



Environmental Protection Act 1986

**Hon Reece Whitby MLA**  
**Minister for Environment; Climate Action**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL AGAINST GRANT OF CLEARING PERMIT CPS 9349/1 SHIRE OF PLANTAGENET, MOUNT BARKER**

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

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

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<b>Appellant:</b>	Wildflower Society of Western Australia (Inc)
<b>Permit Holder:</b>	Shire of Plantagenet
<b>Proposal description:</b>	Grant of Clearing Permit CPS 9349/1, authorising the clearing of 1.29 hectares (ha) of native vegetation for the purpose of constructing a walking trail, bike trail network and car park near Mount Barker.
<b>Minister's Decision:</b>	The Minister dismissed the appeal.
<b>Date of Decision:</b>	6 March 2024

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

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By its appeal, the appellant expressed concern that the amount of clearing will likely be greater than that approved; that the values of the remaining vegetation are at risk due to the potential spread of dieback, weeds and erosion; and given the site is part of the 'Porongurup Range Corridor', the appellant considered that the values should be protected. The appellant also submitted that the offset is inadequate and should be reconsidered.

#### **Decision**

Having considered the information available, including DWER's response to the appeal and the Appeals Committee's report and recommendation (copy attached), the Minister was satisfied that it was reasonable for DWER to grant the permit and that the conditions set on the Shire of Plantagenet (the Shire) are appropriate. The Minister therefore dismissed the appeal.

The Department of Biodiversity, Conservation and Attractions (DBCA) advised that properly designed and managed trails, as proposed here, pose limited additional risks to the environment, and that this is confirmed by studies undertaken in the United States. On that basis, the Minister was satisfied that further research by DBCA is not warranted at this time.

The full reasons for his decision follow.

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

The Minister understood the appellant was of the view that were the Shire to construct all the trails, the total amount of clearing required would be greater than 1.29 ha. The appellant noted that, based on a total trail length of 11.4 kilometres (km), the average width would be 1.133 metres (m), and that in examining the examples in the Concept Plan document produced for the Shire the appellant concluded that trails wider than the average would be constructed.

The Minister noted that condition 3 of the permit only authorises the Shire to clear up to 1.29 ha, and that 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.

The Minister also noted that the Shire reduced the total trail length to 9.728 km, which means the average width of the trails would be 1.326 m if the full amount of clearing were to occur.

The Minister was satisfied that the conditions set on the permit will ensure that the clearing for these trails will not exceed 1.29 ha. He therefore dismissed this ground of appeal.

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

The Minister noted the appellant's concerns that events held at the site pose an ongoing threat to vegetation, including priority flora. In particular, the appellant was concerned that mountain bikers will not always stick to the cleared corridors and may take short-cuts or create their own informal trails, which would add to the amount of clearing and could directly impact priority flora.

DWER 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 that had not already been 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 metre of the identified priority flora. Should any threatened flora be identified, a 50 metre buffer will be required.

The Minister was satisfied that these conditions will ensure that the construction of the trails will not impact on significant flora.

In relation to impacts from the ongoing use of the trails, the Appeals Committee set out in detail its assessment of the adequacy of the proposed ongoing management of the site by the Shire that took into account the information the appellant presented to the Committee, advice from the Shire, advice from DBCA, and the Committee's own investigations.

The Minister considered this advice and agreed that while there is a risk that the ongoing use of the trails could have negative impacts on vegetation, the risk is very low. He considered the management measures that the Shire committed to were adequate and that the groups and individuals that use the site have a significant interest in ensuring the site is not degraded, and its existing environmental and cultural values are maintained.

The Minister therefore dismissed this ground of appeal.

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

The Minister understood the appellant was concerned that there was a high risk that the mountain bikers who would use these trails will spread dieback and weeds throughout the site. The appellant argued that a detailed dieback survey should be carried out before construction, and that an erosion control plan be produced for each trail.

The Minister noted the *Phytophthora* dieback occurrence survey carried out for the Shire and concluded that given the limited nature and extent of the trail construction that a further dieback survey was not required, and that the potential risk of spreading dieback could be managed through the implementation of dieback management conditions as required by condition 6 of the clearing permit. This condition is consistent with the recommendations of the dieback survey.

With respect to erosion, DWER advised that it does not expect water erosion to be significant because the trails will be quite narrow and surrounded by intact remnant vegetation. DWER also advised that the detailed design and construction of the trails will be carried out by professional companies experienced in trail construction.

The Minister accepted DWER's advice and was satisfied that the conditions set by the Department will ensure that the construction of the trails will not cause the spread of weeds or dieback, nor will there be any significant erosion, and that there is no need for a detailed dieback survey or erosion control plans.

In relation to risks posed by ongoing use of the trails, the Minister agreed with the Appeals Committee that the matters related to the appellant's second appeal ground regarding possible impacts on vegetation and significant flora due to the use of the trails was applicable here.

The Minister considered the Appeals Committee's advice and agreed that while there is a risk that dieback and weeds could be spread due to the ongoing use of the trails, that risk is very low. As with his conclusion of the second appeal ground, the Minister considered the management measures that the Shire has committed to are adequate and that the groups and individuals that use the site have a significant interest in ensuring the site is not degraded and its existing environmental and cultural values are maintained.

He therefore dismissed this ground of appeal.

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

The Minister noted the appellant's concerns that the trails network will reduce the existing continuous block of native vegetation on the site to a series of small patches with large edge effects. Consequently, the site will lose its value as habitat and will not provide value as part of the 'Porongurup Range Corridor'.

The Minister noted that the total clearing of 1.29 ha is about 2.3 per cent 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. Further, he understood sufficient measures 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.

The Minister agreed with DWER that considering the extent and the nature of the proposed clearing, the linkage values would not be severed or materially reduced as a result of the proposed clearing. In addition, he agreed with the Appeals Committee that the offset will ultimately lead to a net gain in vegetation cover, which will enhance the regional ecological linkage.

The Minister therefore dismissed this ground of appeal.

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

The Minister understood that the appellant contended that the proposed offset, which is mostly 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.

The Minister noted DWER's advice that the revegetation plan is consistent with the Department's *Guide to Preparing Revegetation Plans for Clearing Permits* and adequately outlines the required revegetation activities to be undertaken. He also noted that the Shire advised that the gravel pit is in Reserve 17394 which is unallocated Crown land, and not vested with the Shire. Also, 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 Minister was therefore satisfied that the offset was appropriate, and dismissed this ground of appeal.

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

#### **Office of the Appeals Convenor**

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