

**In the matter of:** an application for review which the Minister for Planning has called-in and decided to determine

**Pursuant to:** the *Planning and Development Act 2005*, sections 246 and 247

**Formerly:** State Administrative Tribunal proceeding DR 63 of 2022

**Applicant:** B & J Catalano Pty Ltd

**Respondent:** Shire of Harvey

**Relating to:** a proposed extractive industry Lot 7 Runnymede Road, Wellesley

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**WITNESS STATEMENT OF MICHAEL JUST  
FORMING PART OF RESPONSIVE MATERIALS SUBMITTED ON  
BEHALF OF THE RESPONDENT**

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1. Further to my witness statement dated 18 July 2022, I have been engaged by the Shire of Harvey to undertake a reconnaissance vegetation survey of the appeal site and to comment on the reconnaissance vegetation survey conducted by Lundstrom environmental consultants, July 2022, which is annexure ML 2 to the witness statement of Mike Lundstrom, and herein referred to as the Lundstrom Reconnaissance Vegetation Survey.
2. The Lundstrom Reconnaissance Vegetation Survey redrew the boundaries of vegetation condition within the appeal site and identified the vegetation condition within the appeal site to be of much lower quality than that listed in 2018.
3. I attended site on the 08/08/2022 to conduct an independent assessment of their findings. Accompanied by Elizabeth Edwards, Town Planner of the Shire of Harvey, I was escorted to the appeal site by Peter Bennet who identified the boundary markers of the appeal site, before leaving us to conduct my inspection.
4. **Attachment MPJ 4** is an overlay onto an ariel photo of my assessment of "good" quality vegetation within the appeal site versus the balance which was either "degraded" or "completely degraded" (which I have not distinguished between these two classifications).
5. The area which I have assessed as "good" was somewhat larger than that detailed in the Lundstrom Reconnaissance Vegetation Survey but not significantly so.

6. It is alarming that such a rapid deterioration of vegetation has occurred, and I concur with the Lundstrom Reconnaissance Vegetation Survey that these impacts are due to edge effects associated with the clearing to date.
7. The Lundstrom Reconnaissance Vegetation Survey concludes that only one specimen of *Banksia attenuata* occurs within the survey area. This is not true. **Attachment MPJ 4** shows GPS coordinates for 20 mature individual *Banksia attenuata* specimen's characteristic of Banksia Woodland Threatened Ecological Community (TEC). I observed ample evidence within the appeal site in the form of fallen and eaten cones of *Banksia attenuata* to suggest that the appeal is part of an active feeding site of endangered Carnaby's Black Cockatoos.
8. I heard bird calls from within the appeal site or Lot 7 immediately adjacent to the appeal site, which I recognised as Carnaby's Black Cockatoos from my years of experience in Banksia woodlands. Additionally, I observed Kangaroo tracks and scratching upon trees which were presumably made by fauna.
9. Because of the continued presence of numerous *Banksia* trees within the appeal site, the appeal site remains a continuation of the larger patch of TEC contained within Lot 7. A precondition for the recognition of a TEC *Banksia* Woodland is the presence of an understory characteristic of *Banksia* Woodlands. From my inspection, the presence of an understory was approximately co-extensive with the "good" quality vegetation shaded in **MPJ4 plus** the *Banksias* located within the appeal site. As such, I consider that the southeast corner of the appeal site is a part of the TEC in lot 7.
10. On attachment **MPJ4**, I have superimposed a dotted green line that represents my assessment of the outer edge of the TEC. In so far as the TEC is located within the appeal site, it is a part of the larger patch of *Banksia* woodland TEC present within Lot 7. There is no separation of 30m or more that causes the portion of the TEC, which is on the appeal site, to be assessed discreetly from the rest of the Banksia woodland on Lot 7; see my earlier witness statement, quote within paragraph 13.
11. It is my understanding that the extractive activities intended by the applicant would involve the extraction of material from the whole appeal site. On that basis, the proposal as advanced by the applicant would not be environmentally acceptable, in my opinion, as it would invade the TEC which extends from the balance of Lot 7 into the appeal site.
12. If extraction was confined to the part of the appeal site outside of the TEC, the issue would be edge effects on the TEC. Given the alarming deterioration of vegetation quality between 2018 and 2022, it is certain in my opinion that the rate and extent of deterioration of TEC vegetation that would occur once excavation-related activities commence, would be even more rapid and dramatic than the rate and extent of deterioration that occurred to the appeal site between 2018 and 2022.
13. The Lundstrom Reconnaissance Vegetation Survey concludes that the survey area does not possess habitat that cannot be offset by replanting activities. Further, the witness statement provided by Mike Lundstrom (paragraph 21) suggests that offset and replanting measures are to be taken by the applicant to address the environmental damages caused by clearing of the appeal site. Here I would suggest that correct terminology be utilised, as "replanting" does not provide adequate scope to address the potential impacts. Ecological restoration using the Society for Ecological Restorations National Standards

for the Practice of Ecological Restoration will provide a framework to achieve the required environmental outcomes. I recommend a net-gain principle where the applicant engages suitably qualified specialists to ensure they achieve 5-star restoration across the site, assessed against a nearby pristine reference ecosystem.

14. The significant decline in vegetation quality noted by myself and in The Lundstrom Reconnaissance Vegetation Survey highlights the urgent requirement to implement a buffer zone around remaining vegetation in accordance with the relevant Conservation Advice made under EPBC Act section 266B (p.34). Should clearing proceed, a buffer zone of between 30 and 50m should be implemented from the edge of remaining good vegetation, and ideally from the edge of the area marked as TEC in **MPJ4**, to protect the adjacent TEC in Lot 7 from the degradation already noted in the appeal site.



