



Environmental Protection Act 1986

**Hon Donna Faragher JP MLC
Minister for Environment**

Minister's Appeal Determination

APPEAL AGAINST ENVIRONMENTAL PROTECTION AUTHORITY REPORT AND RECOMMENDATIONS – LOT 4 UNDERWOOD AVENUE, SHENTON PARK 2007 DEVELOPMENT AND CONSERVATION PROPOSAL (BULLETIN 1272)

Purpose of this document

This document sets out the Minister's decision on appeals lodged against the Environmental Protection Authority (EPA) report and recommendation on the above proposal. 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

Appellants:	See Appendix 1. Appeals Convenor's report
Proponent:	University of Western Australia
Proposal Description:	The proposal is for the development and conservation of Lot 4 Underwood Avenue, Shenton Park.
Appeal Outcome:	The Minister has allowed the appeals in part.
Date of Decision:	16 October 2009

REASONS FOR MINISTER'S DECISION

Thirty five appeals were received in relation to this matter.

Pursuant to section 106 of the *Environmental Protection Act 1986* (the EP Act), the Minister obtained a report from the EPA on the matters raised in the appeals. The Minister also received a report from the Appeals Convenor. The Appeals Convenor's report sets out the background and other matters relevant to the appeal.

The Appeals Convenor has advised that a representative of his Office has, where possible, discussed the appeals with appellants and met with representatives from the University of Western Australia.

The proposal the subject of the appeals is the development and conservation proposal for Lot 4 Underwood Avenue, Shenton Park.

The key concerns raised in the appeals include the adequacy of the EPA's assessment in the Bulletin particularly with regard to the regional significance and protection of the bushland and the remaining habitat of the Carnaby's Black Cockatoo, fire management, and the proximity of the site to Subiaco wastewater treatment plant particularly in relation to odour. The Appeals Convenor's report contains a comprehensive assessment of the grounds of appeal raised by the appellants.

The Minister acknowledged the proposal is of significant public interest and raises a number of complex issues, the most significant of which appears to be that the development area has been identified as a foraging site for Carnaby's Black Cockatoo which is a species listed as rare under the Wildlife Conservation Act 1950 and as endangered under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

Further, since the Appeals Convenor completed investigation of these appeals and reported to the then Minister for the Environment in April 2008, the Minister understands the Commonwealth Department of Environment, Water, Heritage and the Arts (DEWHA) in December of 2008, published a "draft recommendation report" in respect to the proposal.

This draft report noted that the proposal would result in the loss of up to 25.27ha of foraging habitat for Carnaby's Black Cockatoo, which would be an unacceptable impact due to (among other things) the site being a critical corridor for the species.

Further advice received from the DEC highlighted that Lot 4 is recognised as a quality native vegetation remnant by its listing as a Bush Forever Site containing high quality populations of the Banksia prionotes species which is a significant food source for Carnaby's Black Cockatoo. The Minister was advised that this constitutes 30% of the total extent of that plant species on the Swan Coastal Plain.

The Minister also noted comments made by the State Administrative Tribunal (SAT) in their advice of 23 June 2009.

Taking into account the information presented to the Minister in relation to these appeals, the Minister was of the view that the site is an important foraging habitat for Carnaby's Black Cockatoo within the Perth metropolitan area. The Minister based this conclusion on a wide range of evidence, including the draft decision report published by DEWHA in December 2008 and advice from the DEC. It followed that the Minister allowed appeals against the proposal to the extent that the impacts of the proposal, in its current form is likely to have an impact on Carnaby's Black Cockatoo habitat, in particular the Banksia prionotes woodland at Lot 4, Underwood Ave. In forming this view, the Minister also noted that there are other areas within Lot 4 that are not as environmentally constrained for development and local offsite mitigation measures (offsets) may need to be considered. The Rehabilitation Plan would also need to be modified as specified in the Appeals Convenor's report.

Further, in relation to an appellant's concern on the impacts on the residential development from fire by the close proximity of bushland, the Minister allowed the appeal to the extent that the proposed Rehabilitation and Management Plan is required to address fire management.

The Minister otherwise dismissed the remaining grounds of appeal. In doing so, the Minister noted the proponent's appeal to have the EPA recommended conditions changed to remove the requirement that the Minister for Environment agree to the Land Use Plan, and to have a more flexible approach to the setting of odour criteria for land uses within the notional buffer to the Subiaco Waste Water Treatment Plant.

However, the Minister was supportive of the Appeals Convenor's recommendation that this appeal ground be dismissed and that the Minister should have a role in ensuring odour sensitive land uses that are part of this proposal are not allowed within that notional buffer. Further the Minister considered that the intent of EPA recommended condition 5 does allow flexibility for the Minister to set appropriate odour criteria for land uses within the notional buffer.

Having determined appeals, the Act requires that the Minister consult and seek agreement with relevant decision making authorities as to whether or not the proposal may proceed, and if so, the conditions to which it should be subject.

In undertaking this consultation, the Minister will be seeking additional technical advice from the DEC on the measures (if any) that may be implemented to mitigate adverse impacts on Carnaby's Black Cockatoo.

The Minister will also invite the proponent to make a further submission to her as to why the proposal should be permitted to proceed, which the Minister expects would include details of how the proposal or the impacts of the proposal could be modified to address the risks to Carnaby's Black Cockatoo. This will provide the proponent with the opportunity to also address the issues raised by SAT.

Note: this decision is published pursuant to the terms of regulation 8 of the *Environmental Protection Regulations 1987*.

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