



Environmental Protection Act 1986

**Hon Stephen Dawson MLC**  
**Minister for Environment**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL AGAINST CONDITIONS OF CLEARING PERMIT CPS 7295/1 LOT 509 ON DEPOSITED PLAN 91683 AND UNNAMED ROAD RESERVE (PIN 11648538), HOWICK**

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

This document sets out the Minister's decision on appeals lodged under section 101A(3)(a) of the *Environmental Protection Act 1986* against the conditions of Clearing Permit CPS 7295/1 as granted 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](http://www.appealsconvenor.wa.gov.au).

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<b>Appellant:</b>	Wildflower Society of Western Australia (Inc)
<b>Permit Holder:</b>	Shire of Esperance
<b>Proposal description:</b>	Clearing of 1.9 hectares of native vegetation for the purpose of road widening
<b>Minister's Decision:</b>	The Minister allowed the appeal in part
<b>Date of Decision:</b>	26 March 2018

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

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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 this appeal the appellant's key concerns were in relation to DWER's assessment of the environmental impacts to the '*Proteaceae Dominated Kwongkan Shrublands of the Southeast Coastal Floristic Province of Western Australia*' threatened ecological community (Kwongkan TEC) and the adequacy of the permit conditions. Furthermore, the appellant proposed the inclusion of additional conditions related to avoidance and minimisation of clearing, rehabilitation of the application area and nearby degraded areas and reporting requirements.

The appellant submitted that native vegetation representative of the Kwongkan TEC should not be cleared regardless of size, especially if it is of high quality. The Minister noted that, in this case, the condition of the vegetation within the application area was identified as very good, based on the Keighery scale derived from the *Bushland Plant Survey: A Guide to Plant Community Survey for the Community*.

DWER determined that, although the proposed clearing was at variance with clearing principle (d), it was unlikely to result in any significant impact on the conservation status of the Kwongkan TEC. The Minister understood that this determination was based on the permit holder's flora and vegetation survey, relevant datasets and advice from the Department of Biodiversity, Conservation and Attractions (DBCA).

During the appeal investigation, the Appeals Convenor sought further advice from DBCA on the likely impacts of the proposed clearing on the Kwongkan TEC. DBCA supported DWER's determination, advising that the proposed clearing would not impact the representation of the Kwongkan TEC in the local area nor fragment a key ecological corridor due to the high amount of remnant native vegetation in the area. The Minister noted that DBCA also considered that the presence of dieback reduced the value of the Kwongkan TEC at this location.

Recognising the vulnerability of the Kwongkan TEC to dieback, DWER applied a condition requiring the permit holder to undertake dieback and weed control measures to mitigate the risk of dieback spreading to adjacent native vegetation.

In response to the appellant's concern that the clearing permit does not impose adequate conditions, DWER has recommended that the permit be amended to include conditions requiring rehabilitation of the application area, minimising clearing, and reporting on clearing activities undertaken.

However, in regard to the appellant's proposed condition related to rehabilitating nearby degraded areas, DWER advised that such a condition was equivalent to an offset and, in this case, an offset is not required as the proposed clearing would not result in a significant residual impact.

Having considered the information presented, the Minister was of the view that DWER's assessment of the clearing permit application was appropriate and its decision to grant the clearing permit subject to a condition requiring dieback and weed control to mitigate indirect impacts to adjacent native vegetation was justified.

The Minister has, however, allowed the appeal in part to the extent that the clearing permit is amended to include conditions to:

- require the permit holder to rehabilitate the application area once limestone extraction activities have been completed;
- avoid over-clearing by requiring that the permit holder avoid, minimise or reduce the amount of clearing; and
- ensure auditability of the conditions by requiring the permit holder to record and report on all activities undertaken pursuant to the permit.

The precise wording of these conditions 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.

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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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