



Government of **Western Australia**  
**Appeals Committee**  
Environmental Protection Act 1986

# Appeals Committee Report to the Minister for Environment

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Appeal against grant of clearing permit CPS 9349/1  
Mount Barker, Shire of Plantagenet



|                      |  |
|----------------------|--|
| <b>Appellant</b>     | Wildflower Society of Western Australia (Inc)    |
| <b>Permit holder</b> | Shire of Plantagenet                             |
| <b>Authority</b>     | Department of Water and Environmental Regulation |
| <b>Appeal No.</b>    | 043 of 2023                                      |
| <b>Date</b>          | February 2024                                    |

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**Appeals Committee**

Dr Garry Middle

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Cover image: Aerial view of the proposal site (Garry Middle)

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**Acknowledgement of Country**

The Office of the Appeals Convenor and the Appeals Committee acknowledge 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 and present.

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# 1 Executive summary

This is a report on an appeal by the Wildflower Society of Western Australia (the appellant) against the grant of clearing permit CPS 9349/1 under Part V of the *Environmental Protection Act 1986* (EP Act). The purpose permit was granted by the Department of Water and Environmental Regulation (DWER) to the Shire of Plantagenet as the applicant (the Shire) for the purpose of a bike trail network, walking trail and car park in an area of bushland comprised of the following reserves –

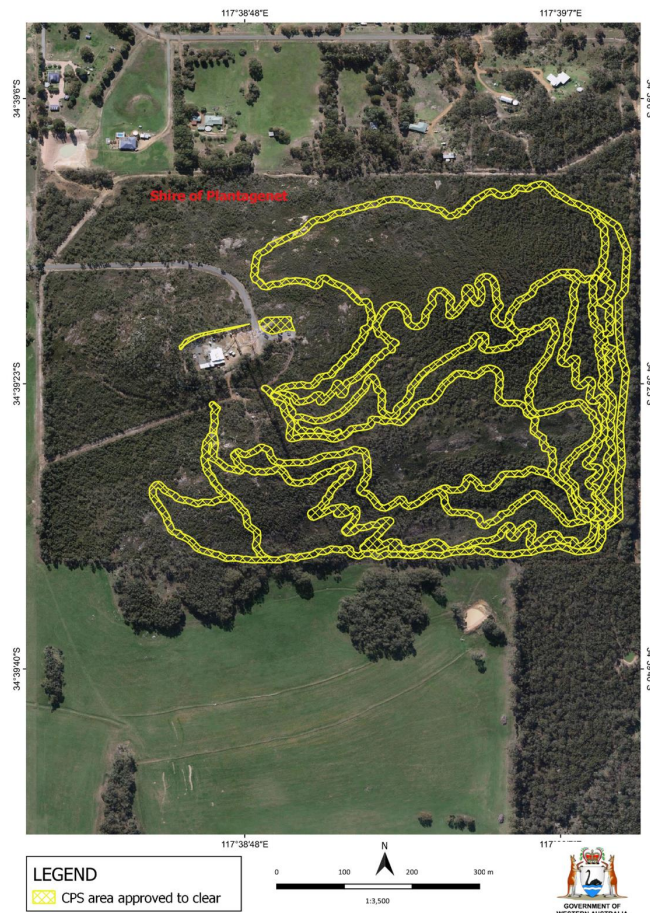
- Lot 6923, Crown Reserve 15162, Mount Barker;
- Dorey Place Road reserve, Mount Barker; and
- Tower Road reserves Mount Barker.

The trail network will be within Crown Reserve 15162, which is a Class A reserve vested in the Shire for the purpose of “Park Lands”.

The project is located approximately 3 km southwest of the Mount Barker townsite in the Shire of Plantagenet.

The Shire proposes to clear no more than 1.29 hectares of native vegetation within a defined larger clearing footprint. The clearing footprint is larger than 1.29 ha which allows flexibility for the Shire to clear for the trails and avoid clearing of significant flora species.

The footprint that includes the trails, short walk and extension to the existing carpark are shown in Figure 1 below.



**Figure 1** Footprint for the proposed clearing for permit CPS 9349/1

The Department of Biodiversity, Conservation and Attractions (DBCA) are partners with the Shire for the trail network, and will manage the clearing and trail construction for the Shire. Funds for this work come from the Covid Recovery Fund.

On 10 January 2024, the Minister for Environment, the Hon Reece Whitby MLA, appointed Dr Garry Middle as Chair and single member of the Appeals Committee (the Committee) to investigate this appeal. The appointment was made under Section 106 of the EP Act.

This is the report from the Committee on the appeal against the grant of clearing permit CPS 9349/1.

**1.1 Grounds of appeal and appellant concerns**

The appellant considers that the permit should not have been granted, and raised several concerns: contending that the amount of clearing would be greater than that approved; that impacts on significant flora, dieback and weeds could spread over the site including from increased erosion; reduced value of the site as part of the “Porongurup Range Corridor”; and that the offset is inappropriate.

**Table 1** Grounds of appeal

| Ground   | Main concerns the appellant submitted  |
|--|--|
| 1. Area to be cleared is inaccurate and an underestimate   | The appellant noted that for a total trail length of 11.4 km clearing of 1.29 ha would mean the average width of the trail would be 1.133 m. The appellant argued that this average width is unrealistic and an underestimate, and that the total amount of clearing required for the trail network would be greater than 1.29 ha. |
| 2. The events held at the site and on-going usage of the site pose a risk to flora and vegetation                | The appellant is concerned that events held at the site pose an ongoing threat to vegetation, in particular to priority flora. It was argued that trail users would likely create their own informal tracks which would lead to increased clearing and could threaten significant flora.   |
| 3. The use of the trails could lead to dieback and weeds being spread over the site as well as increased erosion | The appellant contended this project has a high risk of spreading dieback throughout the site during site development and during operations, given all the trails being developed go up and down gradient and thus resulting in the easy transmission of any infestations that occur throughout the site.                          |
| 4. The trails will reduce the site’s value as part of the “Porongurup Range Corridor”                            | The appellant noted that this reserve forms part of the Gondwana Link, and that the cumulative impacts on the site will significantly reduce its value as part of that link.   |

## 1.2 Appeal investigation process

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The Committee's investigation into the appeal involved the following:

- Two meetings with officers from the Shire;
- One meeting with representatives of the Wildflower Society;
- One meeting with the relevant officer from DBCA; and
- A site visit.

As well, the Committee took into account the following documents:

- The appellant's appeal letter;
- DWER's CPS 9349/1 Purpose Permit with Plan and Decision Report and attachments;
- DWER's s106 of the EP Act response to the appeal and attachments;
- Additional advice from DWER;
- The Shire's response to the appeal;
- The report to the Shire of Plantagenet Council meeting seeking Development Approval for the trail network;
- The Shire's letter of approval detailing the Development Approval;
- Great Southern Regional Trails Master Plan (Great Southern Centre for Outdoor Recreation Excellence 2020);
- Western Australian Mountain Bike Management Guidelines (Department of Biodiversity Conservation and Attractions, Department of Local Government Sport and Cultural Industries et al. 2019);
- Pwackenbak Mountain Bike Trail Network: Detailed design (Three Chillies Design 2023);
- DWER's A guide to the assessment of applications to clear native vegetation (Department of Environment Regulation 2014); and
- *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*; and
- WA Environmental Offsets Policy (Government of Western Australia 2011).

The Committee also carried out a literature review of the academic and grey literature related to the environmental impacts of mountain biking.

As well, the Committee took into account the objects and principles under section 4A of the EP Act.

## 1.3 Key issues and conclusions

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The appellant raised two general concerns – the environmental impacts of the clearing and trail construction, and the environmental impacts of the use of the trails. The appellant sought to have the permit refused arguing that the proposal would lead to a significant cumulative loss of vegetation and subsequent loss of environmental value.

The conclusions and finding of the Appeals Committee are summarised below, with Section 2 providing the details and reasoning behind the Committee's recommendation to

the Minister for Environment. Section 3 gives the full details of the proposal and important context information.

### **Area to be cleared is inaccurate and an underestimate**

The Committee agrees with the appellant that were the Shire to construct the 10 trails the average width of the trails would be 1.133 m. The Committee notes that the total length of the trails has been reduced to 9.728 km, therefore the average width would now be 1.326 m if the full amount of clearing were to occur.

The WA Mountain Bike Management Guidelines (Department of Biodiversity, Conservation and Attractions, Department of Local Government Sport and Cultural Industries et al. 2019), recognises three categories of trails, with the recommended minimum trail width are:

- Green (easy) – 900 mm or wider;
- Blue (moderate) – 600 mm or wider; and
- Black (difficult) – 300 mm or wider.

