



WILDFLOWER SOCIETY OF WESTERN AUSTRALIA (Inc)

14 April 2021

Appeals Convenor
Office of the Appeals Convenor
Level 22 Forrest Centre
221 St Georges Terrace
PERTH WA 6000

**Re: AUGMENTATION OF APPEAL - CPS 818-15
MAIN ROADS WA STATEWIDE CLEARING PERMIT**

Further to our earlier correspondence and meetings on this clearing permit, the Wildflower Society of Western Australia (WSWA) would like to augment its previous appeal with additional information arising from the review of the audit report on earlier permits that was provided by Main Roads Western Australia (MRWA) following a request from the WSWA. This was a substantial report and we apologise for not providing these comments earlier.

1. Summary

A review of the MRWA External Audit report (for CPS 818/10-14) and the Department of Water and Environmental Regulation's (DWER) oversight of MRWA's State-wide Clearing Permit CPS 818 identified serious short comings in MRWA's performance and DWER's approval and compliance procedures. This review highlights the extensive failure of proper and sufficient governance auditing. It found non-compliance issues that continued unchecked by MRWA or DWER over the life of the four permit periods audited.

The auditor was appointed by MRWA to complete an audit to a scope of work defined by MRWA. The scope of work was qualitative in nature and did not address the quantitative conditions specified within the permit and its conditions. Further, the scope of work did not allow the auditor the opportunity to expose issues of non-compliance or requirements to mitigate non-compliance. The report avoids the real compliance and audit issues and the repeated and increased level of non-compliance that has arisen as the permit was rolled over.

The audit specifically states it has ignored State legislation and the requirements of Federal legislation and its enabling regulations. For example, through its failure to acknowledge Australia's signing of the UN Rio Declaration for Development and the Environment, MRWA has ignored the need for proper public engagement, but the audit has not addressed such requirements as a result of not considering all the legislation that reflects MRWA's performance with respect to the previous permits.

There is a need to revise CPS 818-15 to reflect:

- The need to identify and address all international treaties to which Australia is a signatory, all Federal and State legislation, and their enabling Regulations, as they are related to conservation of natural vegetation and its clearing.

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- Due process in the application and oversight of corporate governance by MRWA and DWER in the execution of the actions permitted under the CPS 818-15.
- Development of an audit prescription by DWER with sufficient KPIs and measures to detect the non-compliance that has been repeated consistently during the implementation of previously issued versions of CPS 818. This prescription should form part of the CPS 818-15 to create an awareness within MRWA of the essential ingredients of application of the CPS to relevant projects.

2. Legal Compliance

By the admission of the auditor in the introduction, the audit prescription for the audit conducted on CPS 818 (versions 10-14) failed to test MRWA's performance against State and Federal legal requirements or Australia's international obligations. CPS 818 allows MRWA to sidestep the process of comment and appeal that is provided in the WA Environmental Protection Act, and its associated Clearing Regulations, and allows MRWA to select stakeholders with whom it wishes to consult, and not the general public, to make submissions. There is also no process for stakeholders making submissions to appeal decisions made by MRWA, in response to submissions, to a third party. MRWA is also not accountable to an independent arbiter for decisions it makes under the CPs 818.

There is a lack of clear prescription with CPS 818 of the intent of the clearing permit to define the limits to which MRWA can clear or where or for what purpose the CPS can be applied. The statements are sufficiently broad to allow MRWA to conduct clearing for any type of work to any width. Thus, in wide road reserves (>20m) that were set aside in the 1950's and 1960's for conservation of the State's flora, MRWA can (and do) clear far wider and fail to observe the purpose of the wider road reserve. A recent application of a CPS to a project on Great Eastern Highway results in clearing of greater than 30m in such a road reserve, for example. When asked to comment on clearing proposals, MRWA is not provided with sufficient road design detail to establish the overall width of the area to be affected to enable the clearing impact to be determined. Such information should be prescribed as a requirement when conducting public engagement. Similarly, the actual study reports completed for MRWA by its specialists or their consultants are not made available for consideration by the engaged public.

The requirement for public engagement must:

- Require sufficient detail of road design and study findings to be made available to allow the engaged public to make its assessment of the impact of proposed clearing carried out under CPS 818.
- There must be a process for a merit Review or appeal process, consistent with that required of a normal Clearing Permit, build into the CPS conditions.

3. Basic Audit Prescription

The basic audit prescription adopted in the external audit report failed to test MRWA's achievement of the key elements required by CPS 818.

