



Government of **Western Australia**
Office of the **Appeals Convenor**
Environmental Protection Act 1986

Appeals Convenor's Report to the Minister for Environment

Appeal objecting to amended clearing permit CPS 4442/6
Rio Tinto Iron Ore railway and transport corridor infrastructure



Appellant	Wildflower Society of Western Australia (Inc)
Permit holder	Pilbara Iron Company (Services) Pty Ltd
Authority	Department of Water and Environmental Regulation (DWER)
Appeal No.	002/21
Date	December 2022

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Cover photo of iron ore train in the Pilbara courtesy of Rio Tinto Iron Ore

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Acknowledgement of Country

The Office of the Appeals Convenor acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community.

We pay our respects to all members of the Aboriginal communities and their cultures, and to Elders past, present, and emerging.

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1 Executive summary

1.1 Decision under appeal

This report relates to an appeal against amended Clearing Permit CPS 4442/6 granted by the Department of Water and Environmental Regulation (DWER) under Part V of the *Environmental Protection Act 1986* (EP Act).

The clearing permit was first granted in May 2012, and authorises Pilbara Iron Company (Services) Pty Ltd (permit holder) to clear 500 hectares (ha) of native vegetation per financial year within land tenure or rights administered under specified Western Australian statutes¹ or State Agreement Acts². The purpose of the clearing is to maintain and improve the existing integrated Rio Tinto Iron Ore railway and transport corridor infrastructure system to ensure the ongoing operational efficacy of the system (Figure 1).

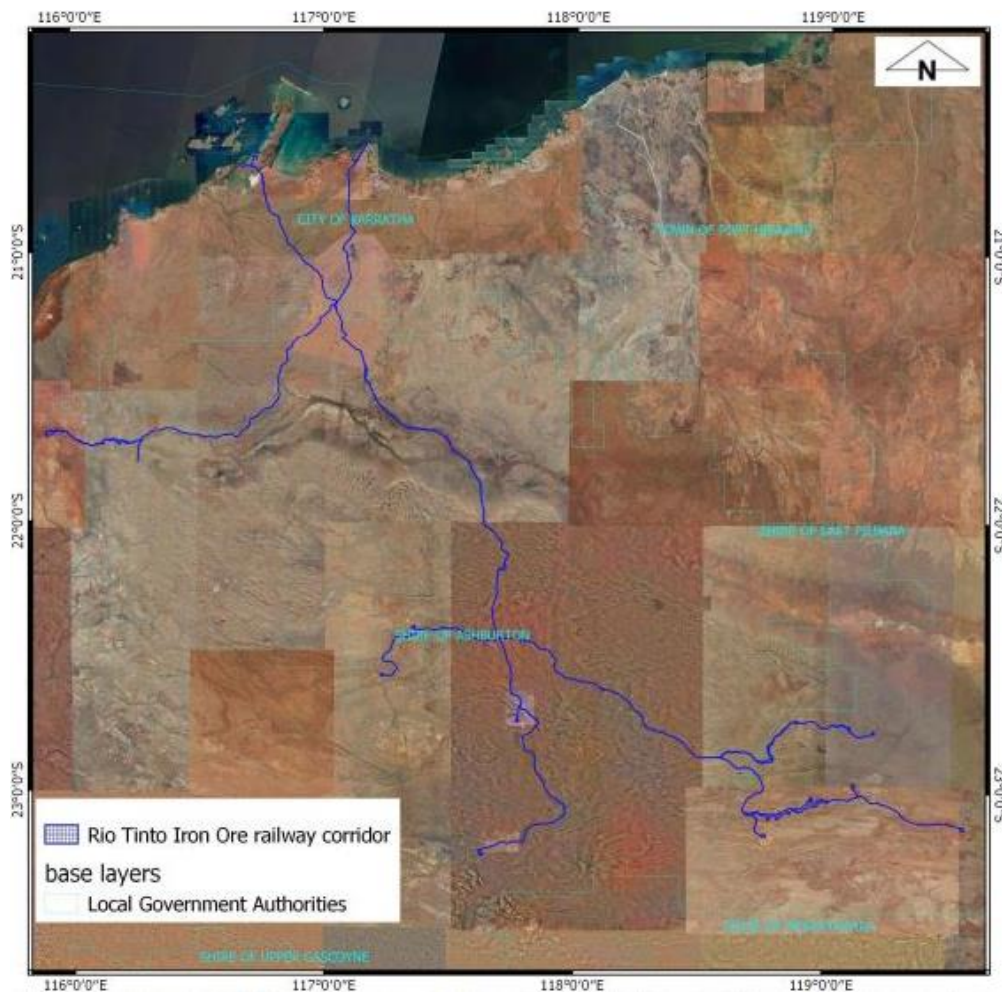


Figure 1 Area cross-hatched blue shows approximate extent of existing railway corridor³

¹ *Mining Act 1904, Mining Act 1978, Land Act 1933, Land Administration Act 1997, Property Law Act 1969, Transfer of Land Act 1893, Strata Titles Act 1985, Rights in Water and Irrigation Act 1914.*

² *Iron Ore (Hamersley Range) Agreement Act 1963, Iron Ore (Robe River) Agreement Act 1964, Iron Ore (Hamersley Range) Agreement Act 1968, Iron Ore (Mount Bruce) Agreement Act 1972, Iron Ore (Channar Joint Venture) Agreement Act 1987, Iron Ore (Hope Downs) Agreement Act 1992, Iron Ore (Yandicoogina) Agreement Act 1996.*

³ Department of Water and Environmental Regulation (2020) *Clearing Permit CPS 4442/6 and Clearing Permit Decision Report*. 23 December 2020. Decision report, page 4.

The clearing permit has been amended on five occasions (refer section 3.2). The current amendment (CPS 4442/6) achieves the following:

- extends the permit duration by five years to 31 December 2030 and the time within which clearing can occur by five years to 31 December 2025.
- reinstates a condition that requires the applicant to avoid, minimise and reduce the impacts and extent of clearing,
- adds a new condition that prevents clearing within 200 metres (m) of threatened ecological communities (TEC) unless approved in writing by the Chief Executive Officer of DWER (CEO), and
- adds multiple conservation significant ecological communities within which the permit holder is not authorised to clear.

1.2 Grounds of appeal and appellant concerns

The Wildflower Society of Western Australia (Inc) (appellant) objected to the amendment, and submitted four grounds of appeal centred around the adequacy of the conditions to ensure that avoidance has been considered, to address impacts on priority flora and priority ecological communities (PECs), and to provide public transparency in reporting and auditing. The appellant's concerns are in Table 1.

