



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 amendment of clearing permit:
CPS 6753/2 Goldfields Highway Upgrade,
Shires of Meekatharra and Wiluna

Appellant	Wildflower Society of Western Australia (Inc.)
Permit holder	Commissioner of Main Roads Western Australia
Authority	Department of Water and Environmental Regulation (DWER)
Appeal No.	019 of 2021
Date	November 2022

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This report

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Cover image: Satellite image of Goldfields Highway (upper horizontal line is the highway and lower line is the railway). Source: DWER GIS System

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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 is a report on an appeal against the amended clearing permit CPS 6753/2 by the Department of Water and Environmental Regulation (DWER). The amendment was granted to the Commissioner of Main Roads Western Australia (permit holder) on 15 April 2021 for the purpose of road upgrades, drainage, fencing, material pits and camps. The permit authorises the clearing of up to 534 hectares (ha) of native vegetation on multiple land parcels and road reserves from Wiluna to Meekatharra. The extent of the clearing footprint is shown in Figure 1.

DWER's consideration of the amendment application determined that the assessment against the clearing principles had not changed significantly since the assessment for CPS 6753/1. Amended clearing permit CPS 6753/2 extended the duration by five years to 24 September 2026.¹

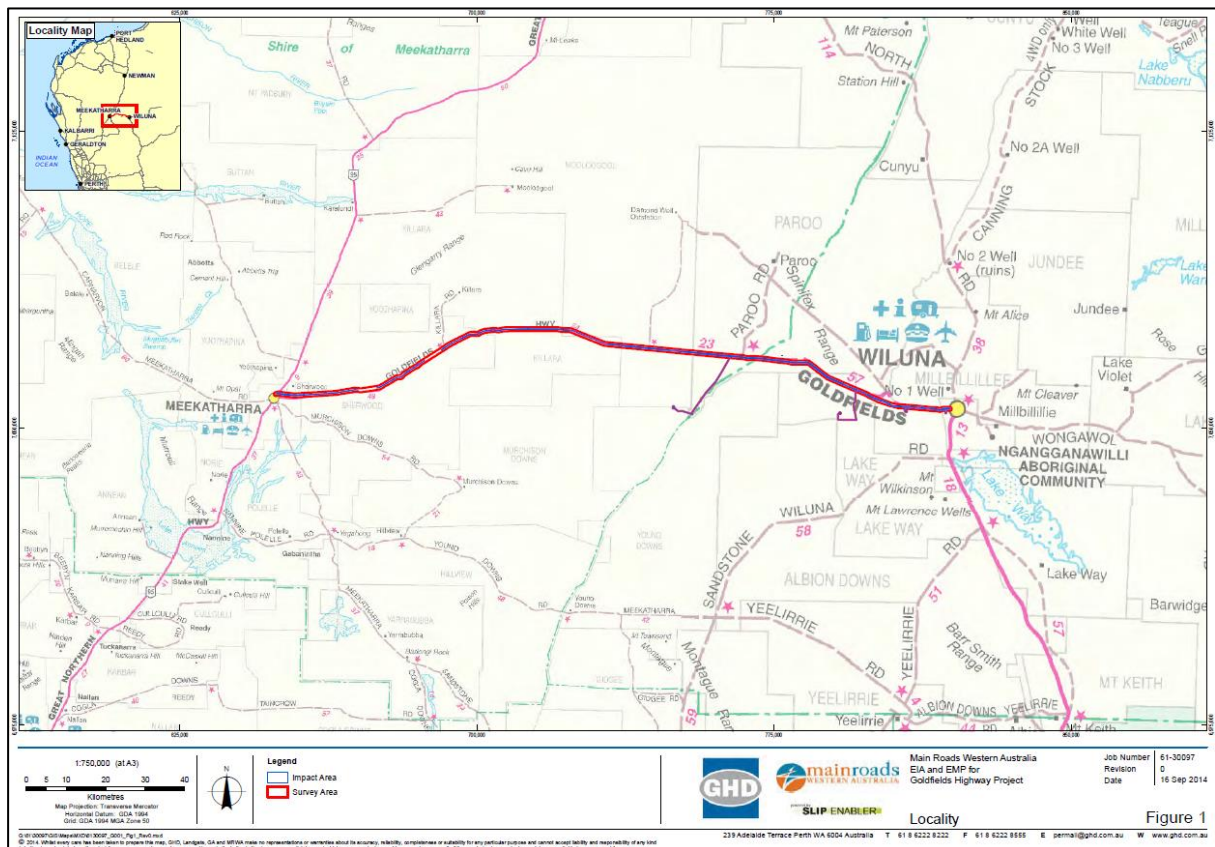


Figure 1 Area authorised to be cleared under clearing permit CPS 6753/2 (indicated by the red line along the Goldfields Highway between Meekatharra and Wiluna, including access to two pits/camps on the southern side).²

¹ Amendments were also made to contemporise definitions and conditions relating to contractors/agents, mitigation hierarchy, record keeping and reporting requirements.

