



Environmental Protection Act 1986

Hon Reece Whitby MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST CONDITIONS OF CLEARING PERMIT CPS 9427/1 METRONET INNER ARMADALE LEVEL CROSSING REMOVAL PROJECT

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section 101A(3)(a) of the *Environmental Protection Act 1986* in objection to the specifications 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:	Public Transport Authority of Western Australia
Proposal description:	The permit authorises the permit holder to clear up to 1.06 hectares of native vegetation for the purpose of removing six level crossings along the Armadale rail line for the Metronet Inner Armadale Level Crossing Removal Project.
Minister's decision:	The Minister allowed the appeal in part
Date of decision:	15 May 2023

REASONS FOR MINISTER'S DECISION

An appeal was received from the Wildflower Society of WA (Inc.) objecting to the conditions of Clearing Permit CPS 9427/1 issued by the Department of Water and Environmental Regulation (the Department), authorising the clearing of 1.06 hectares (ha) of native vegetation for the above project.

The Minister was advised that the Appeals Convenor met with the appellant to discuss the appeal, and received advice from both the Department and the permit holder. In summary, the appeal raised concerns that the conditions do not adequately specify the ratio of tree replacement, planting location of replacement trees or protection of the planted trees from future clearing.

Decision

Having considered the information available to him, including the Department's response to the appeal and the Appeal Convenor's report and recommendation, the Minister allowed the appeal to the extent that a revegetation offset is required to counterbalance the significant residual impacts from the approved clearing.

The full reasons for the Minister's decision are set out below.

The application area is significant foraging habitat for threatened black cockatoo

The Minister noted that the Department's assessment identified that the application area contains 1.06 ha of foraging habitat for all three threatened black cockatoo species, Carnaby's cockatoo, Baudin's cockatoo and forest red-tailed black cockatoo, within foraging distance to breeding and roost sites.

The Minister was advised that during the appeal investigation, the permit holder engaged a consultant to identify and map preferred native foraging habitat for black cockatoos within the area approved to be cleared. The Minister understood that a total of 122 native trees and shrubs and 194 grass trees were recorded.

Clearing principle (b) provides that native vegetation should not be cleared if it comprises the whole or a part of, or is necessary for the maintenance of, a significant habitat for fauna. Guidelines published by the Department provide examples of what types of clearing are likely to be 'at variance' to this principle. As noted in the Appeals Convenor's report, this includes the clearing of native vegetation that is habitat for specially protected or threatened fauna. As such, the Minister agreed with the Appeals Convenor that the clearing is 'at variance' to principle (b).

The Minister was advised that during the appeal investigation, the Department agreed with this finding and revised its assessment of principle (b) to 'at variance'.

An offset is required to counterbalance the significant residual impacts of the clearing

The Department's Clearing of Native Vegetation Offsets Procedure states that where clearing is at variance to the biodiversity-related clearing principles, offsets to counterbalance the impacts of the clearing should be considered after all other measures to avoid and reduce impacts, and a significant residual impact remains.

Having considered the information available to him, the Minister agreed with the Appeals Convenor that an offset is required to counterbalance the significant residual impacts from clearing foraging habitat for black cockatoos.

The Appeals Convenor discussed this matter with the permit holder which proposed a revegetation offset in landscaped areas of the project footprint within road and rail reserves in proximity to the areas proposed to be cleared. The permit holder proposes to salvage and translocate 194 grass trees and replant them in the offset area. Under the proposed offset, a total of 413 foraging trees, shrubs and grass trees will be planted, in addition to the 194 translocated grass trees.

The Minister accepted the Appeals Convenor's advice that the proposed offset is consistent with the relevant State and Departmental offset policies and guidance.

The Minister therefore allowed the appeal to the extent that condition 7 (Planting – mitigation) is replaced with a revegetation offset condition. Completion criteria of at least 413 black cockatoo foraging trees, shrubs and grass trees to be included as an outcome-based condition on the clearing permit and if the completion criteria are not met, the permit duration is to be extended to allow for contingency measures.

In addition, the permit holder is required to salvage and translocate 194 grass trees located within the application area and replant them in the offset area. Completion criteria of at least 80 per cent survival of translocated grass trees are to be included.

In relation to protection of the offset from future clearing, the Minister was advised that the Department's Environmental Offsets Guidelines state that revegetation required under a clearing permit as an offset is considered to be native vegetation under the *Environmental Protection Act 1986* (the Act); and cannot be cleared without a permit or exemption.

Consistent with the Environmental Offsets Guidelines, the offset details should be recorded in the WA Environmental Offsets Register.

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

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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