



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST REQUIREMENTS OF VEGETATION CONSERVATION NOTICE CPS 8557/1 YAKKA MUNGA STATION, GEEGULLY CREEK

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 103 of the *Environmental Protection Act 1986* in objection to the requirements of a vegetation conservation notice. 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:	Zenith Australia Investment Holding Pty Ltd
Land owner:	Zenith Australia Investment Holding Pty Ltd
Appeal description:	An appeal against the requirements of a vegetation conservation notice issued in respect to suspected unlawful clearing of native vegetation at Yakka Munga Station, south east of Broome.
Minister's Decision:	The Minister allowed the appeal in part.
Date of Decision:	26 August 2019

REASONS FOR MINISTER'S DECISION

Zenith Australia Investment Holding Pty Ltd (Zenith) holds the pastoral lease in respect to Yakka Munga Station. In June 2019, the Chief Executive Officer (CEO) of the Department of Water and Environmental Regulation (DWER) issued a vegetation conservation notice to Zenith in relation to what the CEO identified as unlawful clearing on the land.

The notice issued by the CEO sets out the reasons for which it was given, and directs Zenith to ensure that no further unlawful clearing takes place on the land.

Zenith sought to appeal the requirements of the notice, which is provided for in section 103(1) of the *Environmental Protection Act 1986* (the EP Act). Among other things, the appeal asserts that the clearing was for an exempt purpose or purposes, and that as a result, there was no basis upon which the CEO could issue the notice.

The Minister obtained reports from DWER and the Appeals Convenor in response to the appeal, and noted that as part of the investigation, Zenith was given an opportunity to provide comments in response to the Department's advice, which the Appeals Convenor considered in her report.

According to Zenith, the clearing undertaken at Yakka Munga Station was for the purpose of establishing stock water, and constructing roads and fences. Zenith advised that the works were aimed at ensuring more sustainable paddock design and enhanced native pasture growth to reduce erosion and improve productivity.

The threshold issue raised by the appeal is whether the CEO was justified in giving the notice. This in turn relates to the nature of the power to give a vegetation conservation notice, which is set out in section 70(2) of the EP Act. This relevantly provides that a notice may be given where the CEO suspects on reasonable grounds that unlawful clearing is, has, or is likely to take place on any land. Unlawful clearing is defined to mean clearing of native vegetation that is undertaken without a permit or valid exemption.

By the appeal, Zenith indicated that the clearing undertaken on the land was exempt from the requirement to obtain a permit. The details of Zenith's submissions are set out in the Appeals Convenor's report, but relevantly include the view that the clearing was required under the terms of the pastoral lease held by Zenith, and associated requirements applying to pastoral leases under the *Land Administration Act 1997*.

The primary basis for the claim that the activities were exempt was that they are for the purpose of providing water for stock purposes, and that as a result, they are an essential part of the operation of a pastoral lease. Zenith also submitted that roads proposed to be constructed as part of the clearing were similarly essential to the effective operation of the station, and therefore exempt from the requirement to obtain a clearing permit under the EP Act.

Taking into account Zenith's submissions, together with the advice of DWER and the Appeals Convenor, the Minister was of the view that no valid exemption applies to the clearing, and that as no permit had been issued in respect to the clearing, there was (and is) a reasonable basis to suspect unlawful clearing had occurred on the land. As a result, the Minister adopted the Appeals Convenor's recommendations accordingly. In coming to this view, the Minister also accepted that some of the clearing may have been exempt for the construction of up to five hectares of vehicular tracks, and the Minister therefore instructed the CEO to ensure this is reflected in an amendment to the notice.

As to the requirements of the notice, the Minister considered the concerns raised by Zenith, and formed the view that no change to the notice is required. As noted by the Appeals Convenor, the stated requirement that no further unlawful clearing occur on the land reflects the content of section 70(2) of the EP Act, and as no requirements of the kind contemplated under section 70(4)(b) were applied to the notice, there was no requirement for the CEO to give Zenith notice in the manner required by section 70(5).

In coming to this decision, the Minister acknowledged that certain material DWER published purporting to provide guidance on the application of exemptions applicable to pastoral activities did not reflect the Department's current position. The Minister understood the relevant guidelines are currently being reviewed, and DWER is in the process of consulting with relevant parties on the issue, including the Pastoral Lands Board and Pastoralists and Graziers Association.

The Minister also noted his understanding that Zenith has commenced discussions with the Department in respect to applying for a clearing permit for the works. The Minister considered this to be an appropriate course of action, and encouraged Zenith to continue to work through that process. As noted by the Department in its response to the appeal, it is open to the CEO to review the content of and continued need for the notice depending on the outcome of any clearing permit application.

The Department will give effect to the Minister's decision on the appeal under section 110 of the EP Act as soon as practicable.

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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