The Committee found that taking into account these criteria and the average amount of clearing that can occur, the trails can be designed to keep clearing to no more than 1.29 ha. As well, DWER has set legally binding conditions that clearing is to be no more than 1.29 ha and that the Shire is to provide annual reports to DWER on the clearing it has carried out.

For these reasons, the Committee recommends that this appeal ground be dismissed.

### **The events held at the site and ongoing usage of the site pose a risk to flora and vegetation**

The appellant is concerned that events held at the site pose an ongoing threat to vegetation, in particular priority flora. The concern is that users of the trails will not always stick to the cleared corridors and may take short-cuts, which would add to the amount of clearing and directly impact on priority flora.

The Committee noted that the responses to the appeal by DWER address the impacts on significant flora due to the clearing and track construction, but not the matter of possible impacts due to the use of the trails.

The Committee noted that section 51O of the EP Act requires the CEO to have regard to any development approval, planning instrument and other relevant matters when making decisions on clearing permits. In this case, the Development Approval has been given for the project.

As well, the Committee concluded that the ongoing impacts of the use of the trails is a relevant consideration in assessing the permit.

DWER advised, and the Committee agrees, that the Permit Holder has responsibility for managing potential impacts to flora and vegetation resulting from holding events and use of the trail facilities through its role as the manager of the Reserve. The Committee agrees with the appellant that it is not clear to the Committee how DWER considered this matter in its assessment of this Other matter. The Committee carried out its own investigations into this.

Advice from DBCA and the Shire, and the Committee's own research, led to the conclusion that the activities most likely to cause the loss of vegetation and possible loss of significant flora would be riders taking short-cuts or attempting to create new 'rogue' trails. The appellant provided information to the Committee in support of its concerns, and the

Committee carried out an academic literature review related to the impacts of mountain biking.

It can be concluded from the above literature review, and the information provided by the appellant, there is a risk that mountain biking could lead to environmental impacts including loss of vegetation, that there is a view in some sectors of the community that these impacts are significant which is supported by anecdotal information, and the research into the environmental impacts of mountain biking is not comprehensive and difficult to draw conclusions from.

The Committee had to consider the existing information, the site conditions, the nature of the proposal and the management measures that will be put in place to assess the risk of indirect loss of vegetation.

The Committee considers that the risk that activities could lead to significant damage to vegetation - notably short-cutting and creation of informal trails - is very low because:

- The trails design has eliminated the incentives to take short-cuts;
- The thickness of the vegetation; and
- The sandy nature of the soils on the site.

As well, it is expected that if the local bike club or the Southern Centre for Outdoor Recreation Excellence were to organise an event at the site they will be required by the Shire to have an events management plan, and both these organisations are well experienced in holding such events.

The Committee notes that the Shire will include the DBCA recommended maintenance plan into its assets management plan which will be subject to annual budgeting. As well, the Committee notes that site inspections are part of the Shire's asset management procedures.

The Committee agrees with the Shire that all of the relevant stakeholder groups and individuals have a significant interest in visiting and using the site while ensuring it is not degraded and its existing environmental and cultural values are maintained. It is likely, therefore, that any degradation of the vegetation of the site will be reported to the Shire which will then take the necessary remedial actions.

For these reasons, the Committee, while agreeing with the appellant that there is a risk that further loss of vegetation could occur, finds that the risk is very low, and, therefore, recommends that this appeal ground be dismissed.

### **The use of the trails could lead to dieback and weeds being spread over the site as well as increased erosion**

The appellant argued that a detailed dieback survey should be carried before construction to clearly define what areas are dieback free and those which are dieback infested, given this project has a high risk of spreading dieback throughout the site during site development and during operations of all the trails. The appellant went on to argue that:

There needs to be an erosion control plan produced for each trail as the gradients on all the trails will result in erosion and the generation of sediment. This sediment will cover the ground level plants outside the trails when it diverts off the trails and deposit weed seeds and dieback in the vegetation as well as covering plants and local plant seeds, leading to the invasion of weeds. It will also create concentrated water flows and potentially erode areas off the trails.



Condition 6 of the permit approval detailed the management measures that the Shire needs to carry out when undertaking clearing that would minimise the risk of introduction and spread of weeds and dieback. Further, Condition 6(f) requires the Shire to, at least once a year for the term of this Permit, remove or kill any weeds growing within areas cleared under this Permit.

The Committee finds that the conditions set on the permit and the efforts made by DBCA to design the trails to minimise erosion adequately deal with the impacts of the clearing and construction, but do not address the key concern of the appellant, which is the impacts of the on-going use of the trails.

The Committee notes that the discussion related to potential impacts on vegetation and significant flora due to the use of the trails are applicable here. This is because the vector that could cause the spread of weeds and dieback is riders taking short-cuts or creating their own informal trails.

The Committee agrees with the appellant that there is a risk that dieback and weeds could be spread due to the usage of the trails, but concludes that this risk is very low. In arriving at this conclusion, the Committee took into account the following:

- The design of the trails eliminates the incentives for short cuts;
- The site conditions – the thickness of the vegetation and sandy nature of the soils on site also reduce the likelihood of riders going off the designated trails; and
- The high community interest in maintaining the environmental and cultural values of the site.

As well the Committee notes that

- Erosion control is a key design element for the trails;
- Condition 6(f) requires the Shire to, at least once a year for the term of this Permit, remove or kill any weeds growing within areas cleared under this Permit;
- The asset management plans of the Shire will incorporate the recommendations for management from DBCA and include site inspection and any follow-up remedial actions, which would include weed removal; and
- The Shire has committed to installing permanent dieback wash stations at the trail head as well as using special additional dieback stations for events.

For these reasons the Committee finds that events held at the site and the casual use of the site pose an insignificant risk to the spread of dieback and weeds, including through erosion, and therefore recommends that this appeal ground be dismissed.

### **The trails will reduce the site's value as part of the "Porongurup Range Corridor"**

The appellant argued that the trails network will reduce the existing continuous block of native vegetation to a series of small patches with large edge effects. Consequently:

... (these) patches will not be viable in the long-term and will lose their value as habitat without an intense management effort. As a result, this area will not provide the value to the "Porongurup Range Corridor" that is currently provided.

The Committee notes that the total clearing on 1.29 ha is about 2.3% of the existing vegetation on the site, and that this involves linear clearing across the whole site with an average width of at most 1.326 m. The size and nature of this clearing is highly unlikely to prevent fauna movement within the site and between this and adjacent sites. It is

acknowledged that the usage of the site will increase which will lead to intermittent disruption to internal fauna movement.

Further, as noted in other appeal grounds there are sufficient measures that will be put in place to make it highly unlikely that the ongoing use of the site will lead to any indirect loss of vegetation or other environmental and cultural values. As well, the offset will ultimately lead to a net gain in vegetation cover, which will enhance the regional ecological linkage.

For these reasons the Appeals Committee recommends that this appeal ground be dismissed.

### **The proposed offset is inappropriate and the revegetation plan inadequate**

The appellant argued that the proposed offset, which included the rehabilitation of an old gravel pit, should not be counted as an offset, given the Shire should rehabilitated this site irrespective as to whether this proposal proceeds or not.

The proposed offset is revegetating 4.53 ha of degraded land in two separate areas: Lot 580 on Plan 26284 (Reserve 27185); and, the Crown Reserve 17394. The majority of the revegetation will take place on Reserve 27183.

DWER advised that the revegetation plan is consistent with the Department's *A Guide to Preparing Revegetation Plans for Clearing Permits* and adequately outlines the required revegetation activities to be undertaken.

The Shire advised that Reserve 17394 is unallocated Crown land (UCL), and not vested with the Shire of Plantagenet, and there is no requirement on the Shire to revegetate the site.

The Appeals Committee agrees with DWER's advice and considers that the proposed offset is appropriate, noting that the majority of the revegetation will take place on a site that would not otherwise have restoration works carried out on it.

For these reasons the Appeals Committee recommends that this appeal ground be dismissed.

## **1.4 Recommendation to the Minister**

It is recommended that the appeal be dismissed.

However, in the absence of good quantitative data on the impacts of mountain biking, the Minister could consider asking DBCA to carry out research into the environmental impacts of existing mountain biking including the proposal the subject of this appeal. Mountain biking is becoming more popular, and more trails are planned, with some local governments seeing mountain biking as a potential tourism opportunity.

