

President:

Tony Fowler

Ph: 9293-2283

fowlerak@inet.net.au

Vice President

Steve Gates

smgates@tpg.com.au

Ph: 9293 2915



P.O. Box 656

Kalamunda,

W.A., 6926

Nature Reserves Preservation Group, Inc.

Date: 12 May 2015

**TO: Darren Walsh
Chief Executive Officer
Strategen Environmental Consultants
PO Box 243
Subiaco
WA 6904**

**Subject: Metropolitan Region Scheme Amendment 1271/41 Lot 59
Wilkins Rd. Kalamunda**

Dear Sir,

Nature Reserves Preservation Group (NRPG), an umbrella environmental group within the Shire of Kalamunda, has been making submissions on behalf of members for 26 years. Over this period, areas of remnant bushland and natural wetlands have been lost to development, despite submissions for retention of such areas in their natural state. In the above proposed MRS amendment, we see yet another threat to the biodiversity of these dwindling areas of natural vegetation.

Nature Reserves Preservation Group has already made submissions opposing the above amendment, to both the EPBC Referrals section of the Federal Department of the Environment (under the referrals process) and to the Western Australian Planning Commission (WAPC). We understand that the current invitation to comment to Strategen is at the request of the Federal Department of the Environment for the “assessment on preliminary documentation.” Relevant comments will, therefore, be directed mainly at the potential presence of threatened flora and fauna species and, the effect of the development on those species. **‘Boxed’ comments will follow the order in which topics appear in the Report.**

This submission will however include, as attachments, the submissions made to the Shire of Kalamunda and to WAPC. Whilst these address much more than the EPBC Act concerns, we believe these comments should be given due recognition in any deliberations by the Federal Department.

NRPG strongly opposes this amendment. Whilst acknowledging the increasing pressures to provide aged care facilities within the Shire, the transfer of 10.73 ha of natural bushland, gazetted as Darling Range Regional Park, to Urban zoning, creates a precedent which is totally unacceptable to NRPG. The proposed development would involve significant clearing of natural vegetation and, consequently, would compromise the environmental values of Lot 59.

From the 11 grounds on which the NRPG bases its objection, the following have most relevance to the EPBC Act implications:

1. That the environmental values of the block are an essential element in the overall makeup of the Perth Hills and of the local biodiversity.
2. That the block is an integral part of the biodiversity of the acknowledged “green link” from Gooseberry Hill National Park to the State Forest
3. That the accepted shortcomings of surveys, on behalf of the Shire of Kalamunda, should be acknowledged and that anecdotal evidence from local residents should carry more weight.
4. That the proposed siting of an aged-care facility on a ridge above an “extreme bushfire-prone area” (EPA advice to Shire of Kalamunda), subject to strong easterly winds in the bushfire season, provides an unacceptable risk to potential residents.
5. That the proposed rezoning conflicts with Shire of Kalamunda’s District Conservation Strategy (1995), Wildlife Corridor Strategy (1998), Local Biodiversity Strategy (2008), Local Planning Strategy (2010) and Local Housing Strategy (2013).

That the environmental values of the block are an essential element in the overall makeup of the Perth Hills and of the local biodiversity.

The biodiversity values of this site are beyond dispute. These values are an essential element of an important ridge ecological corridor containing very high biodiversity values. These values are also an essential characteristic of the “Local Natural Areas” which make the scarp a unique, integral element within the hills/foothills area.

The Level 1 Flora and Vegetation survey, (Weston 2010) described the vegetation of the survey area as, “*Dwellingup vegetation complex in Medium to High Rainfall*” stating that “*The condition of the vegetation was assessed as >90% being in Excellent to Very Good condition...*”

Kalamunda’s Local Biodiversity Strategy (2008) stresses the need to protect such areas, described as “*those natural areas over which Local Government can exercise the most control.*” These remaining 2110 ha form the focus of the Local Biodiversity Strategy. The Strategy further states that “*Reserves containing 75% or more [vegetation] in good or better condition are required to meet the targets...*” [a list follows, including the Dwellingup Complex.]

