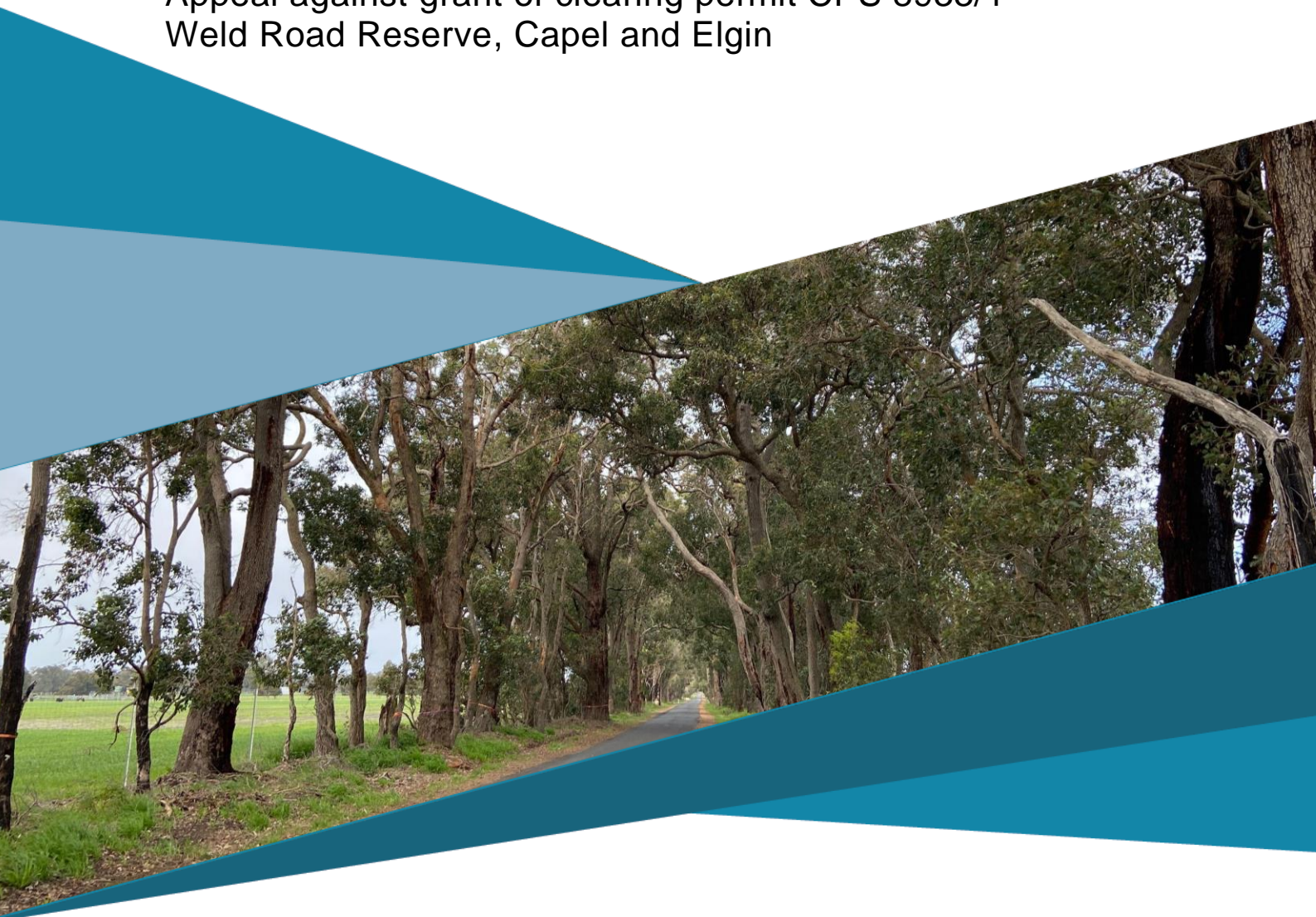




Government of Western Australia
Office of the **Appeals Convenor**
Environmental Protection Act 1986

