www.appealsconvenor.wa.gov.au.

Appellants:	Wildflower Society of Western Australia (Inc) WA Native Orchid Study and Conservation Group Inc. Main Roads Western Australia
Permit Holder:	Main Roads Western Australia
Proposal description:	The clearing of 5.5 hectares of native vegetation for the purpose of road upgrades.
Minister's Decision:	The Minister allowed the appeals in part.
Date of Decision:	12 September 2018

REASONS FOR MINISTER'S DECISION

Pursuant to section 106 of the *Environmental Protection Act 1986* (the EP Act), the Minister obtained a report from the Department of Water and Environmental Regulation (DWER) on the matters raised in the appeals. The Appeals Convenor met with the appellants and the permit holder to discuss the appeals and DWER's response.

After considering the information provided during the appeals investigation, the Appeals Convenor reported to the Minister under section 109 of the EP Act. This report sets out the background and other matters relevant to the appeals.

In summary, the third-party appellants were of the view that the permit should not have been granted based on their view that the flora survey was inadequate in relation to the Smooth-lipped spider orchid, cumulative impacts to the threatened ecological community and fauna, and in particular the significance of the application area as a remnant in an extensively cleared area. One appellant also raised concerns relating to conditions including avoidance and minimisation, and offsets.

The permit holder submitted that the conditions in relation to weeds and dieback were unclear and unreasonable, and that the conditions relating to offsets were practically unachievable.

While the Minister noted the appellants' concerns regarding the number of variances to the clearing principles, he considered that the EP Act does not preclude DWER from granting a clearing permit where the proposal will be at variance to the principles. In this case DWER assessed the application and, finding it to be at variance with various clearing principles, determined that the clearing permit could be granted subject to conditions to mitigate impacts including a requirement of an offset to counterbalance the significant residual impacts.

In response to the appeals, DWER acknowledged that the flora survey may not have been undertaken at the optimal time for the Smooth-lipped spider orchid but due to the relative abundance of this species and its wide range, DWER considered that this species is not likely to be significantly impacted. DWER advised that cumulative impacts were considered through the extent of clearing within the local area, the relevant vegetation association, biodiversity and the conservation classifications of flora and fauna species.

In relation to avoidance and minimisation, DWER advised that the permit holder amended and reduced the application area to the smallest practicable area through numerous measures, including the use of engineering methods such as barriers. DWER also noted that the permit holder committed to numerous mitigation and avoidance measures in order to avoid environmental impacts, including retaining trees containing suitable breeding hollows for black cockatoos.

While the Minister acknowledged the appellants' concerns regarding offsets, the *WA Environmental Offsets Guidelines* provides for the conversion of a spatial area to a monetary contribution and DWER advised that the offset was calculated in accordance with established tools and metrics.

Noting the permit holder's concerns regarding the achievability of meeting the condition relating to offsets, DWER recommended that condition 8(a) be amended to reflect that payment is required at the commencement of clearing (but no later than 12 months from the expiry date of the permit), rather from the date of grant of the permit and also recommended that conditions 8(b–d) be removed.

In relation to the permit holder's request to amend the wording of the condition in relation to dieback, DWER, noting the scarcity in obtaining dieback free material and that the application area is located adjacent to a road verge and farming areas, concluded that the risk of spread of dieback (through the introduction of dieback infested material) is low. Noting the Appeals Convenor's advice and the permit holder's commitments to the implementation of mitigation and management measures to minimise the risk of introduction of dieback, the Minister supported the recommendation that condition 7(b) be amended to read as follows:

- ensure that no known *dieback or weed*-affected soil, *mulch, fill* or other material is brought into the area to be cleared.

After considering the information presented, the Minister was satisfied that DWER appropriately assessed the environmental impacts from the proposed clearing and was of the view that the decision to grant the permit is justified. The Minister however, allowed the appeals to the extent that the clearing permit is amended to reflect DWER's recommendations as described above.

The precise wording of these amendments will be determined by DWER in giving effect to the Minister's decision under section 110 of the EP Act. The Minister otherwise dismissed the appeals.

Note: this decision is published pursuant to the terms of section 110 of the *Environmental Protection Act 1986* and regulation 8 of the *Environmental Protection Regulations 1987*.

Office of the Appeals Convenor

Level 22, 221 St Georges Terrace

Perth WA 6000

Tel: (08) 6364 7990

Fax: (08) 6364 7999

www.appealsconvenor.wa.gov.au