² GHD (2014) Main Roads Western Australia, [Goldfields Highway Wiluna to Meekatharra PortLink Project: EIA and EMP](#). Unpublished Report Prepared for Main Roads Western Australia.

1.2 Grounds of appeal and appellant concerns

The Wildflower Society of Western Australia (Inc) (appellant) lodged an appeal against the amendment of the clearing permit. The appellant's concerns and outcomes sought are summarised below.

Table 1 Grounds of appeal

Ground	Main concerns the appellant submitted
Currency/adequacy of the survey data	The assessment for CPS 6753/1 was based on surveys undertaken by GHD in 2014 ³ , which found nine priority flora taxa in the survey area (two likely to be impacted). Recent <i>NatureMap</i> database ⁴ records and the decision report for CPS 6753/2 indicate other priority taxa occur in the local area that were not found by the 2014 survey. New survey data are needed to inform the assessment.
Residual impacts not offset	The decision report for CPS 6753/1 noted that the proposed clearing is 'at variance' with clearing principles (a) and (b) and represents a residual impact (although claimed to be not significant), in particular on calcrete groundwater assemblage (CGA) priority ecological communities (PECs). By the State offset guidelines an environmental offset would likely be required. The amended permit CPS 6753/2 should require offsets for residual impacts through a contribution to nature conservation or land acquisition in the area.
Minimising clearing	Techniques and standards for road construction have changed since the clearing permit was first granted. The application of newer techniques could reduce the clearing extent in comparison with that proposed in 2016.

The appellant sought for the clearing permit amendment to be refused, and for the permit holder to submit a new clearing permit application with contemporary biological survey information and revised road design specifications.

³ Ibid

⁴ Department of Biodiversity, Conservation and Attractions (2007) *NatureMap: Mapping Western Australia's Biodiversity*. Government of Western Australia.

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 *Environmental Protection Act 1986* (EP Act), including the clearing principles, planning instruments, and other relevant matters. Also relevant is the extent to which the conditions, if the amendment was appropriate, are sufficient to ensure potential environmental impacts are appropriately managed.

These issues are summarised below and section 2 provides further details about the reasons for our conclusion.

What are the environmental values of the vegetation proposed to be cleared?

We consider that DWER's characterisation of the environmental values within the application area was generally appropriate, including its consideration of Priority 1 flora *Eremophila retropila*. However, we agree with the permit holder that Priority 1 species *Euploca mitchellii*⁵ is 'likely'⁶ to occur within the application area.

Using contemporary database searches, DWER's desktop assessment of the amendment identified 28 conservation significant flora, which is five more species than the original 2014 GHD report. From this, DWER concluded that 23 of the 28 conservation significant species were adequately considered and targeted in the 2014 GHD flora report and subsequent clearing permit assessments.

DWER's assessment then considered the five species additional to the GHD report, based on habitat preference, current distribution records and current taxonomy.

For three of those species (all Priority 3) DWER determined that, if impacted, the conservation statuses of the species are unlikely to be impacted, given their wide distribution. For Priority 1 flora *Euploca mitchellii*, DWER determined that it is unlikely that suitable habitat occurs with the application area. Regarding the fifth species (currently listed as threatened) DWER advised that recent taxonomic studies by the Department of Biodiversity, Conservation and Attractions (DBCA) have shown the species to be widespread and common, and therefore likely to be delisted.

Regarding the species raised on appeal (*Eremophila retropila*), we note that, while it is unlikely this species would have been in flower at the time of the GHD survey, it is a large spreading shrub with distinctive leaves. Given that the survey was carried out by experienced botanists, we were advised that it would likely have been detected, even if not in flower.

During the appeal investigation, the permit holder submitted an updated flora desktop report which noted the likelihood of occurrence for conservation significant flora in the application area. The report identified that the application area contains potential habitat for Priority 1 species *Euploca mitchellii*. *Euploca mitchellii* was noted in the 2014 GHD report⁷, but at that

⁵ *Heliotropium mitchellii* this taxon name is not current. The species name changed to [Euploca mitchellii](#) in 2020.

