



Environmental Protection Act 1986

Hon Stephen Dawson MLC
Minister for Environment

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST CONDITIONS OF CLEARING PERMIT CPS 7499/1 BOWELLING CURVES PROJECT, SHIRE OF WEST ARTHUR

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section 101A(1)(b) of the *Environmental Protection Act 1986* in objection to the conditions of Clearing Permit CPS 7499/1. This document is produced by the Office of the Appeals Convenor for the Minister but is not the Acting Appeals Convenor's own report, which can be downloaded from the Appeals Convenor's website at www.appealsconvenor.wa.gov.au.

Appellant:	Main Roads Western Australia
Permit Holder:	Main Roads Western Australia
Proposal description:	Clearing of 17.06 hectares of native vegetation for road alignment changes to the Coalfields Road, Bowelling, southeast of Collie.
Minister's Decision:	The Minister allowed the appeal in part.
Date of Decision:	16 July 2018

REASONS FOR MINISTER'S DECISION

Pursuant to section 106 of the *Environmental Protection Act 1986* (the Act), the Minister obtained a report from the Department of Water and Environmental Regulation (DWER) on the matters raised in the appeal. The Minister also received a report from the Acting Appeals Convenor. The A/Appeals Convenor's report sets out the background and other matters relevant to the appeal.

The appeal related to the content of condition 7, and specifically the requirement that no dieback-affected soil, mulch, fill or other material is brought into the area to be cleared. The basis for the objection is that Main Roads Western Australia proposes to undertake road construction using soil sourced from existing cleared areas (open paddocks) located near the project area. As these areas do not include dieback-susceptible species, Main Roads advised that they cannot be considered to be dieback free.

To meet the requirements of the current condition, Main Roads indicated this would necessitate the identification of a vegetated area that is dieback free, clearing that vegetation, and taking soil for road construction. This would, Main Roads submitted, increase the extent

of clearing, which Main Roads argued is inconsistent with condition 6 of the permit, which requires that clearing of native vegetation be minimised. Main Roads therefore requested that condition 7 be amended to remove reference to dieback.

In response to the appeal, DWER obtained additional officer-level advice from the Department of Biodiversity, Conservation and Attractions. This advice noted that the proposal design will ensure that drainage is directed away from dieback protectable areas and that the sourcing of dieback-free gravel comes at an environmental cost, which generally involves the removal of dieback-free native vegetation. On the basis of this advice, DWER formed the view that a requirement to source dieback-free soil is not required in this instance.

In addition, DWER recommended that further conditions be added to the permit to reflect the commitments made by Main Roads in relation to dieback management. In further discussions between the Office of the Appeals Convenor and DWER, it was clarified that additional conditions were intended to relate to commitments in the hygiene management plan, specifically relating to:

- construction of drainage controls;
- delineation of protectable areas, including on-site signage; and
- hygiene controls for movement of vehicles, soil etc.

In response to these issues, Main Roads expressed agreement to the revised wording for condition 7(b) and inclusion of conditions reflecting the above commitments. Main Roads also expressed the view that the revised wording of the dieback condition should be reflected in permits more broadly.

Noting the concurrence of Main Roads and DWER in respect to the content of the conditions of the permit, the Minister has determined to allow the appeal accordingly. The precise wording of the changes to condition 7 will be a matter for DWER to determine in giving effect to the Minister's decision under section 110 of the Act.

Main Roads' observations in respect to the application of dieback conditions more generally were noted, but were not within the scope of the current appeal. These are appropriately matters for consideration by DWER.

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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