



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST CONDITIONS OF CLEARING PERMITS CPS 7122/1 & CPS 7342/1 FORSHAW PASTORAL COMPANY PTY LTD – IRRIGATED AGRICULTURE PURPOSE PERMITS, NITA DOWNS STATION, SHIRE OF BROOME

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section 101A(3)(a) of the *Environmental Protection Act 1986* in objection to the specifications of clearing permits CPS 7122/1 and CPS 7342/1, granted by the Department of Water and Environmental Regulation. 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.

Appellant:	Environs Kimberley
Permit Holder:	Forshaw Pastoral Company Pty Ltd
Proposal description:	Clearing permits CPS 7122/1 and CPS 7342/1 authorise the clearing of up to 200 and 250 hectares respectively of native vegetation within Lot 39 on Deposited Plan 238417 and Lot 41 on Deposited Plan 238418, Eighty Mile Beach, Shire of Broome, for the purpose of irrigated agriculture.
Minister's Decision:	The Minister dismissed the appeal
Date of Decision:	22 December 2017

REASONS FOR MINISTER'S DECISION

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.

The Minister was advised that representatives of the Office of the Appeals Convenor discussed the appeal with the appellant.

The Minister noted that DWER has imposed the same regulatory controls on both permits, which apply to the respective application area of each instrument. The permits are subject to conditions to minimise the environmental impacts of the proposed clearing, relating to direction and timing of clearing, fauna management in respect to the greater bilby, and recording and reporting requirements.

The Minister noted the appellant raised the same concerns in respect to both permits, that the conditions do not adequately address potential impacts to threatened greater bilby and rare flora *Seringia exastia*. In addition, the appellant raised concerns about the permit holder's compliance with fauna management conditions relating to greater bilby, and that a water licence had not been granted for the final land use.

In relation to potential impacts to greater bilby, the Minister understood that the permit holder's targeted fauna survey found that the areas proposed to be cleared were not highly utilised by greater bilby and did not contain any active burrows, and that similar habitat for greater bilby is located around the application areas and throughout the Nita Downs Station.

In addition, the Minister noted that Condition 8 requires the permit holder, immediately prior to clearing, to engage a qualified fauna specialist to conduct clearance surveys for greater bilby of the vegetation to be cleared; to relocate any greater bilby found in accordance with Department of Biodiversity, Conservation and Attractions' (DBCA's) wildlife licensing process under Regulation 15 of the *Wildlife Conservation Act 1950*; and where any greater bilby is identified and relocated, to record and report the results to DWER. The Minister was advised that these pre-clearance survey requirements were developed in consultation with DBCA and are consistent with relevant DBCA guidelines.

The recording and reporting conditions will enable DWER to monitor the permit holder's compliance with the requirements of each clearing permit. It is the Minister's expectation that DWER will respond to any failure by the permit holder to abide by clearing permit conditions in accordance with the requirements of the Act.

With regards to the appellant's concerns that the permit holder's targeted flora survey may have failed to properly identify *Seringia exastia*, the Minister noted DBCA's advice that the timing, methodology and intensity of the survey was appropriate and did not identify the presence of this or any other rare flora species within the application areas.

The Minister understood that in assessing the clearing applications, DWER had regard to water licensing requirements under the *Rights in Water and Irrigation Act 1914* in accordance with section 51O of the Act. In this regard, the Minister noted that DWER has appropriately applied Condition 7 to ensure that planting of irrigated crops occurs within three months of clearing, and it follows that this cannot occur without the requisite abstraction licence for the water supply.

In considering the information presented, the Minister was satisfied that DWER appropriately assessed the environmental impacts from the proposed clearing and applied conditions to the clearing permits to ensure the activities are undertaken in a manner to minimise and manage the risk of significant environmental impacts. The Minister therefore dismissed the appeal.

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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