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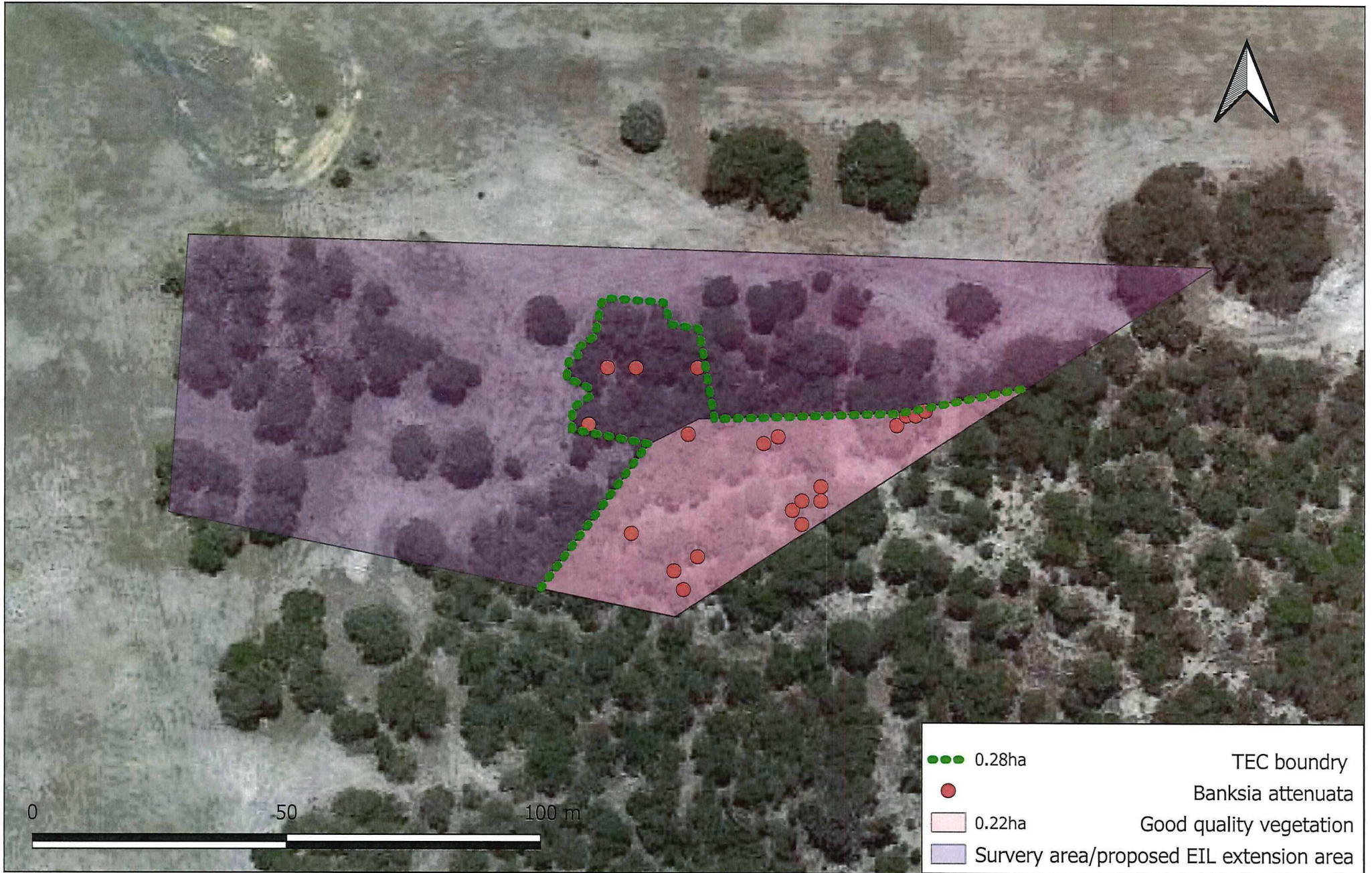
Michael Just

10 August 2022

**Cited information:**

Department of Environment and Conservation. "Carnaby's Cockatoo (*Calyptorhynchus latirostris*) recovery plan." (2012): 12-21.

Lundstrom Environmental Consultants Pty Ltd (2022) Lot 7 Runnymede Rd, Wellesley Vegetation Reconnaissance Survey Report. Prepared by Lundstrom Environmental Consultants Pty Ltd for B&J Catalano Pty Ltd.



Michael Just  
 Padbury WA 6025  
 Mob: 0400906298

Scale: 1:336  
 Original size: A4  
 Air photo source: Google Satilite  
 Datum: WGS84

Location: Lot 7 Runnymede Rd, Wellesley

Attachment MPJ4

**In the matter of:** an application for review which the Minister for Planning has called-in and decided to determine

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**WITNESS STATEMENT OF DOCTOR MICHAEL BAMFORD  
FORMING PART OF RESPONSIVE MATERIALS SUBMITTED ON  
BEHALF OF THE RESPONDENT**

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**INTRODUCTION**

1. My full name is Michael John Bamford.
2. My address is 23 Plover Way, Kingsley, Western Australia.
3. I understand that my witness statement will be considered as expert evidence in this appeal.

**The Greg Harewood 2021 Fauna report**

4. I have been engaged by the Shire of Harvey to undertake a desktop review of the fauna assessment survey commissioned by the applicant on a 9.9 portion which includes the 1.17ha area the subject of this application. The survey report is '*Fauna Assessment Lot 7 Runnymede Road, Wellesley*' by Greg Harewood, dated November 2021 V1, (**Harewood 2021**). It was issued in November 2021 based on field inspections carried out on 6 and 7 October 2021.
5. I have been provided by McLeods, lawyers for the Shire, with a copy of the Harewood 2021 report which I am informed was Attachment ML-2 to the witness statement of Michael Lundstrom filed on behalf of the applicant.

