



Office of the Appeals Convenor
Environmental Protection Act 1986

**REPORT TO THE
MINISTER FOR THE ENVIRONMENT**

APPEAL AGAINST GRANT OF CLEARING PERMIT CPS 1677/1

**CLEARING OF 9.57 HECTARES OF NATIVE VEGETATION FOR
MINERAL PRODUCTION, MINING LEASES M77/88 & M77/124,
SHIRE OF WESTONIA**

PERMIT HOLDER: WESTONIA MINES LTD

Appeal number C025 of 2007

November 2007

EXECUTIVE SUMMARY

The appeal raises objection to the clearing of 9.57 hectares of native vegetation at a mine site in Westonia on the basis that the area is already over cleared and that revegetation measures will not be adequate to replace the values of the vegetation to be cleared.

The Department of Industry and Resources (DoIR) responded to the appeal, stating that whilst the clearing is at variance with two of the clearing principles, the area of clearing is not considered to be significant and other measures to protect the values of the vegetation will be adopted, such as a requirement to revegetate an area equal to or greater than the area to be cleared. DoIR also noted that if approved, the mining tenement conditions would include provision for rehabilitating areas that have not been adequately rehabilitated following prior mining activity.

Taking into account information presented during the appeal process, it was considered that whilst the proposed clearing of 9.57ha of native vegetation for mining purposes is inconsistent with clearing principles (a) and (e), the conditions of the permit require an equal or greater area to be revegetated with local species and the mining tenement conditions will require the rehabilitation of previously mined areas. It was also noted that the proposal will have a limited impact on the declared rare flora species *Eremophila resinosa*, with requirements to regularly monitor the species and ensure impacts are addressed. As a result, it was considered that the conditions of the permit, as well as the requirement for the mine site to be rehabilitated at the cessation of mining will lead to a net environmental benefit.

For the above reasons, it was recommended that the appeal be dismissed.

