



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST REPORT AND RECOMMENDATIONS OF THE ENVIRONMENTAL PROTECTION AUTHORITY REPORT 1683 – SUBDIVISION OF LOT 102 FARRALL RD, MIDVALE

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 100(1)(e) of the *Environmental Protection Act 1986* in objection to the Environmental Protection Authority's Report and Recommendations in respect to the above proposal. 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.

Appellants:	Urban Bushland Council WA Inc. Blackadder/Woodbridge Catchment Group Inc.
Proponent:	Peet Stratton Pty Ltd
Proposal description:	Clearing of 5.08 hectares of native vegetation for the subdivision of Lot 102 Farrall Road, Midvale
Minister's Decision:	The Minister allowed the appeals in part
Date of Decision:	22 January 2021

REASONS FOR MINISTER'S DECISION

Peet Stratton Pty Ltd (the proponent), intends to clear and disturb 5.08 hectares (ha) within Lot 102 for the purpose of development of residential land allotments, road reserves, provision of services, public open space, and a 'conservation' area.

Two appeals were received raising concerns about the assessment and recommendations of the Environmental Protection Authority (EPA) as they relate to impacts to Flora and Vegetation, Terrestrial Fauna, and Inland Waters. It was submitted that the proposal should not be approved for implementation and that Lot 102 Farrall Road be included in conservation estate due to substantial environmental values.

Having regard to the concerns raised in the appeals, and after considering the information before him, including the EPA's response and the Appeals Convenor's report, the Minister was satisfied that the EPA's report and recommendations were generally appropriate.

However, the Minister considered that the appeals should be allowed in part, to the extent that the EPA's recommended conditions are amended to:

- require an offset for the loss of 1.22 hectares of Carnaby's cockatoo foraging habitat; and
- clarify condition 6-1(3) to reflect the intended requirement to maintain 'Excellent' condition vegetation and restore degraded vegetation to 'Good' or better condition within Bush Forever site 309.

The full reasons for the Minister's decision follow.

Black cockatoos

The appeals submitted that the EPA's recommended conditions fail to ensure impacts to black cockatoo habitat are appropriately addressed. In this regard, the EPA concluded that the proposal would not result in a significant residual impact to black cockatoos.

During the appeals investigation, the Appeals Convenor queried the quality of black cockatoo foraging habitat to be impacted as determined by the proponent. Subsequently, the proponent commissioned a revised assessment that mapped the extent of both primary and secondary foraging species for both Carnaby's cockatoo (*Calyptorhynchus latirostris*) and forest red-tailed black cockatoo (*Calyptorhynchus banksii naso*).

The assessment identified that a total of 1.22 hectares of Carnaby's cockatoo foraging habitat (which includes 0.22 ha of forest red-tailed black cockatoo habitat) would be cleared.

Having reviewed the regional context of the habitat, including that it is located within an urbanised setting on the Swan Coastal Plain where extensive fragmentation of such habitat has occurred, the Minister agreed with the Appeals Convenor that the loss of 1.22 hectares of Carnaby's cockatoo foraging habitat is a significant residual impact.

It follows that the Minister required a condition be included for the preparation and implementation of an appropriate offset strategy to counterbalance the identified residual impact. The offset strategy is to be approved by the Chief Executive Officer (CEO) of the Department of Water and Environmental Regulation.

The Minister noted that the proposal includes the retention and rehabilitation of a conservation area, and that this may be of benefit to Carnaby's cockatoo. The extent to which these actions can be accounted for as part of an offset strategy would be a matter for the proponent and the CEO in giving effect to the condition.

Vegetation Complexes

In relation to vegetation complexes, it was submitted that the EPA failed to adequately consider the loss of vegetation mapped as Guildford and Forrestfield complexes, including the extent of these complexes that remain within secure tenure.

The Minister was advised that although most of the site is mapped by the Department of Biodiversity, Conservation and Attractions (DBCA) as Guildford complex, the site is more representative of Forrestfield complex based on soil type and floristics.