Appeals Convenor's Report to the Minister for Environment

Appeal against grant of clearing permit CPS 8933/1
Weld Road Reserve, Capel and Elgin



Appellant	Wildflower Society of Western Australia (Inc)
Applicant	Shire of Capel
Authority	Department of Water and Environmental Regulation (DWER)
Appeal number	014 of 2021
Date	September 2021

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Cover image: Weld Road application area photograph taken by OAC officer

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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

1.1 Decision under appeal

Clearing permit CPS 8933/1 was granted to the Shire of Capel (the applicant) for the purpose of road construction and widening within Weld Road reserve (PIN 11543462), Capel and Elgin. The permit authorises the applicant to clear not more than 1.12 hectares (ha) of native vegetation within the area cross-hatched yellow in Figures 1 and 2 below¹.

To offset the significant impacts to 1.12 ha of black cockatoo foraging habitat and impacts to a significant remnant in an extensively cleared landscape, the applicant is required to revegetate 2.68 ha of land approximately 42 kilometres north of the application area and 16 kilometres northeast of Bunbury (Figure 3).

The offset site has been vested in conservation estate and will be managed by the Department of Biodiversity, Conservation and Attractions (DBCA) once the revegetation is self-sustaining.

This appeal is against the grant of clearing permit CPS 8933/1.



Figure 1 Northern section of application area (yellow)