INTRODUCTION

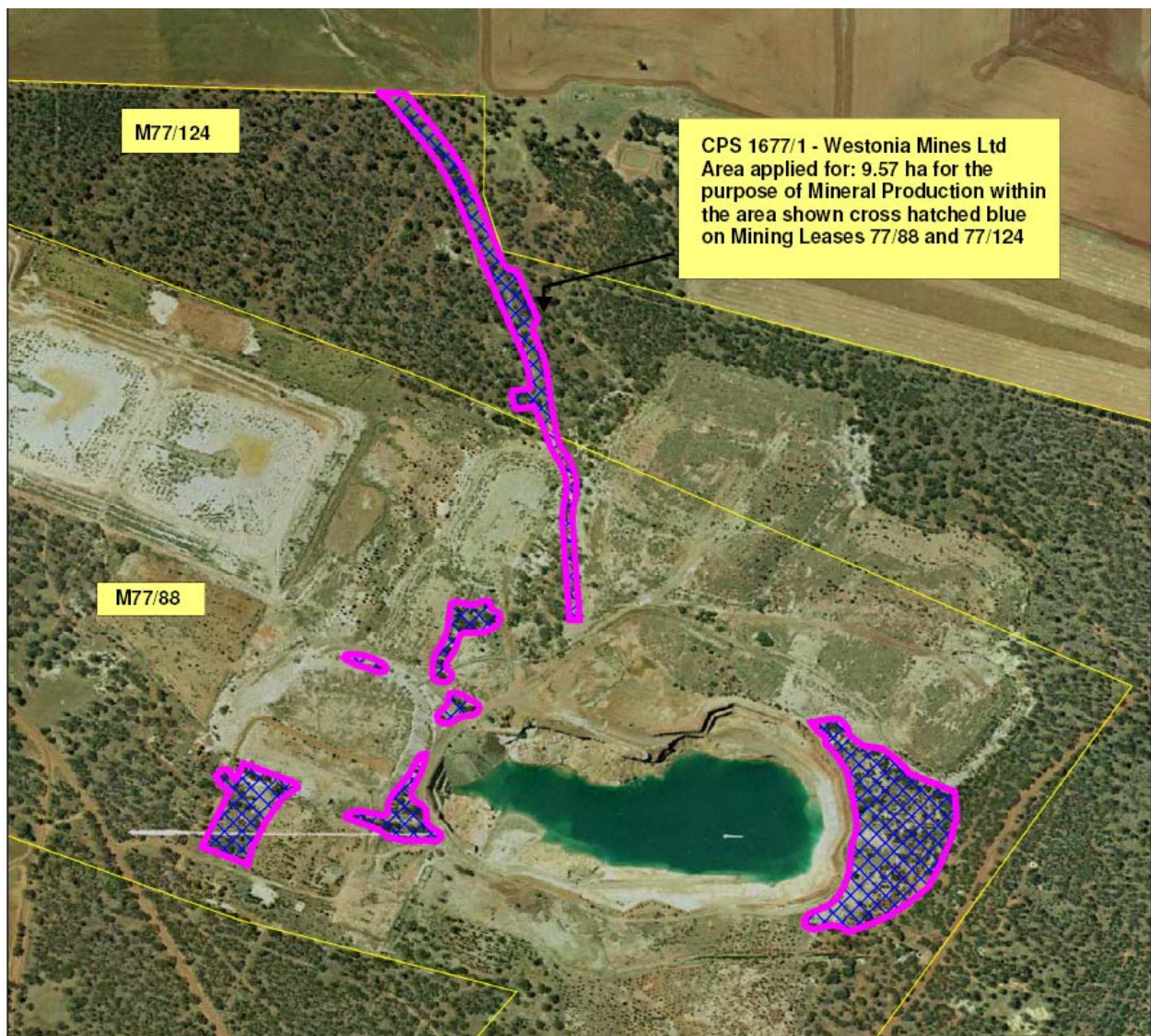
This is an appeal by Mr Kevin Lindley (the appellant) against a decision of the Department of Industry and Resources (DoIR) to grant a permit to Westonia Mines Ltd (the permit holder) to clear 9.57 hectares (ha) of native vegetation for mineral production on mining leases M77/88 and M77/124, in the Shire of Westonia.

BACKGROUND

An application to clear 9.57 ha of native vegetation was received by the DoIR. After considering the application, the DoIR granted the permit on 28 June 2007 and was advertised in the *West Australian* on 2 July 2007. The permit included a number of conditions, including a requirement to revegetate an area of equal or greater to the area approved to be cleared and a requirement to monitor and protect a species of declared rare flora.

The area approved to be cleared was 9.57ha, as shown in Figure 1.

Figure 1 – Area approved to be cleared: source DoIR



The permit holder proposes to recommence gold mining at the site, which it advised commenced in 1911. Ore will be sourced from a series of cutbacks and deepening of the existing pit over the expected six year life of the operation. Clearing of native vegetation will

be required for the cutback (5.78ha) as well as upgrading the access road (2.54ha) and construction of the contractor's laydown area (1.25ha).

The assessment report for the proposed clearing stated that the proposal is at variance to clearing principles (a) and (e), and may be at variance to principles (b) and (c).

PREVIOUS APPEAL DETERMINATION

A proposal to recommence mining at the Westonia site was referred to the Environmental Protection Authority by the proponent in April 2002. This proposal included clearing 50ha of native vegetation. The EPA advised the proponent at the time that the clearing of 50ha of remnant vegetation in an overcleared region was an issue of concern. The proponent subsequently modified the proposal, reducing the area of clearing to 3.7ha. The EPA determined in 2003 that the revised proposal did not raise significant environmental issues, and therefore determined that the proposal did not warrant formal assessment.

The current appellant appealed to the Minister for the Environment against the EPA's decision. The Minister dismissed the appeal, the details of which are considered below.

