



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

---

**REPORT TO THE  
MINISTER FOR ENVIRONMENT**

---

**APPEAL AGAINST DECISION TO GRANT A CLEARING PERMIT  
CLEARING PERMIT CPS 8796/1: LOT 9004 ON DEPOSITED PLAN  
402043, JOONDALUP**

**APPLICANT/PERMIT HOLDER: WESTERN AUSTRALIAN LAND AUTHORITY T/A  
DevelopmentWA**

Appeal Number 022 of 2020

**October 2020**

## Appeal Summary

This report relates to an appeal received from Mitchell Sideris (the appellant) in objection to the decision of the Department of Water and Environmental Regulation (DWER) to grant clearing permit CPS 8796/1 to the Western Australian Land Authority trading as DevelopmentWA (the applicant). The permit is for the clearing of 0.37 hectares of native vegetation within Lot 9004 on Deposited Plan 402043, Joondalup.

By his appeal, the appellant submitted that DWER did not assess the area intended to be cleared by the applicant. The appellant also submitted that clearing commenced in March 2020 prior to the grant of the permit and that this should have been considered by DWER in its assessment. The appellant requests the Minister for Environment overturn DWER's decision to grant the permit.

Having considered both the applicant's and DWER's response to the appeal, and the information provided by the appellant, the appeals investigation found that the correct area had been assessed by DWER and that the environmental values of the application area were considered by DWER in determining to grant the permit.

The investigation of complaints and the taking of enforcement action is a separate matter for DWER and beyond the scope of appeal.

Notwithstanding that some clearing may have occurred prior to the grant of the permit, DWER relied on information obtained in July 2019 to inform its assessment and concluded that the clearing is not likely to lead to an unacceptable risk to the environment.

It is noted that DWER's *A guide to the assessment of applications to clearing native vegetation* (December 2014) sets out that pre-clearing values of vegetation are to be considered in situations where clearing of an application area has already commenced.

Therefore it is considered that the July 2019 information is relevant information. It is considered that, based on the available evidence, the clearing is not likely to lead to an unacceptable risk to the environment and a decision to grant the permit is justified.

### Recommendation

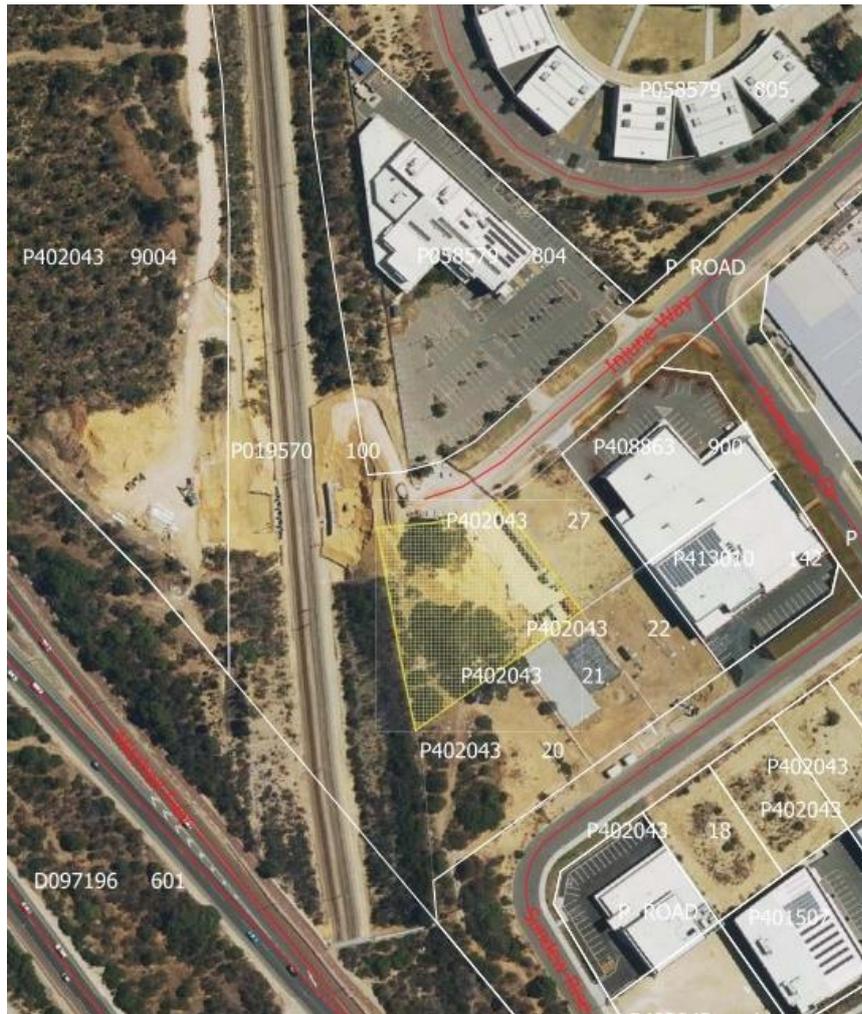
It is recommended that the appeal be dismissed.

