



Environmental Protection Act 1986

**Hon Stephen Dawson MLC  
Minister for Environment**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEALS AGAINST GRANT OF CLEARING PERMITS CPS 8150/1 (STRATHERNE ROAD) AND CPS 8151/1 (WANDERING- NARROGIN ROAD), CUBALLING**

#### **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 the above clearing permits. 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](http://www.appealsconvenor.wa.gov.au).

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<b>Appellant:</b>	Urban Bushland Council WA Inc.
<b>Applicant:</b>	Shire of Cuballing
<b>Proposal description:</b>	Clearing Permit CPS 8150/1 to clear 20 native trees within the Stratherne Road reserve, and Clearing Permit CPS 8151/1 to clear 0.42 hectares of native vegetation or 50 native trees within the Wandering-Narrogin Road reserve, for the purpose of road widening.
<b>Minister's decision:</b>	The Minister allowed the appeals in part.
<b>Date of decision:</b>	27 February 2020

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#### **REASONS FOR MINISTER'S DECISION**

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The Stratherne Road permit authorises the Shire of Cuballing to remove up to 20 native trees in a 2.06 hectare (ha) clearing footprint, while the Wandering-Narrogin Road permit authorises the Shire to clear 0.42 ha of native vegetation or 50 native trees in a 3.78 ha clearing footprint.

The appellant sought for the permits to be refused on the basis that the impacts of the proposed clearing are more significant than identified by the Department of Water and Environmental Regulation (the Department), and the extent of the impact is such that it is unable to be offset. The appellant specifically submitted that the Department understated the level of impact by not finding that the proposed clearing is very seriously at variance with clearing principle (e) and seriously at variance to principles (b), (f) and (i) for Stratherne Road. The appellant also submitted the proposed clearing for Wandering-Narrogin Road is extremely seriously at variance to clearing principle (e), seriously at variance to clearing principle (d), and at variance to clearing principles (b), (c), (g), (h) and (i).

Having considered the appellant's concerns, the Department's advice, the Appeals Convenor's reports, and other relevant information, the Minister considered that the proposed clearing will impact on part of a habitat significant for fauna, and as a result the Minister found the proposed clearing is at variance to clearing principle (b) in both cases. The Minister believed the Department's assessment against the other clearing principles was justified.

Noting advice from the Department and Shire that the clearing is required to improve safety on both roads, the Minister accepted that there is a legitimate public benefit in permitting the clearing to proceed, subject to appropriate offsets being applied that counterbalance the significant residual impacts. The Minister determined that, on the available information, the offset applied by the Department in both cases meets that objective.

The Minister therefore supported the Department's decision to grant the permits subject to conditions. The Minister, however, decided to allow the appeals to the extent that conditions are added to each permit requiring the Shire to limit clearing to within eight metres either side of the existing road centrelines, and to inspect hollows prior to and during clearing for use by threatened fauna.

The reasons for the Minister's decision are outlined below.

### **Fauna habitat**

The Department concluded that the vegetation proposed to be cleared is unlikely to comprise significant habitat for indigenous fauna, including the threatened species Carnaby's cockatoo and red-tailed phascogale, which were considered in habitat tree assessments undertaken for both projects.

The Minister understood that the Department's conclusions in respect to Carnaby's cockatoo were based on a number of factors, including its assessment that the species was not recorded east of Stratherne Road, and an absence of foraging evidence within the application areas. Advice from the Western Australian Museum suggests there are records of the species in the Cuballing area as well as east of Stratherne Road, with breeding records near Dryandra and Wickiepin. This was confirmed by the Appeals Convenor using datasets from 2001 until the present.

In light of the above, the Minister agreed with the Appeals Convenor that the vegetation proposed to be cleared is likely to contribute to the function of the road reserves as ecological corridors for fauna movement, including the movement of Carnaby's cockatoo. It follows that the Minister was of the view that the proposed clearing in both cases is at variance to clearing principle (b).

In relation to the red-tailed phascogale, while the species was not identified during the habitat tree assessments, the Shire's consultant recommended that tree hollows be inspected for the species prior to and during clearing. The Minister noted that the Shire intends to inspect any hollows present in the trees proposed to be cleared in accordance with this recommendation.

The Minister agreed with the Appeals Convenor that conditions should be added to the permits requiring that any native trees proposed to be cleared that contain suitable hollows that may be used by black cockatoos, red-tailed phascogales or other threatened fauna are inspected prior to and during clearing, and that any hollows confirmed to be in use are not cleared until vacated. The Minister also determined that any such hollows should be replaced with artificial hollows or nest boxes as required.

### **Threatened ecological communities**

The Department found that the trees along Stratherne Road were not an occurrence of the Commonwealth-listed 'Eucalypt Woodlands of the Western Australian Wheatbelt' threatened ecological community (Wheatbelt Woodlands TEC) because of the completely degraded condition of the vegetation and the patch not meeting the five metre minimum width criteria.

However, the Department concluded that the proposed clearing along Wandering-Narrogin Road will impact on 0.16 ha of the Wheatbelt Woodlands TEC, and found that the proposed clearing was at variance to clearing principle (d).