Table 1 Grounds of appeal

Ground	Main concerns the appellant submitted
1. Avoid and minimise options	The permit holder has stated that works would occur on previously disturbed areas 'if practical'. The appellant objects to the use and acceptance of this vague term, as it cannot be verified or audited. The permit holder needs to explain the term 'if practical', and DWER needs to see strong evidence and examples of what the proponent can, will or has done to avoid and minimise clearing, when auditing the reports submitted as required in condition 14.
2. Buffer distances	The specified buffer distances for priority flora (10 m) and PECs (20 m) are inadequate and should be increased to 50 m in each case. A greater buffer distance is required for physical protection from mechanical disturbance or trampling, and protection/retention of associated biodiversity such as insects, especially pollinators, which are necessary to the continued existence of the specified priority flora or PEC. This is especially important if a priority flora or PEC is surrounded by cleared land outside the buffer.
3. Clearing of threatened and priority flora and ecological communities	In its decision report, DWER indicated that a review of the proponent's annual reports identified that of the 2,500 ha of native vegetation authorised to be cleared under different versions of this clearing permit, only approximately 3.5 per cent (approximately 88.04 ha) has been cleared. However, DWER did not indicate how much of this contained or constituted threatened or priority flora or ecological communities. This is an important consideration in assessing the environmental impacts of this clearing permit and whether its continuation should be approved. The public has a right, through DWER's decision report or others means, to know the environmental impact of the proponent's actions.
4. Environmental audits	There needs to be a condition in the clearing permit requiring independent, publicly available audits of the proponent's activities and resultant impacts on the environment, similar to that required under the Statewide 'purpose' clearing permit granted to Main Roads Western Australia (CPS 818).

1.3 Key issues and conclusions

The question for the Minister on appeal is whether, based on the concerns raised by the appellant, the clearing permit should have been amended.

To resolve this question, it is necessary to consider the grounds of the appeal in the context of the relevant considerations set out in section 51O of the EP Act and, if it is considered that the amendment was appropriate, the extent to which conditions can be applied to ensure potential environmental impacts are appropriately managed.

These issues are summarised below. Section 2 provides our further details about our reasons, and supporting information is provided in section 3.

Should the clearing permit have been amended?

We conclude that DWER's decision to amend the permit, being a purpose permit within the meaning of the EP Act, was justified, and that the permit sets out the process the permit holder must go through before commencing clearing, so that all relevant environmental values are identified and relevant management requirements are applied.

The amended permit sets out that prior to undertaking any clearing, the permit holder must first determine that the proposed clearing is authorised for one or more of the specified project activities, and then engage a botanist and a fauna specialist to undertake surveys and comply with specified management requirements, if triggered.

Are the conditions appropriate to manage impacts?

We conclude that DWER has generally applied reasonable conditions to manage the identified impacts so that the proposed clearing does not lead to unacceptable risks to the environment. We consider, however, that the recordkeeping and reporting requirements in the amended permit should be strengthened for improved transparency and compliance reasons. In response to each of the appellant's grounds in relation to the requirements of the permit we make the following findings.

Extent and impacts of clearing can be avoided, minimised and reduced

The amendment reinstates a requirement to avoid, minimise and reduce the impacts and extent of clearing (removed in version /3). We consider that this requirement, combined with requirements to revegetate and rehabilitate areas which are no longer required to be cleared and to maintain records of activities under the permit for reporting purposes, as well as the permit holder's internal procedures, provide assurance that clearing of native flora and vegetation is only carried out when unavoidable or otherwise necessary.

Buffer requirements are reasonable

The amended permit does not allow clearing within 50 m of threatened flora, 10 m of priority flora, 200 m of TECs, and 20 m of PECs unless approved by the CEO. To inform this, the amended permit requires surveys to be undertaken in accordance with the EPA's Technical Guidance for Flora and Vegetation Surveys.

During the appeal investigation, the permit holder provided information on its internal procedures in relation to environmental values, which includes buffers as part of a primary analysis to identify when avoidance and minimisation must be considered. With regard for the larger 20 m buffer applied for priority flora in the permit holder's internal procedures, we consider that the buffer distances specified in the amended permit are reasonable.

Additional records to be kept on impacts

DWER noted that the permit holder's annual reporting contains limited information on CEO-approved buffer disturbances, and recommended adding a condition to the permit requiring the permit holder to keep records (for annual reporting purposes) on the extent of impacts on conservation significant flora species and ecological communities within the clearing period and cumulatively under the amended permit. We consider that DWER's recommended changes will improve transparency. Further, we consider that for improved compliance purposes the permit holder should be required to keep records on the nature and extent of any instance(s) of non-compliance with conditions.

External audits not necessary but non-compliances should be reported

We understand that the appellant's request for external environmental auditing is to provide for an independent review of a permit holder's decision making under the clearing permit, such as for the execution of assessment procedures and the management of clearing impacts as is included in other Statewide purpose permits. We consider that the conditions in the amended permit and the permit holder's internal procedures provide confidence that clearing will be avoided or minimised as far as practicable, and that external audits are not necessary in this case.

DWER acknowledged the appellant's request for transparency around clearing activities undertaken under the amended permit, and recommended adding a condition to the permit requiring the permit holder to publish annually a publicly available summary of clearing activities undertaken in the preceding 12-month period. We consider that for improved compliance purposes the permit holder should also be required to notify the CEO of any non-compliance or potential non-compliance within seven days of becoming aware of that incident and no later than 28 days of that incident occurring.

Additional changes to conditions recommended

During our review of the conditions in the amended permit, we noted that references to 'the Department' in condition 11(c) should be changed to 'the Department of Biodiversity, Conservation and Attractions'.

1.4 Recommendations to the Minister

We recommend that the appeal is allowed to the extent that the conditions in the amended permit are modified as follows:

- Amend condition 11(c) to replace references to ‘the Department’ with ‘the Department of Biodiversity, Conservation and Attractions’.
- Amend condition 14 (‘Records must be kept’):
 - amend part (b) to add requirements that the permit holder must keep records of the extent of impacts to identified threatened and priority flora approved and implemented under condition 10(c), within the clearing period and cumulatively for each flora species
 - amend part (c) to add a requirement that the permit holder must keep records of the extent of impacts to identified threatened and priority ecological communities approved and implemented under conditions 11(b) or 11(d), within the clearing period and cumulatively for each threatened and priority ecological community.
 - add a requirement that the permit holder must keep records on the nature and extent of any instance(s) of non-compliance or potential non-compliance with the conditions.
- Amend condition 15 (‘Reporting’):
 - add a requirement that the permit holder must notify the CEO of any non-compliance or potential non-compliance within seven (7) days of becoming aware of that non-compliance or potential non-compliance and no later than 28 days of that non-compliance or potential non-compliance occurring.

2 Reasons for recommendations

2.1 Should the clearing permit have been amended and if so, are the conditions appropriate to manage impacts?

We conclude that it was appropriate for DWER to amend the permit, being a 'purpose' permit within the meaning of the EP Act. We consider that the permit provides a process the permit holder must go through before commencing clearing, so that all relevant environmental values are identified, and relevant management requirements are applied.

The amended permit sets out that prior to undertaking any clearing, the permit holder must first determine that the proposed clearing is authorised for one or more of the specified project activities, and then engage a botanist and a fauna specialist to undertake surveys and comply with specified management requirements, if triggered.

There is an approval pathway under the amended permit

The amended permit is a 'purpose' permit. This type of permit authorises the clearing of different areas from time to time for a specified purpose. In granting a 'purpose' permit, the CEO is required to describe the purpose of the clearing and the principles and criteria that are to be applied, and the strategies and procedures that are to be followed, in relation to the clearing. In this case, the amended permit was granted to authorise the permit holder to clear native vegetation for specified purposes (see below) within a broader footprint (defined by tenure). The current extent of the existing railway corridor is indicated in Figure 1 (permit footprint).

