



Environmental Protection Act 1986

**Hon Stephen Dawson MLC  
Minister for Environment**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEALS AGAINST REPORT AND RECOMMENDATIONS OF THE ENVIRONMENTAL PROTECTION AUTHORITY OCEAN REEF MARINA (EPA REPORT 1629)**

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

This document sets out the Minister's decision on appeals 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 of 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](http://www.appealsconvenor.wa.gov.au).

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<b>Appellants:</b>	West Coast Abalone Divers Association; Mullaloo Beach Community Group Inc.; Western Australian Land Authority (LandCorp); Ms DM Macdonald
<b>Proponent:</b>	Western Australian Land Authority (LandCorp)
<b>Proposal description:</b>	The proposal includes the redevelopment and enlargement of the existing Ocean Reef Boat Harbour and will include two new breakwaters, dredging of sand and rock, construction of jetties to support piled boat mooring pens and piling works for approximately 750 new boat pens.
<b>Minister's Decision:</b>	The Minister allowed the appeals in part
<b>Date of Decision:</b>	10 July 2019

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

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The proposal the subject of these appeals is the development of the Ocean Reef Marina, replacing the existing Ocean Reef Boat Harbour. The proposal was originally put forward by the City of Joondalup, but responsibility was passed to the Western Australian Land Authority (LandCorp) on 8 November 2018.

The Environmental Protection Authority (EPA) advised that land-based elements of the development were considered through amendments to the Metropolitan Region Scheme, and as a result, that part of the development of the site is outside the scope of this appeal.

The EPA's report on the proposal was published on 25 February 2019. In that report, the EPA identified four key environmental factors relevant to the implementation of the proposal, being marine environmental quality, coastal processes, benthic communities and habitat, and social

surroundings. The EPA, after considering the information before it, concluded that the proposal may be implemented in accordance with its recommended conditions.

Conditions recommended by the EPA to address identified environmental risks from the proposal include the preparation and implementation of management plans in respect to construction and operations, and monitoring of abalone habitat and biomass to ensure impacts are not greater than predicted. The EPA also recommended that an offset strategy be prepared to counterbalance the significant residual impact the EPA identified would occur to the nearshore macroalgal habitat.

Appellants raised a number of concerns about the EPA's report and recommendations, which were investigated by the Appeals Convenor. The key concerns related to the adequacy of the EPA's assessment in relation to coastal processes, water quality and impacts to abalone habitat. As part of the investigation, the Appeals Convenor met with each of the appellants, and had further discussions with the representatives of the EPA and the proponent.

### **Coastal processes**

By this ground of appeal, appellants raised concern that the assessment of coastal processes was inadequate. Specific concerns raised included the failure to require baseline studies and the failure to assess impacts associated with predicted sea level rise. Appellants also expressed concern that the content of proposed management plans relating to coastal processes and wrack management were not made available to the public, and that there was uncertainty about predicted sand deposition and accretion rates on nearby beaches.

The EPA noted that the implementation of the proposal would result in an increase in the interruption to sand movements along the coast between Mullaloo Beach and Burns Beach. The EPA specifically found that there would be additional sand accretion immediately to the south of the proposed marina, and additional sand deficits to the north, but that these were not significantly different from impacts at the existing boat harbour, which could be addressed by sand bypassing.

In relation to sea-level rise, the EPA stated that it took into account the proponent's technical advice on the implications for the development of the marina. The EPA noted that the proponent considered predicted sea level in accordance with State Planning Policy 2.6, and that this analysis was the subject of peer review.

In relation to the accessibility of management plans recommended by the EPA, draft plans were published on the EPA's website at the time the proponent's response to submissions was published, in accordance with the EPA's normal practice.

On the information available to him, the Minister concluded that the EPA's assessment adequately considered coastal processes, including potential impacts from predicted sea level rise. He agreed with the Appeals Convenor, however, that the conditions recommended by the EPA should be modified to ensure predicted outcomes are achieved. This includes modifying the objective for the Coastal Processes and Wrack Management Plan so that it includes reference to sediment deficit (not just accumulation) and provides for a spatial extent that reflects the full extent of the area within which impacts are predicted to occur.

### **Water quality**

By this ground of appeal, some appellants submitted that the EPA failed to adequately assess the impacts of the proposal on water quality inside the marina water body, on waters and beaches outside the marina, and within the Marmion Marine Park more generally.

The EPA in Report 1629 acknowledged that modelling of water quality can only provide a best estimate of future outcomes, often with limited confidence. The EPA also noted that other marinas on the Perth coast with similar flush levels have recorded higher concentrations of phytoplankton than have been predicted for this proposal.

