



**Appeals Convenor**  
**Environmental Protection Act 1986**

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**REPORT TO THE  
MINISTER FOR ENVIRONMENT**

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

**CPS 7803/1: LOT 14 ON DEPOSITED PLAN 46523  
YARDARINO, SHIRE OF IRWIN**

**PROPONENT: DONGARA LIME AND GRAVEL PTY LTD**

Appeal Number 016 of 2019

**June 2019**

## Appeal Summary

This report relates to an appeal lodged in objection to a decision of the Department of Water and Environmental Regulation (DWER) to grant Clearing Permit CPS 7803/1 to Dongara Lime and Gravel Pty Ltd (the applicant) to clear 2.81 hectares of native vegetation on Lot 14 on Deposited Plan 46523, Yardarino for the purpose lime sand extraction.

DWER's assessment identified that the proposed clearing may be at variance to clearing principle (g) relating to land degradation and was not likely to be at variance to the remaining clearing principles.

In summary, the appellant submitted that the applicant did not provide any biological information about the application area in support of the clearing permit application. The appellant was of the view that permits should not be granted on the basis of inferred desktop data, including the pre-European vegetation data, without any biological information.

For the reasons stated in this report, the Appeals Convenor was of the view that DWER relied on appropriate information and its subsequent 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.) (the appellant) in objection to the decision of the Department of Water and Environmental Regulation (DWER) to grant Clearing Permit CPS 7803/1 to Dongara Lime and Gravel Pty Ltd (the applicant) to clear 2.81 hectares (ha) of native vegetation for the purpose of lime sand extraction.



(Source: DWER CPS 7803/1 and Whereis.com, May 2019)

**Figure 1 – Location and extent of application area (yellow shaded area) CPS 7803/1**

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).

## Background

On 10 October 2017, Dongara Lime and Gravel Pty Ltd applied for an Area Permit to clear 3 ha of native vegetation per year within Lot 14 on Deposited Plan 46523, Yardarino (the application area) for the purposes of lime sand extraction.

The permit holder amended the application area on 29 October 2017 to 25.65 ha to reflect the entire area that the permit holder intended to clear over the life of the extractive industry.

On 1 November 2017, the application was advertised for public submissions for 21 days and no public submissions were received.

The applicant reduced the area for clearing in December 2017 to 2.81 ha, being the area required for two years of operation and consistent with the Extractive Industry Licence application. The amended application was not readvertised due to the change being a reduction in the application area.

On 7 March 2019, DWER granted Clearing Permit CPS 7803/1 authorising the clearing of 2.81 ha of native vegetation, subject to conditions including weed and dieback control, wind erosion management and rehabilitation. It is against DWER's decision to grant the permit that the appeal was received.

## 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 provided with an opportunity to respond. During the appeal investigation, the Appeals Convenor consulted the appellant and the applicant to discuss the appeal in further detail.

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 the applicant did not provide any biological information about the application area in support of the clearing permit application. The appellant was of the view that permits should not be granted on the basis of inferred desktop data, including the pre-European vegetation data, without any biological information.

The appellant also noted that the Beard pre-European extent data have not been updated for many years.

## Consideration

In its assessment of the clearing permit application, DWER found that the proposed clearing may be at variance to clearing principle (g) relating to land degradation and was not likely to be at variance to the remaining clearing principles.

In response to the appeal, DWER advised that in determining the grant of the clearing permit, it considered GIS datasets, photographs taken by the applicant and advice from the Department of Biodiversity, Conservation and Attractions (DBCA).

In relation to biodiversity and rare flora, DWER's decision report noted that nine priority flora were recorded in the local area and that a Priority 1 (*Scholtzia sp. Dongara*<sup>1</sup>) and Priority 2 (*Dampiera tephrea*) species had been recorded within 4.5 and 3.5 kilometres of the application area.

As a part of its assessment of the potential impacts of the clearing on these two flora species, DWER sought advice from DBCA on the impacts of clearing 25.65 ha, as per the original area under application. DBCA advised that little was known about the two priority flora species, but in particular noted that the Priority 1 species was only listed in 2014 and only known from three locations. DBCA noted that there was a lack of site specific information including information on soils, vegetation type and vegetation conditions or a vegetation and flora survey, and advised that it was not possible to determine if these species were likely to occur within the application area. DBCA advised DWER that a precautionary approach should be applied and that targeted surveys should be undertaken.

Following the reduction of the clearing area to 2.81 ha, DWER considered the degraded nature of the existing vegetation and the extent of the vegetation remaining [Beard vegetation association (approximately 84 per cent) and the local area (approximately 35 per cent)] and determined that the clearing was unlikely to impact on the conservation status of priority flora, if present, within the application area. DWER also noted that *Dampiera tephrea* is a herb and unlikely to be present given that the area has been previously cleared and subject to grazing.

On receiving the appeal, DWER sought further information from DBCA in relation to the two priority flora species of concern. DBCA advised that since its original advice, *Scholtzia calicola* had been downgraded to Priority 2 based on its identification within a National Park which extended its distribution to 50 kilometres south of its previous range.

While acknowledging that priority flora may be impacted, and that only a targeted flora survey would confirm this, DBCA advised that given the reduced application area, and that a large portion of the area had already been cleared and is degraded, the risk of significantly impacting priority flora is greatly reduced.

In relation to the requirement for a targeted survey, DBCA advised:

A targeted survey for this area is therefore not recommended in this instance however this is reliant on the conservation of the surrounding vegetation (which may be suitable habitat for Priority flora), and any future extensions or new clearing applications in this area (even if small sized) should be accompanied by a targeted flora survey.

In relation to the appellant's concerns regarding DWER's reliance of Beard pre-European vegetation extents, it is noted that DWER is required to have regard to the ten clearing principles under the EP Act, including principle (e) which states that:

Native vegetation should not be cleared if it is a significant remnant in an area that has been extensively cleared.

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<sup>1</sup> It is noted that *Scholtzia sp. Dongara* is now listed as a Priority 2 species and is known as *Scholtzia calicola*, As per Rye, Barbara L. (2019). Nuytsia, The Journal of the Western Australian Herbarium. 30:33 – 86 (2019). Published online 28 March 2019. <https://florabase.dpaw.wa.gov.au/science/nuytsia/903.pdf>

In this case, DWER determined that the local area retains approximately 45 per cent pre-European vegetation and the mapped Beard vegetation association 17 retains approximately 84 per cent pre-European vegetation within the Geraldton Sandplains Bioregion. As these figures were above the 30 per cent threshold, DWER determined that the application area is not considered to be a significant remnant in an extensively cleared area.

In response to the appeal, DWER advised that while it acknowledged that the original mapping of vegetation associations undertaken by John Beard in 1964 and 1981 are now dated, the statistics associated with this mapping have been updated by DBCA annually for the past three years. DWER advised that the statistics are updated by overlaying pre-European vegetation extents with current imagery of remnant vegetation. DWER further advised that these statistics were updated in 2017 and this is the data that were referenced in the decision report.

## **CONCLUSION AND RECOMMENDATION**

Having regard for the information provided during the appeal investigation, it is considered that DWER's assessment relied on appropriate information and noting DBCA's advice on the appeal, it is considered that a targeted flora survey was not required in this instance. It is therefore considered that DWER's decision to grant the clearing permit was justified and supported by the available evidence.

DBCA's advice is noted, in that should further applications to clear be made, the application should be supported by a targeted flora survey.

It is recommended that the appeal be dismissed.

Emma Gaunt  
APPEALS CONVENOR

**Investigating Officer:**  
Tonya Carter, Senior Appeals Officer