The amended permit sets out that the permit holder must first determine whether clearing for the specified purposes is authorised for one or more of the specified project activities, limited to 500 ha of native vegetation per calendar year to a total of 2,500 ha. The following types of clearing cannot be conducted under the amended permit:

- for which the permit holder does not have the power to clear under a written law
- for an activity within the Millstream Chichester National Park or Karijini National Park
- within 200 m of the boundary of known TECs, unless approved in writing by the CEO
- for an activity incorporated in any proposal referred to and assessed by the Environmental Protection Authority (EPA) under Part IV of the EP Act.

Secondly, the amended permit sets out that the permit holder must, prior to undertaking any clearing, engage a botanist and a fauna specialist to undertake the following surveys:

- A reconnaissance survey of the areas to be cleared, in accordance with the EPA's *Technical Guidance: Flora and Vegetation Surveys for Environmental Impact Assessment*⁴ (Technical Guidance for Flora and Vegetation Surveys). The purpose is to identify possible occurrences of, and suitable habitat for, threatened⁵ and/or priority flora. Where such possible occurrences and/or suitable habitat is identified, a targeted flora survey of those areas is also required.
- A targeted flora and vegetation survey of the areas to be cleared within 200 m of any TECs and/or 20 m of any priority ecological communities (PECs) listed in Appendix A of

⁴ Environmental Protection Authority (2016) *Technical Guidance: Flora and Vegetation Surveys for Environmental Impact Assessment*. December 2016.

⁵ As defined in the *Biodiversity Conservation Act 2016*.

the amended permit, in accordance with the EPA's Technical Guidance for Flora and Vegetation Surveys.

- A desktop study of the areas to be cleared. The purpose is to identify areas of habitat on which fauna listed under the *Biodiversity Conservation Act 2016* have a specific dependence. Where such areas of habitat are identified, a fauna survey of those areas, in accordance with the EPA's *Technical Guidance: Terrestrial vertebrate fauna surveys for environmental impact assessment*⁶, is also required.

Where threatened and/or priority flora, TECs and/or PECs, and/or listed fauna are identified, the permit holder must comply with the relevant specified management requirements.

Other requirements in the amended permit include that the permit holder must:

- apply the principles of avoid, minimise and reduce
- take steps to minimise the risk of introduction and spread of weeds
- revegetate and rehabilitate areas no longer required to be cleared
- keep records in relation to activities done under the amended permit
- provide annual reports to the CEO on records kept.

Purpose of clearing is necessary for rail infrastructure maintenance

The amended permit authorises clearing for the purpose of maintenance and improvement of the permit holder's existing railway and transport corridor infrastructure system to ensure the ongoing operational efficacy of the system. We note that the original clearing permit was granted in 2012, is supported by other approvals, and that the amendment in this case centres around extending the duration of the time within which clearing can occur (subject to strengthened conditions).

Clearing purpose is consistent with planning framework

The railway system traverses the jurisdictions under three local planning schemes:

- City of Karratha Local Planning Scheme No. 8, 22 August 2000
- Shire of Ashburton Local Planning Scheme No. 7, 24 December 2004
- Shire of East Pilbara Local Planning Scheme No. 4, 13 December 2005.

All three planning schemes include broad objectives relating to economic development in the context of sustainable development. They do not identify protection of native vegetation or flora as a specific objective.

The schemes are underpinned by State Planning Policy 1 *State Planning Framework* (November 2017), and State Planning Policy 2 *Environment and Natural Resources Policy*, (June 2003).

State Planning Policy 1 calls for conservation of the State's natural assets through sustainable development and for planning to contribute to a more sustainable future by promoting the conservation of ecological systems and the biodiversity they support including ecosystems, habitats, species, and genetic diversity.

Similarly, State Planning Policy 2 states an objective to avoid or minimise any adverse impacts, directly or indirectly, on areas of high biodiversity or conservation value because of changes in land use or development.

⁶ Environmental Protection Authority (2020) *Technical Guidance: Terrestrial vertebrate fauna surveys for environmental impact assessment*. June 2020.

Amendment is not contrary to related Part IV approvals

Under section 51F(5) of the EP Act the CEO must not make a clearing decision if the decision is contrary to, or otherwise than in accordance with, a Ministerial Statement.

The amendment extends the duration of the permit overall and the time within which clearing can occur, reinstates a requirement to avoid, minimise and reduce the impacts and extent of clearing, and adds TECs and PECs within which clearing is not authorised.

A list of related EP Act Part IV approvals is provided in section 03. Of note, the Part IV approvals appear to focus on construction, while the amended permit provides for post-construction maintenance. Further, the regulatory content in the Part IV approvals and the amended permit appear to be complementary.

We therefore conclude that the amendment in this case does not constitute a decision that is contrary to, or otherwise than in accordance with, a Ministerial Statement.

Further, by condition 7 the amended permit does not authorise clearing:

- where one or more of the project activities are incorporated or related to a proposal that is referred to and assessed under Part IV of the EP Act by the EPA
- until such time as the EPA has given notice under section 39A(3) of the EP Act that it has decided not to assess a referred proposal incorporating one or more of the project activities (and the appeal period has expired or related appeals have been dismissed).

Having established that the amendment of the clearing permit is justified, we now consider the adequacy of the conditions to manage the identified environmental impacts.

2.2 Are the conditions of the permit adequate?

We conclude that DWER has generally applied reasonable conditions to manage the identified impacts so that the proposed clearing does not lead to unacceptable risks to the environment. We consider, however, that the record keeping and reporting requirements in the amended permit should be strengthened for improved transparency and compliance reasons. In relation to each of the appellants grounds in relation to the requirements of the permit we make the following findings.

Extent and impacts of clearing can be avoided, minimised and reduced

The appellant submitted that the term 'if practical', used in the context of avoiding and minimising clearing, is vague and cannot be verified or audited. The appellant submitted that the permit holder should be required to provide strong evidence and examples of how and what has or will be done to avoid and minimise clearing as part of its reporting to DWER.

The decision report for the amended permit recognises the permit holder's avoid, minimise and mitigation measures:

In relation to whether alternatives have been considered that would avoid the need for clearing, the applicant has advised that, if practical, the required works occur on previously disturbed areas. To minimise the need for clearing, the applicant develops smart designs of the works and clearly demarcates the areas proposed to be cleared (Applicant, 2020).⁷

In supporting information pertaining to the amendment application, the permit holder advised that the need to clear native vegetation will, in the first instance, be determined based on whether the proposed works can occur on previously disturbed ground, and that if this is not

⁷ Department of Water and Environmental Regulation (2020), decision report, page 2.

possible, the extent of clearing will be minimised through smart design and having the work areas clearly demarcated in the field.⁸

During the appeal investigation the permit holder provided the following additional information about its internal procedures:

The Permit Owner operates an Approvals Request Coordination System (ARCS) which requires an internal permit to be issued before clearing may be undertaken pursuant to existing approvals, including CPS 4442/6. This system ensures compliance with regulatory requirements and appropriate justification for all clearing requests. ARCS limits clearing to defined areas and prevents over clearing. An internal permit request via ARCS requires the approval of ten separate approvals subject matter experts prior to any in field activities commencing including review by on-site environmental advisors.

In addition, the most efficient pathway to being able to construct or undertake maintenance is to locate and limit the proposed works to an area that is already disturbed which creates an internal preference for avoidance.

