



Environmental Protection Act 1986

Hon Stephen Dawson MLC
Minister for Environment

MINISTER'S APPEAL DETERMINATION

APPEAL IN OBJECTION TO THE AMENDMENT OF CLEARING PERMIT CPS 6084/4 PURPOSE PERMIT – LOT 253 ON PLAN 238348, MEDA, SHIRE OF DERBY–WEST KIMBERLEY, PIVOT IRRIGATION AND DRYLAND CULTIVATION OF FODDER CROPS

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section 101A(3)(b) of the *Environmental Protection Act 1986* in objection to the amendment of clearing permit CPS 6084/4, granted by the Department of Water and Environmental Regulation. 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:	Environs Kimberley
Permit Holder:	Mowanjum Aboriginal Corporation
Proposal description:	Clearing of up to 116 hectares (ha) of native vegetation for the purpose of pivot irrigation and dryland cultivation of fodder crops on Mowanjum pastoral station at Meda in the Shire of Derby–West Kimberley.
Minister's Decision:	The Minister allowed the appeal in part.
Date of Decision:	5 January 2018

REASONS FOR MINISTER'S DECISION

Pursuant to section 106 of the *Environmental Protection Act 1986* (the Act), the Minister obtained a report from the Department of Water and Environmental Regulation (DWER) on the matters raised in the appeal. The Minister also received a report from the Appeals Convenor. The Appeals Convenor's report sets out the background and other matters relevant to the appeal.

The Minister was advised that representatives of the Office of the Appeals Convenor discussed the appeal with the appellant.

The Minister noted the key concerns raised in the appeal related to concerns that biological surveys had not been conducted; potential impacts to greater bilby, watercourses and wetlands and water quality; and in respect to land degradation and water licensing requirements.

The Minister understood a key element of the appeal was that the permit holder had not addressed the environmental issues raised in DWER's assessment of application CPS 6084/3, which included the area of land approved to be cleared under permit CPS 6084/4 but was refused. The appellant submitted that the permit holder had not undertaken the biological surveys required by DWER during its assessment of application CPS 6084/3, and therefore permit CPS 6084/4 should similarly not have been granted.

The Minister noted DWER advice that CPS 6084/4 was amended by increasing the area of clearing by 40 ha to allow the initial trial irrigation project, consisting of two centre-pivots, to be completed. DWER advised that to date 44 ha of the currently authorised 76 ha had been cleared for one centre-pivot, buffer area and ancillary infrastructure and that insufficient area remained to allow the second centre-pivot to be installed.

With regards to concerns that an additional 40 ha is beyond the scale required for the irrigation trial, the Minister noted the permit holder's advice that lessons learned during operation of the first centre-pivot established on Mowanjum station in 2015 show that a greater area of clearing around a pivot is required to allow for the safe mustering of cattle using motorcycles. Given this, the Minister agreed with DWER that the area of clearing permitted under CPS 6084/4 is consistent with the purpose of establishing the initial irrigation trial.

In relation to the need for targeted biological surveys of the land proposed to be cleared, the Minister noted that DWER sought advice from the Department of Biodiversity, Conservation and Attractions (DBCA) during its assessment. The Minister understood that DBCA provided advice in respect to the potential for conservation significant flora and fauna species to occur within the application area and that having considered the advice, DWER determined that further surveys were not required for it to be able to complete its assessment.

The Minister noted that DBCA did recommend that targeted biological surveys should be undertaken for any expansion of the proposal beyond the trial phase. This is consistent with the Minister's decision on Appeal C018 of 2016 in relation to application CPS 6084/3 noted above, in which he determined that targeted surveys would be necessary to confirm the extent (if any) of potential impacts to conservation significant flora and fauna from clearing on the above land at a scale beyond the irrigation trial phase.

DBCA also advised that any clearing should be done in a single directional manner to allow any ground dwelling species to move into adjacent native vegetation ahead of clearing operations.

The Minister noted, in response to concerns that the proposed clearing presents an unacceptable risk to greater bilby, that DWER recommended that the permit be amended to include a condition requiring the permit holder to conduct clearance surveys for greater bilby immediately prior to and during clearing activities.

In relation to potential impacts to watercourses and wetlands, the Minister noted that DWER has applied Condition 5 (Vegetation management) to the permit, which requires no clearing within 100 metres of riparian vegetation of any watercourse or wetland. This condition was attached to the clearing permit to mitigate any potential impacts to watercourses.

With regards to water quality and land degradation, the Commissioner of Soil and Land Conservation advised that the risk of water erosion, waterlogging or eutrophication as a result of the proposed clearing is likely to be low and is unlikely to impact water quality. In addition, the Commissioner advised that the risk of wind erosion of sandy soils can be mitigated by timing of development and key operations, irrigation management and through adequate retention of plant residues, which the Minister was advised the permit holder has committed to implement.

The Minister understood that in assessing the clearing application, DWER had regard to water licensing requirements under the *Rights in Water and Irrigation Act 1914* in accordance with section 51O of the Act.

In considering the information presented, the Minister was satisfied that DWER appropriately assessed the environmental impacts from the proposed clearing and that its decision to amend the clearing permit with conditions was justified.

The Minister however allowed the appeal in part to the extent that the conditions of the permit be amended to include requirements for clearance surveys of greater bilby and to specify that clearing is conducted in a single directional manner as described above, to ensure the activities are undertaken in a manner to minimise and manage the risk of environmental impacts.

The precise wording of the conditions is a matter for DWER to consider in giving effect to these changes in accordance with section 110 of the Act.

The Minister otherwise dismissed the appeal.

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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