### Qualifications and experience

6. My academic qualifications are B.Sc Hons (Biology); PhD (Ecology – impact of fire on small vertebrates), Murdoch University (1986).
7. Since 1989 I have been a principal of Bamford Consulting Ecologists (**BCE**). BCE provides specialist services for environmental impact assessment and monitoring, in particular long-term ecological monitoring of fauna populations in relation to impacts due to disturbance, mining and rehabilitation.
8. I am the immediate past Chair of Bird Life Australia, WA Group. I was the Chair from 2002-2005, 2015-2018 and in 2021, and Vice-Chair from 2018 to 2021. I was on the national board of BirdLife Australia 2005-2010. I am currently Chair of the Edith Cowan University (Life Sciences) Course Consultative Committee.
9. Honours and awards include:
  - Fellowship of Bird Life Australia (Royal Australasian Ornithologists Union). Awarded May 2020.
  - Alex Harris Memorial Prize for science journalism in 1999 for The Wild Side, a science column in The West Australian newspaper that ran from 1997 to 2003.
  - Awarded (with Mandy) Biodiversity Ambassador Award by the Curtin Institute for Biodiversity and Climate in recognition of services to conservation. December 2012.
  - Presented (with Mandy Bamford) the Serventy Memorial Lecture 2012, on “Wild about the Suburbs” (urban wildlife).
  - Distinguished Service Award from Birdlife Australia. March 2013.
  - School of Biological Sciences Head of School Prize for ‘Biology as Art 2017’, School of Biological Sciences, University of WA.
  - Adjunct Senior Lecturer at the University of WA.
  - 20 year volunteer service award from the Department of Biodiversity, Conservation and Attractions (2019).
10. A copy of my short form Curriculum Vitae is **Attachment MJB 1**.

### Studies on species of conservation significance – Black Cockatoos

11. Studies on species of conservation significance are a major part of BCE’s specialist services for environmental impact assessment and monitoring. The three black-cockatoo species of the South-West are among the significant species we study, and we have carried out work on all three for as long as they have been listed as conservation significance.

12. The first species listed was Carnaby's Black-Cockatoo (2000) and therefore we have conducted studies on this species for over 20 years.
13. The key components to the study of Black-Cockatoos for impact assessment are the assessment of foraging value of native (and even non-native) vegetation, the assessment of breeding habitat and the identification of roosting sites. The federal Department of Climate Change, Energy, the Environment and Water (CCEEW) provides some guidance for assessing these factors, but BCE has developed its own assessment methods that are now widely accepted by government and industry.
14. For foraging habitat, the BCE method assigns vegetation a score based upon the characteristics of the vegetation and the context of the site (such as the proportional representation of similar vegetation in a project area). For breeding habitat, BCE assigns a rank to potential nesting trees based upon the size of the tree (Diameter at Breast Height as recommended by CCEEW) and the presence/absence of hollows of suitable size and orientation. High ranking trees have suitable hollows with evidence of use by Black-Cockatoos.
15. Roosting sites can be surveyed, but abundant information is available from the Great Cocky Count, run by BirdLife Australia and the WA Department of Biodiversity, Conservation and Attractions.
16. Over more than a decade, I have assessed many thousands of hectares of foraging habitat and have ranked many thousands of potential nest trees. Work on nest trees includes one monitoring study in which about 25 high-ranking trees are visited twice a year. Three of these trees have been used for breeding at least once over a period of three years; one by a pair of Carnaby's Black-Cockatoo and two by pairs of Forest Red-tailed Black-Cockatoos.

#### **Desktop review of Harewood 2021**

17. I now set out my opinions based on the requested desktop review of the Harewood 2021 report.
  - (1) Re section 3.1. Methods for literature review addressed only species of conservation significance. However, the scope of work (Section 2) states that a Basic fauna assessment was to be carried out. A Basic fauna assessment would normally list all of the species returned from the database searches that the researcher would expect to find in the ecosystem. Also apparent in section 5.1 which lists only species of conservation significance.
  - (2) Re section 3.2. It is noted that daytime reconnaissance surveys were done. No sunset or night time surveys were done. Sunset surveys (preferably in autumn) are useful for assessing roosting by black-cockatoos. Night-time surveys are useful for detecting the Western Ringtail Possum. These limitations are not fully addressed in section 4 (survey limitations). Some sampling methods that would be routinely used for a targeted survey, such as use of motion-sensitive cameras, were not used.
  - (3) Re section 3.2.3.3. No reference is given for source of information on known black-cockatoo roost sites in the region. The most detailed information is from the Birdlife Australia Great Cocky Count database.
  - (4) Re section 4. Agree that *'lack of observational data on some species should also not necessarily be taken as an indication that a species is absent from*

*the site or does not utilise it for some purpose at times*'. Also agree that *'it is also difficult to locate all hollows within trees as some are not observable from ground level*'.

- (5) Re section 5.2.1, the reference to 'two separate zones' is a reference to the 'survey aerial photograph at Figure 2, with those two zones being:

- The western section of Lot 7, including but not limited to the appeal site; and
- The second area, being an east-west strip north-east of the appeal site.

- (6) Re section 5.2.2, it is noted that 17 fauna species were observed, or secondary evidence of their presence was recorded during the field survey. Also noted is the statement that the lack of records of species of conservation significance other than Carnaby's and the Forest Red-tailed Black-Cockatoos *'does not eliminate the potential for some species to still occur, if only infrequently*'.

It is noted that evidence of presence in the survey area of the Forest Red-tailed Black-Cockatoo and Carnaby's Black-Cockatoo was detected during the day survey in the form of chewed Marri and Jarrah fruits. Section 5.2.3.2 and Table 4 indicate that foraging on banksia was also found. Several individuals of both species were also heard calling and flying overhead during the field survey.

- (7) Re section 5.2.3.1, within an c. 10 hectare survey area, a 'strike-rate' of two hollows highly suitable for black-cockatoos (with one recently used), out of 91 trees with a diameter at breast height (DBH) of greater than 50cm, is quite high. In two nearby studies, BCE (unpublished survey) has found:

Kemerton: 992 trees with DBH >500mm; none recently used but 298 trees considered highly suitable.

Tutunup: 2,767 trees with DBH >500mm; seven recently used and 429 trees considered highly suitable.

In the Harewood data, about 2% of trees with DBH >500m were considered highly suitable for nesting by black-cockatoos, and about 1% were recently used. In contrast, at Kemerton while 30% of trees with DBH >500m were considered highly suitable for nesting by black-cockatoos, none had been recently used. At Tutunup, 16% of trees with DBH >500m were considered highly suitable for nesting by black-cockatoos but only 0.25% had been recently used. The sample size in the Harewood data is small, but the nesting rate in trees deemed potentially suitable does seem to be unusually high.