This preference is further reinforced by the additional requirements imposed through ARCS prior to any clearing being undertaken. This includes a requirement for heritage and flora/fauna surveys to be undertaken to comply with the requirements of both the *Aboriginal Heritage Act 1972 Act* and Part V of the *EP Act 1986*. There are also cost-related motivators for avoiding and minimising clearing. Costs are related to the amount of initial clearing as well as the rehabilitation that needs to be undertaken once the area is no longer required. A major component of these costs is associated with the use of earthmoving and other equipment which must be transported to and from the site in order to complete the work. All of these activities incur significant additional time and costs that reinforce avoidance as the preferred option.

However, there are instances along the rail where clearing of native vegetation cannot be avoided. This can occur in a wide range of circumstances which necessitates some flexibility to clear when required. For example: there may be a need for the placement of engineered structures in an exact location for the ongoing safe operation of the railway network, or clearing required to undertake repair work following heavy rainfall events may be limited by the location of the washout, existing infrastructure and the surrounding terrain. Installation of signaling may also be required in specific locations adjacent to the rail network for safety reasons.⁹

To limit unnecessary clearing, DWER reinstated a requirement in the amended permit that the permit holder must avoid, minimise and reduce the impacts and extent of clearing¹⁰. DWER noted that the term 'if practical' is not included in this requirement.¹¹ This requirement appeared in versions /1 and /2 of the clearing permit, however was removed in version /3).

Condition 14 ('Records must be kept') requires the permit holder to maintain records for activities done under the permit. Condition 14(a)(v) requires the permit holder to maintain records of the actions taken to avoid, minimise, and to reduce the impacts and extent of clearing in accordance with condition 8. By condition 15 ('Reporting'), the permit holder is required to provide these records to DWER annually.

DWER advised that the authorised clearing of 500 ha per calendar year, to a total of 2,500 ha, is to allow the permit holder some flexibility given the scale of the rail network (1,800 km). DWER further advised that its review of the permit holder's annual reports indicates that no more than 33.16 ha of vegetation has been cleared in a single year.

We consider that the combined requirements of the amended permit to avoid, minimise, and to reduce the impacts and extent of clearing, to revegetate and rehabilitate areas which are

⁸ Department of Water and Environmental Regulation (2021) Response to Appeal 002/21, 3 March 2021.

⁹ Rio Tinto Iron Ore (2021) Response to appeal, 19 February 2021.

¹⁰ Condition 8 ('Avoid, minimise and reduce impacts and extent of clearing').

¹¹ Department of Water and Environmental Regulation (2021) Response to Appeal 002/21, 3 March 2021.

no longer required to be cleared¹², and to keep records on clearing activities for reporting purposes, send a clear message that unnecessary clearing is not supported.

We also consider that these requirements, in combination with the permit holder's internal procedures, provide assurance that the extent and impacts of clearing will be kept to the minimum necessary, and provide a mechanism by which DWER can verify that the permit holder has avoided, minimised, and reduced clearing.

Buffer requirements are reasonable

The appellant submitted that DWER has not justified the buffers applied in the amended permit for priority flora (10 m) and PECs (20 m), and contends that these are inadequate to protect against disturbance. The appellant submitted that both should be increased to 50 m.

Under EP Act Part IV approvals, the on-ground protection of environmental values (avoidance of impacts) within broader development footprints generally takes the form of exclusion areas. In EP Act Part V clearing permits these are described as buffers.

DWER's Guide to Assessment defines 'buffer' as follows:

Buffer means an area designed to protect significant environmental values, including significant flora, significant ecological communities, and wetlands and watercourses, from deleterious impacts by maintaining ecological processes and functions in the habitat ...¹³

Conditions 9 ('Flora management') and 10 ('Priority and threatened ecological community management') in previous versions of the clearing permit set out that, subject to flora and vegetation surveys, the permit holder is required to ensure that no clearing occurs within:

- within 50 m of identified threatened flora unless approved in writing by the CEO, or of threatened flora unless approved under (now) section 40 of the *Biodiversity Conservation Act 2016*¹⁴
- of or within 10 m of identified priority flora, unless approved in writing by the CEO
- in or within 20 m of the mapped boundary of listed or possible new occurrences of PECs and TECs, unless approved in writing by the CEO.

Similar requirements appear in the amended permit as conditions 10 and 11 respectively, however have been strengthened for TECs and PECs. In this regard, the permit holder is required to ensure that, unless approved in writing by the CEO, no clearing occurs:

- within 20 m of the boundary of listed PECs or 200 m of the boundary of listed TECs
- in, or within 20 m of the boundary of, possible new occurrences of PECs
- in, or within 200 m of the boundary of, possible new occurrences of TECs.

These buffer zones are not total exclusion zones; on application by the permit holder it is open to the CEO to provide written approval to clear within them.

The Guide to Assessment states the determination of buffers as ongoing and viable areas to protect conservation significant flora species or ecological communities and associated ecological processes and functions should be made on a case-by-case basis, and is related to the specific characteristics of the value being protected and the surrounding land uses.¹⁵

There do not appear to be standard buffer distances for conservation significant flora and ecological communities in WA. While buffer distances include scientific considerations,

¹² Condition 13 ('Revegetation and rehabilitation').

¹³ Department of Environment Regulation (2014), page 44

¹⁴ Previously section 23F(2) of the *Wildlife Conservation Act 1950*.

¹⁵ Department of Environment Regulation (2014), pages 14 and 16.

further considerations generally include a combination of an applicant's avoidance and mitigation measures, and the practical implications of proposal implementation.

To better understand the approach for clearing permits, we conducted a review of the protection considerations (buffers) in a sample of mining-related clearing permits and appeal decisions (summarised in section 3.4).

In relation to conservation significant flora, it appears that DWER typically applies buffer distances of 50 m to threatened flora and 10 m to priority flora; the amended permit applies buffer distances consistent with these. Two clearing permits (CPS 6110/6 and CPS 8953/2) set out different flora buffer distances to those typically applied, however we consider these can be justified based on risk – such exceptions appear to be guided by expert advice (e.g., DBCA) and/or the context of a particular species (e.g., fewer than 20 records, a restricted range, at the extent of the known range).

We also note that the application of 50 m buffers to threatened flora is consistent with the declaration of environmentally sensitive areas in relation to threatened flora in clause 4(1) of the *Environmental Protection (Environmentally Sensitive Areas) Notice 2005*:

(d) the area covered by vegetation within 50 m of rare flora, to the extent to which the vegetation is continuous with the vegetation in which the rare flora is located.

DWER advised that it applies a risk-based approach to the assessment of clearing permit applications¹⁶ consistent with the relevant statutory framework¹⁷. DWER advised that as a result, the conditions imposed on clearing permits are based on the level of environmental risk associated with the proposed clearing, and that stipulated buffer distances separating clearing from locations of priority flora and PECs are determined on a case-by-case basis.

DWER advised that in determining the buffer distances applied for priority flora and PECs in the amended permit, it considered the recorded range distributions and conservation status of priority flora and PECs, the high likelihood that any priority flora and PECs occurring in the permit footprint would be identified through the required flora and vegetation surveys, and the low likelihood of inadvertently clearing any priority flora and PECs due to these surveys.

DWER advised that it also considered the management measures committed to by the permit holder, including avoiding clearing within Millstream Chichester National Park and Karijini National Park, to control of weed populations, and to revegetate cleared areas no longer required. These measures are reflected in the amended permit conditions.