## INTRODUCTION

This report relates to an appeal received from Mitchell Sideris (the appellant) in objection to the decision of the Department of Water and Environmental Regulation (DWER) to grant clearing permit CPS 8796/1 to the Western Australian Land Authority trading as DevelopmentWA (the applicant). The permit is for the clearing of 0.37 hectares of native vegetation within Lot 9004 on Deposited Plan 402043, Joondalup.

The purpose of the clearing is for bridge construction and commercial development.<sup>1</sup> A map of the application area is included as Figure 1.

**Figure 1 – Map of application area (cross-hatched yellow)**



(Source: DWER – Clearing Permit CPS 8796/1 – Plan 8796/1)

DWER's assessment of the application found the proposed clearing is not at variance with, or is not likely at variance with, the ten clearing principles. DWER advised that in determining to grant the clearing permit it took into account the findings of a flora and vegetation survey of the application area commissioned by the applicant.<sup>2</sup>

The permit was granted on 22 April 2020.

<sup>1</sup> Decision report for Clearing Permit CPS 8796/1, 22 April 2020, page 1.

<sup>2</sup> DWER Response to Appeal 022/20, 10 June 2020, page 1.

## OVERVIEW OF APPEAL PROCESS

In accordance with the *Environmental Protection Act 1986* (EP Act), two reports relating to the matters raised on appeal are required for the Minister for Environment to determine the outcome of the appeal:

- a report from the Appeals Convenor, as required by section 109(3) of the EP Act; and
- a report from the decision-making authority of the decision under appeal (i.e. from DWER), as required by section 106(1).

This document is the Appeals Convenor's report to the Minister.

To properly advise the Minister, the Appeals Convenor conducted an investigation that included:

- review of the matters raised in the appeal submitted by the appellant
- review of the report from DWER provided under section 106 of the EP Act
- review of the response to the appeal provided by the applicant
- a meeting with the applicant on 7 July 2020
- a meeting with the appellant on 3 August 2020 and additional correspondence
- review of other information, policy and guidance as considered necessary.

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 the clearing principles as set out in Schedule 5 of the EP Act, as well as planning and other relevant matters. 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 seeks for DWER's decision to be overturned, that is, for the permit to be refused.

## GROUNDINGS OF APPEAL

Two grounds of appeal were submitted. First that DWER has not assessed the area intended to be cleared and second that clearing has already commenced and that this should have been taken into account by DWER.

### GROUND 1: APPLICATION AREA

By this ground of appeal, the appellant submitted concerns that the clearing permit application is intended for the clearing of vegetation outside the application area identified on Figure 1. It was submitted that the property details referred to in the application documents and the permit are inconsistent. The following was cited:

- the clearing permit application refers to the street address of the property as 350 Injune Way, Joondalup
- the flora and vegetation assessment submitted with the application refers to the property as Lot 827 Injune Way, Joondalup
- the clearing permit refers to the property as Lot 9004 on Deposited Plan 402043, Joondalup

The appellant noted that in 2016 the applicant made a referral to the Commonwealth under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) for commercial development of Lot 9004 Hodges Drive, Joondalup (EPBC 2016/7844). The street