One of the two trees with large hollows was in the appeal area: see Harewood's Figure 3. This was tree waypoint 017 that had been recently used. The other was just outside of the appeal area. There were also numerous trees meeting the basic criterion of DBH >500mm within the appeal area.

With regard to there being approximately 12,000ha of remnant vegetation within 12km of the survey area, the report does not state what the remnant vegetation is and therefore it cannot be assumed that this represents available

breeding habitat. Much of it is likely to be heathland, coastal shrubland or swamp, not suitable for black-cockatoos or many of the other species associated with the vegetation types under consideration.

- (8) Re section 5.2.3.2, it is noted that evidence of black-cockatoo foraging was observed during the field survey.

Understand Mr Harewood to be describing the 'first-mentioned zone' (which includes part of the appeal site) as 'quality foraging habitat'. He states:

'Quality foraging habitat within the survey area can mainly be defined as the areas containing Marri, Jarrah and banksia dominated vegetation which makes up most of the southern zone. This vegetation type has a total extent of about 7.9ha.'

Section 5.2.3.2 also refers to being approximately 12,000ha of remnant vegetation within 12km of the survey area, and considers that 'much of this is likely to represent black-cockatoo foraging habitat of some type'. While this may be correct, there is no clear measure of how much of this 12,000ha is of a comparable foraging type.

- (9) Re section 5.2.3.3 headed 'Night Roosting Habitat Assessment', as there was no roosting survey undertaken there was no opportunity to gather evidence of the site being used for roosting. Information on the previously documented roost sites in the region would have been useful. For example, a large roost site nearby would make foraging habitat on the site more critical than if there are only small roost sites several kilometres.

- (10) Re section 6, two species of black-cockatoos were confirmed present within the survey area:

- Forest Red-tailed Black-Cockatoo *Calyptorhynchus banksii naso*; and
- Carnaby's Black-Cockatoo *Zanda latirostris*.

With regard to the hollow which Mr Harewood thought might be used by a possum, it would also be suitable for a black-cockatoo, and just because it hasn't been used recently does not mean that it might not be used by a black-cockatoo in the future.


With regard to Table 5 and the discussion on species of conservation significance, Mr Harewood concludes that up to about 12 species are considered possibly or likely to be present, at least occasionally.

With regard to the statement on page 19 that '*likely impacts are anticipated to be low primarily due to likely low population density and the relatively small total area of vegetation/habitat present (ie, only a small number of individuals, if any, will be affected)*', the environmental risk with this approach is 'death by a thousand cuts' – any clearing proposal could be broken down to individual successive sections of clearing, each relatively small in its own right. But if that is stated about one proposed development area, then the same would be true about each of the rest as well.

In addition, loss of habitat is only one threatening process. Not considered are threatening processes related to ecosystem function such as edge effects,

changes to connectivity, changes in abundance of feral species, and disturbance.

- (11) My comments as set out above are sufficient to make clear my position on Greg Harewood's 'Key Findings' which appear in the 'Summary' at the beginning of his report.
- (12) The only other thing is that with regard to Mr Harewood's last dot point in his summary: *'if approval for the project is obtained it is recommended that a fauna relocation programme be implemented prior to and during clearing works to ensure direct impact on fauna most likely to be encountered are minimised'*. With regard to black-cockatoos, proposals for planting new food plants and putting up some nesting boxes only works up to a point, but it doesn't protect the ecosystem (and therefore may afford limited protection to other fauna), and there is very rarely any suitable mechanism for the maintenance of rehabilitation and nest boxes in the long term.



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Mike Bamford  
10<sup>th</sup> August 2022

# Attachment MJB 1



## Dr Mike Bamford Wildlife Biologist

### Career summary

In partnership with his wife, Mike has run his own business, Bamford Consulting Ecologists (BCE), since 1989. BCE provides specialist services for environmental impact assessment and monitoring, with studies undertaken on terrestrial and freshwater aquatic vertebrates and some invertebrates. Projects have been carried out around Perth, in Western Australia's Goldfields, Pilbara, Kimberley and the Western Deserts, and also in the Northern Territory, far north Queensland and Christmas Island. BCE specialises in long-term ecological monitoring of fauna populations, particularly in relation to impacts due to disturbance, mining and rehabilitation. The business provides an umbrella for a number of skilled sub-consultants who form a cooperative network that enables BCE to undertake large scale and multiple projects.

In addition to consulting, Mike is a regular guest lecturer at Curtin and Murdoch Universities on a range of topics including: fire ecology, techniques of animal sampling, landcare, conservation issues and the origins and evolution of Australia's fauna. He is also an established scientific illustrator, having contributed to major publications such as the Handbook of the Birds of Australia, New Zealand and Antarctica, and Ratites and Tinamous of the World (Oxford University Press). He has had six solo exhibitions of wildlife paintings and illustrations, including 'The Artful Gene Project, held in Letchworth UK (2014) and Perth (Australia); a joint exhibition with his Great Grandfather Alfred John Bamford, From 1997 to 2003 wrote a weekly science and wildlife column ("The Wild Side") in the West Australian Newspaper, and assisted by his wife Mandy, selection of these essays was published in 2015 (The Wild side Chronicles of Nature part 1). He has also published extensively in the scientific literature on the impact of fire on vertebrates, migratory shorebirds, reptile ecology and sampling methods, and regularly makes presentations at conferences.

### Mike's key skills are:

- Biological surveying (fauna observations, capture and identification) using rigorous scientific techniques and sampling procedures designed to address the questions that need to be answered. Experienced with a range of sampling techniques, including mist-netting and bird banding, radio-tracking, use of passive identification tags for mammals and the use of ultra-sonic detection for bats;
- Scientific analysis of abundance, habitat and morphometric data for the interpretation of the population ecology of vertebrates;
- Preparation of scientific but accessible reports;
- Public education about wildlife through writing and presentations, with regular features on ABC radio;
- Wetland appraisal and advice on rehabilitation;
- Scientific illustrations and wildlife art; and

### Qualifications

BSc Hons (Biology), Ph.D. (Ecology – impact of fire on small vertebrates), Murdoch University (1986).

