

BETWEEN

B & J CATALANO PTY LTD

Applicant

- and -

SHIRE OF HARVEY

Respondent

**DECISION OF THE MINISTER FOR PLANNING
PURSUANT TO SECTION 246(2)(a) OF THE
PLANNING AND DEVELOPMENT ACT 2005**

Application

1. This decision concerns the application for review (**Application**) lodged on 8 April 2022 by B & J Catalano Pt Ltd (**Applicant**) to the State Administrative Tribunal (**SAT** or the **Tribunal**) in DR 63 of 2022. The Applicant lodged the review against the refusal by the Shire of Harvey (**Respondent** or **Shire**) of 15 February 2022 regarding an 'Extractive Industry' development application which proposed to extract sand from Lot 7 on Runnymede Rd, Wellesley. The subject Lot 7 has an area of 80.18591 ha.
2. The Acting Minister for Planning considered that the development application for sand extraction from Lot 7 raised issues of State and regional importance such that, on 21 April 2022, the Acting Minister called-in the Application for determination by the Minister for Planning in accordance with section 246(2)(a) of the *Planning and Development Act 2005* (**PD Act**).
3. On 21 April 2022, the Hon Sue Ellery MLC as Acting Minister for Planning wrote to the President of SAT and directed the Application be called-in, by referring it to the Minister for Planning for determination in accordance with section 246(2)(a) of the PD Act.
4. The Government Gazette of 29 April 2022 published the Acting Minister's direction to SAT in accordance with section 246(4) of the PD Act:

"29 April 2022 Government Gazette, WA 2829
PL403

PLANNING AND DEVELOPMENT ACT 2005
DIRECTIONS
DR 63 of 2022

In the State Administrative Tribunal, between B & J Catalano Pty Ltd, Applicant and The Shire of Harvey, Respondent.

Direction to the State Administrative Tribunal to refer application to the Minister for Planning pursuant to section 246(2)(a) of the Planning and Development Act 2005.

To: State Administrative Tribunal
Level 6, State Administrative Tribunal Building
565 Hay Street
PERTH WA 6000

1. On 8 April 2022, Application DR 63 of 2022 between B & J Catalano Pty Ltd, Applicant, and the Shire of Harvey, Respondent, was filed in the State Administrative Tribunal.

2. I, as Acting Minister for Planning, consider that the application raises issues of such State and regional importance that it is appropriate for the application to be determined by the Minister for Planning.

3. I therefore direct, pursuant to section 246(2)(a) of the Planning and Development Act 2005, that the President refer the application to me for determination.

Hon. SUE ELLERY MLC, Acting Minister for Planning."

5. It was considered at the time that the development application for sand extraction on Lot 7 had raised issues of State or regional importance in order to supply sand for use in the construction of the Bunbury Outer Ring Road (**BORR**) and to supply sand for the general construction industry in the Shire of Harvey and surrounds.
6. On 10 May 2022, the call in notice was laid before the Legislative Assembly and the Legislative Council in accordance with section 246(4) of the PD Act.

Jurisdictional Basis of Call In Power

7. The jurisdictional basis for the Planning Minister's power to call in a review application from SAT is set out in sections 246 and 247 of the PD Act.
8. These sections of the PD Act provide that the Minister may call in an application if it 'raises issues' of such State or regional importance:

246. Minister may call in application to SAT for review

- (1) This section applies to an application made to the State Administrative Tribunal if the Minister considers that the application raises issues of such State or regional importance that it would be appropriate for the application to be determined by the Minister.
- (2) The Minister may direct —
 - (a) the President to refer an application to which this section applies to the Minister for determination; or
 - (b) the State Administrative Tribunal to hear the application but, without determining it, to refer it with recommendations to the
 - (a) in respect of an application made to the State Administrative Tribunal under the Heritage Act 2018; or
 - (b) more than 28 days after the application was made to the State Administrative Tribunal; or
 - (c) after a final determination has been made in relation to the application.
- (4) The Minister, within 14 days after a direction is given, is to cause a copy of it to be published in the Gazette and, as soon as is practicable, is to cause a copy of it to be laid before each House of Parliament or dealt with under section 268A.
- (5) If the Minister gives a direction under subsection (2)(a), each party to the proceeding may present the case of that party to the Minister.
- (6) The Minister is to have regard to the submissions of the parties and may have regard to any other submission received by the Minister.
- (7) A copy or transcript of any submission to which the Minister has regard is to be —
 - (a) given to each party; and
 - (b) published in the manner prescribed by the regulations.

247. Determination of application by Minister

- (1) In determining an application the Minister is not limited to planning considerations but may make the determination having regard to any other matter affecting the public interest.
- (2) When the Minister determines an application that determination has effect according to its tenor.
- (3) When an application is referred to the Minister under section 246(2)(b) the executive officer of the State Administrative Tribunal is to —
 - (a) give a copy of the recommendations that accompanied the referral to each party within a reasonable time after the referral; and
 - (b) make a copy of the recommendations available during office hours for inspection by any person without charge.

- (4) The Minister is to —
- (a) give to each party written reasons for the determination of the Minister on the application; and
 - (b) as soon as is practicable, cause a copy of those reasons to be laid before each House of Parliament; and
 - (c) upon payment of a fee determined in the manner prescribed by the regulations, supply a copy of those reasons to any other person.
- (5) The decision of the Minister is final.

Public Interest Principles

9. The nature of the Minister's role in a call in is not merely limited to a review or 'critique' of the Shire's reasons offered in its reasons of 15 February 2022 to refuse the sand extraction development application. Section 247(1) of the PD Act provides the Minister with the broad power to determine a development application anew or afresh in a way that is not limited to planning considerations found in the provisions of a planning scheme.
10. In this regard, I am guided by the Tribunal's remarks in *Hanson Construction Materials Pty Ltd and City of Vincent* [2017] WASAT 81 at [35] that:
- "In fact the PD Act does not specify what powers are available to the Minister when determining a review application called in pursuant to s 246 of the PD Act. The powers of the Tribunal on determining a review application, including one made under Pt 14 of the PD Act, are specified in s 29 of the SAT Act. The Minister is to determine the review application as specified in s 247(1) of the PD Act. That determination is to have effect according to its tenor: s 247(2) of the PD Act."
11. Parliament has provided me with the power to call-in development applications where the matter raises issues of State or regional importance. Part of the legislative intent behind this power is that, pursuant to section 247(1) of the PD Act, I am not limited to planning considerations and may make my determination having regard to any other matter affecting the public interest. In addition to any ground of planning merit, I have duly considered matters affecting the public interest.
12. Pursuant to section 247(4)(b) of the PD Act, I must cause this decision to be laid before each House of Parliament.

13. In having regard to other matters affecting the public interest, I have also reflected upon my own role as a Minister of the Crown ultimately responsible for this determination to the people of Western Australia through the Parliament.

Invitation for Written Submissions

14. After notice of the call-in was published in the Government Gazette on 29 April 2022, a process was put in place to invite and exchange the written submissions by the parties for my consideration. The following outlines the parties written submissions:
 - The parties were invited to provide written submissions on 11 July 2022.
 - The parties exchanged their written submissions on 14 July 2022.
 - The parties were invited to provide written submissions in reply on 4 August 2022.
15. The Applicant's submissions of 18 July 2022 comprised:
 - Submission by Julius Skinner, Partner Thomson Geer lawyers (**Applicant's Submission**);
 - Statement of Lindsay Stephens with annexures LS-1 and LS-2;
 - Statement of Mike Lundstrom with annexures ML-1 – ML-5;
 - Statement of Stephen Allering with annexures SGA1 – SGA18.
16. The Respondent Shire's submissions comprised:
 - Outline of Submissions by Peter Wittkuhn, Partner McLeods, Lawyers;
 - Respondent's Bundle of Documents;
 - Statement of Elizabeth Edwards, Manager Planning Services dated 18 July 2022 (with attachments ERE 1 and ERE 2); and
 - Statement of Dr Michael Just of 18 July 2022 (with attachments MPJ 1 – MPJ 3).
17. The Applicant provided its 'Responsive Submission to the Minister' submission dated 11 August 2022 (**Applicant's Response**).

