



Appeals Convenor

Environmental Protection Act 1986

REPORT TO THE MINISTER FOR ENVIRONMENT

**APPEALS IN OBJECTION TO THE REPORT AND RECOMMENDATIONS OF THE
ENVIRONMENTAL PROTECTION AUTHORITY**

**HIGH STREET UPGRADE
CITY OF FREMANTLE**

PROPONENT: MAIN ROADS WESTERN AUSTRALIA

Appeal Number 014 of 2019

April 2019

Appeal Summary

This report relates to an appeal lodged in objection to the report and recommendations of the Environmental Protection Authority (EPA) Report 1630 for the High Street Upgrade, City of Fremantle. Main Roads Western Australia proposes to upgrade High Street between Stirling Highway and Carrington Street in Fremantle to improve road safety and traffic flow.

In summary, the appellant's concerns relate to the management of noise during construction and operation of the proposal. The appellant submitted that the EPA should have formally applied State Planning Policy 5.4 *Road and Rail Transport Noise and Freight Considerations in Land Use Planning* to the proposal and in turn that the EPA should have recommended an implementation condition be applied to ensure that impacts to the noise amenity of existing sensitive receptors are consistent with State Planning Policy 5.4.

In responding the appeal and as detailed in Report 1630, the EPA remained of the view that noise impacts related to the proposal are manageable and would not be significant, provided the proponent implements the proposed noise walls as specified in Schedule 1 of its recommended implementation conditions.

Having regard for the information provided during the appeals investigation, including the referral documentation, and information provided by the appellant, the proponent and the EPA, the Appeals Convenor considered that the EPA has:

- had appropriate regard for the provisions of State Planning Policy 5.4 relevant to a major redevelopment of an existing major road in the vicinity of existing noise-sensitive land-uses, in its assessment of traffic noise impacts against the factor 'Social Surroundings'; and
- recommended appropriate noise mitigation strategies, consistent with the relevant provisions of State Planning Policy 5.4, to ensure that traffic noise impacts (as modelled) do not increase as a result of the proposal.

Recommendation

The Appeals Convenor recommended that the appeals be dismissed.

INTRODUCTION

This report relates to an appeal lodged by Mr Shane Chambers (appellant) in objection to the content of, and recommendations in, the Environmental Protection Authority (EPA) Report 1630¹ for the High Street Upgrade, City of Fremantle, by Main Roads Western Australia (proponent) to upgrade High Street between Stirling Highway and Carrington Street in Fremantle to improve road safety and traffic flow.

The location and extent of the proposal as described in the proponent's referral documentation² are shown in Figure 1.

