



Environmental Protection Act 1986

Hon Donna Faragher JP MLC
Minister for Environment

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST REFUSAL OF CLEARING PERMIT CPS NO. 749/1 – MR PETER JOHNSTON , CALLAGIDDY STATION, LOT 407 ON PLAN 238097, INGGARDA, SHIRE OF CARNARVON

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 101A(1) of the *Environmental Protection Act 1986* in objection to refusal to grant a permit as set by the Department of Environment and Conservation (DEC) in relation to the above proposal. 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:	Mr Peter Johnston
Proponent:	Mr Peter Johnston
Proposal description:	Clearing of 240 hectares of native vegetation for horticulture and tree farming.
Minister's Decision:	The Minister allowed the appeal.
Date of Decision:	27 October 2008

REASONS FOR MINISTER'S DECISION

This appeal was against the refusal by the Department of Environment and Conservation (DEC) to grant a permit to clear approximately 240 hectares (ha) of native vegetation at the above location for the purpose of horticulture and tree farming.

Pursuant to section 106 of the *Environmental Protection Act 1986*, the Minister obtained a report from the DEC on the matters raised in the appeals. The Minister also received a report from the Appeals Convenor setting out the background and other matters relevant to the appeal.

The Minister noted that the appeal sought to overturn the DEC's decision not to grant a clearing permit and that the application for a clearing permit had taken more than two and a half years to reach this point.

There were two grounds of appeal:

1. A report which formed part of the application for a pastoral diversification permit (diversification permit) to the Pastoral Lands Board (PLB) was removed by an Officer of the Department for Planning and Infrastructure (DPI).
2. Lack of action by Officers of the DPI to submit to the PLB information received from the Soil Commissioner of Western Australia from an onsite visit, and information received from the DEC stating that the application conforms to the clearing principles.

The Minister considered the grounds of appeal concurrently as they both relate to an application for a diversification permit.

The appeal grounds relate to alleged actions either taken or not taken by the DPI therefore the DEC was unable to provide advice in respect to these grounds. The Minister noted, however, that the DEC would be prepared to grant a clearing permit provided that the matter of the diversification permit was resolved. The Minister also noted the DEC's advice that its assessment of the application did not indicate any impacts that would require conditions to be imposed, if the permit were granted.

The Minister considered that, whilst the PLB's decision to refuse to grant a diversification permit had a direct bearing on the DEC's decision to refuse to grant a clearing permit, the environmental appeals process is not an appropriate process for addressing procedural issues that allegedly occurred in processing of the application for a diversification permit. The Minister therefore dismissed the grounds of appeal.

Notwithstanding the foregoing, the Minister noted that the key outcome sought was for the DEC's decision not to grant a clearing permit to be overturned. Given that the matter of the diversification permit had been resolved and given the DEC's advice that it would be prepared to grant the clearing permit if such occurred, the Minister allowed the appeal.

The Minister therefore directed the DEC to grant a clearing permit.

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*.

Prepared by: Renee Zuks

Office of the Appeals Convenor

Level 13, 77 St George's Terrace
Perth WA 6000
Tel: (08) 9221 8711
Fax: (08) 9221 8244
www.appealsconvenor.wa.gov.au