



Government of **Western Australia**  
Office of the **Appeals Convenor**  
Environmental Protection Act 1986

# Appeals Convenor's Report to the Minister for Environment

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Appeal objecting to the amendment of Western Power  
Purpose Permit CPS 1918/7



<b>Appellant</b>	Wildflower Society of Western Australia (Inc)
<b>Permit holder</b>	Electricity Networks Corporation T/A Western Power
<b>Authority</b>	Department of Water and Environmental Regulation (DWER)
<b>Appeal No.</b>	004/2021
<b>Date</b>	November 2021

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**Acknowledgement of Country**

The Office of the Appeals Convenor acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community.

We pay our respects to all members of the Aboriginal communities and their cultures, and to Elders past, present, and emerging.

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# 1 Executive summary

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## 1.1 Decision under appeal

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On 10 January 2008, Clearing Permit CPS 1918/1 was granted to Electricity Networks Corporation trading as Western Power (the permit holder) by the former Department of Environment and Conservation. The permit is a purpose permit which sets out a process for assessing and authorising the clearing of native vegetation for a range of defined activities across Western Australia, necessary for the development, upgrade, and maintenance of the State's energy network. Since its approval in 2008, the permit has been amended on six occasions, with CPS 1918/7 being the latest amendment.

On 24 June 2020, the Department of Water and Environmental Regulation (DWER) received a request from the permit holder to amend CPS 1918/6, under section 51K of the *Environmental Protection Act 1986* (EP Act). The amendment sought to extend the duration of CPS 1918/6 to February 2026 and to include an additional project activity type under condition 1(a).

DWER's reassessment determined that the levels of risk to the environment remained unchanged to those previously identified for CPS 1918/6 and previous iterations of the permit. DWER determined, however, to extend the duration of the clearing permit by 12 months only, to allow a potential further review of the permit conditions.

On 7 July 2020, the amended application was advertised for public comment for 21 days. No public submissions were received. Clearing permit CPS 1918/7 was granted on 2 February 2021.

## 1.2 Grounds of appeal and appellant concerns

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The amendment was appealed by the Wildflower Society of Western Australia (Inc) based on three grounds of appeal as summarised in Table 1.

**Table 1** Grounds of appeal

Ground	Main concerns the appellant submitted
1. Transparency and public review	<p>The entire clearing impact assessment (CIA), including the full reports of any surveys and field assessments, should be made publicly available.</p> <p>The permit holder should be required to provide a response to issues raised in submissions on CIAs.</p> <p>The clearing proposal should be improved based on issues raised in submissions.</p>
2. Cumulative impacts	<p>Incremental degradation is possible as there is no requirement to rehabilitate, revegetate or control weeds in areas that are 0.5 hectares or less.</p>
3. Environmental audits	<p>External audit reports should be made publicly available.</p> <p>If the permit is to terminate before the next audit is due, a final external audit should be required.</p>

### 1.3 Conclusions

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We conclude that DWER's decision to amend the clearing permit was justified.

However, we recommend that appeal grounds 1 and 3 should be upheld and that permit conditions should be amended to improve the transparency of clearing impact assessments and of environmental compliance audits.

We recommend that appeal ground 2 should be dismissed as this matter is adequately addressed by existing permit conditions.

### 1.4 Recommendations to the Minister

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Allow the appeal to the extent that the permit is amended to require the permit holder to:

1. Provide the full clearing impact assessment report when inviting submissions, including full reports of biological surveys or field assessments (with location data for conservation significant species omitted where necessary to maintain confidentiality).
2. Respond to submissions, noting where changes will be made to the proposed clearing in response to matters raised in submissions.
3. Make the reports of external environmental audits publicly available within 30 days of submission of the reports to the CEO.
4. Arrange a final external environmental audit if the permit is due to expire before the next audit is due.

Otherwise dismiss the appeal.

## 2 Reasons for recommendations

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### 2.1 Does the permit include sufficient provision for transparency?

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We conclude that the transparency of clearing impact assessments should be improved by amending the permit to require the permit holder to:

1. Provide the full clearing impact assessment (CIA) report when inviting submissions, including full reports of biological surveys or field assessments (with location data for conservation significant species omitted where necessary to maintain confidentiality).
2. Respond to submissions, noting where changes will be made to the proposed clearing in response to matters raised in submissions.

We explain our reasoning below.

#### ***The environmental assessment process under the permit***

The permit is a *purpose* clearing permit which sets out a *process* for assessing and authorising native vegetation clearing projects across the State. Under the permit, the permit holder is authorised to carry out the environmental assessments. Because the permit establishes a *process*, the permit conditions are relatively complex with multiple sub-conditions. We summarise the key permit conditions below.