¹ DWER decision report for clearing permit CPS 8933/1

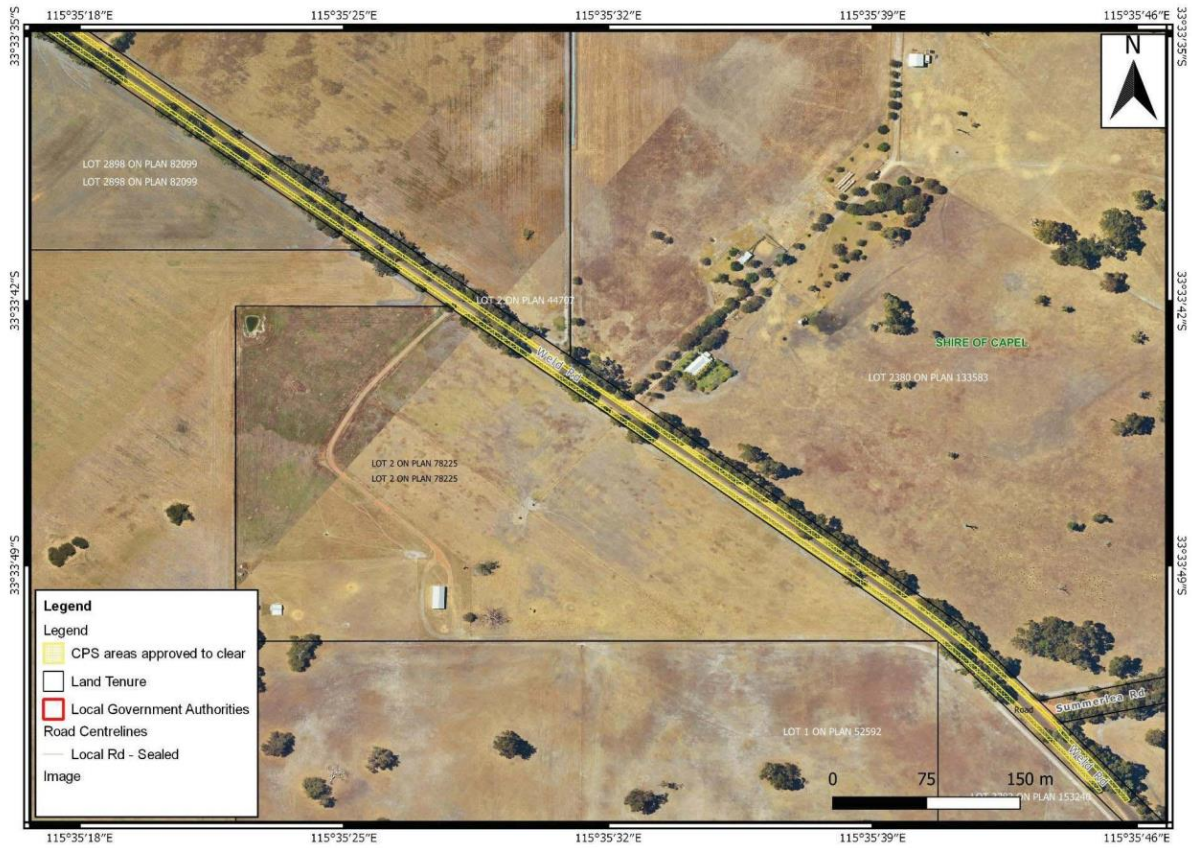


Figure 2 Southern section of application area (yellow)



Figure 3 Offset location with 2.68 hectares to be revegetated (red)

1.2 Grounds of appeal and appellant concerns

In April 2021, the Wildflower Society of Western Australia (Inc) (the appellant) lodged an appeal against the decision to grant the permit and the conditions to which it is subject.

In summary, the appellant opposed the grant of the permit stating that there are alternatives to the clearing, such as purchasing adjacent cleared lands; and that the offset requirements are inadequate.

We have broadly grouped the appellant's concerns into 2 grounds, as summarised in Table 1.

Table 1 Grounds of appeal

Ground	Main concerns the appellant submitted
1 Avoidance and minimisation measures	The application area is a significant remnant in an extensively cleared landscape and the option to purchase adjacent cleared land for construction of a new road should have been considered.
2 Offset condition	The offset condition is inadequate as the completion criteria requiring a minimum of 50% species richness survival is too low. Although condition 10(b)(ii) requires a ' <i>similar species composition, structure and density</i> ' this is open to interpretation as no initial species richness has been specified and no reference sites or surveys have been given.

1.3 Key issues and conclusions

This report relates to an appeal against the grant of the permit. The key question for the appeal investigation is should the permit have been granted, and if so, are the conditions adequate and appropriate to mitigate against impacts to the environment.

We summarise our conclusions for the appellant's grounds of appeal below and Section 2 of the report details our reasoning for the recommendation.

Were reasonable attempts made to mitigate environmental impacts?

We consider that the applicant made reasonable attempts to avoid and minimise impacts within the application area, as outlined in DWER's decision report.

During its assessment of the clearing permit application, DWER requested the applicant to demonstrate what avoidance and minimisation measures it had undertaken. In this case, acquisition of adjacent freehold land was not a viable option. However, the applicant did reduce the application area from 1.77 ha to 1.12 ha which retains 136 habitat trees. Furthermore, the applicant has marked trees to be cleared within the area approved to be cleared. Therefore, the actual clearing may be less than 1.12ha due to targeted clearing and pruning where possible.

Given the reduction in application area and marking of individual trees, we consider that the applicant has made reasonable attempts to reduce the area required to be cleared.

Is the offset condition adequate?

Our conclusion is that the offset condition is adequate.

DWER identified significant residual impacts from the clearing which included 1.12 ha of native vegetation that is black cockatoo foraging habitat and a significant remnant in an

extensively cleared landscape. The vegetation proposed to be cleared is open woodland of Marri (*Corymbia calophylla*), Jarrah (*Eucalyptus marginata*) and Banksia species.

To counterbalance the significant residual impacts, the applicant is required to revegetate 2.68 ha of ‘completely degraded’² vegetation with black cockatoo foraging species local to the offset site. This is appropriate to counterbalance the impacts at the application area as determined using the EPBC Offsets calculator.

The offset site is located approximately 42 kilometres north of the application area within conservation estate that is an ecological linkage. The offset condition requires the applicant to plant native vegetation that will result in similar species composition, structure and density to native vegetation surrounding the offset site. In this case the surrounding vegetation is Tuart (*Eucalyptus gomphocephala*) Woodlands and Forests of the Swan Coastal Plain ecological community (Tuart Woodlands TEC).