CONDUCT OF APPEAL

Upon receipt of the appeal, DoIR was requested to provide a report on the matters raised pursuant to section 106 of the *Environmental Protection Act 1986* (the Act). Discussions were held with the appellant and a meeting held with the proponent and its environmental consultant.

The environmental appeals process is a merits based process. Appeals against the grant of a clearing permit normally considers the environmental merits of the assessment by the decision maker based on principles as set in Schedule 5 the Act as well as other environmental factors. Questions of additional information not considered by the decision maker, technical errors and attainment of relevant policy objectives are normally central to appeals.

GROUND OF APPEAL

The appellant objected to the clearing on the basis that there is little vegetation remaining in the area, and that proposed revegetation activities will be inadequate to replace the values of the vegetation that will be lost.

DoIR advice

In its response to this ground of appeal, DoIR stated that the Shire of Westonia is located within the central eastern wheatbelt region. This Shire, like most others within the Avon Wheatbelt IBRA Bioregion, has been extensively cleared for agriculture, although the extent of clearing within the Shire of Westonia is much less than that of other Shires within the region. DoIR advised that approximately 36% of remnant vegetation remains uncleared within the Shire of Westonia, compared with the Shire of Cunderdin, which remains approximately 1.8% uncleared. Overall, the Avon Wheatbelt Bioregion remains approximately 15.4% uncleared. Given the above, DoIR considered that the removal of 9.57ha of native vegetation is not as significant within the Shire of Westonia as it would be in other Shires within this Bioregion.

DoIR noted the following from the assessment report:

- the vegetation proposed to be cleared constitutes an area of high biodiversity compared to the cleared farmland in the local area and therefore the proposed clearing is at variance to principle (a);

- the vegetation constitutes significant fauna habitat, particularly for reptiles, in the local area and therefore the proposed clearing may be at variance to principle (b);
- whilst a significant population of *Eremophila resinosa* (a Declared Rare Flora species) occurs within the property, no plants will be removed through clearing. However, dust and saline water spray used to suppress dust may impact on Declared Rare Flora if not controlled and therefore the proposed clearing may be at variance to principle (c);
- the vegetation to be cleared constitutes part of a significant remnant of native vegetation and therefore the proposed clearing is at variance to principle (e).

DoIR also advised that the assessment report also considered:

- that there are weeds present within the application area, which has had an impact on the biodiversity present within the area by stifling seedling recruitment, promoting grazing by feral herbivores and making the area more fire prone;
- that much of the vegetation proposed to be cleared is already in a degraded state due to past disturbances, compared with other vegetation within the remnant;
- that the proposed clearing could be offset by the revegetation of an area greater than 9.57 hectares of cleared farmland to the north of the remnant vegetation;
- that other conditions placed on the permit would mitigate the impact to the environment from the proposed clearing;
- that the re-opening of the mine would provide an opportunity to correct previous rehabilitation efforts that have not been successful, thereby improving the biodiversity of the remnant as a whole; and
- that bonds placed on the mining proposal by the Department of Industry and Resources places some surety over the proposal such that rehabilitation must be completed to this Department's satisfaction prior to bonds being returned.

DoIR specifically noted that the permit holder will be required to offset the loss of vegetation by revegetating an area equal to, or greater than, 9.57 hectares on adjacent farmland using locally sourced native seeds and seedlings. Whilst the revegetation may not have the same species diversity as local remnant native vegetation, DoIR considered that given the degraded nature of the vegetation to be cleared, the revegetation would adequately offset the loss of vegetation due to clearing.

Permit holder response

The permit holder provided an initial a brief response to the appeal, expressing confidence in the decision making of DoIR and referring to a 2003 appeal against the decision of the Environmental Protection Authority (EPA) not to assess the proposal.

Subsequent to meeting with the Appeals Officer, the proponent submitted additional information which was received on 30 October 2007. This response addressed the following issues.