## 2 Reasons for recommendation

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### 2.1 Overview of the appeal

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The appellant raised two general concerns: the environmental impacts of the clearing and trail construction; and, the environmental impacts of the use of the trails. The appellant argued that both of these general impacts will lead to a significant loss of vegetation above and beyond that approved in the permit. Consequently, the value of this vegetation will be significantly reduced: in particular, its value as part of a regional ecological link – the Gondwana Link. For this reason, the appellant sought to have the permit refused on appeal.

The specific grounds of appeal listed below are those raised in the appeal and cover both the environmental impacts of the clearing and trail construction, and the environmental impacts of the use of the trails where appropriate.

The matter of whether the permit should be refused on appeal is summarised at the end.

### 2.2 Appeal ground 1 – Area to be cleared is inaccurate and an underestimate

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#### Relevant information

The appellant noted that for a total trail length of 11.4 km, clearing of 1.29 ha would mean the average width of the trail would be 1.133 m (this calculation is confirmed to be correct). The appellant argued that:

The example pictures highlighted in the Concept Plan (MDE, 2020) provides some visual examples of the level of disturbance for the variety of trails proposed. It is clear from them that the disturbance area is well in excess of that suggested by the areas proposed in the application. The finished trail widths indicate permanent width between 0.6 – 2.0 m dependent on the degree of difficulty.

The Shire has advised that:

Completed trail widths are expected to be between 600mm and 1.3 metres, in response to site conditions, as outlined in the Magic Dirt Enterprises (MDE) Tower Hill Mountain Bike Trail Network Concept Plan 2020 and the subsequent Three Chillies Design (TCD) Pwackenbak Mountain Bike Trail Network Detailed Design, 2023.

The Three Chillies Design report (Three Chillies Design 2023) proposed trails to be one of three categories based on the WA Mountain Bike Management Guidelines (Department of Biodiversity, Conservation and Attractions, Department of Local Government Sport and Cultural Industries et al. 2019). These categories and the recommended trail width are:

- Green (easy) – 900mm or wider;
- Blue (moderate) – 600mm or wider; and
- Black (difficult) – 300mm or wider.

The appellant contended that because Blue Trails require the construction of jumps and berms, and Black Trails are designed to include more undulations, there is a need for a wider corridor so as to meet the expectations of more skilled riders. Consequently, clearing for these trails will be wider than the minimum.

The Shire advised that the undulating nature of the site means that wooden features (jumps and berms) are not planned for the proposal.

Condition 3 of the Permit only authorises the Shire to clear up to 1.29 ha, and that additional conditions (12 and 13) require the Shire to keep records of the coordinates of the clearing and the size of the clearing, and to provide annual reports of the clearing activities. DWER advised that it will monitor the clearing activities and audit the reports, and take appropriate enforcement action should any breach of conditions be identified.

As noted above, only 5 of the trails will be constructed in the first instance, with a total length of around 5km. Officers of the Shire have indicated they want to keep the option open to construct the remaining trails, and so will keep to the original trails design width, meaning the total clearing in the first instance will be about half of the 1.29 ha approved in the permit.

### **Consideration**

Based on a revised total trail length of 9.728 km, the average width would be 1.326 m if the full amount of clearing were to occur. This could allow the clearing for the Blue and Black trails to be greater than the minimums as set in the Guidelines without having a total clearing of more than 1.29 ha should all the 10 trails be constructed. Further, the conditions set by DWER in the permit are adequate to ensure total clearing will be no more than 1.29 ha.

### **Finding**

For these reasons the Appeals Committee recommends that this appeal ground be dismissed.

## **2.3 Appeal ground 2 – The events held at the site and ongoing usage of the site pose a risk flora and vegetation**

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### **Relevant information**

The vegetation on the sites was rated by DWER as being 96.6% excellent and the remainder very good. Figures 2 and 3 show some of the vegetation on the site.



**Figure 2** Excellent condition vegetation on the proposal site



**Figure 3** Wider view of the vegetation on the site including a rocky outcrop

The appellant is concerned that events held at the site pose an ongoing threat to vegetation, in particular, priority flora. It was argued that:

The Society believes the use of this facility for events poses a significant threat to the flora and vegetation that ... lies between the trails on this site. We note that the location of threatened, and priority, flora identified on the site is often proximal to the trails.

The appellant met with the Committee and clarified that the concern is that users of the trails will not always stick to the cleared corridors and may take short-cuts or create their own informal trails, which adds to the amount of clearing and could directly impact priority flora.

It should be noted that there are overlapping concerns in the appeal ground with concerns in the next appeal ground which refers to the risk that the spread of weed and dieback could also result in the further indirect loss of vegetation.

In its response to the appeal, DWER addressed the issue of the significance of the vegetation and the efforts made by the Shire to avoid impact on significant flora. It noted that:

The Department agrees with the Appellant that the Application Area contains high quality vegetation and priority flora species. However, it is noted that the Permit Holder has considered avoidance and mitigation measures to ensure no impact to priority flora or significant habitat significant for fauna species are removed within the Application Area, including avoidance of all known populations of priority flora identified through surveys and commitment to avoid clearing of trees.

DWER also advised that Condition 8 (a) requires the Shire to carry out an additional flora survey prior to the clearing to identify any conservation significant flora that could be impacted not already identified. Condition 5 requires the Shire to take further avoidance, minimisation or reduction of the impacts of clearing, where possible, which in practice means changing the alignment of any trails that could impact on significant flora. Condition 8(c) requires that if any priority flora are identified by the additional survey, they are not to be cleared directly and no clearing can occur within 10 metres of the identified priority flora. Should any threatened flora be identified, a 50 m buffer will be required.

The Shire, in response to the appeal stated that it was committed to the flora management control measures as set by the permit.

The Committee met with the relevant DBCA officer, and the following advice was provided relevant to this matter.

As noted above, DBCA will manage and carry out the clearing and trail construction. DBCA has been involved in the construction of several other trails, both on land it manages and other sites. The experience gained from these other trails has enabled DBCA to work with the Shire to develop a trail design that has eliminated any sightlines to trail features that could encourage short-cutting by the riders. As well, the thickness of the vegetation will likely be a significant incentive for riders to stay on the tracks and not create new 'rogue' tracks. Further, the soils of this site are primarily sandy, and the trails will be constructed to have more solid bases, both of which will discourage riders going off the existing trails.

Officers of DBCA carried out on-site inspections of the proposed trails alignments which has led to minor changes to at least one trail alignment to avoid granite outcrops. DBCA will work with the Shire to comply with Condition 8 (a) and the additional flora survey so as to avoid significant flora.

These responses address the impacts on significant flora due to the clearing and track construction, but not the matter of possible impacts due to the use of the trails.

The appellant provided information to the Committee in support of its concerns, in particular:

- An ABC news item reporting that 'illegal' mountain bike trails have been created in the Mount Clarence Reserve in Albany;
- The results of a casual flora survey of the site carried out by one of the Wildflower Society members;
- A piece published in the Literary journal *Southerly* by Professor Stephen Hopper AC raising concerns about mountain biking in general but especially on granite hills, and noted impacts in the Mount Clarence reserve from informal trail creation; and
- An ABC news item reporting that Cockburn Council had delayed making a decision as to whether to exclude mountain bikes from Manning Reserve, noting community concerns about the environmental impacts of mountain bikes, and that there were reported to be 17 km of informal trails already in the park. The report also noted that, while mountain biking was banned from Bold Park, it was still being used by mountain bikers who had created unofficial tracks.

The Committee noted that section 51O of the EP Act requires the CEO to have regard to any development approval, planning instrument and other relevant matters when making decisions on clearing permits. In this case, the Development Approval has been given for the project. The Committee also noted that Other matters may include the necessity of the clearing, with the EP Act prioritising clearing for public benefit over a private benefit or commercial gain. The proposed trails and other developments would be primarily for the public to use and, therefore, of public benefit.

As well, the Committee concluded that the ongoing impacts of the use of the trails is a relevant consideration in assessing the permit.

DWER's guide to the assessment of applications to clear native vegetation (Department of Environment Regulation 2014) notes that:

In considering a permit application the CEO shall also have regard for any other relevant matter. 'Other matters' are not defined in the EP Act, and consequently are any matters the CEO considers relevant...

Environmental, economic and social impacts arising from land use is an 'other matter' the CEO would consider when making a decision regarding the clearing application.

Clearly, the ongoing impacts of the use of the trails is a relevant consideration.

In the regard, DWER advised that:

The Department notes, that the Permit Holder also has responsibility for managing potential impacts to flora and vegetation resulting from holding events and use of the trail facilities through its role as the manager of the Reserve.

