



Environmental Protection Act 1986

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

## **MINISTER'S APPEAL DETERMINATION**

### **APPEALS AGAINST AMENDMENT OF CLEARING PERMITS CPS 7140/2 TICK ROAD SAND MINE AND CPS 7141/2 GNANGARA MINE SITE PROJECT, MINING LEASE 70/776, CITY OF SWAN**

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

This document sets out the Minister's decision on appeals lodged under section 101A(3)(b) of the *Environmental Protection Act 1986* in objection to the above amended 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>	Murdoch University Black Cockatoo Conservation Management Project
<b>Permit Holder:</b>	Hanson Construction Materials Pty Ltd
<b>Proposal description:</b>	The clearing permits relate to the Tick Road Sand Mine and Gnangara Mine Site Project respectively, both of which are located on Mining Lease 70/776 approximately 22 kilometres north of Perth. The amendments extend their duration by 10 years.
<b>Minister's Decision:</b>	The Minister allowed the appeals in part.
<b>Date of Decision:</b>	15 May 2023

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

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Appeals were received from the Murdoch University Black Cockatoo Conservation Management Project objecting to the amendment of the above permits, issued to Hanson Construction Materials Pty Ltd (permit holder) for a 10-year extension for the purpose of sand mining.

The Minister noted that the appellant's concerns broadly related to the adequacy of the Department of Mines, Industry Regulation and Safety's (DMIRS) assessment of impacts to Carnaby's cockatoo foraging habitat because, in the appellant's view, the surveys relied on in the decision-making and the assessment approach were outdated.

## **Decision**

The Minister agreed that contemporary surveys should have been required by DMIRS to inform its assessment and noted that as a result of the appeals, a black cockatoo habitat assessment was undertaken by the permit holder during the appeals investigation.

Having considered all the information available to him, including DMIRS' response and the Appeals Convenor's report which contains a review of the amendments in the context of the black cockatoo habitat assessment, the Minister considered that the amendments were justified.

Notwithstanding, the permit holder has committed to retain 3.6 hectares (ha) of native vegetation and limited the loss of Carnaby's cockatoo foraging habitat (native) to 0.7 ha. Given this, the Minister allowed the appeals to the extent that:

- the total area of native foraging habitat authorised to be cleared should be amended to 0.5 ha for CPS 7140/2 and 0.2 ha for CPS 7141/2, and
- 2.6 ha on CPS 7140/2 and 1 ha for CPS 7141/2 be excluded from the permits.

The Minister was advised that the loss of 0.7 ha of foraging habitat is more than adequately counterbalanced by the permit holder's proposed banksia woodland rehabilitation program of ~117 ha.

The Minister has otherwise dismissed the appeals, the full reasons for his decision are outlined below.

### **A black cockatoo habitat assessment was required**

The Minister noted the appellant's primary concern was that the vegetation surveys submitted to DMIRS were outdated and a black cockatoo habitat assessment was absent. The appellant also considered that DMIRS' assessment approach was outdated, and that vegetation condition is a poor surrogate for determining the quality of foraging habitat.

The Minister noted that DMIRS' assessment relied on a 2009 flora survey and 2014 site walk through of the application area in addition to several GIS databases and imagery as listed in the decision report.

As noted, during the appeals investigation, the permit holder undertook a black cockatoo habitat assessment and identified a total of 0.7 ha of native vegetation that is foraging habitat for Carnaby's cockatoo and approximately 107 ha of pine re-growth. The permit holder further advised that it would also retain 3.6 ha of native vegetation as mapped in the Appeals Convenor's report.

In relation to the appellant's concern regarding DMIRS' use of vegetation condition to determine the value of the vegetation to black cockatoos, the Minister agreed that measures such as the 'Keighery Scale' are largely irrelevant to arboreal foraging species.

Regarding cumulative impacts, the Minister noted that these are generally considered in a clearing permit assessment under the biodiversity-related clearing principles, including clearing principle (e). While this was only partially considered by DMIRS, the Appeals Convenor advised that both the mapped vegetation complex and the remnant vegetation within the local area are both above the State's policy threshold of 30% remaining. Given this, the Minister considered that the clearing is not 'at variance' to clearing principle (e).

Noting that the habitat assessment undertaken during the appeals investigation identified and quantified both native and non-native foraging habitat, the Minister was satisfied that there was sufficient information available to inform his consideration of the appeals.

However, the Minister has requested that both the Department of Water and Environmental Regulation and DMIRS update their assessment approaches to ensure that the impacts to fauna habitat are informed by contemporary survey information relevant to arboreal fauna. This will ensure that the quality of arboreal fauna habitat is considered appropriately and that a consistent approach is applied in the assessment of clearing permit applications.

### **The amendments were justified**

As discussed above, on balance the Minister was satisfied that the amendments were justified primarily on the basis that impacts to Carnaby's cockatoo habitat have been limited and the sand resource is identified as a significant geological supply within *State Planning Policy 2.4 Basic Raw Materials*. The sand resource is recognised as being of the highest priority for extraction as it represents a strategic and long-term supply.

The Minister was advised that the permit holder has committed to rehabilitate the clearing areas (~117 ha including pine re-growth areas) with banksia woodland as proposed in its Mine Closure Plan and supporting Environmental Management Plan. Given the scale of the revegetation program compared to the impact of 0.7 ha, the impact to Carnaby's cockatoo is adequately counterbalanced.

Regarding the loss of approximately 107 ha of pine re-growth, the importance of mature pines as a key food source for Carnaby's cockatoo is not in dispute. However, a clearing permit issued pursuant to section 51(O) of the *Environmental Protection Act 1986* applies only to native vegetation.

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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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