



Appeals Convenor
Environmental Protection Act 1986

**REPORT TO THE
MINISTER FOR ENVIRONMENT**

APPEAL IN OBJECTION TO THE DECISION TO GRANT A CLEARING PERMIT
CLEARING PERMIT CPS 8017/1: CLEARING OF 0.4 HECTARES
OF NATIVE VEGETATION - LOT 820 DP 404596 MURDOCH
CITY OF MELVILLE

PROPONENT: MURDOCH UNIVERSITY

Appeal Number C010 of 2018

September 2018

Appeal Summary

This report relates to an appeal lodged against the decision of the Department of Water and Environmental Regulation (DWER) to grant Clearing Permit CPS 8017/1 to Murdoch University. The clearing permit authorises the clearing of 0.4 hectares (ha) of native vegetation for the purpose of constructing an agricultural research facility.

In summary, the appellant submitted that the permit should not have been granted on the basis that insufficient information was available on the vegetation to be cleared, DWER did not adequately consider the quality of the vegetation to be cleared or cumulative impacts of the clearing (including impacts to black cockatoos), there was no justification for the clearing and an offset should have been applied to the permit.

As part of its assessment, DWER had regard for the permit holder's flora, vegetation and fauna survey and various other information sources including geographic information system (GIS) databases, and the clearing principles and found that the quality of the vegetation in the area was 'degraded to completely degraded', was unlikely to comprise rare or priority flora, not considered to be representative of any threatened ecological communities (TECs) and unlikely to comprise significant habitat for indigenous fauna, including species of conservation significance.

In response to the appeal, DWER advised that it provided a detailed description of the native vegetation and its condition including the names of the species present in the application area in its Decision Report. The clearing permit application and supporting documents were also available on the DWER website and remain publicly available on the DWER clearing permit system and FTP site.

DWER advised that it gave consideration to fauna habitat and the suitability of Tuart and Marri trees within the application area for nesting habitat for black cockatoos, and that it considered both the quantity of the vegetation remaining on the Swan Coastal Plain and the quality of the vegetation to be cleared in its assessment of cumulative impacts. DWER remained of the view that it was unlikely that the proposed clearing would result in significant environment impacts and that the permit should be granted without an offset.

Having regard to the information provided in the appeal investigation, the Appeals Convenor considered that DWER's assessment of the proposed clearing against the clearing principles was supported by the available evidence and its decision to grant the permit, subject to conditions, was justified.

Recommendation

The Appeals Convenor recommended that the appeal be dismissed.

INTRODUCTION

This report relates to an appeal lodged by Mr James Mumme (the appellant) in objection to the decision of the Department of Water and Environmental Regulation (DWER) to grant Clearing Permit CPS 8017/1 to Murdoch University (the permit holder). The location and extent of the application area are shown in Figure 1.



Figure 1 – Location and extent of application area CPS 8017/1 (blue hatched area)

(Source: WhereIs, <https://cps.dwer.wa.gov.au/main.html>)

On 7 March 2018, Murdoch University applied for an Area Permit to clear 0.4 hectares (ha) of native vegetation within Lot 820 on Deposited Plan 404596, Murdoch for the purpose of developing an agricultural research facility.

On 20 March 2018, the application was advertised for public submission for 14 days and no submissions were received.

On 22 May 2018, Clearing Permit CPS 8017/1 was granted to the permit holder, authorising the clearing of 0.4 ha of native vegetation including 15 trees within the application area. It was against this decision that the appeal was lodged.

This document is the Appeals Convenor's formal report to the Minister for Environment under section 109(3) of the *Environmental Protection Act 1986* (EP Act).

OVERVIEW OF APPEAL PROCESS

In accordance with section 106 of the EP Act, a report was obtained from DWER in relation to the issues raised in the appeal. The permit holder also submitted a written response to address the matters raised in the appeal, which was considered during the investigation.

During the appeal investigation, the Appeals Convenor provided an opportunity for further consultation with the appellant, however the appellant was unavailable. The Appeals Convenor met with the permit holder in relation to issues raised in the appeal.

The environmental appeals process is a merits-based process. For appeals in relation to a DWER decision to grant a clearing permit, the Appeals Convenor normally considers the environmental merits of the assessment by DWER based on principles as set out in Schedule 5 of the EP Act, as well as other environmental factors. Questions of additional information not considered by DWER, technical errors and attainment of relevant policy objectives are normally central to appeals.