1.3 Locality and property description:

Whilst the description is accurate, it fails to detail the importance of this section of natural vegetation as an integral part of the wildlife corridor linking Gooseberry Hill National Park (to the north) with Korung National Park (to the south). (cf. 2.4 comment, below). As such, it is vital that all of this remnant vegetation be preserved and protected.

1.9 Alternatives to proposed action.

In answering “No” the Shire may be incorrect. Several large and suitable sites within the Shire are and, have been for some time, under consideration as alternatives.

2.1 Description of proposed action.

Explaining, in detail, the rationale behind the rezoning request being for the establishment of an integrated aged care facility is irrelevant. Desperate though the need is for such facilities, a previous rezoning under an MRS Amendment in High Wycombe, 16 years ago, failed to produce such a facility. This is still an alternative site for aged care and may yet produce the desired result. The Shire letter to Director General, Department of Planning (31 Jan. 2013) noting the “*overwhelming support for such a development from the elderly within the Shire.*” fails to support that statement. There is no evidence to support the assertion that there is such support for such a development **on that site**. Given the degree of opposition to the proposal, it is unlikely the statement can be supported. (see below).

2.2 Alternatives to taking the proposed action. “No alternatives to taking the proposed action have been considered.”

In answering “No” the Shire appears to be unaware of the above list of sites suitable for aged care (1.9) and, of its recent approval of one such site in Gavour Rd. Wattle Grove, together with its wide-ranging examination of and search for other sites, since the start of this appeal.

2.4 Context, framework and State/Local Government requirements.

The reference to a previous school site seems redundant, particularly since this was prior to 1991. More remiss, is the failure to acknowledge the sole purpose of the amendment – in part “... *the reservation of an additional 15,000 hectares of State or Local Government owned or vested land for inclusion into the Regional Park...*” The Shire’s current statement simply acknowledges the amendment seeking to form a green link. Lot 59, forming part of Proposal K13 of the MRS amendment, was rezoned for inclusion in the Darling Range Regional Park.

3.1 (d) Listed threatened species and threatened ecological communities. EPBC Act listed Flora and Fauna species potentially occurring in the Proposal Area.

Nature and extent of likely impact

Threatened flora.

Caution should be exercised when accepting “*none of these species have been recorded during surveys.*” (Bennett Environmental Level 2 survey, November 2012). **4.1 Special List** noted “*an additional 50 species were added to the original flora list.*” This is no reflection on the quality of the Weston 2010/2011 survey but does highlight the changes which can take place in a relatively short time. More consideration should perhaps be given to the longitudinal studies carried out by local individuals over longer periods. Listed flowering periods are known to vary as a result of relatively small climate changes or geographic location. These observations are reinforced, in great detail, in the submission from Barry Goldspink and should be read in conjunction with that submission.

Threatened fauna.

In its **Assessment of Impact on Black Cockatoo species**, the report, whilst purporting to address the “wider context”, fails to do so. It fails to acknowledge the cumulative effects of the significant loss of cockatoo habitat through clearing and development, particularly within the Metropolitan area. This habitat is declining at an alarming rate yet, survey after survey, cites the clearing of small areas of habitat as “*reducing the potential impact to Black Cockatoo species.*” Regardless of the integrity and proven abilities of consultants, this trend to ignore the wider context, results in a blinkered approach to the actual impact on a species. See below.

Table 5. Assessment of potential impacts to Black Cockatoo species against significant impact criteria.

See above comments. References to surrounding habitat availability reducing an impact criterion, invariably fail to acknowledge the continuing threat to all such “*areas of suitable habitat within the locality.*” A case in point is the proposal to clear, for housing development, one such “*suitable habitat*” a mere 2 km north of the Wilkins Rd site [Lot 608 Dixon Road Kalamunda. (EPBC Ref. 2014 – 7389), Submission from NRPG, 7 Jan 2015.] Since that submission is highly relevant to this, we again request they be read together.

