



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

Appeals Convenor's Report to the Minister for Environment

Appeal against conditions of clearing permit CPS 9124/1
Dual-use Pathway, Bandy Creek to Castletown Quays



Appellant	Wildflower Society of Western Australia (Inc.)
Licence holder	Shire of Esperance
Authority	Department of Water and Environmental Regulation (DWER)
Appeal Number	018 of 2021
Date	May 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

Investigating Officer

Tim Gentle

Principal Appeals Officer

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: Dune vegetation near Esperance, courtesy of William Archer.

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 both past and present.

1 Decision under appeal

This is a report on an appeal against the conditions of Clearing Permit CPS 9124/1 issued by the Department of Water and Environmental Regulation (DWER) on 8 April 2021 to the Shire of Esperance. The appellant is the Wildflower Society of Western Australia (Inc.).

The permit authorises clearing of 1.79 hectares (ha) of native vegetation in an approximately 1.92 ha clearing footprint for the purpose of constructing a dual-use (pedestrian and bicycle) path through coastal sand dunes between the Castletown Quays development and Bandy Creek (see Figure 1)¹.

The appellant calls for the Minister to require the conditions of the permit to be amended to require revegetation of areas which need to be cleared to allow construction but are not needed for the final path.

The Shire agrees that such a condition should be added to the permit.



Figure 1: project location (the areas to be cleared are shown in yellow hatching)

We accept DWER's advice that the addition of such a condition would require the following additional amendments to the clearing permit:

- an extension of the permit duration from May 2026 to May 2036 to allow 10 years for monitoring of revegetation activities;

¹ The application area comprises two separate linear strips of native vegetation along the coastline. A central area of native vegetation was not included in the application, as, at the time of the application, the Shire was still negotiating planning matters with the landowner.

- the addition of a condition which would limit the duration of clearing to 5 years only from the commencement date of the permit;
- modification of condition 7 to require the permit holder to maintain records of the proposed revegetation activities; and
- modification of condition 8 to require the permit holder to submit annual reports of records required under condition 7.

Our recommendations to the Minister are provided in Section 2 below. Section 3 provides background on the views of the appellant and of the Shire of Esperance. The appeals process is summarised in Appendix 1.

2 Recommendations to the Minister

Allow the appeal and require that a condition be added to the permit to require the permit holder to:

- revegetate areas to be cleared but not needed for operation and maintenance of the final pathway.
- revegetate with local native species,
- establish a sustainable vegetation cover to control erosion,
- install and maintain fencing to exclude public access from the revegetation areas,
- control and remove weed species within the revegetation for a period of 10 years,
- report on progress of revegetation and weed control; and
- carry out additional planting if required to meet specified revegetation outcomes.

It is also recommended that:

- the duration of the permit be extended from May 2026 to May 2036,
- a condition be added which would limit the clearing to 5 years only from the commencement date of the permit,
- condition 7 be modified to require the permit holder to maintain records of the proposed revegetation activities; and
- condition 8 be modified to require the permit holder to submit annual reports of records required under condition 7.

If you agree with these recommendations, the exact wording of the conditions would be a matter for DWER to determine in giving effect to your decision under section 110(1) of the EP Act.

3 Reasons for recommendations

The permit holder (the Shire of Esperance) and the appellant both agree that a revegetation condition should be added to the clearing permit.

The appellant's concerns

Given that a substantial amount of clearing beyond what is strictly necessary for the path may occur, the appellant contends that DWER should have imposed a revegetation condition requiring that areas cleared beyond the final path be returned to the same vegetation composition and structure as the surrounding dune vegetation.

The appellant submits that the new condition should include requirements to:

- stabilise the soil in the area disturbed,
- control movement of vehicles and people outside the width of the formed path (both of which will assist with wind erosion in an exposed shoreline),
- control and remove weed species within the revegetation for a period of 10 years; and
- provide a report of monitoring results to demonstrate achievement of the revegetation objectives over the 10-year period².

Response from the Shire of Esperance

The Shire has advised that it would have no objection to a condition being added to the permit, including requirements as proposed by the appellant.

The Shire further advised that the steep terrain and thick vegetation will require the use of a Cat IT28 loader to complete the clearing (because the area is too steep for a bobcat) and hence the application involved a larger area than needed purely for a path clearing width. The wider clearing area also allows for works to reduce undulations in some areas to get the incline to meet bike path standards (i.e. not too steep). In addition, a wide area will need to be cleared so that the dune slope can be appropriately battered to prevent sandy soil collapsing and an area established to allow the construction of the dual use path.

The area cleared will be stabilised, rehabilitated, and revegetated after the completion of construction to a standard to allow for maintenance and operations of the dual use path.

The Shire indicated that it is aware that erosion is a potential problem at parts of this site and has already has plans in hand to implement the appropriate physical construction design and employ revegetation techniques, such as use of jute matting to control wind erosion, where necessary.

² The appellant further contends that such a condition should be required for all similar clearing proposals. However, this is outside the scope of appeal and is a matter for DWER to consider.

Appendix 1 Appeal process

The Minister assesses the merits of a decision

Environmental appeals follow a merits-based process. The appeal in this case is against the conditions of the clearing permit and whether they are adequate or appropriate to control and mitigate the environmental impacts of the proposed clearing.

The appeal investigation

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, the investigation included:

- reviewing DWER's report
- meeting with the appellant
- discussion with, and further information received from, the permit holder
- reviewing other information, policy and guidance as needed.

Table 1 lists documents considered.

Table 1 Documents the Appeals Convenor reviewed

Document	Date
DWER clearing permit decision report CPS 9124/1	8 April 2021
DWER Response to Appeal 018/21	28 May 2021