



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

Appeals Convenor's Report to the Minister for Environment

Appeal objecting to the amendment of Clearing Permit
CPS 6808/3 Various lots Naturaliste, Cape Naturaliste Road
reserve and Sheens Road reserve, Dunsborough



| | |
|----------------------|---|
| Appellant | Urban Bushland Council WA Inc |
| Permit Holder | City of Busselton |
| Authority | Department of Water and Environmental Regulation (DWER) |
| Appeal number | 008 of 2021 |
| Date | September 2021 |

Office of the Appeals Convenor

08 6364 7990 or TTY 13 36 77 (National Relay Service)

admin@appealsconvenor.wa.gov.au

www.appealsconvenor.wa.gov.au

221 St Georges Terrace

Perth WA 6000

Appeals Convenor

Emma Gaunt

Investigation Officer

Nikki Pursell

This report

© 2021 Office of the Appeals Convenor, Western Australia.

All rights reserved. This material may be reproduced in whole or in part provided the source is acknowledged.

Cover image source: Pete Battye, Real Image Photography

Please contact us if you need the report in a different format.

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.

Contents

| | | |
|----------|--|-----------|
| 1 | Executive summary | 1 |
| 1.1 | Decision under appeal | 1 |
| 1.2 | Grounds of appeal and appellant concerns | 2 |
| 1.3 | Key issues and conclusions | 2 |
| 1.4 | Recommendation to the Minister | 3 |
| 2 | Reasons for recommendation | 4 |
| 2.1 | Has DWER adequately assessed the values? | 4 |
| 2.2 | Is clearing appropriate in the Meelup Regional Park? | 9 |
| 2.3 | Other matters | 12 |
| 3 | Supporting information | 14 |
| 3.1 | Site description | 14 |
| 3.2 | Clearing application history | 15 |
| 3.3 | Permit conditions | 16 |
| | Appendix 1 Appeal process | 17 |

1 Executive summary

1.1 Decision under appeal

The City of Busselton (the permit holder) holds a purpose clearing permit to clear up to 2 hectares (ha) of native vegetation for the purpose of constructing a mountain bike trail network, on various lots in the Meelup Regional Park, adjacent to Dunsborough townsite (Figure 1).



Figure 1 Proposed clearing area (in yellow) authorised by CPS 6808/3 (DWER Decision Report CPS 6808/3) and location in Western Australia (Whereis.com)

Clearing permit CPS 6808/1 was granted on 11 February 2016 and amended (CPS 6808/2) on 16 February 2017 to alter the clearing footprint among other things.

On 3 February 2021, the permit holder submitted a request to amend the permit again, to extend the duration of the permit to 12 March 2023. The reason for the extension was due to the proposed clearing being delayed for remediation works to a contaminated site within the application area.¹ See Section 3.2 for more detail on remediation works.

The Department of Water and Environmental Regulation (DWER) granted the amended permit (CPS 6808/3) with an extended duration on 8 March 2021.

¹ Classified under section 13 of the *Contaminated Sites Act 2003*

1.2 Grounds of appeal and appellant concerns

In March 2021, the Urban Bushland Council WA Inc (the appellant) lodged an appeal regarding the decision to amend the permit above.

In summary, the appellant opposed the proposed clearing, the purpose of the clearing (construction of trails), and the proposed use of the trails for mountain biking.

The grant of the permit is not under appeal. However, the appellant's concerns about the proposed clearing are considered within the scope of the appeal right, as the previous permit has expired, and the effect of the amendment is a renewed right to clear. We have broadly grouped the appellant's concerns into 3 grounds, as set out in Table 1.

Table 1 Grounds of appeal

| Ground | Main concerns the appellant submitted |
|--|---|
| Assessment | <p>The extent of clearing is likely to be more than 2 ha.</p> <p>The application area is intact vegetation with high biodiversity and conservation value.</p> <p>Significant fauna, and diverse flora species exist in the application area and will be impacted.</p> <p>The clearing will result in land degradation, spread of dieback and a reduction of vegetation condition.</p> |
| Suitability of clearing in this location | <p>The application area is within an A Class Reserve and both the clearing and purpose of the clearing conflicts with conservation objectives of the Reserve.</p> <p>The old tip site is a better location for mountain bike trails.</p> |
| Use and necessity of trails | <p>Mountain biking will impact the values, result in loss of biodiversity, killing fauna and spreading dieback.</p> <p>Additional trails are unnecessary as there are already sufficient trails.</p> |

The appellant's concerns about the use and the necessity of the proposed trails for mountain biking are considered outside the scope of the appeal and are briefly discussed in Section 2.3 of this report.

1.3 Key issues and conclusions

The appeal relates to DWER's decision to extend the right to clear for a further two-year period, and therefore the key question for the appeal investigation to determine is, should the amendment have been made? The appeal investigation found that to answer this question there are 2 determinative issues, which are summarised below. Section 2 provides our further details about our reasons and supporting information is provided in Section 3.

Has DWER adequately assessed the values?