DWER was asked for further advice on whether the use of the trails facilitated by the clearing and the possible impacts on vegetation and spread of weeds and dieback are relevant considerations for the clearing permit. It advised that:

The Department also notes that the Permit Holder is responsible for managing potential impacts to flora and vegetation resulting from holding events, through its role as the manager of the Reserve and through the general provisions of the EP Act. It is an offence under the EP Act to cause serious environmental harm or material environmental harm.

The Committee agrees with DWER that the Shire is responsible for managing potential impacts to flora and vegetation resulting from holding events, as well as the ongoing casual use of the site.

The Committee agrees with the appellant that it is not clear how DWER considered this matter in its assessment of this Other matter. The Committee, therefore, carried out its own investigations.

The Committee notes that DWER typically sets the following condition on clearing permits for mineral exploration related to dieback, other pathogen and weed control:

... restrict the movement of machines and other vehicles to the limits of the areas to be cleared.

The permits usually refer to "When undertaking any clearing or other activity authorised under this Permit." In these cases, the purpose refers to "the purpose of mineral production."

While this relates to managing potential spread of dieback, other pathogens and weeds, it also relates to the ongoing use of the area cleared not managing the clearing process itself.

It is acknowledged that in these cases "the movement of machines and other vehicles" is under the direct control of the proponent, and that for the proposal the subject of this permit and appeal, the Shire does not directly control the users. However, the principle of assessing the impacts of the land use of the area cleared does apply. Given these differences, a different approach is needed in assessing and managing the potential environmental impacts. This requires consideration of the adequacy of the initial design and the adequacy of the ongoing management of the site.

At its August 2021 Ordinary Meeting, the Shire of Plantagenet Council considered an application for development approval for the construction of a mountain bike trail. The report noted that this proposal is consistent the Shire's Strategic Community Plan, which included Strategy 2.3.4:

Plan and seek funding for the development of trails in line with the Trails Master Plan.

This plan was updated in 2022 and included the Plantagenet Trails Masterplan (Shire of Plantagenet 2019) and Regional Trails Masterplan, both of which included the Tower Hill bike trail network.

The Development approval was formally issued on 2 September 2021 without any conditions. The approval was for the development of the trail network and not its ongoing management.

DBCA advised that, once the construction of the trails have been completed it will provide the Shire with a recommended maintenance schedule including inspections schedules and how to address matters like unofficial tracks creation.

DBCA expects that the Shire will provide information for potential users at least through a brochure which will be made easily available for potential users. DBCA noted that other Shires have provided stand-alone information services.

DBCA will also construct trail head information infrastructure and then handover the ongoing upkeep of this resource to the Shire.

With respect to managing events at the site, DBCA advised that events at the other sites in the region are organised and managed either by the local bike club, the Southern Centre for Outdoor Recreation Excellence or the Local Government.

DBCA further advised that given the size of this network, state-wide events would not be held at this site, and any event will be of local or regional interest only, which will be low-key and easy to manage.

The Shire was asked about how it proposes to manage the potential environmental impacts on the site because of ongoing usage, as well as how it proposes to manage environmental impacts of events held at the site.

In response, the Shire advised that when DBCA completes the construction of the trails and provides the Shire with the recommended maintenance schedule, the Shire will consider this as a management plan for the site and will integrate it into the Shire's asset management and maintenance plan, which will be budgeted for on an annual basis. Council has a maintenance officer who does 'walk throughs' of Council reserves to identify issues that need to be addressed. Council could also include in its assets management budget engaging contract staff to do some site inspections, if required.

The Shire also works with local conservation groups to help manage the conservation and biodiversity values of its reserves, including the Tower Hill Reserve, notably Oyster Harbour and Wilson Inlet Catchment Groups, as well as citizen scientists and interest groups in the community.

The Shire has worked with the Mount Barker Bicycle Club and the Mount Barker Community College in developing regional and local trails network plans, constructing demonstration tracks and maintaining trails. The Shire expects to maintain that engagement and partnership relationship with these reference and working groups once the Pwackenbak trails have been completed.

The Reserve is Registered Aboriginal Site ID 39044 - A Ceremonial Place, Meeting Place, Lookout, Lizard Trap Stone Artefact. The project is the subject of a Section 18(3) consent under the *Aboriginal Heritage Act 1972*, and the local First Nations group (Mount Barker Aboriginal Progress Association) has supported the development of the site.



The Shire argued that all of these groups have a significant interest in visiting and using the site and ensuring it is not degraded and maintains its existing environmental and cultural values.

## **Consideration**

The Committee considers that the ongoing impacts of the use of the trails is a relevant consideration with respect to the granting of the clearing permit. The most likely activities that could cause the loss of vegetation and possible loss of significant vegetation would be riders taking short-cuts or attempting to create new informal trails.

The Committee notes the concerns of the appellant and decided to carry out a review of the academic literature related to the impacts of mountain biking, with a summary of the main studies provided below.

One 2010 study reviewed the existing research so as to compare the impact of hiking, mountain biking and horse riding on vegetation and soils in Australia and USA. In summary, it found the following:

Many impacts on vegetation, soils and trails are similar for the three activities, although there can be differences in severity. Impacts include damage to existing trails, soil erosion, compaction and nutrification, changes in hydrology, trail widening, exposure of roots, rocks and bedrock. There can be damage to plants including reduction in vegetation height and biomass, changes in species composition, creation of informal trails and the spread of weeds and plant pathogens ...

Mountain bike specific impacts include soil and vegetation damage from skidding and the construction of unauthorised trails, jumps, bridges and other trail technical features. There are gaps in the current research that should be filled by additional research: (1) on horse and mountain bike impacts to complement those on hiking. The methods used need to reflect patterns of actual usage and be suitable for robust statistical analysis; (2) that directly compares types and severity of impacts among activities; and (3) on the potential for each activity to contribute to the spread of weeds and plant pathogens. Additional research will assist managers and users of protected areas in understanding the relative impacts of these activities, and better ways to manage them. It may not quell the debates among users, managers and conservationists, but it will help put it on a more scientific footing. (Pickering, Hill et al. 2010, 551)

Another study of the collaborative governance structures and approach, benefits and impacts of the Munda Biddi Trail found that:

Overall the collaborative approach, by providing dedicated facilities at approved sites, appears to have led to a reduction in the impacts of unauthorised damaging activities such as trail modification and the creation of informal trails, highlight the benefits of this type of approach. (Newsome, Stender et al. 2016, 26)

Another study examined the ecological impacts of electric mountain bikes and found that:

The results systematically summarise how MTBing can lead to immediate responses of animals, changes in habitat use and diurnal activity patterns of wildlife, a reduced reproductive success, seed dispersal, trampling damage on flora, vegetation changes in areas adjacent to trails, as well as soil compaction, exposure and erosion. The increasing use of eMTBs will cause a larger frequency and spatial cover by bikers and therefore a rising number of trails. Wildlife will be more affected when off-trail riding increases or when the use of so far less

frequented areas or times will intensify. Vegetation and soil will be more affected, when new trails are created. Both aspects are more likely with the switch to eMTBing as steep slopes are climbed faster and more frequently.

However, these direct effects of MTBing may not be associated with negative long-term consequences for ecosystems as those depend on the specific species or subjects of protection, the environmental context and possible interactions with other human activities. Overall, long-term consequences for plants and animals are difficult to assess and thus general patterns of how the direct effects of (e)MTBing translate into consequences for population dynamics are yet missing.

It is essential to improve the knowledge regarding long-term effects of (e)MTBing on the population and ecosystem level and societal debates regarding (e)MTBing need to differentiate effects relevant for animal welfare from implications for nature conservation. (Kuwaczka, Mitterwallner et al. 2023, e02475)

Another study surveyed 3,780 mountain bikers in Europe to get a better understanding of how they interact with the natural environment and to explore their attitudes towards sustainability. They found that:

Connection to nature was an important source of motivation and the use of mountain bike trails has increased rider's appreciation of and willingness to protect nature, with a large majority having taken direct action to do so. Mountain bikers are prepared to contribute towards trail maintenance through the provision of labour or financially. Although most mountain bikers make use of wet trails and illegal trails, incidence of conflict is relatively low. (Campbell, Kirkwood et al. 2021, 1)

A study into the impacts of mountain bike activity in John Forrest National Park, including informal trail development, noted that "mountain bikes creating informal trails and modifications to existing trail systems is acknowledged as a problem by Park management. (Newsome and Davies 2009, 237)

An undated report (likely late 2010s) examined the current research on how soil, flora and fauna are impacted by mountain bikers in Germany, and concluded that:

The comparison shows that, based on the available studies, mountain biking on existing trails is not associated with worse environmental impacts when compared to hiking or other common activities undertaken in natural spaces. (Grapentin, Bielig et al. undated, 1)

It can be concluded from the above literature review, and the information provided by the appellant, that there is a risk that mountain biking could lead to environmental impacts including loss of vegetation, that there is a view in some sectors of the community that these impacts are significant which is supported by anecdotal information, and the research into the impacts of mountain biking is not comprehensive and there is a lack of reliable data upon which to assess and manage the impacts of mountain biking.

