



Environmental Protection Act 1986

**Hon Stephen Dawson MLC**  
**Minister for Environment**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL AGAINST REFUSAL TO GRANT CLEARING PERMIT CPS 8069/1 EDNA MAY OPERATIONS PTY LTD – GREENFINCH PROJECT, AREA PERMIT, MINING LEASES 77/88, 77/124, SHIRE OF WESTONIA**

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

This document sets out the Minister's decision on an appeal lodged under section 101A(1)(a) of the *Environmental Protection Act 1986* in objection to the above refusal. 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](http://www.appealsconvenor.wa.gov.au).

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<b>Appellant:</b>	Edna May Operations Pty Ltd
<b>Applicant:</b>	Edna May Operations Pty Ltd
<b>Proposal description:</b>	Refusal to grant a permit to clear up to 48.8 hectares of native vegetation for the expansion of the Edna May Gold Mine
<b>Minister's decision:</b>	The Minister dismissed the appeal
<b>Date of decision:</b>	13 May 2019

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

Edna May Operations Pty Ltd (Edna May/the appellant) applied to the Department of Mines, Industry Regulation and Safety (DMIRS) for a permit to clear up to 62.3 hectares (ha) of native vegetation within mining leases M77/88 and M77/124 (on Crown Reserve R14983), Westonia (CPS 8069/1) in May 2018, and this was subsequently reduced to 48.8 ha in order to minimise environmental impacts. An offset proposal to address environmental impacts was also submitted, which proposed revegetation of nearby ex-farmland.

Through its assessment, DMIRS concluded that the proposed clearing was seriously at variance to clearing principle (c) and at variance to clearing principles (b), (d) and (e). On 1 November 2018, DMIRS refused to grant a clearing permit for the expansion.

Edna May appealed this decision, submitting that DMIRS failed to take into account the reduction in impacts with the revised proposal or the proposed offset. The appellant also submitted that DMIRS incorrectly assessed the proposed clearing in respect of threatened flora, threatened ecological communities and other biodiversity-related matters, and was inconsistent compared with previous clearing applications for the development of the Edna May Gold Mine.

The appeal was investigated by the Appeals Convenor on the Minister's behalf, which included a meeting with Edna May, as well as feedback from DMIRS, and a site visit.

As outlined in the Appeals Convenor's report, the appeal right in relation to a decision to refuse to grant a clearing permit considers the environmental merits of the assessment based on principles as set out in Schedule 5 of the *Environmental Protection Act 1986*, as well as other relevant matters.

In relation to threatened flora, DMIRS identified that the application area contains four *Eremophila resinosa* plants, along with habitat considered by DMIRS on advice of the Department of Biodiversity, Conservation and Attractions (DBCA) to be critical to the survival of this species. DMIRS also identified the potential for fragmentation of sub-populations as a result of the proposed clearing.

In the appellant's view, the impacts to this species have been minimised through the revised application, and that residual impacts can be counterbalanced through revegetation and translocation. Edna May also submitted that critical habitat for the species has not been formally mapped by DBCA.

While DBCA acknowledged the survival of translocated *E. resinosa*, it queried the long-term sustainability of translocated populations, stating that it is not appropriate to rely on regeneration of the species in non-natural disturbed areas, as this will not be sustainable in the longer term with respect to maintaining other supporting ecosystem processes. In coming to this view, DBCA noted that between 22 to 88 per cent of populations at each translocation site had been recorded as dead or lost.

Having regard to the information presented in relation to this matter, the Minister agreed with the Appeals Convenor that given the status of the species, and DBCA's advice on the potential impacts and questions around translocation, DMIRS was justified in concluding that the proposed clearing is seriously at variance to clearing principle (c).

In relation to fauna habitat values, the appellant submitted that fauna habitat and movement around the area is already affected by Warrachuppin Road and existing disturbance within the application area, and that fauna assessments identified the majority of fauna to comprise mobile bird species.

DMIRS advised that it considered the condition of the vegetation, habitat types, connectivity, and the partial overlap of the application area with the Westonia Common, and had regard for the findings of fauna assessments conducted in 2012 and 2014, in its assessment against clearing principle (b).

The Appeals Convenor considered that the available evidence supports DMIRS' view that the application area forms part of a significant habitat for fauna. On review of the information available in relation to this matter, the Minister agreed with this conclusion.

In relation to threatened ecological communities, DMIRS identified that the proposed clearing would impact approximately 33 ha of the Commonwealth-listed threatened ecological community 'Eucalypt Woodlands of the Western Australian Wheatbelt' (Wheatbelt Woodlands TEC), which the Minister noted is comprised of two State-listed priority ecological communities.

By the appeal, Edna May expressed the view that impacts to the TEC can be addressed through revegetation with appropriate species, and that as a result, DMIRS should not have found the proposed clearing to be at variance to clearing principle (d).

The decision report states that DBCA considered there is a risk of the revegetation not succeeding for a number of reasons, and protection and management of intact areas of the TEC are likely to provide better outcomes long-term.

On the basis of the information available to the Minister, and noting that the listing of the Wheatbelt Woodlands TEC post-dates previous clearing permit decisions in association with mining in the area, the Minister supported DMIRS' conclusion that the proposed clearing is at variance to clearing principle (d).

In relation to the significance of the remnant in an extensively cleared area, the Minister considered the concerns the appellant raised, along with advice of the Appeals Convenor and DMIRS, and consistent with his conclusion with respect to clearing principle (b), the Minister was of the view that the proposed clearing would result in severance of vegetation linkages between portions of the Westonia Common and could lead to impacts to adjacent vegetation. While Edna May submitted that the impact to connectivity can be addressed through revegetation, the Minister was of the view that there remains impacts to connectivity at least in the medium-term. Noting this, the Minister considered DMIRS' conclusion that the proposed clearing is at variance to clearing principle (e) was justified.

As to the concerns raised in the appeal in respect to offsets and consistency with other decisions, the Minister carefully considered the issues raised, and formed the view that DMIRS appropriately considered the issues, and the Minister adopted its conclusions accordingly.

It follows from the above that the Minister considered that DMIRS was justified in concluding that the proposal to clear 48.8 ha of native vegetation for the expansion of the Edna May mine and related purposes was seriously at variance to clearing principle (c), and was at variance to a number of other principles. Noting the identified values, and in particular the impacts to threatened flora as identified by DBCA, the Minister was of the view that the decision to refuse the permit was also justified, and the Minister dismissed the appeal on that basis.

The Minister noted that Edna May submitted a revised clearing proposal to the Appeals Convenor during the appeal investigation, which among other things reduced the extent of clearing to 26.3 ha. While it is open to him to consider a reduced area of clearing in his determination of the appeal, the Minister was of a view that as the modified proposal represents a substantial variation to the application considered by DMIRS (48.8 ha to 26.3 ha), the implications of the change warrant fresh assessment against the clearing principles and other relevant matters by DMIRS.

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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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