In summary, our investigation concluded that DWER adequately assessed the application, identified the values present; and considered the potential impacts of the clearing.

DWER's assessment of the application against the clearing principles concluded that the proposed clearing may be at variance to clearing principle (h) - likely to have an impact on the environmental values of any adjacent or nearby conservation area; and was not likely to be at variance to the other clearing principles. DWER determined that the impacts of the

proposed clearing were unlikely to lead to significant impacts to environmental values, subject to management conditions. In this regard, we note as a result of the appeal DWER has recommended an additional condition be included on the permit to require slow progressive clearing to allow fauna to move to adjacent vegetation.

We consider that DWER's original assessment in 2016 was informed by relevant and appropriate information, including Flora and Fauna surveys and a dieback assessment. In 2021, DWER reviewed the application to amend the permit, including a desktop assessment of the previous surveys, reports and supporting information, as well as the current GIS databases and concluded that the extent of impacts and risks to environmental values has not changed since the previous assessment of CPS 6808/1 (2016) and CPS 6808/2 (2017).

Is clearing appropriate in Meelup Regional Park?

While acknowledging the appellant's concerns about the suitability of the clearing in a Class 'A' Reserve, we consider that the proposed clearing is not inconsistent with the intent of the area and purpose of the Meelup Regional Park.

We note that the Meelup Regional Park is managed in accordance with the Meelup Regional Park Management Plan. The Meelup Regional Park Management Plan characterises the Park into zones based on their priority values and management activities. The application area is within a zone identified as having high conservation significance where protection of natural values is the highest priority for management, but appropriate nature-based recreation is encouraged and catered for.

We also note that the zone has undergone historical disturbance from a landfill site, gravel pits and ongoing unlawful clearing for mountain biking. Given the evidence of unlawful clearing currently occurring, we consider the formalisation and consolidation of access can lead to an improved environmental outcome in the Meelup Regional Park, which is consistent with the planning objectives for this zone.

1.4 Recommendation to the Minister

We conclude that DWER's decision to amend the permit was justified, however we recommend that, in accordance with DWER's advice, an additional condition be added to the permit to require slow, progressive clearing to allow fauna to move into adjacent vegetation ahead of the clearing activity.

We otherwise recommend that the appeal be dismissed.

2 Reasons for recommendation

In summary, we note that it is DWER's role to assess the proposed clearing including the identification of environmental values and the potential significance of impacts from clearing, and its consistency with relevant planning instruments and other matters.

In this case, we conclude that DWER adequately assessed the application, identified the values present and considered the potential impacts of the clearing, including having regard for the permit holder's avoidance and mitigation measures.

Meelup Regional Park is managed in accordance with the Meelup Regional Park Management Plan, which identifies the application area as having high conservation significance where protection of natural values is the highest priority for management but can accommodate appropriate nature-based recreation.

We consider that DWER's decision to amend the permit was generally justified subject to conditions. We agree with DWER's recommendation that an additional condition be applied to the permit to minimise potential direct impacts to ground-dwelling fauna from the clearing. We otherwise recommend that the appeal be dismissed.

The reasons for our conclusion is below.

2.1 Has DWER adequately assessed the values?

The appellant raised concerns about the significant environmental values of the area, the impact of the clearing on these values, and the adequacy of the mitigation measures proposed.

Information DWER relies on to inform its assessment

On 11 February 2016, DWER granted CPS 6808/1 to the permit holder to authorise the clearing of up to 2 ha of native vegetation, to construct a mountain bike trail. Further detail on the history of the clearing permit is in Section 3.

DWER's 2016 assessment of CPS 6808/1 was informed by:

- Review of relevant GIS databases and mapping
- The permit holder's application and supporting information, by Aurora Environmental (2015)
- Level 2 Flora and Vegetation surveys undertaken by Onshore Environmental Consultants (2013) and Webb (2013)
- A Level 2 Fauna survey by NGH Environmental Pty Ltd (2015)
- A Dieback assessment in November 2014 by Dieback Treatment Services (2014)

In considering the application to amend the permit in 2021, DWER advised that it undertook an additional desktop assessment using current GIS databases in accordance with *A guide to the assessment of applications to clear native vegetation* (2014) and *Procedure: Native vegetation clearing permits* (2019). The findings of the desktop assessment were reviewed against the relevant available information, and DWER determined that the assessment against the clearing principles and the extent to which the impacts of the clearing authorised

under the permit present a risk to environmental values, remain unchanged from the previous assessments of CPS 6808/1 and CPS 6808/2.²

Extent and nature of the clearing

DWER's assessment identified that the proposed clearing would be long and narrow and limited to understorey vegetation only, with overstorey and habitat trees retained.