Helicopter Underwater Evacuation Training (2007)

A Class bird-bander under the Australian Bird and Bat Banding Scheme, endorsed to use mist and cannon nets.

Worksafe Construction Card (White (Blue) Card) No. 351510.

Working with Children Permit.

### Professional affiliations and awards

Member (since 1979) and councillor (2004-2010) of BirdLife Australia Chair, WA Group (2002-2005; 2015-2018). Vice-Chair (2019-2020)

Member Environmental Consultants Association (WA)

Member Royal Society of Western Australia, Australian Bird Study Association, Australian Society of Herpetologists and WA Naturalists Club

Alex Harris Memorial Medal for Science Journalism (1999)

Biodiversity Ambassador Award from the Curtin Institute for Biodiversity and Climate (2011)

Awarded Fellow of BirdLife Australia (Royal Australasian Ornithologists Union) May 2020.

# Dr Mike Bamford

## Wildlife Biologist

- Experienced in working with representatives of government agencies, community groups and proponents of developments.

### Examples of projects undertaken

- Fauna surveys and impact assessments in relation to development proposals. Major projects have included: sand-mining in the Bunbury to Busselton area, proposal for a satellite launching facility on Christmas Island, Gorgon Gas Project on Barrow Island, fauna assessment for Fortescue Metals Group's Cloudbreak mine, fauna assessment on Kimberley Islands for Inpex Browse gas development, bandicoot translocations as part of commitments with respect to urban development, Yilgarn rail infrastructure development.
- Fauna monitoring (vertebrates and invertebrates) in relation to impacts and rehabilitation after mining. Monitoring projects are designed on a sound scientific basis and have investigated: Gouldian Finches at the Mt Todd Gold Mine in the Northern Territory, the Tree-stem Trapdoor Spider and Malleefowl for Portman Iron Ore, and vertebrate recolonisation of waste dump rehabilitation for Tiwest Joint Venture.
- Wetland studies, particularly waterbirds.
- Bird population studies using bands issued by the Department of the Environment.
- Sessional lecturing and demonstrating in landcare, animal sampling methods, Australian fauna, frog and reptile biology, Conservation biology and environmental management.
- Environmental education (interpretive materials, brochures) on a wide range of topics, from displays on African Wildlife at Perth Zoo to wetland food-webs.
- Biological art and illustrations, including artwork for information brochures.
- Voluntary activities. Mike has been a member of the Yellagonga Regional Park Community Advisory Committee and the state Wetlands Coordinating Committee, and is on the Birds Australia (WA Group) Committee and the Birds Australia Council. Mike coordinated shorebird (wader) studies, including banding, in the Perth region from 1981 to 1995. He also regularly presents talks to community groups.

### Employment record

Apart from 6 months as a technical assistant on seabird ecology at Murdoch University (1981), 3 years as a part-time project officer with the Royal Australasian Ornithologists Union, investigating waterbirds in Kakadu (1987-1990), and 6 months as a part-time education officer at Perth Zoo (1990), Mike has always been self-employed. He was offered work as a consultant as early as 1982 and this complemented his career choice of being a wildlife biologist, artist and writer.

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**Relating to:** a proposed extractive industry Lot 7 Runnymede Road, Wellesley

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**WITNESS STATEMENT OF ELIZABETH EDWARDS  
FORMING PART OF RESPONSIVE MATERIALS SUBMITTED ON  
BEHALF OF THE RESPONDENT**

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**Response to 'Applicant's Submissions to the Minister' document**

1. With regard to paragraph 52 and 53 of the above document, I formed the view based on the applicant's own lodged materials, that environmental issues were raised of sufficient weight that refusal was the appropriate decision on the merits. I refer in particular to the Lundstrom Environmental Consultants Flora and Vegetation Report: **RBD** pp 8 1 – 162. In those circumstances, there was no justification for the Shire commissioning its own reports for the first instance decision.
2. The first sentence of paragraph 65 is correct.
3. With regard to paragraph 64, my reasons for refusal make reference to numerous aspects of the planning framework under which environmental considerations are relevant.
4. The documentation associated with the decision-making process was done on an 'exceptions basis' in the sense that a relevant planning consideration could be taken to be satisfactory unless otherwise stated. Also, no report needed to be provided to the elected Council.
5. In responding to the appeal, my witness statement was similarly focused around the reasons for refusal, on the basis that there were no other matters that stood in the way of approval. So I agree that the appeal is entirely concerned with environmental issues, however environmental issues are by definition planning issues.
6. Shire officers did prepare a document that detailed the assessment of the application against the relevant planning framework with respect to the reasons for refusal.

7. The determination notice provides the reasons for refusal, which reference the matters to be considered by the local government at clause 67 of the Deemed Provisions. The matters in clause 67 form part of the planning framework and the reasons for refusal specifically refer to the following additional components of the planning framework:
- Shire of Harvey District Planning Scheme No. 1
  - Approved State Planning Policies – 2, 2.4, 2.5 and associated guidelines
  - Shire of Harvey endorsed Local Planning Strategy
8. With regard to paragraphs 68 – 77, the planning framework makes provision for the consideration of environmental matters. Clause 67(2) of the Deemed Provisions requires the local government to have due regard to a range of matters to the extent those matters are relevant to the application. These matters include:
- Aims and provisions of the Scheme: The objectives of the Shire of Harvey District Planning Scheme No. 1 includes matters relating to the environment.
  - Approved State planning policy: There are a number of State Planning Policies that relate to the environment.
  - Endorsed Local Planning Strategy: The Shire of Harvey Local Planning Strategy includes matters relating to the environment.
  - Effect of the development on the natural environment: This subclause specifically refers to the environment.
  - Whether trees or other vegetation should be preserved: This subclause specifically refers to the environment.
  - Suitability of the land taking into account matters such as land degradation. This subclause specifically refers to the environment.
  - Requirements of orderly and proper planning: Consideration of all the above is required for the determination to be orderly and proper.
9. As required by the planning framework, the consideration of the above matters formed part of the assessment and determination of the subject application.
10. In ***Carbone Bros Pty Ltd and Shire of Harvey*** [2021] WASAT 150 at 105, the SAT states that “we are required to take into account environmental considerations in making our determination because the planning framework directs us to consider whether a proposed extraction of basic raw materials would be environmentally acceptable.” And further states at 106 “that retaining the ... trees is more consistent with the principle of sustainability than removing the trees for the extraction of limestone...clearing the trees would not promote the sustainable use and development of the subject land.”
11. The Applicant’s Submissions to the Minister refers to (page 15):
- Point Grey Development Company Pty Ltd and Shire of Murray*** [2019] WASAT 106. The particulars and circumstances of this case are not equivalent to this proposal its use as case law in the determination of the appeal application is not relevant.
- SITA Australia Pty Ltd v Greater Dandenong City Council*** [2007] VCAT 156. This case relates to the duplication of conditions between the Council and State Government approvals and therefore this case is not considered relevant.

