



Environmental Protection Act 1986

**Hon Albert Jacob MLA
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST THE DECISION OF THE DEPARTMENT OF ENVIRONMENT REGULATION TO REFUSE TO GRANT CLEARING PERMIT(CPS 6620/1), LOT 3 BULLER ROAD, WAROONA

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 101A(1) of the *Environmental Protection Act 1986* in objection to the refusal to grant a clearing permit. 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:	AMG (WA) Pty Ltd
Permit Applicant:	AMG (WA) Pty Ltd
Proposal description:	The clearing of up to 20.8 hectares (ha) of native vegetation for the purpose of sand extraction.
Minister's Decision:	The Minister dismissed the appeal
Date of Decision:	31 January 2017

REASONS FOR MINISTER'S DECISION

Pursuant to section 106 of the Environmental Protection Act 1986 (the Act), the Minister obtained a report from DER on the matters raised in the appeal. The Appeals Convenor advised that representatives of her Office discussed the appeal with representatives of the appellant, and further discussions were held with officers of the Department of Environment Regulation (DER) and the Department of Parks and Wildlife. A site visit was undertaken in November 2016, and a further meeting was held with representatives of the appellant in December.

In summary, the appellant submitted that the permit ought to have been granted on the basis that the values of the vegetation proposed to be cleared are not so significant that an offset could not have been considered, and that the values have been further impacted by dieback and the Waroona fire in January 2016. The appellant also submitted that the decision to refuse the permit was inconsistent with planning documents and other decisions made by DER in the area, including in respect to the application of offsets.

The Department of Parks and Wildlife advised that dieback disease has been present at the site for several decades. Notwithstanding the long-term presence of the disease, the flora and vegetation surveys commissioned by the appellant described the majority of the area proposed for clearing being in good to very good condition.

In relation to the 2016 Waroona fire, a site visit conducted by DER officers after the fire found that while some vegetation had died, other vegetation was recovering and that there was potential for the pre-fire extent of black cockatoo foraging habitat to regenerate within seven years.

The Level 2 flora and vegetation survey undertaken on the property also noted that the vegetation proposed to be cleared retains its basic structure or ability to regenerate, with the original permit application identifying that the application area contains more than 19 ha of habitat for listed black cockatoo species.

Taking this information into account, the Minister was of the view that while some damage to vegetation was an inevitable consequence of the fire, the values of the vegetation are capable of being re-established over time, specifically in relation to foraging habitat and as being part of a regional ecological linkage.

In respect to the planning context, the Minister considered that the appellant was correct in observing that neither State Planning Policy 2.4 nor the Greater Bunbury Region Scheme are applicable to the Shire of Waroona, and ought not to have been considered by DER in its decision. The Minister noted that Lot 3 is within the area covered by the Peel Region Scheme and the Waroona Local Planning Scheme. Neither of these schemes identifies Lot 3 as of State or regional significance in respect to basic raw materials.

Lot 3 is identified as being part of a 'Peel Regionally Significant Natural Area' under the Environmental Protection Authority's Environmental Protection Bulletin (EPB) No. 12, and is identified in mapping available from the Department of Mines and Petroleum (DMP) as being part of a regionally significant sand resource. Consistent with a letter to the appellant dated 13 June 2016, the Minister did not consider the content of the draft Green Growth Plan as part of this decision.

The appellant cited a number of cases which it claimed demonstrate an inconsistency between DER's decision on its proposal and those cases. The Minister considered the Appeals Convenor's advice in this regard, and was of the view that the current decision is consistent with the cases identified.

Taking this information into account, the Minister was of the view that DER appropriately considered the application and that its findings with respect to the values of the site were justified and consistent with other decisions. In relation to planning instruments, while DER cited two instruments that do not apply to Lot 3, the instruments that are applicable do not identify the site as of regional or State significance for basic raw materials. The Minister agreed with the Appeals Convenor's conclusions regarding the implications of EPB No. 12 and the DMP mapping.

In relation to the proposed offset, the Minister agreed with the Appeals Convenor that the extent of the clearing, the values of the vegetation proposed to be cleared and the absence of a planning instrument which identifies the land as a priority resource area, provide justification for DER's finding that an offset was not appropriate in this case. The Minister considered this to be consistent with the WA Environmental Offsets Policy, and concurred with the Appeals Convenor's recommendations in that regard.

It follows that the Minister dismissed the appeal and the decision to refuse the permit stands. The Minister noted that this decision does not prevent the appellant lodging a fresh application for a permit to clear with DER. If the appellant is of the view that the vegetation is in poorer condition than that described in its original application, the Minister advised that it will need to confirm this through appropriate surveys. The Minister also noted that appellant will need to carefully consider the planning context, noting the Appeals Convenor's report in respect to the Peel Region Scheme and the Waroona Local Scheme and Strategy.

Finally, in relation to concerns raised by the appellant in respect to delays in the assessment of the application, the Minister noted DER advice that the time the application was under active assessment (219 calendar days) was over the published guidance of 90 calendar days for regular proposals and 120 days for proposals subject to Bilateral Assessments under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

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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