



Environmental Protection Act 1986

**Hon Reece Whitby MLA**  
**Minister for Environment; Climate Action**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL AGAINST CONDITIONS OF CLEARING PERMIT CPS 9479/1 LOT 73 ON PLAN 420072 AND LOT 11 ON PLAN 24201, YARAWINDAH**

#### **Purpose of this document**

This document sets out the Minister's decision on an appeal lodged under section 101A(3)(a) of the *Environmental Protection Act 1986* in objection to the conditions 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](http://www.appealsconvenor.wa.gov.au).

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<b>Appellant:</b>	Mr Warwick Boardman
<b>Permit holder:</b>	European Space Agency and Stratham Engineering Consulting Services
<b>Proposal description:</b>	Clearing Permit CPS 9479/1 authorises the clearing of 8.15 hectares of native vegetation to construct a BIOMASS Calibration transponder and associated infrastructure.
<b>Minister's Decision:</b>	The Minister allowed the appeal in part.
<b>Date of Decision:</b>	21 March 2023

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

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The permit was granted by the Department of Water and Environmental Regulation (the Department) on 25 May 2022 for the clearing of 8.15 hectares (ha) of native vegetation to construct a BIOMASS Calibration transponder and associated infrastructure.

The Minister understood the appellant's concerns were centred around the format and adequacy of the offsets package referred to in conditions 9 and 10 of the permit. In this regard the appellant sought for the offsets to be achieved wholly through revegetation and rehabilitation to ensure no net loss of native vegetation, and for clearing done under exemptions to be recorded and replaced through revegetation and rehabilitation.

## Decision

Having considered the information available to him, including the Department's response to the appeal, the Appeals Convenor's report and recommendation, and submissions from the permit holder, the Minister agreed that the offsets package required under the permit is insufficient to counterbalance the significant residual impact.

The Minister therefore determined to allow the appeal to the extent the revegetation component is protected, and the land acquisition component is increased to 6.27 ha, to ensure the offsets package is consistent with the State's offsets framework and will counterbalance the significant residual impact. The Minister's reasons are set out below.

### Offsets package consistent with State environmental offsets framework

The Department's assessment concluded the clearing will result in a significant residual impact from the loss of 8.15 ha of native vegetation that is suitable habitat for Carnaby's cockatoo (*Zanda latirostris*, Endangered) and is significant as a remnant of native vegetation in an area that has been extensively cleared.

Consistent with section 51H(1) of the *Environmental Protection Act 1986* (the Act) and its *Clearing of Native Vegetation Offsets Procedure*, the Department considered the significant residual impact can be counterbalanced by an offsets package comprised of both revegetation and land acquisition components.

The *WA Environmental Offsets Policy* describes two categories of offsets: direct offsets and indirect offsets. Direct offsets provide for on-ground improvement, rehabilitation and conservation of habitat, and include acquisition, restoration, revegetation and rehabilitation of natural areas outside of an impact site. The *WA Environmental Offsets Guidelines* describes two types of offsets relevant to clearing permits: land acquisition offsets and on-ground management offsets.

The Minister was satisfied that the offsets package in this case, being a combination of revegetation and land acquisition, is consistent with the State environmental offsets framework. Notwithstanding, the Minister was of the view that elements of the package could be improved.

### Revegetation component should be enduring and deliver long-term outcomes

The permit currently does not provide for the protection of the revegetation component from future clearing and therefore may not be consistent with Principle 6 in the *WA Environmental Offsets Policy*. The Department noted this, and recommended a condition is added to the permit requiring a conservation covenant to be placed over the site. The Minister agreed with the Department's recommendation.

### Offset calculations should be based on 'Offset calculation (Area)' function

In her report, the Appeals Convenor noted the following:

- the proposed offsets package, in combination, included 7.49 ha to counterbalance the loss of 8.15 ha,
- the Department used an on-site mitigation credit tool instead of an offsets calculation function in the *WA environmental offsets calculator* (State Calculator) to determine the value of the revegetation component, inconsistent with guidance for the use of the State Calculator

- some of the scores applied in the offset calculations are inconsistent with guidance for the use of the State calculator and the Department's *Draft Procedure for environmental offsets metric inputs*.

Based on the above, the Appeals Convenor advised, and the Minister accepted, that the proposed offsets package is not sufficient to counterbalance the significant residual impacts.

The Minister understood that the Appeals Convenor worked with the permit holder to reconsider the offsets package to address the shortfall and that the permit holder has agreed to increase the land acquisition component to 6.27 ha.

The Minister was advised this increase, calculated in accordance with the State calculator, will more appropriately counterbalance the identified significant residual impact.

It follows that the Minister determined condition 9 should be modified to require the permit holder to establish a conservation covenant in perpetuity over the revegetation component, and condition 10 (and associated Advice Note) should be modified to reflect the increase in the spatial area of the land acquisition component.

In relation to these matters, the Minister requested the Department to ensure that where offsets are considered appropriate, the assessment of the value of offsets is undertaken in accordance with guidance for the use of the State calculator.

The Department will give effect to the Minister's decision under section 110 of the Act as soon as practicable. The final wording of the amended content will be a matter for the Department, consistent with the outcomes of the Minister's 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*.

**Office of the Appeals Convenor**

Level 22, 221 St Georges Terrace

Perth WA 6000

Tel: (08) 6364 7990

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