



Environmental Protection Act 1986

Hon Reece Whitby MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST GRANT OF CLEARING PERMIT CPS 9237/1 COWARAMUP BAY ROAD UPGRADE, SHIRE OF AUGUSTA MARGARET RIVER

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 Convenor's own report, which can be downloaded from the Appeals Convenor's website at www.appealsconvenor.wa.gov.au.

Appellant:	Ms Kerry Hill
Applicant:	Shire of Augusta Margaret River
Proposal description:	The permit authorises the clearing of up to 1.5 hectares of native vegetation within Cowaramup Bay Road reserves and Lot 5266 on Deposited Plan 220451 (Crown Reserve R47049) Cowaramup for the purpose of road construction and upgrades.
Minister's decision:	The Minister allowed the appeal in part
Date of decision:	21 September 2022

REASONS FOR MINISTER'S DECISION

An appeal was received from Ms Kerry Hill objecting to the grant of the above permit to the Shire of Augusta-Margaret River, authorising the clearing of 1.5 hectares of native vegetation. The permit was granted by the Department of Water and Environmental Regulation (DWER) for the purpose of road widening to improve road safety.

The appellant's main concern was that cumulative impacts to black cockatoos were not appropriately considered in DWER's assessment. The appellant sought for the permit to be refused or that black cockatoo habitat be retained.

Decision

Having considered the information available, including DWER's response to the appeal and the Appeal Convenor's report, the Minister was satisfied that the decision to grant the permit was appropriate.

However, the Minister agreed that the application area is significant fauna habitat within an extensively cleared area. The Minister therefore allowed the appeal to the extent that an offset is required to counterbalance the significant residual impacts from the approved clearing.

The full reasons for the Minister's decision are set out below.

The application area is significant as habitat within an extensively cleared area

The Minister understood that the appellant's key concern was DWER's consideration of the cumulative impacts to three species of black cockatoo. The Minister was advised that the application area contains up to 1.3 hectares of foraging, potential nesting and roosting habitat significant for black cockatoos, as well as the western ringtail possum and the south-western brush-tailed phascogale.

The application area also provides a local ecological linkage in a highly fragmented agricultural landscape.

Given the above, the Minister agreed with the Appeals Convenor that the clearing is 'at variance' to clearing principle (b).

The Minister also agreed that the application area is likely compensating for a high degree of fragmentation by providing an ecological linkage in an extensively cleared landscape. Noting this, the Minister found that the proposed clearing is 'at variance' to clearing principle (e).

The clearing is consistent with planning and other matters

As this clearing is for road works, planning approval is not required. However, the Minister noted that the proposal should have regard to relevant planning instruments. In this case, the Minister accepted that relevant planning instruments, including the Leeuwin-Naturaliste Ridge Policy, support the retention and enhancement of environmental values within this part of the Shire.

However, noting that the clearing is within existing road reserves for a public purpose (improving road safety), the Minister considered the decision to grant the permit was justified on planning grounds.

Granting the permit was justified, but offset and changes to conditions required

While the decision to grant the permit was justified, the Minister agreed with the Appeals Convenor that an offset is required to counterbalance the significant residual impacts from clearing habitat.

Through the appeal investigation, the Shire of Augusta-Margaret River reviewed the necessity of some of the clearing. As a result of this review, the Shire advised that the clearing can be reduced from 1.5 hectares to nine individual trees. This is a welcome and constructive approach to minimise clearing and means the offset is similarly reduced.

From the above, the Minister allowed the appeal to the extent that the conditions of the permit are modified as follows:

- area approved to be cleared reduced to nine trees (seven marri and two peppermint)
- offset with completion criteria of at least 31 trees to provide foraging habitat for black cockatoos, the western ringtail possum and the south-western brush-tailed phascogale.

The precise wording of the amended condition will be for DWER in giving effect to this decision under section 110 of the *Environmental Protection Act 1986*.

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*.

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