



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST DECISION OF THE DEPARTMENT OF ENVIRONMENT REGULATION NOT TO GRANT A CLEARING PERMIT CPS 7071/1: LOT 43 ON PLAN 6292 WANNEROO

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 101 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.

Appellants:	R. D'Agostino, A Kursar, V Vulin and E Vulin
Applicants:	R. D'Agostino, A Kursar, V Vulin and E Vulin
Application:	Proposed clearing of 4 hectares of native vegetation for the purpose of establishing a market garden
Minister's Decision:	The Minister dismissed the appeal
Date of Decision:	29 May 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 Environment Regulation (DER) on the matters raised in the appeal. The Minister was advised that representatives from the Office of the Appeals Convenor met with the appellants and discussed their concerns in greater detail.

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

By way of summary, the key ground of appeal was that DER relied on general assumptions and reports which did not relate factually to the property, particularly in relation to Carnaby's cockatoo, rare flora, the significance of the vegetation as a remnant and an ecological linkage and matters related to planning and the appellants' economic circumstances, particularly as it relates to the appellants' plans to relocate their existing market garden activities to Elliot Road.

The Minister understood that the primary reason the clearing permit was refused related to biodiversity values, and in particular, the value of the vegetation to Carnaby's cockatoo. DER's site inspection found that the vegetation under application is in good to very good condition, and was stated to contain foraging habitat for Carnaby's cockatoo. The Minister understood that DER also utilised Department of Parks and Wildlife data that indicate that the application is also within close proximity to numerous roosting sites and mapped breeding areas, and may form a part of an ecological linkage with other areas of native vegetation. On this basis, DER's conclusion that the application area is part of a significant habitat for Carnaby's cockatoo was supported by the Minister.

In relation to rare flora, while the Minister noted the appellants' commitment to translocate any individual plants identified prior to clearing, the Minister also noted that the details of the species present and their ability to be effectively translocated would require further work in consultation with the Department of Parks and Wildlife. The Minister noted DER's advice that other environmental impacts of the proposed clearing are more significant and would need to be addressed prior to such action being undertaken.

The Minister also understood that the application area comprises a vegetation complex which has less than 30 percent of its original extent remaining. As the application area is located within an extensively cleared area and forms an ecological linkage with nearby Bush Forever sites, its relative value is also elevated.

On this basis, DER's conclusion that the clearing may result in significant environmental impacts, particularly in regard to foraging habitat for Carnaby's cockatoo was considered to be justified.

With regards to the planning context, the Minister understood that the land is zoned 'rural resource' under the City of Wanneroo's planning scheme, and that any future rezoning would be subject to a separate assessment under relevant planning processes. While the use of the land as a market garden is consistent with the current zoning, the vegetation proposed to be cleared forms part of a vegetation complex that the City of Wanneroo has identified as a high priority for protection.

In relation to the other matters raised in the appeal, the Minister considered the Appeals Convenor's advice and concluded that DER was justified in its decision to refuse the application.

It follows that the Minister dismissed the appeal. The Minister noted that the decision does not preclude the appellants from applying for a permit in the future, where it is recommended that the appellants address any issues raised in DER's assessment. Obtaining advice from a suitably qualified environmental consultant may assist in identifying what additional information can be provided to assist with any new application.

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*.

Office of the Appeals Convenor
Level 22, 221 St Georges Terrace
Perth WA 6000
Tel: (08) 6467 5190
Fax: (08) 6467 5199
www.appealsconvenor.wa.gov.au