



Environmental Protection Act 1986

Hon Reece Whitby MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST AMENDED CLEARING PERMIT CPS 6753/2 GOLDFIELDS HIGHWAY UPGRADE, SHIRES OF MEEKATHARRA AND WILUNA

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 amendment. 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:	Commissioner of Main Roads Western Australia
Proposal description:	The permit authorises the clearing of up to 534 hectares of native vegetation and was amended to extend the duration to 2026.
Minister's Decision:	The Minister allowed the appeal in part
Date of Decision:	21 December 2022

REASONS FOR MINISTER'S DECISION

An appeal was received from the Wildflower Society objecting to amended Clearing Permit CPS 6753/2, which authorises the clearing of up to 534 hectares of native vegetation for road upgrades, drainage, fencing, material pits and camps. The amendment relates to the extension of the clearing permit by a duration of five years.

The appeal raised concerns in respect to the adequacy of the flora survey data and that an environmental offset should be required for impacts to calcrete groundwater assemblages (CGA) which are listed as Priority 1 Ecological Communities (PECs) by the Department of Biodiversity, Conservation and Attractions (DBCA).

The appellant submitted that road construction standards and techniques have changed over time and given this, further avoidance and minimisation measures could be taken. Furthermore, the appellant requested that the amendment should be refused, and a contemporary assessment be undertaken using current survey information.

Decision

Having considered the information available to him, including the Department of Water and Environmental Regulation's (DWER) response to the appeal and the Appeal Convenor's report

and recommendation, the Minister considered 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, the Minister agreed with the Appeals Convenor that Priority 1 species *Euploca mitchellii* is 'likely' to occur within the application area and decided to uphold the appeal in part, to require targeted pre-clearance surveys for this species. These surveys are to be undertaken when the species is in flower, and if *E. mitchellii* presence is confirmed, clearing will not be authorised within 20 metres. If clearing is unavoidable, the permit holder requires authorisation from the DWER CEO.

The full reasons for the Minister's decision follow.

The application area may contain significant environmental values

Regarding the suitability of the 2014 GHD flora report, the Minister was advised that DWER undertook a contemporary desktop assessment which identified 28 conservation significant species of flora that may occur in the application area. This included five additional species that were not considered in the GHD report.

DWER advised that 23 of the 28 conservation significant species were adequately considered and targeted in the 2014 GHD flora report and subsequent clearing permit assessments.

For the five additional species, the Minister was advised that these were given further consideration by DWER during its assessment of the amendment. DWER identified that impacts to three of the species (all Priority 3) are unlikely to change the conservation statuses due to their widespread distribution. For a further species, *Euploca mitchellii* (Priority 1), DWER determined that it is unlikely that suitable habitat occurs within the application area. Regarding the fifth species (currently listed as threatened), DWER advised that recent taxonomic studies by DBCA have shown the species to be widespread and common, and therefore will be delisted.

Regarding the potential impacts to Priority 1 species *Eremophila retropila* as raised on appeal, the Appeals Convenor advised that it was included in the GHD report but was not detected in the field survey. The Minister accepted the Appeals Convenor's advice that *E. retropila* is a large spreading shrub with distinctive leaf morphology, and that given the survey was carried out by experienced botanists, the species would likely have been detected if present.

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 Priority 1 species *Euploca mitchellii* is 'likely' to occur in the application area due to the presence of suitable habitat and records within the local area.

The presence of potential habitat was confirmed by the Appeals Convenor through interrogation of the relevant soil-landscape layers. The Appeals Convenor has clarified that the potential habitat appears to be restricted to approximately 4 km of this 180 km portion of the Goldfields Highway. Noting this, and given the species is listed as Priority 1, the Minister agreed that further consideration of the species is required prior to clearing.

The clearing is consistent with planning and is for a public benefit

Under DWER Guidelines, the necessity of the clearing is a relevant consideration as to whether a permit should be granted or amended. The Guidelines state that when determining the necessity of clearing, higher priority will be given to clearing for public use rather than for private benefit or commercial gain.

The permit holder has 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 Appeals Convenor advised that the local planning schemes do not identify any specific requirements or constraints in relation to the Goldfields Highway and associated works.

The Minister also noted that the proposed clearing is within existing road reserves and land parcels that are set aside for road widening and associated infrastructure.

Amending the permit was justified, but additional conditions are required

The Minister considered that DWER was justified in amending the permit based on the necessity of the works to improve road safety. Noting the appellant's concerns, the Minister agreed with the Appeals Convenor that the potential impacts to the CGAs have been adequately assessed, with potential impacts managed under the *Rights in Water and Irrigation Act 1914* (RIWI Act).

Regarding environmental offsets, the Minister was advised that significant residual impacts are unlikely to occur, as the greatest risk to the CGAs is groundwater extraction associated with the road construction activities. These potential impacts are managed under the permit holder's groundwater extraction licence (subject to monitoring and reporting conditions) and Environmental Management Plan. This licence was granted by DWER following assessment of the impacts of taking groundwater. DWER has noted that this assessment included consideration of the impacts of water extraction on groundwater dependent ecosystems and it was found that significant impacts are unlikely to occur.

Noting the above, the Minister agreed with DWER and the Appeals Convenor that significant residual impacts to the CGAs are unlikely, and therefore an offset is not warranted.

Upon consideration of the information before him, the Minister agreed with the Appeals Convenor that the decision to amend the permit was justified. However, given that approximately 4 km of potential habitat for *E. mitchellii* exists in the application area, the Minister considered that the requirement for pre-clearance surveys is a proportionate response to ensure conservation of this poorly known and restricted species. Consistent with the mitigation hierarchy and noting the proposed works, the Minister agreed with the Appeals Convenor that opportunities to avoid clearing exist, particularly for works ancillary to the road widening.

Should new records of *E. mitchellii* be confirmed, the Minister considered it appropriate that clearing is not permitted within 20 metres. Where unavoidable, clearing of Priority 1 flora will require authorisation from DWER.

The changes to the permit by this decision will be given effect under section 110 of the *Environmental Protection Act 1986* as soon as practicable with the wording at DWER's discretion.

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*.

Office of the Appeals Convenor

Level 22, 221 St Georges Terrace
Perth WA 6000

Tel: (08) 6364 7990

www.appealsconvenor.wa.gov.au