DWER considered that the implementation of these management measures in conjunction with the specified buffers for priority flora and PECs in conditions 10 and 11, are adequate to result in a low likelihood of these values being disturbed. DWER noted that any incursions within these buffers require approval in writing by the CEO, which provides it with an opportunity to further consider potential impacts on a case-by-case basis.¹⁸

During the appeal investigation, the permit holder provided further information on its internal procedures in relation to environmental values. It is understood that these buffers are part of a primary analysis to identify when avoidance and minimisation must be considered:

The Buffers on Rio Tinto's internal GIS data base for types of flora/fauna of elevated significance are as follows:

¹⁶ Department of Environment Regulation (2014); and Department of Environment Regulation (2015) *Risk-based assessment of clearing permit applications*. Clearing Regulation Fact Sheet 16, February 2015.

¹⁷ Department of Water and Environmental Regulation (2021) *Procedure: Native vegetation clearing permits*. October 2021.

¹⁸ Department of Water and Environmental Regulation (2021) Response to Appeal 002/21, 3 March 2021.

<u>Type of flora/fauna</u>	<u>Buffer on Restriction or Exclusion layer</u>
Priority Flora	20m
Threatened Flora	50m
Priority Ecological Communities (PECs)	0m*
Threatened Ecological Communities (TECs)	200m
Caves	20m – 150m**
Critical habitat: Gorges, Gullies and Pools	Varies based on requirements of clearing mechanism, in this instance CPS 4442/6, as well as any identified significance identified through flora / fauna survey effort.
Pebble Mound Mouse	20m

*: The mapped / inferred boundaries of the PECs determined by Government (DBCAs) are represented on Rio Tinto's GIS data base. The polygons associated with Rio Tinto's planned works are reviewed firstly via desktop by appropriately qualified Botanist's to see where they are located in proximity to the determined boundaries or possible new occurrences of a PEC. To determine this, previous surveys of the area are reviewed as well as new surveys conducted to determine if the PEC is present. Upon completion of the field survey, if it is determined that the proposed works are within 20 metres of a mapped PEC, or within the PEC itself, then in accordance with the requirements of condition 11 of CPS 4442/6, CEO approval is sought to undertake the clearing activities.

** : Buffers can vary based on each caves significance and are classified with critical habitat definitions for the threatened Ghost Bat and the Pilbara Leaf nosed Bat significance i.e.: if cave is a frequently used as a maternity roost for endangered bats, then a buffer of up to 150m is applied.¹⁹

By the above, the buffer distances applied in permit holder's internal procedures are generally consistent with those specified in the amended permit, increased to 20 m for priority flora. Given this, we consider that the buffer distances specified in the amended permit are reasonable to protect the surrounding habitat of these values from clearing impacts (subject to any incursions within them requiring approval in writing by the CEO).

Additional records to be kept on impacts

The appellant submitted that DWER's review of annual reports under previous versions of the clearing permit does not specify how much of the 88.04 ha cleared occurred within, or impacted on, TECs or PECs. The appellant submitted that this level of detail is important in assessing impacts relevant to the amendment and for public transparency.

In response to this element of the appeal, DWER advised that its assessment of the amendment application considered impacts to conservation significant ecological communities, and a review of all annual reports submitted by the permit holder in respect to the previous versions of the clearing permit. DWER advised that it has not identified any non-compliances with permit conditions.

DWER noted that the amended permit requires the permit holder to undertake targeted flora and vegetation surveys prior to clearing²⁰, and to record and report on the details and locations of conservation significant flora species and ecological communities. DWER also

¹⁹ Rio Tinto Iron Ore (2022a) Additional information on internal procedures, 18 November 2022.

²⁰ As set out in conditions 10(a) and (b) and 11(a).

noted that the amended permit does not authorise clearing within specified buffer zones unless specifically approved by the CEO.

DWER advised that requests from the permit holder to disturb specified buffer areas are thoroughly assessed, with each request based on its own merits and in consideration of cumulative impact. DWER advised that this includes consideration of supporting information provided by the permit holder, relevant datasets and reports, external/expert advice (e.g. from DBCA) and a review of the previous annual reports.

DWER noted that 'there is limited information available in annual reporting on the disturbances that have been requested and implemented under conditions 10 and 11 of the permit', and recommended strengthening the record-keeping requirements to address this:

- condition 14(b): add a requirement to keep records of the extent of impacts to identified threatened and priority flora approved and implemented under condition 10(c), within the clearing period and cumulatively under the amended permit for each flora species
- condition 14(c): add a requirement to keep records of the extent of impacts to identified PECs and TECs approved and implemented under conditions 11(b) or 11(d), within the clearing period and cumulatively under the amended permit for each PEC and TEC.²¹

On review, we consider that DWER's recommended changes will improve transparency.

Further, for improved compliance purposes, we consider that the permit holder should be required to keep records on the nature and extent of any instance(s) of non-compliance or potential non-compliance with conditions.

We afforded the permit holder an opportunity to consider and comment on our suggestions for additional records to be kept. In response, the permit holder indicated acceptance of the changes. The permit holder clarified its understanding of the suggested changes as follows:

[T]he intent of [condition 14(b)] is to report the identified species/number of priority/threatened flora and details required should any works occur within the 10 metre buffer of priority flora or with 50 metre of threatened flora that have been approved by the CEO to be cleared ... between the 1 January to 31 December reporting period of the proceeding calendar year ... and the actual number of the respective plant types that were actually cleared during this reporting period ...

[T]he intent of [condition 14(c)] is to report the identified PEC's/TEC's and the number of PEC/TEC flora and details required should any works occur within the 20 metre buffer of PEC's or with 200 metre buffer of TEC's that have been approved by the CEO to be cleared between the 1 January to 31 December reporting period of the proceeding calendar year and the actual number of the respective plant types that were actually cleared during this reporting period ...²²

Given this, we recommend that condition 14 is modified to require the permit holder to keep records of the extent of impacts to identified threatened and priority flora and ecological communities within the clearing period and cumulatively under the amended permit, and on the nature and extent of any instances of actual or potential non-compliance with conditions.

External audits not necessary but non-compliances should be reported

The appellant submitted that the amended permit should require the permit holder to commission independent audits of the permit holder's activities and environmental impacts under the amended permits, and that these audits should be made publicly available. The appellant submitted that this requirement would be consistent with other wide-ranging

²¹ Department of Water and Environmental Regulation (2021) Response to Appeal 002/21, 3 March 2021

²² Rio Tinto Iron Ore (2022b) Response to appeal investigation preliminary findings, 25 November 2022.

permits such as Statewide Clearing Permit CPS 818/15 held by the Commissioner of Main Roads Western Australia (Main Roads).

Statewide Clearing Permit CPS 818/15 sets out detailed assessment and management procedures which, essentially, defer much of the decision making in relation to the assessment and management of clearing impacts to Main Roads, with inbuilt checks and balances to ensure compliance and transparency.

By contrast, the amended permit does not detail assessment and management procedures nor rely on the permit holder's decision making. As previously noted, these elements have been considered and determined by DWER. The extent of decision making by the permit holder is limited to ensuring that clearing is authorised.

By DWER's response to an appeal against another Statewide clearing permit, we understand that the intention of external environmental auditing is to provide for an independent review of a permit holder's decision making under a clearing permit, particularly regarding the execution of assessment procedures and the management of clearing impacts.²³

In response to the current appeal, DWER reiterated the purpose for which clearing is authorised under the amended permit, and the need for the permit holder to comply with the specified conditions (including flora and vegetation surveys). DWER further advised:

The Clearing Permit does not authorise clearing of threatened or priority flora or significant ecological communities, or within buffer distances of these, unless specifically authorised by the CEO. Potential impacts to habitat for conservation significant fauna must be managed in accordance with an approved fauna management plan.

