



Environmental Protection Act 1986

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

## **MINISTER'S APPEAL DETERMINATION**

### **APPEALS AGAINST GRANT OF CLEARING PERMITS CPS 10049/1, CPS 10265/1 AND CPS 10197/1 SHIRE OF YILGARN**

#### **Purpose of this document**

This document sets out the Minister's decision on appeals lodged under section 101A(4) of the *Environmental Protection Act 1986* in objection to the grant of the above permits. 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>	Shire of Yilgarn
<b>Proposal description:</b>	Three permits, being: <ul style="list-style-type: none"><li>• Road construction works Mount Holland, Skeleton Rock, Marvel Loch and Parker Range (CPS 10049/1)</li><li>• Road construction works Marvel Loch, Parker Range and Skeleton Rock (CPS 10265/1)</li><li>• Road construction works Moorine Rock and Marvel Loch (CPS 10197/1)</li></ul>
<b>Minister's decision:</b>	The Minister dismissed the appeals
<b>Date of decision:</b>	6 March 2024

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

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The Minister received appeals objecting to the grant of clearing permits CPS 10049/1, 10265/1 and 10197/1, to allow clearing of no more than 24.9 hectares (ha), 4.02 ha and 9.9 ha of native vegetation, respectively. All three permits are for the purposes of road construction and sourcing of construction material.

The Minister understood that the appellant contended that: there were incomplete or incorrect assessments by the Department of Water and Environmental Regulation (DWER); there would be a loss of significant vegetation; there would be impact on local and regional hydrology; and, impact on two Nature Reserves.

### **Decision**

Having considered the information available to him, including DWER's response to the appeals and the Appeals Committee's report and recommendation, the Minister was satisfied that it was reasonable for DWER to grant the permits and that the conditions set on the Shire are appropriate. The Minister, therefore, each of the appeals.

However, the Minister noted the appellant's concerns that the Merredin IBRA sub-region has been extensively cleared with around 20 per cent of its pre-European extent remaining, which is well below agreed national objectives and targets. The appellant argued that if any clearing is allowed in this sub-region, an offset should be required. The Minister agreed with the Appeals Committee that DWER, in assessing this matter, applied the WA Environmental Offsets Policy and the related Guidelines in a way consistent with both of these documents, but that there is some evidence that DWER may not be applying the policy in a consistent manner.

The Minister requested DWER to examine this matter and to provide clarity as to how the Offsets Policy is to be applied to applications in regions and sub-regions that have been extensively cleared and below the 30 per cent pre-European extent remaining threshold. The Minister requested DWER to examine the application of this policy in the context of the 2022 "Native Vegetation policy for Western Australia – Implementation roadmap" in particular, Action 1.2 about Offsets, Action 1.3 which relates to support for net gain of native vegetation and Action 1.5 which refers to a strategic offset plan for the Wheatbelt.

The reasons are set out below. The Minister dealt with each appeal and clearing permit in turn.

#### **1. Grounds of appeal - CPS 10197/1**

##### **The clearing would impact on environmentally sensitive areas (ESAs)**

The Minister noted the appellant's concerns that the documentation reviewed indicated that there were three ESAs along the road, in particular a threatened ecological community (TEC) which could be impacted either directly or indirectly by the clearing. The appellant argued that DWER should have found that the clearing would be at variance Clearing Principles (a), (d) and (e). The appellant also argued that because of the impacts on the TEC a referral should have been made to the Environmental Protection Authority (EPA).

The Minister also understood that the appellant found that there was not enough information provided on where the road construction material will be sourced from and, therefore, the significance of any vegetation that would need to be cleared.

The Minister noted the Appeals Committee advice that the appellant based its concerns on the original proposed clearing and survey work, but that DWER required additional survey work to be carried out which was not available to the appellant. The Minister noted the advice from DWER that the clearing had been altered so as to avoid any direct loss on the TEC and agreed with DWER that there are adequate conditions placed on the permit holder to manage and reduce any possible indirect impacts on the TEC and any other significant flora.

