



Environmental Protection Act 1986

Hon Reece Whitby MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST GRANT OF CLEARING PERMIT CPS 10068/1, PERTH SURF PARK, LOT 800 DP 50212 AND LOT 9001 DP 65564, JANDAKOT

Purpose of this document

This document sets out the Minister's decision on a 68 appeals lodged under section 101A of the *Environmental Protection Act 1986* in objection to the decision of the Department of Water and Environmental Regulation to grant the above permit. This document is produced by the Office of the Appeals Convenor for the Minister but is not the Appeals Committee's own report, which can be downloaded from the Appeals Convenor's website at www.appealsconvenor.wa.gov.au.

Appellants:	See Appeals Committee's report
Permit Holder:	PSP Properties Pty Ltd as trustee for the Perth Surf Park Property Trust
Proposal description:	Clearing of 5.75 hectares (ha) of native vegetation for the purpose of developing a surf park and related infrastructure
Minister's Decision:	The Minister partly allowed the appeals
Date of Decision:	18 March 2024

REASONS FOR MINISTER'S DECISION

The Department of Water and Environmental Regulation (the Department) granted the permit on 22 November 2023. The permit authorises the permit holder to clear up to 5.75 ha of native vegetation for the construction of the Perth Surf Park (surf park).

Fundamental to most of the appeals was the view that, because of the significant environmental values of the application area, the permit should not be granted and that an alternative location with less significant environmental values should be identified for the surf park.

On the environmental values, appellants noted that the vegetation comprises significant habitat for two threatened species of black cockatoo, locally significant habitat for other fauna, the Banksia Woodlands of the Swan Coastal Plain (Banksia Woodlands) threatened ecological community (TEC), a significant wetland with values consistent with conservation category status, and provides an ecological linkage/stepping stone.

Appellants challenged the Department's conclusions with respect to the necessity of the clearing and public benefit of the surf park against the environmental values at the site. Concerns were also raised about some of the permit conditions, including the adequacy of the proposed offsets.

This appeal follows the Minister's earlier decision on appeals against the decision of the Environmental Protection Authority not to formally assess the proposal (appeal 008/23).

Due to the Acting Appeals Convenor recusing himself, the Minister appointed an appeals committee to investigate and report on the appeals.

Decision

From the information available, and consistent with his decision on the earlier appeals, the Minister found that the application area contains multiple significant environmental values.

Against those values, the Minister noted that development approval has been issued for the surf park and the economic value of the development to the State is reflected in its endorsement by Cabinet as a State significant tourism project.

Weighing these matters, the Minister was of the view that the site is an appropriate location for the proposal, notwithstanding the significant environmental values identified by appellants and reflected in the Department's assessment and the appeals committee's report.

After carefully considering the information before him, the Minister amended the conditions to strengthen offsets and fauna protection. The details of his decision follow.

Environmental considerations

As noted above, the Minister acknowledged the application area contains multiple significant environmental values. These include being part of a habitat identified as critical to the survival of two threatened black cockatoo species, as well as forming a part of the Banksia Woodlands TEC.

The appeals committee has comprehensively reviewed the concerns raised by appellants in respect to the environmental values of the site. In that regard, the Minister considered the Department was correct to find the clearing to be at variance with four clearing principles.

In relation to *Xanthorrhoea preissii* (grass trees), the Minister acknowledged that these provide some foraging value to Carnaby's cockatoo, although it is not preferred habitat.

In relation to *Caladenia huegelii* (grand spider orchid) the Minister noted this flora was not identified in biological surveys and accepted the advice of the Department of Biodiversity, Conservation and Attractions (DBCA) that if present, the species is unlikely to occur in large numbers at this site.

Planning considerations

A proposal to develop a surf park and associated land uses was granted development approval by the Metro Outer Joint Development Assessment Panel in March 2023. The approval included conditions relating to the future management of the site, including of potential environmental impacts from construction and operation of the surf park.