18. The Respondent Shire's submissions in reply comprised:
 - Witness Statement of Dr Michael Just;
 - Witness Statement of Dr Michael Bamford; and
 - Witness Statement of Elizabeth Edwards, Manager Planning Services.
19. On 17 March 2023 the Applicant requested an opportunity to make further submissions. I allowed the Applicant to make these further submissions and also provided the Respondent with an opportunity to respond.
20. The Applicant made supplementary submissions dated 12 May 2023.
21. On 30 May 2023, the Respondent provided a submission responding to the Applicant's supplementary submissions of 12 May 2023.
22. By correspondence to me dated 31 May 2024 and copied to the Applicant's solicitor, the Respondent made further submissions on the basis that the local planning framework had changed when the Shire of Harvey's Local Planning Scheme No 2 became effective upon gazettal on 12 April 2024 thereby revoking District Planning Scheme No 1.
23. The Applicant's responsive submissions took the form of Stephen Allering's Supplementary Witness Statement dated 1 August 2024 and proposed draft conditions.
24. By letter dated 20 March 2025 the Applicant advised that it had withdrawn its applications to the Department of Water & Environmental Regulation) (**DWER**) for the environmental approvals required for the clearing of native vegetation.
25. On 5 September 2025 the Environmental Protection Authority (**EPA**) published on its website a 'Notice of Decision to Consent to Amend a Referred Proposal During Assessment' made under section 43A of the *Environmental Protection Act 1986 (WA)* (**EP Act**) relating to the Kemerton Strategic Industrial Area (**KSIA**) Strategic Proposal, Assessment No 2317.
26. The EPA's Notice appeared to affect the subject Lot 7 due to the land being located within the buffer area of the KSIA and was relevant to this matter. Pursuant to section 246(5) to (7) of the PD Act I wrote to the parties providing them with an opportunity to review the EPA's Notice and make further submissions by 14 November 2025.

27. Mr Julius Skinner, Partner Thomson Geer lawyers provided the Applicant's written submissions of 13 November 2025 regarding the EPA's Notice.
28. On 18 November 2025, Peter Wittkuhn, Partner McLeods, Barristers & Solicitors provided the Respondent's written submissions to my office regarding the EPA's Notice. There are no further submissions from the parties.

History of the 'Extractive Industry' Development Application

29. On 29 September 2021, the Applicant lodged a development application at the Shire seeking planning approval for an 'Extractive Industry' on Lot 7 to extract sand along with an application for an extractive industry licence.¹
30. The 'Extractive Industry Licence Application & Environmental Management Plan' over Lot 7 was prepared by Lundstrom Environmental Consultants Pty Ltd. This document at 4.2 stated that the Applicant proposed to extract sand from 1.17 ha of Lot 7:

"B&J Catalano Pty Ltd propose to extract a total of 70,000 cubic metres of sand from an additional area of 1.17 ha immediately to the east of the original pit, and to the south of the recently approved EIL area, as shown in Figure 3."



Proposed sand extraction area of 1.17 ha shown on Figure 3 in the Lundstrom 'Extractive Industry Licence Application & Environmental Management Plan'. The sand extraction area of 1.17 ha is described as 'Proposed Extension EIL Area' in the legend and is coloured light blue on Figure 3.

¹ Respondent's bundle of documents at page 1 and Applicant's submission dated 18 July 2022 at paragraph 42.

31. Mr Skinner's submission on behalf of the Applicant confirmed that the development application of September 2021 sought planning approval to extract a total volume of 285,000 cubic metres of sand from Lot 7 outlined as follows²:

"45 The Review Site forms an extension of the current Stage 4 of the extractive industry operation on Lot 7 (and is referred to in some documentation as the "Stage 4 Extension"), with logical staging of extraction being from the west to east towards the hill which is contained within the review site.

46 BJC propose to extract a total of approximately 70,000m³ of sand from the Review Site.

47 The total extraction area of Stage 4 (including the Stage 4 Extension) will be 3.13 ha, resulting in a combined resource of approximately 195,000m³.

48 The above resource plus the batters (~ 90,000m³) will bring the total resource from this approval to 285,000m³, and with approximately 80,000m³ remaining from the existing EIL area, the total Lot 7 resource is estimated as 365,000m³. Annual extraction will be approximately 70,000m³ per annum, this may vary depending on the demand for sand."

32. The Witness Statement by Michael Lundstrom on behalf the Applicant stated that the development application would involve sand extraction from an area of 1.17 ha and clearing of about 0.88 ha of native vegetation on the subject Lot 7:

"clearing of the area of approximately 0.88 hectares of native vegetation; within the 1.17 hectare area of the Review Site which has been identified for the purpose of carrying out the Stage 4 extension."³

Shire Refusal

33. On 15 February 2022, the Manager, Planning Services of the Shire wrote to the Applicant advising that the Shire's staff acting under delegated authority had refused the development application on Lot 7 for reasons in the Shire's attached "Notice of determination on application for development approval" of the same date.

² Applicant's submission dated 18 July 2022.

³ Witness Statement by Michael Lundstrom on behalf of the Applicant dated 18 July 2022 at paragraph 14.

34. The Shire's notice of determination of 15 February 2022⁴ stated that it refused the development application for reasons (a) to (f) dealing with the issues impacting on the natural environment as follows:

"SHIRE OF HARVEY
District Planning Scheme No 1

Notice of determination on application for development approval

Location: RUNNYMEDE ROAD WELLESLEY 6233

Lot: 7	Plan/Diagram: DO40591
Vol No: 1358	Folio No: 260
Application date: 29/09/2021	Received on: 30/09/2021

Description of proposed development: EXTRACTIVE INDUSTRY (SAND) [EX/004]

The application for development is:

Refused for the following reason(s)

The proposal is contrary to the following provisions of clause 67(2) of the Planning and Development (Local Planning Schemes) Regulations 2015:

- (a) Does not protect and preserve the more important natural flora and fauna habitats and is therefore contrary to clause 67(2)(a) and clause 1.6.1(g) of the Shire of Harvey District Planning Scheme No 1;
- (b) Does not:
 - i) protect, conserve, and enhance the natural environment;
 - ii) ensure the retention and protection of rural land for biodiversity protection;
 - iii) protect valued landscapes;
 - iv) effectively manage environmental impacts;
 - v) manage and improve environmental and landscape attributes;
and is therefore contrary to clause 67(2)(c) and the objectives and principles of State Planning Policies 2.0, 2.4 and 2.5;
- (c) Does not protect significant areas of remnant vegetation or balance the environmental and visual objectives and is therefore contrary to clause 67(2)(fa) and the Shire of Harvey's endorsed Local Planning Strategy;
- (d) Will have a significant effect on the natural environment and is therefore contrary to clause 67(2)(c);
- (e) Does not make provision for the preservation of vegetation and is therefore contrary to clause 67(2)(p); and
- (f) Has the potential to create irreversible damage to the land quality by creating the potential erosion and loss of soil and is therefore contrary to clause 67(2)(q).

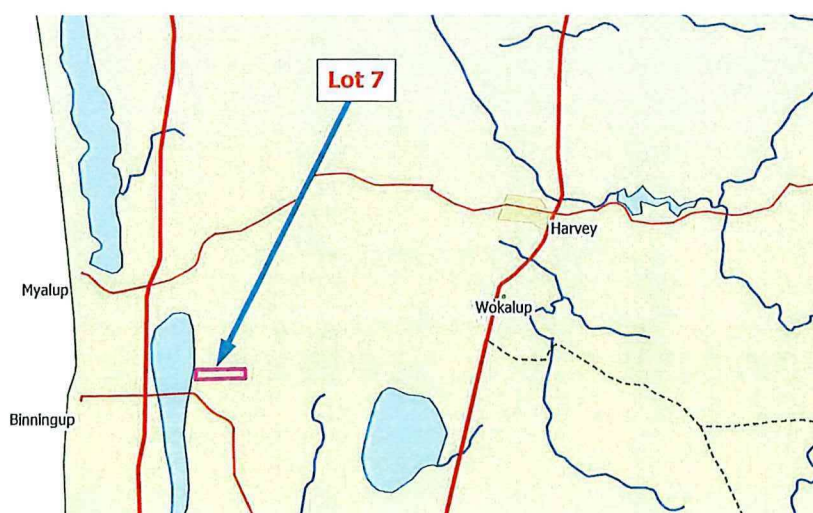
Date of determination: 15 February 2022."