Given the applicant proposes a minimum of 26 native species to survive at the offset site, we consider this an appropriate completion criterion given it exceeds that described in the Approved Conservation Advice for Tuart Woodlands TEC³. Furthermore, the revegetation plan appropriately lists flora species characteristic of the TEC with an emphasis on black cockatoo foraging species.

The offset appropriately counterbalances the impacts at the application area by re-establishing black cockatoo habitat, improving ecological linkage values and restoring vegetation representative of Tuart Woodlands TEC.

1.4 Recommendation to the Minister

We conclude that DWER’s decision to grant the permit was justified and the offset condition is appropriate to counterbalance the identified significant residual impacts.

We recommend that the appeal be dismissed.

² following Keighery, B.J. (1994) Bushland Plant Survey: A Guide to Plant Community Survey for the Community. Wildflower Society of WA (Inc). Nedlands, Western Australia.

³ Threatened Species Scientific Committee (2019). [Approved Conservation Advice](#) for the Tuart (*Eucalyptus gomphocephala*) Woodlands and Forests of the Swan Coastal Plain. Canberra: Department of the Environment and Energy.

2 Reasons for recommendation

2.1 Reasonable attempts were made to mitigate environmental impacts

Our conclusion is that the applicant has made reasonable endeavors to avoid and minimise impacts to the environment. We explain our reasoning below.

The appellant submitted that given the clearing is proposed to occur within a significant remnant in an extensively cleared area, the applicant should purchase the cleared land adjacent to the application area to construct a new road. The appellant submitted this would provide for the necessary road upgrade while avoiding impacts to a significant vegetation remnant.

While acknowledging the cost implications of land acquisition, the appellant submitted that this option is being increasingly implemented, citing Main Roads Western Australia as an example. The appellant contended that this option had not been adequately considered.

We note that the applicant is required to apply the mitigation hierarchy when submitting a clearing assessment application. This includes making reasonable attempts to avoid and minimise impacts to the environment.

DWER considers it the applicant's responsibility for planning, constructing, and maintaining the roads in its jurisdiction, as it has the relevant expertise and experience to determine the technical options, solutions and engineering standards of the road and road reserves.

DWER advised that upon submission of the clearing permit application, the applicant stated there were no alternatives to the proposed clearing. During the early stages of the assessment, DWER requested the applicant to provide evidence of efforts taken to mitigate the significant residual impacts of the road widening. In response, the applicant reduced the application area from 1.77 hectares to 1.12 hectares and retained 136 (65%) habitat trees within the Weld Road reserve.

Additionally, as part of the appeal investigation a site inspection was undertaken with the appellant and representatives of the applicant. At that meeting, the applicant had marked all trees intended to be cleared for the road to be consistent with current road safety standards. In combination with pruning, it was apparent that the area to be cleared may be less than the 1.12 ha authorised by the permit.

Given the above, we consider that the applicant has made reasonable attempts to mitigate adverse impacts to the environment.

2.2 The offset condition is appropriate

Our conclusion is that the offset condition is appropriate. We explain our reasoning below.

The appellant raised concern that the vegetation surrounding the offset area contains a mix of native vegetation types, including previous rehabilitation. The appellant submitted that the offset condition should include an objective, quantitative baseline and that reference sites should be used to determine revegetation success, including the comparison of species composition.

The appellant sought for offset condition (10) to be strengthened, specifically:

- increase the required minimum species richness to be achieved, as the appellant considered 50 per cent of those species planted to be a low standard;
- include a baseline for species richness;

- refine the overarching condition of ‘similar species composition’, due to it being open to interpretation; and
- include specific reference sites or surveys.

Impact and offset requirement

Principle 1 of the Offsets Policy outlines that environmental offsets will only be considered after avoidance and mitigation options have been pursued. The WA Environmental Offsets Guidelines (2014) outlines a four-step mitigation hierarchy; avoid, minimise, rehabilitate and offset. The mitigation measures addressed in ground 1 of the appeal, are appropriate in addressing this requirement.

