



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST REFUSAL TO GRANT CLEARING PERMIT CPS 7516/1: LOT 3 ON DIAGRAM 35920 BULLER ROAD SHIRE OF WAROONA

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section 101A(1)(a) of the *Environmental Protection Act 1986* in objection to the refusal to grant Clearing Permit CPS 7516/1. This document is produced by the Office of the Appeals Convenor for the Minister. The report of the Appeals Committee can be downloaded from the Appeals Convenor's website at www.appealsconvenor.wa.gov.au.

Appellant:	Pandanus Park Aboriginal Community and AMG (WA) Pty Ltd
Permit Holder:	AMG (WA) Pty Ltd
Proposal description:	The clearing of 14 hectares of native vegetation for the purpose of sand mining.
Minister's Decision:	The Minister dismissed the appeal
Date of Decision:	9 July 2018

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 Water and Environmental Regulation (DWER) on the matters raised in the appeal.

Mr Paul Stephens was appointed as an Appeals Committee to investigate and report to the Minister on the matters raised by the appeal. The Committee met with representatives of the appellant on site, and had further discussions with the appellant as part of the investigation. The Minister was also advised that the Committee discussed certain issues raised by the appeal with officers within DWER and the Department of Biodiversity, Conservation and Attractions.

In terms of substantive issues, the appellant's key concerns about DWER's decision to refuse the permit relate to its assessment of the value of the proposed clearing area as habitat for black cockatoos; its role as part of an ecological linkage; potential impacts to a nearby conservation area; and possible impacts to ground and surface water.

The appellant also raised a number of issues of an administrative nature relating DWER's decision-making process, including the identification of the applicant; the delineation of the application area into two parts; and the adequacy of the site inspection carried out by DWER officers.

On the substantive issues, the appellant stated that assessment of the value of the application area as being valuable as black cockatoo habitat was subjective and not supported by a firm methodology, and that there was no recent evidence of foraging or breeding by black cockatoos in the application area. The appellant also drew attention to the way DWER assessed the application area in two parts.

The Minister considered the issues raised by the appellant, together with the advice of the Appeals Committee and DWER. While it was accepted that the values of the vegetation to black cockatoos were negatively impacted by the Waroona fires, the Minister considered that the vegetation nonetheless retains habitat values for the identified species. The Minister also acknowledged the Appeals Committee's advice in respect to the status of the three species, and the impact posed by further clearing of vegetation that is of habitat value.

It follows that the Minister agreed with the Appeals Committee that the 14 hectares of native vegetation proposed to be cleared forms part of a significant habitat for black cockatoos. The Minister also noted that the vegetation may form part of a habitat for brush-tailed phascogales and quendas. In coming to this conclusion, the Minister also noted that only 18 per cent of the pre-European Southern River vegetation complex on the coastal plain remains intact, and only 15 per cent of the original extent of native vegetation remains within a 10 kilometre radius of the property.

In respect to the identification by DWER of the site as part of an ecological linkage, the appellant submitted that DWER failed to adequately take into consideration the presence of the Western Power transmission corridor. The appellant was of the view that this corridor, which is regularly cleared as part of maintenance activities, means there is effectively no connectivity between the area proposed to be cleared to the Buller Nature Reserve. The appellant also raised the decision of DWER to grant permits to the Shire of Waroona to expand an existing landfill south of the area the subject of this appeal.

In considering this issue, the Appeals Committee acknowledged that factors such as the powerline corridor, the adjoining landfill, the adjoining farmland and the previous unremediated sand extraction pits may support the notion that the ecological linkage is not maintained. However, the Committee found that the subject area is clearly part of a patch of bushland within a regional linkage.

Based on the information available, the Minister agreed with the Appeals Committee that while clearing the application area would not sever the regional linkage, it would make the linkage patch smaller and expose to edge effects a greater area that is in better condition. As such, the Minister was of the view that DWER appropriately considered ecological linkages in its assessment of the proposal.

On the related issue of possible impacts to Buller Nature Reserve, the appellant argued that there is no connectivity between the area proposed to be cleared and the Reserve, and as such, the clearing should be approved. In considering this issue, the Appeals Committee reiterated its findings in respect to the habitat values of the area proposed to be cleared, and found that it was reasonable to conclude that the proposed clearing would negatively affect the environmental values of the Buller Nature Reserve by reducing foraging and nesting opportunities available to black cockatoos and by reducing the bushland available to other species that may travel between the remnant bushland patches in the locality. The Minister concurred with the Appeals Committee's advice in this regard, and as a result, the Minister considered that DWER adequately considered this matter in assessing the proposal.

The appellant also questioned DWER's approach to the application of an offset for the proposal, submitting that its current approach was inconsistent with its approach to the previous permit application. This issue relates to the position taken by DWER that the significant residual impacts raised by the clearing of 'Area A' (3.25 hectares of the application area) could be counterbalanced with an appropriate offset, whereas this was not put forward as an option in the previous application.

The appellant did not pursue the option of a partial approval with an offset, as the area identified by DWER was economically unviable. Instead, the appellant was of the view that the proposed offset (being a proposal to set aside 106 hectares of vegetation on the western part of Lot 3) was suitable to counterbalance the residual impacts of the area proposed to be cleared.

Taking into account the values identified in respect to the entire application area, the Minister believed DWER was justified in forming the view that an offset was not appropriate in this instance.

As to the other matters raised in the appeal, the Minister considered the issues the appellant raised, the advice of DWER and the advice of the Appeals Committee, and determined these matters in accordance with the Appeals Committee's recommendations.

It follows that the Minister considered DWER's assessment of the proposed clearing was appropriate, and adequately considered the environmental values and other relevant matters relevant to the proposal. The Minister has therefore dismissed the appeal.

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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