All requests from the Permit Holder for CEO approval to disturb buffer areas, priority flora taxa, or significant ecological communities are recorded within Departmental systems. The records to be retained under condition 14(a)(iv) includes species' composition of cleared vegetation, and these records are to be included within annual reports provided by the Permit Holder to the Department under condition 15 of the Clearing Permit ...

The Department considers that the reporting processes required by the Clearing Permit provide a sufficient basis on which to determine the Permit Holder's compliance with the Permit conditions.²⁴

DWER acknowledged the appellant's request for transparency around clearing activities undertaken under the amended permit, and recommended strengthening the reporting requirements to address this:

[A] condition is added to the Clearing Permit requiring a publicly available summary of clearing activities undertaken under the Permit in the preceding 12-month period to be published annually by the Permit Holder.²⁵

On review, we consider that the permit conditions in combination with the permit holder's internal procedures provide confidence that clearing will be avoided or minimised as far as practicable, without a need for external environmental audits. However we consider that DWER's recommended changes to the reporting requirements will improve transparency.

We suggest that DWER's recommendation is extended to require that each annual summary is published within 30 days of the submission of each annual report to the CEO.

Further, for improved compliance purposes and to provide for timely resolution, we consider that the permit holder should also be required to notify the CEO of any non-compliance or potential non-compliance within seven days.

²³ Department of Water and Environmental Regulation (2022) Response to [Appeal 014/22](#), 20 May 2022.

²⁴ Department of Water and Environmental Regulation (2021) Response to Appeal 002/21, 3 March 2021

²⁵ Department of Water and Environmental Regulation (2021) Response to Appeal 002/21, 3 March 2021

We invited the permit holder to consider and comment on the suggestions for annual publishing of summaries of clearing activities undertaken, and to keep records on and report to the CEO within seven days of any non-compliance or potential non-compliance.

In relation to the annual publishing of summaries of clearing activities undertaken, the permit holder expressed reservations, noting that it holds a number of approvals under Parts IV and V of the EP Act that do not contain a similar requirement. The permit holder further advised:

A number of clearing mechanisms are available and utilised along the Rio Tinto Rail Network on an annual basis to authorise ongoing maintenance activities. In addition to using these mechanisms, clearing exemptions are utilised under both Schedule 6 of the [EP Act] and Regulation 5 of the Environmental Protection (Clearing of Native Vegetation Regulations 2004) where appropriate. The amount of clearing that has been authorised using CPS 4442/6 between the 1 January to 31 December reporting period of the proceeding calendar year is reported to [DWER] on an annual basis in accordance with condition 15. The Permit Holder is of the view that as the annual report is submitted to DWER then transparency is maintained.²⁶

We acknowledge the permit holder's concerns about annual publishing of summaries. We note that the permit holder publishes annual reports²⁷, information about environmental performance (e.g. land²⁸ and biodiversity²⁹), and information about operations in each country, state and/or region (e.g. Pilbara³⁰). Reporting for individual projects is understood to be under each of the relevant regulatory instruments, and does not appear to be published on the permit holder's website. Given this, we consider that there is unlikely to be a tangible benefit by requiring the annual publishing of summaries for this approval in isolation of all others. We also note that the transport corridor infrastructure system the subject of the amended permit services the majority of the permit holder's individual projects in the Pilbara region, and is within an existing broad corridor (indicated in Figure 1) for which DWER has assessed the impacts of clearing on environmental values and applied conditions. We note, however, that it is open to DWER to consider the matter of applying conditions to improve public transparency in any future amendments or new approvals.

In relation to 'real-time' reporting of any non-compliance or potential non-compliance, the permit holder indicated acceptance of the change, however requested that notification is made when it becomes aware of an actual or potential non-compliance on the basis that sub-contractors undertake much of the work. The permit holder further requested:

Can [the] condition read that the permit holder must notify the CEO of any non-compliance or potential non-compliance within ten (10) business days once becoming aware of such an occurrence? ...

The suggested 10 business days just takes into account should an incident occur on a weekend or public holiday that there is still time to undertake an appropriate investigation to inform the actual or potential non-compliance notification.³¹

On review of the permit holder's response, we agree with notification to the CEO being made when the permit holder becomes aware of an actual or potential non-compliance. In relation to increasing the timeframe from seven calendar days to 10 business days (effectively up to 14 calendar days), we note that many of the Ministerial Statements relating to portions of the permit footprint (refer section 0) state that notification should be made within seven days of becoming aware of an actual or potential non-compliance (irrespective of when that incident

²⁶ Rio Tinto Iron Ore (2022b) Response to appeal investigation preliminary findings, 25 November 2022.

²⁷ <https://www.riotinto.com/en/invest/reports/annual-report>

²⁸ <https://www.riotinto.com/en/sustainability/environment/land>

²⁹ <https://www.riotinto.com/en/sustainability/environment/biodiversity>

³⁰ <https://www.riotinto.com/Operations/australia/pilbara>

³¹ Rio Tinto Iron Ore (2022b) Response to appeal investigation preliminary findings, 25 November 2022.

occurred), and we consider the amended permit should be consistent in this regard. Further, to support timely resolution, we consider that notification should be given no later than 28 days of the actual or potential non-compliance occurring.

Given this, we recommend that condition 15 is modified to require the permit holder to notify the CEO of any actual or potential non-compliance within seven days of becoming aware of that incident and no later than 28 days of the actual or potential non-compliance occurring.

2.3 Additional changes to conditions recommended

Condition 11(c) should be revised

We note that condition 11(c) states:

If any possible new occurrences of any priority ecological community on the Department's "Priority Ecological Communities for Western Australia" list, or threatened ecological CPS community on the Department's "threatened ecological communities for Western Australia" list are located during surveys, then this information must be provided to the Department.

DWER confirmed that the Department of Biodiversity, Conservation and Attractions is the custodian of the *Priority Ecological Communities for Western Australia* and *Threatened Ecological Communities endorsed by the Western Australian Minister for Environment* lists³².

Noting that 'the Department' specifically refers to DWER in the amended permit, we recommend that condition 11(c) is amended to replace references to 'the Department' with 'the Department of Biodiversity, Conservation and Attractions'.

³² Both lists available from: <https://www.dpaw.wa.gov.au/plants-and-animals/threatened-species-and-communities/wa-s-threatened-ecological-communities>

3 Supporting information

3.1 Description of proposal

The permit holder is a wholly-owned subsidiary of the Rio Tinto Group. Rio Tinto Iron Ore operates 17 iron ore mines³³, four port terminals, a rail network spanning nearly 2,000 kilometres (km) and related infrastructure in the Pilbara region.³⁴ For the purpose of this report, reference to ‘the permit holder’ includes Rio Tinto as the parent company.

The construction of portions of the rail network (including spurs) to support the mines is referenced in a number of Ministerial approvals under Part IV of the EP Act (refer section 0). The amended permit relates to the maintenance and improvement of this rail network.

