



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 7736/1: CLEARING OF 0.88 HECTARES OF
NATIVE VEGETATION – RICHARDSON ROAD RESERVE,
NORTHCLIFFE AND MEERUP
SHIRE OF MANJIMUP**

PROPONENT: SHIRE OF MANJIMUP

Appeal Number C023 of 2017

June 2018

Appeal Summary

This report relates to an appeal lodged in objection to the decision of the Department of Water and Environmental Regulation (DWER) to grant a clearing permit to the Shire of Manjimup (permit holder) to clear 0.88 hectares (ha) of native vegetation within the Richardson Road Reserve, Northcliffe and Meerup, for the purpose of road widening.

DWER determined that the proposed clearing was not likely to have any significant environmental impacts, and thus was not likely to be at variance with any of the ten clearing principles.

The appellant's key concerns were in regard to the lack of surveys undertaken, potential impacts to flora and fauna, and the inadequacy of conditions.

In its assessment, DWER advised that it relied on site photographs provided by the permit holder and determined that the vegetation was in a degraded condition, comprised predominantly of karri and marri trees over minimal understorey and that the application area did not contain suitable hollows for black cockatoo species. In assessing the clearing permit application, DWER also took into account Geographic Information System (GIS) datasets, the Department of Biodiversity, Conservation and Attraction's (DBCA) advice on threatened flora and fauna, a NatureMap search of the local area, aerial imagery and the small scale of the clearing, and determined that there was a low likelihood of the proposed clearing resulting in a significant impact. DWER was of the view that sufficient information was available to undertake the assessment.

During the appeals investigation it became apparent that the site photographs provided by the permit holder were representative of only a portion of the application area and further advice from DWER was sought. DWER undertook a site inspection of the application area and advised that its assessment of the clearing permit application was unchanged as the condition in the other portion of the application was also in a degraded condition and did not contain suitable hollows for black cockatoos or dreys for western ringtail possums.

Notwithstanding, in response to the appellant's proposed conditions, DWER recommended that an additional condition requiring the permit holder to record and report on the extent of vegetation cleared be included on the permit.

Having regard to the issues raised in the appeal and the available information, the Appeals Convenor considered that DWER's assessment of the clearing permit application was appropriate and that the grant of the clearing permit, subject to certain conditions, was justified.

However, the Appeals Convenor considered, based on DWER's advice, that the conditions should be amended requiring the permit holder to keep records of and report on the extent of clearing undertaken and on activities undertaken in relation to the implementation of management conditions 6 and 7, related to avoiding and minimising clearing and implementing dieback and weed control measures.

Recommendation

It is recommended that the appeal be allowed in part, to the extent that the clearing permit is amended to include conditions requiring the permit holder to record and report on the extent of clearing undertaken and on activities undertaken in relation to the implementation of management conditions 6 and 7 (avoid and minimise clearing and dieback and weed control).

INTRODUCTION

This report relates to an appeal lodged by the Wildflower Society of Western Australia (Inc) (the appellant) in objection to a decision of the Department of Water and Environmental Regulation (DWER) to grant a clearing permit to the Shire of Manjimup (permit holder) to clear 0.88 hectares (ha) of native vegetation within the Richardson Road Reserve, Northcliffe and Meerup, for the purpose of road widening. The location and extent of the application area are shown in Figure 1 and Figure 2.



Figure 1 – Location and extent of application area for CPS 7736/1 – Plan 7736/1a
(Source: cps.der.wa.gov.au, 2018, Googlemaps 2018)



Figure 2 – Location and extent of application area for CPS 7736/1 – Plan 7736/1b
(Source: cps.der.wa.gov.au, 2018, Googlemaps 2018)

Background

On 10 August 2017, DWER received an application to clear 24 trees within a footprint of 0.88 ha of native vegetation within Richardson Road Reserve, Northcliffe and Meerup. The application was advertised for public submissions on 19 September 2017 for a period of 14 days and no public submissions were received.

