



Environmental Protection Act 1986

**Hon Amber-Jade Sanderson MLA**  
**Minister for Environment; Climate Action**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL AGAINST GRANT OF CLEARING PERMIT CPS 8933/1 WELD ROAD RESERVE (PIN 11543462), CAPEL AND ELGIN, SHIRE OF CAPEL**

#### **Purpose of this document**

This document sets out the Minister's decision on an appeal lodged under section 101A(4) of the *Environmental Protection Act 1986* in objection to grant of the above permit. This document is produced by the Office of the Appeals Convenor for the Minister but is not the Appeals Convenor's own report, which can be downloaded from the Appeals Convenor's website at [www.appealsconvenor.wa.gov.au](http://www.appealsconvenor.wa.gov.au).

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<b>Appellant:</b>	Wildflower Society of Western Australia Inc
<b>Applicant:</b>	Shire of Capel
<b>Proposal description:</b>	The permit authorises the clearing of not more than 1.12 hectares of native vegetation for the purpose of road construction and widening within Weld Road reserve
<b>Minister's decision:</b>	The Minister dismissed the appeal
<b>Date of decision:</b>	22 September 2021

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#### **REASONS FOR MINISTER'S DECISION**

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An appeal from the Wildflower Society of Western Australia was received on 9 April 2021 objecting to the grant of Clearing Permit CPS 8933/1 to the Shire of Capel (applicant) by the Department of Water and Environmental Regulation (DWER). The permit was granted to clear up to 1.12 hectares (ha) of native vegetation within the above lot, for the purpose of road construction and upgrades.

DWER granted the permit subject to conditions on 19 March 2021.

The appellant sought for the permit to be refused, with the main concerns relating to the adequacy of avoidance and minimisation measures and the ability of the offset condition to mitigate against impacts to the environment.

#### **Decision**

Having considered the information available to her, including DWER's response to the appeal and the Appeals Convenor's report and recommendation, the Minister considered that the decision to grant the permit subject to conditions was justified. The Minister also considered

that the offset condition is appropriate and will counterbalance the significant residual impacts from the clearing.

The Minister therefore decided to dismiss the appeal. The full reasons for her decision are set out below.

### **Avoidance and minimisation**

Regarding the appellant's concern that mitigation efforts were inadequate, the Minister considered that the applicant made reasonable attempts to avoid and minimise impacts within the application area. This included a reduction in the application area from 1.77 ha to 1.12 ha during DWER's assessment of the clearing permit application. The Minister was advised that the reduction in application area subsequently reduced the impact to habitat trees, with 136 trees being retained.

Furthermore, the Minister noted that the Appeals Convenor conducted a site inspection with the appellant and representatives of the applicant. At that meeting, the applicant had marked all trees required to be cleared based upon distance from the centreline, as provided by 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 application area that is authorised to be cleared.

Regarding the acquisition of cleared land adjacent to the application area, the Minister was advised that this was not a viable option.

Given the above, the Minister was satisfied that the applicant made reasonable attempts to mitigate the environmental impacts of the road upgrades.

### **Offset condition**

The Minister noted the appellant's concern that the completion criteria requiring 50% of native species to survive at the offset site is too low, and no initial species richness was given. Additionally, the appellant submitted that the completion criteria should be based on reference site data or surveys.

As a result of its assessment, DWER identified the following significant residual impacts would remain from the clearing including 1.12 ha of native vegetation that is black cockatoo foraging habitat and a significant remnant in an extensively cleared landscape.

To counterbalance the above impacts, DWER required the applicant to provide an offset that included revegetation of a 2.68 ha area in 'degraded condition' with black cockatoo foraging habitat and vegetation local to the offset site. This was determined by application of the Commonwealth Offsets calculator.

The offset condition requires the applicant to plant native vegetation that will result in similar species composition, structure and density of 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).

The applicant's revegetation plan proposes a minimum of 26 native species consistent with Tuart Woodlands TEC. The Minister noted that this exceeds that described in the Approved Conservation Advice for Tuart Woodlands TEC which requires at least 12 understorey species for remnants in 'very high' condition. Overstorey species must include Tuart, and other canopy, or sub-canopy species may be present. Given this, the applicant's commitment to a minimum of 26 native species at the offset site is appropriate.

The Minister was advised that the revegetation plan lists flora species characteristic of Tuart Woodlands TEC with an emphasis on black cockatoo foraging species. The revegetation is appropriate to counterbalance the impacts at the application area by re-establishing black cockatoo habitat, improving ecological linkage values and restoring vegetation representative of Tuart Woodlands TEC.

Should the completion criteria 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.

Given the above, the Minister accepted the Appeals Convenor's advice that the appeal be dismissed.

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Note: this decision is published pursuant to the terms of section 110 of the *Environmental Protection Act 1986* and regulation 8 of the *Environmental Protection Regulations 1987*.

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