DWER advised that in its assessment of the application, it had regard for the avoidance and minimisation measures proposed by the permit holder to reduce the extent and impact of the clearing, which are summarised as:

- the positioning of trails within an area of the Park that had been subject to previous disturbance through gravel extraction, landfill activities and the introduction of dieback
- the arrangement of the trail network to include an area of the Park that had been degraded from existing, unauthorised use of mountain bikes
- the composition of the trail network to ensure tread widths were only to the extent necessary for the safe use of the trails, i.e. a tread width of 0.9 to 1.5 metres for general trails and three metres for corners and bends, and
- the commitment that clearing within the application area would be limited to understorey species only and that all overstorey vegetation would be retained.³

The constructed trail will be approximately 4.4 km long, with a tread width of between 0.9 m and 1.5 m, but the majority being 1 m wide. Some locations require a 3 m disturbance to construct corners and berms. Additionally, 11.2 km of existing trail will be widened by 1 m. A maximum tread width of 2 m has been applied to all new trails, and an additional 1 m to all existing trails, in order to calculate the extent of the total clearing footprint for 2 ha, however this is likely to be a conservative estimate and the actual clearing required is likely to be less than 2 ha.⁴

DWER identified the environmental values

The appellant submitted that the application area is within a regional park and a broader biodiversity hotspot, which has high conservation value.

The appellant contends that the application area provides habitat for fauna, and fauna such as western ringtail possums, black cockatoo, quenda, and reptiles are present. They submitted that these species will be impacted by the clearing and the mountain bike use:

Fauna such as Quenda and reptiles are generally earth bound and risk being hit, injured, killed and disturbed.⁵

DWER advised that it acknowledges that the Meelup Regional Park (the Park) is likely to provide suitable habitat for a variety of fauna species. The understorey vegetation may provide suitable habitat for quenda, Dell's skink, and the Coastal plains skink (all ground-dwelling fauna), however, it considered:

the vegetation proposed to be cleared is unlikely to provide significant habitat for these species, given the extent of the proposed clearing and the presence of an expansive tract of suitable habitat directly adjacent to the Application Area.⁶

² DWER (2021) Appeal Report CPS 6808/3, page 6

³ DWER (2021) Appeal Report CPS 6808/3, page 3

⁴ Aurora (2015) and City of Busselton Pers com (2021)

⁵ Urban Bushland Council (2021) Appeal against amendment of CPS 6808/3, page 2

⁶ DWER (2021) Appeal Report CPS 6808/3, page 4

DWER further advised that it considered that due to the nature of the clearing – limited to understorey species only and retention of all overstorey vegetation – in conjunction with the fauna management conditions (discussed more below), the proposed clearing was unlikely to result in the loss of suitable habitat for black cockatoo species (*Calyptorhynchus banksii naso*, *Calyptorhynchus baudinii*, and *Calyptorhynchus latirostris*) or arboreal fauna, including western ringtail possum (*Pseudocheirus occidentalis*), south-western brush-tailed phascogale (*Phascogale tapoatafa wambenger*) and western false pipistrelle (*Falsistrellus mackenziei*).

Noting DWER's advice that the assessment undertaken in 2016 remained unchanged⁷, we sought further advice from DWER in relation its 2021 re-assessment, including the potential impacts to western ringtail possum as the conservation status of the species has changed since 2016. In response, DWER acknowledged the change in its conservation status from vulnerable to critically endangered. However, it advised that this change in status did not alter the outcome of its assessment, as suitable habitat was not being removed because of the clearing, overstorey were being retained, and fauna management conditions were included on the permit.

Despite concluding that the assessment was unchanged, DWER acknowledged that, having regard for the concerns of the appellant, there is a risk of direct impacts to ground-dwelling fauna if they are present during the clearing activities. DWER therefore recommended that a condition requiring slow, progressive clearing be added to the permit, to allow fauna to move into adjacent vegetation ahead of the clearing activity. We agree that a condition of this type should be included on the permit.

DWER considered the potential impacts of the clearing

The appellant contends that the clearing will reduce the vegetation condition to 'degraded' condition. The appellant also raised concerns about the increased dieback risk resulting from the construction of the trails:

...given the extent of dieback both in the SW [Southwest WA] and in the Meelup Regional Park, allowing km of mountain bike trails is only adding to the threats to susceptible plants of dieback...

In a meeting with the appellant, the appellant submitted that soil would be imported to build the trail and this may bring dieback into the area.

Vegetation condition

The vegetation condition was determined via a Level 2 Flora and Vegetation Survey and identified as ranging from Excellent to Completely Degraded. DWER advised that 25% was Excellent to Good, 70% was Good to Degraded, and 5% was Completely Degraded, with no native species present. 95% of the area was identified as low forest over open scrub, with 5% devoid of native vegetation and supporting introduced weed species as low shrubs and herbs.⁸

The investigation notes that DWER's assessment of the application identified that the application area has been subject to historical disturbance through gravel extraction and landfill activities and existing unauthorised use of mountain bikes.

In response to the appeal, DWER acknowledged that the proposed clearing for mountain bike trails will impact the condition of the vegetation within the application area, including

⁷ DWER (2021) Appeal Report CPS 6808/3, page 3

⁸ DWER (2016) Decision Report CPS 6808/1, page 2

areas of Excellent to Good condition vegetation, as these areas will be 'cleared' (black cockatoo habitat trees and other overstorey vegetation excepted) for the trails. However, DWER noted that the 25% of Excellent to Good vegetation in the application area constitutes 0.5 ha.