⁴ See Respondent's bundle of documents at pages 177 – 180 and attached to the Witness Statement of Stephen Allerding at SGA3.

35. On 8 April 2022, the Applicant filed a review application in SAT against the Shire's refusal of the development application on 15 February 2022.
36. On 29 April 2022, the Acting Minister's direction to SAT to call in the review was published in the Government Gazette under section 246(4) of the PD Act.

'Extractive Industry' Site - Lot 7 Runnymede Road, Wellesley

37. The land the subject of the proposed 'Extractive Industry' application is Lot 7 Runnymede Rd, Wellesley. The Certificate of Title of Lot 7 records that the subject land is depicted on Diagram 40591 with a land area of 80.18591 ha. The registered proprietor of Lot 7 is S & C & B Catalano Pty Ltd of South West Hwy, Brunswick Junction.
38. Lot 7 is bordered by Lot 21 (39.4 ha) and Lot 22 (40.5 ha) to the north. Lot 3 (68.5 ha) is situated on the western side of Runnymede Rd. Lot 21 is owned by the Commissioner of Main Roads. Lots 22 and 3 are owned by Development WA trading as the Western Australian Land Authority.
39. The land bordering the east of Lot 7 is Lot 411 which is Reserve 53149 vested in the Department of Biodiversity, Conservation and Attractions. Lot 4 is located on the southern side of Lot 7 and is owned by S & C & B Catalano Pty Ltd. The Applicant's documents consistently identify that Lot 7 is the subject of the 'Extractive Industry' application set out below.



Location Map: The proposed sand extraction is located on Lot 7 Runnymede Rd, Wellesley in the Shire of Harvey. Source: Figure 1 of the Applicant's 'Extractive Industry' application prepared by Lundstrom Consulting, dated September 2021 at document 1 of the Shire's Bundle of Documents.

40. The 'Extractive Industry Licence Application & Environmental Management Plan' prepared by Lundstrom Environmental Consultants Pty Ltd that the Applicant submitted to the Shire on 29 September 2021 at page 7 states that the property is situated approximately 2km east of the Forrest Hwy and 23 km north of Bunbury.⁵ This document contains the following details in relation to the land the subject of the Application set out in Table 1:

Table 1. Property Description

Property Description:	Lot 7 on Diagram 40591 Runnymede Road, Wellesley Shire of Harvey
Volume	1358
Folio	260
Area	80.19 ha
Ownership	B,C & S Catalano

41. Appendix 1 of the Lundstrom 'Extractive Industry Licence Application & Environmental Management Plan' contains a further document headed 'Shire of Harvey District Planning Scheme No 1 – s 77 Application for Amending or Cancelling a Development Approval.'
42. The Applicant lodged its development application for sand extraction on Lot 7 on the 'Shire of Harvey District Planning Scheme No 1 – s 77 Application for Amending or Cancelling a Development Approval' document. The Applicant specified in this document that the subject land comprised Lot 7:
- "Property Details: Lot No 7 on Diagram D40591."
43. The Applicant's formal development application contained the following further details regarding the proposed extraction of sand on Lot 7:
- Nature of Development/Use Approved: Sand extraction.
 - Date of Development Approval: 10 September 2020."
 - Details of amendments: Sand extraction over an additional 1.17ha of existing site."

⁵ See Respondent's bundle of documents.

44. The Shire accepted this compilation of documents as comprising the development application lodged by the Applicant for the 'Extractive Industry' land use on Lot 7 in September 2021.⁶

Shire's Notice of Determination of 15 February 2022

45. The Shire's refusal letter dated 15 February 2022 is headed "Proposed extractive Industry (Sand) [EX/004] – Lot 7 Runnymede Road, Wellesly".
46. The Shire's refusal letter attached a form headed 'Scheme No 1 - Notice of determination on application for development approval' dated 15 February 2022. The Shire's formal Notice of refusal under its Scheme No 1 confirmed that the subject land was limited to Lot 7 as set out below:

Planning and Development Act 2005

SHIRE OF HARVEY
District Planning Scheme No. 1

Notice of determination on application for development approval

Location: 0 RUNNYMEDE ROAD WELLESLEY 6233			
Lot:	7	Plan/Diagram:	D040591
Vol. No:	1358	Folio No:	260
Application date:	29/09/2021	Received on:	30/09/2021
Description of proposed development: EXTRACTIVE INDUSTRY (SAND) [EX/004]			
The application for development approval is:			
<input type="checkbox"/> Refused for the following reason(s):			

47. It is apparent that the Shire's refusal for the proposed extraction of sand only related to Lot 7.

Applicant's Submissions - Subject Lot 7

48. The Applicant's Submission dated 18 July 2022 describes the subject 'Extractive Industry' site as being confined to Lot 7 as follows:

⁶ See Respondent's bundle of documents at page (i) and pages 1 – 80.

"5. Lot 7 Runnymede Road, Wellesley is the land contained in Certificate of Title Volume 1358 Folio 260 (Lot 7).

6. Lot 7 has a total area of 80.16 hectares. A Location and Site Plan are included as Annexure SGA5 to the Witness Statement of Stephen Allering.

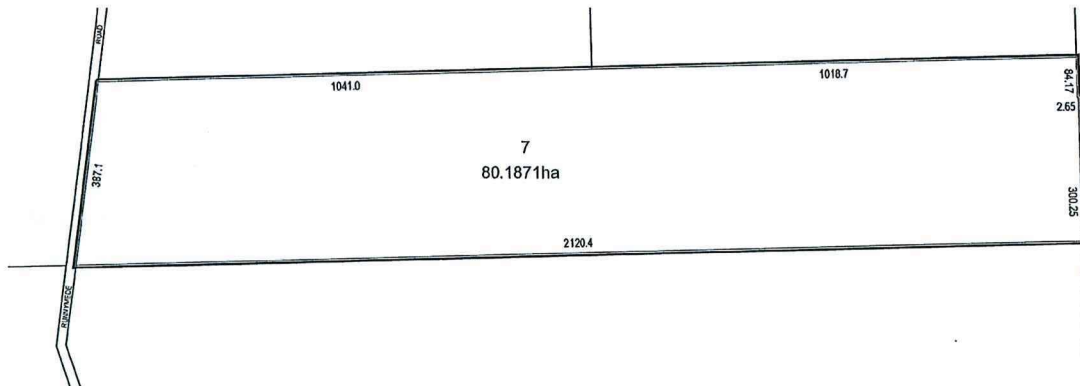
7. Approximately 10 hectares of Lot 7 is currently used for sand extraction, with e remaining 70 hectares comprising –

(a) an area utilised as a screening buffer to Runnymede Road to the West;

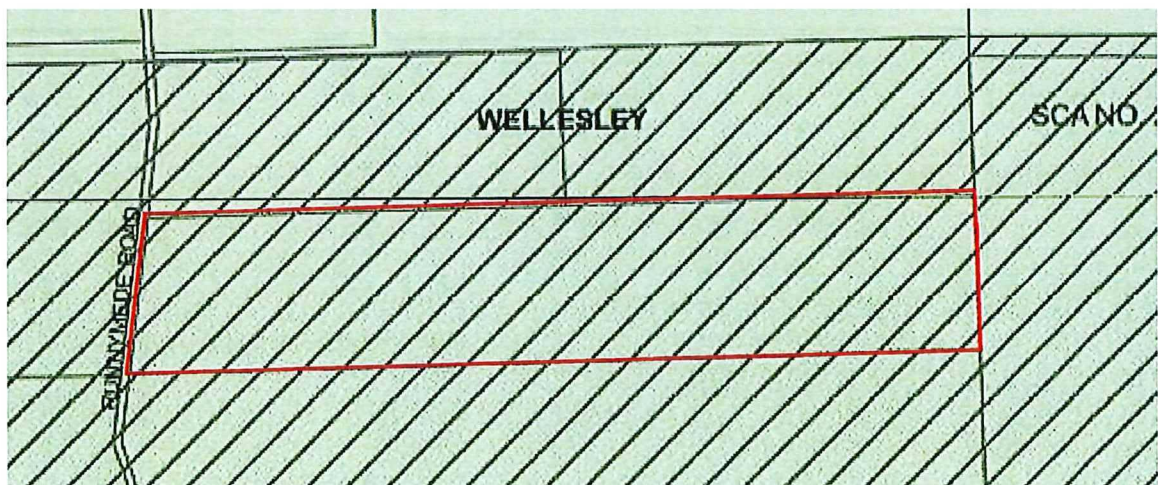
and

(b) the balance of Lot 7 to the east, which remains in a natural vegetated condition."

