



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST REFUSAL TO GRANT A CLEARING PERMIT, APPLICATION CPS 7043/1, LOT 39 ON PLAN 238417 AND LOT 41 ON PLAN 238418, EIGHTY MILE BEACH, SHIRE OF BROOME

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.

Appellants:	Mr D and Ms K Forshaw
Applicant:	Forshaw Pastoral Company Pty Ltd
Proposal description:	Proposed clearing of 350 hectares of native vegetation on Lot 39 on Plan 238417 and Lot 41 on Plan 238418, Eighty Mile Beach in the Shire of Broome, for the purpose of irrigated agriculture (pastoral diversification)
Minister's Decision:	The Minister dismissed the appeal
Date of Decision:	13 June 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 of the Office of the Appeals Convenor held discussions with the appellants on the matters raised in the appeal.

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 Minister understood that the appellants were of the view that the permit ought to have been granted on the basis that the land was previously the subject of a clearing approval which expired in September 2015. The appellants raised a number of other objections to DER's decision, including the assessment of clearing principles relating to biodiversity and land degradation. In addition, the appellants submitted that the decision to refuse the permit was inconsistent with other decisions made by DER in the area, and that the proposed clearing was for an exempt purpose and did not require a permit. In support of the application, the appellants stated that the proposed pastoral diversification would lead to improved environmental outcomes. The Minister also noted that the appellants had raised concerns relating to planning and other matters not specifically related to the environmental merits of the refusal.

In relation to expired Clearing Permit CPS 3516/1, which was granted in 2010 and applied to the land the subject of the appeal, the Minister noted that no application was made to extend the duration of the approval prior to the expiry date on 26 September 2015, and that it was not open to DER to extend the permit once it had expired.

The Minister was advised that the proposed clearing raised a number of environmental issues as outlined in DER's Decision Report, and that DER considered the proposed clearing may be at variance to principles (a) high level of biological diversity, (b) significant habitat for indigenous fauna, (c) rare flora and (g) land degradation.

In relation to biodiversity, DER noted Department of Parks and Wildlife (Parks and Wildlife) advice that the conservation status of some flora species had changed since the assessment of the expired clearing permit, and that new information had become available regarding the flora and fauna species present in the locality of the application area. In this regard, Parks and Wildlife advised that the area contains suitable habitat for one rare and seven priority flora species and the threatened greater bilby and Priority 3 listed spectacled hare-wallaby. Parks and Wildlife recommended that targeted surveys of the application area be undertaken to determine potential impacts to these conservation significant species.

The Minister noted that DER notified the appellants of the unresolved environmental issues identified as part of the preliminary assessment, in particular the need for targeted biological surveys, and invited the appellants to provide additional information demonstrating the ability to avoid, minimise or mitigate potential impacts. The Minister noted however that the appellants did not commission the required surveys nor address the unresolved issues. The Minister was of the view therefore, that on biodiversity grounds alone, DER was justified in refusing to grant the permit.

In respect to clearing exemptions, the Minister noted DER was of the view that the proposed clearing did not appear to fit within the scope of possible relevant exemptions under the Act and the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*, and therefore a clearing permit was required.

In relation to the proposed pastoral diversification and the appellants' claim that it would lead to improved environmental outcomes, the Minister was advised by DER that the appellants did not provide adequate information in respect to any environmental benefits resulting from the proposal nor address the environmental issues identified during the assessment.

With regards to the other issues identified in the assessment, including the risk of land degradation and planning matters, the Minister noted that the key factors in the refusal were related to the potential risk to biodiversity values, and that further consideration of these issues would not have changed the decision to refuse the application. The Minister referred the appellants to the Appeals Convenor's report for further information on these matters.

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

The Minister advised that this decision does not preclude the appellants from submitting a fresh clearing permit application which addresses the environmental issues raised in DER's Decision Report.

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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