DWER concluded that on review, it considers that the impact on vegetation condition would not be significant based on the limited extent of Good to Excellent vegetation that would be impacted, in combination with measures for preventing the spread of dieback into uninfected areas (see below).

Dieback

DWER's assessment identified dieback as a potential risk in its consideration of the application against clearing principle (h). DWER determined that the proposed clearing may impact the environmental values of the Park through direct clearing and the introduction and spread of weeds and dieback. However, it determined that the impacts are not likely to be significant given the application area is already weed and dieback infested. To minimise any impact on the adjacent remnant vegetation, DWER imposed a management condition related to weeds and dieback practices (condition 7 of the permit, see Section 3).

DWER's finding was informed by the Dieback Treatment Services (2014) assessment of dieback within the Park, including the application area. Dieback Treatment Services (2014) found Management Zone 6, the location of the application area, to be infested with *Phytophthora* most likely resulting from previous disturbances, such as extensive gravel extraction.

The appeal investigation notes that in 2017 Dieback Treatment Services re-checked the extent of dieback in the Park and determined that the areas infested were largely the same as the previous assessment (see Figure 2):

Phytophthora cinnamomi distribution was predominantly unchanged from the last interpretation in 2013 with minor adjustments made to the existing disease edge based on fresh indicator species deaths. In some instances, reclamation of small sections of previously classified infested areas was made possible due to increased interpreter confidence.⁹

⁹ Dieback Treatment Services (2017) Dieback Interpretation Report Meelup Regional Park, page 10

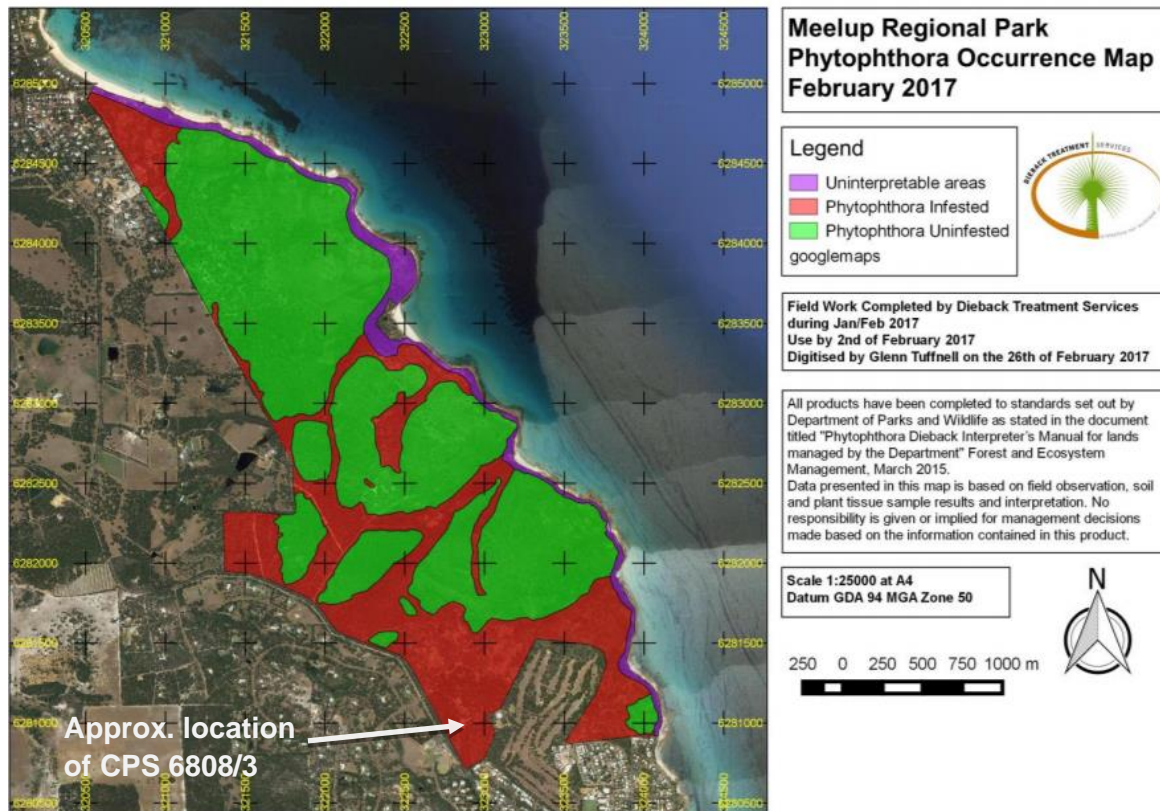


Figure 2 Meelup Regional Park Dieback occurrence map as assessed in 2017, including the location of the application area (Dieback Treatment Services, 2017)

In response to the appeals, DWER reiterated that the application area is already infested with dieback, and that it considered it was sufficiently buffered from adjacent uninfested remnant vegetation:

The Department notes that the entirety of the Application Area was identified by dieback interpretation mapping as either being dieback infested or as being dieback uninfested but unprotectable from future infestation.