Given this, DWER⁷ determined that the following significant residual impacts remained, and that an offset would be required for clearing 1.12 ha of:

- significant foraging habitat for black cockatoos
- a significant remnant in an extensively cleared landscape.

The WA Environmental Offsets Policy⁸ states that environmental offsets relate to the environmental value that is being impacted. In some instances, it may be necessary to offset a value with a similar, but not identical value. In this case, the values at the offset site are *similar* to those at the application area, and not identical.

The applicant’s offset proposal involves revegetation of an area in ‘completely degraded’⁹ condition within Lot 150 on Deposited Plan 29857, Parkfield (the offset site). The land is vested with DBCA for the purpose of conservation and the offset site is located approximately 42.5 kilometres north of the application area.

DWER notes that this property was identified during the appeal process related to previous Clearing Permit CPS 8116/1 (appeal 049/19). During this process, the then Minister for Environment¹⁰ noted the offset site is located adjacent to a recognised ecological linkage which includes other DBCA managed lands. The Minister considered that the revegetation of this property would not only re-establish black cockatoo foraging habitat, but also improve ecological linkage values.

In determining whether the proposed offset is proportionate to the significance of the environmental values being impacted, DWER undertook a calculation using the EPBC Offsets calculator. DWER’s calculation indicates that the revegetation of an area that is vested for the purpose of conservation from a ‘completely degraded’ to ‘good’ condition is sufficient to counterbalance the impacts of the clearing.

DWER concluded¹¹ that the offset will restore approximately 2.68 hectares of native vegetation that:

- is a significant remnant within an extensively cleared landscape
- contains black cockatoo foraging habitat
- is representative of the Commonwealth-listed Tuart Woodland TEC
- improves ecological linkage values.

⁷ DWER clearing permit CPS 8933/1 decision report

⁸ WA Environmental Offsets Policy 2011

⁹ following Keighery, B.J. (1994) Bushland Plant Survey: A Guide to Plant Community Survey for the Community. Wildflower Society of WA (Inc). Nedlands, Western Australia.

¹⁰ Then Minister for Environment, Hon Stephen Dawson MLC

¹¹ DWER clearing permit CPS 8933/1 decision report

The offset site

The offset site is mapped as Yoongarillup Complex with a Tuart canopy (*Eucalyptus gomphocephala*) and a Peppermint (*Agonis flexuosa*) mid-storey; or less consistently, open forest of Tuart, Jarrah and Marri. This differs to the application area which is characterised as open woodlands of Marri (*Corymbia calophylla*), Jarrah (*E. marginata*) and Banksia species (Southern River Complex).

Based on a field survey of the offset site conducted by Natural Area Holdings, the objective of the revegetation plan was to restore vegetation that would meet the key diagnostic criteria of the Tuart Woodlands TEC¹³.

DWER reviewed and approved the revegetation plan for CPS 8116/2 in July 2020, for which the species list was endorsed by DBCA. Once completion criteria are met, DBCA has responsibility for the future management of the offset site into perpetuity.

DWER¹⁴ acknowledged that the characteristics of the offset site, including the topography and soil attributes, do not support revegetation of the Southern River vegetation complex which is impacted by the clearing. DWER considered that revegetation of the offset site which would, at the completion meet the key diagnostic criteria of the Tuart Woodlands TEC, achieve a better environmental outcome. The revegetation would also re-establish black cockatoo habitat and improve ecological linkage values.

Tuart Woodlands TEC species richness

In determining revegetation completion criteria for the clearing permit, DWER took into consideration that the offset site is mapped on Spearwood S2a Phase soil and that the applicant will revegetate a highly disturbed patch of tuart, marri and jarrah woodland in conservation estate. Given that the applicant proposes to plant 53 different species¹⁷ within the offset site, DWER determined that a reasonable completion criterion for species richness is at least 50 per cent of those species planted as specific in condition 10(l)(1) of the clearing permit.

