



Environmental Protection Act 1986

Hon Reece Whitby MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST CONDITIONS OF CLEARING PERMIT CPS 9300/1 HEAVY VEHICLE BYPASS Warburton, Shire of Ngaanyatjaraku

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 101A(3)(a) of the *Environmental Protection Act 1986* in objection to the conditions of the above 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.

Appellant:	Wildflower Society of Western Australia (Inc)
Permit holder:	Shire of Ngaanyatjaraku
Proposal description:	The permit authorises the clearing of 60.32 hectares of native vegetation to allow the construction of a heavy vehicle bypass road
Minister's decision:	The Minister dismissed the appeal
Date of decision:	13 June 2022

REASONS FOR MINISTER'S DECISION

The Wildflower Society of Western Australia (Inc) submitted an appeal objecting to the conditions of the above permit, issued to the Shire of Ngaanyatjaraku for the construction of a bypass road around the Warburton Community.

The appellant is concerned about some of the conditions of the permit, including in respect to conservation significant flora species, dust and changes to hydrology.

The Appeals Convenor investigated the appeal, which included a meeting with the appellant and consideration of advice received from the Shire, the Department of Water and Environmental Regulation (DWER) and the Department of Biodiversity, Conservation and Attractions (DBCA). The Appeals Convenor's report sets out the grounds of appeal in more detail.

Decision

Having considered the information available, the Minister was satisfied that the conditions of the permit do not require amendment and he decided to dismiss the appeal. The Minister's reasons are set out below.

Conservation significant flora

By the appeal, the appellant raised concern about the potential impacts to two conservation significant species of flora, and requested that the buffer around the recorded plants be increased from 10 metres to 50 metres. The appellant also requested that targeted flora surveys be undertaken to better understand the species.

The first species *Seringia exastia* is currently listed as threatened under the *Biodiversity Conservation Act 2016*. However, the Minister was advised that it is scheduled to be delisted. DBCA advised the Appeals Convenor that a nomination for delisting is under preparation and is based on recent taxonomic review that concluded that *Seringia exastia* is the same as (former) *Seringia elliptica* which is widespread across the state. For this reason, the Minister concluded that neither buffers nor further surveys are required.

The second species raised by the appeal, *Goodenia virgata*, is a Priority 2 species. The Minister understood that habitat for the species is widespread and DBCA advised that the loss of three plants is unlikely to be significant to the overall conservation of the species. The species is currently known from seven recorded populations in the Shires of East Pilbara, Wiluna and Ngaanyatjarraku, including one in the Warburton area. Of the three records within the application area, the permit holder has committed to retain two with 10 metre buffers.

While there is some uncertainty as to whether a 10 metre buffer is adequate to protect the two plants from the indirect impacts, the Minister accepted the Appeals Convenor and DBCA's advice that habitat for the species is relatively widespread and that the loss of all three plants is unlikely to be significant to the overall conservation of the species.

The Minister also agreed with the Appeals Convenor that further surveys are not required.

Controls on weeds

The permit conditions include weed management conditions, including a requirement that vehicles entering the application area are clean and free from material that may spread weeds. The permit holder must also record and report on measures taken to minimise the introduction and spread of weeds.

The appellant requested that the conditions be modified to require the permit holder to eradicate weeds within the application area before commencing clearing.

Noting the existing conditions require the permit holder to report on measures to minimise the risk and introduction of weeds, and noting the road alignment is largely in 'excellent' condition, the Minister did not consider changes to the conditions are required. The Minister expects the permit holder, with the assistance of Main Roads, will ensure that conditions are adhered to so that the risk of weed spread and introduction is minimised.

Dust management

The appellant requested that conditions be applied to the permit to require the permit holder to prepare a dust management plan for the project and specifically address the protection of vegetation in areas adjacent to the road alignment.

While the Minister understood that dust may adversely affect vegetation near the road during construction and operation, the local area and the Central Ranges bioregion retains more than 99 per cent of its original vegetation cover. The Minister therefore accepted DWER's advice that the impacts to the adjacent vegetation from dust will be sufficiently limited in the context of the wider bioregion. The Minister also accepted that options to control dust are limited due to water scarcity in the area.

Despite the above, it is the Minister's expectation that options to manage dust are considered as part of the clearing proposal. In that regard, the Minister endorsed the permit holder's commitment to liaising with Main Roads on measures available to reduce dust during construction.

Drainage management

The appellant sought for conditions to be added to the permit to require the permit holder to ensure road drainage does not impact of the viability of Mulga and Triodia hummock grassland communities.

Consistent with DWER's advice, the Minister did not consider the risks posed to surrounding vegetation by altered surface water flows to be a significant risk. Again, however, the Minister noted the permit holder is working with Main Roads on this project, and he expected drainage of water during heavy rainfall events to be a consideration in the design of the proposal.

Rehabilitation of temporarily cleared areas

The appellant requested the conditions include requirements to restore areas temporarily cleared to construct the road.

On the information before the Minister, there will be no areas temporarily cleared for the proposal: the permit holder advising that road materials will be taken from an existing pit, and that any additional borrow areas will be subject to a separate clearing permit application, as required.

In these circumstances, the Minister agreed with the Appeals Convenor that no additional requirements for rehabilitation are necessary, and that as no new borrow pits are proposed, additional flora and fauna surveys are not required in this instance.

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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