The appellant submitted that the proposed clearing along Wandering-Narrogin Road should be found to be seriously at variance to the clearing principle (d). The Minister agreed with the Appeals Convenor that due to the linear nature of the application area, the condition of the vegetation, and the extent of the Wheatbelt Woodlands TEC impacted, the finding that the proposed clearing is at variance to clearing principle (d) is justified.

### **Significant as a remnant in a highly cleared area**

While the Department found that the proposed clearing in both cases is at variance to clearing principle (e), the appellant contended that it should be found to be seriously at variance to the principle, on the basis that the proposed clearing is within a biological region which is highly cleared, and is part of a threatened ecological community which has less than ten per cent of its original extent remaining.

Given the relatively small area of the proposed clearing in each case, coupled with the fact that the road reserves are not large, consolidated areas of remnant vegetation, the Minister did not consider the proposed clearing to be seriously at variance to clearing principle (e). In the Minister's view, the Department was right to find that the clearing was at variance to the principle.

### **Threatened flora**

The appellant submitted that the proposed clearing in both cases should be found to be at variance to clearing principle (c) on the basis of impacts to wandoo (*Eucalyptus wandoo*).

Wandoo are not listed as threatened flora, and as a result, clearing principle (c) is inapplicable to the species. This does not mean that the effect of clearing wandoo is not important: it simply reflects the fact that it is not a relevant consideration under that principle.

As noted above, the Minister found that the proposed clearing in both cases is at variance to clearing principles (b) and (e), as well as (d) for Wandering-Narrogin Road, which includes contemplation of the fact that some of the trees proposed to be cleared are wandoo.

### **Nearby conservation area**

The appellant submitted that the proposed clearing along Wandering-Narrogin Road should be found to be at variance to clearing principle (h).

The Department concluded that the proposed clearing may have an impact on the environmental values of the adjacent Fourteen Mile Brook Nature Reserve through increased edge effects and introduction and spread of weeds and dieback.

To address this impact, the Department applied a condition to the permit requiring the Shire to undertake measures to minimise the risk of introducing or spreading weeds and dieback within the reserve.

From the information presented, the Minister understood that the proposed clearing, if limited to eight metres either side of the existing road centreline, will avoid about two metres of vegetation either side of the road formation.

Noting the extent of the proposed clearing and the vegetation condition, the Minister was of the view that the remaining vegetation will act as a buffer between the proposed clearing and the reserve, and that the risk of impacts to the reserve are unlikely to be substantially greater than already exist. On this basis the Minister agreed with the Department's conclusion that the proposed clearing may be at variance to clearing principle (h), and that the risk of weeds and dieback can be managed through the permit condition.

### **Impact on salinity**

The appellant submitted that the proposed clearing will exacerbate salinity, by the removal of deep-rooted perennial vegetation resulting in rising water tables. As a result, the appellant believed the proposed clearing in both cases ought to have been found to be at variance to clearing principle (i) which relates to protection of water quality, as well as clearing principle (g) which relates to appreciable land degradation in the case of Wandering-Narrogin Road.

While the appellant was correct to identify the removal of native vegetation as a cause of secondary salinity, the relatively small number of trees proposed to be cleared at these locations is unlikely to lead to 'appreciable' land degradation in the form of salinity. Furthermore, the Minister did not consider that the proposed clearing in either case will cause a deterioration in the quality of surface or underground water, noting that groundwater in both locations is understood to be saline to hypersaline.

### **Offset**

The appellant submitted that offsets should not be considered in either case, with the values of the vegetation being such that the impacts should be avoided, not approved and offset.

The proposed clearing in both cases is at variance to a number of clearing principles, and the Minister considered the Department was justified in concluding that it has significant residual impacts.

The Shire advised that the works are required to improve safety. As a result the Department considered that as the proposed clearing is for a public benefit, it should be approved (subject to appropriate offsets) despite being at variance to a number of clearing principles.

The Minister agreed with the Department on this point, noting that the Shire has identified these portions of Stratherne Road and Wandering-Narrogin Road to be in need of rectification for safety reasons. The Minister therefore considered that it is appropriate for the proposed clearing in both cases to be approved due to the public benefit identified, subject to appropriate offsets to counterbalance the significant residual impacts.

The Department determined that changing the purpose of a combined 1.475 ha portion of Crown Reserve 2556 from 'Gravel' to 'Conservation' would be adequate to counterbalance the significant residual impacts of the proposed clearing. The Minister understood that the reserve contains similar environmental values as proposed to be cleared. On this basis, the Minister considered that the offsets are consistent with the WA Environmental Offsets Policy, and are appropriate to counterbalance the significant residual impacts identified.

### **Other matters**

In relation to the other matters raised in the appeals, the Minister agreed with the Appeals Convenor's findings and recommendations as outlined in her reports.

## **Conclusion**

In summary the Minister decided to allow the appeals to extent that additional conditions are added to the permits that:

- more clearly exclude the majority of hollow-bearing trees from the scope of the approval by limiting clearing to within 8 metres of either side of the road centreline
- require the Shire to inspect any potential habitat trees for Carnaby's cockatoos, red-tailed phascogales or other threatened fauna immediately prior to clearing, delay clearing of any trees found to be occupied by these species until no longer in use, and install artificial nesting boxes to replace any confirmed habitat trees required to be cleared
- require to the Shire to keep records on efforts in relation to the implementation of these fauna management conditions, and report to the Department as required.

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

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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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