OUTCOME SOUGHT BY APPELLANT

The appellant is seeking for the Minister to overturn DWER's decision to grant Clearing Permit CPS 8017/1.

GROUND OF APPEAL

The grounds of appeal are summarised as follows:

1. assessment of environmental impacts;
2. offsets; and
3. justification of the proposal.

GROUND 1: ASSESSMENT OF ENVIRONMENTAL IMPACTS

The appellant submitted that DWER's Decision Report did not contain sufficient information on the species to be removed, including the size and condition of each tree, and whether they offer any habitat to threatened species (for example black cockatoos). Furthermore, the appellant submitted that due to the extent of remaining vegetation on the Swan Coastal Plain, the cumulative assessment should be based on the quality of the vegetation to be cleared and not only the quantity. The appellant raised concern over the removal of any *Eucalyptus gomphocephala* (Tuart) tree.

This ground is considered as follows:

- environmental values of the vegetation; and
- cumulative impacts.

Consideration

Environmental values of the vegetation

In response to the appellant's submission that inadequate information was included in the assessment, DWER advised that it had regard to the flora, vegetation and habitat survey report¹ provided by the permit holder and various resources as listed in the Decision Report including online GIS databases. DWER advised that the application and supporting documents (including the survey), were published for public submission on DWER's website

¹ Strategen (2018). *South Metropolitan Crop Research Hub – Flora, vegetation and fauna habitat survey*. Prepared for Murdoch University by Strategen Environmental Consultants Pty Ltd.

in March 2018 and continues to be available through the DWER clearing permit system and FTP site.

Based on the available information, DWER concluded that the application area includes two vegetation types (VT):

- VT1: open woodland of *Pinus* sp. and *Eucalyptus camaldulensis* (river red gum) over mixed native and introduced species (approximately 86 per cent of the application area); and
- VT2: closed grassland of planted pasture grasses with scattered *Pinus* sp., *Eucalyptus camaldulensis*, *Eucalyptus gomphocephala* (Tuart) and *Corymbia calophylla* (marri) (approximately 14 per cent of the application area).

DWER found that the quality of the vegetation in the area was 'degraded to completely degraded', was unlikely to comprise rare or priority flora, not considered to be representative of any TECs and unlikely to comprise significant habitat for indigenous fauna, including species of conservation significance. However, DWER found that the application area may contain three Priority 3 and one Priority 2 Basidiomycetes fungal species, but concluded that the proposed clearing is not likely to impact the conservation status of these species should any individuals occur in the application area. It was on this basis that DWER found the proposed clearing 'may be at variance' to clearing principle (a) and is not likely to be at variance to the remaining clearing principles.

In regard to Tuart trees and the value of these to provide habitat for black cockatoos, the survey report identified three potential black cockatoo nesting habitat trees (diameter at breast height of greater than 500 millimetres: two Tuart trees and one Marri tree). While DWER noted in the Decision Report that the application area may comprise suitable habitat for these species and is located within the buffer of a confirmed roost site for Carnaby's black cockatoo, the survey report identified that there were no hollows observed in the trees and the vegetation was considered to be of a 'Very Poor' quality habitat for Carnaby's black cockatoo and Forest red-tailed black cockatoo due to historical disturbance of native vegetation. Noting the condition of the vegetation and the extent of the clearing, DWER concluded that application area is not likely to comprise significant habitat for fauna of conservation significance.

Cumulative impacts

In regard to the appellant's concerns as to cumulative impacts to the Swan Coastal Plain, DWER advised that it considered impacts to the Swan Coastal Plain in its consideration of the clearing against clearing principle (e).

In relation to principle (e), DWER's *A guide to the assessment of applications to clear native vegetation* (December 2014)² states that the principle aim of clearing principle (e) is to maintain sufficient native vegetation in the landscape for the maintenance of ecological values, however, also recognises that it is important to consider the context and condition of vegetation in the assessment of the clearing against this principle.

As outlined in the Decision Report, the National objectives and targets for biodiversity conservation has a target to prevent the clearance of ecological communities with an extent below 30%³ of that pre-1750. The Environmental Protection Authority (EPA) recognises the

² Government of Western Australia (2016). *A guide to the assessment of applications to clear native vegetation*. Under Part V Division 2 of the *Environmental Protection Act 1986*. Department of Environment Regulation, December 2014.