Here we have the farcical state where an area of 1.444ha of remnant vegetation habitat relevant to the trigger species, is proposed to be cleared for development. Reference is made to “*additional areas of bushland in the vicinity of the site that are zoned as ‘Parks and Recreation’ that are vegetated with similar habitat such that the clearing of the small area on the site would not cause the species to decline.*” With Lot 59 Wilkins Road (EPBC Ref. 2013/6990.) only 2km south of the Dixon Road site, no doubt Lot 59 was included in this statement. So much for addressing the “*wider context*”. See earlier comments.

Table 6. Assessment of the Proposal against the Black-Cockatoo Referral Guidelines 2012.

Nesting and clearing of foraging habitat.

The loss of 29 potential breeding habitat trees should be seen as significant. The lack of nesting hollows recorded should take into account the limitations of a ground survey. The degree of clearing may be underestimated. The advent of State Planning Policy 3.7, with its increased demands for hazard reduction, coupled with the fact that all such demands must be met within Lot 59, emphasizes this.

Dieback. *Phytophthora cinnamomi.* “*A dieback survey of the site has not been undertaken.*”

It is important to note, however, that a report was prepared (NPC Consulting Report 3.1, 28 October 2013) and that the site is heavily infested with dieback. (“*Phytophthora cinnamomi is present throughout the entire 10ha of the reserve of Wilkins Road.*” In addition, Recommendation 4 of the Bamford survey states “*...a prevention and control strategy should be developed if required for areas of retained vegetation.*”(p.20)

3.3 (a) Flora and Fauna.

Flora. *“No priority or DRF species were recorded...”*

See previous comments on the potential drawbacks of surveys, the comments of Dr. Weston [Oct 2013 letter to Coterra] and the B. Goldspink submission references to the vagaries of botanical species. Dr. Weston’s comment *“Because some of these dates are during the flowering period of Thelymitra stellate, it is likely, though not certain, that I would have found it if it had been there.”* is important. All consultants are, of necessity, cautious in their conclusions.

Fauna.

The fact that there were no sightings of Black-Cockatoos during the survey should be discounted. Whilst simply highlighting the shortcomings of such surveys (diligently and competently carried out as they are) it conflicts with numerous observations (equally diligently conducted and supported by photographs) from local residents. These residents visit the site on a regular, even daily basis. Their observations should be given serious consideration, particularly where they conflict with those of the consultants.

3.3 (b) Hydrology, including water flows.

The Priority 1 protection zone, to the east of and downslope from Lot 59, (Strategen 2011) fig. 5) should be relevant to any clearing and development application, notably on the topic of ‘dieback’ spread. (See above.)

Table 9. Vegetation unit descriptions and distribution at Wilkins Road.

The “Condition” column of this table gives an indication of the extremely high vegetation values found on this site. Such vegetation should be preserved and conserved (as stated by Bennett Report (2012) Section 5 General Comments.) *“The reserve is worthy of conservation.”*

3.3 (e) Remnant native vegetation.

Dwellingup Vegetation Complex (Vegetation Complex 2)

The Level 1 Flora and Vegetation survey (Weston, 2010) stated *“The condition of the vegetation was assessed as >90% being in Excellent to Very Good condition...”* Kalamunda Local Biodiversity Strategy, in its targets for the protection of such complexes, states *“Reserves containing 75% or more in good or better condition, are required to meet the targets related to...”* Then follows a list including the above Complex. The aim of the Strategy is to *“Incorporate biodiversity protection into planning and decision making.”* The current application runs counter to the Shire’s Local Biodiversity Strategy (2008). By clearing and developing Lot 59, Shire strategies, including the above, are rendered irrelevant.

3.3 (k) Tenure of the action area.

“Lot 59 is currently a Crown allotment held by the State Government and reserved for the Use and Requirements of the Minister for Works.”

The Shire's willingness to "...allow the crown to dispose of the land directly to a developer on either a freehold or long term leasehold arrangement." is reprehensible, given its fervent support for the 1996 MRS Amendment.

3.3 (l) Existing land/marine uses of the area.