The designed network of mountain bike trails remains wholly within the infested and unprotectable areas. There is no movement of mountain bikes proposed between infested and uninfested protectable areas along the designated trails. Further, from the dieback interpretation mapping, the Department estimates that there is approximately 75 metres of vegetation between the proposed mountain bike trails and the nearest uninfested protectable area. The Department considers that this distance is likely to act as a buffer for the uninfested protectable area, reducing any risk of spread of dieback between the mountain bike trails and uninfested areas in the greater Meelup Regional Park.

In 2021, DWER reassessed the application on receipt of the request to amend the permit. Regarding dieback risk specifically, DWER advised:

The mapping contained within the dieback interpretation report was undertaken in 2013. The Department of Biodiversity, Conservation and Attractions' (DBCAs) *Corporate Policy Statement No. 3: Management of Phytophthora Disease* (2015) states that eradication of dieback without the destruction of all flora in the infested area is costly and unlikely. Given the above, the Department considers that the

infested status of the Application Area is not likely to have changed since the original mapping in 2013.¹¹

The investigation also notes that in 2016 the permit holder requested condition 7b be amended to remove the requirement to ensure no dieback affected soil is brought into the application area. In its assessment of the amendment application, DWER restated that it considered that the proposed clearing may impact adjacent environmental values through the introduction of dieback, and that condition 7b should remain on the permit to minimise this risk. We therefore consider that the permit includes mitigation measures with the intent of managing the spread of dieback.

In addition to the permit conditions, the Disease Management Plan contained within the Meelup Regional Park Management Plan includes provisions for preventing the spread of dieback into uninfested areas, including:

- no development of new tracks between infested and uninfested areas
- restricting vehicle movement throughout the Park by limiting movement to designated trails and erecting signage and fencing between infested and uninfested areas, and
- introducing dieback control measures on trails, i.e. cleaning stations.¹²

DWER concluded:

While the Department acknowledges that the use of the mountain bike trails may facilitate the spread of dieback within the infested areas, it considers that the design of the mountain bike trails and the provisions of the Disease Management Plan will assist in mitigating the risk of spreading dieback into uninfested areas. Given this mitigation and the weed and dieback conditions placed on the Permit, it is not considered likely that the use of trails will result in the spread of dieback to uninfested areas or significantly impact on the environmental values of the greater Park.

2.2 Is clearing appropriate in the Meelup Regional Park?

The appellant raised concerns about the location of the clearing and whether a Class 'A' Reserve was a suitable location for the activity. The appellant submitted that the old tip site would be a more appropriate location for the trails.

Consideration of alternative locations within the Park

Regarding the appellant's contention that other sites may be more appropriate, the investigation notes DWER's guidance document, 'A guide to the assessment of applications to clear native vegetation' (2014), which assists guides the considerations for applications for clearing, including the mitigation hierarchy and reasonable attempts to avoid impacts. DWER's role is to assess the proposed clearing including the identification of environmental values of the application area and the potential significance of impacts from clearing, and its consistency with relevant planning instruments and other matters.

As discussed in Section 2.1, the DWER assessed the values of the area and the potential impacts of the clearing. DWER determined that given the nature of the clearing and subject to management conditions, the proposed clearing was not likely to lead to an unacceptable risk to environmental values of the application area.

¹¹ DWER (2021) Appeal Report CPS 6808/3, page 6

¹² DWER (2021) Appeal Report CPS 6808/3, page 6

Having addressed the assessment above, the investigation now considered the consistency of the proposed clearing with relevant planning instruments.

Consistency with the Meelup Regional Park Management Plan

The appellant raised concern in relation to the suitability of clearing in a Class 'A' Reserve and submitted:

Meelup Regional Park is an A Class Reserve, vested for the purpose of conservation and recreation...

The UBC maintains that the 'conservation' part of 'conservation and recreation' would not include clearing understorey and the 'recreation' part would only include activities not destructive of the natural environment...

... active recreation by mountain biking is total unacceptable in a regional park¹³.

The investigation notes that the Park is managed by the City of Busselton in accordance with the Meelup Regional Park Management Plan, which was approved by the Minister for Lands in 2010.

DWER advised that the permit holder's application form for CPS 6808/1 noted that:

The Department of Lands has advised [the City of Busselton] that the use of Meelup Regional Park for mountain biking is ancillary to the purpose of Conservation and Recreation.¹⁴

The investigation also notes that the vision statement for the Park is:

To manage the area for conservation and environmental enhancement and allow recreation and other uses of the Park to occur to the extent that they do not impair the conservation values of the Park.¹⁵

The Management Plan further states:

there are no mountain bike trails within the Park at the present time [2010], but these may be considered in the future.

Regarding the application area's location within the Park, DWER advised that the Management Plan categorises the Park into 23 'Management Zones', based on the appropriate uses and priority management activities for each zone. The application area is located within the Natural Environmental Uses zone (zone 6), which is defined as an area of high conservation significance where protection of natural values is the highest priority for management, but appropriate nature-based recreation is encouraged and catered for.

