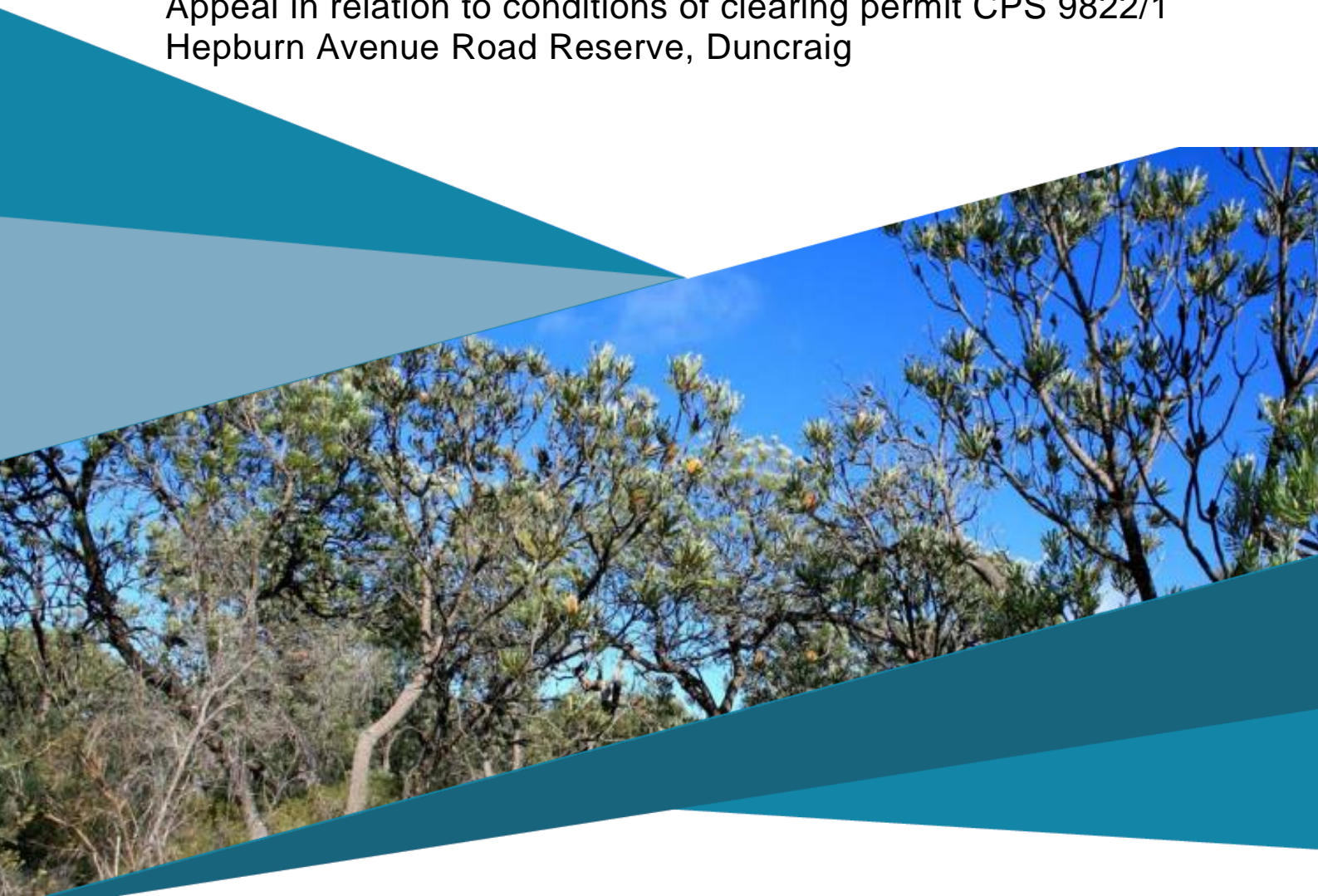




Government of **Western Australia**
Office of the **Appeals Convenor**
Environmental Protection Act 1986

Appeals Convenor's Report to the Minister for Environment

Appeal in relation to conditions of clearing permit CPS 9822/1
Hepburn Avenue Road Reserve, Duncraig



Appellant	Mr Mitchell Sideris
Permit holder	Sanpro Construction Pty Ltd
Authority	Department of Water and Environmental Regulation
Appeal No.	038 of 2022
Date	December 2022

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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

This report relates to an appeal against the conditions of Clearing Permit CPS 9822/1 (the permit) granted by the Department of Water and Environmental Regulation (DWER) under section 51E(5) of the *Environmental Protection Act 1986* (EP Act).

