

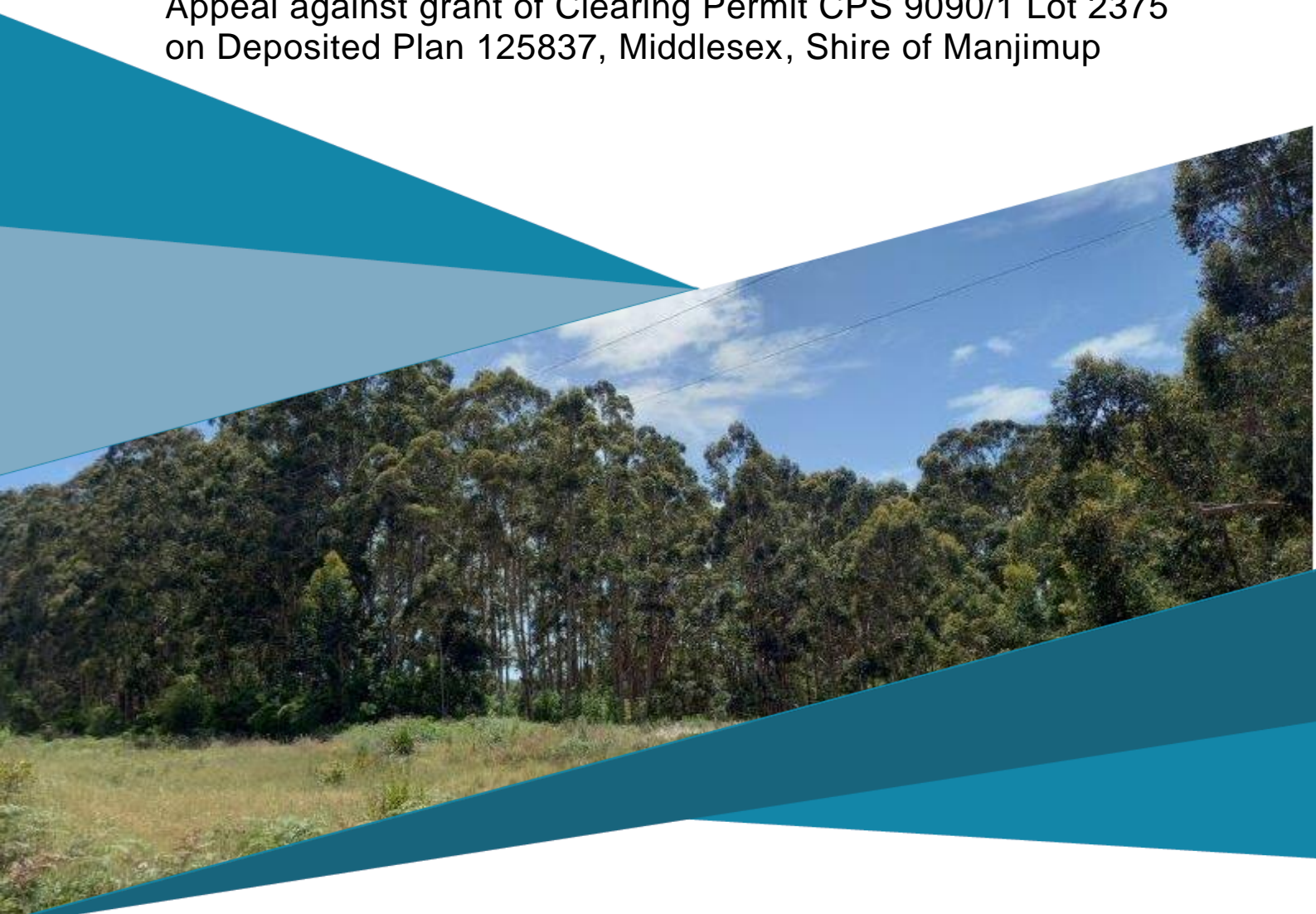


Government of **Western Australia**  
Office of the **Appeals Convenor**  
Environmental Protection Act 1986

## Appeals Convenor's Report to the Minister for Environment

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Appeal against grant of Clearing Permit CPS 9090/1 Lot 2375  
on Deposited Plan 125837, Middlesex, Shire of Manjimup



<b>Appellant</b>	Wildflower Society of Western Australia (Inc)
<b>Permit holder</b>	John Reeve
<b>Authority</b>	Department of Water and Environmental Regulation
<b>Appeal number</b>	010 of 2021
<b>Date</b>	July 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 both past, present, and emerging.

