



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST GRANT OF CLEARING PERMITS CPS 8787/1 AND CPS 8788/1 OCEAN REEF MARINA

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 101A(4) of the *Environmental Protection Act 1986* in objection to the above clearing permits. This document is produced by the Office of the Appeals Convenor for the Minister. The Appeals Convenor's own reports can be downloaded from the Appeals Convenor's website at www.appealsconvenor.wa.gov.au.

Appellants:	Urban Bushland Council Inc (018/20 and 026/20) Dr Marjorie Apthorpe (018/20) Joondalup Community Coast Care Forum Inc (018/20 and 026/20) Mullaloo Beach Community Group Inc (018/20 and 026/20) Mr Bob Mason (026/20)
Permit holder:	Western Australian Land Authority trading as DevelopmentWA
Proposal description:	Geotechnical investigations (CPS 8787/1) and an early works program (CPS 8788/1) for the development of the Ocean Reef Marina
Minister's decision:	The Minister dismissed the appeals.
Date of decision:	1 July 2020

REASONS FOR MINISTER'S DECISION

Appeals were received in objection to the decision of the Department of Water and Environmental Regulation (DWER) to grant DevelopmentWA two permits to clear native vegetation. A total of four appeals were received against CPS 8787/1, and three against CPS 8788/1.

The clearing authorised by these permits is to facilitate certain geotechnical investigations and early works supporting the development of the Ocean Reef Marina. The marine elements of this proposal were approved under the *Environmental Protection Act 1986* in August 2019.

For the land based elements of the proposal, an amendment to the Metropolitan Region Scheme (MRS) was referred to the Environmental Protection Authority (EPA) in 2014. This amendment sought to exclude approximately 26.26 hectares of land from Bush Forever site 325, and change the zoning of the majority of the land to urban use.

After considering the environmental issues contemplated by the scheme amendment, the EPA accepted that the land could be developed subject to a negotiated planning outcome being agreed between the Department of Planning, Lands and Heritage, the Department of Biodiversity, Conservation and Attractions and the Office of the EPA (now part of DWER). It is understood that a negotiated planning outcome was agreed between these agencies, which included the acquisition of an area of land at Carabooda which will be managed for conservation purposes.

In light of this agreement, the amendment to the MRS was finalised in November 2019. The Minister understood that the majority of the clearing authorised under these permits is within the area the subject of the MRS amendment and is therefore within the contemplation of the negotiated planning solution for impacts caused by its development.

By the appeals, appellants raised concern that DWER failed to adequately assess the impacts of the proposed clearing, especially in relation to flora and fauna values.

Appellants also raised concern that the negotiated planning outcome site in Carabooda contains different vegetation from the application area, and as such, is not an appropriate offset for the values at Ocean Reef Marina.

Decision

Having regard to the concerns raised in the appeals, and noting the planning context triggered by the EPA's public advice in 2014, the Minister considered that the decisions to grant the permits in this case were justified. The Minister specifically considered that the significant residual impacts have been adequately offset through the negotiated planning outcome process and in accordance with the recommendations of the EPA.

It follows that the Minister dismissed the appeals. The full reasons for the Minister's decision follow.

Environmental risks posed by the proposal

CPS 8787/1 authorises the clearing of up to 3.9 hectares of native vegetation for geotechnical investigations, while CPS 8788/1 authorises the clearing of up to 4.47 hectares of native vegetation to facilitate early works associated with the marina.

DWER considered the proposals against the clearing principles, and determined that the clearing the subject of both permits was at variance to principles relating to biodiversity and fauna habitat (principles (a) and (b)), while the clearing the subject of CPS 8788/1 was found to be additionally at variance to principles relating to the importance of the vegetation as a remnant and impacts to a nearby conservation area (principles (e) and (h)). DWER also found that the proposed clearing may be at variance to a number of other principles, including in relation to rare flora.

The Appeals Convenor's report summarises the concerns raised on appeals as they relate to flora and fauna values of the site. In this regard, the Appeals Convenor concluded that DWER's assessment of both permits was generally appropriate, and the findings justified. However, the Appeals Convenor formed the view that it was appropriate to find that both proposals were at variance to clearing principle (e), which relates to clearing of a significant remnant in a highly cleared landscape.

Noting both DWER's assessment and the Appeals Convenor's investigation of the appeals, it is apparent that the proposed clearing will have a number of environmental impacts, and some of these impacts are significant. This includes among other things, clearing of foraging habitat

for Carnaby's cockatoo, and the potential for a large portion of the local population of *Conostylis bracteata* to be cleared. These impacts are consistent with the former classification of the majority of the application area the subject of these permits as part of Bush Forever site 325.

Based on the foregoing, the Minister agreed with the Appeals Convenor's advice in respect to the environmental values to be impacted by the proposed clearing. Specifically, the Minister believed the proposals are at variance to clearing principles (a), (b) and (e), with CPS 8788/1 additionally being at variance to principle (h).

Adequacy of offset

Having concluded that the proposed clearing will have a significant residual impact on a number of environmental values, the Minister then considered the concerns raised by appellants as to the adequacy of the way in which DWER considered the application of offsets to counterbalance the impacts.

DWER identified the significant residual impacts as relating to flora, fauna and ecological communities, concluding that these were appropriately offset by the negotiated planning outcome, including the acquisition of the site at Carabooda. Appellants challenged this view, submitting that the offset site is not 'like-for-like' to the environmental values that will be lost at the Ocean Reef site.

As discussed above, the EPA considered that the impacts associated with the land based elements of the proposal could be adequately dealt with through a negotiated planning outcome, to be developed by the planning, conservation and environment agencies before the amendment was approved. In coming to this decision, the EPA relevantly advised in 2014 that its objectives for flora and vegetation and terrestrial fauna could be met subject to a satisfactorily negotiated planning outcome being developed.

The negotiated planning outcome includes both the acquisition of an area of 22.7 hectares of native vegetation at a site in Carabooda, and the restoration of 5 hectares of vegetation within Bush Forever site 325 from 'degraded' to 'very good' condition.

On the information available, and noting that the significant residual impacts identified were within the contemplation of the EPA at the time the MRS amendment was referred in 2014, the Minister considered DWER was justified in applying the negotiated planning outcome to the permits the subject of this appeal.

While the Minister acknowledged that the offset site may not be like-for-like in respect to all of the significant residual impacts, DWER's approach is consistent with relevant offsets policy and the EPA public advice from 2014. The Minister also noted that the negotiated planning outcome is consistent with methodology reflected in the relevant State Planning Policy.

Overall, the Minister considered that the application of the negotiated planning outcome as an offset for the significant residual impacts identified for these permits was appropriate, and no additional offset is required.

Planning context

As noted above, the majority of the application area identified in the clearing permits is within an area of land that was deleted from Bush Forever site 325 in November 2019 through the MRS amendment.

The reason for the removal of the Bush Forever status of the land was to facilitate the development of the land-based elements of the proposed Ocean Reef Marina. The marine-based elements of that proposal were assessed by the EPA in 2018, and following the Minister's consideration of appeals against the EPA's report, was approved by the Government in 2019, with a number of new conditions relating to monitoring of impacts and translocation of abalone.

In addition to excising the proposed development area from Bush Forever, the scheme amendment also rezoned the majority of the area from reserve to urban land use. The City of Joondalup's local planning strategy also identifies the area as being for the development of residential and related land uses as part of the development of the Ocean Reef Marina.

It follows that the planning instruments administered by the Western Australian Planning Commission and the City of Joondalup support the clearing of the land, noting that the purpose of the proposed clearing is consistent with the intended land use reflected in those instruments.

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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