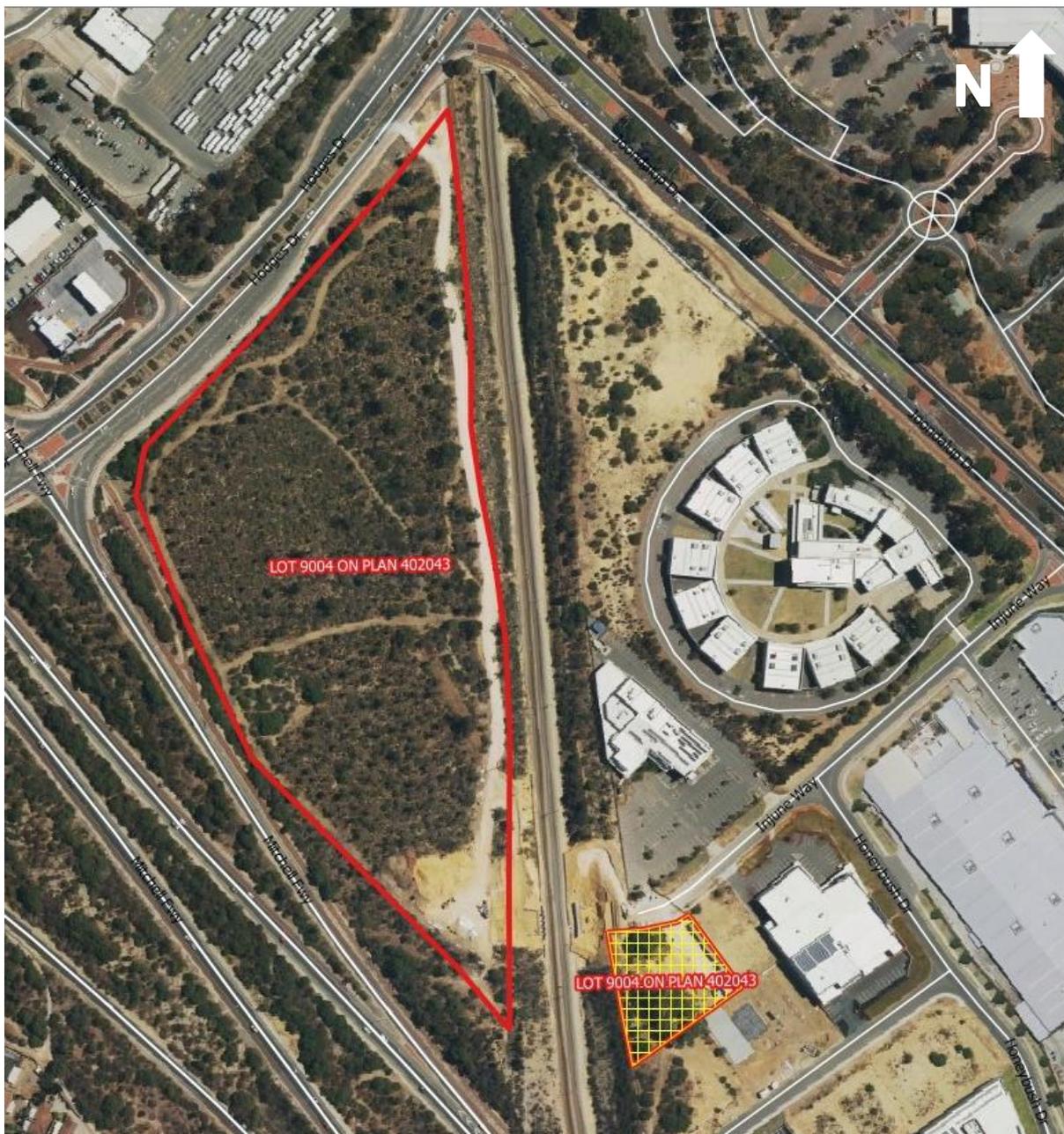
address included in the referral is 350 Hodges Drive, Joondalup. The appellant submitted that the area subject to the EPBC Act referral is the area intended to be cleared by the applicant and that the values of this vegetation have not been considered by DWER.

The appellant also questioned whether the applicant was the owner of the application area.

### Consideration

Lot 9004 on Deposited Plan 402043, Joondalup comprises two parcels of land separated by the Joondalup rail line (Figure 2). The street address is 350 Hodges Drive, Joondalup.

**Figure 2 – Map of Lot 9004 on Deposited Plan 402043, Joondalup (red outline) in relation to the application area (cross-hatched yellow)**



The application area comprises the eastern portion of Lot 9004 which is located on Injune Way. This is shown on Plan 8796/1 which is referenced by and attached to the permit. The decision report for the permit also states:

The eastern portion of Lot 9004 on Deposited Plan 402043, Joondalup, is analogous with the native vegetation clearing permit application area of 0.37 hectares.<sup>3</sup>

The EPBC Act referral document defines the referral area as being bound by Hodges Drive to the north, Mitchell Freeway to the west and the rail line to the east. This description is consistent with the western portion of Lot 9004. Maps are included in the referral confirming that the referral area relates to the western portion of Lot 9004.<sup>4</sup>

The flora and vegetation assessment submitted in support of CPS 8796/1 includes maps of the area assessed with an example provided as Figure 3.<sup>5</sup> The area assessed is consistent with the application area. In explaining the reference to Lot 827, the applicant advised the following:

DevelopmentWA submitted a subdivision application to the Western Australian Planning Commission (WAPC) on 28 March 2018 seeking planning approval to subdivide lot 9004 to create two separate lots.