"While the site is currently zoned 'Parks and Recreation', it was previously zoned 'Public Purpose' and used as a school site."

In 1970, Reserve 30314 was designated as a school site. In 1991, this purpose was changed to "for the Use and Requirements of the Minister for Construction." (read 'Works')? Since 1991, this reserve has officially been unmanaged. In 1996, reserve 30314, "unvested" was one of the K13 proposal reserves transferred to Parks and Recreation reservation, for inclusion in the Darling Range Regional Park. Information on the status of this site prior to the 1996 MRS Amendment No. 978/33, should be ignored or, viewed as irrelevant.

4. Measures to avoid or reduce impacts.

"minimisation of the clearing footprint..."

The latest (2012) Bethanie proposal shows most of the site will need to be cleared for development. This plan indicates only a 20m Building Protection Zone. In light of the SPP 3.7 requirements, we do not consider this to be sufficient.

"development design to ensure retention of 12 potential breeding habitat trees."

We believe the loss of so many other trees on the site far outweighs this proposed reduction measure.

5.1 Do you THINK your proposed action is a controlled action?

In stating they did not consider the action to be a controlled action, the Shire demonstrated its complete lack of awareness of the value of this reserve, the relevant 1996 amendment and reasons for it, the dramatic effect of any development on its environmental value and of the impact of clearing on the EPBC trigger species. Its claim that the proposed clearing is not expected to have a significant impact on these species, ignores the evidence of widespread loss of such relatively small areas of suitable nesting/roosting/foraging habitat.

This lack of awareness was highlighted by the Environmental Protection Authority noting that "...development on Lot 59 has been classed as a controlled action under the Environmental Protection and Biodiversity Conservation Act 1999." (Letter to WAPC 14 July 2014.) In the 'Advice and Recommendations', the letter stresses that clearing of vegetation should be minimized and, where possible, potential cockatoo breeding trees should be protected. NRPG maintains that, given the stated bushfire requirements under State Planning Policy 3.7, such recommendations cannot be adhered to.

6. Environmental Record of the Responsible Party.

6.2 *“Has ... the party proposing to take the action ever been subject to any proceedings under a Commonwealth, State or Territory law for the protection of the environment or the conservation and sustainable use of natural resources?”*

In answering “No”, to this question, the Shire has failed to acknowledge the appeal, by Nature Reserves Preservation Group (Inc.) in July 2012. The appeal, under section 51E (11) and section 101A (4) of the Environmental Protection Act 1986, was in opposition to the granting of a clearing permit for remnant vegetation on a designated Bush Forever site. (Clearing application CPS 41001/1). The appeal was upheld by the Office of Appeals Convenor and overruled by the State Minister.

6.4 *“Has the party taking the action, previously referred an action under the EPBC Act or been responsible for undertaking an action under the EPBC Act?”*

Whilst no response was provided to this question, it is relevant to note that both the Appeals Committee and the Minister noted that the above proposal appeared to require approval under the EPBC Act, for impact on forging habit of Black Cockatoos. In January 2015, NRPNG appealed against a proposal for a residential development on Lot 608 Dixon Road Kalamunda (EPBC Ref. 2014-7389). Whilst this appeal post-dates the Strategen report date, it is extremely relevant to the current appeal.

Section 8. Contacts, signatures and declaration.

The comment above, relating to responses provided by the Shire in their referral documentation, indicates a degree of confusion. Whilst the signing date (30 Aug 2013) predates the above Dixon Road EPBC referral, the July 2012 appeal by NRPNG, clearly predates the declaration dates. Whilst this comment throws no doubt whatsoever on the integrity of the proponent and its consultants, it emphasises the complexity of the Planning and Environmental Appeal process. Currently, even the professionals are prone to making mistakes. This may indicate that the current Planning and Appeal process needs an overhaul at Local Government, State and Federal levels. The current system is a daunting morass.

Figure 3 Concept Plan.