Under permit condition 5, for each proposed clearing project, Western Power is required to carry out a *desktop study* assessing the clearing to be undertaken against each of the clearing principles in accordance with the DWER *Guide to the Assessment of Applications to Clear Native Vegetation*.

Under permit condition 6, if the outcome of the desktop study indicates that clearing is likely to be *seriously at variance*, *at variance* or *may be at variance* to one or more of the clearing principles, or where there is *insufficient information* to determine the extent of variance with one or more of the clearing principles, Western Power must conduct a *clearing impact assessment* (CIA). This must include a biological survey carried out in accordance with the EPA technical guidance documents on flora and vegetation surveys and on terrestrial fauna. Western Power must also carry out vegetation mapping, and “any other surveys and field assessments required to determine the impacts of the clearing on any environmental value protected by the clearing principles”.

Permit condition 6(i) requires that, where the CIA indicates that clearing is *likely to be at variance* or *may be at variance* with one or more of the clearing principles, the permit holder must invite a submission from DWER. Condition 6(j) requires Western Power to apply to DWER for a separate clearing permit if the CIA indicates that clearing is *likely to be seriously at variance* with one or more of the clearing principles.

Also, where the CIA indicates that clearing is *likely to be at variance* or *may be at variance* with one or more of the clearing principles, under permit condition 7(a), Western Power is required to invite submissions from a specified list of interested parties, including “any environment or community groups that the permit holder reasonably considers may have an interest in the clearing that is proposed to be done”. The permit requires Western Power to allow at least 21 days for submissions.

More information on the approval process under the permit is in section 3 of this report.

### ***Provision for public input***

For clearing projects assessed under the permit, the only opportunity for input by interested parties is at the point where Western Power is required to invite submissions. There is no provision for appeals. By contrast, if Western Power was required to apply for a separate clearing permit for each clearing project, there would be two opportunities for interested parties to have input: at the start of the process (when the clearing proposal, normally including full survey reports, would be advertised by DWER for public comment) and at the end of the process through appeals.

### ***The permit only requires summary information to be provided to submitters***

The appellant's first concern under this appeal ground is that: "The entire clearing impact assessment (CIA), including full reports of any surveys and field assessments, should be made publicly available either at the time that public submissions are sought or as soon as the CIA is available".

Permit condition 7(c) specifies the information that must be provided to parties from whom Western Power invites submissions. This includes:

- a description of the land and project activities, and the area to be cleared (including map),
- how the proposed clearing is considered to be at variance with the clearing principles,
- "an outline of any proposed vegetation management plan, rehabilitation, revegetation, dieback management plan or offset proposal"; and
- "a summary of the results of any surveys and field assessments if these surveys have been carried out at the time of seeking submissions."

The permit therefore requires Western Power to provide only "outline" or "summary" information rather than a full CIA with the full reports of the accompanying surveys and field assessments.

In its advice under on the appeals, DWER acknowledged that "requirements to enhance transparency and further public review of the assessments conducted by the permit holder would support the improvement of clearing proposals under the clearing permit". DWER recommended that the permit be amended to include a requirement to "make the CIA publicly available".

In considering this matter, we concur with DWER that enhancing requirements for transparency and public review would improve the environmental assessment process under the permit. However, given that, under the permit, the only opportunity for public input is when Western Power calls for submissions, it is particularly important that interested parties have access to the full CIA to be able make informed comment. Consistent with requirements for DWER-assessed clearing permits, this should include the full reports of any surveys and field assessments, and not just "a summary of the results of any surveys and field assessments" as presently required by the permit.

The appellant has asked that the full information be made publicly available "either at the time that public submissions are sought or as soon as the CIA is available". However, in our view, to allow the public to make informed comment, this information should be made available when submissions are invited. This would again be consistent with requirements for DWER-assessed clearing permits.

We therefore conclude that the permit should be amended to include a requirement to provide the *full* clearing impact assessment report when seeking submissions, including *full* reports (as opposed to summaries) of biological surveys and field assessments.

Western Power has indicated it is amenable to making full survey information available but that, consistent with Department of Biodiversity Conservation and Attractions policy, some biological survey data needs to be kept confidential to avoid revealing the locations of conservation significant species. This is to avoid the risk of third parties interfering with or removing rare native flora or wildlife. We would therefore conclude that the amended condition should include a proviso that, when reports of biological surveys are made publicly available, location data for conservation significant species should be omitted where necessary to maintain confidentiality.

