



Environmental Protection Act 1986

Hon Reece Whitby MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST GRANT OF CLEARING PERMIT CPS 8830/1 LOT 12291 ON DEPOSITED PLAN 203116, BOORARA BROOK SHIRE OF MANJIMUP

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 above grant of 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.

Appellant:	Wildflower Society of Western Australia (Inc.)
Permit holder:	Gems Brook Pty Ltd
Proposal description:	Clearing of 8.94 hectares of native vegetation for the purpose of re-establishing the property for primary production
Minister's decision:	The Minister allowed the appeal in part
Date of decision:	15 June 2022

REASONS FOR MINISTER'S DECISION

An appeal was received from Wildflower Society of Western Australia (the appellant) against the grant of Clearing Permit CPS 8830/1, authorising the clearing of up to 8.94 hectares (ha) of native vegetation at the above location to facilitate primary production.

The permit was granted to Gems Brook Pty Ltd (permit holder) by the Department of Water and Environmental Regulation (the Department) and includes 3.27 ha of broadscale clearing and 5.67 ha of low impact and incidental clearing of riparian vegetation to facilitate non-native blackberry (*Rubus* sp.) control.

The appellant's concerns related primarily to the adequacy of the Department's desktop assessment, in particular the identification of conservation significant species and considered that before clearing commences, a flora survey and additional fauna surveys should be undertaken. The appellant also submitted that, given the net loss of vegetation from the property and its location adjacent to a conservation area, an offset should have been required.

Decision

Having considered the information available, including the Department's advice and the Appeals Convenor's report and recommendation, the Minister decided to allow the appeal in part, to the extent that the permit is amended to clarify that the clearing associated with blackberry control should be carried out with as little impact to native vegetation as possible. The changes to the conditions are set out in the Appeals Convenor's report, which the Minister has adopted.

These changes provide greater assurance that the values of the riparian vegetation that contain western ringtail possum habitat are protected, while at the same time allowing the permit holder to undertake the important work of controlling blackberry on the property.

The Minister otherwise dismissed the appeal. The full reasons for his decision follow.

Targeted flora survey

The appellant submitted that the Department's desktop assessment was incomplete and that a formal flora survey should be undertaken prior to any clearing. The appellant submitted that at least two additional flora species of conservation significance, including 'Priority 4' taxa *Stylidium leeuwinense* and *Gonocarpus pusillus*, may occur in the clearing footprint.

The Department's assessment identified eight flora species of conservation significance within 10 kilometres of the clearing footprint, comprising one threatened and seven priority flora taxa, including those noted in the appeal.

The Department's decision report sets out those species that it considered were 'possible' or 'likely' to occur within the clearing footprint on the basis of its desktop assessment. In this context, the Department advised that it considered *Stylidium leeuwinense* and *Gonocarpus pusillus* were unlikely to occur based on habitat preferences and did not discuss them in its decision report.

The Minister agreed with the Appeals Convenor that DWER had sufficient information on which to base its assessment. It follows that the Minister considered that further flora surveys are not required in this case.

Additional fauna surveys

The appellant raised concern about the lack of seasonality in the targeted fauna survey and habitat tree assessment, which was undertaken in summer. The appellant considered that additional fauna surveys at key times throughout the year should be undertaken prior to any clearing.

The Department identified eight fauna species of conservation significance that may utilise habitat within the clearing footprint, based on their habitat preferences, and requested a targeted fauna survey and habitat tree assessment to determine the likely presence or absence of these species. The Department noted that this report found that habitats within the clearing footprint were generally absent, unsuitable, or of poor quality for most of the species of concern.

The Department advised that the identification of habitat types and features for these species can be done at any time of year, and that multi-seasonal surveys would provide little additional context to the information already obtained. Based on the above, the Minister agreed with the Department that additional fauna surveys are not required in this case.

However, the Minister noted the Appeals Convenor's advice that because some of the riparian vegetation types within the clearing footprint have been identified as containing 'moderate' quality habitat for conservation significant fauna, including the critically endangered western ringtail possum and threatened black cockatoo species, the clearing is at variance to clearing principle (b).

Noting the Department's advice that intent of the permit is to ensure that clearing in the riparian zone (being the areas cross-hatched red in Figure 1 of the permit) is only to the extent necessary to control blackberry and therefore only results in minor incidental clearing of native vegetation, the Minister determined that the permit should be amended to ensure that the clearing impacts better reflect this intent.

The Minister adopted the Appeals Convenor's recommendations in that regard, with the final wording of the changes to the conditions being a matter for the Department to determine in giving effect to the decision under section 110 of the *Environmental Protection Act 1986*.

Offsets

The appellant considered that an offset should be required given the net loss of trees and vegetation from the clearing. The appellant also sought for the establishment of a vegetated linkage between riparian vegetation on the property and the adjacent State Forest (from areas 'A' to 'B') for the benefit of fauna.

Consistent with the *WA Environmental Offsets Policy (2011)*, offsets may be appropriate for significant residual environmental impacts, but not for minor environmental impacts. The Minister was advised that for clearing permits, offsets may be required where clearing is determined to be at variance with one or more of the biodiversity-related clearing principles [(a)–(f) and (h)] and a significant residual impact remains following application of the mitigation hierarchy.

The Department concluded that the clearing is at variance to clearing principle (f), may be at variance with clearing principle (h), and is not likely to be at variance with the remaining biodiversity-related clearing principles. For the reasons stated above, the Minister considered the clearing to be at variance to clearing principle (b) on the basis that the vegetation is part of a habitat for threatened fauna, including the critically endangered western ringtail possum.

Noting the clearing of riparian vegetation is low impact, and the changes the Minister has made to clarify that outcome, the Minister agreed with the Appeals Convenor that an offset is not required in this case.

In relation to the establishment of a vegetated linkage, the Minister was advised that there is unlikely to be material benefit in this as area 'A' is in completely degraded condition and is authorised to be cleared under the permit, and is separated from the adjacent State Forest by a road reserve. The Minister therefore considered a condition to this effect is not warranted.

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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