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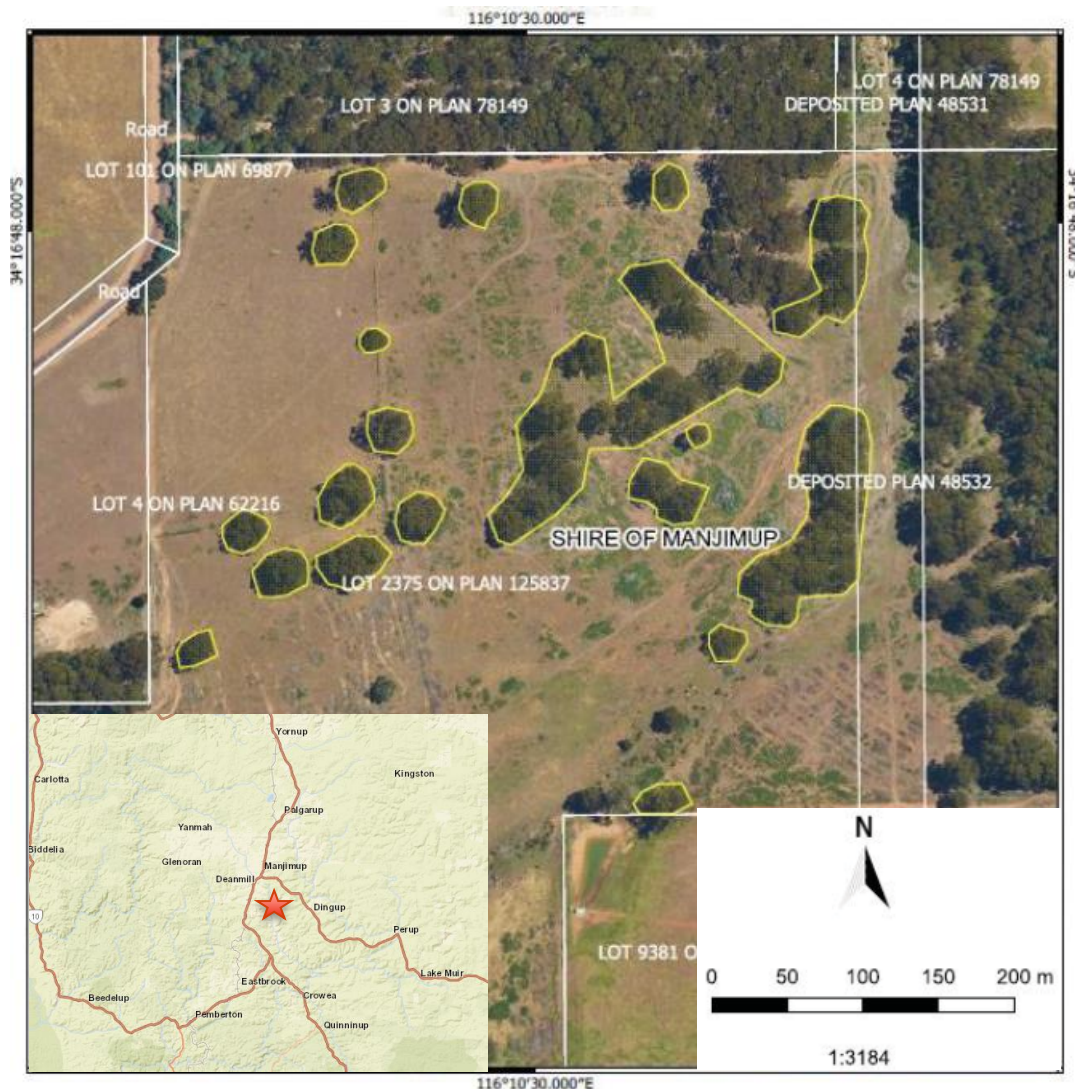
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# 1 Executive summary

## 1.1 Decision under appeal

Clearing Permit CPS 9090/1 was granted to Mr John Reeve (the applicant) on 5 March 2021 and authorises the clearing of up to 2.9 hectares (ha) of native vegetation at Lot 2375 on Deposited Plan 125837, Middlesex (Figure 1). The purpose of the clearing is for cropping and asset protection of existing powerlines.

This appeal is against the grant of Clearing Permit CPS 9090/1 (the permit).



