



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST GRANT OF CLEARING PERMIT CPS 8460/1 LOT 5038 ON PLAN 229254, EASTBROOK, SHIRE OF MANJIMUP

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 above clearing 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:	Rebecca Donaldson
Permit holder:	Daniel Christopher Collins
Proposal description:	Clearing Permit CPS 8460/1: fire mitigation and forest management (thinning), Eastbrook, Shire of Manjimup
Minister's decision:	The Minister allowed the appeal in part
Date of decision:	1 February 2021

REASONS FOR MINISTER'S DECISION

The Minister noted the permit was granted for the clearing of up to 40 hectares of native vegetation on Lot 5038 on Plan 229254, Eastbrook, for the purpose of fire mitigation and forest management (thinning).

The appellant's concerns primarily related to potential impacts to black cockatoos (Carnaby's cockatoo, Baudin's cockatoo and forest red-tailed black cockatoo) and western ringtail possums (WRPs).

The Minister understood the appellant sought for the permit to be refused, or in the alternative if the permit is granted, for black cockatoo habitat surveys to be undertaken and additional conditions applied to address impacts including offsets and standard permit conditions to manage impacts to WRPs.

Having regard to the appeal, both the Department of Water and Environmental Regulation's (DWER) and the applicant's response, the Appeals Convenor's report and recommendation and advice from the Department of Biodiversity, Conservation and Attractions (DBCA), the Minister considered that the decision to grant the permit was justified and that an offset is not

warranted in this case. However, the Minister decided to allow the appeal to the extent that additional conditions are applied to the permit to further mitigate impacts to black cockatoos and WRPs. The additional conditions and the reasons for his decision are outlined below.

Black cockatoos

The Minister noted DWER's assessment acknowledged the application area contains black cockatoo foraging habitat and may contain black cockatoo breeding habitat. DWER was satisfied, however, that the available information combined with the applicant's retention commitments meant there was sufficient evidence to demonstrate impacts would not be significant. The available information included the current extent of vegetation remaining in the local area and known black cockatoo records and the applicant's commitments included the retention of two habitat trees per hectare and a basal area retention rate of 16-18 m² per hectare.

In response to the appeal, noting the extent of remaining native vegetation near the application area, DWER remained of the view that potential impacts to foraging habitat for black cockatoos would not be significant. However, DWER recommended that additional conditions should be applied to the permit to mitigate impacts to potential breeding habitat, noting that potential breeding habitat should be avoided wherever possible.

As part of the appeal investigations into this matter, the Appeals Convenor undertook a site visit to observe the vegetation proposed to be cleared and identified a range of mitigation measures for black cockatoos that are routinely applied to timber harvesting practices undertaken on lands managed by DBCA. As a result, the Appeals Convenor recommended a range of conditions be added to the permit to mitigate impacts to black cockatoos.

As part of his deliberations on this matter, the Minister sought further advice from DBCA and DWER and decided that these conditions can be further refined to include requirements for the overall structure and composition of the overstorey to be maintained, for revised habitat tree retention measures, and for the works to be undertaken by an appropriately experienced operator.

While the Minister noted that the Appeals Convenor recommended a condition that would permit burning in black cockatoo breeding periods, the Minister was advised that burning at other times is either not allowed, impracticable or may result in greater impacts to retained habitat trees and the forest generally. The Minister considered that it is reasonable for fire mitigation burning to be allowed on the property in the interests of protecting human life and assets, and that further conditions requiring 'tops disposal' around retained habitat trees will assist in mitigating impacts.

Taking into account the additional measures that can be applied, the purpose of the clearing, and that natural regeneration of the application area should occur, the Minister was satisfied that an offset was not warranted in this case.

Western ringtail possums

In relation to WRPs, the Minister noted that the appellant submitted that standard permit conditions for managing impacts to the species were not imposed by DWER and that this may represent a shortcoming in DWER's assessment.

The Minister noted that the permit conditions include requirements to avoid riparian vegetation (preferred habitat) and to undertake directional clearing, and that these measures are appropriate towards mitigating impacts to WRPs.

The Minister considered that the revised conditions for black cockatoos mentioned above, such as the requirement for the works to be undertaken by an appropriately experienced operator, are also appropriate towards mitigating WRP impacts.

Furthermore, the Appeals Convenor's consideration of timber harvesting practices on DBCA managed lands identified that the retention of patches of second-storey species and large ground habitat logs can provide mitigation for WRPs through assisting with recolonisation.

Therefore, the Minister decided to require the inclusion of additional conditions consistent with the above, including as refined through consultation with DBCA, to further mitigate WRP impacts.

Summary

It followed that the Minister decided to allow the appeal to the extent that additional conditions are required, including:

- thinning must be conducted by operators experienced in meeting harvest and silvicultural standards required for native forest operations on DBCA managed lands
- thinning must be undertaken from below (i.e. removing the smaller stems with consideration of tree spacing), maintaining the overall structure and composition of the dominant overstorey species
- the definition for basal area to be corrected to reference measurement of trunk diameter is made over bark at 1.3 metres above ground not 1.5 metres
- retention of at least two primary habitat trees per hectare in karri dominant stands and at least five primary habitat trees per hectare in marri dominant stands – these rates may be averaged across the total area of each dominant forest type (karri or marri) to account for natural variation in stand structure
- inclusion of a definition for primary habitat trees as trees with a trunk diameter at breast height (measured over bark 1.3 metres above ground) of at least 70 cm for karri and marri that are senescing with first preference being those trees with visible evidence of hollow use, nests, or large hollows suitable for cockatoo breeding, or where these do not occur, large mature trees that in future will develop hollows suitable for larger hollow-nesting species
- retention of an average of one 30 metre diameter patch per hectare of healthy representative understorey, with an emphasis (where present) on habitat suitable for WRPs, such as patches dominated by *Agonis flexuosa*
- retention, where present, of large ground habitat logs longer than 3 metres which have an internal pipe/decay diameter of greater than 10 cm at a rate of at least one per hectare
- 'tops-disposal' around retained habitat trees and ground habitat logs – i.e. removal of woody fuels larger than 75 mm diameter and 1 metre in length from within 1 metre of the retained habitat tree or log
- burning of the application area no more than once comprising a low-intensity controlled burn during spring to early summer under suitable conditions as determined by the Bushfire Control Officer appointed under the *Bush Fires Act 1954*
- associated record keeping and reporting of the activities undertaken in accordance with the above.

The final wording of the above conditions is a matter for DWER to determine in giving effect to this appeal 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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