



Environmental Protection Act 1986

Hon Reece Whitby MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST AMENDED CLEARING PERMIT CPS 3891/4 BALLINE GARNET MINE, M70/1280 AND L70/134, SHIRE OF NORTHAMPTON

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 a 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:	Dr Indre Asmussen Mrs Myra Neumann Mr Paul Eley
Permit holder:	Australian Garnet Pty Ltd
Proposal description:	Authorises the clearing of up to 90 hectares of native vegetation for the purpose of mineral production and associated activities.
Minister's decision:	The Minister allowed the appeals in part
Date of decision:	21 December 2022

REASONS FOR MINISTER'S DECISION

Three appeals were received objecting to the amendment of the above permit by the Department of Mines, Industry Regulation and Safety (DMIRS), under a delegation from the Chief Executive Officer (CEO) of the Department of Water and Environmental Regulation.

The permit was first granted in November 2010 and authorises Australian Garnet Pty Ltd (the permit holder) to clear up to 90 hectares (ha) of native vegetation within Mining Lease 70/1280 and Miscellaneous Licence 70/134, located approximately 18 kilometres (km) north of Port Gregory in the Shire of Northampton, for the purpose of mineral production and associated activities.

The amended permit (CPS 3891/4) was granted on 7 September 2021. The amendment alters the shape and size of the permit footprint by adding two new areas of about 1.54 ha and 1.67 ha at the northern end, and removing 2.2 ha along Sandalwood Bay Road and a 0.5 ha portion at the northern end. The amendment aligns the permit footprint with tenement boundaries, and facilitates the construction of a communications tower, access track and 12 metre (m) wide infrastructure corridor. The amount of clearing authorised, and the permit conditions and duration, have not changed through this amendment.

The Minister understood that the matters raised by the appeals broadly centre around consideration of alternatives to clearing, adequacy of the biological surveys considered by DMIRS, significance of the habitat for flora and fauna, impacts to hydrology and wetlands, Aboriginal heritage, and the adequacy of consultation.

Decision

Having considered the information available to him, including DMIRS' response to the appeal, the Appeals Convenor's report and recommendation, and submissions from the permit holder, the Minister was satisfied that the amendment was necessary and is justified. The Minister decided, however, that the permit footprint should be amended to avoid potential impacts on priority flora and minimise impacts on a particular fauna habitat type, and that conditions relating to fauna management should be applied. The Minister's reasons are set out below.

Environmental values of added areas

The appeals raised concern with the age of the surveys relied on by DMIRS in its assessment of the environmental values of the added areas. In response to these concerns, DMIRS advised that the surveys did not identify any conservation significant fauna, flora or ecological communities within the amended permit footprint, and that there is no new information to suggest that any might now be present.

The Minister was advised that during the appeals investigation the permit holder provided reports of flora, vegetation and fauna surveys conducted in 2021, the findings of which generally supported the findings of the 2013 surveys.

On review of the 2013 and 2021 survey findings, the Appeals Convenor found that *Beyeria cinerea* subsp. *cinerea* (Priority 3) had been recorded from a sample site that appears to be within or immediately adjacent to the western-most new area (1.54 ha). The permit holder's information indicates that the proposed clearing will not directly impact on this species. The Minister agreed, however, with the Appeals Convenor that given proximity, the proposed clearing may impact on supporting habitat for this species, and therefore may be at variance to clearing principle (a).

The Appeals Convenor also found that the same added area extends into a mapped 20 ha extent of fauna habitat type 'VSA3', which may contain suitable habitat for an isopod (slater) *Buddelundia* '81' described as a 'likely' short-range endemic species and therefore of conservation significance. This fauna habitat was previously excluded from the permit footprint. The permit holder noted that this isopod is not confirmed to be short-range endemic fauna. The Minister agreed, however, with the Appeals Convenor that the possible impact on suitable habitat for an undescribed fauna species that may be of conservation significance contributes to DMIRS' conclusion that the proposed clearing may be at variance to clearing principle (b).

Based on the information available, the Minister otherwise found that the environmental values of the two added areas, and the risks to these values from the proposed clearing within them, are generally consistent with DMIRS' assessment conclusions.

Relevant planning instruments and other matters

The appeals raised concern about the level of consultation undertaken by DMIRS in relation to the amendment, including with Traditional Owners, and the consideration of Aboriginal heritage and native title.

The provisions of section 51E of the *Environmental Protection Act 1986* (EP Act) set out that the CEO must invite comments from interested parties on, and publish, applications for clearing permits. The EP Act does not, however, specify that applications to amend clearing permits are to be managed in the same manner. DMIRS advised that despite this, it invited comments from interested parties on, and publicly advertised, the amendment application, including the Yamatji Marlpa Aboriginal Corporation and the Bundi Yamatji Aboriginal Corporation.

In relation to native title and Aboriginal heritage, the Minister accepted DMIRS' advice that it had undertaken consultation for the amendment application in accordance with the *Native Title Act 1993* (Cth), and that the grant of the clearing permit in this case does not constitute a future act. DMIRS also advised that it had regard for registered Aboriginal sites of significance in its assessment.

It is the permit holder's responsibility to comply with the *Aboriginal Heritage Act 1972* and to ensure that no unauthorised damage to Aboriginal sites occurs during clearing activities.

The permit amendment was justified

By the information presented to him, the Minister understood that the amendment to the permit footprint supports improvements to the communications aspect of the mining operation. As this relates to operational safety generally, the Minister was satisfied that the amendment was necessary and is justified.

The permit is supported by other approvals including other clearing permits and a works approval under Part V of the EP Act, a groundwater licence under the *Rights in Water and Irrigation Act 1914*, and a 'Not Assessed' decision under Part IV of the EP Act.

Permit footprint to be refined and fauna management conditions to be applied

During the investigation the Appeals Convenor invited the permit holder to refine the western-most new area, on the basis of potential impacts on the supporting habitat of priority flora and potential short-range endemic fauna. In response the permit holder proposed to reduce the width of this area from its current 57-67 m to about 40 m by removing a linear strip along the length of the west-south-west facing perimeter.

The Minister agreed with this refinement, given that it retains a buffer between the proposed clearing and the supporting habitat of priority flora, and reduces the extent of the permit footprint within fauna habitat type 'VSA3', while still allowing the permit holder some flexibility in locating the infrastructure corridor.

In addition, the permit holder proposed to reduce the width of the infrastructure corridor from 12 m to 8 m to avoid potential limestone outcroppings, thereby minimising the risk of clearing impacts on potential short-range endemic fauna. The Minister was advised that this equates to a reduction in the extent of clearing within the western-most new area to about 0.2 ha. While the width of the infrastructure corridor is not conditioned in the permit, the Minister commended the permit holder's endeavour to avoid, minimise and reduce clearing impacts on environmental values in this manner.

During her investigation, the Appeals Convenor conducted a review of other permits relating to mining activities and identified that many of these other permits contain a fauna management requirement that clearing is to be conducted in a slow, progressive and single-directional manner to allow fauna to move out of the clearing path. Given the extent of clearing authorised, the Minister agreed with the Appeals Convenor that a similar requirement should be applied on this permit.

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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