



Section 73A
Environmental Protection Act 1986

PREVENTION NOTICE

Reference: Notice 202201

Persons to whom this prevention notice is issued:

Mr Richard James Fauntleroy
168 Almeria Parade
Upper Swan WA 6069

AND

Ms Melissa Jayne Mills-Fauntleroy
168 Almeria Parade
Upper Swan WA 6069

Joint tenants 168 Almeria Parade Upper Swan WA 6069

The location to which this notice relates:

The location where this section 73A *Environmental Protection Act 1986* (EP Act) Prevention Notice (*the Notice*) applies is :

168 Almeria Parade, Upper Swan WA
Lot 50 on Diagram 61652
Volume 1600 Folio 582 (168 Almeria)

Reasons for which this Notice is issued:

This Notice is given in accordance with section 73A (1)(b) of the EP Act because I reasonably suspect that the owners of 168 Almeria have done, are doing and are likely to do an act which harms the environment through alteration of the environment to the potential detriment of a beneficial use of the environment as declared under Clause 7 of the *Environmental Protection (Western Swamp Tortoise Habitat) Policy 2011* (WST EPP) being the use of western swamp tortoise habitat as a resource for maintaining ecological processes, ecological integrity and ecological functions on which the survival of viable wild populations of the western swamp tortoise depends and its use as a basis for conserving biological diversity and maintaining a diverse natural environment in the policy.

I suspect that the owners artificially created standing water in a winter-wet depression on 168 Almeria between 19 December 2021, based upon –

- Installation of white piping into a trench extending to the winter wet depression in the paddock at 168 Almeria between and 13 November 2021 and 19 December 2021;
- A pool of standing water appearing in the paddock at the end of the piping between 19 December 2021 and 14 January 2022, after the paddock had been dry as at 19 December 2021;
- The pool of water which appeared by 14 January 2022 being the only shallow pool of water present in the area at the time – other winter wet depressions and swamps were dry by December 2021 and continued to stay dry through to April 2022;
- Historical imagery showing that the area where the pool occurred contains water during winter, but was dry in summer, including in January 2012, 2014-2017 and 2021, February 2013, 2015 and 2018-2019. No aerial imagery from the last ten years has been found showing standing water in the pool in January, except in 2022. Pools of water can form during heavy summer rainfall, such as occurred in February 2017, but no rainfall was recorded for Perth January 2022. In 2017 the winter-wet depression was dry before the rain, in January 2017, the area did not stay wet all summer.

I am satisfied that because Mr Richard James Fauntleroy and Ms Melissa Jayne Mills-Fauntleroy are the owners of 168 Almeria that they are the appropriate persons whom to give the Notice.

I am satisfied that Lot 507 on Diagram 61652 is located immediately to the north of 168 Almeria and provides habitat for western swamp tortoises. I am satisfied that standing water within 100 metres of western swamp tortoise habitat can attract tortoises when other water within their home range dries up, when otherwise the tortoises would be aestivating. I am satisfied that such an alteration of the tortoises' natural behaviour can adversely impact on ecological functions and conservation of the biological diversity of the western swamp tortoise population.

I am not satisfied that the owners of 168 Almeria will not artificially create or maintain pools of water within 100 metres of the boundary of Lot 507 on Diagram 61652 when shallow pools and swamps are drying up, or have dried up on Lot 507. The owners have denied that they caused or allow the creation and maintenance of the pool of water which appeared after 19 December 2021 on 168 Almeria, which is not consistent with the evidence. The owners have declined to meet with staff from the Department of Biodiversity, Conservation and Attractions and have not given any commitment that will not artificially cause or maintain standing water within 100 metres of the boundary with Lot 507.

Requirements of this Notice:

Terms used in the Notice have the meaning defined in Appendix 1.

In accordance with section 73A(2)(c) of the EP Act, the Notice requires the persons to whom the notice is given to prevent the act giving rise to alteration of the environment to the potential detriment of an environmental value, being the beneficial uses of the western swamp tortoise habitat protected under the WST EPP.

The Notice requires:

1. On being served with the Notice, the persons to whom the Notice is given must not cause standing pools of water to be artificially created or maintained on 168 Almeria within 100 metres of the boundary of Lot 507 on Diagram 61652.
2. On being served with the Notice, the persons to whom the Notice is given must not allow standing pools of water to be artificially created or maintained on 168 Almeria within 100 metres of the boundary of Lot 507 on Diagram 61652.

Duration

This Notice subsists until it is amended or cancelled by written notice of the CEO.



Kelly Faulkner
Acting Chief Executive Officer
Department of Water and Environmental Regulation

12 October 2022

Important Information:

Under section 73A(6) of the EP Act, a person who intentionally or with criminal negligence does not comply with a requirement contained in a prevention notice given to that person, without reasonable excuse for that contravention, commits an offence. The maximum penalty for this offence for an individual is a fine of \$250,000 with a daily penalty of \$50,000.

Under section 73(7) of the EP Act, a person who does not comply with a requirement contained in a prevention notice given to that person, without reasonable excuse for that contravention, commits an offence. The maximum penalty for an individual for this offence is \$62,500 with a daily penalty of \$12,500.

Section 103 of the EP Act provides that:

- a person who is aggrieved by a requirement contained in the Notice may within 21 days of being given this notice lodge with the Minister for Environment an appeal in writing setting out the grounds of that appeal: and
- any other person who disagrees with a requirement contained in the Notice may within 21 days of the making of that requirement lodge with the Minister for Environment an appeal in writing setting out the grounds of that appeal.

PENDING THE DETERMINATION OF AN APPEAL REFERRED TO ABOVE, THE RELEVANT REQUIREMENTS CONTAINED IN THIS NOTICE CONTINUE TO HAVE EFFECT.

Appendix 1: Definitions

In this Prevention Notice, the following terms have the following meanings:

'EP Act' means the *Environmental Protection Act 1986* (WA).

'Artificially created or maintained' means created or maintained through human intervention, including excavating, draining, damming, pumping, discharging or otherwise causing water to pool on the ground.

'Artificial pools of water' means standing water on the ground that has been artificially created. It does not include water that pools naturally on the ground after high rainfall.

'CEO' means Chief Executive Officer, Department of Water and Environmental Regulation;

'CEO' for the purposes of correspondence means;

Chief Executive Officer
Department of Water and Environmental Regulation
Locked Bag 10
JOONDALUP DC WA 6919
Telephone: (08) 6364 7000
Fax: (08) 6364 7001
Email: primehouse.reception@dwer.wa.gov.au

'Tortoises' means the western swamp tortoise, *Pseudemydura umbrina*