The Minister noted that the development is consistent with planning instruments applying to the site, including the structure plan for the area developed by the City of Cockburn.

The Minister acknowledged that a number of planning instruments also highlight the importance of considering biodiversity values as part of planning decisions. The Minister considered these instruments in the context of the decision on the appeals.

Other relevant matters

A key issue raised on appeals related to the Department's views about the proposed surf park providing a public benefit through increased economic activity associated with job creation and tourism.

In considering this issue, the Minister had regard for the concerns raised in the appeals, as well as the Department's advice and the appeals committee's analysis. On the basis of this information, the Minister considered the surf park proposal to be a unique project that has been endorsed by Cabinet as of State significance from a tourism perspective. While accepting that the proposal is a private, commercial venture, the Minister weighed that against the significant economic activity that has been predicted for the development.

The Minister also considered submissions raised in appeals about the possibility of an alternative site being identified. The Minister advised the site selection process for this proposal has been comprehensive and detailed. The location near the freeway and Cockburn Central train station were key factors in the identification of the site. As such, the Minister did not consider it appropriate to review whether alternative sites may be available at this stage in the process.

Permit should be granted with amended conditions

On balance, the Minister was of the view that the social and economic benefits of the surf park outweigh the significant environmental values of the application area (noting the Department has identified the impacts to these values can be offset). The Minister noted this was not an easy decision, and not one that he took lightly.

In coming to this view, the Minister agreed with the appeals committee that special attention should be placed on the conditions of the permit to ensure the impacts to environmental values are minimised and offset with a high level of confidence.

It follows that the Minister allowed the appeals to the extent that the permit is amended in the manner set out in the attachment to this decision. This includes extending the duration of the permit by 10 years to ensure the permit holder remains responsible for ensuring revegetation at Bibra Lake meets required outcomes, and modifying the fauna trapping and relocation conditions to clarify that they are not limited to quenda.

On technical advice provided by the Department, it expressed the view that there is a lack of evidence that the loss of grass trees represents a significant residual impact to foraging habitat for black cockatoos. Noting this, and that all the grass trees on site are proposed to be salvaged where possible and either reused onsite or elsewhere around Perth and surrounding areas, the Minister was satisfied that an additional offset is not required on this occasion.

The Minister also accepted advice from the Department that the proposal is unlikely to result in significant residual impacts to spider orchids. This is based on the findings of biological surveys and expert advice from DBCA.

As to offsets generally, a number of recommendations of the appeals committee relate to the currency of certain information relied on by the Department, including land values. The Minister requested the Department to look at these issues and ensure the best information is available to support effective and robust offsets going forward (noting offsets should be used as a last resort).

The final wording of the changes to the permit in the attachment will be a matter for the Department to consider in giving effect to the decision under section 110 of the *Environmental Protection Act 1986*.

Attachment Changes to permit

Offset conditions:

1. black cockatoo foraging habitat: amend condition 6(a) by deleting reference to 14 June 2026 to clarify that the Project Revegetation Plan is to be submitted to the Department within six months of commencement of clearing.
2. Banksia Woodlands TEC: apply a contingency requiring the permit holder to pay the full cost of acquiring alternative land if the purchase of the site north of Perth does not proceed.
3. wetland:
 - a. any discrepancy between the 2019 land valuations and current valuations should be the subject of further discussions and negotiations between the State (as the owner of the land) and permit holder
 - b. in the meantime, condition 5 is amended to increase the monetary contribution for the wetland offset to \$102,596.70.

Permit duration:

4. the duration of the permit should be extended 10 years to account for the 17 year 'time until ecological benefit' and ensure that the revegetation/rehabilitation offset achieves a significant foraging resource for black cockatoos.

Fauna trapping and relocation:

5. condition 4 (a) and (b) is amended to refer to vertebrate fauna generally, including quenda.
6. condition 4 (c) and (d) is amended to refer to any conservation significant fauna spotted during clearing activities, including quenda.

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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