



Appeals Convenor
Environmental Protection Act 1986

**REPORT TO THE
MINISTER FOR ENVIRONMENT**

**APPEAL AGAINST CONDITIONS APPLIED TO A CLEARING PERMIT
CPS 8861/1: LOT 705 ON DEPOSITED PLAN 405359,
NEERABUP**

PROPONENT: MAIN ROADS WESTERN AUSTRALIA

Appeal Number 036 of 2020

September 2020

Appeal Summary

This report relates to an appeal lodged by the Quinns Rocks Environmental Group, in objection to the conditions of clearing permit CPS 8861/1 granted by the Department of Water and Environmental Regulation (DWER).

The clearing permit authorises Main Roads Western Australia (the permit holder) to clear 0.5 hectares (ha) of native vegetation within a 0.69 ha footprint to enable the realignment and construction of a two-lane quarry access road connecting to Hester Avenue. The proposed works are a part of the larger Mitchell Freeway Extension Project.

The appellant submitted that the approved clearing footprint intersects with the southern entry of the only fauna underpass under Hester Avenue, with no management commitments or conditions on the permit to ensure that the function of the underpass is not affected. The appellant is seeking for a condition be applied to the permit to minimise impact on the Hester Avenue fauna underpass, including vegetated buffers between the road and clearing.

In response to the appeal, the permit holder committed to reducing the clearing application area to avoid native vegetation immediately west of the underpass, creating a 29-metre buffer between the application area and the underpass.

Noting the advice from the permit holder, DWER in response to the appeal, recommended that the authorised clearing area be amended to reflect the permit holder's commitments.

Recommendation

The Appeals Convenor recommended that the appeal be allowed in the manner proposed by the permit holder, that is the authorised clearing area be amended to reflect the reduction in the clearing footprint immediately west of the fauna underpass.

The amendment of the permit is a matter for DWER under section 110 of the *Environmental Protection Act 1986*.

INTRODUCTION

This report relates to an appeal lodged by the Quinns Rocks Environmental Group (the appellant) in objection to the conditions of purpose permit CPS 8861/1 granted to Main Roads Western Australia (the permit holder). The clearing permit authorises the permit holder to clear 0.5 hectares (ha) of native vegetation within a 0.69 ha footprint to enable the realignment and construction of a two-lane quarry access road connecting to Hester Avenue.

The existing access road is required to be realigned due to the requirement for a new roundabout at Hester Avenue which has a larger footprint than the existing T-intersection.

The project forms a part of the larger Mitchell Freeway Extension Project, the majority of which was considered under MRS Amendment (992/33), that was assessed by the Environmental Protection Authority and approved under Ministerial Statement 629. The application area under CPS 8861/1 was not considered under the MRS amendment and therefore an application to clear was submitted under Part V of the *Environmental Protection Act 1986* (EP Act).

The location and extent of the approved clearing are shown in Figure 1 below.



Figure 1 – Location and extent of application area CPS 8861/1

(Source: DWER Decision Report CPS 8861/ and Googlemaps.com)

The clearing permit application was advertised on 29 April 2020 with a 21-day submission period. One submission was received, made by the appellant, which is described in DWER's decision report raising the same issues to those submitted in the appeal.

DWER's assessment of the clearing permit application found that the proposed clearing is at variance to clearing principles (a) biodiversity, (b) significant habitat for fauna (e) remnant of native vegetation in an extensively cleared area and (h) adjacent and nearby conservation areas, and is not at variance with principle (f) watercourses and wetlands and is not likely to be at variance with the remaining clearing principles. DWER granted the clearing permit, subject to conditions, including an offset, on 30 June 2020. It is against the conditions of the clearing permit that the appeal was lodged.

OVERVIEW OF APPEAL PROCESS

In accordance with section 106 of the EP Act, two reports relating to the matters raised on appeal are required for the Minister for Environment to determine the outcome of the appeal: the Appeals Convenor's Report and a report from the decision-making authority of the decision under appeal.

This document is the Appeals Convenor's formal report to the Minister for Environment under section 109(3) of the EP Act.

In order to properly advise the Minister for Environment, the Appeals Convenor conducted an investigation into the matters raised on appeal. The investigation included:

- a review of the appeal submitted by the appellant
- a review of the written response to the appeal provided by Main Roads WA provided on 31 July 2020
- a review of the section 106 report from DWER
- further information provided by the appellant on 6 August 2020
- a meeting with the appellant on 31 August 2020
- a review of other information, policy and guidance as required.

The environmental appeals process is a merits-based process. For appeals in relation to the conditions of a clearing permit, the Appeals Convenor normally considers whether the conditions are adequate or appropriate, taking into account an assessment of the proposal against the principles as set out in Schedule 5 the EP Act, as well as other environmental factors. Questions of additional information not considered by DWER, technical errors, errors in DWER's assessment and attainment of relevant policy objectives are normally central to appeals.

OUTCOME SOUGHT BY APPELLANT

The appellant is seeking for conditions to be applied to the permit to minimise impacts on the Hester Avenue fauna underpass, including vegetated buffers between the road and clearing.