**Figure 1** Location of application area (red star and yellow outline)

## 1.2 Grounds of appeal and appellant concerns

The appellant is the Wildflower Society of Western Australia, which raised concerns that flora and fauna surveys for conservation significant species had not been undertaken despite species being present in the local area. The appeal also questioned the origin of the avoidance and minimisation measures noted in DWER's decision report. The appellant



requested the permit not be granted until surveys of the application area have been undertaken to confirm the absence of conservation significant flora and fauna.

The appellants concerns are summarised in Table 1.

**Table 1:** Grounds of appeal

Ground	Main concerns
1 Fauna	No black cockatoo habitat assessment survey undertaken
2 Flora	No surveys undertaken for conservation significant flora
3 Mitigation	Conflicting evidence of avoidance and minimisation measures

### 1.3 Key issues and conclusions

From the appellant's concerns, we have identified 3 issues central to the appeal. We summarise our conclusions for these issues below. Section 2 of the report then details our reasoning.

#### **Are black cockatoo habitat surveys required?**

Due to the availability of additional black cockatoo habitat in the local area (10km radius), and review of applicant supplied photographs, DWER concluded that surveys are not required. DWER identified potential black cockatoo habitat from a desktop assessment and was satisfied that those large areas of native vegetation within conservation estate are more likely to provide higher quality habitat; most notably Tone State Forest located 675 metres to the north of the application area.

However, in response to the appeal DWER acknowledged that an improved environmental outcome may be achieved through the retention of a large tree (wp6) with characteristics that indicate it may produce suitable breeding hollows in the future.

It should be noted that in this case, incremental loss of black cockatoo habitat is considered acceptable due to the application area being located in a region with relatively lower development pressures.

#### **Are flora surveys required?**

The application area is in 'Degraded' to 'Completely Degraded'<sup>1</sup> condition from intensive agricultural disturbance. DWER considered the presence of conservation significant flora unlikely, including Priority 1 species *Deyeuxia inaequalis* due to the vegetation condition and soil type of the application area. Although recorded 1.4 km away in Tone State Forest, *D. inaequalis* is typically associated with Jarrah forest communities which are not represented in the application area.

Given the above, DWER advised that conservation significant flora are unlikely to occur in the application area and surveys are not required.

<sup>1</sup> Keighery, B. (1994) Bushland plant survey: a guide to plant community survey for the community, Wildflower Society of Western Australia (Inc.), Nedlands.

### **Where did the avoidance and mitigation measures come from?**

Avoidance and minimisation measures were not included in the clearing permit application yet were noted in DWER's decision report. In response to the appeal, DWER advised that the applicant provided the measures while the permit was under assessment. DWER considered the avoidance and minimisation measures to be appropriate and that they could have been more clearly articulated in the decision report.

### **1.4 Recommendation to the Minister**

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It is recommended that the permit be amended to require the identified potential habitat tree (at wp6) be retained.

It is otherwise recommended that the appeal be dismissed.

## 2 Reasons for recommendation

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### 2.1 Black cockatoo desktop assessment adequate

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Our conclusion is that DWER had sufficient desktop information to make an appropriate risk-based decision to not require black cockatoo surveys. We explain our reasoning below.

#### **Availability of potential habitat in a region with lower development pressures**

The appellant submitted that no black cockatoo habitat surveys have been undertaken to verify the presence of hollows and the quality of foraging habitat within the application area.

In its assessment, DWER noted that the application area is within the distribution area for all three species of black cockatoo. However, from the applicant photographs, DWER considered the trees not suitable for breeding. This was due to small trunk diameters, lack of suitable hollows and a lack of broken branches for the formation of future hollows. The nearest confirmed breeding site is 23 kilometres south of the application area.