DWER granted a clearing permit to the permit holder on 8 November 2017 authorising the clearing of up to 0.88 ha of native vegetation. 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. During the appeal investigation, the Appeals Convenor consulted the appellant and the permit holder and conducted a site visit. Further information was also provided by DWER in relation to the issues raised in the appeal that was considered during the investigation.

The environmental appeals process is a merits based process. For appeals in relation to a 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 7736/1 and in the alternative, if the clearing permit is granted, for additional conditions to be included on the permit.

GROUNDINGS OF APPEAL

The appellant's concerns have been summarised under the following grounds:

- significance of environmental impacts; and
- adequacy of the conditions.

GROUND 1: SIGNIFICANCE OF ENVIRONMENTAL IMPACTS

The appellant was of the view that the decision to grant the permit was unacceptable in the absence of flora and fauna surveys being undertaken. Noting the results from a NatureMap search which indicated that there were multiple conservation significant flora and fauna species within the local area (ten kilometres of the application area), the appellant submitted that the proposed clearing was potentially at variance with clearing principles (a) biodiversity, (b) fauna habitat and (c) rare flora, and that a Spring survey would be essential to determine the presence of such flora and fauna.

Additionally, the appellant submitted that the clearing permit should not have been granted in the absence of DWER and the permit holder considering alternative options to improve road safety, and that the clearing was unjustified and excessive. The appellant provided a list of alternative options that did not involve the clearing of native vegetation.

Consideration

During the assessment, DWER determined that the native vegetation was in a degraded condition along an existing disturbed road corridor and determined that the application area did not include trees with suitable hollows for black cockatoos, based on the site photographs provided by the permit holder. DWER also had regard to aerial imagery to identify ecological linkages, a NatureMap search of the local area, GIS datasets and DBCA advice.

DWER advised that the GIS datasets were used to determine the soil and landform within the application area, and the frequency and proximity of known records of conservation significant flora and fauna species within the local area. Based on soil and vegetation types, habitat requirements of flora and fauna species, the shape of the application area, the degraded condition of the vegetation and DBCA advice, which confirmed there were no records of threatened flora or fauna within the local area, DWER determined that the proposed clearing was not likely to be at variance with clearing principles (b) fauna habitat and (c) rare flora.

In response to the appellant's concerns regarding the lack of surveys undertaken, DWER remained of the view that sufficient information was available to undertake an assessment of the proposed clearing. Noting that the risk of unacceptable environmental impacts were determined to be low, DWER considered additional information was not necessary in accordance with its risk-based assessment process.

During the appeal investigation, representatives of the Office of the Appeals Convenor conducted a site visit and it was noted that the photographs provided to DWER by the permit holder represented only one section of the application area, shown in Figure 1. Subsequently, photographs of the other section, represented in Figure 2, were provided to DWER and advice was sought as to whether this altered DWER's assessment. In response, DWER acknowledged that its assessment had relied upon site photographs that were only representative of a portion of the application area and advised that, as a result, it had undertaken a site inspection. Having regard to its site inspection, DWER determined that the native vegetation within the application area was:

... an open woodland of marri (*Corymbia calophylla*) with emergent *Eucalyptus* species and occasional peppermint (*Agonis flexuosa*), over mixed shrubs and *Pteridium* species, in a degraded condition, and that the trees within the application area do not contain hollows suitable for use by threatened species of black cockatoos or dreys of the threatened fauna western ringtail possum (*Pseudocheirus occidentalis*).

DWER advised that the additional information obtained from its site inspection did not alter its assessment of the clearing permit application and considered that the conditions applied were appropriate, subject to the addition of a condition as recommended in response to this appeal, which is discussed under Ground 2.

In relation to the appellant's contention that the proposed clearing is not necessary and alternatives should have been considered, it is noted that under section 51O of the EP Act, the Chief Executive Officer (CEO) shall have regard to planning instruments or other matters considered relevant. In this case DWER advised it had regard to the purpose of the clearing which was to 'allow the widening of Richardson Road, with trees to be removed for road safety and drainage construction' as a relevant consideration.