GROUND OF APPEAL: IMPACTS TO FAUNA

By the appeal, the appellant submitted that the approved clearing footprint intersects with the southern entry to the only fauna underpass under Hester Avenue, with no management commitments or conditions on the permit to ensure that the function of the underpass is not affected.

The appellant was of the view that the fauna underpass has not been constructed to the standard agreed upon as part of the Mitchell Freeway Extension Project (including the installation of fauna furniture and revegetation), and is seeking for conditions to be applied to the permit to ensure that any fauna management actions are formalised.

The appellant also raised concern about DWER's conclusion that the proposed clearing will not have a significant impact on fauna due to the large remaining area of the Neerabup National Park, noting that DWER did not acknowledge the level of fragmentation and barriers being built within the National Park and adjoining conservation reserves.

In support of the appeal, the appellant attached its submission made to DWER on the clearing permit application. The appellant's submission noted concerns about cumulative impacts to Neerabup National Park from the Mitchell Freeway Extension Project, impacts to the existing fauna underpass and the proposed offset for the permit. The appellant clarified during the appeal investigation that it was not intended for the concerns raised in the submission to be considered as appeal grounds, rather the submission demonstrated that further conditions were required on the permit to ensure that permit holder commitments became enforceable requirements.

Consideration

By way of background and noting the appellant's broader concerns about impacts to the Neerabup National Park, DWER advised that it:

concurrently assessed three clearing permit applications from the Permit Holder associated with the larger Mitchell Freeway Extension project and had regard to the combined impact of these applications. The Department calculated that approximately 8.59 ha of Neerabup NP will need to be excised to facilitate the proposed extension. The Department also noted that approximately 6.735 ha of three areas currently zoned as road reserves will be added to Neerabup NP. This strategy was endorsed by the Conservation and Parks Commission branch of the Department of Biodiversity, Conservation and Attractions (DBCA).

To mitigate impacts on Neerabup NP, the Department imposed condition 15 on Clearing Permit 8753/1 which requires the Permit Holder to revegetate a 10 ha site managed by DBCA adjacent to Neerabup NP. The Department considered that the revegetation of this area would contribute to enhancing the environmental values of Neerabup NP.

To mitigate the potential impacts from weed introduction into the native vegetation within Neerabup NP, the Department imposed conditions on all clearing permits associated with the larger Mitchell Freeway Extension project which requires the Permit Holder to implement weed control management actions.

In relation to the addition of road reserves, the Decision Report includes advice from the Permit Holder that an MRS amendment, which will incorporate the clearing permit application areas that are inconsistent with the current MRS zoning, will be progressed after construction. The Permit Holder had also indicated that it is common practice for the MRS to be amended following construction and that the amendment will likely be part of an omnibus amendment for consideration by the Western Australian Planning Commission in the future.¹

In response to the appellant's specific concerns about the impacts to fauna from this clearing permit, DWER advised that the application area forms a part of a north-south regionally significant ecological linkage (the Conceptual Linkage) which supports fauna movement through a highly fragmented landscape and that the application area is adjacent to Hester Avenue which fragments two sections of the Neerabup National Park (ID 1307 and 2139). DWER considered that the proposed clearing would not further fragment the Conceptual Linkage but would create a wider barrier for fauna movement.

In its assessment of the potential impacts to the fauna underpass under Hester Avenue, DWER advised that approximately 0.022 ha of the native vegetation within a 30-metre (semi-circle) buffer of the underpass was required to be cleared. Considering that approximately 85 per cent of the buffer would remain vegetated, DWER determined that the clearing would not significantly deteriorate the effectiveness of the fauna underpass and determined that no management conditions would be required.

¹ DWER, Appeal 036/2020. Advice under section 106, page 4.

However, in response to the appeal, the permit holder committed to reducing the clearing application areas to avoid native vegetation immediately west of the underpass, creating a 29-metre buffer between the application area and the underpass (Figure 2).

In its response to the appeal, DWER supported the proposed reduction of the clearing footprint area by recommending that the authorised clearing area be amended to reflect the permit holder's commitments.



Figure 2 – Revised design and original application area granted

(Source: DWER, s106 Advice Appeal 036-20, p3)

CONCLUSION AND RECOMMENDATION

Noting that the appellant's primary concern in relation to the conditions applied to CPS 8861/1 is that the approved clearing footprint intersects with the southern entry to the only fauna underpass under Hester Avenue, and that DWER supports the permit holder's commitments to amend the footprint to create a larger buffer between the boundary of clearing and the fauna underpass, it is considered that the matter has been resolved.

It is therefore recommended that the appeal be allowed in the manner proposed by the permit holder and that the authorised clearing area is amended to reflect the reduction in the clearing footprint immediately west of the fauna underpass. If the Minister agrees with this recommendation, the amendment of the permit will be a matter for DWER to consider in giving effect to the Minister's decision under section 110 of the EP Act.

Emma Gaunt
APPEALS CONVENOR

Investigating Officer:
Tonya Carter, Senior Appeals Officer