The permit was granted on 30 September 2022 and authorises Sanpro Construction Pty Ltd (the permit holder) to clear up to 0.12 hectares (ha) of native vegetation within Lot 9693 on Plan 214205 and Hepburn Avenue Road Reserve, Duncraig, City of Joondalup. The purpose of the clearing is to create a temporary access track to support the construction of a school building within the school grounds immediately adjacent to the clearing permit area (Figure 1). According to the permit holder, the temporary access track will facilitate the movement of vehicles and heavy equipment outside the perimeter of the school complex, to avoid exposing the school children and staff to potential safety hazards.

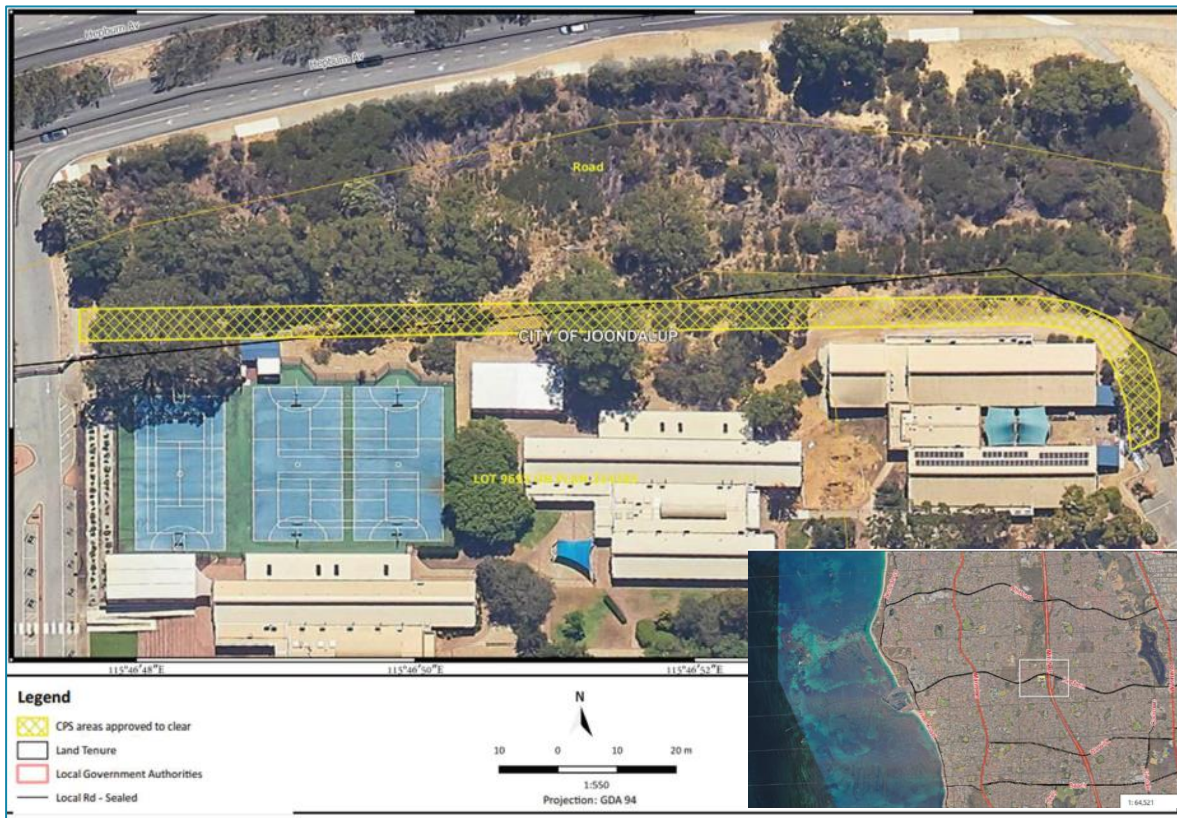


Figure 1 Location of clearing CPS 9822/1 with approved clearing footprint in yellow ¹

The clearing is subject to conditions related to:

- avoiding, minimising, and reducing impacts and extent of clearing including retaining larger trees in the application area (condition 5)
- weed and dieback management (condition 6)
- directional clearing to allow fauna movement to adjacent vegetation (condition 7)
- revegetation and rehabilitation of temporary works with local provenance species within 6 months of no longer being required (condition 8).

