



Environmental Protection Act 1986

Hon Stephen Dawson MLC
Minister for Environment

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST REFUSAL TO GRANT CLEARING PERMIT CPS 8059/1: LOT 1 ON DIAGRAM 73539, ROY ROAD, METRICUP, CITY OF BUSSELTON

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 101A(1)(a) of the *Environmental Protection Act 1986* in objection to the above refusal. 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:	Simon Ensor
Applicant:	Simon Ensor
Proposal description:	Proposed clearing of 9.5 hectares of native vegetation for the purpose of sand extraction
Minister's Decision:	The Minister dismissed the appeal
Date of Decision:	12 June 2019

REASONS FOR MINISTER'S DECISION

In April 2018, the appellant lodged clearing permit application CPS 8059/1 to clear approximately 9.5 hectares (ha) of native vegetation at the above property (the application area), for the purpose of sand extraction.

Through its assessment, the Department of Water and Environmental Regulation (DWER) concluded that the proposed clearing is at variance to clearing principles (a) biodiversity, (b) significant habitat for fauna, (d) threatened ecological community (TEC) and (e) significant remnant in an extensively cleared area and may be at variance to (c) threatened flora and (g) land degradation, and is not likely to be at variance to the remaining principles. On 7 January 2019, DWER refused to grant a clearing permit for the application.

The appellant appealed DWER's decision to refuse to grant a clearing permit, submitting that the findings of DWER's assessment of the clearing application were speculative and not based on fact. In support of his position, the appellant submitted that the populations of conservation-significant fauna which occupy the application area are the result of his efforts and expense in establishing a predator-free enclosure at the property. In addition, the appellant submitted that

DWER did not properly consider rehabilitation of the application area following the proposed clearing and sand extraction.

The appeal was investigated by the Appeals Convenor on behalf of the Minister, which included a meeting and site visit with the appellant and his wife.

In considering the information presented in respect to the appeal, the Minister noted that DWER sought advice from the Department of Biodiversity, Conservation and Attractions (DBCA) on the environmental values of the application area and sought guidance on potential risks of the proposed clearing.

The Minister also noted that the condition of the vegetation the subject of the application reflected the appellant's sound management of the property over a number of years, and acknowledged the appellant's efforts in that regard. The Minister noted however, that he is required to consider the appeal in the context of the environmental values as they currently exist, and not how they may have existed had they been managed in a different way.

In this regard the Minister understood that in refusing the permit, DWER identified that the native vegetation proposed to be cleared is known to support populations of conservation-significant fauna including the critically endangered woylie and western ringtail possum and includes significant foraging habitat for threatened black cockatoo and could contain breeding hollows. In particular, the Minister understood that DBCA advised that the woylie population is likely to be significantly impacted by the clearing.

DWER also identified the vegetation within the application area as representative of the endangered Banksia Woodlands of the Swan Coastal Plain TEC and may support a number of threatened and priority flora. In addition, DWER determined that the application area is significant as a remnant in an extensively cleared area, and that the clearing may cause appreciable land degradation from wind erosion if the clearing were not carefully managed.

The Minister noted that during the assessment, the appellant advised DWER that he was willing to undertake flora and fauna surveys to establish the presence or absence of conservation-significant species and ecological communities but was advised by DWER not to undertake such investigations. The Minister understood that this was on the basis that DWER had sufficient information about the environmental values of the area to inform its assessment and that further investigations would come at some considerable cost to the appellant.

In considering the appeal, the Minister had regard to the information available to him, including guidance from DBCA as to the potential risks to conservation-significant fauna and flora, and was of the view that DWER was justified in concluding that the proposed clearing would significantly impact on the environmental values of the area and that it was not environmentally acceptable.

It follows that the Minister was also of the view that the decision to refuse the permit was justified and 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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