



Environmental Protection Act 1986

Hon Reece Whitby MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST GRANT OF CLEARING PERMIT CPS 9542/1 PROPOSED BROOME REGIONAL RESOURCE RECOVERY PARK, LOT 550 DEPOSITED PLAN 421448, WATERBANK

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section 101A(4) of the *Environmental Protection Act 1986* in objection to grant of the above permit. This document is produced by the Office of the Appeals Convenor for the Minister but is not the Appeals Committee's own report, which can be downloaded from the Appeals Convenor's website at www.appealsconvenor.wa.gov.au.

Appellant:	Julie Furness
Permit Holder:	Shire of Broome
Proposal description:	Clearing Permit CPS 9542/1 authorising the clearing of 79.85 hectares of native vegetation on Lot 550 on Plan 421448 (Crown Reserve 53878) for the purpose of constructing the Broome.
Minister's Decision:	The Minister dismissed the appeal.
Date of Decision:	6 May 2024

REASONS FOR MINISTER'S DECISION

The Minister for Environment received an appeal objecting to the grant of the above clearing permit issued to the Shire of Broome (the Shire), authorising the clearing of 79.85 hectares (ha) of native vegetation in Waterbank, north of Broome. The permit was granted by the Department of Water and Environmental Regulation (the Department), for the purposes of constructing the Broome Regional Resource Recovery Park (RRRP).

The Minister understood that the appeal raised concerns about the environmental values proposed to be cleared, specifically the habitat for the greater bilby (*Macrotis lagotis*). The appellant submitted that the application area is mapped as critical bilby habitat in the 2023 national Recovery Plan for the species, and as such, the clearing is at variance to clearing principle (b). On this basis, the appellant was seeking for the impacts of the clearing to be offset.

The appeal was investigated by the former Appeals Convenor, and with her departure in December 2023, the investigation was assumed by an appeals committee.

Decision

The Minister noted the Appeals Committee stated that the clearing permit was justified but an offset is required. He accepted the Committee's advice on the justification of the permit, but dismissed advice that an offset is required.

The full reasons for the Minister's decision follow.

The application area

The Minister understood that the Department found the vegetation proposed to be cleared is habitat for the greater bilby. The Department advised that no evidence or records of this species were found within the application area, and that large tracts of similar habitat exists in the local area. The Department therefore concluded that the application area was not significant habitat for the species, and as a result, the clearing was not at variance with clearing principle (b).

Advice provided to the Minister by the Department is that the entire Broome (and Dampier) peninsula is mapped as a critical habitat for the greater bilby in the recovery plan. However, the recovery plan also provides key caveats, explaining that critical habitat exists as a continuum, with carrying capacity fluctuating with seasonal or episodic food availability and effects of threats, and that a set of comprehensive habitat descriptions to define habitat critical to survival was unavailable at the time of its writing. While the Department acknowledges that the recovery plan offers interim criteria in the absence of habitat descriptions, these criteria are similarly broad.

The Minister accepted the Departments view that taking a black-and-white approach to the definition of critical habitat while not accounting for local and regional environmental context in decision-making, would mean that almost any development requiring clearing on the Dampier Peninsula would require an offset for the greater bilby. The Departments view is that this is not an outcome that is required by the WA Environmental Offsets Framework.

Similarly, the Minister was also advised there is insufficient land available within the Shire that can be set aside for conservation due to many large land parcels being subject to exclusive Native Title determinations, nor does it contain adequate degraded areas to undertake impactful revegetation/rehabilitation as an offset.

The purpose of the clearing is consistent with planning instruments and is for a public use

Consistent with section 51O of the *Environmental Protection Act 1986* (the Act), in addition to the clearing principles, the Department considers planning and other relevant matters, including the necessity of the clearing in its assessment of a clearing permit application.

The Minister was advised that the Shire's existing landfill is approaching the end of its operational life, with limited remaining capacity to receive waste. The Shire has been investigating the opportunities to develop a new facility, including additional recycling and resource recovery opportunities, for the last decade. Several locations were assessed, with the proposed site identified as the preferred option due to environmental, social, engineering, and economic factors. The Minister was advised and accepted that the proposed facility is necessary and will deliver community benefits through improved disposal services for the Kimberley region.

The Minister also noted that the RRRP is consistent with the intent of relevant local and regional land use planning instruments.

The clearing permit is justified

Based on the public benefit of the proposal, the planning context, and the fact that the surrounding area retains much of its original extent of native vegetation, the Minister considered the decision to grant the permit is justified.

Next steps

Given the likelihood that the proposed landfill will act as a vector for feral animals, and noting the recognised threat posed to the greater bilby from feral cats, the Minister requested that the Department consider applying a feral cat control condition on any future licence for the premises under Part V of the Act.

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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