⁶ 'likely' to occur means that the species is previously recorded within 10 km of the application area and suitable habitat appears to be present in the application area. From Astron (2021) Goldfields Highway PortLink Project – Wiluna to Meekatharra Significant Flora Likelihood of Occurrence, June 2021, p. 3.

⁷ Included in species list from NatureMap on page 229 of the GHD report.

time was not recognised as conservation significant and therefore, further consideration and targeted surveys were not undertaken.

Based on our interrogation of publicly available soil landscape mapping⁸, we agree with the permit holder that a small area of approximately 4 km of potential habitat for *E. mitchellii* exists within the application area towards the Meekatharra end of the alignment.

Is the proposed clearing consistent with planning and other matters?

The decision to amend a clearing permit requires consideration of the clearing principles, relevant planning instruments and other matters, as described in section 51O of the EP Act. Other matters usually include the necessity of the clearing and prioritises clearing for public use over private benefit or commercial gain.

The permit holder advised that the road is a key route between Wiluna and Meekatharra, servicing mining, pastoral and tourism industries, yet is largely unsealed. The proposed upgrades including sealing and drainage improvements to address safety and serviceability concerns.

The proposed clearing is within existing road reserves and land parcels set aside for road widening and associated infrastructure, and therefore the purpose of the clearing (road safety), is consistent with the purpose of the reserve. Based on this, we consider that the clearing is necessary and consistent with relevant planning and other matters.

Should the amendment have been granted? And if so, are conditions adequate?

We consider that DWER was justified in amending the permit based on the necessity of the works to improve road safety. Regarding the potential impacts to the calcrete groundwater assemblages (CGAs) which are listed as Priority 1 Ecological Communities (PECs), these are managed under the *Rights in Water and Irrigation Act 1914* (RIWI Act) through the existing ground water licence. Upon review of the available information, we consider that significant residual impacts to the CGAs are unlikely, and therefore an offset is not warranted. We also consider that the requirement for an updated CGA management plan under the EP Act would be duplicative to the ground water licence.

As previously noted, the application area contains potential habitat for Priority 1 flora species, *Euploca mitchellii*. At the time of the original 2014 flora survey, this species was not listed as conservation significant. Given the species is now listed as a Priority 1 flora, we consider that targeted surveys are required prior to clearing being undertaken.

As the potential habitat appears to be limited to approximately 4 km of the application area, we consider that pre-clearance surveys are a proportionate and appropriate response, particularly given the proposed clearing stretches over 180 km. Where possible, clearing of *E. mitchellii* and supporting habitat should be avoided to ensure conservation of this poorly surveyed and restricted species. Consistent with the mitigation hierarchy and given this is a purpose permit, there are opportunities to avoid clearing, particularly as the works are ancillary to the road widening.

Where *E. mitchellii* is confirmed, we consider that clearing should not be authorised within 20 metres of the population. If clearing is unavoidable, authorisation is required from the CEO of DWER.

⁸ [Soil Landscape Mapping - Best Available \(DPIRD-027\) - Datasets - data.wa.gov.au](https://data.wa.gov.au/datasets/dpird-027)

1.4 Recommendation to the Minister

While the decision to amend the permit was justified, we recommend that additional permit conditions are required as follows:

- targeted pre-clearance surveys for Priority 1 species *Euploca mitchellii* when the species is in flower
- clearing not permitted within 20 metres of Priority 1 flora records
- where unavoidable, clearing of Priority 1 flora requires authorisation from the CEO of DWER.

Otherwise dismiss the appeal.

2 Reasons for recommendation

2.1 What are the environmental values of the vegetation proposed to be cleared?

We consider that DWER's characterisation of the environmental values within the application area was generally appropriate, including its consideration of Priority 1 flora *Eremophila retropila*. However, we agree with the permit holder that Priority 1 species *Euploca mitchellii*⁹ is 'likely'¹⁰ to occur within the application area. We explain below.

***Euploca mitchellii* is 'likely' to occur in the application area**

The appellant submitted that more recent survey data should be obtained, as the 2014 GHD¹¹ flora report omits a number of priority taxa that are present in NatureMap. Also the DWER decision report for CPS 6753/2 notes 28 conservation significant taxa in the local area, which is five more than was recorded by the GHD survey. Additionally, the appellant submitted that Priority 1 species *Eremophila retropila* was not recorded in the GHD report. The appellant submitted that other applicants in the area have been requested to re-survey areas when their survey data is of a similar age.

