



Environmental Protection Act 1986

**Hon Stephen Dawson MLC  
Minister for Environment**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL AGAINST REQUIREMENTS OF VEGETATION CONSERVATION NOTICE CPS 7470/1 LOT 2 ON DIAGRAM 57736, LAKES ROAD, NAMBEELUP**

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

This document sets out the Minister's decision on an appeal 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](http://www.appealsconvenor.wa.gov.au).

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<b>Appellant:</b>	Mr Roger William Graham
<b>Notice issued to:</b>	Mr Roger William Graham and Ms Valmai Evelyn Graham
<b>Proposal description:</b>	Lot 2 on Diagram 57736, Lakes Road, Nambelup
<b>Minister's Decision:</b>	The Minister dismissed the appeal
<b>Date of Decision:</b>	6 July 2018

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#### **REASONS FOR MINISTER'S DECISION**

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Pursuant to section 106 of the *Environmental Protection Act 1986* (the Act), the Minister was provided with a report from the Department of Water and Environmental Regulation (DWER) on the matters raised in the appeal. The Minister was advised that representatives of the Office of the Appeals Convenor met with the appellant as part of the investigation.

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

In summary, the appellant submitted that the clearing was exempt under the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* as the clearing was carried out for pastoral maintenance and had been cleared within the past 20 years. The appellant was also of the view that the Vegetation Conservation Notice (VCN) requirements were unreasonable, stating that the duration of ten years was excessive based on the aggressive regrowth rate of the vegetation described as 'tea tree' and the requirement to exclude stock would result in a considerable cost with limited benefit. The Minister noted that DWER advised that the vegetation referred to as 'tea tree' in the appeal is *Kunzea glabrescens*, which appeared to be the dominant species regrowing within the cleared areas.

The VCN was issued in response to the alleged unlawful clearing of approximately 16 hectares of native vegetation, which included clearing within an environmentally sensitive area (ESA). In response to the appellant's submission that the clearing was of an exempt kind, DWER advised it had regard to aerial and satellite imagery and found that clearing occurred during the 1970s, with consistent native vegetation regrowth from 1995 until the alleged unlawful clearing in 2016. Based on the foregoing, DWER considered that the pastoral maintenance exemption did not apply.

The appellant submitted that the ten year period restricting cultivation and livestock access was unreasonable based on the aggressive regrowth rate of *K. glabrescens*. DWER's site inspection report acknowledged that the area is likely to return to a *K. glabrescens* thicket within a short period of time, provided no further clearing is conducted. However, noting DWER's retrospective Decision Report which stated that rare flora, if present within the cleared area, has the potential to return with time, the Minister considered that the ten year period is reasonable and appropriate to ensure that the vegetation is allowed to regenerate to a condition similar to that which existed prior to the clearing.

The Appeals Convenor noted that the VCN does not specify how livestock are to be excluded from the cleared areas and the Minister understood that there may be various options available to achieve the objectives of the VCN.

Having considered the information presented, the Minister was satisfied that DWER had reasonable grounds to suspect that unlawful clearing had taken place and was justified in issuing the VCN. The Minister was also of the view that the requirements contained in the VCN were appropriate to enable the regeneration of native vegetation.

Given the above, it follows that the Minister dismissed the appeal.

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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*.

**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](http://www.appealsconvenor.wa.gov.au)