



Environmental Protection Act 1986

**Hon Stephen Dawson MLC  
Minister for Environment**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL IN OBJECTION TO THE REFUSAL TO GRANT CLEARING PERMIT CPS 6728/1 – LOT 6628 ON PLAN 208576 TORBAY**

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

This document sets out the Minister's decision on appeals lodged under section 101a(1)(A) of the *Environmental Protection Act 1986* in objection to the refusal to grant clearing permit CPS 6728/1. This document is produced by the Office of the Appeals Convenor for the Minister but is not the Appeals Convenor's own report, which can be downloaded from the Appeals Convenor's website at [www.appealsconvenor.wa.gov.au](http://www.appealsconvenor.wa.gov.au).

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<b>Appellant:</b>	Mr M Swainston
<b>Applicant:</b>	Mr M Swainston
<b>Proposal description:</b>	The clearing of 12.1 hectares (ha) of native vegetation for the purpose of grazing and pasture.
<b>Minister's Decision:</b>	The Minister dismissed the appeal
<b>Date of Decision:</b>	2 October 2017

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

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

By way of summary, the key ground of appeal was that DWER overstated the impacts to black cockatoo species, on the basis that there are other areas of suitable native vegetation in the local area and that there is little evidence that black cockatoo utilise the vegetation within the application area. In support of this view, the appellant submitted the results of a consultant's fauna report to DWER.

The Minister understood that the appellant had proposed mitigation measures to address potential impacts to surface water quality of the Marbellup Catchment as recommended by the former Department of Water and also noted the appellant's concerns regarding the economic future of his farming enterprise and the improvement that the proposed clearing would make to his current farming practices.

DWER advised that it refused to grant the clearing permit based on the value of the vegetation to protected fauna species, including three black cockatoo species and the western ringtail possum. In this regard, the Minister noted that DWER's site inspection report described the vegetation as being in very good condition and the appellant's fauna survey report noted that the vegetation is in excellent condition. The Minister also noted that the appellant's fauna report and the advice from the former Department of Parks and Wildlife (Parks and Wildlife) identified that the species and structure of the vegetation and the presence of tree hollows suggests that the remnant is suitable for foraging, breeding and potentially roosting habitat for the three listed species of black cockatoo.

While the Minister understood that the appellant's fauna report noted that the potential impacts on the western ringtail possum were less conclusive, Parks and Wildlife was of the view that the application area should be considered 'high quality habitat' for all four threatened species. It was on this basis that DWER concluded that the vegetation within the application area is significant for the maintenance of habitat for protected fauna.

In regard to the appellant's view about the availability of other areas of native vegetation in the vicinity of the application area being suitable for black cockatoo, DWER acknowledged that the vegetation complex within the application area is 'equal to or marginally above' the acceptable threshold of the original extent remaining in the Albany area, however determined that the area under application may be a significant remnant due to its linkage to other remnants and its size.

Parks and Wildlife advice that all remnant vegetation within the Albany Management Zone that supports the western ringtail possum, listed as *Critically Endangered*, as being important, was also noted. The Minister understood that this advice elevated the significance of the application area as a remnant, and therefore DWER considered the proposed clearing 'may' be at variance to principle (e). The Minister noted that although DWER's decision to refuse the clearing permit was not based on this issue alone, it was a contributing factor due to the significance of the vegetation to protected fauna species.

While the appellant's commitment to undertake mitigation measures to protect the water quality of the Marbellup Catchment is acknowledged and supported, the Minister noted that surface water quality was not a key factor in DWER's decision to refuse the permit, and in this regard, the Minister agreed with the Appeals Convenor that these measures do not address the other environmental risks associated with the clearing.

Based on the quality and type of the vegetation within the application area and, the conservation status of the black cockatoo and the western ringtail possum, the Minister considered that DWER correctly assessed the potential impacts associated with the proposed clearing and that it was likely to be at variance to principle (b) and 'may' be at variance to principle (e). On this basis, the Minister considered the decision to refuse to grant the clearing permit was justified by the available evidence.

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Note: this decision is published pursuant to the terms of section 110 of the *Environmental Protection Act 1986* and regulation 8 of the *Environmental Protection Regulations 1987*.

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