



Environmental Protection Act 1986

Albert Jacob MLA
Minister for Environment

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST REFUSAL TO GRANT CLEARING PERMIT CPS 4310/1 – LOT 1 ON DIAGRAM 75124 WANNEROO ROAD, NOWERGUP

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 by the Department of Environment and Conservation (DEC) to grant a permit to clear native vegetation. 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

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| Appellant: | PMR Quarries Pty Ltd |
| Permit applicant: | PMR Quarries Pty Ltd |
| Proposal description: | Clearing 6.7 hectares of native vegetation for the purpose of limestone extraction |
| Appeal Outcome: | The Minister dismissed the appeal |
| Date of Decision: | 21 May 2013 |

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 and Conservation (DEC) on the matters raised in the appeal. The Minister also received a report from the appointed Appeals Committee, which sets out the background and other matters relevant to the appeal. The Minister was advised that the Appeals Committee met with the appellant onsite as part of the investigation.

The appellant submitted that in refusing to grant the permit, the DEC failed to take into account all relevant information and that the DEC's assessment against the clearing principles in Schedule 5 of the Act was incorrect and contained factual errors. The appellant also contended that the DEC failed to consider the proposed area of rehabilitation and did not properly assess the offset and mitigation measures put forward during the assessment process.

The proposal the subject of this appeal is the clearing of approximately 6.7 hectares of native vegetation for the purpose of limestone extraction. In its assessment of the

proposal, the DEC found that the vegetation proposed to be cleared was in excellent condition and that the clearing was at variance to clearing principles (a) biodiversity, (b) fauna habitat and (h) conservation areas and may be at variance to principles (d) threatened ecological community and (g) land degradation.

The DEC also noted that the site is identified under State Planning Policy 2.4 *Basic Raw Materials*, and is considered to be a regionally significant source of limestone.

Taking into account the information presented to him, the Minister considered there are two key issues raised by the appeal: firstly, the nature and extent of the values of the vegetation proposed to be cleared, and secondly, the extent to which the impacts to those values have been avoided and mitigated, and whether it is possible or appropriate to offset any residual impacts.

On the first issue, the appellant submitted a number of concerns in relation to the DEC's assessment of the proposal, including that the DEC exaggerated the number and probability of fauna species likely to occur on the site, and that the assessment of impacts in respect to Carnaby's cockatoo was deficient.

The appellant also contended that the Threatened Ecological Community 26a would not be impacted in the manner suggested by the DEC, noting that despite other adjoining land uses, the site remains in excellent condition.

In considering the environmental values of the site, the Minister noted that the vegetation proposed to be cleared is described as being in excellent condition. In relation to fauna values, the fauna assessment noted that the site is likely to be used as habitat by a wide number of species, including foraging habitat for Carnaby's cockatoo.

Lot 1 also includes Threatened Ecological Community 26a and may also provide linkage values between remnant vegetation within the area.

Noting the above, the Minister was of the view that the site is important as habitat for fauna, including providing foraging habitat for Carnaby's cockatoo. The Minister considered that the DEC's assessment of the potential impacts to these values was therefore justified.

Having concluded that the vegetation does have a number of environmental values, the second issue raised by the appeal is whether it is appropriate and possible for the residual impacts of the proposed clearing to be offset.

In its advice, the DEC noted that given the site has been identified as a key resource area in respect to limestone extraction, an appropriate offset proposal that addresses the residual impacts could be considered. As part of the appeals process, the appellant submitted an avoidance, mitigation and offset proposal which, it considered, addressed the impacts associated with the proposed clearing. The detail of the proposal is set out in the Appeals Committee's report, which includes the setting aside of that part of Lot 1 north of Nowergup Road for conservation purposes and the progressive rehabilitation of the quarry area.

The Appeals Committee sought advice from the DEC as to the suitability of the offset, which is detailed in the Committee's report, along with the appellant's further response to the issues raised.

In considering this issue, the Minister acknowledged the commitments to address the residual impacts associated with the proposed clearing, and the Minister believed they go some way to offsetting the values of the vegetation to be cleared. However, the Minister

was of the view that further work is required to appropriately compensate for the residual environmental impacts and achieve long term outcomes. For example, and as noted by the DEC, the WA Offsets Policy requires that offsets be secure and long lasting. While the offset partially achieves this outcome through the proposed ceding of part of Lot 1 for conservation purposes, this does not of itself represent the establishment of any additional vegetation for the period the extraction area remains un-vegetated.

The Minister noted that while it is proposed to progressively rehabilitate the area following quarrying, this is considered to be consistent with normal practice for mining activities. The Minister also noted that there will be a time lag between quarrying and rehabilitation taking effect which will result impact on the available habitat values of the site.

For the above reasons, the Minister was of the view that the DEC appropriately assessed the values of the vegetation proposed to be cleared and the proposed offset and mitigation proposal, and that its decision to refuse the permit was therefore justified.

The Minister noted that this decision does not preclude the appellant from applying for a clearing permit in the future, where the applicant will need to address the issues raised in the DEC's assessment as well as any residual impacts.

Finally, the Minister noted that the DEC's advice refers to discussions around a potential exchange of land. As this is a matter relating to the Planning Portfolio, the Minister wrote to the Minister for Planning advising him of the decision on the appeal and offering support for any land exchange proposal which optimises the outcome for the environment.

Note: this decision is published pursuant to the terms of regulation 8 of the *Environmental Protection Regulations 1987*.

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