Specifically:



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- No attempt was made to correlate the total area cleared since 2005 and compare it, in total and annually, to the areas described in the permit conditions, in total and by region.
- There was no attempt to correlate area cleared on a project-by-project basis to determine if planned areas exceeded or under-estimated actual areas cleared.
- There is a failure to examine the effectiveness of the offsets program and determine if offset funds expended were actually applied to vegetation similar to that which had been cleared.
- There is no reporting of areas cleared to be offset vs area actually offset.
- There is no audit completed of areas actually subjected to biological survey, desktop biological survey or no survey at all.

4. Governance

Where MRWA has been seen to be non-compliant, DWER and MRWA have deleted those conditions against which non-compliance was observed in subsequent iterations of CPS 818 to create the impression that MRWA was subsequently compliant. To permit these changes is poor governance on behalf of DWER and generation of untruths regarding their performance by MRWA. The following examples provide some support for this statement:

1. Non-compliance Condition: variation with clearing principle 'f'. DWER removed the need for a biological survey in CP 818 -14 in CP 818/15 if the project was at variance with clearing principle 'f' to determine the extent of variance, so there is no longer non-compliance with the CP 818 conditions.
2. DWER have inappropriately allowed the proponent to decide what impact is 'minor' and what is 'not minor' so the proponent can ignore the need for a proper due process biological survey. An independent biological survey is the only tool that can define what is 'minor' through objective, biological evidence and must be reinstated for all projects which are potentially at variance with Clearing Principle 'f'. 'Minor' must be defined quantitatively and objectively in the EP Act and its regulations.
3. Despite audit after audit, from 2005 to 2018, MRWA projects still have clear evidence of an increase to over 40 non-compliances with time. If a condition of the permit required MRWA to modify its internal processes to continuously improve their performance which should have reduced the number of non-compliances observed, recurring non-compliance issues continue. This includes lack of proper public engagement, ignoring submissions including DWER (as regulator) submissions, failure to fulfil the Vegetation Management Plan (VMP), vehicle hygiene for weeds and pathogens and failure to properly supervise contractors.
4. MRWA does not reveal its scientific method for "assessment for variance against clearing principles". The EP Act guidelines stipulate a biological study is required to determine the presence/absence of rare flora. There is no evidence MRWA have complied. The WA Herbarium specifically indicates that the absence of rare flora from herbarium records should not be used to justify a conclusion that no rare flora is present. It recommends a field survey is completed to confirm the presence/absence.
5. The Auditor states there is an assumption that all data is true and correct. There is no evidence of a drill down, random sampling audit that requires substantial evidence to corroborate claims. The auditor states, by MRWA prescription, it does not undertake an audit to ensure that the works carried out were compliant with the documented evidence and reports. There is no ground truthing. This is a clear lack of basic auditing procedures, not included by MRWA in the auditing prescription. What actually occurred in each project involving native vegetation clearing by MRWA is not audited, described, reported nor



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remedied. DWER have not identified this basic oversight and not required this as part of the auditing KPI.

6. There is no requirement, in the audit recommendations for non-compliance, for MRWA management to have responsibility the organisations continued non-compliance. There is recommendation after recommendation for refresher courses for staff engaged in project approvals. There is no onus of change on managers or on the organisation culture, despite the non-compliance being clearly systemic.

5. Recurring Non-compliance

This MRWA External Audit report document provides detailed evidence of systemic failures in MRWA's management of native vegetation clearing. Through amendment after amendment, audit after audit, within the narrow audit prescription and despite deleting non-compliance issues in subsequent CPS 818 amendments, MRWA:

- Repeatedly ignore DWER (the compliance regulator) submissions.
- Ignore DWER in its Assessment Reports.
- Ignore conditions of approval, such as the requirement for stakeholder engagement and refuse to invite submissions, as required.
- Ignore any stakeholder engagement submissions in their native vegetation clearing management or EIA reports.
- Ignore auditor findings to have real time MRWA auditing of contractors, despite contractor's illegal clearing of native vegetation.
- Repeatedly ignore the need for vehicle hygiene for weed and pathogen control.
- Ignore the need for pre-clearing checks.
- Ignore DWER stated clearing principles at variance in MRWA Assessment Reports.
- Ignore DWER submissions their PCIA Reports.
- Ignore EMEC during projects.
- Ignore discrepancies in Monitoring and Auditing between MRWA and DWER.
- Provide no evidence of MRWA VMP being implemented, repeatedly ignoring VMPs.
- Do not provide sufficient contractor supervision resulting in illegal native vegetation clearing.
- Ignore post native vegetation clearing management of weeds, especially adjacent to good and excellent native vegetation.
- Choose not to consider avoidance before mitigation, despite this requirement, invariably due to economic factors which are not relevant under the EP Act.
- Ignore the need for proper transparency by producing only summaries and not full documents on their web page.
- Provide no evidence of how MRWA have changed processes and procedures where there is non-compliance, except by deletion of the requirement from the next amendment of the CPS.
- Repeatedly have such deficient data and record keeping that the auditor cannot make a finding.
- Repeatedly do not provide sufficient oversight and training of its staff to fulfil the CPS.

