



Environmental Protection Act 1986

Hon Reece Whitby MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST GRANT OF CLEARING PERMIT CPS 8878/1 LOT 2919 ON DEPOSITED PLAN 203096, ROSA BROOK

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 a 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:	Margaret River Regional Environment Centre
Permit holder:	Papillon Holdings Pty Ltd
Proposal description:	Clearing Permit CPS 8878/1 authorises the clearing of up to 2.32 hectares of native vegetation for the purpose of construction of a dam and expansion of a soak
Minister's Decision:	The Minister allowed the appeal in part
Date of Decision:	5 May 2023

REASONS FOR MINISTER'S DECISION

Clearing Permit CPS 8878/1 was granted by the Department of Water and Environmental Regulation (the Department) on 30 January 2023, and authorises the permit holder to clear up to 2.32 hectares (ha) of native vegetation on Lot 2919 on Deposited Plan 203096, Rosa Brook. The purpose of the proposed clearing is for the construction of a dam and expansion of a soak.

The appellant raised concerns in relation to the environmental values present, the need for the proposed clearing, the adequacy of the permit conditions, and impacts associated with the end land use. The appellant submitted the vegetation should be left intact to preserve local connectivity, that old and dead trees containing hollows provide habitat for a range of native fauna species, and that the proposed clearing of western ringtail possum habitat is contrary to the local community's efforts to re-establish habitat elsewhere. The Minister understood the appellant was seeking for the clearing permit not to be granted.

Decision

Having considered the information available to him, including the Department's response to the appeals, the Appeals Convenor's report and recommendation, and submissions from the local government and the permit holder, while the Minister agreed that the values of the clearing footprint are significant, the Minister considered that in this case the Department was justified in granting the permit.

The Minister has, however, allowed the appeal to the extent that some of the fauna management conditions are strengthened to ensure impacts on a broader range of arboreal hollow-using fauna are addressed noting that several habitat trees containing hollows may provide habitat for hollow-using fauna in the area.

The application area contains important environmental values

The Minister was advised that, during the Department's assessment, the permit holder substantially reduced the original extent of proposed clearing from 5.215 ha to 2.32 ha to avoid and minimise impacts on conservation significant flora, a 'conservation category' wetland, and habitat for conservation significant fauna.

By its assessment the Department found the proposed clearing will impact on native vegetation largely in 'good' or better condition that includes suitable habitat for 15 conservation significant fauna species (including two 'critically endangered' species), one priority flora taxa, riparian vegetation growing in association with a 'conservation category' wetland, and two watercourses. The Department also found the clearing footprint is part of a local ecological linkage between remnant vegetation on this and adjacent properties and the Blackwood State Forest.

The Minister understood the proposed clearing will result in the loss of 0.39 ha of very high quality habitat for the western ringtail possum, 1.93 ha of high quality foraging habitat for three threatened species of black cockatoos, and five hollows with potential for breeding use by black cockatoos.

The Minister was advised the clearing footprint contains 61 trees with a diameter at breast height of 50 centimetres or more, of which 17 were found to contain 21 hollows of varying sizes, heights and orientation (including five with potential for breeding use by black cockatoos). The Department recognised the hollows may be used by a range of fauna.

Notwithstanding the vegetation representing quality habitat for western ringtail possum, the Minister accepted the Department's advice that the likelihood of the western ringtail possum occurring within the clearing footprint is low, given that no evidence of its presence was found during site inspections and noting the low number of records in the local area.

In relation to local connectivity, the Appeals Convenor noted linkage will be maintained through the road reserve and other remnant vegetation in the area (including in the southern part of the property), and will likely be re-established in the northern part of the clearing footprint by a requirement of the local government development approval to plant a 10 metre wide vegetated buffer around the expanded dam.

Applicant has obtained other necessary approvals

The Minister noted the Shire of Augusta-Margaret River's *Local Planning Scheme No. 1* and *Local Planning Strategy* promote the retention and enhancement of biodiversity. The Appeals Convenor advised the proposed clearing is consistent with the environmental objectives of the

local planning framework given the permit holder has obtained development approval and proposed an offsets package.

In addition, the Department advised it proposes to approve the permit holder's applications for a licence to abstract water, and a permit to interfere with bed and banks, under the *Rights in Water and Irrigation Act 1914* subject to confirmation of clearing approval.

Fauna management conditions should be strengthened

The Minister accepted the Department's advice that the permit conditions in relation to fauna management are generally appropriate, however he considered that condition 6, which requires the inspection of habitat trees by a fauna specialist prior to clearing with specified actions to be undertaken where there is evidence of breeding use by black cockatoos or masked owls, should be expanded. This is on the basis of the Appeals Convenor's advice that condition 6 applies only to those trees identified as having potential for breeding use by black cockatoos, which the Minister understood is limited to three trees containing five of the total of 21 hollows.

The Minister noted the clearing footprint includes 14 trees containing 16 hollows which, while considered unsuitable for breeding use by black cockatoos, may provide habitat for other arboreal hollow-using fauna. Given this, the Minister accepted the Appeals Convenor's recommendation to broaden parts of condition 6 to apply for all trees containing hollows within the clearing footprint to account for a broader range of arboreal hollow-using fauna.

The Minister understood that the appellant asserted that there is no evidence that Baudin's or forest red-tailed black cockatoos will use artificial hollows. The Minister was advised that while there is evidence of use by forest red-tailed black cockatoos, there is currently no published evidence to suggest Baudin's cockatoo will use artificial hollows. The Minister has written to the Department asking it to review this matter in its assessments.

Adequacy of the offsets package

To address the significant residual impacts the Department required an offsets package comprised of the permanent protection of 8.05 ha of remnant vegetation on the property, the planting of 500 marri tree seedlings within this area, and perimeter fencing to protect the site. The Minister was advised the permit holder has also committed to installing five artificial hollows in the offset site to mitigate the loss of hollows for black cockatoos.

The Minister acknowledged the Appeals Convenor's advice that while the value of the offsets package exceeds the minimum required for western ringtail possum habitat, there is a shortfall in relation to black cockatoo foraging habitat. Noting the good faith engagement from the permit holder in seeking to resolve concerns raised by the Department late in the assessment process, and taking into account the local government development approval requirement to establish a 10 metre landscape buffer, the Minister considered that in this case the offsets package is reasonable.

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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