The permit holder's application states:

Management Zone 6 (the application area) is 56 ha in size, and has primarily been selected as the site for the propos[ed trails] due to its level of historical disturbance (i.e. landfill sites and decommissioned gravel pits).

The proposal will allow the City of Busselton to better manage informal mountain bike use within other areas of the Park, through discouraging/preventing such use in areas that are not appropriate. This will further improve the conservation values of the Park.

¹³ UBC (2021) Appeal against amendment of CPS 6808/3

¹⁴ City of Busselton (2015) Application for a clearing permit form, page 2

¹⁵ Meelup Regional Park Committee (2010) Meelup Regional Park management Plan, page 4

The proposed use is consistent with the intent of the Department of Lands management order for the Meelup Regional Park. Constructing the proposed mountain bike trail will help manage current uncontrolled mountain biking activities.¹⁶

DWER advised that it had regard for the Access Management Plan contained within the Management Plan which specifies that the operational management of the Park should consider the development of mountain bike trails and dual use paths in the Natural Environmental Use zones, provided these are carefully planned to minimise risk of erosion, the spread of dieback, impacts on conservation significant flora, fauna and communities, conflict with other users and impacts to aesthetic values.

In summary, DWER concluded:

The Department considers that the proposed mountain bike trails were accounted for in the Management Plan, noting that the arrangement of the trails incorporates existing unauthorised trails and includes provisions to minimise impacts to environmental values.¹⁷

The proposed clearing can improve the environmental values of the Park

The Meelup Regional Park Management Plan notes that unauthorised mountain bike trails have been created in the southern end of the park and that these trails either needed to be formalised through careful planning or be removed.

The permit holder's application states that the purpose of the trails is to:

meet the growing recreational needs of the community and to assist in the discouragement of informal mountain bike use within the Meelup Regional Park.¹⁸

DWER advised that it considers that:

the implementation of defined and carefully designed mountain bike trails under requirements of the Disease Management Plan contained within the Management Plan and conditions 7, 9 and 10 on the Permit may lead to improved environmental outcomes, as bikes will be utilising designated trails and leaving intact adjacent vegetation and habitats largely undisturbed.

Consistency with other planning guidance

During the investigation we noted that the application area also falls within the boundaries of State Planning Policy 6.1 Leeuwin-Naturaliste Ridge (SPP 6.1). As this was not referenced in DWER's Decision Reports, we sought further advice from DWER regarding the consistency of the proposed clearing with this guidance.

DWER advised that it acknowledged that SPP 6.1 does not provide specific provisions for mountain bike trails, and there is a general presumption against the clearing of remnant vegetation along the Leeuwin-Naturaliste Ridge.

However, DWER went on to explain that appropriate nature-based recreation opportunities are encouraged provided they do not threaten significant flora or fauna values:

¹⁶ Aurora Environmental (2015) Native Vegetation Clearing Application, Management Zone 6, Meelup Regional Park, for City of Busselton, page 10

¹⁷ DWER (2021) Appeal Report CPS 6808/3. Page 5

¹⁸ Aurora Environmental (2015) Native Vegetation Clearing Application, Management Zone 6, Meelup Regional Park, for City of Busselton

Policy Statement 2.3 states that the clearing of remnant vegetation may be supported where the need has been established and the removal of remnant vegetation does not threaten the presence of rare and threatened flora, fauna and ecological communities.

Policy Statement 5.1 also states that appropriate nature-based and cultural tourism and recreation proposals will be encouraged...

...The Department also notes that the mountain bike trails are likely to be considered "nature-based recreation", which is encouraged within the Natural Environmental Uses zone under the Park's Management Plan and under SPP 6.1.

In conclusion, while DWER has acknowledged that SPP 6.1 were not referenced in the assessment of CPS 6808, having regard for the above, the investigation considers that the clearing authorised under the clearing permit is consistent with relevant planning instruments, including the Meelup Regional Park Management Plan and SPP 6.1.

2.3 Other matters

The appellant submitted that mountain bike riding on the trails will impact fauna and spread dieback, for example:

Black cockatoos interested in breeding would likely be disturbed with noise and great activity over this area by mountain biking.

We note that the appeal relates the clearing of 2 ha of native vegetation, and therefore we consider that the use of the trails is outside the scope of appeal. However, DWER has responded to the appellant's concerns in this regard, and advised:

With respect to fauna impacts, while the Department acknowledges that the use of trails has the potential to result in some human-wildlife conflict, the Department notes that many of the fauna of concern are predominantly nocturnal species, such as quenda, south-western brush-tailed phascogale and Western Ringtail Possum. Noting that mountain bike riding is usually a daytime activity, these species are likely to be sheltered in diurnal refuge sites during peak periods of use and are unlikely to be significantly disturbed by the use of the trails. The Department also considers that, given the extent of the clearing and that the Application Area is adjacent to an expansive tract of native vegetation, ground-dwelling fauna will be able to move out of the trails and into adjacent suitable habitat, if disturbed by the noise and activity of mountain bikes.