### ***The permit does not require responses to submissions***

The appellant's second concern under this ground of appeal is that the permit should be amended to include requirements for Western Power to provide responses to submissions and to improve clearing proposals where issues have been identified in submissions.

As noted above, where the CIA indicates that clearing is *likely to be at variance* or *may be at variance* with one or more of the clearing principles, under permit condition 7(a), Western Power is required to invite submissions from a specified list of interested parties, including "any environment or community groups that the permit holder reasonably considers may have an interest in the clearing that is proposed to be done". The permit requires Western Power to allow at least 21 days for submissions.

However, the permit does not currently require Western Power to provide a response to submissions or to indicate how clearing projects will be modified, where required, based on points raised in submissions. This contrasts to procedures under DWER-assessed clearing permits where the applicant's responses to submissions are published as part of DWER's assessment report.

In its advice on the appeal under section 106 of the EP Act, DWER has recommended the permit be amended to include a requirement for the permit holder to "include in the CIA a summary of all submissions received and a statement responding to each submission".

We concur that the permit should be amended to require responses to submissions, which would be consistent with processes under DWER-assessed clearing permits. To properly address the appellant's concerns, we consider that there should be an explicit requirement not just to provide a statement responding to submissions but specifically to note where changes will be made to the proposed clearing in response to matters raised in submissions.

We conclude therefore that the permit should be amended to include a requirement to provide responses to submissions, noting where changes will be made to the proposed clearing in response to matters raised in submissions.

Western Power has advised that it supports this proposed amendment and that it plans to upgrade its website to allow it to publish material for community consultation purposes, including CIA documents, survey reports, submissions, and responses to submissions.

## **2.2 Is there a risk of incremental degradation of vegetation?**

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We conclude that this matter is already addressed by the existing permit conditions. We explain our reasoning below.

## **Revegetation**

The appellant is concerned that incremental degradation is possible under the permit as there is no requirement to revegetate areas that are 0.5 hectares (ha) or less.

We note that, under permit condition 10(i), Western Power is *not* required to submit a Revegetation Plan where the CEO advises so in writing or where:

“...the area to be *revegetated* and *rehabilitated* is:

- (i) 0.5 hectares or less;
- (ii) not located in an *ESA*<sup>1</sup>; and
- (iii) is either not or not likely to be at variance with all of the *clearing principles*”.

However, condition 10(a) applies in all cases, irrespective of the area disturbed and irrespective of whether a Revegetation Plan is required. This condition stipulates that:

“The Permit Holder must *revegetate* and *rehabilitate* areas cleared for *temporary works* as soon as possible, and within 24 months from when the area is no longer required for the purpose for which it was cleared”.

This condition requires the permit holder to rehabilitate and revegetate all areas cleared for “temporary works”<sup>2</sup>. The only exceptions are as stipulated in condition 10(b):

“The Permit Holder is not required to *revegetate* and *rehabilitate* an area specified in condition 10(a) of this Permit if:

- (i) the CEO advises so in writing; or
- (ii) the Permit Holder has scheduled to use that cleared area for another project activity within 24 months of that area no longer being required for the purpose for which it was originally cleared under this Permit”.

## **Weed control**

The appellant has also raised concern that the permit does not require weed control in areas of 0.5 ha or less. As noted above, a Revegetation Plan is not required in some cases where the area disturbed is 0.5 ha or less. However, condition 11(h) contains the following requirements for weed control which apply in all cases, irrespective of the area disturbed:

“At least once in each 12 month period for five years from the commencement of clearing for a *project activity*, the Permit Holder must remove or kill any *weeds* growing within areas cleared under this Permit, where those *weeds* are likely, on the advice of an *environmental specialist*<sup>3</sup>, to spread to and result in environmental harm to adjacent areas of native vegetation that are in *good or better condition*”.

The permit therefore requires weed control in all cleared areas (regardless of size or location) where, in the opinion of an environmental specialist, there is a risk of weeds spreading to adjacent areas. In addition, the permit includes a comprehensive definition for the term “weed”, being “any plant listed as a declared or environmental weed, or which is not

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<sup>1</sup> “ESA” is defined in the permit as “an environmentally sensitive area, as declared by a notice under section 51B of the *Environmental Protection Act 1986*.”

<sup>2</sup> “Temporary works” are defined in the permit as works associated with a *project activity* that are temporary in nature including, but not limited to, decommissioning, tracks, spoil areas, site offices, storage areas, laydown areas, *project surveys* and *pre-construction activities*.”