Revegetation requirement

The proponent noted that condition 6 of the clearing permit requires that a minimum of 9.57ha of cleared farmland be revegetated using locally sourced native seeds and seedlings as an offset for the proposed clearing associated with the re-commissioning of the Westonia mine. Prior to the approval of the permit, the proponent stated that it had already made such a

commitment within the 2007 Mining Proposal as it is stated that a vegetation corridor is to be established around the perimeter of the tailings storage facility (TSF). The proponent stated that this corridor would be 75m in width and cover approximately 25ha. Given that substantial work has been undertaken by the Westonia Shire in regard to propagation of local flora species, the proponent noted that local knowledge will be utilized to assist in the establishment of the vegetation corridor.

Rehabilitation program

The proponent acknowledged that a number of areas of rehabilitation across the Westonia mine site are currently substandard, particularly the historic TSF which is clearly visible to the public utilising an adjacent road. The proponent stated that the recommissioning of the mine will allow for such areas to be re-worked, and will be rehabilitated at the completion of works.

The proponent noted that a rehabilitation strategy and techniques for the different components of the site will be defined in greater detail as mining progresses, with works being restored progressively through operations.

Post-mining, the proponent stated that all hardstand areas, roads and access tracks will be rehabilitated unless required for monitoring access, fence maintenance and/or farming access. This will involve re-establishing natural ground levels to allow natural water movement, replacement of topsoil (where available), the spreading of vegetation mulch (where necessary and/or available), contour ripping to minimise erosion, alleviate compaction and provide suitable habitat for vegetation re-establishment and seeding with appropriate local flora species.

The proponent stated that all waste landforms will be designed to limit runoff from rain as the top surface will be water harvesting. All batters will be contour ripped and re-vegetated as early as is possible in order to reduce erosion. On completion of the operations, the TSF is proposed to be capped appropriately with nearby waste stockpiles. A TSF decommissioning research plan to identify an adequate capping design will be prepared within 12 months of operations commencing.

Flora

In 2004, in conjunction with staff from the Botanic Gardens and Parks Authority (BGPA), the proponent stated that an *Eremophila resinosa* Translocation Program was established which opportunistically utilised material from 15 plants that had been approved for removal. The proponent advised that this programme has seen the successful establishment of 560 plants in a fenced area adjacent to the mine.

The proponent also indicated that it was undertaking research to develop an understanding of the soil requirements for *Eremophila resinosa*, which it submitted will be valuable in developing strategies to enhance the conservation of this species. While all soils analysis work has been completed, germination trials are still underway and the proponent expects a final report will be compiled by December 2007.

The proponent also advised that it has updated its *Eremophila resinosa* management plan to encapsulate changes to the native vegetation clearing regulations, to include exploration activities and to cover all threatened flora (and not just *E. resinosa*) within the proponent's mining and exploration tenements.

The proponent noted that it has engaged a botanist to undertake targeted DRF and Priority Flora surveys of proposed exploration drilling locations in areas of remnant native vegetation within their exploration tenements. A subsequent report has been lodged with the local Department of Environment and Conservation (DEC) office and samples of all Priority Flora are to be vouchered with the WA Herbarium. The proponent stated that it is its intention to

lodge copies of all reports associated with flora surveys and annual surveys with the local DEC office.

CONSIDERATION

The appellant objects to the clearing proceeding on the basis that the area is already over cleared and that revegetation measures will not be adequate to replace the values of the vegetation to be cleared.

DoIR responded to the appeal, stating that whilst the clearing is at variance with two of the clearing principles, the area of clearing is not considered to be significant and other measures to protect the values of the vegetation will be adopted, such as a requirement to revegetate an area equal to or greater than the area to be cleared. DoIR also noted that if approved, the mining tenement conditions would include provision for rehabilitating areas that have not been adequately rehabilitated following prior mining activity.

The proponent concurred with DoIR, confirming that it will protect *Eremophila resinosa* species and undertake revegetation and rehabilitation to ensure the environmental values of the area are not compromised.

