



Environmental Protection Act 1986

Hon Reece Whitby MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST AMENDMENT OF CLEARING PERMIT CPS 818/15 MAIN ROADS STATEWIDE PURPOSE PERMIT

Purpose of this document

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

Appellants:	Ms Bronwyn Humphreys Wildflower Society of Western Australia (Inc.)
Permit holder:	Commissioner of Main Roads Western Australia
Proposal description:	The Statewide purpose permit provides a process for assessing and authorising native vegetation clearing in road reserves across Western Australia to maintain and upgrade the State's main road network to meet public safety and road transport requirements.
Minister's decision:	The Minister allowed the appeals in part
Date of decision:	3 November 2022

REASONS FOR MINISTER'S DECISION

The amended permit (CPS 818/15) was granted on 25 June 2020. The amendments included extension of the duration to 30 June 2023, and changes to conditions to streamline processes and improve public transparency.

The permit provides a process for assessing and authorising native vegetation clearing in road reserves across Western Australia to maintain and upgrade the State's main roads network to meet public safety and road transport requirements.

The Minister understood that the appellants were concerned about the transparency provided for in the permit, the assessment process and the rigour of the regulatory governance arrangements.

The Minister's decision

Having considered the information available to him, including advice from the Department of Water and Environmental Regulation (DWER), the permit holder's response to the appeals, and the Appeals Convenor's report and recommendations (copy attached), the Minister decided to allow the appeals by adopting the amendments to the conditions outlined in the Appeals Convenor's report. The Minister considered these amendments will ensure better clarity and transparency and scrutiny of roadside clearing, improving confidence that the process set out in the permit provide for robust regulatory assessment, review and compliance audits. The reasons for the Minister's decision follow.

Environmental values to be a central consideration before all clearing

The permit is a purpose permit. This type of permit authorises the clearing of different areas from time to time for a specified purpose.

In granting a purpose permit, the CEO of DWER is required to describe the purpose of the clearing and the principles and criteria that are to be applied, and the strategies and procedures that are to be followed, in relation to the clearing.

In this case, the permit was granted to authorise the permit holder to clear native vegetation for the purpose of a range of defined project activities over the entire State of Western Australia. As outlined in the Appeals Convenor's report, the permit includes pathways by which clearing may be authorised, reflecting the sensitivity of the environmental values proposed to be cleared. For example, where the permit holder's desktop study determines that clearing may be or is at variance with any of the clearing principles set out in Schedule 5 of the *Environmental Protection Act 1986*, the permit requires that Main Roads conduct an environmental assessment, informed by biological surveys if required, and to invite submissions. Further, clearing determined to be at variance with any of the biodiversity-related clearing principles will require consideration of offsets.

On the information available to him, the Minister considered that while a purpose permit is appropriate in this case, the permit should be amended to clearly set out the process the permit holder must go through before commencing clearing, so that all relevant environmental values are identified and that clearing that is at variance to one or more of the clearing principles is avoided, reduced or minimised, and significant residual impacts offset.

With respect to cumulative impacts, the Minister noted that the cumulative impacts of roadside clearing are recognised in the State Government's *Native Vegetation Policy for Western Australia* released in May this year. DWER advised that the annual regional clearing limits specified in the permit do not reflect the lower extents of on-ground clearing conducted in previous years, however Main Roads has advised that clearing limits in some regions may be reached over the next three years.

While the Minister accepted the permit holder's advice that the limits have been or are likely to be approached in the next three years and that the regional limits should not be revised at this time, the Minister agreed with the Appeals Convenor that further amendments are required to the permit to provide appropriate oversight and transparency and that regional limits will be a matter for DWER's consideration in any future reviews of the permit (with a particular focus on regions within the intensive landuse zone).

Conditions amended to address transparency, monitoring and audit

A key concern raised in appeals was the lack of apparent information on how the permit holder considered the values of a patch of vegetation before clearing was undertaken.

Given the permit granted to the permit holder provides a degree of self-assessment, the Minister believed that it is important for the rationale for decisions taken by the permit holder to be available to the public. In this regard, the Minister agree with the Appeals Convenor that each Desktop Report should be published no later than three months after the commencement of the relevant clearing and that more specific consideration of alternatives (including reasons when alternatives are considered unviable) should also be documented.

The appeal investigation looked at the audits and monitoring applied to the activities under the permit and concluded that there was limited scope within the requirements to consider the adequacy of the assessment of environmental impacts in the decision making. To address this, the Minister agreed with the Appeals Convenor that improvements to the record keeping, reporting, and audit requirements are necessary and that visibility of the monitoring and outcomes of vegetation management plans, revegetation and rehabilitation and offset proposals should also be improved.

The Minister considered that these broader transparency improvements provide for additional scrutiny by DWER and the public on the assessment, decisions and subsequent environmental outcomes under the permit.

The Minister was also advised that DWER intends to undertake a wider review of the permit.

The Minister asked DWER to keep him informed on the outcomes of the audits and reviews required under the permit, and the wider review, to inform the appropriateness of the permit into the future.

Lastly, the Minister noted that he has recently determined a number of appeals (including 047 and 058 of 2021, and 002 and 010 of 2022) where, by the examples set out in DWER's *A Guide to the assessment of applications to clear native vegetation*, it is clear that proposed clearing is at variance with one or more of the clearing principles. It is the Minister's expectation that the permit holder will apply a consistent approach in its assessments and decision making under the amended permit, with regard for the published guidance and the recent appeal findings.

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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