



Environmental Protection Act 1986

**Hon Stephen Dawson MLC**  
**Minister for Environment**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEALS AGAINST GRANT OF CLEARING PERMIT CPS 8947/1 OCEAN REEF MARINA BREAKWATERS SUPPORTING INFRASTRUCTURE**

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

This document sets out the Minister's decision on appeals lodged under section 101A(4) of the *Environmental Protection Act 1986* in objection to the grant 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](http://www.appealsconvenor.wa.gov.au).

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| <b>Appellants:</b>           | 279 appellants (listed in the Appeals Convenor's report)  |
| <b>Proponent:</b>            | DevelopmentWA   |
| <b>Proposal description:</b> | Clearing of 2.89 hectares of native vegetation to facilitate the supporting infrastructure for the development of breakwaters associated with the Ocean Reef Marina development |
| <b>Minister's decision:</b>  | The Minister allowed the appeals in part  |
| <b>Date of decision:</b>     | 5 January 2021  |

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

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#### **Background**

On 9 October 2020, the Department of Water and Environmental Regulation (DWER) granted a clearing permit to DevelopmentWA authorising the clearing of 2.89 hectares of native vegetation to facilitate the development of supporting infrastructure for the development of breakwaters associated with the Ocean Reef Marina development.

The marine elements of the marina were approved under section 45 of the *Environmental Protection Act 1986* in August 2019.

For the land-based elements of the proposal, an amendment to the Metropolitan Region Scheme (MRS) was referred to the Environmental Protection Authority (EPA) in 2014. This amendment excluded approximately 26.26 hectares of land from Bush Forever site 325, and changed the zoning of the majority of the land from reserve to urban use.

After considering the environmental issues contemplated by the scheme amendment, the EPA accepted that the land could be developed subject to a negotiated planning outcome being agreed between the Department of Planning, Lands and Heritage, the Department of Biodiversity, Conservation and Attractions and the Office of the EPA (now part of DWER). The Minister was advised that a negotiated planning outcome was agreed between these agencies, which included the acquisition of an area of land at Carabooda which will be managed for conservation purposes. In light of this agreement, the amendment to the MRS was finalised in November 2019.

In addition to the MRS amendment, an Improvement Scheme was referred to the EPA in February 2020. On 3 March 2020, the EPA decided not to assess the scheme finding that the potential impacts of implementation are not so significant as to warrant formal assessment. In coming to its determination, the EPA noted the existence of the negotiated planning outcome through the MRS amendment and the previous assessment and approval of the marine components of the proposal.

The Minister was advised that the Improvement Scheme came into effect on 30 September 2020 and replaces the MRS and Local Planning Scheme No. 3 as the statutory land use planning instrument over the area. Among other things, most of the area which was zoned parks and recreation following the MRS amendment is now a residential precinct.

The Minister understood that the majority of the clearing authorised under the clearing permit is within the area the subject of the MRS amendment and the Improvement Scheme and is therefore within the contemplation of the negotiated planning solution for impacts caused by its development.

The decision to grant the permit was subject to a 21 day appeal period, and by the close of that period, 279 appeals were received. These appeals were investigated by the Appeals Convenor, and she submitted her final report to the Minister on 31 December 2020.

By the appeals, concerns were raised that DWER failed to adequately assess the impacts of the proposed clearing, particularly regarding the flora and fauna values, significance of the vegetation as a remnant, impacts to adjacent conservation areas, impacts to groundwater and land degradation.

Appellants also raised concern that the negotiated planning outcome site in Carabooda contains different vegetation from the application area, and as such, is not an appropriate offset for the values at Ocean Reef Marina.

### **The Minister's decision**

Having regard to the concerns raised in the appeals, and noting the planning context triggered by the EPA's public advice in 2014, the Minister considered that the decision to grant the permit in this case was justified.

The Minister specifically considered that the significant residual impacts identified by DWER have been adequately offset through the negotiated planning outcome process and in accordance with the recommendations of the EPA.

Notwithstanding the above, the Minister considered that certain conditions of the permit should be modified in the manner recommended by the Appeals Convenor. This includes amending condition 11 to require the permit holder to consult with local community groups to identify an area of not less than 3.5 hectares within Bush Forever site 325 that would best benefit from rehabilitation, and for that area or areas to be rehabilitated accordingly. Other changes include requiring the permit holder to publish the final rehabilitation plan on its website and retention of topsoil from an area of clearing within Bush Forever site 325 for use in rehabilitation.

The full reasons for the Minister's decision follow.

### **Environmental risks posed by the proposal**

The permit authorises the clearing of up to 2.89 hectares of native vegetation to enable the development of the breakwaters associated with the marina.

DWER considered the proposal against the clearing principles, and determined that the clearing is at variance to the following principles:

- biodiversity and fauna habitat (principles (a) and (b));
- significant remnant vegetation (principle (e));
- adjacent conservation areas (principle (h)); and
- land degradation issues (principle (g)).