We note that DWER's assessment used the 2014 GHD report which was based on a single-phase Level 2 flora and vegetation survey undertaken between October and November 2013.

The decision report for CPS 6753/2 states that:

Within the local area, 28 conservation significant flora species have been recorded with the closest being *Eremophila retropila* (a priority 3 species¹²). Of the 28 conservation significant flora species recorded within the local area, six are P1 species, 18 are P3 species, three are P4 species and one is a threatened species.¹³

In response to the appeal, DWER noted its consideration of the 28 flora species undertaken during its assessment of the clearing permit amendment. DWER advised that 23 of these taxa (all priority listed; none threatened) were sufficiently targeted and adequately considered in the GHD 2014 survey.

Regarding the five flora species not included in the GHD report, DWER advised that these were given additional consideration during its assessment as follows:

[T]hree species are Priority 3 species (*Goodenia modesta*, *Thryptomene* sp. Leinster (B.J. Lepschi & L.A. Craven 4362) and *Vittadinia pustulata*). The Department considered the number of records of these species and the presence of extensive suitable habitat within the local area. The Department determined the conservation statuses of these species are unlikely to be impacted if they occurred within the Application Area, and therefore no further survey effort was required.

⁹ *Heliotropium mitchellii* this taxon name is not current. The species name changed to [Euploca mitchellii](#) in 2020.

¹⁰ 'likely' to occur means that the species is previously recorded within 10 km of the application area and suitable habitat appears to be present in the application area. From Astron (2021) Goldfields Highway PortLink Project – Wiluna to Meekatharra Significant Flora Likelihood of Occurrence, June 2021, p. 3.

¹¹ GHD (2014) Main Roads Western Australia, [Goldfields Highway Wiluna to Meekatharra PortLink Project: EIA and EMP](#). Unpublished Report Prepared for Main Roads Western Australia.

¹² This is incorrect: *E. retropila* is listed in FloraBase as a Priority 1 species.

¹³ DWER (2021) [Clearing Permit Decision Report for CPS 6753/2](#), 15 April 2021.

One Priority 1 species, *Heliotropium mitchellii*, was not considered... The Department notes that at the time of GHD's survey, the species was not conservation significant and had not been recorded within the GHD field survey. The Department considered the species has the preference of sandstone uplands and cliffs which are not well represented within the Application Area. Noting this, no further survey effort was requested, as it was considered unlikely for this species to occur within the Application Area.

One threatened species, *Seringia exastia* was identified within the local area in the Department's desktop assessment for CPS 6753/2.

...

A recently completed taxonomic study that assessed genomic and morphological characters in several *Seringia* taxa¹⁴ has concluded that *Seringia exastia* and *S. elliptica* are the same species. The taxonomy of the genus has been revised to synonymise *S. exastia* and *S. elliptica* under the oldest valid name of *S. exastia*. As *S. elliptica* is common and widespread throughout the Pilbara region, central Western Australia and the Northern Territory, and extends into South Australia, following the taxonomic revision *S. exastia* is now considered common and widespread. Advice received from the Department of Biodiversity, Conservation and Attractions (DBCA) ... notes the species *Seringia exastia* has been nominated to be delisted; until such time, authorisation to take this species under the *Biodiversity Conservation Act 2016* is still required, although the Department understands that DBCA will not require standard targeted surveys to be undertaken to inform the threatened flora authorisation for the species.¹⁵

DWER advised that its consideration of these additional species had regard for habitat preferences, the distribution of potential habitat within the area, the distribution of records in the local area and the distribution of records more broadly across IBRA¹⁶ regions and subregions within Western Australia. DWER noted that it also considered the currency of flora records from available databases (including DBCA datasets in the NatureMap database) and that there were no new records of conservation significant flora in the local area since the original clearing permit was granted.

Regarding Priority 1 species *Eremophila retropila*, we note that it was included in the GHD report¹⁷, and was considered 'likely to occur' due to the presence of suitable habitat. We note that the Meekatharra part of the survey (where potential habitat for this species occurs), was undertaken in sub-optimal conditions when the flowers used to identify species may not have been present due to a dry winter. However, we were advised that given the species is a conspicuous spreading shrub that is 0.7 to 1.7 m high with distinctive leaves,¹⁸ it would have been detected, particularly as the survey was carried out by experienced botanists.

