



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST REQUIREMENTS OF VEGETATION CONSERVATION NOTICE – CPS 6651/1 LOT 9510 SUTTON STREET, PINJARRA

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 103(1) of the *Environmental Protection Act 1986* in objection to the requirements of the above notice. 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:	Ivo Nominees Pty Ltd
Notice issued to:	Ivo Nominees Pty Ltd
Property:	Lot 9510, Deposited Plan 56143, Sutton Street, Pinjarra
Minister's Decision:	The Minister allowed the appeal in part
Date of Decision:	6 April 2018

REASONS FOR MINISTER'S DECISION

Pursuant to section 106 of the *Environmental Protection Act 1986* (the Act), the Minister was provided with a report from the former Department of Environment Regulation (DER) on the matters raised in the appeal. Representatives of the Office of the Appeals Convenor met with the appellant on-site as part of the investigation.

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

The Vegetation Conservation Notice (VCN) was issued on the finding of DER that approximately 14 hectares of wetland native vegetation growing in and in association with a watercourse and wetland, was cleared and that a clearing permit had not been granted for this property. The Minister noted advice that no apparent exemption applied to the clearing.

By the appeal, the appellant requested an extension of time to fence the cleared area, as well as more information on how to determine the condition and composition of the vegetation that is required to be reinstated. The appellant also requested that the time set

aside to ascertain whether vegetation will naturally regenerate should be extended, and that any requirement to actively revegetate the area (should natural regeneration fail to reach an appropriate standard) be limited to two years, rather than seven years, as currently stipulated.

Before coming to these issues, the Minister noted advice from the Appeals Convenor that the appellant was uncertain as to why controls on clearing native vegetation apply to private land. The Minister acknowledged these controls can be frustrating and confusing, but they do serve an important role in ensuring unintended impacts to our State's unique plants and animals are minimised. In this regard, the Minister noted Western Australia's rich and diverse natural environment is reflected in few other places in the world, and is something we all have a responsibility to enhance and maintain for future generations.

The requirement to fence the area is to assist natural regeneration of the vegetation by excluding stock. The Minister noted advice that cropping and grazing has been undertaken in the area since it was cleared, which is likely to have adversely impacted the capacity of the area to restore naturally. Nonetheless, stock-proof fencing remains important to protect replanted vegetation if natural regeneration does not occur. It follows that the Minister agreed with the Appeals Convenor that the requirement to erect and maintain a fence around the specified area is appropriate and should be retained.

The condition, structure, density and composition of vegetation to be restored within the specified area must be similar to the vegetation as it was before the clearing. In this regard, the Minister concurred with the Department that the remaining vegetation in the northern portion of the remnant provides sufficient guidance on the values that are expected to be restored.

Where natural regeneration does not result in the area being restored to its pre-clearing values, measure 10 of the VCN requires the appellant to achieve this outcome by revegetating the specified area each and every year for seven years. In response to the appellant's request for this measure to be reduced to two years, DER recommended that the measure be amended to clarify that revegetation is required to be undertaken each year for a period of up to seven years, until pre-clearing composition, structure, density and condition is achieved. As such, DER recommended that this ground of appeal be allowed to the extent that seven years remain, but that a lesser period can be applied if sufficient evidence is available to establish that the restoration criteria have been met.

Taking the above into account, the Minister allowed the appeal to the extent that measure 10 is amended in the manner recommended by the former DER. Aside from that change, the Minister considered that the requirements of the VCN are appropriate and dismissed those grounds of appeal accordingly.

The Department of Water and Environmental Regulation (which assumed the role of the former DER on 1 July 2017) will give effect to this decision under section 110 of the Act.

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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