



Environmental Protection Act 1986

**Hon Stephen Dawson MLC  
Minister for Environment**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEALS AGAINST GRANT OF A CLEARING PERMIT CPS 8448/1 NORTH WALPOLE ROAD RESERVE, SHIRE OF MANJIMUP**

#### **Purpose of this document**

This document sets out the Minister's decision on appeals lodged under section 101A(4) of the *Environmental Protection Act 1986* in objection to the grant of the above clearing permit. 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](http://www.appealsconvenor.wa.gov.au).

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<b>Appellants:</b>	Wildflower Society of Western Australia (Inc) Urban Bushland Council WA Inc Rachel and Philip Fry Steve Dreher Theres Dreher Robin Adair Michael Filby Sue Youngman Jan Cernohous
<b>Permit holder:</b>	Shire of Manjimup
<b>Proposal description:</b>	Clearing of up to one hectare of native vegetation for widening North Walpole Road, Shire of Manjimup.
<b>Minister's decision:</b>	The Minister allowed the appeals in part.
<b>Date of decision:</b>	5 March 2020

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### **REASONS FOR MINISTER'S DECISION**

Clearing Permit CPS 8448/1 was granted to the Shire of Manjimup by the Department of Water and Environmental Regulation (DWER) for the clearing of up to one hectare of native vegetation for the widening of a section of North Walpole Road.

Nine appeals were received and all sought for DWER's decision to be overturned. The appeals were submitted on a number of grounds including the adequacy of DWER's assessment against the clearing principles, the extent of avoidance and minimisation undertaken, the absence of an offset, and concerns regarding community consultation, climate change and tourism.

Having carefully considered the information provided, including the nine appeals, the advice of DWER, and the Appeals Convenor's report and recommendation, the Minister considered that DWER's decision to grant the permit was justified. The Minister decided, however, that a condition needed to be added to the permit limiting the width of clearing to up to one metre either side of the edge of the road pavement. This is to ensure the permit adequately reflects the Shire's avoidance/minimisation commitments and DWER's assessment.

The full reasons for the Minister's decision are set out below.

### **Assessment against the clearing principles**

The Minister noted that the concerns raised about DWER's assessment primarily related to the absence of flora and fauna surveys, the assessment of clearing principle (e), and the acceptance of impacts relating to principles (f) and (h).

In relation to flora and fauna surveys, appellants submitted that *Drakaea micrantha*, Carnaby's cockatoo (*Calyptorhynchus latirostris*), western ringtail possum (*Pseudocheirus occidentalis*), Tingle pygmy trapdoor spider (*Bertmainius tingle*) and mystical pygmy trapdoor spider (*Bertmainius mysticus*) may be present in the application area and therefore surveys should have been undertaken to better inform DWER's assessment.

As outlined in the Appeals Convenor's report, DWER undertook a risk-based assessment of potential impacts to flora and fauna having regard for observations from a site visit and datasets, and site specific advice received from the Department of Biodiversity, Conservation and Attractions.

In this regard, the Minister was advised that there is a lack of suitable habitat within the application area for *Drakaea micrantha* and the two species of trapdoor spiders. Also DWER did not find any potential black cockatoo breeding hollows or western ringtail possum (WRP) dreys during its site inspection. The Minister also noted:

- the application area is located in an area surrounded by protected old-growth forests expected to contain similar or better quality habitat for Carnaby's cockatoo;
- a substantial proportion of the application area has impacted canopy continuity for WRP; and
- the application area appears to be located entirely outside the South Coast management zone for WRP as documented in the recovery plan for the species.

In relation to clearing principle (e), appellants submitted that DWER should have found the proposed clearing to be at variance noting the high level of clearing elsewhere in the State. Appellants also submitted that DWER should not have relied on statistics of remaining vegetation extent in the assessment given they are inflated by degraded regrowth forest infested with weeds and dieback.