To improve confidence that its objectives and levels of ecological protection can be met inside and outside the marina, the EPA recommended conditions be applied requiring the proponent to ensure that water quality meets certain standards during construction and operations. This includes a requirement to meet all environmental quality objectives for primary contact recreation, such as swimming and diving.

Overall, the Minister considered that the EPA's assessment in relation to water quality was acceptable. However, he agreed with the Appeals Convenor that the conditions should be strengthened to ensure the environmental quality objectives identified by the EPA are met. This includes amending the conditions to ensure all criteria are expressed in mandatory terms, that is, that each of the criteria will be required to be met, not merely that they are 'predicted' or 'expected' to be met.

The Minister also agreed with the EPA's recommendation in response to the appeals that condition 6-3 is amended to require the final Marine Operations Management Plan to evaluate further practicable measures to reduce and manage the level of fines in breakwater construction material and to develop triggers relevant to underwater visibility for commercial abalone fishers.

### **Social surroundings (abalone)**

One appellant raised concern that the proposal will have a significant impact on an important habitat for Roe's abalone, and that the EPA ought to have considered options for translocating individual abalone from the direct impact area to other habitats. The appellant also raised concern that the recommended conditions do not require the proponent to fully fund an adjustment scheme for commercial abalone fishers impacted by the implementation of the proposal.

The proponent also lodged an appeal against the EPA's recommendation that it be required to monitor abalone health in an area 500 metres north of the development envelope to confirm there is no loss of abalone biomass in this area. The proponent submitted that the PER assumed (as a worst case scenario) 100% loss of biomass in this zone, but that no impact was expected further north.

The proposal is located on Burns Beach Reef, which extends from the south of the existing boat harbour to approximately three kilometres north. While Roe's abalone is not a listed or threatened species, it is an important commercial and recreational fishery species, with catch and season limits applied by the Department of Primary Industries and Regional Development (DPIRD). Within the Perth metropolitan area, Burns Beach Reef is understood to be the most significant reef for both commercial and recreational fishers.

In response to the proponent's appeal, the EPA noted the uncertainties around cause and effect pathways from marina construction and abalone abundance. The EPA accepted that given the proponent put forward a worst case prediction, there is a likelihood that impacts will be less than predicted. In these circumstances, and noting the range of potential indirect impacts that could eventuate to abalone and abalone habitat, the EPA agreed that the abalone monitoring zone should be extended to be 1500 metres north of the proposal footprint. Taking into account the EPA's advice, the Minister agreed to these changes being made to the conditions, noting however that the monitoring zone should include an area at least 1500 metres north of the development envelope, for the reasons set out in the Appeals Convenor's report.

The Minister also agreed with the Appeals Convenor that the monitoring specified in the Abalone Habitat and Biomass Baseline Survey and Monitoring Plan should continue for no less than five years after the completion of the construction of the breakwaters.

If monitoring shows that impacts to abalone are greater than predicted, the Minister determined that the conditions should be amended to require the proponent to publish the details of the results of the monitoring, and the contingency management measures that have been implemented or are proposed to be implemented in response to the results of the monitoring.

In relation to translocation of abalone from the development envelope before commencement of construction, given the relative importance of the Burns Beach Reef for Roe's abalone, the Minister believed there is merit in this option being further explored. To this end, the Minister allowed this element of the appeal such that condition 8 is amended to require the proponent to identify (in consultation with DBCA and DPIRD) options for translocating abalone from within the development envelope to other suitable habitat, subject to consideration of timing, biosecurity and genetic differences in populations.

In relation to adjustment mechanisms, the Minister noted that the Minister for Fisheries has provided support for the establishment of a Voluntary Fisheries Adjustment Scheme to provide compensation to commercial licence holders arising from the implementation of the proposal. The EPA considered that such a Scheme would adequately address commercial compensation for licensed fishers impacted by the proposal. The Minister indicated he considers these matters to be appropriately the subject of that process, and in that regard, he will consult with the Minister for Fisheries as part of the final decision-making process under section 45 of the *Environmental Protection Act 1986*.

### **Other matters**

In relation to the other matters raised in the appeals, the Minister considered the information provided, and dismissed those issues in the manner recommended by the Appeals Convenor.

### **Conclusion**

Taking into account the above, the Minister concluded that the EPA's assessment was sufficient to establish the environmental risks posed by the proposal. However, he determined to allow appeals in the manner set out in this decision by amending the conditions recommended by the EPA. The changes to the conditions provide greater confidence that the impacts of the proposal are minimised and properly monitored, and that there is greater transparency in the provision of monitoring results if impacts exceed those predicted.

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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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