



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST GRANT OF CLEARING PERMIT CPS 7946/1 LEARMONTH BUNDLE SITE, LEARMONTH AND EXMOUTH GULF

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section s101A(4) of the *Environmental Protection Act 1986* in objection to the grant of clearing permit CPS 7946/1. 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.

Appellant:	Cape Conservation Society
Permit Holder:	Subsea 7 Contracting Pty Ltd
Proposal description:	The clearing of up to 8 hectares (ha) of native vegetation for the purpose of subterranean fauna sampling, geotechnical investigations and associated works.
Minister's Decision:	The Minister allowed the appeal in part.
Date of Decision:	10 August 2018

REASONS FOR MINISTER'S DECISION

Pursuant to section 106 of the *Environmental Protection Act 1986* (the Act), the Minister obtained a report from the Department of Water and Environmental Regulation (DWER), on the matters raised in the appeal. The Minister noted that the appellant sought a copy of DWER's report and provided a response that was considered as part of the appeal investigation. The Minister was advised that the Appeals Convenor met with the appellant to discuss the appeal, and has also consulted with the permit holder.

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

In summary, the appellant submitted that the clearing permit should not have been granted in the absence of a thorough assessment, the proposed clearing is unnecessary for the purpose and the conditions applied were not sufficient to prevent, control, abate or mitigate environmental harm.

In relation to the assessment of the clearing permit application the Minister understood that the appellant was particularly concerned with the permit holder's flora and vegetation assessment (FVA), with which the Department of Biodiversity, Conservation and Attractions (DBCAs) had identified a number of flaws. DWER advised that although the broader proposal referred to the Environmental Protection Authority (EPA) has the potential to impact priority flora, the proposed clearing is unlikely to impact on the conservation status of priority flora as the clearing permit application area is linear, follows existing tracks, is in a mostly degraded condition and in an area not extensively cleared. It was on this basis that DWER determined that additional surveys were not required to inform the assessment.

Nonetheless, as a result of the appeal investigation the Minister was advised that the permit holder has committed to undertake an additional survey in order to determine the presence or absence of priority flora and address the issues identified by DBCAs. The Minister understood that this additional survey will be in relation to the Learmonth Bundle Site development area and that the permit holder will use these survey results to inform the pre-clearance survey for the clearing permit application area. In the event priority flora is located within the application area, the permit holder has committed to avoiding these species by altering the location of tracks and drill pads and the Minister supported the Appeals Convenor's recommendation that this be included as a condition of the permit.

The Minister noted that the Appeals Convenor sought additional advice from DBCAs in relation to the permit holder's proposed approach to undertaking the survey and avoidance measures, and was advised that DBCAs considered the approach outlined by the permit holder as generally acceptable.

The Minister understood that the appellant also questioned whether the EPA had provided approval under section 41A(3) of the Act in relation to the proposed works. During the clearing permit application assessment process, the EPA advised DWER that the proposed works are investigation works for the purpose of informing the EPA's assessment and do not involve implementation of the proposal. Furthermore, the EPA considered it would not require a separate referral as the proposed works were unlikely to have a significant impact.

The appellant also submitted that the clearing was unnecessary for the stated purpose as the area contains an extensive network of tracks and cleared areas, and sought for further clarification in relation to the term 'associated works' used in the clearing permit. In response to this element of the appeal, DWER was of the view that the conditions of the clearing permit provided a clear intent that the permit holder should balance the need for clearing with options that would avoid, minimise or reduce clearing. DWER advised that 'associated works' primarily meant access tracks, and recommended that the clearing permit be amended to replace 'associated works' with 'access tracks'.

In regard to the conditions, the appellant submitted that they are not sufficient to prevent, control, abate or mitigate environmental harm and do not create a certain and enforceable obligation to minimise or reduce environmental harm. The appellant also suggested that the management measures listed in the Decision Report should be included as clear and enforceable conditions. The Minister was advised by DWER that the conditions applied to the permit were adequate to address the impacts from the clearing. However, DWER recommended that condition 7 (avoid, minimise and reduce clearing) be clarified through the removal of the term 'etc', and also recommended that a condition be included to require the permit holder to record and report on revegetation and rehabilitation activities, and the Minister supported these recommended amendments.

In relation to the other issues raised through the appeal, the Minister considered that DWER's assessment was appropriate and supported by the available evidence.

After consideration of the information presented, the Minister was satisfied that DWER appropriately assessed the environmental impacts from the proposed clearing and supported the permit holder's commitment to undertake additional surveys. Therefore, the Minister was of the view that DWER's decision to grant the clearing permit subject to certain conditions was justified.

However, the Minister agreed that the clearing permit could be further improved and allowed the appeal to the extent that the clearing permit is amended in the following manner:

- condition 1 (purpose for which clearing may be done) is amended to replace 'associated works' with 'access tracks';
- condition 7 (avoid, minimise and reduce clearing) is to state 'avoid, minimise and reduce the impacts and extent of clearing' with the term 'etc' removed;
- include a condition to require the permit holder to record and report on activities undertaken in relation to condition 9 (revegetation and rehabilitation); and
- include a condition to require the permit holder to, in the event priority flora is located within the application area, avoid such species by adjusting tracks and drill pad locations within the approved clearing footprint area.

The precise wording of the amendments will be determined by DWER in giving effect to this decision under section 110 of the Act. The Minister otherwise dismissed the appeal.

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*.

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