49. Mr S Allering's independent expert Witness Statement of 18 July 2022 marked Lot 7 as the 'Subject Land' within a bold black border on the Site Plan at page 130 of his Statement:



50. Mr Allering's independent expert Witness Statement of 18 July 2022 at page 136 helpfully depicted the 'Subject Land' as Lot 7 bordered in red and superimposed on the Shire's Zoning Plan:



51. It is clear that the development application to the Shire was limited to one lot being Lot 7 on Diagram 40591 with an area of 80.18591 ha.
52. I will turn to the subject land being limited to Lot 7 later in this decision.

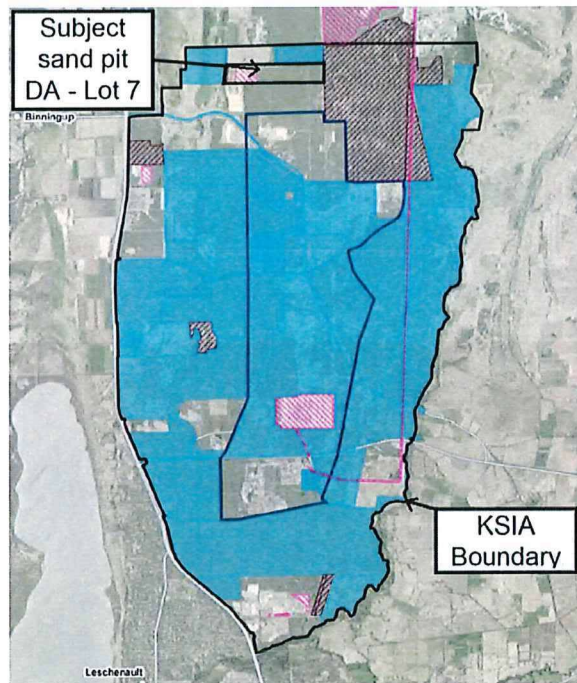
The Planning Framework

53. Paragraph 8 of the Witness Statement by Stephen Allarding dated 18 July 2022 on behalf the Applicant stated that Lot 7 has the following planning framework designations:
- “Is zoned Rural pursuant to the Greater Bunbury Region Scheme (GBRS) and within a Special Control Area No 2 (SCA 2)(refer to Zoning Plans in Annexure SGA7);
 - Is Zoned Kemerton Buffer pursuant to the Shire of Harvey District Planning Scheme No 1 (TPS 1)(refer to Zoning Plans in Annexure SGA7);
 - Is identified in the GBRS Strategic Minerals and Basic Raw Materials Resources Policy, and the State Planning Policy 2.4 – Basic Raw Materials Policy (SPP 2.4) as being within an area of Significant Geological Supplies (SGS) for sand (Annexure SGA 6).”
54. After this review commenced, the planning framework altered when the Shire of Harvey Local Planning Scheme No 2 (**LPS 2**) was gazetted and became effective on 12 April 2024. LPS 2 revoked and replaced the Shire of Harvey District Planning Scheme No 1. Elizabeth Edwards’ Witness Statement of 31 May 2024 submitted on behalf of the Shire deals with the provisions of LPS 2 and advised in relation to Lot 7 that:
- “2. Lot 7 Runnymede Road is now zoned "Strategic Industry" under LPS2 and is subject to Restricted Use No. 3 (RU3). Industry — Extractive is an "A" use under LPS2.
- ...
25. Lot 7 Runnymede Road is subject to Restricted Use 3 (R3) in relation to the Kemerton Industry Buffer. The Restricted Uses are identified in row R3 of Schedule 2 to LPS 2. Each location/area subject to Restricted Uses (ie each row of Schedule 2) has objectives identified in the fourth column of Schedule 2.”

55. Although the applicable Local Planning Scheme had changed, the proposed sand extraction use is classified as an 'A' use under LPS 2, meaning that the use is capable of approval in the exercise of discretion following advertising.
56. The planning framework also makes environmental considerations relevant to planning decisions. This is the case whether or not other approvals are required under a separate environmental regime, or whether or not the subject site is subject to particular protections under another State or Commonwealth environmental regime. The following documents regarding the environmental values of the subject site have been submitted:
- (a) Flora and Vegetation Survey Report (v0.2) prepared by Lundstrom Environmental Consultants Pty Ltd on behalf of the Applicant issued in March 2019 based on a flora survey conducted in 2018 (Lundstrom Flora Report).
 - (b) Fauna Assessment prepared by Lundstrom Environmental Consultants Pty Ltd on behalf of the Applicant dated November 2021.
 - (c) Reconnaissance Vegetation Survey conducted in July 2022 prepared by Lundstrom Environmental Consultants Pty Ltd on behalf of the Applicant.
 - (d) Witness Statement prepared by Dr Michael Just on behalf of the Respondent dated 18 July 2022. Dr Just's Witness Statement at paragraph 3 states that it comprises "*a desktop review of a vegetation and flora report*" that the Applicant submitted to the Shire of Harvey in this review.
57. In forming my views on the planning merits of the development application, I have had due regard to the planning schemes and policies which apply to the subject Lot 7 and other documents which form the planning framework.

Strategic Environmental Assessment Under Environment Protection Act

58. When the Application was called in to the Minister in April 2022, Lot 7 was located within the KSIA being land that was subject to a Public Environmental Review under the EP Act. On 18 November 2021, the Western Australian Land Authority (trading as Development WA) referred the development of the KSIA to the EPA for strategic environmental assessment under section 38 of the EP Act. Lot 7 lies just within the northern boundary of the KSIA.



Map indicating the location of Lot 7 inside the KSIA buffer area.

59. On 3 December 2021, Dr Shaun Meredith as delegate of the EPA issued a 'Notice of Decision to Assess Proposal' and the EPA set the level of assessment as a Public Environmental Review (**PER**) over the KSIA.

EPA Notice Amending KSIA on 5 September 2025

60. On 5 September 2025 the EPA published a 'Notice of Decision to Consent to Amend a Referred Proposal During Assessment' made under section 43A of the EP Act relating to the KSIA Strategic Proposal, Assessment No 2317.
61. The subject Lot 7 is located within the buffer area of the KSIA. The EPA's Notice therefore appeared to affect the subject land and was relevant to this matter and the parties. On 20 October 2025 I invited the parties to make submissions regarding the EPA's Notice of 5 September 2025.
62. Mr Julius Skinner provided the Applicant's written submissions¹³ November 2025 regarding the EPA's Notice. Mr Skinner submitted that the subject Lot 7 was now identified as being excluded from the EPA's consideration of the KSIA Strategic Proposal and the clearing of native vegetation is "unchanged at 1.17 ha".⁷

⁷ Paragraph 10.

63. Mr Skinner confirmed that Lot 7 is located at the northern end of the land described in the KSIA Strategic Proposal as the buffer and the total area of the buffer is 5,498 ha surrounding the core area.⁸ Mr Skinner observed that amongst other things, the EPA's amendments to the KSIA Strategic Proposal had reduced the total area proposed for clearing within the buffer.⁹ Mr Skinner stated that:

"The amended KSIA Strategic Proposal now refers to clearing of no more than 9 ha of native vegetation within the 5,498 ha Buffer, and the references to sand extraction within the (Buffer) as part of the KSIA Strategic Proposal) has been deleted."¹⁰

64. Mr Skinner's submission attached an aerial photograph taken in December 2024 obtained from Landgate illustrating the relationship between "the existing, approved extraction on Lot 7, the area of Lot 7 that is the subject of the Review, and adjoining MRWA extraction area on Lot 21."¹¹

65. Mr Skinner's submission referred to and reiterated the content of the various submissions and evidence that have been submitted on its behalf in this matter.¹²

66. On 18 November 2025, Peter Wittkuhn, Partner McLeods, Barristers & Solicitors provided the Respondent's written submissions to my office regarding the EPA's Notice. Mr Wittkuhn's submission on behalf of the Shire firstly observed that the EPA's Notice would result in a significant reduction in the clearing of native vegetation from 1450 ha to 659 ha, reflecting a contemporary recognition that the vegetation of this area is of great value and should be preserved unless clearing is not reasonably avoidable.¹³

67. Mr Wittkuhn further submitted that page 2 of the EPA's Notice included references to significant reductions to impacts on banksia woodlands and cockatoo habitats. Mr Wittkuhn said that the application "runs against" the "presumption of preservation of vegetation in this immediate region."¹⁴

Commonwealth Environmental Protection Biodiversity Conservation Act

68. In May 2022 the Applicant lodged a referral to the (then) Commonwealth Department of Agriculture, Water and the Environment (**DAWE**) under the *Environment Protection and*

⁸ Paragraph 5.

