



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST GRANT OF A CLEARING PERMIT CPS 7188/1 FISHERIES ROAD RESERVE, ORLEANS BAY ROAD RESERVE AND MERIVALE ROAD RESERVE, CONDINGUP AND CAPE LE GRAND

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section s101A(4) of the *Environmental Protection Act 1986* in objection to the grant of a clearing permit by the Department of Water and Environmental Regulation. 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)
Proponent:	Shire of Esperance
Proposal description:	Clearing of 11.64 hectares of native vegetation for the purpose of road upgrades and safety within the Fisheries Road Reserve, Orleans Bay Road Reserve and Merivale Road Reserve, Condingup and Cape Le Grand
Minister's Decision:	The Minister allowed the appeal in part
Date of Decision:	20 February 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 was advised that representatives from the Office of the Appeals Convenor met with the appellant to discuss the appeal.

After considering the appeal, the Appeals Convenor reported to the Minister under section 109 of the Act. This report sets out the background and other matters relevant to the appeal.

In objection to the grant of the clearing permit, the appellant raised a number of concerns related to impacts to biodiversity values, particularly fauna habitat and significant remnants of native vegetation in extensively cleared areas, adequacy of offsets and adequacy of permit conditions.

The appellant contested DWER's assessment of clearing principle (b) and submitted that the proposed clearing would destroy necessary habitat for indigenous fauna. In particular, the appellant indicated that the clearing would result in a loss of linkage between remnants of native vegetation and a loss of Carnaby's black cockatoo foraging habitat.

DWER determined the proposed clearing would reduce the width of the vegetation in the road reserve but would not fragment the ecological linkage. In regard to Carnaby's black cockatoo foraging habitat, the Minister was advised that similar habitat was likely to occur in nearby areas, the permit holder's survey did not identify use of the area by the cockatoos and the dieback and weed management condition addressed the impacts of edge effects.

For the abovementioned reasons, DWER considered the proposed clearing was unlikely to significantly impact either the ability of indigenous fauna to move through the landscape or the foraging habitat of the Carnaby's black cockatoo. Although the loss of Carnaby's black cockatoo foraging habitat was not considered to be a significant residual impact, the Minister noted that it was taken into account by DWER when assessing the acceptability of the proposed offset.

The appellant submitted that the proposed clearing would significantly impact the remaining areas of a threatened ecological community (TEC) and Beard vegetation associations (BVAs). The Minister noted that this view was consistent with DWER's determination that the application area was significant as a remnant of native vegetation in an extensively cleared area. Accordingly, after considering the permit holder's avoidance measures, DWER determined the proposed clearing would have a significant residual impact on the TEC and BVAs.

While noting the appellant's concerns regarding the number of variances to the clearing principles, the Minister considered that the Act does not preclude DWER from granting a clearing permit where the proposal will be at variance to the principles. In this case, DWER assessed the application and finding it to be at variance with various clearing principles, determined that the clearing permit could be granted subject to conditions to mitigate impacts which included the requirement of an offset to counterbalance the significant residual impacts.

The Minister acknowledged the appellant's view that offsets are not able to compensate the net loss of native vegetation. However, the Minister considered the Western Australian Offset Policy recognises that offsets may be applied to counterbalance the significant residual impacts that remain after avoidance and mitigation options have been considered. The Minister was advised that DWER assessed the offset proposal in accordance with published policies and guidelines and found it was acceptable on a like-for-like basis.

The Minister noted that the clearing permit required the permit holder to secure land containing native vegetation representative of the TEC and BVAs for conservation purposes. The details of the offset are publicly available on the Environmental Offsets Register which can be accessed via <https://offsetsregister.wa.gov.au/public/home/>.

Having considered the information presented, the Minister was of the view that DWER's decision to grant the clearing permit was justified and its determination that the significant residual impacts could be counterbalanced by the proposed offset was appropriate.

The Minister did, however, allow the appeal in part to the extent that the clearing permit is amended to include a condition to ensure auditability of permit conditions by requiring the permit holder to record and report on all activities undertaken pursuant to the permit.

The precise wording of the condition will be a matter for DWER to consider in giving effect to the change in accordance with section 110 of the Act.

The Minister otherwise dismissed the appeal.

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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