The Minister noted that the EPA has a modified retention target of 10% of each vegetation complex within constrained areas such as the Perth Metropolitan Region. This 10% threshold relates to the entire extent of a vegetation complex, rather than the extent within secure tenure.

Given, there is 12% of the Forrestfield vegetation complex remaining, the Minister was satisfied that the EPA's conclusion is consistent with published guidance.

TEC FCT 20c

The Minister noted that four occurrences of the threatened ecological community (TEC) 'Shrublands and Woodlands of the eastern Swan Coastal Plain', also referred to as Floristic Community Type (FCT) 20c, occur within Lot 102. The proposal includes the clearing of three occurrences totalling 0.23 hectares, and the conservation of a fourth occurrence of 0.54 hectares. This occurrence of the TEC will be included in a conservation area, in addition to 0.44 hectares of adjacent TEC rehabilitation and Bush Forever site 309.

By the appeals, it was submitted that the proposal had the potential to result in serious or irreversible damage to the TEC, that the clearing of 0.23 hectares is inconsistent with the Commonwealth's Approved Conservation Advice, and that the proposed rehabilitation within the conservation area is unlikely to recreate the TEC and should therefore not be relied upon as mitigation.

The Minister noted that consistent with the findings of an independent review, the EPA found that the three occurrences proposed to be cleared were unlikely to be viable in the long-term without intensive, ongoing management and investment of resources.

As part of the investigations, the Appeals Convenor sought advice from DBCA which confirmed that the occurrences are likely to continue to deteriorate from increased weed invasion and recreational activity.

Based on this information, the Minister considered that the EPA's decision to investigate available mitigation measures was reasonable and appropriate.

The EPA has recommended conditions with a clear objective requiring the protection and maintenance of the largest occurrence of the TEC (0.54 hectares) occurring within Lot 102. Additional to this, is a requirement for restoration of the adjacent 0.44 hectares with species similar in composition and structure to the TEC. The conditions require works to be guided by a Rehabilitation and Vegetation Management Plan prepared in consultation with DBCA and the City of Swan.

In relation to the wetland, the Minister noted that the EPA recommended condition 6-1(3), requiring the proponent to maintain or restore the wetland vegetation to 'good' or better condition as a means of ensuring an appropriate level of protection to the wetland from the proposal. The Minister considered that this condition did not accurately reflect the EPA's intentions, noting most of the wetland vegetation is in 'excellent' condition.

It follows that the Minister determined that the condition be amended to reflect the intended requirement to maintain 'excellent' condition vegetation and restore degraded vegetation to 'good' or better condition.

The EPA advised that the potential indirect impacts to the wetland area will be considered and managed through the development of the Urban Water Management Plan (UWMP). The UWMP is required to be developed and submitted as part of the subdivision application process.

In advice obtained from DBCA during the appeals investigation, it was noted that the UWMP is essential to establish and maintain the current hydrological function of the entire conservation area, including both the TEC occurrence and wetland vegetation.

Additional grounds

The appeals also submitted concerns relating to the disturbance of acid sulphate soils (ASS), the EPA's assessment of impacts to the wetland within the conservation area and impacts to short range endemics (SREs).

The Minister was advised that dewatering of the site was not proposed nor required for subdivision, and the existing production bore is proposed to be used for temporary construction and dust suppression purposes. Acid sulphate soil sampling identified that the risk of ASS to depths of two metres is low.

In relation to SREs, the Minister noted that a survey was undertaken and it found that significant impacts to the two species raised by the appeals were unlikely. This was based on several factors including vegetation condition, distance to known records, and the availability of suitable habitat remaining in the local area.

Having reviewed these additional grounds, the Minister was satisfied that the concerns have been appropriately considered subject to the amendment of condition 6-1(3).

The Minister will commence consultation with relevant decision-making authorities as to whether or not the proposal may be implemented, and the conditions which apply to any such implementation, under section 45(1) 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*.

Office of the Appeals Convenor

Level 22, 221 St Georges Terrace
Perth WA 6000

Tel: (08) 6364 7990

www.appealsconvenor.wa.gov.au