The Minister also noted the advice from the Committee that the Shire advised that the borrow pits were not included in the permit application because the sites for the pits are on already cleared land.

With respect to the appellant's view that an offset should be required for the clearing in the local highly cleared landscape, the Minister found that, based on DWER's interpretation of Residual Impact Significance as described in Figure 3 of the WA Environmental Offsets Guidelines, the proposed loss of vegetation does not represent a significant cumulative impact. The Minister agreed with DWER that an offset is not required.

However, the Minister noted the Appeals Committee's view that DWER's interpretation of Residual Impact Significance as described in Figure 3 of the Guidelines needs to be clarified as it appears that it may not be being applied consistently. He will seek clarity from DWER on the application of offsets in these circumstances.

The Minister was satisfied, therefore, that DWER assessed the proposal against Clearing Principles (a), (d) and (e) correctly and that an offset is not required and, therefore, dismissed this ground of appeal.

### **Impact on the Wockallarry Nature Reserve**

In relation to the appellant's concerns regarding the loss of vegetation within the Wockallarry Nature Reserve, the Minister noted that the section of the road in question has been constructed on an alignment outside the road reserve and that the road reserve remains uncleared. The 3.49 ha of the proposed clearing is for widening this section of the road. The Minister noted the advice from the Shire that the total of the existing and proposed clearing would be of a width which is less than the width of the existing road reserve.

The Minister agreed with the Appeals Committee that that if the road had been constructed within the road reserve, no clearing would be required within the Nature Reserve and that there would be no environmental benefit in realigning this section of the road to be within the road reserve and rehabilitating the existing alignment. For these reasons, he dismissed this ground of appeal.

### **Clearing will cause significant hydrological impacts**

The Minister noted the appellant's concern that clearing of deep-rooted vegetation in an already highly cleared landscape has the potential to raise the water table and cause other impacts. However, he agreed with DWER that the potential impact on groundwater hydrology is unlikely to lead to a rise in the water table and impact on surface water hydrology.

For this reason, the Minister dismissed this ground of appeal.

## **2. Grounds of appeal - CPS 10265/1**

### **Inadequate assessment of the biodiversity of the vegetation to be cleared**

The Minister understood that the appellant was of the view that information in the original flora survey lacks critical information which would enable DWER to confidently assess this proposal. The appellant was of the view that DWER's assessment is flawed and the proposed clearing it as variance with Principle (a), and no assessment can be made against Principle (c).

DWER advised that its assessment was based on an additional survey work as required by DWER and that this information was not available to the appellant. The Minister also noted that the clearing had been modified so that the TEC will now not be directly impacted by the clearing, and agreed with DWER that adequate conditions have been placed on the permit holder to manage and reduce any possible indirect impacts on the TEC. As well, he agreed with DWER that any impact on any other significant flora is unlikely to be regionally significant, nor likely to impact the conservation status of the impacted species.

For these reasons, the Minister dismissed this ground of appeal.

### **Inadequate assessment of the impact on fauna**

The Minister understood that the appellant was concerned that no fauna survey and assessment has been supplied in the supporting documents for this Clearing Permit.

The Minister agreed with the Appeals Committee that DWER's assessment with respect to Clearing Principle (b), Biological value – Fauna, was adequate and that the condition requiring directional clearing 7(b) will allow any fauna present during clearing to move away from the works and avoid being directly affected.

For this reason, the Minister dismissed this ground of appeal.

### **Additional clearing within the Merredin IBRA sub-region should not occur**

The appellant noted that the clearing for this permit is within the Merredin IBRA sub-region which has been extensively cleared with the amount of vegetation remaining below the national objectives and targets of 30 per cent.

Whilst the Minister acknowledged that any clearing of vegetation in this sub-region would further reduce the area of vegetation remaining below the national objectives and targets, he agreed with DWER that this loss can be considered as insignificant. The Minister also referred the appellant to the relevant comments above summarising his decision.