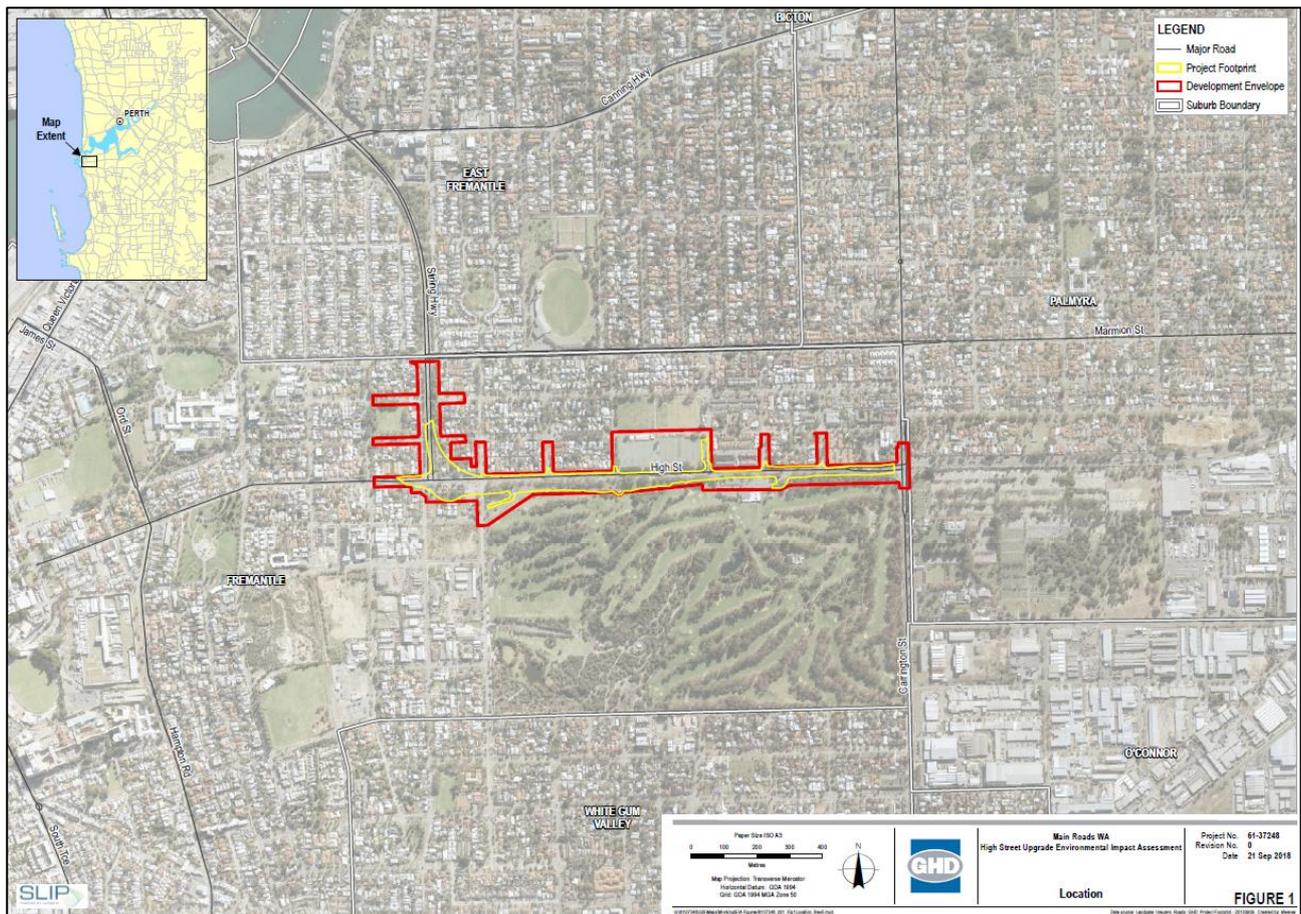


Figure 1: Location and extent of proposal (indicated in red)

(Source: referral documentation)

Background

High Road forms part of a Strategic National Road Network serving freight traffic between Fremantle Inner Harbour and industrial areas to the south and east, as well as local, regional and tourist traffic. EPA Report 1630 describes the proposal as follows:

The proposal includes the construction of a roundabout at the Stirling Highway and High Street Intersection, a new westbound carriageway of High Street between Stirling Highway and Carrington Street, realignment of approaches to Stirling Highway and High Street, pedestrian crossing points, a new service road for residents north of High Street and local road realignments.

The proposal also includes the installation of noise walls, drainage, lighting, electricals, utilities and associated road infrastructure.

¹ Environmental Protection Authority (2019) *Report and recommendations of the Environmental Protection Authority – High Street Upgrade – Main Roads Western Australia*. Report 1630, March 2019. Government of Western Australia.

² Available at: <http://www.epa.wa.gov.au/proposals/high-street-upgrade>

The majority of the proposal is located within an existing primary regional road reservation. The proposal requires excision of a portion of a Class A (1.8 ha) reserve associated with the Fremantle Royal Golf Course and reclassification of part of a Class C (0.1ha) reserve associated with the Fremantle Public Golf Course. The Class A reserve is vested in the City of Fremantle and reserved for recreation. The Minister for Lands has to approve the tabling of the excision proposal in Parliament. ...

The proposal was determined not to be a controlled action by a delegate of the Commonwealth Minister for the Environment under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) on 21 November 2018.³

The proposal is located within a residential area, with housing and netball courts on the north side of High Street and golf courses on the south side. The proposal includes the clearing of up to 0.63 hectares (ha) of native vegetation within a 20.15 ha development envelope, including mature trees.

On 8 October 2018, the EPA decided to assess the proposal and set the level of assessment at Public Environmental Review noting that several preliminary key environmental factors are complex and detailed assessment was required to determine the extent of direct and indirect impacts. The EPA released Report 1630 in March 2019 and concluded that the proposal is environmentally acceptable and may be implemented, provided the implementation of the proposal is carried out in accordance with its recommended conditions.

This document is the Appeals Convenor's report to the Minister for Environment under section 109(3) of the EP Act.

