



Appeals Convenor

Environmental Protection Act 1986

REPORT TO THE MINISTER FOR ENVIRONMENT

**APPEAL IN OBJECTION TO THE DECISION OF THE DEPARTMENT OF WATER AND
ENVIRONMENTAL REGULATION TO GRANT A CLEARING PERMIT**

**CLEARING PERMIT CPS 8194/1:
LOT 701 DP 413030, TREEBY, CITY OF COCKBURN**

APPLICANT: ARMADALE ROAD PTY LTD

Appeal Number 013 of 2019

June 2019

Appeal Summary

This report relates to an appeal lodged by the Wildflower Society of Western Australia (Inc.) (appellant), in objection to a decision of the Department of Water and Environmental Regulation (DWER) to grant Clearing Permit CPS 8194/1 to Armadale Road Pty Ltd (applicant) to clear 7.0335 hectares of native vegetation within Lot 701 on Deposited Plan 413030, Treeby, City of Cockburn, for the purpose of a site compound associated with Armadale Road works and future development.

On the basis of its assessment of clearing impacts having regard to the available information, DWER identified that the vegetation within the application area is in 'Degraded' to 'Completely Degraded' condition, and concluded the proposed clearing is not likely to be at variance to any of the clearing principles.

The appellant submitted that DWER should not have granted the clearing permit because there is remnant native Swan Coastal Plain vegetation present that has not been properly assessed for its conservation values, and may include threatened species and communities. The appellant is seeking for the Minister to overturn DWER's decision to grant the clearing permit.

For the reasons stated in this report, the Appeals Convenor considered that DWER's assessment of the clearing application and conclusions formed in relation to the potential for threatened species and communities to occur was supported by and is consistent with available scientific information. It is considered that DWER's decision to grant the clearing 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 the Wildflower Society of Western Australia (Inc.) (appellant), in objection to a decision of the Department of Water and Environmental Regulation (DWER) to grant Clearing Permit CPS 8194/1 to Armadale Road Pty Ltd (applicant) to clear 7.0335 hectares (ha) of native vegetation within Lot 701 on Deposited Plan 413030 (application area), Treeby, for the purpose of a site compound associated with Armadale Road works and future development. The location and extent of the application area is shown in Figures 1 and 2.