MRWA has failed to meet its requirements and obligations, while DWER, having oversight as the compliance regulator, has failed not enforced the requirements and obligations.



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6. Scope of the Audit Prescription

The scope of the audit prescription has failed to allow the auditor to take up the following issues:

1. The auditor, via MRWA's narrow prescription, has not sufficiently captured the non-compliance of governance in MRWA's use of the 'Fast Track Assessment Form', FTAF. It is a clear conflict of interest for MRWA to assess their own 'low clearing impacts'. This term is currently subjective and qualitative and not in the Acts or regulations. It is in MRWA's own interest, and not the environment's, to determine the impact of fast tracking of low clearing impacts to reduce costs and time delay. It is especially a governance issue as this is not defined nor quantifiable or measurable. For due governance to occur, 'Low clearing impacts' are required to be defined in the Act and regulations, independently assessed and quantitatively measured and documented by a suitably qualified person. MRWA 'Fast Track Assessment' is a clear case of MRWA choosing economic imperatives overriding environmental imperatives. This is not consistent with the EP Act in its scope or intent.
2. The Auditor, via MRWA's narrow prescription, has not captured the non-compliance of governance in the DWER conditions and MRWA's use of its prerogative to determine if it will conduct desktop only studies when deciding how to assess environmental impact of its proposed clearing. It is a conflict of interest for MRWA to determine whether or not there is a need to conduct a biological survey. Further, it is scientifically invalid to conduct a desktop only study. The use of the absence of data to assert the evidence of absence is scientifically invalid but occurs in MRWA's native vegetation clearing processes and procedures. It is not only ignored by DWER, but DWER also enshrines such scientifically invalid processes in the Clearing Permit conditions and amendments. Indeed, such DWER conditions and MRWA processes contravene the EP Act's own guidelines that state that rare flora can only be identified by biological survey. There is such a deficiency in all desktop data, that its sole use to determine absence of rare flora is unscientific. MRWA's Goomalling-Merredin road widening project used data that was pre-1986 for flora taxa extent and conservation status. Since 1986, potential threats have increased exponentially and therefore the data of flora taxa extent and conservation status from 1986 is grossly inaccurate. Up-to-date biological surveys that include a proper assessment of the real cumulative impact of the proposed project in the project area surrounds, as well as current extent for all identified species, must be included in any report. To allow the use of such aged data is inconsistent with decisions made by the Minister on recommendation of the Appeals Convenor within the last 12 months and the EPA, who have not accepted data being more than five years old as being suitable for use in an assessment.
3. There is a gross deficiency of audit compliance by MRWA of dieback, weed and pathogen control across projects in many regions and over audit periods. This requires an urgent independent audit report of randomly selected projects to establish the extent to which these controls are actually implemented by MRWA and its contractors.

7. Conclusion

The current adoption and application of CPS 818 continues to reflect the issues described at this time. MRWA has failed to seek public submissions on works on Albany Highway at Williams and on South Western Highway in the vicinity of Donnybrook. For the Goomalling Merredin Rd widening



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project, MRWA chose not to provide the baseline surveys to the selected exclusive stakeholders asked to comment on the clearing impact assessment. Road design and baseline survey documentation for Great Eastern Highway was not provided to invited stakeholders to assess the adequacy of the clearing assessment for a project in the vicinity of Bodallin.

The audit process for CPS 818/15 needs to include independent project level audits to verify compliance at a project level, as well as overall audits of the performance within the scope of CPS 818/15. Audit after audit does not reveal how MRWA addresses any non-compliance issues or address the lack of evidence for the auditor.

Within CPS 818/15, there needs to be definition of 'low clearing impacts' and 'unacceptable clearing impacts' if fast track assessments are to be permitted. There also needs to be cut-off limits defined where the use of CPS 818/15 is not suitable and independent assessment by DWER, as an individual project clearing permit application, is required.

Yours faithfully



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