



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST GRANT OF A CLEARING PERMIT CPS 8172/1 BALDIVIS DISTRICT SPORTING COMPLEX, CITY OF ROCKINGHAM

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 grant of Clearing Permit CPS 8172/1. 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:	WA Black Cockatoo Recovery Project
Permit holder:	City of Rockingham
Proposal description:	The permit authorises the clearing of 1.85 hectares of native vegetation within Lot 4 on Diagram 31062 and Lots 103, 104 and 105 on Diagram 50627, Baldivis, for the purpose of developing the Baldivis District Sporting Complex for public recreation.
Minister's decision:	The Minister allowed the appeal in part
Date of decision:	19 September 2019

REASONS FOR MINISTER'S DECISION

Pursuant to section 106 of the *Environmental Protection Act 1986* (the Act), the Minister obtained a report from the Department of Water and Environmental Regulation (DWER) on the matters raised in the appeal. The Minister also received a report from the Appeals Convenor. The Appeals Convenor's report sets out the background and other matters relevant to the appeal.

The City applied to DWER for a permit to clear 1.85 hectares (ha) of native vegetation on Lot 4 on Diagram 31062 and Lots 103, 104 and 105 on Diagram 50627, Baldivis, for the purpose of developing the Baldivis District Sporting Complex. The application area includes 1.85 ha of foraging habitat and nine suitable nesting trees for threatened black cockatoo species.

After considering the information provided to it, DWER granted the permit on 21 May 2019 subject to conditions, including requirements to minimise and mitigate the impacts of the proposed clearing, conduct directional clearing, undertake weed and dieback management, and to counterbalance identified significant residual impacts through the installation of artificial nest hollows, revegetation and conservation tenure.

The appellant requested that the clearing of foraging habitat and suitable nesting hollows for black cockatoos is not allowed under the permit, and for an independent study to be conducted on black cockatoo usage of the application area.

The appeal was investigated by the Appeals Convenor on the Minister's behalf, which the Minister understood included consultation with you, as well as feedback from DWER and the City.

The appellant expressed concern about the adequacy of the black cockatoo habitat assessment that informed DWER's assessment, and considered that usage of the site by black cockatoos is greater than reported. The appellant also considered the mitigation measures specified in the permit to be insufficient to address impacts to black cockatoos as a result of the proposed clearing, particularly in relation to the success of artificial nest hollows and the timeframes for revegetation establishment.

DWER advised that the black cockatoo habitat assessment commissioned by the City was sufficient to inform its assessment of the significance of impacts of the proposed clearing on black cockatoos, and considered the timing to be appropriate to determine the presence of potential foraging and breeding habitat and any historical use of hollows. On the basis of its assessment, DWER concluded that the application area comprises significant habitat for black cockatoos.

To address the impacts to black cockatoos, DWER placed conditions on the permit requiring the installation and monitoring of nine artificial nest hollows, and revegetation with species that include known foraging plants for black cockatoos, within a 3.15 ha remnant of tuart and jarrah woodland adjacent to the proposed clearing. These requirements would apply for the duration of the permit, which includes minimum 10 year revegetation and monitoring requirements.

In addition to these requirements, DWER, in its response to the appeal, recommended that a conservation covenant is placed over the proposed revegetation site to ensure that the nest hollows and foraging habitat are protected indefinitely.

Taking into account the information presented to him, the Minister was satisfied that DWER had sufficient information available to inform its conclusions about the significance of impacts to black cockatoos as a result of the proposed clearing, and that its decision to grant the clearing permit subject to conditions to manage those impacts was justified. Notwithstanding, the Minister agreed with the Appeals Convenor's recommendation that the clearing permit should be strengthened to ensure minimal impact on black cockatoos during clearing, and to protect the proposed revegetation site in perpetuity.

It follows that the Minister allowed the appeal to the extent that the clearing permit conditions are changed to include requirements to inspect the nine suitable nesting trees immediately prior to clearing and avoid any tree found to be in use for breeding by black cockatoos until vacated, and to establish a conservation covenant over the area hatched red on Plan 8172/1b attached to the clearing permit.

The precise wording of the conditions will be a matter for DWER to consider in giving effect to the Minister's appeal decision.

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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