¹ DWER (2022) Decision Report CPS 9822/1.

1.2 Grounds of appeal and appellant concerns

In October 2022, Mr Mitchell Sideris (the appellant) lodged an appeal against the conditions of the permit. In summary, the appellant contends that the rehabilitation and revegetation controls (condition 8) do not adequately specify what remedial action is required post-clearing, especially in the context of the vegetation being a part of an ecological linkage. The appellant's concerns are summarised in Table 1.

Table 1 Grounds of appeal

Ground	Main concerns the appellant submitted
Revegetation and Rehabilitation (temporary works)	Condition 8 should specify that mulch, soil, and seeds used in the rehabilitation and revegetation should be sourced from local materials. Condition 8 should specify that the rehabilitation and revegetation should be carried out by a suitably qualified bushland rehabilitation specialist.

1.3 Key issues and conclusions

The question for the Minister on this appeal is – in the context of the concerns raised by the appellant – are the conditions adequate?

Our consideration of the issues and our conclusions are summarised below. Section 2 provides further reasons for our conclusions, and supporting information is provided in section 3.

Are the rehabilitation and revegetation conditions adequate?

In summary, we find that the intent of condition 8 of the permit – to rehabilitate and revegetate the area temporarily cleared once it is no longer required for access – is generally appropriate. Having regard for the concerns raised on appeal about the lack of detail and clarity on the rehabilitation and revegetation requirements, we consider that the conditions could be amended to provide more certainty around the environmental outcome.

The application area is a narrow strip of vegetation on the edge of a larger patch of degraded roadside vegetation and comprises scattered Eucalyptus trees with tall mixed shrubs over non-native grass and weeds. The clearing relates to only the small and medium largely non-native shrubs and weeds. The permit holder advised that the design and position of the access road was selected to minimise the amount of clearing and avoid the removal of all large native trees.

When the access track is no longer required the permit holder will rehabilitate and revegetate the disturbed area to minimise potential land degradation and mitigate the loss of remnant vegetation. We consider that any function as an ecological linkage will not be severed, due to the nature of the clearing being a narrow strip on the edge of the existing vegetation, no large trees being cleared, and because the cleared vegetation will be restored. With this in mind, we consider the specific concerns raised by the appellant.

Locally sourced mulch and similar soil types

The permit does not specify that mulch is required, however DWER advised that it is assumed that within the definition of rehabilitation, mulching may be necessary. We find that the permit should be amended to specify that mulch is required, and that it should be locally sourced and free from weeds.

Stockpiling topsoils for revegetation is not required by the permit due to the weed infestation in the area. We agree with DWER and the appellant that the permit should state that soil used to rehabilitate the disturbed site should be a similar soil type to that removed.

Locally sourced seeds

We note that DWER's definition of 'local provenance' requires the use of locally sourced seeds species, however we consider that the definition within the permit should be amended to clearly state that seed and plant material used in revegetation and rehabilitation should be obtained as close as possible to the area of clearing.

Engagement of an environmental specialist

We agree that the inclusion of a requirement to engage an environmental specialist in relation to rehabilitation and revegetation is appropriate. We therefore recommend the condition be amended to require the permit holder to engage an environmental specialist to determine the species composition, structure and density of the area revegetated and rehabilitated after the revegetation and rehabilitation occurs, including a sufficient time after completion to ensure adequate survival. In addition, we recommend the definition of 'environmental specialist' be amended to ensure the person(s) is sufficiently experienced in revegetation/restoration of vegetation on the Swan Coastal Plain.

1.4 Recommendation to the Minister

It is recommended that the appeal be allowed by amending the conditions of the permit as follows (final wording to be determined by the CEO in giving effect to this decision):

1. Condition 8 is amended to:
 - a. require mulch to be used as part of rehabilitation, and for that mulch to be locally sourced
 - b. require soil used to replace the removal of any road base associated with the temporary works to be of the same or similar soil type to the soil before clearing commenced
 - c. require the permit holder to engage an environmental specialist to determine the species composition, structure and density of the area revegetated and rehabilitated after the revegetation and rehabilitation occurs, including a sufficient time after completion to ensure adequate survival (the criteria of which is to be determined by the CEO in giving effect to this decision).
2. Definitions are amended to:
 - a. include a definition of 'environmental specialist' that ensures the person(s) is sufficiently experienced in revegetation/restoration of vegetation on the Swan Coastal Plain
 - b. add a note to the definition of 'local provenance' to the effect that seed and plant material used in revegetation and rehabilitation should be obtained as close as possible to the area of clearing.