In response to the appeal, the permit holder provided a contemporary desktop flora report prepared by Astron¹⁹ which included a revision of the original 2014 likelihood of occurrence assessment for flora. Further to this, we compared the findings of the 3 flora reports, including the original 2014 GHD report, DWER's 2021 desktop assessment and the 2022 Astron report. All three flora reports generally aligned except for the likelihood of occurrence

¹⁴ Binks, R.M., Wilkins, C.F., Markey, A.S., Lyons, M.N. and Byrne, M. (2020), [Genomic data and morphological re-assessment reveals synonymy and hybridisation among *Seringia* taxa](#) (*Lasiopetaleae*, *Malvaceae*) in remote north-western Australia. *TAXON*, 69: 307-320.

¹⁵ DWER response to Appeal 019/21, page 3.

¹⁶ Interim Biogeographic Regionalisation for Australia.

¹⁷ Ibid, page 185.

¹⁸ Email correspondence from Principal Environmental Scientist, Astron Environmental, 14 July 2022.

¹⁹ Astron (2021) Goldfields Highway PortLink Project – Wiluna to Meekatharra Significant Flora Likelihood of Occurrence, June 2021.

of Priority 1 species *Euploca mitchellii* (previously known as *Heliotropium mitchellii*), which is restricted to the Meekatharra region.

Euploca mitchellii was included in the 2014 GHD report²⁰, but at that time was not recognised as conservation significant. Therefore, further consideration and targeted surveys were not required.

In response to the appeal, DWER advised that:

This species [*Euploca mitchellii*] was not conservation significant at the time of the initial survey. There are 5 records of this species in Florabase, two of which are in the local area. The nearest record to the application area is at a distance of a little over a kilometre from the year 1966. The species has the preference of sandstone uplands and cliffs which are not well represented within the application area. Although it was not considered within the GHD desktop, DWER considered the likelihood of occurrence to be low and no further survey effort was requested.

In contrast to DWER, Astron's desktop assessment concluded that *E. mitchellii* is 'likely' to occur in the application area. Astron provided that:

This species was not returned from database searches conducted for the GHD (2014) field survey. Current database search results indicate this species has been recorded in very close proximity to the survey area (440 m) and that suitable habitat is present within the survey area.²¹

Based on our interrogation of publicly available soil landscape mapping²², we agree with the permit holder and find that approximately 4 km of potential habitat for *E. mitchellii* exists within the application area which stretches over 180 km. This matter is considered further in section 2.4.

Proposed clearing intersects groundwater PECs

In addition to the conservation significant flora, the application area intersects several calcrete groundwater assemblages (CGAs) which are listed as Priority 1 ecological communities (PECs).

The decision report for CPS 6753/1 (relevant to CPS 6753/2) notes under clearing principle (a) that the clearing footprint intersects two CGAs and is one km from a third Priority 1 CGA. The extent of the two CGAs intersected by the clearing footprint is described by DWER:

The application intersects 'Killara calcrete groundwater assemblage types on Murchison palaeodrainage on Killara Station', a mapped occurrence of 5,219 ha, and 'Millbillillie Bubble Well groundwater calcrete assemblage type on Carey palaeodrainage on Millbillillie Station', a mapped occurrence of 2,107 ha.²³

DBCA's Priority Ecological Communities list²⁴ describes CGAs as 'unique assemblages of invertebrates [that] have been identified in the groundwater calcretes' under threat from 'hydrological changes associated with mining'.

²⁰ Included in species list from NatureMap on page 229 of the GHD report.

²¹ Astron (2021) Goldfields Highway PortLink Project – Wiluna to Meekatharra Significant Flora Likelihood of Occurrence, June 2021, page 4.

²² [Soil Landscape Mapping - Best Available \(DPIRD-027\) - Datasets - data.wa.gov.au](#)

²³ DWER response to appeal 019/21, page 4.

²⁴ Department of Biodiversity, Conservation and Attractions (2021) [Priority Ecological Communities for Western Australia Version 32](#).