12. The sustainable use and development of the land requires balancing the relevant social, economic and environmental matters. Retaining the subject native vegetation is more consistent with the principles of sustainability than removing the native vegetation for the extraction of 70,000m<sup>3</sup> of sand. Destruction of the subject native vegetation would not promote the sustainable use and development of the land.
13. As stated above, the planning framework requires the local government to consider a range of matters, including those relating to the environment, when assessing applications. Therefore, the Shire has the ability and is empowered to determine applications via the inclusion of environmental matters in the planning framework.
14. With regard to paragraph 79, I repeat what I stated in paragraph 1 of this witness statement.
15. With regard to paragraphs 83 – 85, it seems that the applicant contends that its 70,000m<sup>3</sup> of sand will supply the broader market for sand for normal consumers, as opposed to all of the other existing sand resources in the region which are supposedly being directed entirely towards the BORR. However, in my opinion, any planning decision-maker should proceed on the assumption that market forces will operate in the usual way, namely, that a supplier such as B & J Catalano will provide sand to whoever is prepared to pay the highest price. There would be absolutely nothing to prevent B & J Catalano supplying all of their sand to the BORR. If all existing sand suppliers are directing all of their supplies to the BORR on the basis that the BORR pays the best terms, then we have to assume that B & J Catalano will supply their sand to the BORR as well. That will not solve the supposed supply gap for other consumers. Indeed, it will not even come close to solving the supply gap for the BORR itself.

#### **Witness statement of Lindsay Stephens**

16. There are a number of contradictory statements provided in the Statement of Lindsay Stephens.
  - (a) Mr Stephens discusses that the source of the resources need to be in proximity to the source of the need of the resource (page 5). He provides that the approved resource within the Myalup Pines would add an extra 30km to supply the resource for the BORR and yet mentions that the applicant is discussing with MRWA to supply sand resource for the Bussell Highway works (page 4). The location of the Bussell Highway works, in comparison to the Runnymede Road pit location, is in the order of about 60km, much further than the current need location of the northern section of the BORR.
  - (b) Mr Stephens identifies the location of sand resources being under the Banksia TEC and specifically states that *"there is locally some sand on lower ridges but that is limited by Banksia Woodland cover..."* (page 2). He concludes however that due to the existing current demand of sand for the BORR, Banksia TEC will need to be removed due to the time involved in making additional land within the Myalup Pines available for extraction (page 5).
  - (c) Mr Stephens provides that the subject additional 1.17ha portion of Lot 7 will provide an additional 250,000 tonnes of sand and an additional 50,000 tonnes (totalling 300,000 tonnes) with the change of batter slope from 1:6 to 1:3 (page 5). The development application provides that:
    - (i) The subject 1.17ha portion will supply 70,000m<sup>3</sup> (converts to 112,000 tonnes).

- (ii) Extracting the batter between the subject 1.17ha area and the adjoining 1.97ha area will supply 90,000m<sup>3</sup> (converts to 144,000 tonnes)
  - (iii) The subject 1.17ha area and the batter could supply 130,000m<sup>3</sup> (converts to 256,000 tonnes)
17. Mr Stephens refers to the proposal as a "*small development*" (page 5), and thus reiterates the Shire's position that the extraction of 70,000m<sup>3</sup> of sand is not of State or regional significance.
  18. The need for sand and other basic raw materials is not disputed. I deduce that the Minister considers my refusal of the subject application to be of State or regional significance due to the current availability of sand and the large quantities required for State projects such as the BORR. The subject application to extract 70,000m<sup>3</sup> of sand from an area of 1.17ha, a quantity of sand that represents approximately 1% of the total amount of sand required for the northern section of the BORR currently under construction, is considered insignificant and not of State or regional significance. Availability and supply issues of basic raw materials is not limited to the South West and is an issue globally. This is a matter that could qualify as being of State or regional significance, not the extraction of a mere 70,000m<sup>3</sup>.
  19. Main Roads WA (MRWA) commenced planning investigations for the BORR in 2018. The Banksia Woodlands TEC was listed under the EPBC Act in 2016, before MRWA commenced planning for the BORR. MRWA/State Government has had sufficient time to source sand that would not impact significant native vegetation that is endangered and is a federally listed TEC. It has been the Government's choice to proceed with the BORR on the timetable that they have. Environmental constraints on sand availability is something that the Government must be taken to have factored into the decision to proceed with the timing of the BORR construction, in my opinion. In my opinion, environmental protection should not be sacrificed if there have been misjudgements by government agencies about the availability of sand. There is an onus on Government to make other land available or identify suitable sand resources that don't result in clearing federally listed TEC and to utilise alternative materials.
  20. Mr Stephens makes a number of statements of his understanding, without stating the basis for it. For example, he says:
    - Bleached white sand (Bassendean type) is committed for silicon production in the new refinery: paragraph 1.2;
    - Yellow sand in the Kemerton Industrial Area is committed to development of the industrial precincts. Even so Kemerton developments will be in sand shortfall: paragraph 1.2; and
    - Without access to resources [B & J Catalano's] sand supply business will close: paragraph 5.
  21. The basis for these statements of belief or understanding are not stated, and in my opinion should be disregarded.
  22. With regard to the statement that B & J Catalano specifically purchased Lots 4 and 7 to supply long term sand requirements; that the land was deliberately purchased within the Kemerton Buffer Area as that land being identified as being of potential for continued excavation etc – any purchaser of land in the expectation of establishing an extractive industry, must do so knowing that there is a development approval and an environmental approval processes to be gone through, and that the acceptability of the extraction proposal would need to be assessed on its merits against those processes.