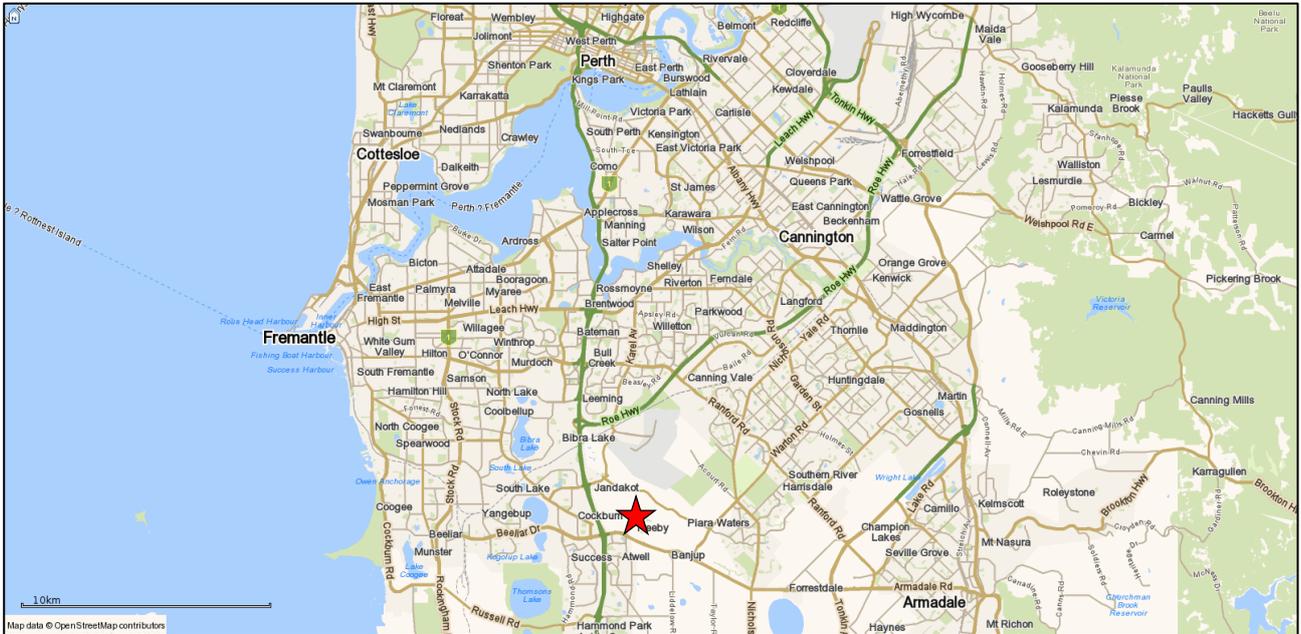


Figure 1: Location map (indicated by red star)

(Source: Whereis.com, January 2019)



Figure 2: Application area (indicated by yellow shading)

(Source: DWER CPS 8194/1)

Background

Clearing Permit CPS 6163/1¹ was granted on 14 August 2014, authorising the applicant to clear 4 ha of native vegetation within Lot 1 on Diagram 20182 (Lot 1), Banjup, for the purpose of fire hazard reduction to protect an adjacent housing development. CPS 6163/1 expired on 13 September 2016 prior to the clearing being undertaken.

On 18 September 2018, the applicant applied for an area permit to clear 7.0335 ha of native vegetation within Lot 1 (now Lot 701 on Deposited Plan 413030), Treeby, for the purpose of a site compound associated with Armadale Road works and future development. The clearing footprint includes the area previously authorised to be cleared under CPS 6163/1.

The application was advertised for a 21-day public comment period. DWER advised that one submission was received, which submitted that the remnant vegetation has not been assessed for its conservation values, and may be a representation of a threatened ecological community (TEC) and may support threatened flora and fauna.

DWER granted Clearing Permit CPS 8194/1² on 25 February 2019, authorising the applicant to clear no more than 7.0335 ha of native vegetation within the application area. It was against DWER's decision to grant the clearing permit that the appeal was received.

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 applicant was also given an opportunity to address the matters raised in the appeal. During the appeal investigation, the Appeals Convenor consulted the appellant and the applicant in relation to issues raised in the appeal, and undertook a site visit.

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 the clearing permit.

GROUND OF APPEAL

The appellant submitted that DWER should not have granted the clearing permit because there is remnant native Swan Coastal Plain vegetation present that has not been properly assessed for its conservation values, and may include threatened species and communities.

The appellant also raised the matter of commercial advantage, however as this matter does not relate to the grant of the clearing permit it has not been considered in detail in this report and is described under 'Other Matters'.

¹ Available at: <ftp://ftp.dwer.wa.gov.au/permit/6163/Permit/>

² Available at: <ftp://ftp.dwer.wa.gov.au/permit/8194/Permit/>

GROUND 1: ASSESSMENT OF CONSERVATION VALUES

By this ground of appeal, the appellant submitted that the remnant vegetation has not been adequately assessed for its conservation values, and that DWER should not have granted the clearing permit for the reasons outlined below:

- DWER's conclusions were not supported by scientific data;
- the vegetation may represent TECs and support threatened fauna and flora; and
- the State Government has recognised that remnant vegetation on the Swan Coastal Plain is regionally significant and needs protection, which should trigger the need for further investigation.

Consideration

DWER advised that in its assessment and decision-making, it took into account the clearing principles,³ planning instruments and other matters in accordance with section 51O of the EP Act, the findings of a site inspection undertaken by DWER officers, and information provided by the applicant (including the report of a vegetation assessment undertaken by PGV (2014)⁴) and obtained from other sources.

Through the assessment, DWER identified that the vegetation within the application area is in 'Degraded' to 'Completely Degraded' condition, comprising a mixture of native and introduced species with a patch of *Banksia* spp. trees in the northern portion.⁵

DWER concluded that the proposed clearing is unlikely to have any significant environment impacts, and is not likely to be at variance to any of the clearing principles. DWER subsequently granted the clearing permit subject to conditions, including requirements to avoid, minimise and reduce the impacts and extent of clearing, and to keep records and report as required on the specified activities.

