



Environmental Protection Act 1986

**Hon Stephen Dawson MLC  
Minister for Environment**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL AGAINST GRANT OF A CLEARING PERMIT CPS 8601/1: LOT 11176 ON DEPOSITED PLAN 217295 (CROWN RESERVE 40802), HILLARYS**

#### **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](http://www.appealsconvenor.wa.gov.au).

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| <b>Appellant:</b>            | Mullaloo Beach Community Group Inc.   |
| <b>Applicant:</b>            | City of Joondalup   |
| <b>Proposal description:</b> | The permit authorises the clearing of 0.035 hectares of native vegetation on Lot 11176 on Deposited Plan 217295 (Crown Reserve 40802) to construct a new exercise stairway structure. |
| <b>Minister's decision:</b>  | The Minister dismissed the appeal   |
| <b>Date of decision:</b>     | 27 February 2020  |

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

An appeal was received against the decision of the Department of Water and Environmental Regulation (the Department) to grant the above clearing permit to the City of Joondalup (the City).

The permit authorises the clearing of 0.035 hectares of native vegetation on Lot 11176 on Deposited Plan 217295 (Crown Reserve 40802) to construct a new exercise stairway structure.

The Minister understood that the appellant was seeking for the permit to be refused on the basis that among other things the impacts of the proposed clearing are more significant than identified by the Department. The appellant specifically submitted that the Department understated the impacts in respect of tuart trees, Bush Forever Site 325, geoheritage, fauna, flora and erosion.

Having considered the appellant's concerns, the Department's advice, the Appeals Convenor's report and recommendation, and other relevant information, the Minister considered that on balance the Department's assessment of the clearing principles was appropriate and its decision to grant the permit subject to conditions to minimise and mitigate environmental impacts was justified.

Central to this decision was the City's advice that the proposed stairway will consolidate access to a sensitive area and allow for improved management and rehabilitation of the broader area such that the environmental values are enhanced over time.

The reasons for the Minister's decision are outlined as follows.

Firstly, the Minister was advised that the EPA declined to accept the referral on this proposal and advised the appellant at the time that it considered that the proposed development is designed to confine public access to the coastal dunes, reduce degrading processes and providing for revegetation to be undertaken.

The Minister noted the Appeals Convenor's advice with respect to the efforts the City has made to minimising the direct and indirect impacts of the proposed clearing. The Minister understood that the site was selected on the basis of the existing impacts (being an informal pathway), and that the stairway has been designed such that the direct impacts from its construction (i.e. constructing offsite and minimising the number of posts required to install) and indirect impacts from its operation (i.e. a raised stairway allowing for fauna to pass underneath and ensuring surface water flows are maintained) will be minimised.

Additionally, the Minister was advised that the City has committed to rehabilitating the project footprint following construction, include planting of low-growing dune species at a rate of four plants per square metre, consistent with the Department of Planning, Lands and Heritage's (DPLH) advice on rehabilitation for this site.

With regard to the specific grounds of appeal the Minister made the following comments.

### **Tuart trees**

The appellant submitted that the application area includes mature tuart trees comprising the Commonwealth-listed 'Tuart (*Eucalyptus gomphocephala*) woodlands and forests of the Swan Coastal Plain' threatened ecological community (Tuart Woodlands TEC).

The Department acknowledged that the vegetation within the application area may be part of an occurrence of the Tuart Woodlands TEC. The Department considered, however, that this does not alter its assessment outcomes and concluded that the impacts of the proposed clearing on the Tuart Woodlands TEC are not significant.

The Minister noted the City's advice that mature tuart trees are not proposed to be cleared for the project. The Minister also understood that the City put forward a number of mitigation measures to avoid impacts on tuart trees, including in the design of the proposed stairway to minimise the number of posts and its location between the trees.

The Minister was satisfied that implementation of these measures in combination with the requirements of the permit will ensure minimal impacts on tuart trees as a result of the proposed clearing.

## **Bush Forever Site 325**

The appellant was concerned that the proposed clearing may result in fragmentation of a coastal ecological linkage, weed invasion and decline in diversity, and that the Department did not have proper regard for State Planning Policy 2.8 *Bushland Policy for the Metropolitan Region*.