⁹ Paragraph 7.

¹⁰ Paragraph 8.

¹¹ Paragraph 12.

¹² Paragraph 13.

¹³ Shire submission at paragraph 20 received on 18 November 2025.

¹⁴ Paragraph 20.

Biodiversity Conservation Act 1999 (Cth) (**EPBC Act**) which included the proposed clearing of the subject site.¹⁵ This referral was later withdrawn.¹⁶

69. The Applicant subsequently lodged a referral (EPBC Number 2022/09332) with the Commonwealth Department of Climate Change, Energy, the Environment and Water (**DCCEEW**). This referral includes the proposed clearing of the subject site. On 2 December 2022 it has been determined that the proposal is a controlled action and will require assessment and approval under the EPBC Act before it can proceed.¹⁷

Environmental Planning Issues

70. It is not contentious that environmental matters are relevant planning considerations. In this regard, see clause 67(2)(o) of the Deemed Provisions¹⁸ and the decision of *Squarcini and Milano Pty Ltd v State Planning Commission* (Unreported, Supreme Court of Western Australia, Scott J, Library No. 960200, 17 April 1996) and cited in the Applicant's Submissions of 18 July 2022 at paragraph 68.

71. Clause 67(2)(o) of the Deemed Provisions states that a planning decision maker is to have due regard to:

“the likely effect of the development on the natural environment....and any means that are proposed to protect or mitigate impacts on the natural environment ...”

72. The Applicant's Submission dated 18 July 2022 stated that the Shire's refusal of 15 February 2022 of the sand extraction development application on Lot 7 focussed on environmental issues:

“63. The reasons for the Refusal relate exclusively to environmental issues, primarily associated with the clearing of vegetation.”

73. The Applicant's Submission dated 18 July 2022 appears to reflect the Witness Statement of Michael Lundstrom dated 18 July 2022 which stated in relation to the Shire's refusal of 15 February 2022 that:

¹⁵ Applicant's Submissions paragraph 26

¹⁶ EPBC Act Public Portal Referral Summary for EPBC Number 2022/09262

¹⁷ Notification of Referral Decision and Designated Proponent – controlled action Decision on assessment approach re EPBC 2022/09332 dated 2 December 2022.

¹⁸ Deemed Provisions are contained in *Schedule 2, Planning and Development (Local Planning Schemes) Regulations 2015* (referred to as the “**Deemed Provisions**”).

"14. It is apparent that the reasons for the Refusal relate exclusively to environmental issues, primarily associated with the clearing of the area of approximately 0.88 hectares of native vegetation within the 1.17 hectare area of the Review Site which has been identified for the purpose of carrying out the Stage 4 Extension."

74. Ms Elizabeth Edwards' Witness Statement of 18 July 2022 made submissions on behalf of the Shire regarding the environmental values of the subject Lot 7. In summary, the Shire submitted that:

- (a) The subject site contains species characteristic of Banksia Woodland Threatened Ecological Community.
- (b) Following the decision in *Carbone Bros Pty Ltd and Shire of Harvey* [2021] WASAT 150 it is open for a planning decision maker to refuse a development application purely on environmental grounds.¹⁹
- (c) The planning framework does not subjugate environmental matters to the public interest in having basic raw materials available. Rather, the planning framework contemplates that the extraction of basic raw materials will occur in an environmentally acceptable manner.

75. The Applicant's Response of 11 August 2022 objected to Ms Edwards' submission of 18 July 2022 on the basis that Ms Edwards;

"does not have any formal qualifications in environmental sciences or in the assessment of environmental matters".²⁰

76. With respect to the Applicant, Ms Edwards is an experienced town planner and no doubt often assesses the environmental values of land in making planning decisions.

77. I am not strictly bound by the rules of evidence and do not consider Ms Edwards' opinions to be irrelevant. Similarly, Mr Allering is an experienced town planner and I do not consider that his opinions regarding environmental considerations are irrelevant.

78. Without limiting the full extent of the Applicant's contentions, I understand that the Applicant submits:

¹⁹ Respondent's Submissions, paragraph 9

²⁰ Applicant's Response paragraph 16.

- (a) The subject site is part of an area containing a Significant Geological Supply (SGS), and partly because of this, is surrounded by land used for sand extraction.
- (b) There is a large volume of sand on Lot 7, some of which could be extracted from the subject site with a comparatively small footprint.²¹
- (c) The Respondent placed too much emphasis on the environmental issues associated with the clearing of vegetation and did not properly assess the development application against the relevant planning framework.
- (d) General planning considerations (not including environmental issues) favour approval.
- (e) Although environmental matters can be relevant planning considerations, any environmental issues should be addressed by the separate environmental regulation regime. To this end, the Applicant has applied for these approvals, and has put forward, as part of its Application management plans to mitigate any environmental impacts.
- (f) It is only a relatively small area intended to be cleared, and this area consists of mostly poor quality vegetation.
- (g) There is a shortage of sand resources in the South-West region. The sand is needed for the construction of the BORR and general construction.
- (h) Having locally available sand will save transport and truck movements further away.

Shire Submissions

- 79. The Shire has submitted that the original environmental report submitted with the Applicant's application for development approval being the Lundstrom Flora Report did not encompass the whole of the subject site.²²
- 80. I agree with the Respondent that the environmental report provided with the original development application did not cover the whole area of the proposal. I also agree that

²¹ Applicant's Submissions paragraph 8.

²², Witness Statement of Elizabeth Edwards, paragraph 19 and Attachment ERE 2.

the Respondent is not obliged to carry out its own environmental assessment if the Applicant does not supply complete information about the subject site.

81. The absence, however, of an independent environmental assessment by the Shire is of no practical consequence for my decision in this review because the Applicant has provided further information in its submissions.

Applicant's Submissions

82. I accept Mr Allerding's statement of 18 July 2022 at paragraph 17 along the lines that that the planning decision maker often must assess "competing interests between economic, social and environmental outcomes." Mr Allerding acknowledged at paragraph 19 that specific environmental considerations are addressed in Mr Lundstrom's Statement for the Applicant, then submitted that "I have considered the other components of the State Planning Framework that address economic and social matters for contextual purposes."
83. Mr Allerding then at paragraph 20 made a comprehensive submission regarding broad high level State Planning Policies and Regional Strategies outlined in Table 1 (paragraph 19) with more details within the various Sub-Regional and Operational Policies summarised in Table 2 as they apply to the subject site. Mr Allerding went on to outline that the site is subject to the provisions of the Greater Bunbury Region Scheme (**GBRS**) (paragraphs 22 – 25), and the Kemerton Strategic Industrial Area Structure Plan (paragraphs 26 – 28).
84. Mr Allerding noted at paragraph 25 that a number of extractive Industries "*already operate*" within the Kemerton Industrial zone buffer area and further at paragraph 28 that the proposed use of the land for extractive industries is consistent with both the GBRS and the Kemerton Strategic Industrial Area. At paragraph 55 Mr Allerding presented further submissions in Table 3 under clause 67 of the Deemed Provisions to be read in conjunction with the response to the Planning Framework.
85. Without limiting the submissions raised in Mr Allerding's Table 3, paragraph (a) stated that "the proposed extractive industry is consistent with the Shire's Scheme objectives to promote economic development within the Shire and increase local employment opportunities." Paragraph (v) of Table 3 stated that "The proposal to continue extraction of sand provides a community benefit that assists in the development of the BORR and

the associated benefit that it brings.” At paragraph 56, Mr Allerding submitted that the use of the site for an ‘Extractive Industry’ “is suitable”.