Therefore, in my opinion the question is whether the extractive industry should be approved on its merits. The motivations of the purchaser of the land are in my opinion irrelevant. It is also inherent in the planning and environmental framework that it is capable of changing over time, and any purchaser would need to factor that into their risk analysis.

## NEW INFORMATION PROVIDED WITH APPLICANT'S SUBMISSION

### Reconnaissance Vegetation Survey

23. I note that the Reconnaissance Vegetation Survey dated July 2022 is watermarked as "Draft".
24. The Reconnaissance Vegetation Survey reports that there has been a very significant change in the vegetation condition between 2018 and 2022.
25. **Attachment ERE 4** to this witness statement is an aerial photograph which I have prepared which overlays a comparison of the 2022 Reconnaissance Survey vegetation condition findings, against the 2018 vegetation condition findings.
26. The 2022 vegetation condition findings are overlaid with coloured *shading* as set out in the legend.
27. The 2018 vegetation condition findings are shown with contour *lines*.
28. For example, compare the 'Good' vegetation conditions of 2022 against 2018, the Reconnaissance Vegetation Survey says that only a small section near the southern corner (shaded in green in **Attachment ERE 4**) is 'Good'; whereas in 2018 more than half (as shown by the orange contour line) was 'Good'.
29. According to the 2018 Reconnaissance Vegetation Survey, none of the appeal site was 'Completely Degraded'. At worst, parts of it were 'Degraded'. However, according to the 2022 Reconnaissance Vegetation Survey, probably almost half of the appeal site is said to be 'Completely Degraded', as shown by the light red shading in the western third and the northernmost strip,
30. The supposedly 'Completely Degraded' section also concludes the westernmost part of the appeal site which was actually not surveyed in the 2018 Vegetation Condition Survey. According to the aerial photography, that western section has some large trees, so the idea that it was 'Completely Degraded' was surprising to me, particularly since some of the then already-cleared bare sections were only 'Degraded' according to the 2018 Vegetation Condition Survey.
31. In my experience as a planner, I am aware that extractive industry activities tend to have some degree of adverse effect on adjacent vegetation. I am not surprised that there was some degree of decline in the vegetation condition between 2018 and 2022, however I was surprised by what the Reconnaissance Vegetation Survey said was the extent of that decline.
32. In light of the points made in paragraphs **25 - 31** above, I would not be prepared to accept without some ground-truthing, the 2018 Reconnaissance Survey Vegetation.
33. In view of that, the Shire commissioned its own vegetation reconnaissance survey from Michael Just, and his responsive witness statement also forms part of the materials to be lodged by the Shire.

34. I inspected the site on 8 August 2022 with the Shire's expert (Michael Just) to verify the Reconnaissance Vegetation Survey. Before stating what I observed on site, I acknowledge that I do not have botanical or zoological qualifications. However:
- I do have a lifetime of lay person's experience of knowing what a banksia tree is, as well as marri and jarrah trees.
  - I can recognise black cockatoos, and I can distinguish red-tailed black cockatoos from other species of Black Cockatoos.
  - I can't distinguish between Baudins and Carnaby's Cockatoos.
  - Black Cockatoos feed and forage on my property, and I have seen the kind of debris that they leave behind.
  - I am aware that they feed on, among other things, banksia cones and marri nuts.
35. I observed the following on site:
- The boundary of the 1.17ha appeal area was marked with survey pegs allowing for an accurate inspection of the subject area.
  - Most of the appeal site had a significant intact tree canopy coverage.
  - I observed a number of Banksia trees, in the order of 15 – 20, despite the Reconnaissance Vegetation Survey identifying one Banksia tree.
  - Most of the Banksia trees had what I consider to be a very large number of cones on them compared to most banksias that I have seen. It is my understanding that banksia cones are an important food source for Black Cockatoos.
  - I saw cones on the ground, and also marri nuts, which Michael Just told me were the evidence of feeding by Black Cockatoos.
  - I heard bird calls, which Michael Just told me were from the Carnaby's Black Cockatoo.
  - I saw kangaroo footprints, and scratchings on trees which are consistent with what I have seen before around possum hollows and feeding trees (I have seen many possums on my own property).

#### **Michael Just responsive witness statement**

36. I have reviewed the witness statement of Michael Just dated 10 August 2022 which sets out his conclusions from his reconnaissance survey.
37. He found the 'good' area to be somewhat larger than the Lundstrom 2022 report, but not significantly so.
38. He found many banksias within the appeal site, contrary to the Lundstrom 2022 survey.
39. He found that much of the appeal site was still to be regarded as part of the same 'patch' of the Banksia Woodland TEC, as the balance of Lot 7. This does contrast with the findings applicable on review of the Lundstrom 2019 report, where the whole of the appeal site was part of the same patch of the TEC as the rest of Lot 7.