2 Reasons for recommendation

2.1 Are the rehabilitation and revegetation conditions of the permit adequate?

In summary, we find that the intent of condition 8 (see section 3.2 for wording) related to the rehabilitation and revegetation of the site post-clearing is generally adequate, however, as raised by the appellant, greater clarity around the actions required is appropriate in the context of the environmental values. In this way, we conclude that the permit should be amended in line with the appellant's suggestions, and as generally agreed by DWER. We also recommend some minor additional changes for improved clarity.

The reasons for our conclusions are explained below.

The values and impacts of the clearing are not in dispute

The appellant raised concerns about the adequacy of the revegetation and rehabilitation conditions of the permit in the context of the ecological linkage provided by the native vegetation subject to the clearing permit, and more broadly, present in the local area (for example the Hepburn Heights Bushland over the road).

DWER's consideration of the environmental values is set out in its Decision Report for CPS 9822/1. In summary, while DWER found that the clearing is approximately 600 m outside the formal Perth Regional Ecological Linkage, the vegetation may provide a steppingstone for fauna within the local area.

Nonetheless, DWER noted that any function as an ecological linkage provided by the roadside vegetation is unlikely to be severed, due to the narrow clearing footprint, retention of all large trees, and the rehabilitation and revegetation condition applied to the permit (discussed below).

Standard conditions were applied due to low environmental risk

DWER advised that it considers permit conditions on a case-by-case basis commensurate with the likelihood of an impact occurring and the magnitude of the impact. On the basis of the small scale of impact, linear configuration, temporary nature of the clearing, condition of the vegetation and presence of weeds, and the permit holder's commitment to minimise impacts, DWER found that the proposed clearing was of a low environmental risk. As such, standard management conditions were applied.

DWER recommends that mulch is locally sourced

The appellant requested that condition 8 be amended to require that mulch used in the rehabilitation should be sourced from local material.

In response to the appeal, DWER acknowledged that the permit does not specify the requirement to mulch, however, its definition of revegetation as 'the re-establishment of a cover of native vegetation using appropriate methods' implies that mulching may be required in the process. We note that the permit holder has committed to mulching the disturbed area post-clearing to reduce potential land degradation impacts,² and DWER noted that the use of locally sourced mulch would strengthen the revegetation outcome.

² DWER, Appeal Response CPS 9822/1 22 November 2022, page 2.

Having regard for the above, for the sake of greater clarity, we consider that condition 8 should be amended to require mulch to be used as part of rehabilitation, and for that mulch to be locally sourced and free from weeds.

DWER recommends the use of similar soil types

The appellant submitted that the permit should require the total removal of base material used for the access track at the end of project and replacement by soil of similar coastal nature (not 'Gnangara yellow sand').

In response to the appeal, DWER advised that the permit has not required the stockpiling of topsoil for use in rehabilitation due to the presence of weeds in the clearing area.

DWER advised that while it considered that the permit can ensure an appropriate rehabilitation outcome given the definitions of rehabilitation and revegetation on the permit, it considered on review that:

...the use of soil materials of the same types to the clearing area ... for rehabilitation would further strengthen the outcome of the rehabilitation and revegetation for this application.³

We consider it appropriate for the permit to be amended to require soil used to replace the removal of any road base associated with the temporary works to be of the same or similar soil type to the soil before clearing commenced.

Seeds should be locally sourced where possible

The appellant submitted that the permit should specify that plant species used in revegetation should be of locally sourced seed materials, such as those listed by the City of Joondalup and Friends of Hepburn Heights.

Condition 8 of the clearing permit requires the permit holder to revegetate cleared areas with 'local provenance' species. The permit defines 'local provenance' to mean:

... native vegetation seeds and propagating material from natural sources within 50 kilometres (km) and the same Interim Biogeographic Regionalisation for Australia (IBRA) subregion of the area cleared.⁴

The appellant submitted that this could mean the use of seeds from plants growing 50 km away, which in his view would be inappropriate for use in revegetation at this location.