The permit holder provided an environmental impact assessment (EIA) and an environmental management plan (EMP)²⁵ for the assessment of the amendment. The EIA states that the potential impacts relevant to CGAs are:

- excavation of rock /gravel (only if on calcrete)
- groundwater extraction/dewatering (single bore/bore-field if affecting calcrete aquifer)
- changed surface topography due to compaction or creation of hard (impermeable road) surfaces resulting in increased runoff and reduced infiltration and aquifer recharge (or modified infiltration/recharge regime).
- potential leaks (or sediment-laden runoff) resulting in alterations to groundwater quality including wastewater, introduction of toxins or radiation (e.g. hydrocarbon spills, sediments).
- salinisation due to pit voids or intrusion (if gravel pits extend below water table in or near calcrete).
- vegetation clearing (road drainage and runoff) leading to sedimentation and changed nutrient inputs (only when on or near calcrete).

Given the proposed works, the greatest risk to the CGAs is groundwater extraction, which is licensed under the *Rights in Water and Irrigation Act 1914* (RIWI Act) through a groundwater extraction licence. The management of potential impacts to the CGAs is discussed further in section 2.4 of this report.

2.2 Is the proposed clearing consistent with planning?

Section 51O(4) of the EP Act requires that, in addition to assessment against the clearing principles, the CEO must have regard to development approvals, planning instruments and other relevant matters. On the available information, we conclude that the clearing is consistent with planning.

The proposed clearing is for public road works. As public works, the proposal is exempt from the requirement to obtain planning approval.²⁶ However, while planning approval is not required, the body carrying out the works must have regard to:

- the purpose and intent of any planning scheme that has effect in the locality where, and at the time when, the public works are undertaken
- the orderly and proper planning, and the preservation of the amenity, of that locality at that time.²⁷

The application area is subject to the Shire of Wiluna and Shire of Meekatharra planning schemes, which sets out local government's planning aims and intentions for the Scheme area and to set aside land for public purposes.

We note that the proposed clearing is within existing road reserves and land parcels (Crown and freehold) set aside for road widening and associated infrastructure.

In relation to the planning context, the Shire of Wiluna Local Planning Scheme No. 2 (updated 21 December 2018) does not identify any specific requirements or constraints in relation to the Goldfields Highway. The Shire of Meekatharra Town Planning Scheme No. 3 (updated 8 July 2011) states that the planning consent of the Council is not required for the

²⁵ GHD (2014) Main Roads Western Australia, [Goldfields Highway Wiluna to Meekatharra PortLink Project: EIA and EMP](#). Unpublished Report Prepared for Main Roads Western Australia.

²⁶ *Planning and Development Act 2005*, section 6(1).

²⁷ *Ibid*, section 6(2).

carrying out of any works on, in, over or under a street or road by a public authority acting pursuant to the provisions of any Act.

During DWER's assessment, the Shire of Meekatharra responded to DWER's direct interest letter and noted the Shire had no objection or further comment on the application. No other responses were received.²⁸

Given the above, local planning context does not constrain the proposed clearing or road works. Therefore, we consider the proposed clearing is consistent with planning.

2.3 Is the clearing necessary?

Noting that DWER is required to consider other relevant matters as noted in the EP Act, we accept the permit holder's advice that the clearing is necessary and that the road upgrades will provide a public benefit. We explain further below.

Section 51O of the EP Act, sets out that DWER must have regard to, among other things, other relevant matters when making decisions as to whether a clearing permit or amendment should be granted. While 'other matters' are not defined in the EP Act, DWER has published guidance on what types of 'other matters' could be relevant to a clearing permit application:

Other matters are not defined in the EP Act, and consequently are any matters the CEO considers relevant. Other matters are generally environmental issues not directly within the scope of the clearing principles, but within the object and principles of the Act.

Other matters typically include consideration of land use impacts, previous decisions related to the area, other legislative requirements related to the application and **the necessity of the clearing**. (emphasis added).²⁹

Regarding the necessity of clearing, DWER's assessment guide prioritises clearing for public use over private benefit or commercial gain.³⁰

The permit holder advised that the road is currently unsealed, and it proposes to upgrade the road to a highway standard to improve safety and serviceability of the route:

Goldfields Highway extends almost 800 kilometres (km) from south of Kambalda in the Goldfields, to Meekatharra, in Western Australia's Mid-West. The section of Goldfields Highway between Wiluna and Meekatharra is approximately 182 kilometres (km) in length and is a key route that links industry and community between the Goldfields-Esperance region and the Mid- West / Pilbara regions. However, the majority of this section of the highway is unsealed. Sealing of this highway (the Project) has been proposed as part of the PortLink Inland Freight Corridor Development Plan...

... from time to time safety and serviceability concerns are raised in respect to dust, the road surface and serviceability of the flood crossings, particularly from flood and storm events, which can result in disruption to travel and periods of road closure.³¹

On the available information, we accept that the clearing is required to upgrade the road and will have a public benefit through improved road safety.

