



Environmental Protection Act 1986

**Hon Reece Whitby MLA**  
**Minister for Environment; Climate Action**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL AGAINST AMENDED CLEARING PERMIT CPS 4442/6 RIO TINTO IRON ORE RAILWAY AND TRANSPORT CORRIDOR INFRASTRUCTURE**

#### **Purpose of this document**

This document sets out the Minister's decision on an appeal lodged under section 101A(3)(b) of the *Environmental Protection Act 1986* in objection to the above amended clearing permit. 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](http://www.appealsconvenor.wa.gov.au).

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<b>Appellant:</b>	Wildflower Society of Western Australia (Inc.)
<b>Permit Holder:</b>	Pilbara Iron Company (Services) Pty Ltd
<b>Proposal description:</b>	Clearing of up to 500 hectares of native vegetation per financial year within land tenure or rights administered under specified Western Australian statutes or State Agreement Acts.
<b>Minister's Decision:</b>	The Minister allowed the appeal in part
<b>Date of Decision:</b>	21 December 2022

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#### **REASONS FOR MINISTER'S DECISION**

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An appeal was received from Wildflower Society of Western Australia (Inc.) objecting to the decision of the Department of Water and Environmental Regulation (DWER) to grant amended Clearing Permit CPS 4442/6.

The amended permit was granted on 23 December 2020. The amendments included extending the permit duration to 31 December 2030 and the time within which clearing can occur to 31 December 2025, reinstating a requirement to avoid, minimise and reduce the impacts and extent of clearing, adding a new condition that prevents clearing within 200 metres of threatened ecological communities (TECs) unless approved in writing by the Chief Executive Officer (CEO) of DWER, and adding multiple conservation significant ecological communities within which the permit holder is not authorised to clear.

The appellant's concerns related to the intent and adequacy of the requirements to avoid, minimise and reduce the impacts and extent of clearing, the buffer distances applied for priority flora and priority ecological communities (PECs), the records to be kept on impacts to these values, and the need for public transparency in reporting.

## Decision

Having considered the information available, including DWER's advice and the Appeals Convenor's report and recommendation, the Minister decided to allow the appeal in part by strengthening the recordkeeping and reporting requirements relevant to conservation significant flora and ecological communities. The Minister considered that these changes will improve transparency and support compliance. The Minister's reasons are set out below.

### **Flora, fauna and vegetation surveys required prior to clearing**

The 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 of DWER 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 permit was granted to authorise Pilbara Iron Company (Services) Pty Ltd (permit holder) to clear up to 500 hectares (ha) of native vegetation per financial year (to a total of 2,500 ha) within land tenure or rights administered under specified statutes or State Agreement Acts, 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.

The permit sets out that prior to undertaking any clearing, the permit holder must firstly determine that the proposed clearing is authorised for one or more of the specified project activities, and secondly engage a botanist and a fauna specialist to undertake surveys. Based on the findings of these surveys, the permit holder must comply with specified flora, fauna and/or vegetation management requirements (if triggered).

Other requirements in the 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; maintain records in relation to activities done under the permit; and provide annual reports to the CEO on records kept.

By the information presented to him, the Minister considered that a purpose permit is appropriate in this case. Further, the Minister understood that the amendment supports continued operation of transport infrastructure for a number of mines, and is supported by various other approvals (including under Part IV of the *Environmental Protection Act 1986* (EP Act)). As this relates to operational safety generally, the Minister was satisfied that the amendment was necessary and is justified.

### **Clearing impacts and extent can be avoided, minimised and reduced**

The amendments included reinstating a requirement to avoid, minimise and reduce the impacts and extent of clearing. The Minister agreed with the Appeals Convenor's view that this requirement, in combination with requirements to revegetate and rehabilitate areas no longer required to be cleared and to maintain records of activities for reporting purposes, clearly signals that unnecessary clearing is not supported.

Further, the Minister was advised that the permit holder has developed internal controls which seek justification for any clearing under the permit, and which limit clearing to defined areas to prevent over-clearing. The Minister also understood that based on annual reports submitted to

DWER, the extent of clearing that has been conducted under the permit to date is substantially less than the authorised extent.

On the information available, the Minister was satisfied that through the permit holder's compliance with the conditions of the permit and its internal controls, the extent and impacts of clearing will be avoided, minimised and reduced as far as practicable.

### **Buffer distances are reasonable**

The Minister noted the appellant's submission regarding the adequacy of the buffer distances applied for priority flora (10 metres) and PECs (20 metres) to protect against disturbance.

DWER advised that buffer distances are determined on a case-by-case basis based on risk, and take into account recorded range distributions and conservation status, the high likelihood that occurrences in the permit footprint would be identified through the required surveys, and the low likelihood of inadvertent clearing impacts due to the required surveys.

The permit holder's internal controls apply buffer distances around environmental values. These include 20 metres around priority flora, greater than that specified in the permit. The Minister understood these buffers form part of a primary analysis to identify when avoidance and minimisation must be considered.

With regard to permit holder's internal controls, and noting that it is open to the CEO to approve clearing within the buffers specified in the permit, the Minister considered that the buffer distances specified for priority flora and PECs do not need to be changed at this time.

### **Recordkeeping and reporting requirements to be strengthened**

The Minister noted that the appellant requested that the permit holder be required to commission independent audits and that the results of these be made publicly available.

The Minister noted the Appeals Convenor's advice that the permit conditions, in combination with the permit holder's internal controls, provide confidence that clearing will be avoided or minimised as far as possible without the need for audits. However, the Minister agreed that the permit holder's annual reporting contains limited information on CEO-approved buffer disturbances, and that there is a lack of public transparency in reporting on clearing undertaken under the permit. The Minister considered therefore that the recordkeeping and reporting requirements should be strengthened.

The Minister accepted DWER's advice that an additional requirement to keep records of the extent of impacts to identified threatened and priority flora and ecological communities within the clearing period and cumulatively for each year, should also be applied to the permit.

The Minister also agreed with the Appeals Convenor that an additional condition should be included requiring records to be kept on the nature and extent of any instance of non-compliance or potential non-compliance with conditions, and to report any non-compliance or potential non-compliance to the CEO within seven days of becoming aware of that incident and no later than 28 days of that actual or potential non-compliance occurring.

The Minister considered that these changes will improve the information available about clearing undertaken under the permit, for both improved transparency and compliance purposes. The Minister also noted that the reporting to the CEO within seven days of becoming aware of any actual or potential non-compliance is consistent with the approach set out in many of the Ministerial Statements relevant to portions of the permit footprint.

While not directly raised by the appeal, the Minister considered that references to 'the Department' in condition 11(c) should be changed to 'the Department of Biodiversity, Conservation and Attractions' to reflect the correct custodian of the stated lists.

DWER will give effect to the Minister's decision under section 110 of the EP Act as soon as practicable. The final wording of the amended content will be a matter for DWER, consistent with the outcomes of this decision.

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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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