86. In my view, Mr Allerding’s planning submission of 18 July 2022 demonstrated through a detailed planning assessment that the sand extraction proposal may be suitable on the planning merits if considered alone.
87. Mr Allerding at paragraph 56, however, qualified his planning merits assessment by referring to Mr Lundstrom’s Witness Statement who considered that the flora and fauna, threatened species and federally protected species are “capable of being managed” and said that “These will be independently considered by DWER and DAWE to determine their environmental suitability prior to development being able to take place.”
88. Mr Allerding’s Supplementary Witness Statement of 1 August 2025 at paragraph 33 acknowledged that: “the application involves limited clearing of 1.17ha, and will be subject to approval from DWER and DCCEEW in relation to removal of native vegetation.”

Applicant’s Environmental Submissions

89. In accordance with section 246(6) of the PD Act, I have had regard to the parties’ planning and environment submissions and their responsive submissions.
90. I have had regard to the environmental issues raised in the parties’ submissions which I consider are relevant to my determination of this matter under section 247(1) of the PD Act in the public interest.
91. Paragraph 28 of the Witness Statement by Michael Lundstrom dated 18 July 2022 on behalf of the Applicant confirmed that the application for the clearing of native vegetation over the subject land was made in July 2022:
 - “28. On 7 July 2022 an application was made to the DWER under the EP Act for a Clearing Permit in respect of the clearing of native vegetation within the Review Site, for the purposes of the Stage 4 Extension ...”
92. Mr Lundstrom’s witness statement dated 18 July 2022 said the following:
 - “30. The outcomes of the EPBC Referral and the 2022 Clearing Permit Application will determine – and are the appropriate processes to determine – what, if

any, further specific measures may be required for the approval of the clearing of the native vegetation.”

93. Mr Lundstrom effectively submits that the outcomes of the 2022 EPBC Act Referral and the 2022 Clearing Permit Application should determine the further specific measures that may affect the approval of clearing native vegetation on the land. In other words, the decisions by the Department of Water and Environmental Regulation (**DWER**) and DAWE will determine what environmentally suitable measures are required before clearing and development on the subject land may lawfully take place.
94. Mr Allering’s planning submission of 18 July 2022 at paragraph 16 reflects Mr Lundstrom’s Witness Statement in relation to the removal of native vegetation and environmental matters where Mr Allering said that “These will be independently considered by DWER and DAWE to determine their environmental suitability prior to development being able to take place.”
95. I am guided by Mr Lundstrom’s environmental expertise who is well placed regarding the issue of the clearing of native vegetation on the land. I consider that Mr Lundstrom’s submission on behalf of the Applicant is persuasive as to the appropriateness of having the environmental matters and their outcomes decided before any clearing of native vegetation on the land.
96. In my view it would logically follow that the environmental decision by DWER regarding the clearing of native vegetation should be made first. I consider that the public interest favours that the proposed extractive industry and the associated clearing of native vegetation clearing not be approved before the outcomes of the environmental applications and processes are determined and publicly known.

Wilman Wadandi Highway - Bunbury Outer Ring Road (BORR)

97. The supply of sand for construction is a major issue for this region but the importance of sand for the BORR elevated the issues raised by the Applicant in April 2022 to one of State or regional importance. The Applicant’s Submission of 18 July 2022 referred to the Witness Statement of Lindsay Stephens which concluded that:

“the refusal of this proposal will contribute to leaving the BORR with a significant shortfall of sand resources.”

98. The Applicant's Submission of 18 July 2022 observed that the Minister's consideration of the Application is not limited to planning considerations and highlighted the importance of the 'Extractive Industry' development sought by the Applicant to supply sand to the State Government's BORR project:

"80 [S]ection 247(1) of the PD act provides that in determining an application, the Minister is not limited to planning considerations, but may also have regard to any other matter affecting the public interest.

81 The Stage 4 Extension, which was designed by the Southern Gateway Alliance, is proposed to directly supply the State Government's construction of the BORR, along with an adjoining sand resource located on Lot 21 for MRWA, which is the subject of separate, existing approvals.

82 The BORR is a 27km section of highway connecting Forrest Highway to Bussell Highway consisting of three stages. A plan and fact sheet in relation to the BORR is included as Annexure SGA3 to the Statement of Stephen Allering. The BORR is a State Government Proposal that has the following specific benefits."

99. The Applicant's Submission of 18 July 2022 goes on at paragraph 82 to list the benefits arising from the State's proposed BORR as including "improved high speed access to the port", will cater for "population growth for greater Bunbury from 80,000 to more than 200,000", and will remove the "majority of regional improvements within Greater Bunbury and allowing better access to and across Forrest Highway".

100. The Applicant's Submission dated 18 July 2022 emphasised at paragraph 85 that the Shire's refusal of the sand extraction development application would contribute to a significant shortfall of sand for the BORR:

"85 The Statement of Lindsay Stephens provides a detailed analysis of current and proposed sand resources, concluding that the refusal of this proposal will contribute to leaving the BORR with a significant shortfall of sand resources, and would also leave no other currently available sand resources within the Shire of Harvey capable of supplying the future development needs of the Shire for planned growth in the Greater Bunbury Region."

101. Paragraph 55 of the Witness Statement by Stephen Allering dated 18 July 2022 on behalf the Applicant reinforced the argument that the sand extraction development application will have significant economic benefits for the region by supplying sand to the BORR:

“(a) The proposed extractive industry ... will also have significant economic benefit through its primary function to supply sand to the BORR, which itself results in significant economic benefits and efficiencies for future development in the region.”

102. The Witness Statement by Mr Allering dated 18 July 2022 emphasised the scale and magnitude of the BORR project by attaching a copy of the BORR’s plans and details at SGA4. In summary, the Applicant’s Submission cited above predicted that the sand extracted from the subject site:

- “will have significant economic benefits for the region by supplying sand to the BORR”: see paragraph 55 of the Witness Statement by Stephen Allering dated 18 July 2022; and
- “that the refusal of this proposal will contribute to leaving the BORR with a significant shortfall of sand resources”: see Applicant’s Submission dated 18 July 2022 at paragraph 85.

103. On 23 August 2023 the Applicant’s email made a further contention which predicted that if this appeal is not resolved soon, then the Main Roads WA (MRWA) sand will be “sterilised” and this will have implications for the BORR and other projects:

“At the time of lodging the application for development approval for the additional extraction area on Lot 7, and at the time of the call-in by Minister Saffioti following the Shire’s refusal of that application, there was plenty of time before the extraction of sand from the adjoining area of the MRWA extraction area was expected to be required. However, we are instructed that now, if the appeal is not resolved soon, then a large volume of sand will need to be left behind and will be sterilised within the MRWA extraction area. This will presumably have implications for the Bunbury Outer Ring Road and other projects for which that sand is being utilised.”

104. The Applicant’s submissions made on 18 July 2022 (para 83) stated that it was estimated that “up to 9 million tonnes of sand is required to complete Stages 1 and 2 of the BORR.” On the other hand the Applicant’s submission of 18 July 2022 confirmed at paragraph 48 that the “total resource from this approval” will be “285,000 cubic metres.”

105. As I understand the Applicant’s submissions made on 18 July 2022 at paragraph 85 which referred to the Statement of Lindsay Stephens, that they are based on the premise that “refusal of this proposal will contribute to leaving the BORR with a significant shortfall of sand resources”. If correct this would have serious adverse implications for the implementation of the BORR project. If approved, it is difficult to see how the

extraction of a limited amount of 285,000 cubic metres of sand from Lot 7 in this matter could materially meet the BORR's important regional demand for sand.

106. I am mindful of the Applicant's lack of evidence in support of its claims that a lack of sand from Lot 7 would have adverse consequences for the BORR. It is difficult for me to reconcile the absence of the Applicant's evidence in comparison to the fact that the construction of the BORR was moving forward smoothly during 2023 and during 2024.