³ Commonwealth of Australia (2001). *National Objectives and Targets for Biodiversity Conservation 2001-2005*, Canberra.

Perth Metropolitan Region to be a 'constrained area', within which a minimum 10%⁴ representation threshold for ecological communities is recommended. The Application Area is located within the mapped Perth Metropolitan Region Scheme and noting that the EPA considers a constrained area to be an area where there is an expectation that development will proceed, and that the cleared area is 'urban' in the Perth Metropolitan Region Scheme, the 10% threshold applies.

DWER's assessment found that the mapped vegetation complexes within the application area: (Hedde vegetation complex: Karrakatta Complex (Central and South), and Bassendean Complex (Central and South) are 23% and 26%, respectively. DWER also had consideration of the value of the vegetation, as outlined in its Decision Report and concluded:

"noting the extent of the proposed clearing and that the application area is not likely to include flora or ecological communities of conservation significance or comprise significant habitat for indigenous fauna, the application area is unlikely to be significant as a remnant in an area that has been extensively cleared".

Conclusion

Based on the information provided, it is considered that DWER's assessment of the permit application against the clearing principles was appropriate and supported by available evidence and it is recommended that this ground of appeal be dismissed.

GROUND 2: OFFSETS

The appellant submitted that an offset should have been applied to the permit to counterbalance the loss of 15 trees and understorey vegetation.

The appellant also raised various suggestions for how offsets should be applied including locating offset sites within a green corridor, consider rhizofungal communities (soil bacteria) and ensuring rehabilitation offset sites are meaningful with respect to soils, groundcover understorey and monitoring.

Consideration

In response to this ground of appeal, DWER advised that the *WA Environmental Offsets Guidelines* state that environmental offsets will only be applied where residual impacts of a project are determined to be significant, after avoidance, minimisation and rehabilitation have been pursued.

As noted above, DWER's assessment against the clearing principles did not identify any significant residual impacts resulting from the proposed clearing and therefore an offset was not considered necessary for this clearing.

Notwithstanding the above, the permit holder in response to the appeal advised that it has a policy of replacing three trees for every one removed and operationally exceeds this ratio.

Conclusion

Noting the above, it is considered that DWER had appropriate regard for the requirement for an offset in accordance with the *WA Environmental Offsets Policy* and guidelines. It is recommended that this ground of appeal be dismissed.

⁴ Government of Western Australia (2008). Environmental Guidance for Planning and Development. Guidance Statement No. 33. Environmental Protection Authority, May 2008.

GROUND 3: JUSTIFICATION OF THE PROPOSAL

The appellant submitted that the permit holder failed to specify the purpose of the clearing and that the permit holder should be made to justify the clearing in terms of value to the community against the cost to the environment.

Consideration

In response to the appeal, DWER noted that sections 51E and 51O of the EP Act outline requirements for clearing permit applications and the considerations when making decisions relating to clearing permits. These include taking into account any comments received from any public authority or person from whom comments were invited, having regard to the ten principles for clearing native vegetation contained in Schedule 5 of the EP Act so far as they are relevant to the matter under consideration, and to any planning instrument or other matter that DWER considers relevant. DWER advised that a cost-benefit assessment, weighing up the costs and benefits to the community and environment resulting from the implementation of the proposed project is not a part of its consideration.

DWER advised that the decision to build a facility at a specific location is a matter for the permit holder to determine and that it assesses applications on a case by case basis. DWER advised that its function is to conduct an assessment of the proposed clearing against the clearing principles, identify the environmental values and potential impacts from the clearing, and if a permit is able to be granted impose conditions to mitigate and minimise any identified impacts.

Conclusion

Based on the above, it is considered that the application was submitted in the prescribed manner and DWER assessed the proposal before it in accordance with policies and procedures.

CONCLUSIONS AND RECOMMENDATION

Based on the available information, it is considered that DWER's assessment of the permit application against the clearing principles was appropriate, supported by the available evidence and undertaken in accordance with policies and procedures and its decision to grant the permit, subject to conditions, was justified.

It is therefore recommended that the appeal be dismissed.

Emma Gaunt
APPEALS CONVENOR

Investigating Officer:
Tonya Carter, Senior Appeals Officer