



Environmental Protection Act 1986

Hon Stephen Dawson MLC
Minister for Environment

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST REPORT AND RECOMMENDATIONS OF THE ENVIRONMENTAL PROTECTION AUTHORITY ELIWANA RAILWAY PROJECT (EPA REPORT 1633)

Purpose of this document

This document sets out the Minister's decision on appeal lodged under section 100(1)(d) of the *Environmental Protection Act 1986* in objection to the Environmental Protection Authority's Report and Recommendations in respect to the above proposal. 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:	The Wilderness Society Western Australia
Proponent:	Fortescue Metals Group Limited
Proposal description:	To construct 120 kilometre railway line between the existing Solomon Iron Ore project and the Propose Eliwana Iron Ore Project, located approximately 40 kilometres west of Tom Price.
Minister's Decision:	The Minister allowed the appeal in part
Date of Decision:	25 July 2019

REASONS FOR MINISTER'S DECISION

One appeal was made in relation to the Environmental Protection Authority's (EPA) report and recommendations in relation to the Eliwana Railway Project. The appellant raised concern about the EPA's assessment as it related to clearing of native vegetation, fauna and social surroundings (including culturally important sites).

The appeal was investigated by the Appeals Convenor on the Minister's behalf which included meeting with the appellant and the proponent, as well as advice from the EPA.

In relation to flora and vegetation, the EPA noted that the implementation of the proposal would result in a significant residual impact through the clearing of 3,690 hectares (ha) of native vegetation in good to excellent condition, including up to 40 ha of the *Themeda grasslands on cracking clays* threatened ecological community (TEC).

In relation to priority flora species, the EPA considered that while direct disturbance is unlikely to represent a significant regional impact to any species, there was some uncertainty about the survey methodology employed by the proponent. To address this, the EPA recommended conditions be applied to require the proponent to conduct staged, targeted surveys for particular priority flora species as construction for the rail line progresses, and to take action to protect priority flora from direct and indirect impacts where practicable, noting that there is scope within the approved corridor to vary the rail alignment and location of infrastructure to avoid impacts.

In relation to the appellant's concerns that the scale of the proposed clearing is unacceptable, on the basis of the predicted direct impact to 40 ha of the *Themeda grasslands on cracking clays* TEC and fragmentation of the vegetation values along the length of the railway, the Minister noted the EPA's advice that direct impacts to the TEC are less than 1% of its extent, and that conditions have been applied to require indirect impacts to be avoided and minimised.

A specific condition has also been included to prohibit the construction of borrow pits within the mapped TEC area or within the *Brockman Iron cracking clay communities of the Hamersley Range* priority ecological community.

In relation to priority flora, the Minister considered the EPA's conclusions were justified noting that none of the species likely to be impacted by the proposal would be impacted by more than 6% of the known individuals. The Minister agreed with the Appeals Convenor, however, that condition 8-1(1) of the EPA's recommended conditions be varied to include reference to indirect impacts, consistent with the EPA's report and response to the appeal. This amendment will clarify that the proponent should avoid where possible, and minimise all impacts to the priority flora species listed in condition 8-1(1).

In relation to cumulative impacts to *Triodia basitricha*, the EPA identified that the proposal will impact on 1.7% of known individuals. On this basis, it is considered that the EPA's conclusion that the project will not significantly impact this species was justified. Notwithstanding this finding, the change to condition 8-1(1) in the previous paragraph encompasses *Triodia basitricha*, noting that it is one of the priority species listed in that condition.

In relation to the appellant's concerns in respect to fauna, the EPA noted that surveys undertaken by the proponent did not locate any suitable habitat for the night parrot within the proposal area. On this basis, the EPA concluded that impacts to the night parrot are unlikely. On the submission that as there is limited information to know with confidence what habitat the species uses, the EPA has advised that the potential for the night parrot to utilise any other habitat type in the proposal area is acceptably low and that it is unlikely that the proposal would result in impacts to the species.

Regarding the northern quoll, the EPA noted that despite what it described as extensive survey effort, the species was not recorded within the proposal area. The EPA recognised, however, that individuals may be transient visitors to the proposal area, and therefore recommended a condition be applied to the proposal to require the proponent to avoid and minimise impacts to the northern quoll where possible.

Notwithstanding this advice, the appellant's comments about the importance of the population of northern quoll in the Pilbara were noted, particularly in regard to threats posed to other populations of the species by ingestion of cane toads. The EPA acknowledged the significance of the Pilbara population of this species, and the Minister noted in this regard that part of the offset recommended by the EPA is to counterbalance direct impacts to northern quoll habitat.

The EPA also recommended that the proponent be required to prepare and implement a Significant Fauna Monitoring and Management Plan to (among other things) avoid where possible, and minimise direct and indirect impacts to significant fauna, including the species raised by the appeal, and their habitat.

The appellant requested that the requirements of the Monitoring and Management Plans be modified to provide greater specificity around targets to be met, and how these will be measured. It is noted that in accordance with condition 6-2, the monitoring and management plan must specify the environmental objectives to be achieved, management actions, measurable management targets, monitoring to ensure effectiveness and compliance reporting. Condition 6-3 provides that the Chief Executive Officer (of the Department of Water and Environmental Regulation) determines if the plans satisfy the requirements set out in condition 6-2.

The Minister noted the appellant's concern that the proposal is located a short distance from the Nharraminju Wuntu Rock Art Precinct and Kumpanha Dancing Grounds, and that these distances should be modified to reduce the possibility of impact. In response to this issue, the EPA advised that it conducted extensive consultation with the Eastern Guruma and Puutu Kunti Kurrama and Pinikura (PKKP) peoples throughout the assessment of this proposal. The Minister was advised that this consultation process specifically addressed the proximity of the rail line to the above sites, and both the Eastern Guruma and the PKKP people expressed their support for the proposed conditions, and in particular the conditions regarding the distance of the railway from the three significant sites.

On fire impacts raised by the appeal, the EPA advised that while this was not an issue raised by the native title holder groups, it considered that the Social, Cultural and Heritage Management Plan it has recommended would require the proponent to develop management actions to manage indirect impacts to heritage in consultation with relevant native title holders, which could include management of fire regimes, where relevant.

Finally in relation to rehabilitation concerns and long term consequences for traditional activities in the area, the EPA advised that the construction and operation of the railway is unlikely to result in changes to flora and fauna populations that would significantly impact traditional activities, provided that the recommended condition 14 (requiring a Social, Cultural and Heritage Management Plan) is implemented to ensure that impacts to culturally significant flora and fauna are managed, and loss of access to areas where traditional activities are undertaken is minimised.

Given the above, and in particular the EPA's advice that the Eastern Guruma and the PKKP people expressed their support for the proposed conditions as they relate to cultural heritage and related values, the Minister considered the EPA's assessment was justified. The Minister for Aboriginal Affairs is identified as a relevant decision-making authority for this proposal, and as a result, he will be consulted as part of the process required under section 45(1) of the *Environmental Protection Act 1986* (the Act). This will provide an additional opportunity for any concerns of the kind raised by the appeal to be considered.

For the reasons stated above, the Minister considered that the EPA's assessment of the proposal was acceptable in the context of the concerns raised by the appeal. The Minister however, determined to allow the appeal to the extent that the condition 8-1(1) is amended to include reference to indirect impacts.

The Minister otherwise dismissed the appeal.

The Minister will commence consultation with relevant decision-making authorities under section 45(1) of the Act as to whether or not the proposal should be implemented, and if it is to be implemented, the conditions to which that implementation should be subject.

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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