The Minister was advised that DWER undertook its assessment having regard to the published *A guide to the assessment of applications to clear native vegetation under Part V Division 2 of the Environmental Protection Act 1986* (December 2014). The guide outlines that vegetation condition is an important consideration when assessing the amount of vegetation remaining in a local area. In this case, the Minister was advised that the application area is located in an area surrounded by protected old-growth forests and considered that these forests can reasonably be expected to be in a 'good' or better condition than the application area.

In relation to clearing principles (f) and (h), appellants submitted that the variances identified by DWER were sufficient reason to not approve the clearing, or at least exclude the related areas from the permit. Appellants also expressed doubt that the risk of dieback spread could be adequately managed.

Both DWER and the Appeals Convenor advised that based on site observations, the watercourse and wetland vegetation to be impacted is minimal and degraded.

In relation to the risk of dieback spread, the Minister noted DWER imposed condition 7 on the permit. Condition 7 requires that during clearing operations, no known dieback or weed affected soil, mulch, fill or other material is to be brought into the area to be cleared, that all earth-moving machinery be cleaned before entering and leaving the clearing area, and that all machines/vehicles be restricted to the clearing area.

The Minister considered that the conditions imposed by DWER require an appropriate level of hygiene for mitigating the risk of dieback spread to the Mount Frankland South National Park from the proposed clearing. The Minister also noted that the Shire would be liable to enforcement action if the conditions imposed by DWER were not complied with.

Having considered the information available in relation to the matters raised by these grounds of appeal, the Minister considered that DWER's assessment of the application against the clearing principles was adequate and supported by the available evidence.

### **Avoidance, minimisation and offset**

All appellants submitted that the proposed clearing could be further reduced. It was also submitted that larger trees should be avoided and an offset should have been applied to the permit.

In response to the appeals, DWER advised that the purpose of the clearing, being to widen the road for safety reasons, was a relevant consideration for determining the application. DWER advised that the Shire's efforts to avoid and minimise impacts were considered during its assessment, including commitments to clear no more than one metre from the existing road on either side and to only remove trees that are deemed a risk to road safety.

DWER imposed condition 6 on the permit requiring the Shire to have regard to avoiding, minimising and reducing the impacts and extent of clearing. However, in response to the appeals, DWER noted that the Shire's commitment to only clear one metre either side of the road was a material consideration in its assessment and recommended that a condition be applied to the permit. The Minister accepted DWER's advice and decided that the permit should be amended by applying a condition that limits clearing to the extent committed and assessed.

In relation to offsets, the Minister noted the Appeals Convenor's advice, particularly the Shire's commitments to avoid and minimise impacts, the fact that the proposed clearing is for a public use, and that the *WA Environmental Offsets Policy* (September 2011) outlines offsets will not be applied to minor environmental impacts. On this basis the Minister was satisfied that an offset is not required in this instance.

### **Community consultation, climate change and tourism**

Appellants also submitted concerns relating to the lack of community consultation undertaken by the Shire, and the need to assess climate change and tourism impacts from the clearing.

DWER advised that on 16 April 2019, the clearing permit application was advertised for a 21-day public comment period with a total of 12 public submissions received. The Minister noted that the submissions were considered and addressed by DWER on page 7 of its decision report. The Minister considered that the assessment has included consideration of public input, including through the appeals process, and encouraged appellants to contact the Shire if further opportunities to discuss the works were sought.

In relation to climate change impacts, DWER acknowledged that the clearing of native vegetation contributes to climate change but considered the clearing of one hectare would be minor in this regard. The Minister agreed that climate change impacts from the clearing are unlikely to be significant.

In relation to tourism impacts, DWER advised that it does not assess such matters for clearing permit applications. Noting the Shire is the responsible authority for managing North Walpole Road, the Minister considered that the Shire is better placed to balance the safety and tourism concerns relating to the road for the local community.

### **Summary**

The Minister considered that DWER's decision to grant clearing permit CPS 8448/1 to the Shire was justified, however, the Minister decided that the appeals should be allowed in part by a condition being added to the permit limiting the width of clearing to up to one metre either side of the edge of the road pavement.

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

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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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