Adequacy of the information

In relation to the appellant's submission regarding a lack of scientific data, the decision report outlines that DWER's assessment had regard for the findings of the PGV (2014) vegetation assessment provided by the applicant and its own site inspection.

The environmental values of the application area were also considered in environmental assessments undertaken by RPS (2011) and 360 Environmental (2017).⁶ Both assessments described the vegetation within the application area to be in 'Degraded' to 'Completely Degraded' condition, comprising a mixture of native and introduced species, with limited habitat value. It is noted that DWER's assessment findings are consistent with the findings of these assessments.

In response to this element of the appeal, DWER advised that the decision not to require the applicant to provide more current biological surveys is consistent with its published guideline *A guide to the assessment of applications to clear native vegetation under Part V of the Environmental Protection Act 1986*.⁷ This guide outlines that surveys are required based on the scale and nature of the clearing application's impacts. DWER stated that:

³ As listed in Schedule 5 of the EP Act and in accordance with section 51O of the EP Act.

⁴ PGV Environmental (2014) *Lot 1 Armadale Road, Banjup – Vegetation Assessment*. Unpublished report prepared for Eastcourt Property Group. Provided in support of application CPS 8194/1.

⁵ As identified in the PGV Environmental (2014) vegetation assessment, page 4.

⁶ RPS (2011, Rev 2) *Environmental Assessment Report for Lots 1, 868, 9002 and 9004 Armadale Road, Banjup*. Unpublished report prepared for Stockland WA Development Pty Ltd. Subiaco, Western Australia.

360 Environmental (2017) *Treeby District Structure Plan – Environmental Assessment Report*. Report prepared for Perron Developments Pty Ltd, December 2017.

⁷ Department of Water and Environmental Regulation (2014) *A guide to the assessment of applications to clear native vegetation under Part V of the Environmental Protection Act 1986* Government of Western Australia.

In this instance, the Delegated Officer determined that the Application was likely to have a low impact on the environment and that further biological surveys were therefore not required. In addition, as the findings of DWER's 2019 site inspection concurred with the 2014 Vegetation Assessment, it was considered that this information was sufficient to support the application.

Potential for threatened species and communities

In relation to the appellant's submission that the vegetation may include a TEC and support threatened flora and fauna, it is noted that the PGV (2014) vegetation assessment states:

A small stand of 10 *Banksia menziesii* trees occurs towards the north-west corner of the site. ... No evidence of foraging by Black Cockatoos was observed on the cones.

... The vegetation is not a Threatened or Priority Ecological Community. As a result, the vegetation on the site has negligible environmental significance for flora and vegetation values.

... [The stand of *Banksia* trees] has very low value as Black Cockatoo habitat. The regrowth on the site would provide some habitat for ground-dwelling fauna species. However, the fauna habitat value of the site overall is considered to be very low.⁸

With regard for the findings of the PGV (2014) vegetation assessment and DWER's site inspection, the decision report outlines that the application area:

- contains the same mapped soil system and vegetation complex from which *Caladenia huegelii* (grand spider orchid; threatened) and *Cyathochaeta teretifolia* (Priority 3) have been recorded in the local area, however given the vegetation condition these species are unlikely to occur;
- includes a patch of *Banksia* spp. trees that may comprise suitable foraging habitat for black cockatoos, however no evidence of foraging was observed; and
- includes a portion mapped as the Commonwealth-listed TEC 'Banksia Woodlands of the Swan Coastal Plain' (Banksia Woodlands TEC), however given the composition and condition of the vegetation is not representative of the Banksia Woodlands TEC.

DWER's assessment concluded that the vegetation within the application area is unlikely to comprise significant habitat for threatened or priority fauna (including black cockatoos) or contain suitable habitat for threatened or priority flora (including *Caladenia huegelii* and *Cyathochaeta teretifolia*), and does not meet the key characteristics of the Banksia Woodlands TEC.

From available aerial imagery,⁹ it is estimated that the patch of *Banksia* spp. trees is approximately 0.25 ha in size. Noting the key diagnostic features described in the Approved Conservation Advice, it is considered that DWER's conclusion that the application area does not include the Banksia Woodlands TEC is reasonable.