²⁸ DWER (2021) [Clearing Permit Decision Report for CPS 6753/1](#), 15 April 2021, page 27.

²⁹ Department of Environment Regulation (2014a), page 39.

³⁰ Ibid, page 40.

³¹ GHD (2014) Main Roads Western Australia, [Goldfields Highway Wiluna to Meekatharra PortLink Project: EIA and EMP](#). Unpublished Report Prepared for Main Roads Western Australia, page 1

2.4 Should the amendment have been granted? And if so, are the conditions adequate?

Having regard for the environmental values present and noting that the clearing is consistent with planning and will provide a public benefit, we consider that granting the amendment was justified. However, additional conditions are required to manage the potential impacts to Priority 1 flora. Noting that significant residual impacts are unlikely to occur, we consider that an environmental offset is not warranted at this time. We explain further below.

Targeted pre-clearance surveys are required for *Euploca mitchellii*

Noting that Priority 1 flora *Euploca mitchellii* has been recorded within the local area and that a relatively small area of approximately 4 km of suitable habitat is present in the application area, we consider that targeted pre-clearance surveys are required.

At the time of the original flora survey in 2014, this species was not listed as conservation significant, and therefore, no further surveys were undertaken. As provided by the permit holder during the appeal investigation, potential habitat for the species occurs in the application area, which we confirmed by interrogation of soil-landscape layers.

As the potential habitat appears to be limited to approximately 4 km of the proposed clearing, we consider that pre-clearance surveys are a proportionate and appropriate response, given the application area stretches over 180km. Where possible clearing of *E. mitchellii* and supporting habitat should be avoided to ensure conservation of this poorly surveyed and restricted species. Consistent with the mitigation hierarchy and given this is a purpose permit, we consider that the opportunities to avoid clearing exist, particularly for works ancillary to the road widening.

We consider it appropriate that if new records of the species are confirmed, that clearing is not authorised within 20 metres. If clearing is unavoidable, the permit holder will require authorisation to clear from DWER.

Potential impacts to groundwater PECs are already managed

In its advice on the appeal, DWER recommended that the permit holder be required to update its EMP to include additional management measures for CGAs and to provide reports to the CEO on implementation of those measures.

The permit holders EIA states that ‘all of [the] potential impacts can be avoided, managed or mitigated to ensure that the project does not pose an unacceptable risk to the conservation of CGAs’, and that subject to the following assumptions ‘there is no existing evidence and a low likelihood that the proposed project actions will pose a threat to CGAs provided that:

- groundwater pumping or drawdown will not impinge on any CGAs.
- best practice operational procedures are applied to avoid and manage potential impacts to groundwater recharge and groundwater quality that might result from road building activities on or near to CGAs including drainage, gravel pits and control of leakage/spills.³²

The EIA contains several recommendations for managing potential impacts to CGA PECs. DWER³³ advised that these recommendations were supported with advice by DBCA,

³² Ibid, pages 77-78.

³³ DWER response to appeal 019/21, page 4.

including additional comments on management measures to reduce potential impacts. These recommendations were also outlined in the decision report for CPS 6753/1³⁴ and include:

- Where there is a likelihood that a CGA or other calcrete deposit may be affected by the highway works, a field inspection by a suitably qualified person (geologist, hydrogeologist or groundwater ecologist) is undertaken to confirm that sites selected for groundwater pumping and gravel pits are located to avoid calcrete.
- That groundwater pumping operations are managed to ensure that a minimum two kilometre buffer of zero drawdown is maintained between any calcrete deposit and the maximum limit of drawdown propagation from a groundwater pumping station.
- That modelling of lateral drawdown propagation is undertaken to ensure a two kilometre buffer of zero drawdown to any calcrete.
- That gravel pits should be placed to avoid all calcrete groundwater assemblages.
- That all gravel pits be a minimum of 500 metres from any calcrete deposit.
- That the highway design should aim to maintain natural hydrological processes and water quality as far as possible.
- That best practice management is applied to potential pollutants including management of leaks and spills.