For this reason, the Minister dismissed this ground of appeal.

### **The proposed clearing is at variance to Clearing Principles (i) and (j)**

The Minister noted that this is the same ground of appeal raised in the appeal against permit CPS 10197/1.

The Minister agreed with DWER that the small size of the clearing is unlikely to impact further on groundwater quality and surface water quality and any potential impacts can be controlled through conditions set in the permit and that the clearing is not likely to be variance to these Clearing Principles.

For this reason, he dismissed this ground of appeal.

### **3. Grounds of appeal – CPS 10049/1**

#### **The level of investigation into impact significant flora is inadequate to correctly assess the proposal against the Clear Principles**

The Minister noted the appellant's concerns that the information contained in the applicant's original flora survey was insufficient to assess the proposal correctly and that it is likely to be at variance with some of the Clearing Principles.

DWER advised that its assessment was based on an additional survey work as required by DWER and that this information was not available to the appellant. The Minister found that the assessment carried out by DWER against the Clearing Principles was adequate, and agreed with DWER that impacts on biodiversity are not likely to be significant and can be managed through conditions placed on the Clearing Permits.

For these reasons, the Minister dismissed this ground of appeal.

#### **DWER's assessment of the impacts on Threatened species *Banksia dolichostyla*, is incorrect**

The appellant contended that the original permit would allow the clearing that would either directly or indirectly impact on Threatened species *Banksia dolichostyla*.

The Minister noted that the clearing had now been modified so that of the 26,346 plants of *Banksia dolichostyla* (T) within the survey area, only 73 individual plants will not have the recommended 50 metres buffer from the proposed clearing, and no individual plants will be directly cleared. The Minister agreed with DWER that the permit contains conditions to manage dust, weeds and erosion which will be adequate to protect the plants of *Banksia dolichostyla* (T) adjacent to the clearing. The Minister also noted that considerable dust is generated as trucks use the road in its existing unsealed state and that there is likely to be a net reduction in amount of dust generated when the road is sealed.

For these reasons, the Minister dismissed this ground of appeal.

**The proposed clearing is at variance to Clearing Principles (f), (g) and (i)**

The Minister understood that the appellant was concerned that the clearing would lead to land degradation due to the removal of deep-rooted vegetation. The Minister noted that this is the same ground of appeal raised in the appeal against the other permits. For the same reasons, the Minister dismissed this ground of appeal.

**The impact on the vegetation in the Jilbadji Nature Reserve has not been properly assessed**

The appellant noted correctly that there will be a direct loss of vegetation in the Jilbadji Nature Reserve. However, the Minister agreed with DWER that whilst there will be some direct loss of vegetation within the Reserve, this loss is insignificant with respect to the total size of the Reserve.

For this reason, the Minister dismissed this ground of appeal.

**ESAs occur along the road alignment and the project should be referred to the EPA**

The appellant noted correctly that ESAs do occur along the road alignment, notably the TEC “Eucalypt Woodland of the Western Australian Wheatbelt”, and for this reason, argued that the proposal should be referred to the EPA for consideration of assessment under Part IV of the *Environmental Protection Act 1986*.

The Minister noted that the design of the road now avoids any impact on the TEC. Further, DWER have applied conditions on the permit holder to reduce any indirect impacts on the TEC.

For these reasons, the Minister found that a referral to the EPA is not required, and dismissed this ground of appeal.

**Information not provided as to where the road construction material will be sourced**

The Minister understood that the appellant’s concern was based on the original documentation for the application not having enough information on where the road construction material will be sourced from and, therefore, the significance of any vegetation that would need to be cleared. However, the Minister noted the advice from the Shire that all borrow pits are in either cleared farmland areas or in areas already disturbed adjacent to the road.

For this reason, the Minister dismissed this ground of appeal.

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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*.

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