



Environmental Protection Act 1986

Hon Stephen Dawson MLC
Minister for Environment

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST AMENDMENT OF CLEARING PERMIT CPS 7403/3, LOT 1 ON PLAN 8940, BEEDELUP, SHIRE OF MANJIMUP

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section 101A(3)(b) of the *Environmental Protection Act 1986* in objection to the amendment 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.

Appellant:	Rebecca Donaldson
Permit Holder:	Red Moon Property Holdings Pty Ltd
Proposal description:	The amendment extended the permit duration to 12 May 2021 to allow the permit holder additional time to undertake the authorised clearing.
Minister's Decision:	The Minister allowed the appeal in part.
Date of Decision:	6 August 2020

REASONS FOR MINISTER'S DECISION

Clearing Permit CPS 7403/2 authorised Red Moon Property Holdings Pty Ltd (Red Moon) to clear 48.12 hectares of native vegetation on Lot 1 on Plan 8940 in Beedelup for the purpose of constructing a dam and developing an orchard. The Department of Water and Environmental Regulation (the Department) amended the permit to CPS 7403/3, allowing an application by Red Moon to extend the permit duration to 12 May 2021 to provide additional time to undertake the authorised clearing.

The Minister understood the appeal sought for the Department's decision to amend the permit be overturned. Central to the appeal was the potential importance of the trees as foraging and breeding habitat for three threatened black cockatoo species. The appellant submitted that the permit should not be amended in the absence of surveys to quantify foraging and breeding habitat for these species and guide the need to mitigate or offset identified impacts.

Having considered the appeal, the Department's response to the appeal, and the Appeals Convenor's report and recommendation, the Minister considered that the Department's decision to amend the permit was justified. However, the Minister decided to allow the appeal to the extent that additional conditions are applied on the permit requiring Red Moon to:

- engage a suitably qualified person to identify and inspect any trees potentially suitable for breeding use by black cockatoos prior to clearing, and if identified delay clearing of any trees found to be occupied until no longer in use
- install artificial nesting boxes to replace any breeding trees with evidence of use that cannot be avoided
- monitor and maintain any installed artificial nesting boxes
- keep records on efforts in relation to the implementation of these conditions, and report to the Department as required.

The reasons for the Minister's decision are outlined below.

Assessment against the clearing principles

In relation to black cockatoos, the Department's finding that the clearing footprint contains suitable but not significant foraging habitat had not changed since its original assessment.

The Minister was advised that the Department's view was based on its assessment, a recent site inspection, and advice obtained from the Department of Biodiversity, Conservation and Attractions (DBCA). In this regard, DBCA advised that karri and karri sheoak, which the Minister understood are the dominant species present at the site, are known foraging plants for black cockatoos but not preferred species. It follows that the Minister agreed that the clearing footprint contains suitable but not significant foraging habitat.

As set out in the Appeals Convenor's report, DBCA's advice also outlined that it is important to retain known and potential future nesting trees within the local area, and that it is difficult to determine the importance or significance of the area for black cockatoo nesting due to a lack of nesting data in the region.

In response to the appeal, the Department acknowledged the potential for trees with suitable breeding hollows to occur within the clearing footprint, and considered that clearing of suitable breeding habitat should be avoided wherever possible. Given this, the Minister agreed with the Appeals Convenor that the proposed clearing may be at variance to clearing principle (b).

Adequacy of the conditions

The Minister noted the appellant's view that if the amendment is allowed, the conditions should be strengthened to ensure no net impact to black cockatoos.

In response to the appeal, the Department recommended that a condition be added to the permit requiring Red Moon to commission a habitat assessment prior to clearing to avoid impacts to breeding individuals.

The Department further recommended that any identified confirmed breeding hollows should be avoided where possible, and those which cannot be avoided should not be cleared while in use and should be mitigated through the installation of artificial hollows within the local area.

Noting the assessment findings above, the Minister considered the Department's recommendation for additional conditions to address risks to breeding black cockatoos is justified. The Minister was satisfied that these additional conditions are sufficient to ensure there are no significant residual impacts to warrant an offset noting the context of the extent of native vegetation remaining in the local area.

It follows that the Minister allowed the appeal to the extent described above.

The final wording of the above amendments will be a matter for the Department to determine in giving effect to this appeal decision under section 110 of the *Environmental Protection Act 1986*.

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

Fax: (08) 6364 7999

www.appealsconvenor.wa.gov.au