In relation to fragmentation and decline in diversity, the Minister understood that the City is intending to rehabilitate the area following construction of the proposed stairway, as outlined above.

In relation to State Planning Policy 2.8, the decision report sets out that the Department sought advice from DPLH as the custodian of Bush Forever sites, and that DPLH recommended an offset in accordance with State Planning Policy 2.8 and the WA Environmental Offsets Policy (as well as recommending that revegetation be undertaken at a rate of four plants per square metre).

The Department identified that the proposed clearing may result in the spread of weeds and dieback in Bush Forever Site 325, and considered that these impacts could be managed through a weed and dieback management condition applied to the permit. On the basis of its view that these impacts can be managed, the Department concluded that the proposed clearing would not result in any significant environmental impacts to Bush Forever Site 325 that would require an offset.

Noting the above, the Minister was satisfied that the impacts to Bush Forever Site 325 can be managed and mitigated consistent with State Planning Policy 2.8, and considered the Department's conclusion that the impacts are unlikely to be significant is reasonable.

## **Erosion**

The appellant submitted that the Joondalup coastal foreshore is highly susceptible to storm erosion, and that the proposed clearing could result in dune blowouts.

The Department advised that it considered the potential risk of wind erosion as a result of the proposed clearing, and concluded that the impact is unlikely to be significant due to the protection afforded by surrounding vegetation.

The Minister understood that the proposed stairway is largely aligned with an existing informal track, and was relocated and redesigned to avoid or minimise impacts (including dune erosion) identified during an ecological assessment. The Minister also noted the City's advice that measures will be implemented to mitigate the risk of erosion and dune blowout.

From the above, the Minister was satisfied with the Department's conclusion that the proposed clearing is not likely to cause appreciable land degradation.

## **Geoheritage**

The appellant submitted that the Department has not had adequate regard for impacts on a site of geoheritage significance. The Appeals Convenor understood that the appellant's concerns relate to the incremental impacts from various coastal developments on the Quindalup Dunes system and Whitfords cusped foreland area.

The Department advised that the application area is not formally mapped as a geoheritage site, and has been extensively rehabilitated since the 1980s.

The Minister understood that the City proposed mitigation measures to minimise impacts to the dune system, including relocating the proposed stairway to an area of existing disturbance, and rehabilitation and management to stabilise the soil.

Noting this, the Minister agreed with the Appeals Convenor's view that the proposed clearing is unlikely to significantly impact on the scientific values of the Whitfords cusplate foreland area or the Quindalup Dunes system.

### **Conservation-significant fauna and flora**

The appellant submitted that conservation-significant fauna and flora species occur in the area (specifically Carnaby's cockatoo, rainbow bee-eater, osprey and quenda), and that the Department did not have proper regard for impacts to these species. The appellant also submitted that macroinvertebrate or herpetofauna surveys have not been undertaken within the application area.

In relation to fauna, the Department concluded that the vegetation proposed to be cleared contains suitable habitat for, but is unlikely to comprise significant habitat for, indigenous fauna, including conservation-significant species recorded in the area. The Minister understood this conclusion was based on a number of factors, including the size of the application area and its location within a larger remnant, and the findings of a flora, fauna and fungi survey undertaken in spring 2015. The Minister noted the Appeals Convenor's advice that the flora, fauna and fungi survey was of a larger area that included the application area, and sampled macroinvertebrates and herpetofauna.

In relation to flora, the Department concluded that the application area is unlikely to include or be necessary for the continued existence of threatened or priority flora. The Minister understood this conclusion was based on the findings of the flora, fauna and fungi survey, which included that no conservation-significant flora were recorded in the application area.

On this basis, the Minister agreed with the Appeals Convenor's view that the Department had regard for the impacts of the proposed clearing on conservation-significant fauna and flora species in its assessment, and that macroinvertebrates and herpetofauna have been surveyed within the application area.

### **Other matters**

In relation to the other matters raised in the appeal, the Minister agreed with the Appeals Convenor's findings as outlined in her report.

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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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