



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST GRANT OF CLEARING PERMIT CPS 8116/1 BOYANUP ROAD WEST, SHIRE OF CAPEL

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 grant of 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:	Urban Bushland Council WA Inc.
Permit holder:	Shire of Capel
Proposal description:	Clearing of up to 2.21 hectares of native vegetation for the upgrade of Boyanup Road West in the Shire of Capel.
Minister's decision:	The Minister allowed the appeal in part.
Date of decision:	28 April 2020

REASONS FOR MINISTER'S DECISION

The Urban Bushland Council WA Inc. (UBC) appealed against the grant of Clearing Permit CPS 8116/1 to the Shire of Capel (the Shire) by the Department of Water and Environmental Regulation (DWER). The permit is for the clearing of 2.21 hectares of native vegetation for the upgrade of Boyanup Road West.

The Minister understood that UBC sought for the permit to be refused on the basis that the impacts of the proposed clearing are more significant than identified by DWER. Specifically, UBC submitted that the proposed clearing is seriously at variance to clearing principle (b) due to impacts to threatened black cockatoo species and the brush-tailed phascogale, and at variance to clearing principle (h) as the area forms part of an ecological linkage between conservation areas.

Having considered UBC's appeal, the advice of the Appeals Convenor and other relevant information, the Minister considered that DWER's assessment did understate the impacts of the proposed clearing and that the clearing will impact on part of a habitat significant for fauna and vegetation that is significant as a remnant in an area that has been extensively cleared.

Noting advice from DWER and the Shire that the clearing is required to improve road safety, the Minister accepted that there is a legitimate public benefit in permitting the clearing to proceed and supported DWER's decision to grant the permit.

However, an appropriate offset is required to counterbalance the identified significant residual impacts and the Minister decided that the appeal should be allowed to the extent that conditions are added to the permit requiring the Shire prepare and implement an appropriate revegetation plan and to inspect hollows prior to and during clearing for use by brush-tailed phascogale.

The full reasons for the Minister's decision are set out below.

The Minister noted that as a result of the appeal, the Appeals Convenor's investigation found that some of the data used in DWER's assessment were inaccurate. In particular it was found that the extent of native vegetation that will remain in the road reserve appeared to have been overstated by DWER. It was also found that the degraded condition of the vegetation under application and the prevalence of nearby conservation areas did not mean that the vegetation was not significant.

The Minister understood these findings were presented to DWER along with the Appeals Convenor's preliminary view that the clearing would result in significant residual impacts to fauna habitat and an ecological linkage.

DWER subsequently reviewed its assessment and agreed that the impacts to black cockatoo foraging habitat, significant remnant vegetation in an extensively cleared area, and the ecological linkage were greater than initially determined and that a significant residual impact would remain. DWER remained of the view that the permit could be granted but advised that an offset should be required to counterbalance the significant residual impacts.

The Minister noted that the *Environmental Protection Act 1986* (EP Act) does not preclude a clearing permit from being granted where the clearing will be at variance to the clearing principles.

Noting the purpose of the clearing is for a public benefit, being to improve road safety, and that avoidance and minimisation of potential impacts was appropriately investigated and undertaken by the Shire, the Minister considered that DWER's view that the permit should be granted was justified.

However, the Minister considered it necessary that an offset be implemented to counterbalance the identified significant residual impacts.

In this regard, the Minister was advised that the Shire had identified land owned by the Department of Biodiversity, Conservation and Attractions (DBCA) which it proposed to revegetate utilising species suitable as habitat for black cockatoos. The Minister noted that DWER had determined that revegetation of at least 3.6 hectares of this land would be adequate to offset the identified impacts and it had requested the Shire to prepare a revegetation plan consistent with its published guidance and obtain DBCA's endorsement.

Noting the offset site is located adjacent to a recognised ecological linkage which includes a number of other DBCA managed lands, the Minister considered that the revegetation will not only re-establish black cockatoo foraging habitat but also improve ecological linkage values.

Separate to the above works, the Shire advised that it will revegetate a portion of the Boyanup Road West road reserve to further mitigate the impacts and the Minister supported the Shire in its endeavours in this regard. The Minister noted that the Shire had been working with the Capel Land Conservation District Committee to identify works for an area of up to 1.6 hectares and that this revegetation will assist in maintaining the ecological linkage values of the road reserve.

In relation to brush-tailed phascogale, the Appeals Convenor found there is a risk of mortality of individuals from the clearing, noting that a tree with potentially suitable hollows occurs within the application area. To address this risk the Minister agreed with the Appeals Convenor that the tree must not be cleared until an appropriately qualified and licensed fauna specialist confirms it is not occupied by a brush-tailed phascogale. If evidence of use of the tree is identified, a brush-tailed phascogale nest box must be installed nearby to ensure the availability of refuge sites does not decrease as a result of the clearing.

Having considered all of the information before him, the Minister decided that an offset condition should be applied to the permit requiring the preparation and implementation of an appropriate revegetation plan to guide the revegetation activities undertaken. The commencement of clearing need not be deferred while the plan is under preparation noting that vegetation establishment may not be able to occur until 2021.

The precise wording of the new conditions will be determined by DWER in giving effect to the Minister's decision under section 110 of the EP Act.

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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