The Committee sought advice from DBCA regarding the research it carries out into this matter. DBCA has developed a Trail Management Plan Template it uses for new trails, as well as trail development guidelines. It has also carried out a survey of users of the Munda Bidli long trail. The results of this survey along with the experience of the officers who manage trails within land managed by DCBA has informed the Trail Management Plan Template as well as the guidelines.

The Committee had to consider the existing information, the site conditions, the nature of the proposal and the management measures that will be put in place to assess the risk of indirect loss of vegetation.

The Committee agrees with the appellant that there is a risk of these activities occurring, and therefore negative impacts on vegetation occurring, but finds that this risk is very low because:

- The trails design has eliminated the incentives to take short-cuts;
- The thickness of the vegetation; and
- The sandy nature of the soils on the site.

As well, it is expected that if the local bike club or the Southern Centre for Outdoor Recreation Excellence organise an event at the site, they will be required by the Shire to have an events management plan, and both these organisations are well experienced in holding such events. Should the Shire wish to organise an event it will likely work with the local bike club and will draw on their experience. It is expected, therefore that the risk of riders taking short-cuts during events is also very low.

The Committee notes that the Shire will include the DBCA recommended maintenance plan into its assets management plan, which will be subject to annual budgeting. As well, the Committee notes that site inspections are part of asset management.

The Committee agrees with the Shire that all of these groups and individuals mentioned above have a significant interest in visiting and using the site ensuring it is not degraded and its existing environmental and cultural values are maintained. It is likely, therefore, that any degradation of the vegetation of the site will be reported to the Shire which will then take the necessary remedial actions.

### **Finding**

For these reasons the Committee finds that events held at the site and the casual use of the site pose an insignificant risk to vegetation, in particular to priority flora.

Consequently, it is recommended that this appeal ground be dismissed.

However, in the absence of adequate quantitative data on the impacts of mountain biking, the Minister could consider asking DBCA to carry out research into the environmental impacts of existing mountain bike trails including the proposal the subject of this appeal. Mountain biking is becoming more popular, and more trails are planned, with some Local Governments seeing mountain biking as a potential tourism opportunity.

## **2.4 Appeal ground 3 – the use of the trails could lead to dieback and weeds being spread over the site as well as increased erosion**

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### **Relevant information**

The appellant noted the site was rated as dieback uninterpretable due to the recent fire and argued that:

Given the susceptibility to dieback and the movement constraints on the site, as well as the site topography, the Society contends this project has a high risk of spreading dieback throughout the site during site development and during operations as all the trails being developed go up and down gradient resulting in the easy transmission, of any infestations that occur, throughout the site. The constrained construction zone will make delineation of areas with differing dieback status difficult to manage in a practical sense.

It was argued that a detailed dieback survey should be carried before construction to clearly define what areas are dieback free and those which are dieback infested.

Condition 6 of the permit approval detailed the management measures that the Shire needs to carry out when undertaking clearing that would minimise the risk of introduction and spread of weeds and dieback.

In its response to the appeals DWER advised that:

The Department acknowledges the Appellant's concern that there is a risk of dieback spread within the Application Area ...

DWER considered the *Phytophthora* dieback occurrence survey carried out for the Shire and concluded that:

The dieback survey acknowledges that the Reserve has been recently burnt and indicates this to be a limitation. The dieback survey recommended that if the proposed trails are limited to the vegetation classified as 'uninterpretable' then, no additional survey will be required. Alternatively, if trails are likely to traverse vegetation classified as 'temporary uninterpretable', then either a comprehensive disease assessment or limited trail construction should be undertaken with works limited to dry soil conditions and no soils are to be excavated and moved across the Reserve.

Based on the disease status mapping, the Department noted that trails transverse the vegetation classified as 'temporary uninterpretable'. However, given the limited trail construction proposed by the Permit Holder, the Department did not consider that a further dieback survey was required, and that the potential risk of spreading dieback could be managed through the implementation of dieback management conditions (Condition 6) on the Clearing Permit (Attachment 1) that align with the aforementioned recommendations of the dieback survey. Under Condition 6(d), the Permit Holder can only move soils in dry conditions when undertaking any clearing authorised under the Permit. Condition 6(b) and 6(e) prevents the Permit Holder from moving dieback affected soil into and across the Application Area.

The Shire, in response to the appeal advised that:

Appropriate and site-specific weed and dieback management controls will be implemented during construction. DBCA commissioned a further dieback occurrence survey which was completed on 4 July 2023. This has informed the detailed design and will be the basis of the dieback management plan. All works will be conducted in accordance with the approved dieback management plan and the weed management conditions as set out in the permit.

The Shire of Plantagenet is committed to the weed and dieback management conditions set by the permit.

With respect to weeds and erosion, the appellant argued that:

Visual assessment of the impact zone of trails in Albany suggests this may be up to 5 m either side of the trail, as a result of sediment created through erosion and the introduction of weeds carried on bicycle tyres. With the close proximity of some parts of the proposed trail, this is likely to result in the loss of up to 15 ha (or 25% of the area) of the natural vegetation structure in the long-term.

There needs to be an erosion control plan produced for each trail as the gradients on all the trails will result in erosion and the generation of sediment. This sediment will cover the ground level plants outside the trails when it diverts off the trails and deposit weed seeds and dieback in the vegetation as well as covering plants and

local plant seeds, leading to the invasion of weeds. It will also create concentrated water flows and potentially erode areas off the trails.

In response to this concern DWER advised that:

In determining the Clearing Permit application, impacts to land degradation in the form of erosion by the proposed clearing were considered a relevant matter and were assessed under clearing principle (g). According to available databases, the majority (83 per cent) of the Application Area is mapped within the soil type, Barrow upper slope Phase (242PrBAg), described as consisting of granite outcrops, with the remaining 17 per cent of the Application Area is described as yellow duplex soils, sand and gravels. The Application Area avoids all granite outcrops and based on the sandy soil type mapped within the Application Area, the risk of land degradation in the form of water erosion was not considered to be high.

Noting the topography of the Application Area, the Department is aware that some water erosion (depending on the season) may occur. The Department does not expect water erosion to be significant given the Application Area is bordered by intact remnant vegetation and the small scale, linear nature of the proposed clearing. The Department also noted that the concept plan prepared for the Tower Hill Mountain bike trail network outlined that "the detail design and construction will be completed by professional companies to guarantee there is no erosion caused by the trails, and the construction footprint remain minimal".

Based on the above, the Department remains of the view that there is a low risk of the proposed clearing having an appreciable impact on land degradation in the form of water erosion. The implementation of appropriate standard construction methodologies will ameliorate any potential water erosion to the surrounding remnant vegetation. Hence, the Department did not request for an erosion management plan from the Permit Holder.

The Shire, in response to appeals, advised that:

Weed and dieback management mitigation and controls are integral to the project. This is supported by conditions in the MOU between the project partners which include:

- a. The Licensee must comply with all requirements of any Government Agency and all Laws in connection with the licensed land, and ... obtain any Authorisations; and
- b. The Licensee's general Obligations not to do anything which is illegal.

The Shire of Plantagenet is committed to the weed and dieback management conditions set by the permit, specifically minimising extent of Clearing and vegetation removal.

As noted above, DBCA will carry out the clearing and trail construction. DBCA advised that it will work with the Shire to ensure the conditions of the permit related to this matter are adhered to. It is noted that DBCA has been involved with several other mountain bike trail constructions and managing dieback, weeds and erosion have been issues to manage in those cases as well. DBCA advised that its detailed design work has taken the proper management of these issues into account, and it is well experienced in this regard.

These responses address the management of dieback, weeds and erosion due to the clearing, but not the matter of possible impacts due to the use of the trails. However, Condition 6(f) requires the Shire to, at least once a year for the term of this Permit, remove or

kill any weeds growing within areas cleared under this Permit. As well, DWER made the following comments with respect to ongoing weed management:

The Permit Holder also has an ongoing responsibility to manage weeds when operating the bike trail facility through its role as the manager of the Reserve.

As noted above, DWER and the Shire were asked for further advice on this matter of ongoing management with respect to indirect clearing of native vegetation, and the responses are relevant here.