DWER noted the appellant's statement that alternative planning strategies could avoid the need for clearing; however, advised that its role is to conduct an assessment of the environmental values and potential impacts of the clearing proposal, while it is the permit holder's responsibility to specify the proposed works. In this case, the permit holder was responsible for the management of regional road upgrades and maintenance.

Conclusion

Having regard to the information provided, it is considered that DWER's assessment of the clearing permit application against the clearing principles was appropriate, supported by the available evidence, including the subsequent DWER site inspection, and undertaken in accordance with published policies and procedures.

Therefore, it is recommended that this ground of appeal is dismissed.

GROUND 2: ADEQUACY OF CONDITIONS

The appellant submitted that the clearing permit did not impose adequate conditions to avoid, minimise or ameliorate clearing. The appellant provided a list of conditions that should be included, should the clearing permit be granted. Proposed conditions included prohibiting clearing within 10 metres of habitat trees occupied by threatened fauna, leaving the understorey, rehabilitation of nearby degraded areas and providing a completion report with evidence of compliance.

Consideration

Section 51H of the EP Act provides that a clearing permit may be granted subject to conditions considered by the CEO as necessary or convenient for the purposes of preventing, controlling, abating or mitigating environmental harm, or offsetting the loss of clearing vegetation. Section 51I of the EP Act lists examples of conditions that may be applied to a clearing permit. Clearing Permit CPS 7736/1 was granted subject to conditions requiring the permit holder to avoid, minimise and reduce clearing, and to implement dieback and weed control measures.

Noting that the permit holder proposed to clear 24 trees within a 0.88 ha footprint and a condition to avoid, minimise and reduce the impact of clearing was applied to the clearing permit, DWER did not agree that the clearing permit required further conditions to minimise clearing or avoid over-clearing. However, DWER agreed that the permit holder should keep records and report on the clearing undertaken and recommended that the permit be amended to include a condition requiring the permit holder to keep records of and report on the vegetation cleared to enable DWER to ascertain which trees were cleared.

Having regard to the above it is noted that management conditions 6 and 7 of the clearing permit, which require the permit holder to avoid and minimise clearing and implement dieback and weed control measures, are not subject to a record and report requirement. To ensure consistency with previous appeal decisions and the auditability of conditions, it follows that the permit holder should also be required to record and report on activities undertaken in relation to the implementation of management conditions 6 and 7.

DWER considered the appellant's proposed condition regarding rehabilitation of nearby degraded areas as being, in effect, an offset. The *WA Offsets Policy* (2011) states that offsets will be used to compensate significant residual environmental impacts of a development or activity and are designed to achieve long-term outcomes. In this case, DWER determined that the clearing was unlikely to result in any significant residual impacts and, therefore, did not consider an offset was required.

Conclusion

Taking into account the foregoing, it is considered that DWER properly applied conditions requiring the permit holder to avoid and minimise clearing and implement dieback and weed control measures.

However, for the reasons stated above, it is considered that the clearing permit could be improved by the inclusion of additional conditions. Therefore, it is recommended that this ground of appeal be allowed in part, to the extent that the clearing permit is amended to include conditions requiring the permit holder to record and report on the extent of clearing undertaken and on activities undertaken in relation to the implementation of management conditions 6 and 7 (avoid and minimise clearing, and weed and dieback control).

CONCLUSION AND RECOMMENDATION

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

However, noting DWER's advice, it is considered that the clearing permit could be improved by requiring the permit holder to record and report on clearing activities undertaken pursuant to the clearing permit. Therefore, it is recommended that the appeal be allowed in part, to the extent that the clearing permit is amended to include the conditions as detailed in this report.

The final wording of the conditions is a matter for DWER under section 110 of the EP Act.

It is otherwise recommended that the appeal is dismissed.

Emma Gaunt
APPEALS CONVENOR

Investigating Officer:
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