This completion criteria would require a minimum of 26 species be present at the end of the 3-year monitoring period. This is in addition to completion criteria for vegetation structure, vegetation density, weed cover and bare ground.

DWER is of the view that, provided the dominant species of the Tuart Woodlands TEC are planted (as already included in the revegetation plan and required under completion criterion 2 of condition 10 of the clearing permit), achieving the revegetation completion criteria delivers an appropriate offset. The offset represents long-term environmental benefits and a net increase in vegetation which is representative of the Tuart Woodlands TEC and provides foraging habitat for black cockatoos.

We note that the requirement to restore a minimum of 26 native species is above that outlined in the Approved Conservation Advice¹⁹ for Tuart woodland TEC. The Conservation Advice provides indicative species richness thresholds for Tuart woodland TEC patches based on vegetation condition. These relate to understorey vegetation and range from 12 native understorey species for 'very high' condition patches, down to 4 native understorey species for 'moderate' condition patches. Overstorey species must include Tuart and other canopy or sub-canopy species may be present. They commonly include: *Agonis flexuosa*

¹³ DWER response to appeal 014/21 June 2021

¹⁴ DWER clearing permit CPS 8933/1 decision report

¹⁷ Shire of Capel Offset Site Revegetation Plan – Weld Road and Payne Street, 17 December 2020.

¹⁹ Threatened Species Scientific Committee (2019). [Approved Conservation Advice](#) for the Tuart (*Eucalyptus gomphocephala*) Woodlands and Forests of the Swan Coastal Plain. Canberra: Department of the Environment and Energy.

(Peppermint) and *Banksia grandis* (Bull banksia) (both in the southern part of the range), *Banksia attenuata* (Candlestick banksia), *Eucalyptus marginata* (Jarrah); and less commonly, *Corymbia calophylla* (Marri), *Banksia menziesii* (Firewood banksia) and *Banksia prionotes* (Acorn banksia). Notably, these are predominantly the preferred foraging species for black cockatoos which is appropriate given this is the value required to be offset.

Therefore, the completion criteria of 26 native species exceeds the requirement for a patch to be characteristic of Tuart Woodlands TEC.

Should the completion criteria target not be met, clearing permit condition 10(m) requires the applicant undertake remedial actions and additional monitoring to achieve all the completion criteria as specified on the clearing permit. If completion criteria are not met prior to expiry of the permit as determined by an environmental specialist, the applicant or DWER may seek an extension to the permit.

Noting the above, we agree with DWER's approach and consideration of the offset although it could have been more clearly articulated in the decision report. Noting that the revegetation plan does include species appropriate to the offset site which are also black cockatoo foraging species, we consider that the existing revegetation completion criteria are appropriate. If revegetation is successful, it will deliver an offset that adequately counterbalances the impacts at the application area.

Given the above, this ground of appeal should be dismissed.

3 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.

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.

The appeal investigation will consider the extent to which conditions can address the issues raised, as well as any new information that may not have been available at the time of the original decision.

While process issues can be raised in an appeal, the focus of investigations will be on the substantive environmental matters relevant to DWER's conditions.

Appeals Convenor and DWER report to the Minister

To decide an appeal 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 the report, the investigation included:

- reviewing DWER's decision and appeal reports
- meeting with the appellant and the applicant at the application area
- reviewing other advice from DWER
- reviewing other information, policy and guidance as needed.

Table 2 lists documents considered in the appeals investigation.

Table 2 Documents reviewed in the appeals investigation

Document	Date
Natural Area Offset site revegetation plan – Weld Road and Payne Street. Unpublished report prepared for the Shire of Capel.	September 2020
DWER Clearing Permit Decision report for CPS 8933/1	March 2021
DWER Clearing Permit CPS 8933/1	March 2021
Wildflower Society of WA appeal submission	April 2021
DWER Response to Appeal 014/21	June 2021
Wildflower Society of WA further comments	August 2021