## Consideration

The Committee finds that the conditions set on the permit and the efforts made by DBCA to design the trails to minimise erosion adequately deal with the impacts of the clearing and construction, but agrees with the appellant that this does not address its concern, which is the impacts of the ongoing use of the trails.

The Committee notes that the discussion in Section 2.3 regarding possible impacts on vegetation and significant flora due to the use of the trails are applicable here. This is because a critical vector for the spread of weeds and dieback would be riders taking short-cuts and creating their own informal trails.

The Committee agrees with the appellant that there is a risk that dieback and weeds could be spread due to the usage of the trails, but concludes that this risk is very low. In arriving at this conclusion the Committee took into account the following:

- The design of the trails eliminates the incentives for short-cuts;
- The site conditions – the thickness of the vegetation and sandy nature of the soils on site also reduce the likelihood of riders going off the designated trails; and
- The high community interest in maintaining the environmental and cultural values of the site.

As well the Committee notes that

- Erosion control is a key design element for the trails;
- Condition 6(f) requires the Shire to, at least once a year for the term of this Permit, remove or kill any weeds growing within areas cleared under this Permit;
- The asset management plans of the Shire will incorporate the recommendations for management from DBCA and include site inspection and any follow-up remedial actions, which would include weed removal; and
- The Shire has committed to installing permanent dieback wash stations at the trail head as well as using special additional dieback stations for events.

## Finding

For these reasons the Committee finds that events held at the site and the casual use of the site pose an insignificant risk to the spread of dieback and weeds, including through erosion impacts, and therefore recommends that this appeal ground be dismissed.

## 2.5 Appeal ground 4 – the trails will reduce the site’s value as part of the “Porongurup Range Corridor”

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### Relevant information

The appellant argued that the trails network will reduce the existing continuous block of native vegetation to a series of small patches with large edge effects. Consequently

... (these) patches will not be viable in the long-term and will lose their value as habitat without an intense management effort. As a result, this area will not provide the value to the “Porongurup Range Corridor” that is currently provided.

The appellant noted that this reserve forms part of the Gondwana Link. This is a community driven project that has a vision to:

Reconnected country across south-western Australia, from the wet forests in the south west corner to the dry woodlands and mallee bordering the Nullarbor Plain, in which ecosystem function and biodiversity are restored and maintained.

<https://gondwanalink.org/about-us/our-vision/>

The Gondwana Link website notes that:

Only across one part of south-western Australia is the basic ecological integrity and connectivity that supported the proliferation of the south-west’s biological magnificence almost still intact. Along 1000kms we already have over 900kms of intact habitat, much managed as national Park and Nature reserve.

- The biggest “breaks” along this 1000kms are in the areas either side of Stirling range national park – through to the Forests and the Fitzgerald, and south to the Porongurups. Much of these gaps in the Link were only cleared 50-60 years ago and that makes effective restoration easier to achieve than elsewhere. <https://gondwanalink.org/about-us/why-gondwana-link/>

This reserve forms part of the link between Mount Lindesay National Park, the Stirling Ranges National Park and Porongurup National Park.

In response to the appeal DWER advised that:

The extent of the Reserve 15162 is approximately 55 ha, and the proposed clearing is limited to 1.29 ha. While the Reserve supports an ecological linkage, considering the extent and the nature of the proposed clearing, it is not considered that the linkage values would be severed or materially reduced as a result of the proposed clearing. The Department determined that abundant native vegetation is available within the Reserve and within the local area to facilitate the movement of fauna species across the landscape.

DWER also noted that the offset would compensate for the loss of vegetation on the proposal site in the long term because:

... revegetation within the offset areas (Reserve 17394 and Reserve 27185) would increase the availability of fauna habitat and contribute to the enhancement of the movement of fauna through the landscape. The revegetation offset Permit Conditions attached to the Clearing Permit will mitigate potential fragmentation of the ecological corridor resulting from the proposed clearing.

The Shire in response to the appeal argued that:

Trails do not run edge to edge of the Lot, minimising corridor breakage or fragmentation. Trails are designed to be narrow, linear tracks within the larger

vegetated reserve. Mature trees will be retained and buffering from threatened flora and priority flora is required as a condition of CPS 9349/1.

## Consideration

The Committee notes that the total clearing of 1.29 ha is about 2.3% of the existing vegetation on the site, and that this involves linear clearing across the whole site with an average width of 1.326 m. The size and nature of this clearing is highly unlikely to prevent fauna movement within the site and between this and adjacent sites. It is acknowledged that the usage of the site will increase, which will lead to intermittent disruption to internal fauna movement.

Further, as noted in other appeal grounds there are sufficient measures that will be put in place to make it highly unlikely that the ongoing use of the site will lead to any indirect loss of vegetation or loss of other environmental and cultural values. As well, the offset will ultimately lead to a net gain in vegetation cover, which will enhance the regional ecological linkage.

## Finding

For these reasons the Committee recommends that this appeal ground be dismissed.

## 2.6 Appeal ground 6 – The proposed offset is inappropriate and the revegetation plan inadequate

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### Relevant information

The appellant argued that proposed offset, which included the rehabilitation of an old gravel pit, should not be counted as an offset as the Shire should rehabilitate this site irrespective as to whether this proposal proceeds or not. As well, in arguing that the revegetation plan is inadequate noted that:

There is roadside vegetation in that area that was revegetated over 30 years ago which can be used as a guide as to what should be achieved by any rehabilitation proposed.

The proposed offset is revegetating 4.53 ha of degraded land in two separate areas - Lot 580 on Plan 26284 (reserve 27185) and Crown Reserve 17394. The current vesting of reserve 27185 is for conservation and 17394 for gravel quarry. The majority of the revegetation will take place on the reserve 27185.

Figure 4 below shows a typical area of the two sites to be revegetated.





**Figure 4** One of the areas of the two sites to be revegetated

DWER advised in its response to appeals that:

The Department considers that the revegetation plan is consistent with the Department's *A Guide to Preparing Revegetation Plans for Clearing Permits* and adequately outlines the required revegetation activities to be undertaken. Note that the Clearing Permit includes requirements relating to completion criteria, revegetation actions and remedial actions under Condition 10.

The Department's clearing permit database did not identify that the proposed offset area was subject to conditions or offsets under another Clearing Permit nor are there any statutory requirements under the Mining Act 1978 for the Permit Holder to undertake revegetation within Reserve 27185 or Reserve 17394.

The Shire, in its response to the appeal advised

Reserves 27185 and 17394 are considered to satisfy the offset criteria for this project. Notwithstanding Reserve 17394 is UCL, and not vested with the Shire of Plantagenet, revegetation will provide ecological and community benefit, and complements the Shire's management objectives for the adjoining 'Mondurup Bushland' reserves.

## **Consideration**

When the Committee met with officers of the Shire, they further advised that there is no record of when the gravel reserve was used for basic raw material extraction, what material was extracted, what conditions for any rehabilitation was applied and what agency or individual any conditions were imposed on. The extraction likely dated back further than the 1960s.

The Committee considers that the proposed offset is appropriate, noting that the majority of the revegetation will take place on a site that would not otherwise have restoration works

carried out on it, and that the revegetation plan is consistent with the Department's A Guide to Preparing Revegetation Plans for Clearing Permits.

### **Finding**

For these reasons the Committee recommends that this appeal ground be dismissed.

## **2.7 Overall Appeal ground – the permit should be refused due to the cumulative loss of vegetation and environmental value over time**

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### **Consideration**

The key finding of the above appeal grounds is that both the construction of the trails and the ongoing management measures, both formal and informal, are highly unlikely to lead to loss of vegetation, both direct and indirect over time. As well, the offset, over time, will add to the environmental value of the region.