107. As a matter of public record, the MRWA website confirmed that the anticipated completion date of the Wilman Wadandi Highway (BORR) was late 2024 and emphasised the magnitude of the project:

"The Wilman Wadandi Highway (Bunbury Outer Ring Road Project) is a 27-kilometre four-lane, high-standard road linking Forrest Highway to Bussell Highway. This is the biggest transport infrastructure project ever undertaken in the South West, delivering a safe and efficient road network for freight, tourists and locals alike."

108. This MRWA statement published on 8 May 2024 as available on the MRWA's website indicates that the project was approximately 75% complete in the middle of 2024.

109. This MRWA progress report in May 2024 appears to conflict with paragraph 55 of Mr Allering's earlier Witness Statement dated 18 July 2022 which said that the proposed extractive industry will have significant economic benefits for the region "through its primary function to supply sand to the BORR."

110. Notwithstanding the Applicant's adverse predictions, the BORR is a major public work designed and implemented by MRWA which was completed and opened to the public early this year on time. A joint media statement issued by the State Government and released on 15 February 2025 is headed 'Wilman Wadandi Highway Officially Opened.' The media statement of 15 February 2025 highlighted that the Highway was:

"The biggest road project ever delivered in the South West region has been officially opened at a ceremony today, delivering a major win for Bunbury locals and people travelling to and from the South West. Traffic will formally begin flowing on the 27km four-lane highway tomorrow, which connects Forrest Highway north of Bunbury to Bussell Highway south of Bunbury."

111. It appears from the fact that the BORR has already been completed early this year, that there were no contracts in place with MRWA to supply sand from the subject site on Lot

7 to the BORR. It is apparent that the construction of the BORR has been successfully carried out from sand that has been sourced from sites other than the subject site without disruption to the delivery of the BORR.

112. The actual completed construction of the BORR early this year does not support the Applicant's central contention that the Shire's refusal of the development application on 15 February 2022 would contribute to leaving "the BORR with a significant shortfall of sand resources."
113. The time that has elapsed since early 2022 when this matter was called in reveals that the lack of sand from the subject site on Lot 7 has not disrupted the timely progress of the Wilman Wadandi Highway. There is therefore a tension between the Applicant's claim regarding an alleged shortage of sand for the BORR and the fact that this regionally significant infrastructure project was constructed on time.
114. During the course of submissions, the Applicant's claims have not materialised regarding the claim that a shortage of sand would adversely impact the construction of the BORR. In my view the Applicant and its advisers have not maintained their position that the proposed extraction of sand from Lot 7 was necessary to supply sand to the regionally important BORR. As a result I place little or no weight on the Applicant's submissions in this regard. For this reason I am unable to conclude that the public interest favours approval of the extractive industry on the subject site.

Whether Conditional Approval may be Appropriate

115. The Applicant's submission of 20 March 2025 advised that the Applicant had withdrawn the applications for the clearing of native vegetation, but those approvals would still be required:

"Over that period of time, and due to the delay in the determination of the Review, BJC has been requested to withdraw, and has withdrawn, applications that it had also made for the environmental approvals required for the clearing of native vegetation associated with the 1.17 hectare expansion of the extractive industry operation the subject of the Development Application. Those approvals will still be required, and will be re-activated in the event of an approval of the Development Application by the Review, as provided for in the Applicant's Without-Prejudice Draft Conditions lodged on 1 August 2024."

116. The Applicant's submission is essentially that I may grant development approval conditioned upon the obtaining of a subsequent clearing permit, with the idea that the environmental aspects of the development will be dealt with by the process of obtaining a clearing permit. The proposed condition is as follows:

"13. Any proposed clearing of native vegetation is prohibited unless done under a Clearing Permit issued in accordance with the EP Act 1986, or the clearing is exempt from the need for a clearing permit."

117. A relevant question for my consideration is whether the planning approval may be granted ahead of the clearing permits. Both Mr Allerdin and Mr Lundstrom agree that the clearing permits must be granted before the clearing can take place on the subject site. I accept their submissions on the basis that they reflect the environmental law of this State as it currently stands.

118. The Applicant's proposed condition seeks to prohibit any clearing of native vegetation on the subject land until a clearing permit is issued under the EP Act. In other words, the Applicant is asking that my approval, if granted, should wait and be of no effect until the required environmental approvals are in place. This condition, if imposed, would effectively cause my approval to be stalled and held in abeyance for an unknown time until the outcome of the environmental processes are determined.

119. After careful consideration of the circumstances and facts in this matter, the nature of the Applicant's proposed condition of approval appears to be lacking in finality.

120. The Applicant has now had the benefit since 2022 for over three years to make the appropriate expert submissions to the relevant environmental authorities in support of its plans to clear the native vegetation on the subject site. I note that the clearing permits have not been issued within a reasonable time after the permits were applied for in July 2022.

121. In my view, the absence of the required environmental approvals for over three years weighs against the Applicant. Even though the Applicant has recently withdrawn its application, it is still reasonable for me to infer that there is no certainty that the Applicant could obtain the necessary clearing permits were I to approve the development application. It appears that the Applicant is seeking conditional approval with an unknown outcome in an unknown time frame. In my view it would be contrary to the public interest to grant approval subject to the Applicant's proposed condition.

Clearing Permit CPS 5480/1 and CP 5480/2

122. The 'Extractive Industry Licence Application & Environmental Management Plan' prepared by Lundstrom Environmental Consultants Pty Ltd that the Applicant submitted to the Shire on 29 September 2021 at page 11 contains the following 'Table 4' regarding permits to clear native vegetation on Lot 7.²³ The portion of Mr Lundstrom's Table 4 dealing with 'Clearing Permit CPS 54801/1' is repeated below:

Table 4. Permits to Clear Permit Native Vegetation

Approval	Date of Issue	Description	Duration of Permit	Status
CPS 5480/1	21/03/2013	Lot 7, 2.86ha	12 April 2013 – 12 April 2023	Current

123. The publicly accessible DWER web site records that 'Clearing Permit CPS 54801/2' was granted on 27 March 2023 under s 51E of the EP Act and contains the following details in relation to Lot 7:

- "Duration of Permit: From 12 April 2013 to 12 April 2035.
- Permit Holder: B & J Catalano Pty Ltd.
- Land on Which Clearing is to be Done: Lot 7 on Diagram 40591, Wellesley.
- Authorised Activity: The Permit Holder must not clear more than 2.86 hectares of *native vegetation* within the area cross hatched yellow in Figure 1a of Schedule 1." (Emphasis added.)

²³ See Respondent's bundle of documents.



Portion of the figure in Schedule 1 of Clearing Permit CPS 54801/2 showing the area cross hatched yellow which may be cleared up to a maximum of 2.86 hectares as specified above.

124. The text of 'Clearing Permit CPS 54801/2' imposed the following conditions 1 and 4 relevant to this matter:

"1. Period during which clearing is authorised

The permit holder must not clear any *native vegetation* after 12 April 2018."

4. Revegetation and Rehabilitation

The permit holder shall establish and maintain *native vegetation* within the area shaded green on Figure 1b of Schedule 1 in accordance with the following conditions:

- a) Trees shall be established and maintained to an average planting density of 1100 live stems per hectare;
- b) Ensuring only *local provenance* seeds and propagating material are used to *revegetate* and *rehabilitate* the area; and
- c) *Planting* is to commence within twelve months of clearing any area authorised under this Permit." (Emphasis added.)



Portion of the figure in Schedule 1 of Clearing Permit CPS 54801/2 showing the area shaded green under condition No 4 above which requires that the permit holder shall establish and main native vegetation within the green shaded area until the duration of the permit being 12 April 2035.

125. The area shaded green above under 'Clearing Permit CPS 54801/2' corresponds to the area coloured dark tan and labelled as the "Existing Environmental Offsets/Conservation Covenants (retained)" on Figure 1 of the EPA's Notice which amended KSIA strategic proposal on 5 September 2025.
126. Paragraphs 44 and 45 of the independent expert Witness Statement by Mr S Allarding dated 18 July 2022 on behalf the Applicant confirms that the development application for sand extraction cannot proceed without first obtaining the clearing approvals/permits from the relevant public environmental authorities:

"44. It is the case that all clearing proposals will require approval from the relevant Environmental Approval Authorities in this as being the Department of Water and Environmental Regulation (DWER) and the Department of Environment (DAWE). Development cannot proceed without the requisite approvals from those authorities and Applications have been submitted to address those specific criteria with respect to the clearing of vegetation.

