



Environmental Protection Act 1986

**Hon Stephen Dawson MLC**  
**Minister for Environment**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL AGAINST REFUSAL TO GRANT CLEARING PERMIT APPLICATION CPS 6084/3, LOT 253 ON PLAN 238348, MEDA, SHIRE OF DERBY–WEST KIMBERLEY**

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

This document sets out the Minister's decision on an appeal lodged under section 101A of the *Environmental Protection Act 1986* in objection to the refusal of a clearing application by the Department of Environment 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](http://www.appealsconvenor.wa.gov.au).

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<b>Appellant:</b>	Mowanjum Aboriginal Corporation
<b>Applicant:</b>	Mowanjum Aboriginal Corporation
<b>Proposal description:</b>	Proposed clearing of up to 223 hectares of native vegetation on Lot 253 on Plan 238348 at Meda in the Shire of Derby–West Kimberley, for the purpose of expanding an existing pivot irrigation and dryland fodder crop enterprise.
<b>Minister's Decision:</b>	The Minister dismissed the appeal
<b>Date of Decision:</b>	23 June 2017

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#### **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 Environment Regulation (DER) on the matters raised in the appeal. The Minister was advised that representatives of the Office of the Appeals Convenor met with the appellant to discuss the appeal and that the Appeals Convenor also sought advice from the Department of Water (DoW) on matters relating to water.

After considering the appeal, the Appeals Convenor submitted her report to the Minister under section 109 of the Act. This report sets out the background and other matters relevant to the appeal.

The appellant considered DER's decision to refuse to grant a clearing permit in respect to the application was unjustified. The appellant specifically disputed DER's findings that the proposal was at variance to clearing principles relating to biodiversity; fauna habitat; rare flora; watercourses, wetlands and water quality; land degradation; and nearby conservation area. In addition, the appellant contended that the fact that DoW had not granted a water licence to abstract groundwater for the proposal was not a relevant consideration for DER during its assessment of the application.

In considering the information presented in respect to the appeal, the Minister noted that in assessing the application DER sought advice from DoW, Department of Parks and Wildlife (Parks and Wildlife) and the Commissioner of Soil and Land Conservation.

In relation to biodiversity, Parks and Wildlife advised DER that targeted flora, vegetation and fauna surveys were required to confirm the extent (if any) of potential impacts from the clearing to conservation significant flora and fauna. With respect to water related matters, Parks and Wildlife advised DER that the proposed clearing may present potential risks to seasonal watercourses and wetlands in the area. The Minister was advised that had a clearing permit been granted, conditions to manage and mitigate these risks could have been included.

The Minister also noted that DoW advised DER that it had no objections to the proposed clearing pending the grant of a water licence. In this regard, had the environmental matters raised during the assessment been appropriately addressed, DER advised that it would have been open to it to express an intention to grant a clearing permit pending approval of the relevant water licence.

With regards to land degradation, the Commissioner of Soil and Land Conservation advised that the sandy soils in the southern section of the application area have an inherently high risk of wind erosion. Given this, the Minister was of the view that DER was justified in its assessment that the proposed clearing may cause appreciable land degradation. The Minister also noted DER's advice that had the clearing application been granted, conditions to manage and mitigate any risks from wind erosion could also have been included.

The Minister was advised that DER notified the appellant of the unresolved environmental issues identified above as part of the preliminary assessment, including the need for targeted biological surveys, and invited the appellant to provide additional information demonstrating the ability to avoid or minimise any impacts identified. The Minister noted however that the appellant did not commission the required surveys nor address the unresolved issues.

After considering all of the information presented to him in respect to this appeal, the Minister was of the view that DER was justified in its decision to refuse the application. It follows that the Minister dismissed the appeal.

This decision does not preclude the appellant from submitting a fresh clearing permit application which addresses the environmental issues raised in DER's assessment, particularly the advice of Parks and Wildlife that targeted flora, vegetation and fauna surveys would be required to determine the extent of any potential impacts from clearing at the scale proposed in the application.

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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*.