As noted above, this clearing permit is related to an earlier proposal to recommence mining at the site which was referred to the EPA in 2002. That proposal included the clearing of 50ha of native vegetation. After discussions between the EPA and proponent, a revised proposal was referred in July 2003. The area of clearing proposed was reduced to 3.7ha. The EPA determined not to assess the proposal, which was the subject of an appeal by the current appellant.

In its advice to the Minister in relation to the earlier appeal, the EPA stated:

[T]he proponent recognised that rehabilitation of the previous mine operation was an issue for Westonia residents and has committed to rehabilitating all disturbed land associated with the recommencement of mining. The proponent, however, has not offered any further compensation strategies.

...

Westonia Mines Limited has committed to rehabilitating all areas it will disturb, as a result of recommencing mining, back to native vegetation. All disturbed areas will be rehabilitated in accordance with mining tenement conditions placed on Westonia Mines Limited by the Department of Industry and Resources (DoIR). Mining tenement conditions of approval will include:

- the preparation and implementation of a rehabilitation and decommissioning closure plan; and
- an unconditional performance bond to cover the total cost of rehabilitation of the site in the event that rehabilitation is not carried out appropriately.

After considering the appeal, and the information provided to her from the proponent and EPA, the then Minister determined that having regard to the fact that the proponent had reduced clearing from 50ha to 3.7ha, the proposal could be managed under other mechanisms as identified by the EPA. The Minister therefore dismissed the appeal, but requested DoIR and the then Department of Environmental Protection to give the appellant an opportunity to comment on future regulatory processes for the mine.

From this earlier decision, it is noted that the value of the vegetation on the site is seen as a key issue. The clearing permit the subject of the current appeal is for the clearing of 9.57ha of native vegetation, which is significantly greater than the 3.7ha proposed to be cleared in the 2003 proposal. The proponent was asked to clarify the reason for the difference between the two proposals.

It responded that in 2003, it was estimated that only 3.7ha of bushland would require clearing to allow for access between the pit/plant site and the proposed TSF located on cleared farmland to the north. In contrast, the proponent estimated that 9.57ha will require clearing for the same project, as outlined in the 2007 Mining Proposal, which is currently under assessment by the DoIR.

The proponent noted that the original 2003 proposed road route between the pit/plant site and the TSF has been changed slightly with the final design requiring only 2.54ha of clearing. The majority of the remaining 7.03ha that requires clearing is associated with the pit cutback which encapsulates pockets of remnant vegetation immediately adjacent to the pit (inside the abandonment bund). The proposed pit cutback, as submitted in 2003, did not include a cutback to the southern end of the pit, as is now proposed. The proponent stated that this has added 4.19ha of clearing to the proposal.

The proponent noted that although the 2003 pit design at the northern end would have required the removal of a number of small pockets of native vegetation (ranging from 0.1 ha to 0.7ha in size), as does the 2007 design, these do not appear to have been included in the final calculation of native vegetation to be cleared for the 2003 proposal.

CONCLUSION AND RECOMMENDATION

Taking into account the above information, it is considered that whilst the proposed clearing of 9.57ha of native vegetation for mining purposes is inconsistent with clearing principles (a) and (e), the conditions of the permit require an equal or greater area to be revegetated with local species and the mining tenement conditions will require the rehabilitation of previously mined areas. It is also noted that the proposal will have a limited impact on *Eremophila resinosa*, with requirements to regularly monitor the species and ensure impacts are addressed. As a result, it is considered that the conditions of the permit, as well as the requirement for the mine site to be rehabilitated at the cessation of mining will lead to a net environmental benefit.

In relation to the difference between the area proposed to be cleared in 2003 and 2007, it is noted this is largely attributable to the pit area being expanded and the 2003 estimate of the area to be cleared excluding small areas of isolated vegetation. Given the conditions in the clearing permit and expected for the mining tenement, it is considered the additional area of clearing will not have a significantly different impact from that considered through the 2003 appeal.

For the above reasons, it is recommended that the current appeal be dismissed.

Garry Middle
APPEALS CONVENOR

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