The decision report notes an absence of wetlands, watercourses and dense native understorey in the application area. On this basis, and noting the condition of the vegetation, it is considered that DWER's conclusion that the application area is unlikely to provide suitable habitat for threatened or priority flora is reasonable.

The patch of *Banksia* spp. trees may comprise suitable foraging habitat for black cockatoos. However, noting the extent of this patch and absence of foraging evidence, and the condition and composition of the vegetation more broadly, it is considered that DWER's conclusion that the application area is unlikely to provide significant habitat for conservation significant fauna is reasonable.

⁸ PGV (2014) vegetation assessment, pages 4-5.

⁹ Accessed at: <https://cps.dwer.wa.gov.au/main.html>

Significance of the vegetation

In relation to the appellant's submission that remnant vegetation on the Swan Coastal Plain is regionally significant, it is noted that DWER's assessment had regard for the *National Objectives and Targets for Biodiversity Conservation 2001-2005* and the Environmental Protection Authority's Guidance Statement No.33,¹⁰ and for the location of the application area within a 'constrained area' of urban development.

DWER's assessment concluded that the application area is not significant as a remnant in an extensively cleared area. It is noted from historical aerial imagery¹¹ that clearing commenced within the application area in about 1961 and that the application area was almost entirely cleared until about 1991.

In response to this element of the appeal, DWER advised that the PGV (2014) vegetation assessment identified through aerial imagery that the area had been previously cleared for sand mining operations and now contains a mixture of regrowth and planted native and non-native species which means the area is not considered remnant vegetation.

Conclusion

Based on the information available in this appeal, the following is noted:

- the application area was almost entirely cleared until about 1991, and the native vegetation present is regrowth (rather than remnant) vegetation or has been planted since that time; and
- in addition to the findings of the PGV (2014) vegetation assessment considered by DWER in its assessment, the environmental values of the application area were also considered in environmental assessments by the RPS (2011) and 360 Environmental (2017) with consistent findings in relation to the potential for threatened species and communities.

Having regard to the above, it is considered that there is sufficient environmental information available to inform conclusions about the environmental values of the application area, and that DWER's assessment findings are consistent with this. It is also considered that DWER's conclusions regarding the impacts of the proposed clearing, and its subsequent decision to grant the clearing permit subject to conditions, were justified and were supported by the available information.

OTHER MATTERS

The appellant questioned whether the grant of the clearing permit is giving the applicant a commercial advantage, compared to other landholders within the vicinity and bioregion who the appellant contends are required to do thorough assessments prior to clearing being approved.

This matter is beyond the scope of the appeal right in this instance. Sections 51E and 51O of the EP Act outline the requirements for clearing applications and the considerations of DWER when making decisions relating to clearing permits. It is understood that the decision to propose works at specific locations is a matter for applicants to determine, and that DWER's role is to assess the potential environmental impacts of clearing applications on a case by case basis.

¹⁰ Commonwealth of Australia (2001) *National Objectives and Targets for Biodiversity Conservation 2001-2005*. Commonwealth of Australia, Canberra.

Environmental Protection Authority (2008) *Environmental Guidance for Planning and Development*. Guidance Statement No. 33, dated May 2008. Government of Western Australia. Available at: <http://www.epa.wa.gov.au/policies-guidance/environmental-guidance-planning-and-development-gs-33>

¹¹ RPS (2011) environmental assessment, Appendix 3: RPS (2010, Rev 0) *Preliminary Site Investigation for Contamination – Cemex Site, Banjup*. Unpublished report prepared for Stockland WA Development Pty Ltd. Subiaco, Western Australia.

CONCLUSION AND RECOMMENDATION

For the reasons stated in this report, it is considered that DWER's assessment of the clearing application and conclusions formed in relation to the potential for threatened species and communities was supported by and is consistent with available scientific information, and was undertaken in accordance with relevant policies and procedures. It is also considered that DWER's decision to grant the clearing permit subject to conditions was justified.

It is recommended that the appeal be dismissed.

Emma Gaunt
APPEALS CONVENOR

Investigating Officers:
Emma Bramwell, Senior Environmental Officer
Emma Fitzgerald, A/Appeals Officer