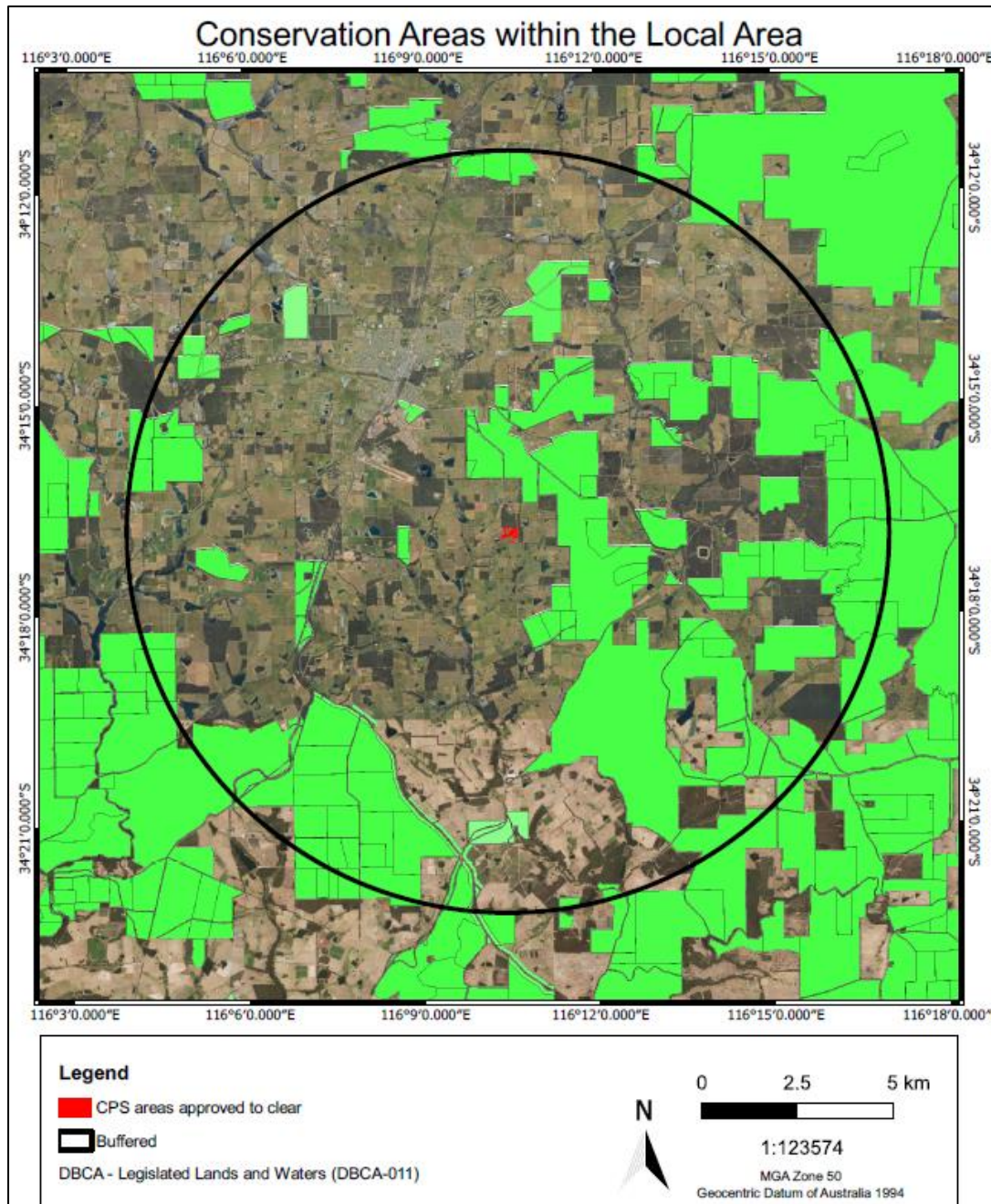
The application area has potential value as black cockatoo foraging and roosting habitat. However, DWER noted that there are larger areas of native vegetation in better condition with higher habitat values within proximity to the application area. This includes Tone State Forest which is located 675 metres to the north (Figure 2). DWER estimates that there are 12,000 hectares of native vegetation retained within conservation estate within 10km of the application area. DWER calculated that more than 50% of the vegetation within the conservation estate comprises the same vegetation types mapped within the application area. Given this, DWER concluded that the removal of the application area will not significantly impact black cockatoo species.

In response to the appeal, DWER reviewed the applicant's photographs and determined that one tree may have the structural characteristics<sup>2</sup> necessary for the formation of suitable breeding hollows. Given this, and noting the proximity of alternative foraging, roosting, and breeding habitat, DWER concluded that the proposed clearing will not pose a risk to the long-term viability of black cockatoo species. However, DWER acknowledged that an improved environmental outcome may be achieved through the retention of the potential habitat tree.

Noting the above, it is considered that there are larger areas of higher quality and contiguous black cockatoo habitat both within conservation estate and on private land nearby and we accept DWER's advice that black cockatoo surveys are not required in this case.