Approval was granted to create the two separate Lots from Lot 9004 as proposed Lot 828, west of the rail and proposed Lot 827 to the east of the rail.<sup>6</sup>

A copy of the subdivision approval was provided which outlines that WAPC is prepared to endorse a deposited plan upon fulfilment of several conditions. The conditions include, but are not limited to, requirements to construct a bridge over the railway and to provide for the supply of electricity, water and sewerage.<sup>7</sup> Therefore, the application area will remain as Lot 9004 until such time as the WAPC conditions are fulfilled and the subdivision effected.

In response to the appeal, the applicant rejected the assertion that the clearing permit application was in any way submitted to clear the EPBC Act referral area.<sup>8</sup>

On the matter of land ownership, the applicant advised:

DevelopmentWA will be the owner of Lot 827 when the subdivision is completed. DevelopmentWA currently has a memorandum of understanding with Edith Cowan University over the land.<sup>9</sup>

## Conclusion

It is considered that the correct area has been assessed by DWER. The permit only authorises the clearing of the assessed area (i.e. the eastern portion of Lot 9004).

---

<sup>3</sup> Decision report for Clearing Permit CPS 8796/1, 22 April 2020, page 1.

<sup>4</sup> Referral for EPBC 2016/7844. Available from: <http://epbcnotices.environment.gov.au/entity/annotation/98153344-aac5-e611-9a9c-005056ba00a7/a71d58ad-4cba-48b6-8dab-f3091fc31cd5?t=1602646133966>. Accessed 19 October 2020.

<sup>5</sup> PGV Environmental (2019). Lot 827 Injune Way Joondalup – Flora and Vegetation Assessment. Unpublished report prepared for LandCorp. Version 2, 8 August 2019.

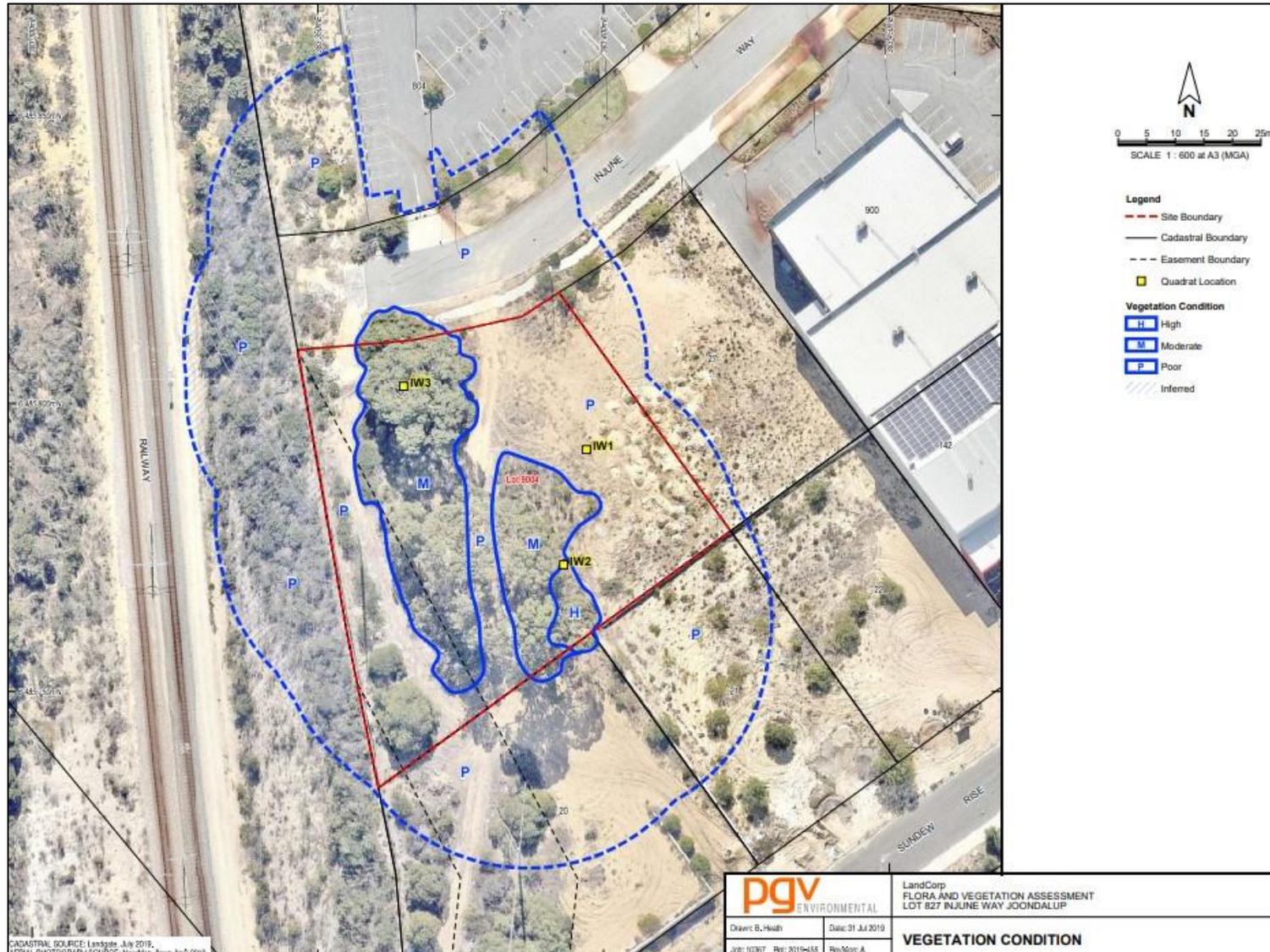
<sup>6</sup> DevelopmentWA Response to Appeal 022/20, 3 June 2020, page 1.