The Department considered that direct impacts to black cockatoo species would be mitigated through the Permit Holder's commitment to limit clearing to understorey species only, as well as fauna management conditions placed on the Permit requiring the Permit Holder to retain all habitat trees. While the Department acknowledges that the mountain bike trails may increase noise and activity in the area, it has not identified any studies or evidence that black cockatoo breeding activity may be significantly impacted by the level and type of noise that may be expected as a result of mountain biking activities. Indeed, the *EPBC Act referral guidelines for three threatened black cockatoo species (2012)* note that black cockatoo species are known to breed in former woodland or forest, now present as isolated trees along roadsides, impacted by traffic noise.

The Department also notes that potential breeding habitat for black cockatoo species is distributed throughout the Park, as identified during the level 2 fauna

survey, including within the largely undisturbed Conservation and Protection zones. The Department considers that, given the presence of adjacent suitable breeding habitat and that black cockatoo species are known to breed in isolated trees in disturbed landscapes, the use of the mountain bike trails is unlikely to significantly impact breeding by black cockatoo species in Meelup Regional Park.

While the Department acknowledges that the use of the mountain bike trails may facilitate the spread of dieback within the infested areas, it considers that the design of the mountain bike trails and the provisions of the Disease Management Plan will assist in mitigating the risk of spreading dieback into uninfested areas. Given this mitigation and the weed and dieback conditions placed on the Permit, it is not considered likely that the use of trails will result in the spread of dieback to uninfested areas or significantly impact on the environmental values of the greater Meelup Regional Park.¹⁹

¹⁹ DWER (2021) Appeal Report CPS 6808/3, page 6

3 Supporting information

3.1 Site description

The application area lies within Meelup Regional Park, a Reserve vested with the City of Busselton for conservation and recreation.

The Park is approximately 577 ha and extends 11.5 kilometres along the coastline from Dunsborough to Bunker Bay.