<sup>3</sup> “Environmental specialist” is defined in the permit as “a person who is engaged by the Permit Holder for the purpose of providing environmental advice, who holds a tertiary qualification in environmental science or equivalent and has experience relevant to the type of environmental advice that an environmental specialist is required to provide under this permit.”

indigenous to the area concerned”. This provides confidence that all types of weed will be controlled.

For these reasons, we conclude that this ground of appeal should be dismissed as the appellant’s concerns are already addressed by the existing permit conditions. In its report under section 106 of the EP Act DWER reached the same conclusion.

## **2.3 Should environmental audit requirements be strengthened?**

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We conclude that requirements for external audits should be strengthened by amending condition 17 as follows:

1. the permit holder to make the reports of external environmental audits publicly available within 30 days of submission of the reports to the CEO; and
2. the permit holder to arrange for a final external audit to be conducted if the clearing permit is likely to terminate before the next external audit.

We explain our reasoning below.

### ***Existing environmental audit requirements under the permit***

Permit condition 17 requires Western Power to commission biennial external environmental compliance audits and to submit the audit reports to the CEO of DWER. The condition requires the audits to be carried out by an external certified environmental auditor and, in the “Advice” section of the permit, it is specified that the auditor will determine the permit conditions against which the audit is conducted

### ***Audit reports are not available to the public***

The appellant’s first concern under this ground of appeal is that the permit should be amended to require Western Power to make external audit reports available to the public.

There is currently no requirement for the audit reports to be made publicly available.

As previously noted, in its advice under section 106 of the EP Act, DWER acknowledged that “requirements to enhance transparency and further public review of the assessments conducted by the permit holder would support the improvement of clearing proposals under the clearing permit”. DWER recommended that the permit be amended to require the reports of external environmental audits to be publicly available within 30 days of submission of the reports to the CEO.

We concur with DWER’s recommendation.

### ***Requiring a final audit***

The appellant’s second concern under this ground of appeal is that, if the permit is to terminate before the next audit is due, a final external audit should be required.

In its advice under section 106 of the EP Act, DWER has recommended that the permit be amended as advocated by the appellant. We concur, noting that this amendment would ensure independent audits are carried out over the whole life of the permit which is important both for regulatory compliance and for public transparency.

Western Power has indicated that it would also support both these amendments.

### 3 Overview of the approval process under the permit

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The permit is a purpose permit which sets out a *process* for assessing and authorising native vegetation clearing across the State. The permit provides three “pathways” through which clearing may be authorised as outlined below.

#### ***Pathway 1: self-assessment based on desktop study only***

Under pathway 1, clearing may be undertaken with only assessment by Western Power where a desktop study determines that the clearing is either *not at variance* or *not likely to be at variance* with the clearing principles.

#### ***Pathway 2: clearing impact assessment and DWER review***

Under pathway 2, if the outcome of the desktop study indicates that clearing is likely to be *seriously at variance*, *at variance* or *may be at variance* to one or more of the clearing principles, or where there is *insufficient information* to determine the extent of variance with one or more of the clearing principles, Western Power must conduct a clearing impact assessment (CIA), including biological surveys, and must seek submissions. However, there is currently no requirement for Western Power to respond to submissions.

#### ***Pathway 3: clearing excluded from the permit***

The following types clearing cannot be authorised under the permit:

- the clearing is likely to be seriously at variance with one or more of the *clearing principles*;
- the clearing and the associated effect on the environment would be inconsistent with any approved policy (as defined in section 3 of the *EP Act*);
- those *project activities* are incorporated in any *proposal* that is *referred* to and assessed under Part IV of the *EP Act* by the *EPA*;
- the clearing may have a significant *impact* on a *matter of national environmental significance* under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), or
- the clearing has been referred to the *EPA* (unless the *EPA* has decided not to assess the proposal and any appeals on that decision have been dismissed)

## **Appendix: Appeals process**

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### **The Minister assesses the merits of a decision**

Environmental appeals follow a merits-based process. This means the Minister can consider all the relevant facts, legislation and policy aspects of the decision and decide whether it was correct and preferable.

### **We report to the Minister, as does the decision-making authority**

To decide an appeal's outcome, the Minister for Environment must have a report from both:

1. the Appeals Convenor [see section 109(3) of the EP Act], and
2. the authority that originally made the decision under appeal [see section 106(1)].

To properly advise the Minister in our report, our investigation included:

1. reviewing the appeal,
2. reviewing the report DWER, as the decision-making authority, provided to the Minister under section 106(1); and
3. meeting with the appellant and with the permit holder.