<sup>7</sup> WAPC. Approval Subject to Condition(s) – Freehold (Green Title) Subdivision. 15 June 2018. Application No: 156468.

<sup>8</sup> DevelopmentWA Response to Appeal 022/20, 3 June 2020, page 5.

<sup>9</sup> DevelopmentWA Response to Appeal 022/20, 3 June 2020, page 5.

Figure 3 – Flora and vegetation assessment vegetation condition map



## GROUND 2: CLEARING ALREADY COMMENCED

By this ground of appeal the appellant submitted evidence that clearing has already commenced within the application area. The appellant is of the view that this demonstrates DWER's assessment was inadequate and is reason alone for the permit to be refused.

### Consideration

In response to the appeal, DWER advised that the appellant lodged a formal complaint alleging clearing commenced unlawfully on 22 March 2020.<sup>10</sup>

The applicant's response to the appeal acknowledged that a subcontractor had "cleared a small section between the tuart trees to allow the stockpiling of a small volume of sand for the rail bridge batter construction".<sup>11</sup>

During a meeting with the appellant, the appellant provided a copy of correspondence he received from DWER dated 13 July 2020 advising:

The Department of Water and Environmental Regulation (DWER) has completed an investigation into the alleged clearing and determined that vegetation was cleared within Lot 827 for the purpose of holding sand for the construction of a bridge across the rail track.

The area cleared was within a clearing permit application (Ref # CPS 8761/1) [sic], however this application had not been approved. Therefore, as there does not appear to be any other exemption available, the clearing of any native vegetation was not authorised and was done in breach of section 51C of the *Environmental Protection Act 1986* (EP Act).

DWER determines the level of enforcement response to identified breaches of the EP Act based on the level of risk to public health, the environment or water resources in accordance with the attached Compliance and Enforcement Policy.

Based on the completely degraded pre-clearing vegetation condition and the relatively small area cleared, the environmental impact of the above breach was assessed as low. Development WA was therefore advised that no further action would be taken, but was reminded of their obligations under the EP Act in writing.

The appellant expressed dissatisfaction with the outcome. Subsequent to this, the appellant provided further information alleging unlawful clearing has continued at the site.

The appellant's concerns are noted, however, it is considered that the investigation of complaints and the taking of enforcement action is a separate matter for DWER and beyond the scope of appeal.

In discussing their appeal, the appellant suggested that the fact DWER was unaware of the clearing prior to granting the permit indicates its assessment was not of sufficient rigour.