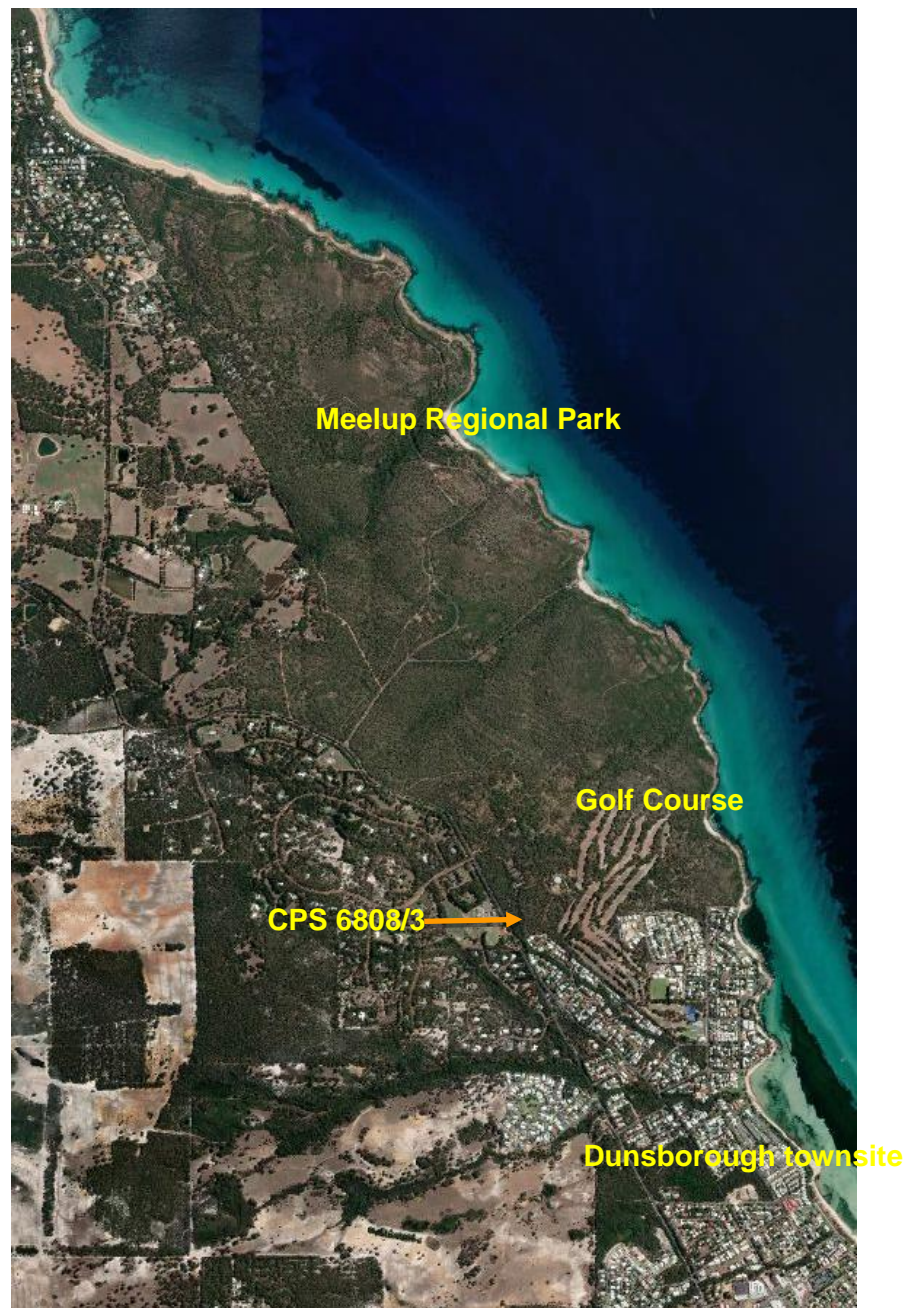


Figure 3 Location of CPS 6808/3 within the Meelup Regional Park (Whereis.com)

3.2 Clearing application history

CPS 6808/1 was first granted in 2016. The history of permit amendments is in Table 2.

The permit holder advised that the reason for the current amendment, to allow an extension of time they are authorised to clear, was a result of requirement to remediate a contaminated site within the application area. The site was found to contain buried waste including asbestos, resulting from historical landfilling activities between 1960 and 1989. The contamination assessment identified that use of the site should be restricted to recreational open space. The permit holder has advised that the area has now been remediated in accordance with the *Contaminated Sites Act 2003*, and DWER therefore considers that the proposed clearing is consistent with the restrictions on the site regarding use.²⁰

Table 2 History of permit amendments

| Date | Details |
|--------------|--|
| 14 Oct 2015 | City of Busselton applied for a purpose permit to clear 2 ha to construct trails |
| 11 Feb 2016 | DWER grants CPS 6808/1 authorising the clearing of no more than 2 ha (no appeals received) |
| 13 Nov 2016 | DWER receives a request to amend the permit to amend the clearing footprint, with no net increase in the clearing area |
| 12 Dec 2016 | DWER advertises amended permit for public comment (no submissions received) |
| 16 Feb 2017 | DWER grants CPS 6808/2 with amended footprint (no appeals received) |
| 3 Feb 2021 | DWER receives a request to amend the permit to extend the duration |
| 27 Feb 2021 | DWER advertised amended permit for public comment (no submissions received) |
| 8 March 2021 | DWER grants CPS 6808/3 with amended duration |
| March 2021 | One appeal is lodged relating to the amendment |

²⁰ DWER (2021) Decision Report CPS 6808/3, page 3

3.3 Permit conditions

PART II – MANAGEMENT CONDITIONS

6. Avoid, minimise etc clearing

In determining the amount of native vegetation to be cleared authorised under this Permit, the Permit Holder must have regard to the following principles, set out in order of preference:

- (a) avoid the clearing of native vegetation;
- (b) minimise the amount of native vegetation to be cleared; and
- (c) reduce the impact of clearing on any environmental value.

7. Dieback and weed control

When undertaking any clearing or other activity authorised under this Permit, the Permit Holder must take the following steps to minimise the risk of the introduction and spread of *weeds* and *dieback*:

- (a) clean earth-moving machinery of soil and vegetation prior to entering and leaving the area to be cleared;
- (b) ensure that no *dieback* or *weed*-affected soil, *mulch*, *fill* or other material is brought into the area to be cleared;
- (c) restrict the movement of machines and other vehicles to the limits of the areas to be cleared; and
- (d) only move soils in *dry conditions*.

8. Fauna management

The permit holder shall ensure no clearing of *black cockatoo habitat tree/s* occurs within the area shaded yellow on attached Plan 6808/3, unless first approved by the *CEO*.

Appendix 1 Appeal process

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.

However, for appeals relating to a clearing permit amendment, the Minister can only consider matters directly linked to the amendment. Appeal rights do not extend to parts of the permit that were not amended.

A merits review cannot overturn the original decision to grant a permit. But if the appeal is upheld, the permit conditions might change or an amendment might not go ahead.

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:

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

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

- reviewing documents from DWER
- meeting with the permit holder on 7 April 2021
- meeting with the appellant on 16 April 2021

Table 3 Documents we reviewed in the appeals investigation

| Document | Date |
|---|--------------|
| Aurora Environmental, Native Vegetation Clearing Application, Management Zone 6, Meelup Regional Park | October 2015 |
| DWER Permit conditions and Decision Document CPS 6808/1 | Feb 2016 |
| DWER Permit conditions and Decision Document CPS 6808/2 | Feb 2017 |
| DWER Permit conditions and Decision Document CPS 6808/3 | March 2021 |
| Meelup Regional Park Management Plan | 2010 |
| WAPC State Planning Policy 6.1 | 1998 |
| South West Mountain Bike Master Plan | 2015 |
| Dieback Treatment Services, Dieback Interpretation Report Meelup Regional Park | 2017 |