3.2 DWER’s assessment of the amendment application

Clearing permit CPS 4442/1 was granted by the former Department of Environment and Conservation (DEC; now DWER) on 17 May 2012 under section 51E of the EP Act. The clearing permit authorises the permit holder to clear 500 ha of native vegetation per financial year within land tenure or rights administered under specified Western Australian statutes³⁵ or State Agreement Acts³⁶, to maintain and improve the existing integrated Rio Tinto Iron Ore railway and transport corridor infrastructure system to ensure the ongoing operational efficacy of the system.

Since the original grant, the clearing permit has been amended on five occasions. These amendments are summarised in Table 2.

Table 2 Versions of Clearing Permit CPS 4442

Version	Grant date	Agency	Amendments
4442/1	17 May 2012	DEC	Original permit, duration five years expiring 8 June 2017.
4442/2	13 September 2012	DEC	Primarily administrative amendments to correct errors in conditions 15(a)(i), 15(b) and 18(b) which make reference to incorrect conditions.
4442/3	16 October 2014	DER ³⁷	To alter condition 12 (‘Revegetation and rehabilitation’), to extend the duration by five years and three months to 30 September 2022, to add a new condition that no clearing can occur after 8 June 2017, and to remove the ‘avoid, minimise, reduce’ condition.
4442/4	12 March 2015	DER	To correct an administrative error in condition 13(e).
4442/5	22 February 2017	DER	To update conditions 9 and 10 to refer to current guidance, to extend the duration by two years and nine months to 30

³³ Including: Mesa A, Mesa J, Nammuldi, Brockman 2, Brockman 4, Western Turner Syncline, Paraburdoo, Mt Tom Price, Eastern Range, Channar, Marandoo, West Angelas, Hope Downs, Hope Downs 2, Hope Downs 4, Yandicoogina, Gudai-Darri.

³⁴ From: <https://www.riotinto.com/en/about/business>

³⁵ *Mining Act 1904, Mining Act 1978, Land Act 1933, Land Administration Act 1997, Property Law Act 1969, Transfer of Land Act 1893, Strata Titles Act 1985, Rights in Water and Irrigation Act 1914.*

³⁶ *Iron Ore (Hamersley Range) Agreement Act 1963, Iron Ore (Robe River) Agreement Act 1964, Iron Ore (Hamersley Range) Agreement Act 1968, Iron Ore (Mount Bruce) Agreement Act 1972, Iron Ore (Channar Joint Venture) Agreement Act 1987, Iron Ore (Hope Downs) Agreement Act 1992, Iron Ore (Yandicoogina) Agreement Act 1996.*

³⁷ Department of Environment Regulation (now DWER).

Version	Grant date	Agency	Amendments
			June 2025, and to extend the time within which clearing can occur by three years and six months to 31 December 2020.
4442/6	23 December 2020	DWER	To reinstate the 'avoid, minimise, reduce' condition, to add multiple threatened and priority ecological communities, to extend the duration by five years and six months to 31 December 2030, and to extend the time within which clearing can occur by five years to 31 December 2025.

DWER's assessment of the environmental values of the permit footprint (all permit versions) concluded that the proposed clearing 'is at variance' to clearing principles (a), (d) and (h), 'may be at variance' to clearing principles (b), (c), (f) and (g), 'is not likely to be at variance' to clearing principles. DWER's considerations in relation to these matters is outlined in Table 3.

Table 3 Assessment against the clearing principles (CPS 4442)

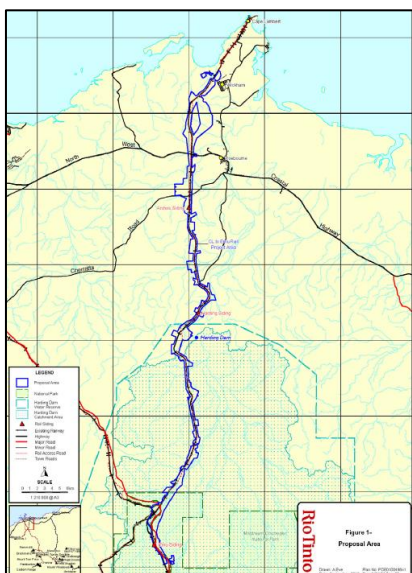
Variance	Reason
Is at variance	<p>Clearing principle (a): 'given the large scale of clearing proposed (up to 500ha per financial year being 2500ha of the term of the permit) over the length of the rail tenure, approximately 1,400 km, and that the clearing is to extend through a number of priority ecological communities and is likely to provide habitat for [threatened] and priority flora species and significant habitat for indigenous fauna'.</p> <p>Clearing principle (d): because the proposed clearing 'runs through the Themeda grasslands on cracking clays threatened ecological community'.</p> <p>Clearing principle (h): because the clearing area 'extends through two conservation estates and system 8 conservation reserves'.</p>
May be at variance	<p>Clearing principle (b): 'given the large scale of the clearing proposed ... the proposal may comprise and impact significant fauna habitat'.</p> <p>Clearing principle (c): 'given that the proposed clearing extends through habitat suitable for [threatened] flora species', including <i>Lepidium catapycnon</i>.</p> <p>Clearing principle (f): due to the clearing area traversing 'a large number of minor watercourses, major tributaries and significant streams' and 'due to the likelihood of some riparian vegetation likely to require clearing'.</p> <p>Clearing principle (g): 'given the sandy soils in some areas there is the potential for wind erosion to occur and there may also be the potential for some erosion through water flows'.</p>
Not likely to be at variance	Clearing principles (e), (i) and (j).

3.3 Related EP Act Part IV approvals

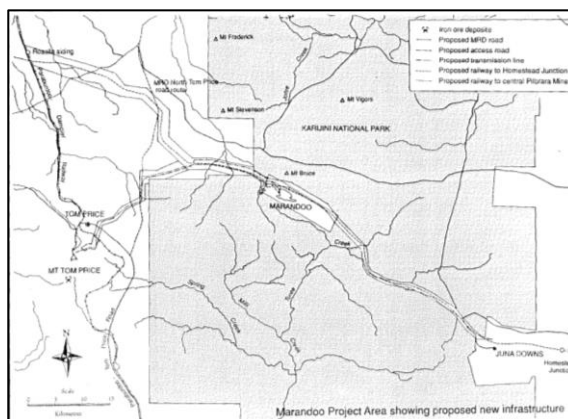
The permit holder is a wholly-owned subsidiary of the Rio Tinto Group, which operates 17 iron ore mines. The Ministerial Statements (MS) under Part IV of the EP Act that relate to these mines and/or the rail infrastructure servicing them are outlined in Table 4.