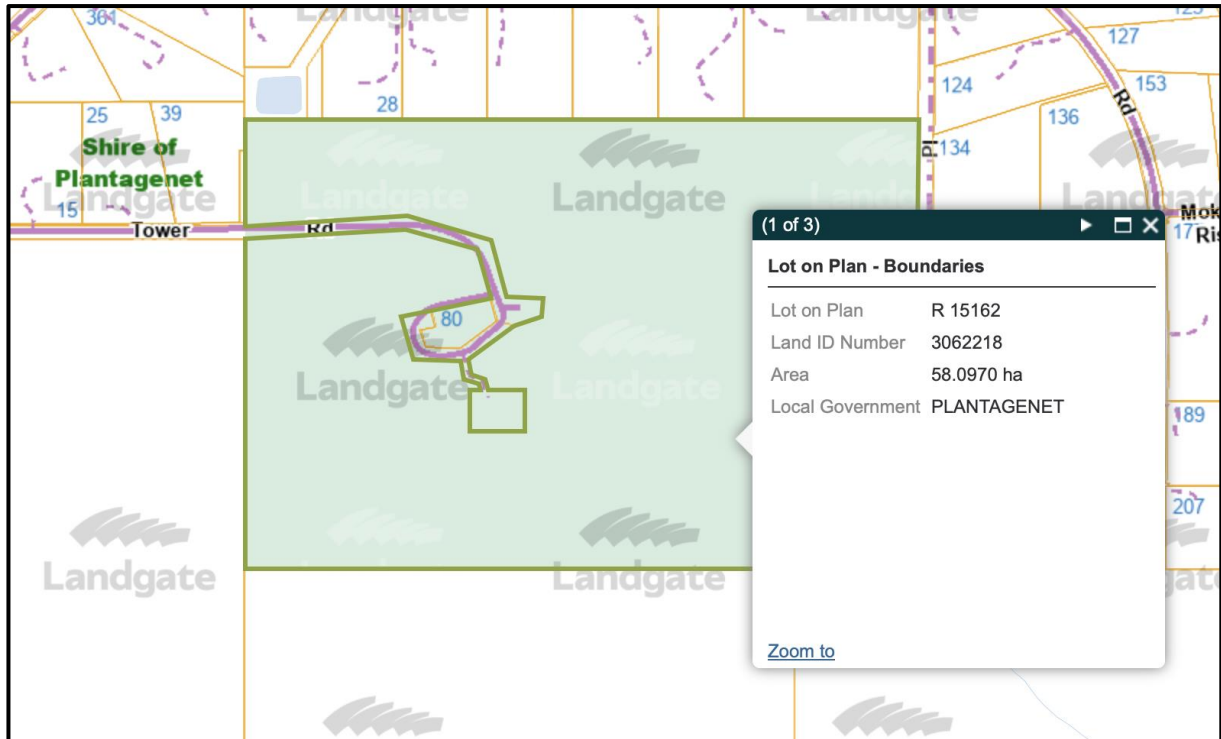
### **Finding**

For these reasons the Appeals Committee recommends that this appeal ground be dismissed, and the permit be allowed without change.

### 3 Supporting information

#### 3.1 Proposal description

The main component of the project for which the clearing is required is for a proposed mountain bike trail network - called the Pwakkenbak mountain bike trail network (trail network), also known as the Tower Hill MTB Trails. The other components are a short walking trail and an expansion to the existing carpark. Below is a screenshot for the Landgate Map Viewer showing cadastre information. Figure 5 shows the footprint of the proposed clearing.

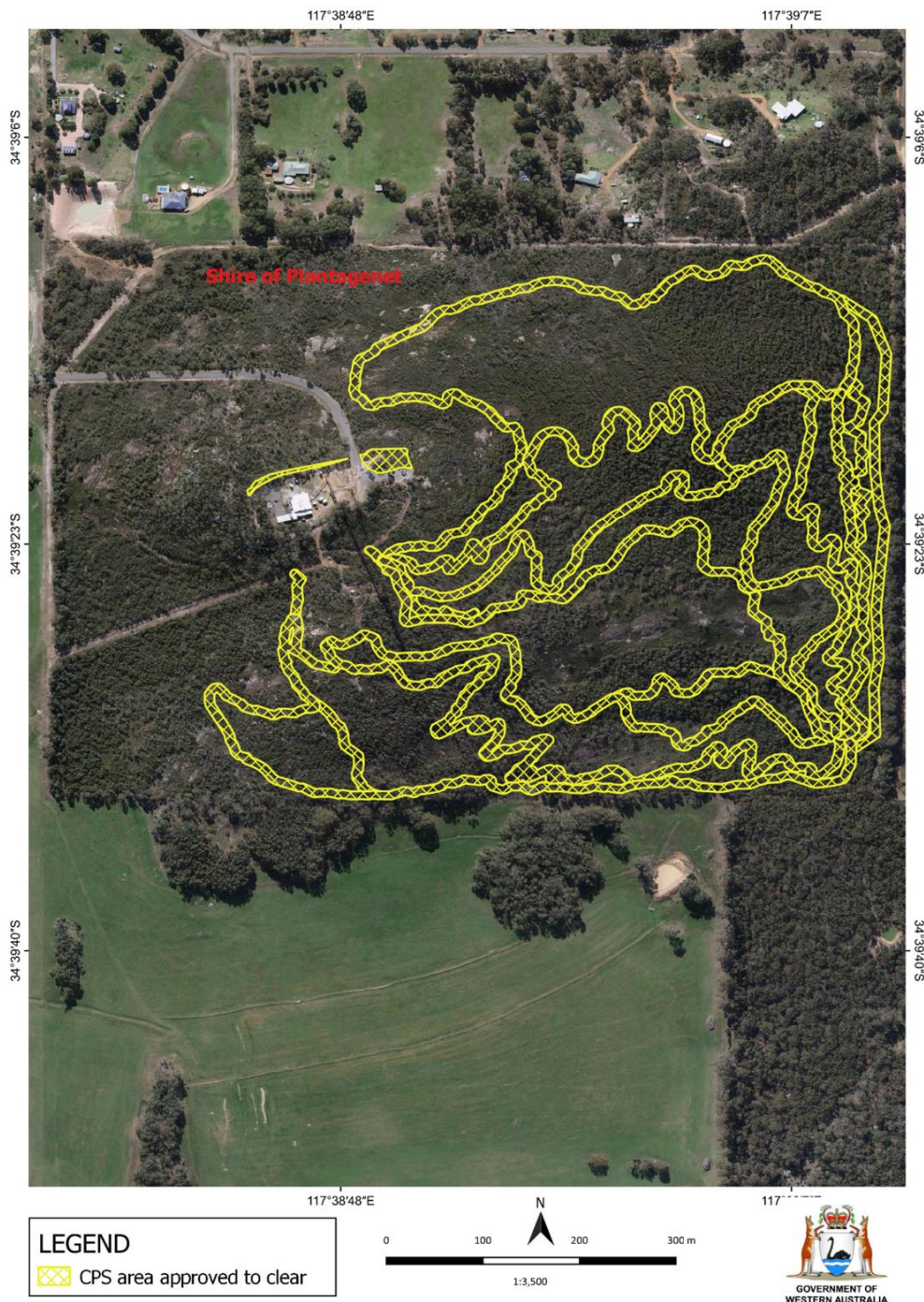


**Figure 5** Cadastre data for the site (Source: Landgate Map Viewer).

This trail network was proposed as part of the Great Southern Regional Trails Master Plan (Great Southern Centre for Outdoor Recreation Excellence 2020). The Master Plan proposed fourteen (14) 'regional priority trails', and the network the subject of this appeal was rated as having a short timeframe priority of 1-2 years.

The Master Plan notes of the Tower Hill MTB Trails:

“An opportunity for a locally significant descending focused trail network for the local community, which will also drive visitation to the area. The proximity of the trail network to Mount Barker town site combined with views across to the Porongurups will provide excellent trail opportunities.” (p35)



