



Environmental Protection Act 1986

**Hon Reece Whitby MLA**  
**Minister for Environment; Climate Action**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL AGAINST GRANT OF CLEARING PERMIT CPS 9705/1 LOT 1504 ON DEPOSITED PLAN 404497, LOT 1499 ON DEPOSITED PLAN 404497, GREAT NORTHERN HIGHWAY ROAD RESERVE AND CROWN RESERVE 33016, BOODARIE**

#### **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 the 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](http://www.appealsconvenor.wa.gov.au).

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<b>Appellant:</b>	Wildflower Society of Western Australia (Inc)
<b>Permit Holder:</b>	Horizon Power
<b>Proposal description:</b>	Lot 1504 on Deposited Plan 404497, Lot 1499 on Deposited Plan 404497, Great Northern Highway Road Reserve and Crown Reserve 33016, Boodarie (CPS 9705/1)
<b>Minister's Decision:</b>	The Minister partly allowed the appeal.
<b>Date of Decision:</b>	26 March 2024

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#### **REASONS FOR MINISTER'S DECISION**

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The Minister for Environment received an appeal objecting to the grant of the above clearing permit issued to Horizon Power (Horizon), authorising the clearing of 106 hectares (ha) of native vegetation at Boodarie, south of Port Hedland. The permit was granted by the Department of Water and Environmental Regulation (the Department), for the purposes of constructing a solar farm.

The Minister understood that the appeal raised concerns about impacts to habitat for the greater bilby (*Macrotis lagotis*) and brush-tailed mulgara (*Dasymercus blythi*), land degradation and cumulative impacts of clearing in the area. The appellant also raised concerns about the adequacy of the conditions as they apply to management of topsoil and vegetation stockpiles and management plans.

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 accepted the recommendations of the appeals committee and decided that while the grant of the permit was justified, the clearing is inconsistent with clearing principle (b) because the application area is part of a significant habitat for the greater bilby.

Given that the Western Australian *Environmental Offsets Guidelines* indicate that an offset is required where the native vegetation comprises habitat for threatened fauna, the Minister determined that the significant residual impacts to greater bilby habitat should be counterbalanced. He amended the permit to require the development of an offset plan by Horizon within six months of the date of this decision.

On the other issues raised by appeal, the Minister agreed with the recommendations of the appeals committee and determined the appeal accordingly. It follows that he allowed the appeal to the extent that the permit is amended to require an offset and that the topsoil stockpile height is limited to 1 metre.

Noting the Minister recently requested the Department to review its consistency in decision making in response to the appellant's appeals on a number of road proposals in the Shire of Yilgarn, he asked the Department to expand that review to include consideration of how it assesses clearing of fauna habitat and offsets for threatened fauna.

The full reasons for his decision follow.

### **The application area is part of a significant habitat for the greater bilby**

The Minister understood that the Department found the vegetation proposed to be cleared is habitat for the greater bilby. However, the Department found the clearing would not have a significant impact on the availability of habitat within the local area, given the scale of the vegetation proposed to be cleared in the context of extensive tracts of similar condition habitat immediately adjacent and within the vicinity of the application 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).

The greater bilby is listed as threatened in Western Australia. Mapping associated with the recently published national Recovery Plan for Greater Bilby shows the application area is within an area identified as 'critical to the survival' of the species. The Department's *Guide to the assessment of applications to clear native vegetation* (the Guide) defines significant habitat as habitat that 'provides resources (breeding, resting and feeding), connectivity or habitat area for a species or community that is critical for its survival.' Considering the numerous records of greater bilby in the vicinity of the application area, the mapping of critical habitat in the Recovery Plan, and previous decisions the Minister has made about the relevance of surrounding habitat, he found that the clearing was at variance with clearing principle (b).

In relation to the brush-tailed mulgara, the Minister noted that the application area provides habitat for the species. On the advice of the Department and appeals committee, he accepted that the clearing may be at variance to clearing principle (b) in respect to this species.

As to the other environmental issues raised by the appeal, the clearing may cause appreciable land degradation if steps are not taken to reduce this risk as part of the future land use. The Minister agreed with both the Department and appeals committee that these risks can be managed, which is discussed below.

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

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 proposal in this case is for the development of a solar farm to feed renewable energy into the North West Interconnected System. Horizon is a State-owned electricity provider and the proposal will reduce greenhouse gas emissions in the region. The Minister was therefore of the view that the proposal is for a clear public benefit, consistent with the Department's Guide.

The proposal is also consistent with relevant planning instruments and the zoning of the land.

**The clearing permit is justified, changes to conditions required**

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 was justified.

Consistent with the *WA Environmental Offsets Guidelines*, the Minister however determined that the loss of native vegetation that provides habitat to the greater bilby should be counterbalanced with an offset. This is on the basis that the greater bilby is listed as threatened, and the Guidelines provide that where clearing is at variance with a clearing principle, and involves removal of habitat necessary to maintain a threatened species, an offset should be applied.

The offset will be developed by Horizon in consultation with the Department within six months of the date of this decision.

The Minister also amended the conditions to limit the vegetation and topsoil stockpile height to 1 metre. He otherwise dismissed the appellant's other requested changes to the conditions, for the reasons given by the appeals committee.

**Next steps**

The Department will give effect to this decision under section 110 of the Act as soon as possible.

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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**

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