Table 4 Ministerial approvals relating to Rio Tinto Group rail infrastructure (Pilbara)

Mine	Ministerial approvals
Brockman Syncline complex	Brockman 2 Detrital: MS 0131 (including rail link), MS 0867 Brockman 4: MS 0717 (including rail link), MS 1000 Nammuldi / Silvergrass: MS 0558 (including rail link), MS 0925
Cape Lambert Rail	MS 0880, MS 0918 (Figure 2), MS 1074
Gudai-Darri (Koodaideri)	MS 0999 (including rail link and infrastructure corridor, conditions 9, 10 and 11 relate to flora management)
Hope Downs complex	Rail / Port: Hope Downs 1: MS 0584 (including rail link), MS 0893 Hope Downs 2: [under assessment] Hope Downs 4: MS 0854 (including infrastructure corridor, condition 8 refers to flora and vegetation), MS 0932 (new condition 8) Baby Hope: MS 1025
Marandoo	MS 0286 (including Central Pilbara Railway; Figure 2), MS 0598 (dewatering and re-injection), MS 0833, MS 1020
Mesa A (Waramboo)	MS 0756 (including rail link), MS 1112
Mesa J	MS 0208 (including rail link) Mesa H: MS 1141 Mesa K: MS 0776
Mount Tom Price	[not found]
Paraburdoo complex	Paraburdoo (Greater): MS 1195 Eastern Range: [not found] Channar: MS 0016
Turee Syncline	MS 0947, MS 1142
West Angelas	MS 0514 (including rail link), MS 0970, MS 1015, MS 1113
Western Turner Syncline	MS 0807, MS 0946, MS 1031
Yandicoogina	MS 0417 (including rail link), MS 0523 (including rail link), MS 0914 (including rail link), MS 1038 (including infrastructure corridor); [unclear if MS 0029, MS 0259 and MS 0357 also relate or are intended for nearby BHP operated 'Yandi' mine]



MS 0918 proposal footprint corresponds with northern portion of permit footprint



MS 0286 proposal footprint related to lower central portion of permit footprint³⁸

Figure 2 Maps from some Ministerial Statements overlapping permit footprint

3.4 Determination of buffer distances

To better understand the level of consistency applied for the protection of environmental values in clearing approvals, we conducted a review of the protection considerations (buffers) in a random sample of other mining-related clearing permits and/or where buffers were considered on appeal (Table 5).

³⁸ Environmental Protection Authority (1992) *Marandoo Iron Ore Mine and Central Pilbara Railway: Hamersley Iron Pty Limited. Report and recommendations of the Environmental Protection Authority. Bulletin 643, August 1992.*

Table 5 Buffer distances in some other clearing permits

Clearing permit	Buffers applied	(m)	Comments
CPS 9518/1 Process Minerals International Ltd	Priority 1 flora Priority 2, 3, 4 flora	20 m 10 m	Permit granted 2 November 2022. Located in Shire of Coolgardie. Larger buffer to Priority 1 flora appears to be reflective of small number of records (between two and 14) for each of four known species (decision report indicates clearing could have significant impacts on species with less than 20 records, a restricted range and/or at extent of known range).
CPS 9383/2 Aurenne MIT Pty Ltd	Malleefowl mounds	50 m	Permit amended 14 June 2022. Located in Shire of Menzies.
CPS 9556/1 BHP Nickel West Pty Ltd	Malleefowl mounds	50 m	Permit granted 13 June 2022. Located in City of Kalgoorlie-Boulder and Shire of Coolgardie.
CPS 6110/6 Pilbara Iron Company (Services) Pty Ltd	Threatened flora Priority 1 flora Priority 2, 3, 4 flora	50 m 50 m 20 m	Permit amended 19 October 2021. Located in Shire of Ashburton, Shire of East Pilbara and City of Karratha. Buffers determined on advice of DBCA ³⁹ for version /2. Purpose of clearing for new infrastructure.
CPS 5974/3 Fortescue Metals Group Limited	Threatened flora Priority flora	50 m 10 m	Permit amended 13 August 2021. Located in Shire of Ashburton.
CPS 8953/1 BHP Iron Ore Pty Ltd (Juna Downs)	Priority flora Riparian vegetation Western pebble mound mouse	10 m 10 m 10 m	Permit granted 5 November 2020. Located in Shire of East Pilbara. Protection of values by combination of applicant efforts to avoid/minimise, internal procedures, and buffer requirement in permit. Appeal 057/20 against conditions resulted in finding that 10 m buffer to priority flora is reasonable, given permit holder internal procedures (which are 30 m).
CPS 7925/4 Yandin Wind Farm Pty Ltd	Threatened flora Priority flora	50 m 30 m 10 m	Permit amended 5 February 2020. Located in Shire of Dandaragan. Protection of values by combination of applicant efforts to avoid/minimise and buffer requirement in permit. Buffers to priority flora reduced to 10 m in specified areas. Appeal 005/20 against amendment resulted in clarification of buffers to priority flora.

³⁹ DPAW advice on priority flora buffers 18 December 2014 A1704505

Appendix 1 Appeal process

The Minister assesses the merits of a decision

Environmental appeals follow a merits-based process. This means the Minister can consider all the relevant facts, legal and policy aspects of the decision and decide whether it was correct and preferable.

For appeals relating to a clearing permit amendment, the Minister can only consider the amendment of matters directly consequential to the amendment.

A merits review cannot overturn the original decision to grant a clearing permit. But if the appeal is upheld, the clearing permit conditions might change or an amendment might not go ahead.

We report to the Minister, as does the decision-making authority

To decide an appeal's outcome, the Minister for Environment must have a report from both:

- the Appeals Convenor (see section 109(3) of the EP Act), and
- the authority that originally made the decision under appeal (see section 106(1)).

To properly advise the Minister in our report, our investigation included reviewing:

- the appeal
- the report to the Minister provided by DWER under section 106 of the EP Act
- the permit holder's response to the appeal dated 19 February 2021
- the permit holder's annual reports submitted to DWER (2018-2020)
- relevant policy and guidance documents.

The key documents we reviewed in the appeal investigation are set out in Table 6.

Table 6 Documents we reviewed in the appeals investigation

Document	Date
Appeal submission.	13 January 2021
Rio Tinto Iron Ore (2021) Response to appeal.	19 February 2021
Department of Water and Environmental Regulation (2021) Response to Appeal 002/21.	3 March 2021
Western Australian Herbarium (1998–). Florabase – the Western Australian Flora . Department of Biodiversity, Conservation and Attractions.	Current
Rio Tinto Iron Ore (2022b) Response to appeal investigation preliminary findings.	25 November 2022
Rio Tinto Iron Ore (2022a) Additional information on internal procedures.	18 November 2022
Department of Water and Environmental Regulation (2022) Response to Appeal 014/22 CPS 186/7 Water Corporation Maintenance Activities Statewide Purpose Permit.	20 May 2022
Department of Water and Environmental Regulation (2021) Procedure: Native vegetation clearing permits .	October 2021
Department of Water and Environmental Regulation (2020) Clearing Permit CPS 4442/6 and Clearing Permit Decision Report .	23 December 2020

Document	Date
Environmental Protection Authority (2020) <u>Technical Guidance: Terrestrial vertebrate fauna surveys for environmental impact assessment.</u>	June 2020
Environmental Protection Authority (2016) <u>Technical Guidance: Flora and Vegetation Surveys for Environmental Impact Assessment.</u>	December 2016
Department of Environment Regulation (2015) <u>Risk-based assessment of clearing permit applications.</u> Clearing Regulation Fact Sheet 16.	February 2015
Department of Environment Regulation (2014) <u>A guide to the assessment of applications to clear native vegetation under Part V Division 2 of the Environmental Protection Act 1986.</u>	December 2014
Strategen Environmental Consultants Pty Ltd (2011) <u>Cape Lambert to Emu Siding Rail Duplication: Assessment on Proponent Information.</u> Report prepared for Rio Tinto.	2011
Environmental Protection Authority (1992) <u>Marandoo Iron Ore Mine and Central Pilbara Railway: Hamersley Iron Pty Limited. Report and recommendations of the Environmental Protection Authority.</u> Bulletin 643.	August 1992