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<sup>2</sup> large broken branch which often provides for subsequent hollow formation



**Figure 2** Conservation areas (green) within a 10km radius of the application area

## 2.2 Application area unsuitable for conservation significant flora

Our conclusion is that flora surveys are not required due to vegetation condition, disturbance history and soil type of the application area. We explain our reasoning below.

### Site characteristics not conducive for conservation significant flora

The appellant submitted that:

- Flora surveys should have been undertaken for conservation significant flora, given the lack of records may be due to lack of survey effort on freehold land



- The nearest record of significant flora is relatively close at 1.4km from the application area

In its assessment DWER, considered that:

The soil types, vegetation condition (especially the lack of groundcover) and landform topography do not correspond with the habitat requirements for threatened flora species previously recorded within the local area, therefore, the proposed clearing area is unlikely to contain suitable habitat for threatened flora species listed under the BC Act.

In response to the appeal, DWER reiterated the above and provided additional information regarding its consideration of conservation significant flora. Of the 6 species of conservation significant flora recorded in the local area, the application area was considered unsuitable due to topography, soil type, past vegetation type and vegetation condition. The closest conservation significant flora species to the application area is Priority 1 species, *Deyeuxia inaequalis*, recorded 1.4 km away within Tone State Forest. DWER advised that:

*Deyeuxia inaequalis* is a native herb that typically occurs within Jarrah (*Eucalyptus marginata*) forest ecological communities, which are not represented within the Application Area. Although *Eucalyptus sp.* trees are present, understorey which would provide habitat for *Deyeuxia inaequalis* is absent from the Application Area and surrounding open paddock. Other site characteristics are considered unsuitable for this species, as the Application Area shows a history of continual intensive agricultural disturbance which has resulted in a Completely Degraded vegetation condition. In addition, groundcover species within the Application Area consist of introduced paddock grasses and invasive weed species which are known to aggressively displace native grasses.

Given the above, DWER concluded that the application area is unlikely to contain conservation significant flora and that targeted surveys are considered unnecessary.

We accept DWER's position.

### **2.3 Origin of avoidance and minimisation measures was unclear**

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Our conclusion is that the origin of the avoidance and minimisation measures should have been included in DWER's decision report. We explain our reasoning below.

The appellant submitted that:

It is not clear that thorough efforts to avoid and minimise impacts have been made by the proponent. On the one hand the clearing permit application states that no alternatives have been considered to avoid and minimise environmental impacts. By contrast, the Decision Report states that the applicant made a reasonable effort to avoid and minimise potential impacts, by only choosing to clear degraded or completed degraded vegetation.

In its assessment, DWER considered the avoidance and minimisation measures which included:

- the selection of areas of Degraded to Completely Degraded vegetation and partially cleared areas
- avoiding vegetation were possible and limiting the areas to be cleared to the minimum necessary for the purpose of cultivation and infrastructure (powerline) protection

In response to the appeal, DWER noted that as avoidance and minimisation measures were not provided in the clearing permit application, it requested further information during the assessment. DWER advised that:

As a result, the Permit Holder provided information to the Department which demonstrated that appropriate consideration had been given to options which would reduce the environmental impacts of the clearing. The Permit Holder clarified that the overall area identified for clearing was kept to a minimum through the retention of vegetation where possible and preferentially choosing areas which had been previously cleared or comprised regrowth vegetation. The Permit Holder supplied photographs to the Department which provided further demonstration of this approach, while also confirming that vegetation condition within the Application Area was Degraded to Completely Degraded.

DWER acknowledged that the applicant's measures to avoid and mitigate the impacts of the clearing could have been more clearly articulated in the decision report. However, DWER remains satisfied that the measures are reasonable in the context of the environmental values to be impacted.

We accept DWER's position.

## Appendix 1 Appeal 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 appropriate.

For clearing permits, the Minister can overturn the original decision to grant the permit if this was the basis of the original appeal submission. Alternatively, if the appeal submission was against the conditions of the permit, the Minister may modify the conditions only.

### Appeals Convenor and the DWER report to the Minister

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 DWER's decision report
- reviewing the appellant's submission and DWER's response
- meeting with the appellant and with the permit holder
- reviewing other advice from DWER
- reviewing other information, policy and guidance as needed

Table 2 lists documents considered in the investigation.

**Table 2** Documents reviewed in the appeals investigation.

Document	Date
DWER clearing permit and decision report CPS 9090/1	March 2021
Wildflower Society of WA appeal submission	March 2021
DWER response to appeal 010/21	May 2021