45. In my experience, it is those environmental authorities who are the pre-eminent authorities dealing with the specific consideration of environmental matters."

127. The Witness Statement by Mr Allerding reflects the primacy of the environmental provisions in the EP Act over planning matters. The relevant section five concerning the primacy of the EP Act in this State follows:

"5. Inconsistent Laws

Whenever a provision of this Act or an approval policy is inconsistent with a provision contained in, or ratified or approved by, any other written law, the provision of this Act or the approved policy, as the case requires, prevails."

128. I accept Mr Allerding's independent expert submission along the lines that environmental authorities are the pre-eminent authorities in respect of environmental matters including the granting of clearing permits under the EP Act. Mr Allerding's submission reflects the primacy of the EP Act in accordance with section 5 of that Act.

129. The effect of 'Clearing Permit CPS 54801/2' and its conditions means that the Applicant cannot clear any native vegetation outside the 2.86 ha which is shown as hatched in yellow above during its duration until 12 April 2035. The Applicant's proposed sand extraction with an area of 1.17 ha falls outside the yellow hatched 2.86 ha area where clearing may take place. In other words, 'Clearing Permit CPS 54801/2' does not permit any native vegetation clearing proposed by the development application before 12 April 2035.

130. While it may be possible for the Applicant to apply for a new or amended clearing permit which varies 'Clearing Permit CPS 54801/2', the Applicant's submission confirms that it has withdrawn its clearing permit application over Lot 7. The Applicant appears to have abandoned its clearing permit application. On this basis the Applicant and the development application must rely on 'Clearing Permit CPS 54801/2' as the current clearing permit applying to Lot 7.

131. I have accepted Mr Allerding's independent expert submission regarding the pre-eminent public authorities in granting clearing permits under the EP Act. I must have regard to and am bound by the primacy of the EP Act in arriving at this decision. In my view it would be futile and contrary to the public interest to disregard 'Clearing Permit CPS 54801/2' which prevents the clearing of native vegetation on the proposed sand extraction area of 1.17 ha until 12 April 2035.

132. In my view, the public interest requires that the outcome of the environmental process should be fully determined by the environmental authorities before the subject sand extraction may be approved. In this regard I agree with Mr Allerding's independent expert submission of 18 July 2022 made on behalf the Applicant.

Vehicle Access to Sand Extraction on Lot 7

133. The area shaded green under 'Clearing Permit CPS 54801/2' over the frontage of Lot 7 corresponds to the area coloured dark tan and labelled as the "Existing Environmental Offsets/Conservation Covenants (retained)" on Figure 1 of the EPA's Notice which amended KSIA strategic proposal on 5 September 2025. This existing environmental offset must be maintained as indicated on the EPA's Notice.
134. Condition 4 of 'Clearing Permit CPS 54801/2' provides that the Applicant must establish and maintain native vegetation about 50 m deep along the full frontage of Lot 7 bordering Runnymede Rd until April 2035. Hence, the green shaded area under 'Clearing Permit CPS 54801/2' must preserve native vegetation along the full frontage of Lot 7. This effectively prevents vehicles crossing from Runnymede Rd to the 1.17 ha sand extraction area as shown on Figure 3 in the Application prepared by Lundstrom Consulting dated September 2021.
135. It is apparent from the Applicant's documents, the Shire's refusal of 15 February 2022 and the independent expert submissions from Mr Allerding that the land the subject of the proposed 'Extractive Industry' application is confined to Lot 7 Runnymede Rd, Wellesley. It is also apparent that the Applicant's plans do not show any proposed vehicular access over Lot 7 to the 1.17 ha sand extraction area deeper within Lot 7.
136. If vehicular access is contemplated across Lot 4 to Lot 7 this would constitute a use and development on the southern adjoining Lot 4. Since there is no development application over Lot 4 in this call in, I am unable to approve access over Lot 4 in order to reach Lot 7. Although Lots 4 and 7 are owned by the Applicant, this does not overcome the absence of a development application over Lot 4. If vehicular access is contemplated across Lot 4 to Lot 7 the development application should have comprised one integrated application over both Lots.
137. Furthermore, both Lot 4 and Lot 7 are on separate Certificates of Title so that each Lot could be sold separately. In my view it would not be in the public interest to grant approval in the knowledge that Lot 4 is not an integrated part of the development application and could be sold thereby losing access. In my view, on the basis that Lot 4 was not included as part of an integrated development application, it would not be proper nor in the public interest to grant approval to this call in.

DECISION

138. Pursuant to section 247(1) of the PD Act, I am not limited in my Ministerial determination to planning considerations and may make my determination having regard to any other matter affecting the public interest. From a planning viewpoint, I accept that there are planning merit arguments which may support the sand extraction application as indicated if considered in isolation. In relation to the public interest, the Applicant's submissions contended that the sand extracted from the subject site:

- "will have significant economic benefits for the region through its primary function to supply sand to the BORR": see paragraph 55 of the Witness Statement by Stephen Allarding dated 18 July 2022; and
- "that the refusal of this proposal will contribute to leaving the BORR with a significant shortfall of sand resources": see Applicant's submission dated 18 July 2022 at paragraph 85.

139. In fact, the evidence shows that the BORR was constructed on time earlier this year without the disruption of any sand shortage. The successful completion of the BORR in February of this year stands counter to the Applicant's central claim that the "primary function" of the subject site would be to "supply sand to the BORR." I am therefore unable to find that approval of the proposed extractive industry would be necessary for the regionally important BORR.

140. I agree with paragraph 43 of the Witness Statement by Stephen Allarding dated 18 July 2022 who said that planning considerations must be balanced with environmental considerations. Mr Lundstrom's submission on behalf of the Applicant provided cogent environmental evidence regarding the issue of clearing of native vegetation on the subject site.

141. In my view, paragraph 30 of Mr Lundstrom's submission of 18 July 2022 is persuasive and I agree that the environmental planning factors in the context of the public interest must favour upholding the primacy of the EP Act. Any environmental clearing permits should be determined first before I make a planning decision to grant approval on the subject development application on Lot 7.

142. During the course of submissions, the Applicant has had an ample opportunity for almost three years to obtain the necessary clearing permits but has not done so. 'Clearing Permit CPS 54801/2' applies to Lot 7 until 12 April 2035 and provides that the permit holder must not clear any further native vegetation until 12 April 2035. It would not be

in the public interest to make a decision that would result in more clearing contrary to the requirements of 'Clearing Permit CPS 54801/2'. The Applicant is able to extract sand from Lot 7 within the parameters of any current approvals and in accordance with 'Clearing Permit CPS 54801/2'.

143. In my view, the public interest requires that the proposed extractive industry and the associated clearing of native vegetation should not be approved conditionally before the outcomes of the environmental applications and processes are determined and publicly known. There is clearly a public interest in the finality and certainty of my decision without it being subject to a further condition of approval with an unknown outcome in an unknown time frame beyond the current clearing permit over Lot 7 which is currently in place until 12 April 2035.
144. On 20 October 2025 I invited the parties to provide submissions regarding the EPA's Notice of 5 September 2025 which amended the KSIA Strategic proposal.
145. Mr Wittkuhn on behalf of the Shire observed that the EPA's Notice would result in a significant reduction in the clearing of native vegetation from 1450 ha to 659 ha.²⁴ I am inclined to the view that the Application runs against the prevailing presumption against the clearing of native vegetation in this immediate region and therefore would be contrary to the public interest.
146. For these reasons, and having considered the public interest, I hereby refuse to approve the Application over Lot 7 on Diagram 40591, Wellesley. This decision takes effect immediately, and is final, in accordance with section 247(5) of the PD Act.
147. I now cause my reasons in this decision to be given to the parties, laid before each House of Parliament and to be given to anyone as requested under section 246(4) of the PD Act.



 HON JOHN CAREY MLA
 MINISTER FOR PLANNING; LANDS

Date
 18/12/23

²⁴ Shire submission at paragraph 20 received on 18 November 2025.