



Environmental Protection Act 1986

Hon Stephen Dawson MLC
Minister for Environment

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST GRANT OF CLEARING PERMIT CPS 7664/1 LOT 16150 ON DP 217818 AND COATES ROAD RESERVE, WUNDOWIE

Purpose of this document

This document sets out the Minister's decision on the appeal lodged under section 101A(4) of the *Environmental Protection Act 1986* in objection to the grant of clearing permit CPS 7664/1. 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:	Wildflower Society of Western Australia (Inc)
Permit Holder:	Shire of Northam
Proposal description:	The clearing of up to 1.98 hectares (ha) of native vegetation for the purpose of road upgrades.
Minister's Decision:	The Minister allowed the appeal in part.
Date of Decision:	14 June 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 appeal. The Minister was advised that the Appeals Convenor met with the appellant to discuss the appeal and DWER's response, and 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 EP Act. The Appeals Convenor's report sets out the background and other matters relevant to the appeal.

The key concern raised in the appeal was that DWER's assessment was flawed in respect to its assessment against clearing principles (a) biodiversity, (b) fauna, (e) significance as a remnant, (f) watercourses and wetlands and (h) nearby conservation areas. The Minister also noted the appellant's concerns regarding the cumulative impacts of clearing and the conditions included on the permit.

In response to the appeal, DWER advised that it had given consideration to its site inspection, online NatureMap and GIS databases, and found that the application area 'may be at variance' to clearing principles (b) relating to fauna and (h) nearby conservation areas.

DWER advised that it considered cumulative impacts in its assessment of principle (e) and found that while the Shire of Northam retains less pre-European vegetation than the recommended target threshold value of 30 per cent, the local area and mapped vegetation complexes retain above the recommend threshold. DWER, having regard to the purpose of the permit and the permit holder's commitment to avoid and minimise clearing, granted the permit subject to conditions relating to fauna management, the avoidance and minimisation of clearing and weed and dieback management.

In relation to the appellant's concerns in respect to the assessment of impacts to flora, DWER advised that having regard to the soil and vegetation types, it found that for the 19 priority flora species identified as potentially occurring in the area, suitable habitat only occurs for one Priority 2 species, *Lasiopetalum trichanthera*. DWER considered that the risk of impact to this species was low given that it has been recorded 9.6 kilometres from the application area, with known occurrences in conservation estates.

The appellant's concerns in relation to fauna were noted, and while DWER acknowledged that the application area may comprise foraging and nesting habitat for three conservation significant black cockatoo species, DWER advised that based on the size of the application area and the availability of better quality vegetation nearby, it concluded that the proposed clearing would not significantly impact on significant habitat for these species. Notwithstanding, DWER in the absence of a survey to determine the utilisation of the trees by black cockatoos for breeding, applied a fauna management condition requiring the permit holder to identify and inspect trees with suitable hollows prior to clearing. The permit also requires that where the tree hollows are being utilised by black cockatoos, the tree should be avoided where possible and clearing delayed until the tree hollow is no longer in use.

After consideration of the appeal and DWER's advice, the Minister agreed with the Appeals Convenor that the fauna management condition can be improved by requiring the permit holder to install artificial hollows to replace any utilised hollows that are required to be removed, with consideration given to the former Department of Parks and Wildlife guidance material on the design, installation and monitoring.

While the Minister noted the appellant's concerns regarding potential impacts to the adjacent conservation reserves, DWER noted in the Decision Report that although the application area may provide an ecological linkage between the Woondowing Nature Reserve and the Kwolyinine Nature Reserve, the road reserve will retain predominantly 10 to 20 metres of vegetation either side of the existing road allowing the reserve to function as an ecological linkage. DWER in noting that areas of adjacent native vegetation may be impacted by the proposed clearing, included a weed and dieback condition on the permit.

In relation to principle (f) watercourses and wetlands, DWER advised it relied on GIS hydrography datasets and its site inspection that no watercourses were identified within the application area and the nearest watercourse is located approximately 20 metres from the application area.

In relation to the adequacy of conditions, the Minister agreed with the Appeals Convenor that the clearing permit should also include a requirement for the permit holder to maintain records on all activities pursuant to the clearing permit and provide reports at DWER's request.

With regard to the appellant's request that the permit holder rehabilitate degraded areas, this was considered by DWER to be, in effect, an offset. DWER advised that as the proposed clearing is not likely to have any significant residual impacts, an offset was not warranted.

After considering the information presented to him, 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 appeal to the extent that the clearing permit is amended to include conditions that require the permit holder to:

- install artificial hollows to replace any tree hollows utilised by black cockatoos and are required to be cleared; and
- to maintain records of all activities undertaken pursuant to the clearing permit and provide reports at DWER's request.

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 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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