



Environmental Protection Act 1986

Hon Amber-Jade Sanderson MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST CONDITIONS OF CLEARING PERMIT CPS 8953/1: GEOTECHNICAL INVESTIGATIONS ON UNALLOCATED CROWN LAND (PIN 11455504) NEWMAN, LOT 1563 ON DP 67603 JUNA DOWNS, AND LOT 1580 ON DP 72910 NEWMAN

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section 101A(3)(a) of the *Environmental Protection Act 1986* in objection to the above matter. 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.

Appellant:	Wildflower Society of Western Australia (Inc)
Applicant:	BHP Billiton Iron Ore Pty Ltd
Proposal description:	Clearing of up to 30 hectares of native vegetation for the purpose of geotechnical activities
Minister's decision:	The Minister allowed the appeal in part
Date of decision:	19 August 2021

REASONS FOR MINISTER'S DECISION

The Wildflower Society of Western Australia (Inc) appealed against the conditions of Clearing Permit CPS 8953/1 issued by the Department of Water and Environmental Regulation (DWER) to BHP Billiton Iron Ore Pty Ltd (the applicant).

The permit was granted for the clearing of up to 30 hectares of native vegetation within an application area of 2,363 hectares for the purpose of geotechnical activities on Unallocated Crown Land (PIN 11455504), Newman; Lot 1563 on Deposited Plan 67603, Juna Downs; and Lot 1580 on Deposited Plan 72910, Newman.

The appellant's key concerns included the adequacy of the permit conditions as they related to the survey effort, impacts to Priority species, and the adequacy of the revegetation and buffer conditions.

Decision

Having carefully considered the information provided to her, including DWER's response to the appeal and the Appeals Convenor's report and recommendations, while the Minister generally agreed that the conditions applied to the permit are adequate and appropriate, the Minister decided to allow the appeal to the extent that the following conditions are amended:

- Condition 11 be clarified that "not more than 20% of Western pebble-mound mouse mounds be cleared".
- Condition 14 be amended to authorise clearing of not more than 20% of individual plants for each Priority flora species as listed in Schedule 4.
- Additional recordkeeping and reporting condition to capture impacts and reasons for unavoidable impacts to Priority species.

The Minister otherwise decided to dismiss the appeal. The full reasons for her decision follow.

Adequacy of the survey effort

The Minister noted the appellant's concern regarding the adequacy of survey effort comparative to the size of the application area, and the ability to determine impacts to Priority flora. Given this, the appellant requested that the applicant undertake pre-clearance surveys.

The Minister was advised that the flora surveys undertaken by the applicant were adequate to determine impacts to Priority flora species in this instance. The Priority flora recorded have known habitat preferences associated with refugial features in the landscape and includes vegetation associated with watercourses, rocky ridges, semi-permanent waterholes and caves. The permit includes conditions that restrict clearing in these habitats which in turn provides protection for un-recorded Priority flora that may be present in these areas.

Given the association of the Priority flora species with refugial habitats, in conjunction with the existing restriction of clearing in these areas, pre-clearance surveys are unlikely to provide any further value and the Minister accepted the Appeals Convenor's advice that further surveys are not required.

Quantifying and reporting impacts

The appellant was of the view that the applicant should record and report its unavoidable impacts to Priority flora and Western pebble-mound mouse mounds. Additionally, the appellant requested that impacts to Priority flora should be based on the number of plants and not location, given the variation in plant counts at each location.

The Minister noted that the applicant is permitted to impact up to 20% of the Priority flora and fauna locations within the application area. As these locations are provided in Schedules 3 and 4 of the permit, the Minister agreed with the Appeals Convenor that it is reasonable for the applicant to be required to report unavoidable impacts and why such impacts were required.

Regarding the quantification of the 20% impact to Priority flora, the Minister understood that determining the impacts to flora based on location alone fails to consider the variability in plant numbers at different locations across the application area. Given this, it is more appropriate for the 20% impact to be determined based on individual plant counts for each of the Priority flora species. The Minister noted that the plant count information is already included in Schedule 4 of the permit. Therefore, the Minister considered it appropriate that the applicant reports authorised impacts to Priority flora based on plant counts and not simply location.

The Minister noted that the reporting requirement also extends to authorised impacts to Western pebble-mound mouse mounds and for clarity she accepted the Appeals Convenor's advice that condition 11 should also be amended to ensure that "not more than 20% of Western pebble-mound mouse mounds be cleared".

Revegetation condition

The Minister noted the appellant's concern that a single post wet-season survey may not be adequate to indicate if revegetation is likely to be successful; and that weed cover should be included as an indicator of success.

The Minister was advised that the permit does not limit the applicant to one survey. Condition 15(d)–(g) provides an iterative process to ensure the revegetation is likely to be successful as determined by an environmental specialist for approval by DWER.

Regarding weed cover and control, although not explicitly stated in the permit, consideration of such is inherent within the existing condition that defines the revegetation requirements. The Minister noted that revegetation is required to result in a similar species composition, structure and density consistent with pre-disturbance vegetation types in that area. The Minister was advised that this includes both native and introduced species. Given this, weed cover is required to be considered by the environmental specialist when forming their determination of the trajectory of revegetation success.

If any cleared areas have not been restored to the appropriate standard, the permit holder or DWER may seek an extension to the permit.

Buffer distances

The Minister noted the appellant's submission regarding the adequacy of 10 metre buffer distances to protect against edge effects, including weed encroachment and erosion run-off into riparian habitats.

The Minister was advised that the applicant has developed internal controls which place a 30 metre buffer around Priority flora and a minimum of 50 metres around caves. The Minister understood that these buffers are used as a 'first pass' to avoid and minimise impacts. If disturbance cannot be practicably avoided, then disturbance will occur within these buffers and down to the minimum of 10 metres as authorised.

The applicant has committed to minimise potential erosion effects through the construction of windrows around geotechnical pads and tracks. Where tracks do cross drainage lines, the natural surface flow will be maintained. The Minister was advised that the structural integrity of caves will also be maintained.

Regarding weed encroachment and as noted above, the consideration of weed cover is inherent within the existing permit condition, through the requirement for revegetation to result in a similar species composition, structure and density.

Having regard for the permit holder's internal controls, the Minister considered that the 10 metre buffer is adequate in this instance.

Priority 1 flora

Regarding the absence of a permit condition relating to Priority 1 flora *Hibiscus* cf. *campanulatus*, the Minister understood that this species has since been confirmed to be absent from the application area. The Minister was informed that the specimens thought to be

the above species have been verified by the Western Australian Herbarium to be the morphologically similar, *Hibiscus* sp. Mt Robinson (G. Byrne 3537), which has no conservation listing. This information was updated in the 2018 Onshore Environmental report. However, due to an administrative error this report was not publicly available during the appeal period, and has since been rectified by DWER.

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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