



**APPEALS CONVENOR
ENVIRONMENTAL PROTECTION ACT 1986**

A/DIRECTOR GENERAL
DEPARTMENT OF ENVIRONMENT

Our ref: C022/05
Your ref:
Enquiries: (08) 9221 8711
Date: 7 December 2005

**APPEAL AGAINST REFUSAL TO GRANT CLEARING PERMIT – (CPS No. 148/1) LOT 62
ON DIAGRAM 95302, GREAT NORTHERN HIGHWAY, CHITTERING**

Pursuant to regulation 9 of the *Environmental Protection Regulations 1987*, please find enclosed a copy of the appeal decision summary for the above appeal. This appeal was lodged in objection to the decision of the Department of Environment to refuse to grant a permit to clear 30 hectares of native vegetation at the above location.

In accordance with regulation 8, it would be appreciated if you would arrange for this document to be made available to the public in the Department of Environment's library.

RR

Renee Rush
A/APPEALS REGISTRAR

enc.

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Environmental Protection Act 1986

Minister for the Environment

APPEAL DECISION SUMMARY

Appeal Number C022 of 2005

This appeal was lodged with the Minister for the Environment pursuant to section 101A(1) of the *Environmental Protection Act 1986*. The appeal was in objection to decision of the Department of Environment to refuse to grant a permit to clear the land described below.

CPS No.: 148/1
Appellant: Leslie and Barbara Miller
Permit holder: Leslie and Barbara Miller
Location: 5283 Great Northern Highway, Chittering
Acting Minister's Decision: Allow in part
Date of Decision: 30 November 2005

REASONS FOR DECISION

Background

The land in this case is a small (40 hectare) hobby farm in the Shire of Chittering. The land has been 'parkland cleared', with a sparse understorey of *Xanthorrhoea* and *Grevillea/Hakea*, with the overstorey comprising *Corymbia calophylla* and *Eucalyptus marginata* (marri/jarrah). The vegetation condition is described in the Clearing Assessment Report prepared by the Department of Environment (DoE) as being degraded, with the structure of the vegetation severely disturbed.

The appellants applied to clear 30 hectares of native vegetation on the land on 27 August 2004. The purpose of the clearing was stated to be to improve the stock-holding capacity of the land as well as an access track through the centre of the lot. The DoE conducted a site inspection on 18 November 2004.

In assessing the proposal, the DoE received advice from the Shire of Chittering. This advice recommended the clearing permit be refused on the basis that the vegetation was growing in close association with a site of conservation significance (Burroloo Well) and that the clearing was contrary to the Shire's Local Planning Strategy and Land Capability Assessment.

The DoE assessed the information provided by the Shire and in the permit application. The DoE determined that due to the proposal being inconsistent with the Shire of Chittering Local Planning Strategy, the permit application should be refused. This was due to the operation of section 51O of the Act, which requires the DoE to have regard to the content of local planning laws in considering whether or not to grant a permit.

Appeal

The appeal questioned the basis upon which the Shire of Chittering refused development approval for the clearing of vegetation on the land, and noted that other clearing proposals had been approved in close proximity to the land in question. The appeal also questioned the conclusion by the Department of Conservation and Land Management that the clearing should be refused as it will be within 250 metres of Burroloo Nature Reserve.

From further discussions with the Office of the Appeals Convenor, the appellants confirmed that the area proposed to be cleared was five hectares, not the 30 hectares recorded on the original application.

Department of Environment's response to the appeal

The DoE advised that on the basis of the original application to clear 30 hectares, the proposal may have been at variance with three of the 'clearing principles'. The clearing principles are contained in Schedule 5 of the Act, and provide guidance on when clearing of native vegetation should not be approved.

In considering the revised proposal to clear only 5 hectares of native vegetation at the western end of the property, the DoE advised that the proposal was unlikely to be at variance to any of the clearing principles. In particular, the DoE was of the view that the reduced area of clearing, and its confinement to degraded vegetation more than 500 metres away from the Burroloo Well Nature Reserve meant that it was unlikely to have a significant environmental effect.

The DoE advised that in the event that the Shire approved a revised development proposal, then its objection to the clearing proceeding would be removed, and it would recommend the permit be granted.

Shire of Chittering's response

The Office of the Appeals Convenor discussed the appeal with the Principal Planner at the Shire of Chittering in August 2005. The Shire confirmed its objection to the original proposal, but indicated that it would likely approve a revised proposal for clearing five hectares of degraded vegetation at the western end of the land. In this regard, the Shire advised that at that time, it was waiting to receive a valid development application from the appellants that it could consider under its planning scheme.

It was understood that the appellants were reluctant to lodge a fresh application with the Shire of Chittering, but that following discussions with the Office of the Appeals Convenor, they agreed to do so. The Shire considered the revised development application at the Council meeting on 28 September 2005. At this meeting, it was agreed to grant approval to clear an area of 4.6 hectares for the purpose of an access track and grazing subject to (among other things) the clearing not impacting on Burroloo well; vegetation being retained or re-established along drainage lines and subject to the approval of the DoE. This decision was communicated to the Office of the Appeals Convenor on 4 November 2005.

Consideration

The decision to refuse the original permit application was based on a number of factors, including the possible impacts on the Burroloo Nature Reserve and the fact that the clearing was inconsistent with the Shire of Chittering's Local Planning Strategy.

Since lodging the appeal however, the area proposed to be cleared has been revised to 5 hectares of degraded vegetation. A new development application for the proposed clearing

was subsequently approved by the Shire of Chittering. The DoE's advice is that approval be granted to clear the reduced area.

Having regard to the information provided, the Minister was satisfied that the proposed clearing is consistent with the clearing principles. The Minister also noted that the Shire of Chittering approved the clearing of 4.6 hectares of vegetation, subject to a number of conditions.

Noting the degraded state of the vegetation in question, and the small area proposed to be cleared, the Minister determined to partially allow the appeal by granting the appellants a permit to clear up to 4.6 hectares of native vegetation in accordance with the plan approved by the Shire of Chittering on 28 September 2005.

The DoE was asked to prepare a permit to give effect to this decision.

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

Preparing officer: Jean-Pierre Clement



Government of
Western
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