In response to this aspect of the appeal, DWER advised that 'local provenance' requires the seed be selected within 50 km and from within the same IBRA Region – in this case the Swan Coastal sub-bioregion. This second requirement ensures similarity in vegetation, soil types and landforms of the source material.

DWER advised that it reviewed the City of Joondalup's list of local native plants species recommended for the local area and concluded that it was comparable with the native plant species within the definition of local provenance for the area. DWER agreed that the permit holder could use the City's list as a reference when selecting locally sourced seeds for revegetation, however remained of the view that the definition of local provenance was sufficient to ensure that seeds used for revegetation are locally sourced.⁵

³ DWER, Appeal Response CPS 9822/1 22 November 2022, page 4.

⁴ Ibid, page 3.

⁵ Ibid.

For clarity, we recommend that the permit be amended to add a note to the definition of 'local provenance' to the effect that seed and propagating material used in revegetation and rehabilitation should be obtained as close as possible to the area of clearing.

The recommended changes to engage an *environmental specialist* will further strengthen this outcome (discussed below).

DWER recommends the engagement of an environmental specialist

The appellant submitted that the permit should require that a qualified and highly experienced bushland rehabilitation specialist known and approved by the City of Joondalup undertake the rehabilitation and revegetation of the cleared site to maximise plant seedling survival and result in minimal weed reintroduction.

DWER agreed that the inclusion of a requirement to engage a suitably qualified environmental specialist would strengthen the outcome of the rehabilitation and revegetation. DWER defines an environmental specialist as:

A person who holds a tertiary qualification in environmental science or equivalent, and has a minimum of 2 years work experience relevant to the type of environmental advice that an environmental specialist is required to provide under this permit, or who is approved by the CEO as a suitable environmental specialist'.⁶

DWER advised that the City of Joondalup's approved rehabilitation specialist may fulfill the above definition.

DWER recommended condition 8 be amended with the addition of the requirement to engage an *environmental specialist* to determine the species composition, structure and density of the area revegetated and rehabilitated.

In reviewing the permit, we note that the permit does not include a condition requiring the permit holder to record the species composition, structure, and density of the area after revegetation. DWER's response to the appeal notes that the environmental specialist's contributions (as recommended above) can be particularly relevant to the requirement for the permit holder to determine the species composition, structure, and density of the area after revegetation.

In this regard, we recommend an amendment to the permit to require the permit holder to engage an environmental specialist to determine the species composition, structure and density of the area revegetated and rehabilitated after the revegetation and rehabilitation occurs, including a sufficient time after completion to ensure adequate survival (the criteria of which is to be determined by the CEO in giving effect to this decision).

In addition, having regard for the appellant's submission that this person should have specific experience in bushland rehabilitation, we recommend that the permit be amended to include in its definition of environmental specialist that the person(s) is sufficiently experienced in revegetation/restoration of vegetation on the Swan Coastal Plain.

⁶ DWER, Appeal Response CPS 9822/1, page 4.

3 Supporting information

3.1 Description of clearing

The application area is a narrow strip of vegetation on the edge of a larger patch of degraded roadside vegetation. It comprises scattered Eucalyptus trees with tall mixed shrubs over non-native grass and weeds. The clearing relates to only the small and medium, largely non-native shrubs, and weeds.



Figure 2 Some photos provided by the permit holder showing the clearing permit area, where the large trees will not be cleared (DWER Decision Report CPS 9822/1)

3.2 Wording of existing condition 8 in CPS 9822/1

Condition 8. Revegetation and rehabilitation (temporary works)

The permit holder must revegetate and rehabilitate areas cleared for a temporary access track with local provenance species within six months of the area no longer being required for the purpose for which it was cleared, unless the CEO, in writing, advises the permit holder to the contrary.

3.3 Approval to undertake works

The City of Joondalup issued a Development Approval under the *Planning and Development Act 2005* in January 2021 for the construction of a new school building. In approving the development, the City recommended that larger trees be retained and that the cleared area revegetated with local provenance species at the completion of the project.

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, legal 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 the appeal.

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

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

- correspondence with the permit holder
- a meeting (via phone) with the appellant on 15 December 2022

Table 2 Documents we reviewed in the appeals investigation

Document	Date
DWER, Clearing Permit CPS 9822/1	30 Sept 2022
DWER, Decision Report for Clearing Permit CPS 9822/1	30 Sept 2022
DWER, Appeal Response CPS 9822/1	22 Nov 2022