DWER also found that the proposed clearing may be at variance to other principles, including impacts to threatened flora and wetland/linkage vegetation. The Act does not preclude a clearing permit from being granted where the clearing is at variance to the clearing principles.

The Appeals Convenor's report summarises the concerns raised on appeals as they relate to flora and fauna values of the site. In this regard, the Appeals Convenor concluded that DWER's assessment was generally appropriate, and the findings justified.

Noting both DWER's assessment and the Appeals Convenor's investigation of the appeals, it is apparent that the proposed clearing will have a number of environmental impacts, and some of these impacts are significant. This includes, clearing of vegetation with high flora and fauna biodiversity, increased fragmentation and reduced ecological linkage value and impacts to a coastal shrubland PEC. These values are consistent with the former classification of part of Bush Forever site 325.

Based on the foregoing, the Minister agreed with the Appeals Convenor's advice in respect to the environmental values to be impacted by the proposed clearing. Specifically, the Minister found that the proposal is at variance to clearing principles (a), (b), (e), (g) and (h).

### **Adequacy of offset**

Having concluded that the proposed clearing will result in a significant residual impact to a number of environmental values, the Minister then considered the concerns raised by appellants as to the adequacy of the way in which DWER considered the application of offsets to counterbalance the impacts.

DWER advised that the significant residual impacts to flora, fauna and ecological communities were appropriately offset by the negotiated planning outcome, including the acquisition of the site at Carabooda. Appellants challenged this view, submitting that the offset site is not 'like-for-like' to the environmental values that will be lost at the Ocean Reef site.

As discussed above, the EPA considered that the impacts associated with the land based elements of the proposal could be adequately dealt with through a negotiated planning outcome, to be developed by the planning, conservation and environment agencies before the amendment was approved. In coming to this decision, the EPA relevantly advised in 2014 that its objectives for flora and vegetation and terrestrial fauna could be met subject to a satisfactorily negotiated planning outcome being developed. The EPA's decision not to assess the Implementation Scheme in March 2020 was to similar effect.

The negotiated planning outcome includes both the acquisition of an area of 22.7 hectares of native vegetation at a site in Carabooda, and the restoration of 5 hectares of vegetation within Bush Forever site 325 from 'degraded' to 'very good' condition.

On the information available to him, and noting that the significant residual impacts identified were within the contemplation of the EPA in 2014 and again in 2020, the Minister considered DWER was justified in applying the negotiated planning outcome to the permit the subject of this appeal.

Whilst the Minister acknowledged that the offset site may not be like-for-like in respect to all of the significant residual impacts, the Minister noted DWER's approach is consistent with relevant offsets policy and the EPA public advice from 2014. The Minister also noted that the negotiated planning outcome is consistent with methodology reflected in the relevant State Planning Policy.

Overall, the Minister considered that the application of the negotiated planning outcome as an offset for the significant residual impacts identified for this permit was appropriate. However, the Minister agreed with the Appeals Convenor that the conditions of the permit should be modified to improve environmental outcomes. These changes are set out in detail in the Appeals Convenor's report but relevantly include:

- remove the reference to clearing permit CPS 8788/1 from condition 10 in relation to the development and implementation of a fauna management plan;
- replace the requirement in condition 11 to rehabilitate the area hatched blue on Plan 8947/1c and the 2.5 ha portion in excellent condition of the area hatched blue on Plan 8947/1b with a requirement to identify, in consultation with local community groups (e.g. Joondalup Community Coast Care Forum), and rehabilitate 3.5 ha of Bush Forever site 325 that would best benefit from such works and which does not overlap with any rehabilitation required by the negotiated planning outcome;
- add a requirement for the applicant to publish on its website the final approved rehabilitation plan required by condition 11; and
- add a requirement to condition 11 for the applicant to appropriately conserve and store topsoil from the area hatched green on Plan 8947/1a and to reuse it in the revegetation of that area.

## **Planning context**

As noted above, most of the clearing proposed by the permit is within an area of land that was removed from Bush Forever site 325 in November 2019 through the MRS amendment.

The reason for the removal of the Bush Forever status of the land was to facilitate the development of the land-based elements of the proposed Ocean Reef Marina. The marine-based elements of that proposal were assessed by the EPA in 2018, and following the Minister's consideration of appeals against the EPA's report, was approved by the Government in 2019, with a number of new conditions relating to monitoring of impacts and translocation of abalone.

In addition to excising the proposed development area from Bush Forever, the scheme amendment also rezoned the majority of the area from reserve to urban land use. The City of Joondalup's local planning strategy also identifies the area as being for the development of residential and related land uses as part of the development of the Ocean Reef Marina.

The Improvement Scheme that took effect in September 2020 resulted in additional changes, including rezoning certain areas from parks and recreation to residential.

It follows that the planning instruments administered by the Western Australian Planning Commission and the City of Joondalup support the clearing of the land, noting that the purpose of the proposed clearing is consistent with the intended land use reflected in those instruments. The decision of DWER to grant the permit was therefore consistent with its obligation under section 51O(4) of the Act to have regard to any planning instrument that is relevant to the clearing permit application.

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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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