40. He observed that even though the area of the appeal site that should be considered part of the TEC had diminished since 2018, nevertheless, if the application was for excavation of the whole of the appeal site, then the application was environmentally unacceptable because excavation would invade the TEC itself.
41. I am of the opinion that if 37 – 39 are correct, then the conclusion at 39 above is also logical and correct and I support that reasoning.
42. Michael Just said further that even if the application only proposed excavation outside of the part of the appeal site that should be considered to still be part of the TEC, then that would still be environmentally unacceptable because of the edge effect that excavation etc. would have on the 'good' quality vegetation. That conclusion appears to me to be logical and I support that reasoning from a development approval assessment (environmental issue) point of view.
43. Even if the Minister was to find that the vegetation condition is as reported in the Reconnaissance Vegetation Survey 2022, it is noted that vegetation in Good condition (given it is adjoining a large patch in Very Good and Excellent condition) can still be considered part of the patch of Banksia Woodland TEC.
44. Furthermore, as noted in the Conservation Advice (page 21), very degraded/modified patches not forming part of the TEC "*may still retain important natural values and may be critical to protecting those patches that meet minimum thresholds.*"
45. If the Minister was to find, contrary to **38 – 44** above, that the diminished quality of the vegetation in the appeal site was such that approval of the application was the correct and preferable decision, then I would respectfully urge that the Minister find that this is expressly due to diminished quality in that section only, and not make a finding that is capable of being relied on to support any part of the balance of Lot 7. There is no evidence that the quality of the vegetation in the balance of Lot 7 is not still predominantly 'Excellent' as found in Lundstrom 2019.

#### **RESPONSE TO WITNESS STATEMENT OF STEPHEN ALLERDING**

46. For the most part, I don't find it necessary to respond to individual paragraphs in Mr Allerding's statement. Rather, my main comment is a more global one applicable to the entirety of his statement.
47. My global comment is that I don't believe that aspects of the planning framework that protect basic raw materials, are expressed in a way intended to override or outweigh environmental concerns. The way that the basic raw materials documents protect basic raw materials, is to go some way towards shielding them from the establishment of incompatible uses in their vicinity. The documents in the planning framework concerned with basic raw materials don't contain pointers that the sites are *environmentally acceptable* for extraction. I don't believe that Mr Allerding's witness statement fully acknowledges this. Environmental assessment needs to be done from first principles the same as any other development that raises environmental issues, with no presumption towards approval so far as environmental issues are concerned, even for sites in identified Basic Raw Materials areas.
48. With regard to paragraphs 47 – 52 and also 56(b), Mr Allerding has simply referred to the *existence and the subject matter* of various environmental-related documents prepared by Lundstrom Environmental Consultants or by the applicant. On the basis of the *existence and the subject matter* of those materials, Mr Allerding concludes at para 52 that the Application has properly addressed environmental attributes. By contrast, in my original witness statement, I went into some of the detail of the Lundstrom report – not just its existence and its subject matter – to explain my reasoning as to why I considered that the Lundstrom report itself showed that there

were environmental values where their destruction through clearing and excavation would not be environmentally-acceptable, in my opinion. I referenced relevant planning and environmental publications in explaining that opinion.

49. With regard to paragraph 54, I repeat what I stated at paragraph 1 of this statement.
50. With regard to paragraph 56(d), Mr Allerding seems to be saying that without approval of this particular 1.17ha, 70,000m<sup>3</sup> extractive industry (see 'without which...'), there will be a shortfall in sand supply for the BORR. The evidence is that there is a huge shortfall of sand regardless, if construction proceeds on a 'business-as-usual' basis. The approval of this particular application would lessen that problem only negligibly.
51. Paragraph 56(d) second sentence and 56(e) seem to allude to the subject site providing sand for consumers other than the BORR, but as to this, see my comments at paragraph 15 above.

### CONCLUDING COMMENTS

52. I consider approval of this proposal will result in irreversible damage to native vegetation that:
  - Provides foraging habitat, and has the potential to provide breeding and roosting habitat for the three protected Black Cockatoos.
  - Provides habitat for a range of other native fauna.
  - Is considered to form part of the Banksia Woodlands TEC.
  - Provides a buffer for the adjoining large patch of very good and excellent Banksia Woodlands TEC.
  - Retains the viability of the adjoining patch of Banksia Woodlands TEC.
53. The planning framework requires all decision-makers to consider a range of matters, including those relating to the environment, when assessing applications. The sustainable use and development of the land requires balancing the relevant social, economic and environmental matters. Retaining the subject native vegetation is more consistent with the principles of sustainability than removing the native vegetation for the extraction of only 70,000m<sup>3</sup> of sand. Destruction of the subject native vegetation would not promote the sustainable use and development of the land and is therefore contrary to the principles of orderly and proper planning and the relevant planning framework.
54. Approval of the proposal to clear important native vegetation to extract only 70,000m<sup>3</sup> of sand will undermine the purpose of the planning framework and legislation on the basis that the loss of important native vegetation (that may or may not be federally protected) on the Swan Coastal Plain is inconsequential because the 'business as usual' approach to construction requires millions of tonnes of sand. In addition, approval of the proposal for extraction of only 70,000m<sup>3</sup> will not address the demand and supply of sand issues.
55. The Government and MRWA are committed to sustainable development and has an obligation to examine and utilise alternative techniques to reduce the reliance on sand and other non-renewable and finite resources. The need to protect our native vegetation highlights the immediate need to move away from the 'business as usual' approach.

56. I consider that my refusal of an application to extract only 70,000m<sup>3</sup> of sand, due to the destruction of the subject native vegetation, is the correct and preferable decision under the applicable planning framework and does not represent matters of State or regional significance and does not warrant the appeal being approved.
57. If the Minister considers the extraction of only 70,000m<sup>3</sup> of sand to be of State or regional significance, there is a critical threat for the loss of the Banksia Woodlands TEC on the remaining portion of the site, and adjoining sites, which will have a devastating and irreversible impact on the Banksia Woodlands.
58. If the Minister was to find, contrary to **38 – 44** above, that the diminished quality of the vegetation in the appeal site was such that approval of the application was the correct and preferable decision, then I would respectfully urge that the Minister find that this is expressly due to diminished quality in that section only, and not make a finding that is capable of being relied on to support any part of the balance of Lot 7. There is no evidence that the quality of the vegetation in the balance of Lot 7 is not still predominantly 'Excellent', as found in Lundstrom 2019 at **RBD** p. 126.



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Elizabeth Edwards

11 August 2022

# Attachment ERE 4