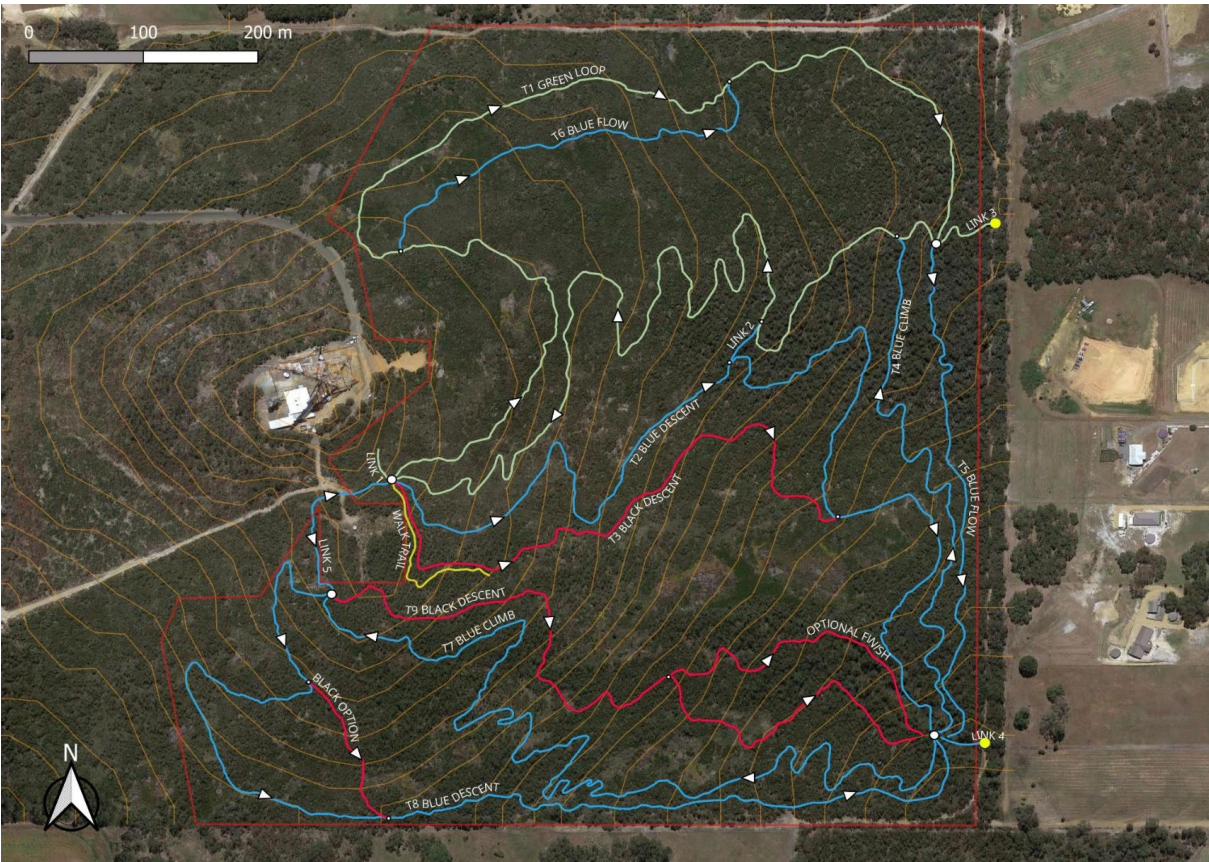
**Figure 6** Footprint for the proposed clearing for permit CPS 9349/1

The Master Plan rates it as local significant and:

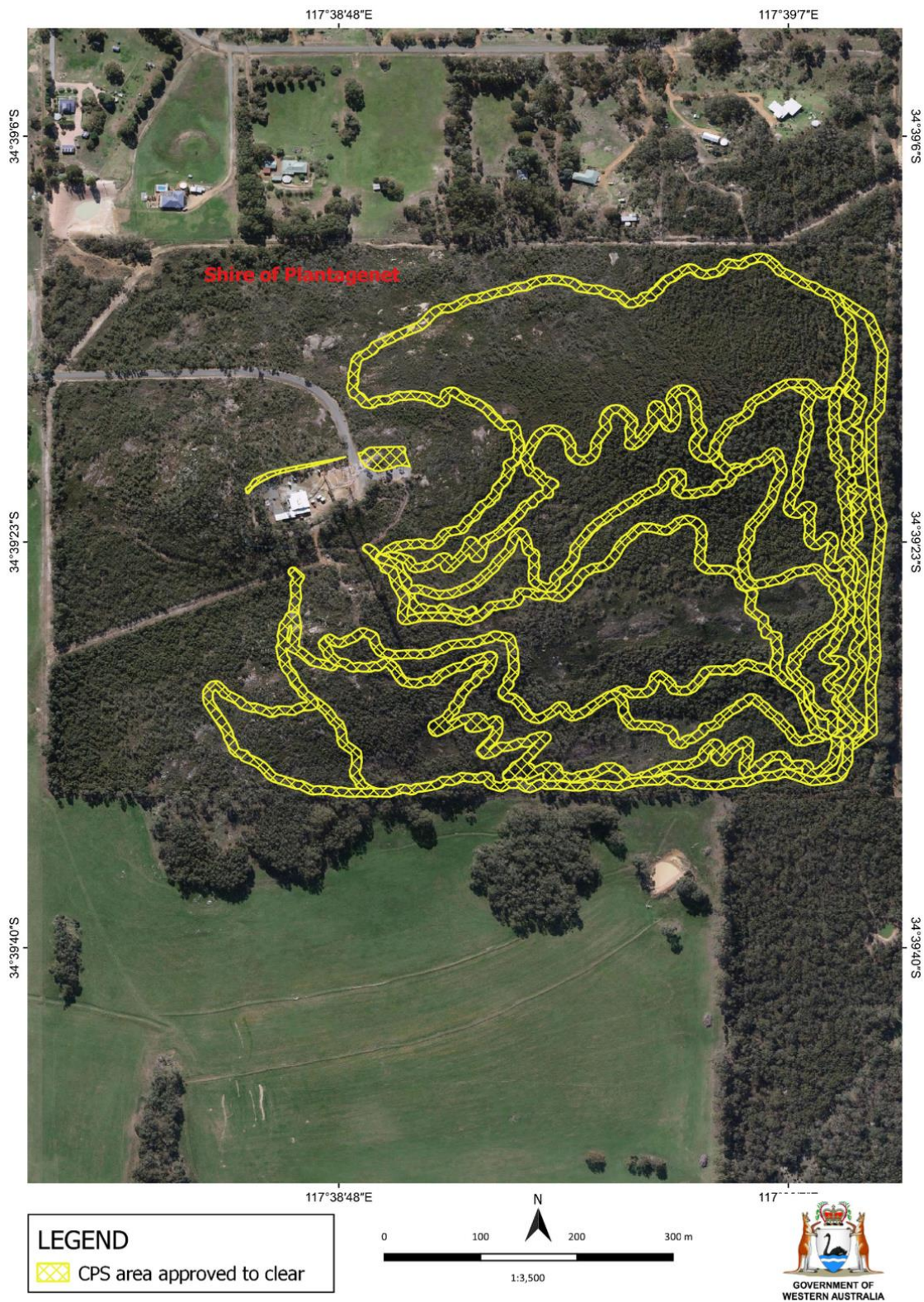
Small scale MTB network to service the local Mount Barker community and to provide additional experiences for visitors to the region, the network will also include a disability access walk trail at the top of Tower Hill. The network is ideally located close to the township and offers magnificent views, excellent terrain and sufficient elevation to make it a fun and challenging local trail network. Trails should be descending cross country focused with multiple descent opportunities across the site.” (P36)

DBCA are partners with the Shire for the trail network, and will manage the clearing and trail construction for the Shire. Funds for this work come from the Covid Recovery Fund.

Consultants Three Chillies Design were commissioned to provide a detailed design for the trail network (Three Chillies Design 2023), which included specific trail alignments. In support of its clearing permit application, the Shire submitted a plan showing a broad trail footprint which overlapped with the specific trail alignments but was much wider than the proposed clearing for the trails. This was done to provide flexibility for the Shire in its detailed planning to avoid significant vegetation, flora species or fauna habitat. Figure 7 shows trails as proposed in the Three Chillies Design report and Figure 8 the broad trail footprint as referred to DWER. Figure 9 shows the location of the Reserves as being part of a larger area of native vegetation that includes land for communications towers and a Western Power easement.



**Figure 7** The trails as proposed in the Three Chillies Design report (Source: Three Chillies Design 2023).



**Figure 8** Broader trails footprint as approved (Source: DWER CPS 9349/1 - Purpose Permit with Plan and Decision Report)



**Figure 9** Site boundary within broader area of native vegetation and series of Reserves for different purposes.

The total length of trails as assessed by DWER was 11.4 km, which has subsequently been reduced to 9.728 km, which will still be within the assessed broad footprint (Shire of Plantagenet response to the appeal).

Based on the information provided by the Shire, in particular the width of clearing for the trail network, DWER has approved clearing up to 1.29 ha.

A more detailed flora survey carried out in October 2022 enabled the location of three priority species to be identified within the site one P2 and two P3. The alignments of the trails were modified by the Shire to avoid any clearing of these three species and to establish an appropriate buffer. DWER set a condition of approval requiring that a further inspection/survey of the permit area be carried out to identify the presence of threatened and priority flora prior - where threatened and priority flora are identified the Shire must not allow clearing of those species or within the appropriate buffer specified in the clearing permit.

DBCA advised that it will carry out the clearing and track construction on behalf of the Shire, but the Shire remains the proponent for the clearing permit and are responsible for the conditions of the permit.

DBCA also advised that funding for the trail network is from the Covid Recovery Fund, and the amount allocated to this project is only enough to construct 5 of the 10 trails. Should the Shire wish to proceed with the remaining trails, the Shire will need to provide the necessary funds or seek a grant from another source.

The Shire will be responsible for the ongoing management and maintenance of the trail network.

## **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, law 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 appeal. Alternatively, if the appeal 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.

### **The Committee reports 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 Committee [see section 109(3) of the EP Act], and
- The authority that originally made the decision under appeal [see section 106(1)].



## Appendix 2      References

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