In this case, DWER assessed the application taking into account information from the flora and vegetation assessment which documented the vegetation type and condition prior to the clearing. The flora and vegetation assessment was undertaken on 12 July 2019 and described the application area as comprising:

*Eucalyptus gomphocephala* (Tuart) over a sparse cover of native species such as *Acacia saligna*, *Jacksonia sternbergiana*, *Jacksonia calcicole*, *Acacia pulchella* and *Xanthorrhoea preissii* as well as an abundant weed presence including *Chamelaucium uncinatum*

<sup>10</sup> DWER Response to Appeal 022/20, 10 June 2020, page 4.

<sup>11</sup> DevelopmentWA Response to Appeal 022/20, 3 June 2020, page 3.

(Geraldton Wax), *Oxalis pescaprae*, *Ehrharta calycina*, *Briza maxima*, *Lupinus cosentinii* and *Gladiolus caryophyllaceus*.

One small area containing native understorey species was recorded in the south-east part of the Tuart woodland. Quadrat IW2 was sampled in this area. The vegetation consisted of *Banksia sessilis* Shrubland with *Melaleuca systema* a common smaller shrub.

...

The eastern half of the site was cleared with bare sand and weeds.

...

The condition of the vegetation using the Keighery scale ranged from Degraded to Completely Degraded. A small area of native understorey described by quadrat IW2 was rated in Good condition.<sup>12</sup>

Noting the presence of tuarts, PGV Environmental also evaluated the vegetation against the diagnostic characteristics and condition categories and thresholds for the Tuart woodlands and forests of the Swan Coastal Plain threatened ecological community (TEC) listed under the EPBC Act. The assessment found that the vegetation did not meet the criteria for the TEC as the size of the patch and the condition category did not meet the relevant thresholds.<sup>13</sup>

The above information is reflected in DWER's decision report. Ultimately, DWER found that the proposed clearing is not or is not likely to be at variance to the clearing principles. DWER determined that the size and location of the clearing, and the predominantly degraded condition of the vegetation present, meant that the proposed clearing is not likely to lead to an unacceptable risk to the environment.<sup>14</sup>

## Conclusion

The investigation of complaints and the taking of enforcement action is a separate matter for DWER and beyond the scope of appeal.

Notwithstanding that some clearing may have occurred prior to the grant of the permit, DWER's assessment relied on information obtained prior to that clearing. The assessment found that the clearing is not likely to lead to an unacceptable risk to the environment.

It is noted that DWER's *A guide to the assessment of applications to clearing native vegetation* (December 2014) sets out the following in respect to how to consider already cleared areas when assessing a clearing permit application:

In assessing the vegetation condition for clearing permit applications, assessors require the current condition of the vegetation. This can be provided by the applicant or identified by the assessor through a desktop and/or site analysis...

Where the vegetation under assessment is likely to have been unlawfully cleared prior to an application for a clearing permit being submitted, or is part of an investigation, the condition rating is based on the pre-clearing vegetation if this can be assessed. The pre-clearing vegetation condition is identified using a combination of desktop analysis and comparison of the condition of the same vegetation type adjoining or nearby the site.<sup>15</sup>

---

<sup>12</sup> PGV Environmental (2019). Lot 827 Injune Way Joondalup – Flora and Vegetation Assessment. Unpublished report prepared for LandCorp. Version 2, 8 August 2019, page 9.

<sup>13</sup> Ibid, page 18.

<sup>14</sup> Decision report for Clearing Permit CPS 8796/1, 22 April 2020, page 1.

<sup>15</sup> Available from: [https://www.der.wa.gov.au/images/documents/your-environment/native-vegetation/Guidelines/Guide2\\_assessment\\_native\\_veg.pdf](https://www.der.wa.gov.au/images/documents/your-environment/native-vegetation/Guidelines/Guide2_assessment_native_veg.pdf) page 9.

Therefore it is considered that the July 2019 flora and vegetation assessment provides relevant information. It is considered that, based on the available evidence, the clearing is not likely to lead to an unacceptable risk to the environment and a decision to grant the permit is justified.

## **CONCLUSION AND RECOMMENDATION**

The appeal investigation found that both the correct area and the environmental values of the vegetation were assessed by DWER in determining to grant the clearing permit.

It is considered that, based on the available evidence, the clearing is not likely to lead to an unacceptable risk to the environment and a decision to grant the permit is justified.

It is recommended that the appeal be dismissed.

Emma Gaunt  
APPEALS CONVENOR

**Investigating Officer:**  
Simon Weighell, A/Senior Appeals Officer