The permit holder has an existing groundwater licence (GWL81976/4). DWER has advised, that the assessment for this licence included the consideration of the impacts of water extraction on groundwater dependent ecosystems.³⁵

At the time of the original assessment, the Department of Environment Regulation [DER] (also now part of DWER) sought further information from the Department of Water (DoW) as to DoW's assessment and regulation of this matter under the *Rights in Water and Irrigation Act 1914* (RIWI Act). In the decision report, DER concluded, having reviewed documentation provided by DoW, that:

...the basic operating strategy [under the RIWI Act]... is satisfactory, and should ensure that the prediction of acceptable impacts [to the CGA PECs] is confirmed by monitoring and that contingencies are in place to enable compliance with the [RIWI Act] licence.

Given the above, we consider that the potential impacts to the CGAs are managed appropriately under the existing groundwater licence (GWL81976/4). Noting this, we consider that DWER's recommendation to update the EMP is unnecessary.

The conditions are otherwise adequate

The appellant submitted that techniques and standards for road construction have changed since the original project proposal. The appellant noted that the original width proposed to be cleared is generally about 23 metres and submitted that it is likely that with application of newer techniques the area required could be reduced compared to that proposed in 2016.

DWER has advised that:

The Permit Holder is responsible for planning, constructing and maintaining the roads in its jurisdiction and has the relevant expertise and experience to determine the technical options, solutions and engineering standards of the road and road reserves. The Department's *A guide to the assessment of applications to clear native vegetation* (2014) assists applicants in the considerations for applications for clearing, including the application of the mitigation hierarchy and the undertaking of reasonable attempts to avoid impacts. It is

³⁴ DWER (2016) [Clearing Permit Decision Report for CPS 6753/1](#), 25 August, page 6.

³⁵ DWER (2021) [Clearing Permit Decision Report for CPS 6753/2](#), 15 April 2021, pages 11-12.

the Department's function to assess the proposed clearing area including the environmental values and the potential significance of impacts from clearing.

The Permit Holder's considerations of potential avoidance and minimisation of impacts were considered in the decision to amend CPS 6753/1.

The following requirements were applied to the amended Clearing Permit:³⁶

- Condition 6 for further avoidance, minimisation, or reduction of the impacts of clearing where possible.
- Condition 9.1(d) requires record keeping of actions taken to avoid, minimise and reduce the impacts and extent of clearing; and
- Condition 10 requires reporting of records.

From the above, we consider that avoidance and minimisation have been adequately applied, and that appropriate conditions have been applied to the amended clearing permit to ensure that the impacts to the environment are acceptable.

An offset for CGA impacts is not warranted

The *WA Environmental Offsets Policy* states 'An environmental offset is an offsite action or actions to address significant residual environmental impacts of a development or activity'. This is supported by the *WA Environmental Offsets Guidelines*, which state 'Environmental offsets will only be applied where the residual impacts of a project are determined to be significant, after avoidance, minimisation and rehabilitation have been pursued'.

Principle 2 of the *WA Environmental Offsets Policy* states "While environment offsets may be appropriate for significant residual environmental impacts, they will not be applied to minor environmental impacts". In other words, where a residual impact is not considered to be 'significant', an offset would not be required.

Regarding environmental offsets for impacts to the CGAs, DWER has provided the following advice:

Impacts to the CGAs, as well as the recommendations to manage these impacts as noted in the EMP and by DBCA, were considered during the Department's assessment under clearing principle (a). The Department's assessment recognises the potential for clearing to impact on [PECs]...

[T]he Department considers that its assessment of potential impacts to CGAs was appropriate, and remains of the view that the implementation of management measures is sufficient to avoid significant residual impacts to CGAs ...

Noting the above, we agree that significant residual impacts to the CGAs are unlikely, and an offset is not required.

³⁶ DWER response to appeal 019/21, page 5.

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, legislation 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 or matters directly related to or 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 DWER

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 *Environmental Protection Act 1986*; 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 DWER's decision and appeal reports
- discussions with the appellant
- discussions with permit holder
- reviewing DWER's response to the appeal
- reviewing other information, policy and guidance as needed.

Table 2 Documents reviewed in the appeals investigation

Document	Date
Permit holder supporting information for CPS 6753/1 (relevant to CPS 6753/2): GHD Pty Ltd (2014) <i>Main Roads Western Australia Goldfields Highway Wiluna to Meekatharra PortLink Project Environment Impact Assessment and Management Plan</i> .	September 2014
DWER clearing permit, plans and decision report for CPS 6753/1	25 August 2016
DWER clearing permit, plans and decision report for CPS 6753/2	15 April 2021
Appeal submission	06 May 2021
DWER response to appeal 019/21 (including attachments)	18 August 2021
Additional correspondence from permit holder, including advice from Astron Environmental	03 August 2022