



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST GRANT OF CLEARING PERMIT CPS 7388/1: MARTIN ROAD RESERVE, WATERHOUSE ROAD RESERVE, ROWE ROAD RESERVE AND MAYA NATURE RESERVE, SHIRE OF PERENJORI

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section 101A(4) of the *Environmental Protection Act 1986* in objection to the grant of Clearing Permit CPS 7388/1. 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 Perenjori
Proposal description:	The clearing of 4.54 hectares of native vegetation within the Martin Road reserve, Waterhouse Road reserve, Rowe Road reserve and Lot 6617 on Deposited Plan 226684 (being Maya Nature Reserve), Perenjori for the purpose of road repairs and reconstruction.
Minister's decision:	The Minister allowed in part the appeal.
Date of decision:	26 August 2019

REASONS FOR MINISTER'S DECISION

The Department of Water and Environmental Regulation (DWER) granted the clearing permit on 12 April 2019, authorising the Shire of Perenjori (applicant) to clear 4.54 hectares (ha) of native vegetation for the purposes of road repairs and reconstruction to improve road safety. As part of the application process the applicant reduced the extent of proposed clearing from 10 ha within a 79.54 ha footprint, to 4.54 ha within a 39.1 ha footprint.

The appellant appealed DWER's decision to grant the clearing permit, submitting that the permit should not have been granted based on the environmental values identified, including in relation to impacts to the Commonwealth-listed *Eucalypt Woodlands of the Western Australian Wheatbelt* threatened ecological community (Eucalypt Woodlands TEC) and priority flora. The Minister understood that the appellant was concerned about the timing and limitations of a flora and vegetation survey, and the failure of the applicant and DWER to

consider alternatives that would avoid and minimise clearing. The appellant also expressed concern that the conditions applied to the permit in relation to buffers and offsets were inadequate.

The appeal was investigated by the Appeals Convenor on the Minister's behalf, which included a meeting with the appellant, as well as feedback from DWER and the applicant.

In relation to the Eucalypt Woodlands TEC, the appellant submitted that DWER's conclusion that this community does not occur within the application area is incorrect given that the flora and vegetation survey identified vegetation consistent with this TEC.

The Minister noted the Appeals Convenor's advice that the vegetation within the application area does not meet the minimum patch size and condition rating criteria specified in the Commonwealth's *Approved Conservation Advice (including listing advice) for the Eucalypt Woodlands of the Western Australian Wheatbelt*.

In relation to the flora and vegetation survey, the appellant submitted that the April 2017 timing did not coincide with the flowering periods for several priority flora taxa, and was not sufficient to determine the full extent of *Westringia ophioglossa* (Priority 1) within the application area. The appellant also submitted that the presence of priority flora with limited distributions or at the extremity of known distributions should not be cleared.

In response to this matter, while DWER acknowledged that the timing of the flora and vegetation survey meant that the presence of many species could not be ruled out with certainty, subsequent investigations and advice from the Department of Biodiversity, Conservation and Attractions (DBCA) provided sufficient basis on which to determine that most species were either unlikely to be present, or that impacts to them, if present, would not be significant to the conservation of the species.

In regard to *Westringia ophioglossa*, DBCA provided advice that this species is known from a 2012 survey and the April 2017 survey, and that further surveys for this species would only be required if the known populations were proposed to be impacted or not protected by a suitable buffer.

To protect this species, DWER applied condition 7 to the clearing permit which prohibits clearing within 10 metres of the *Westringia ophioglossa* species on Rowe Road, which is the only population at risk from the proposed clearing. As such DWER determined that no further surveys for this species would be required as no known populations of this species will be impacted by the proposed clearing.

In relation to the adequacy of the buffer to occurrences of *Westringia ophioglossa*, as a result of the appeal, DWER reviewed the known populations and acknowledged the importance of this occurrence of the species given there are only three known populations. Therefore DWER recommended that the buffer should be increased and a clearly demarcated buffer of 50 metres should be applied to individual plants within the application area as it would provide a more appropriate level of protection for the species as per DBCA advice.

On the information available, the Minister considered the requirement for a 50 metre buffer to be applied to occurrences of *Westringia ophioglossa* was appropriate. Further, the Minister agreed with DWER's recommendation that individual plants and their buffers are clearly demarcated.

DWER assessed the project using the available information and deemed that no significant impacts to a TEC or flora would occur. However the proposed clearing occurs in an area with less than 30 per cent of the pre-1750 vegetation extent remaining, with the Beard vegetation

associations 352 and 435 to be cleared having 17 and 11.5 per cent vegetation remaining respectively. Aerial imagery also identified that the local area retains approximately 15 per cent native vegetation cover.

Therefore DWER determined that the proposed clearing will result in the loss of vegetation that represents a significant remnant in an extensively cleared landscape, under-represented vegetation associations, and an ecological linkage for fauna species. It was on this basis that DWER determined that an offset was necessary to counterbalance the significant residual impacts of the proposed clearing. DWER determined that the acquisition of 21 ha of vegetation within Crown Reserve 12305 and changing its reservation purpose from 'Gravel' to 'Conservation' would counterbalance these impacts and applied condition 10 requiring the applicant to provide the amended management order prior to clearing.

While the Minister noted DWER's advice that the offset does not counterbalance the loss of the ecological linkage, DWER also advised that the *WA Environmental Offsets Policy 2011* provides for offsets with similar but not identical values in certain situations. DWER noted that the proposed offset site contains Beard vegetation association 352, which is also present within the application area and that the ecological linkage will be reduced but not severed by the proposed clearing.

It follows from the above that the Minister allowed the appeal to the extent that condition 7 of the permit is amended to require a 50 metre buffer to occurrences of *Westringia ophioglossa* (Priority 1), and clear demarcation of individual plants and their buffers, as described above. The Minister has otherwise dismissed the appeal.

The precise wording of this amendment will be determined by DWER in giving effect to the Minister's decision under section 110 of the *Environmental Protection Act 1986*.

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*.

Office of the Appeals Convenor

Level 22, 221 St Georges Terrace

Perth WA 6000

Tel: (08) 6364 7990

Fax: (08) 6364 7999

www.appealsconvenor.wa.gov.au