Bethany Wellness Village Kalamunda (12 June 2013). This plan may be ignored, since it fails to show even the minimal 20metres Building Protection Zone (BPZ) of the later plan Bethanie Wellness Village Kalamunda-MP-SP2). This latter is undated but contains Cockatoo breeding trees information from 2012 Coterra Report.

Strategen letter to DOE March 2015.

The following comment is significant – *“no recent evidence of foraging by Carnaby’s Cockatoos or Baudin’s Cockatoos was identified within the proposed area however, the survey timing may have been too early to detect foraging by these species which are known to migrate from breeding areas to the Swan Coastal Plain and Darling Scarp between February and May (Bamford 2014). Historical records kept by Bamford Consulting indicate that these two species forage within the proposal area.”* See comments on 3.3 (a) Flora and Fauna (above.)

Having identified 30 potential nesting trees the letter further comments “...the remaining trees did not appear to have suitable structure or hollows. Any large tree however, can contain concealed large hollows which are not visible from the ground or has the potential to develop a hollow suitable for nesting.” Given the increasing pressures on and declining numbers of all species of Black Cockatoo and the rapid reduction of suitable habitat within both the metropolitan and farming areas, the importance of such “potential nesting trees” should be recognised.

3. Details on any revegetation proposed to be undertaken on the site.

“Shire of Kalamunda proposes to retain 27 large trees within the proposal area...”

Whilst the Shire proposal to retain 27 large trees within the area is commendable, when the loss of understorey and other trees implied under SPP3.7 is taken into account, we consider it will not be practicable.

“Revegetation is not proposed to occur within the project area, however, to offset the loss of Black Cockatoo habitat, the Shire proposes to revegetate within a number of local reserves.”

Given that “*Offsets are only considered after all reasonable actions to avoid or mitigate environmental damage on site have been investigated.*” (Q and A Offsets under National Environmental Law. June 2013) we consider this section of the letter to be premature in the extreme. Whilst we can understand the Shire of Kalamunda planning for every outcome, we consider information on such proposed offsets to be of no relevance at this stage. NRPG has serious concerns over the use of such offsets, whereby land in the ‘care’ of a local government (in some instances a designated Bush Forever site), suddenly becomes subject to a rehabilitation project to compensate for clearing of pristine remnant vegetation. Until the proponents can demonstrate that ALL “reasonable actions to avoid or mitigate environmental damage...” have been taken, all reference to offsets should be ignored.

The request for rezoning under a Metropolitan Region Scheme Amendment is before the WAPC. They are far from hearing all the arguments and handing down a decision. The EPBC referrals process is far from completion yet, proponent and consultants give the impression that the use of such offsets is a ‘fait accompli’.

Conclusion.

The importance of this site to the biodiversity of the Shire and to the green linkages/wildlife corridors and interconnectivity of remnant vegetation must be acknowledged. The excellent quality and condition of its vegetation is supported by consultant surveys and the observations of local residents.

The loss of this site to clearing and development must be accepted as having a significant effect on the dwindling population of Black Cockatoos.

The acknowledged shortcomings of the flora and fauna surveys and the value of longitudinal studies and observations by residents, should be taken into consideration when assessing the impact of this proposal on trigger species. The call for more surveys should be supported.

Whilst it may be of little direct relevance to the EPBC Act, we have grave concerns over the proposed siting of a facility for an ‘at risk’ population. Lot 59 Wilkins Road is within a Bushfire Prone Area. The land stretching to the east of this ridgetop site contains heavily wooded areas under the stewardship of Department of Parks and Wildlife. The risk posed to

the site from an out-of-control wildfire, driven by fierce, dry easterly winds on a 'Catastrophic' rated day must be considered extreme.

Bureau of Meteorology data support this contention, revealing a rapidly increasing level of hazard through declining rainfall, increased periods of high temperatures and increasing wind speeds. Whilst this is of more direct relevance to State authorities, we feel it should be acknowledged in Federal deliberations at this stage.

We again request that this submission be read in conjunction with the (email) attached NRPB submissions and the highly detailed B. Goldspink submission (covering the fauna elements of this proposal).

Yours faithfully,

Anthony Fowler

President.