OVERVIEW OF APPEAL PROCESS

In accordance with section 106 of the EP Act, a report was obtained from the EPA in relation to the issues raised in the appeal. The proponent was also given the opportunity to address the matters raised in the appeals. During the appeal investigation, the Appeals Convenor consulted with the appellant to discuss the matters raised in further detail.

The environmental appeals process is a merits-based process. For appeals in relation to an EPA report and recommendations, the Appeals Convenor normally considers the environmental merits of the assessment by the EPA, based on objectives as set by the EPA as well as other environmental factors. The appeals process considers environmental significance, relevance of factors, additional information not considered by the EPA, technical errors and attainment of policy objectives. Where the development has been the subject of previous EPA assessments, those assessments and any subsequent Ministerial appeal decisions also need to be taken into account.

OUTCOMES SOUGHT BY APPELLANT

The appellant is seeking for the implementation conditions recommended by the EPA to be changed to include an additional condition requiring that State Planning Policy 5.4 *Road and Rail Transport Noise and Freight Considerations in Land Use Planning*⁴ (State Planning Policy 5.4; SPP 5.4) formally applies to the proposal.

GROUND OF APPEAL

In summary, the appellant submitted that the EPA should have recommended a condition requiring that State Planning Policy 5.4 is formally applied to the proposal. These concerns have been considered under the ground below.

³ EPA Report 1630, pages 2 and 4.

⁴ Western Australian Planning Commission (2009) *Road and Rail Transport Noise and Freight Considerations in Land Use Planning*. State Planning Policy 5.4 prepared under section 26 of the *Planning and Development Act 2005*, dated 22 September 2009. Government of Western Australia. Available at: <https://www.dplh.wa.gov.au/spp5-4>

GROUND 1: STATE PLANNING POLICY 5.4 SHOULD BE FORMALLY APPLIED

The appellant submitted that the EPA should have formally applied State Planning Policy 5.4 in its assessment of traffic noise impacts and through the recommended conditions, with particular regard for the specified noise criteria and the need for additional noise mitigation measures to achieve these, for the reasons outlined below:

- the proposal impacts on noise-sensitive land uses;⁵
- residences along Holland and Forrest Streets will be impacted by traffic noise exceeding the noise criteria as the new turning lane is in closer proximity to them than the existing road, and residents rely on a competent and practical government assessment to protect them;
- existing approvals relating to major road developments formally apply State Planning Policy 5.4, including Ministerial Statements 1008⁶ and 1036⁷ for the Roe Highway Extension and Perth-Darwin National Highway (Swan Valley Section) proposals respectively; and
- by not formally applying State Planning Policy 5.4, future revisions are not applied, changes in the design of the road due to political changes or of the noise mitigation strategies due to unforeseen economic constraints are not prevented, and there is no basis to seek redress to a failure in design by the proponent should such a failure cause harm.

The appellant also noted that the proponent's noise impact assessment⁸ makes reference to the '*upgrade of the road to a 4 lane dual carriageway with ultimate design being 6 lanes, and realignment of the High Street and Stirling Highway intersection*', and questioned the potential for future expansion as part of this proposal.

Consideration

Through its assessment the EPA identified that (among other things) the proposal has the potential to impact nearby noise-sensitive premises and land uses during both construction and operation through additional noise and vibration. The EPA considered traffic noise impacts under the key environmental factor 'Social Surroundings', which has the objective '*to protect social surroundings from significant harm*'. Report 1630 states that the EPA's assessment in relation to this factor had regard to relevant policies, guidelines and regulation, including State Planning Policy 5.4.⁹

The EPA noted that the scope of State Planning Policy 5.4 includes '*a proposed major redevelopment of existing major road or rail infrastructure in the vicinity of existing or future noise-sensitive land uses*'.¹⁰ The types of proposals to which State Planning Policy 5.4 applies include:

In addition to new major road infrastructure projects, this policy may be applied to a major redevelopment of an existing major road. Typically, a major redevelopment of an existing major road involves physical construction works designed to facilitate an increase in traffic-carrying capacity (such as carriageway duplication or the addition of a traffic lane), or a change in the alignment through design or engineering modifications. ...¹¹

⁵ State Planning Policy 5.4 defines 'noise-sensitive land use' as 'includes land used for noise-sensitive premises (as defined in the *Environmental Protection (Noise) Regulations 1997*) occupied solely or mainly for residential or accommodation purposes, rural premises and premises used for the purpose of — a caravan park or camping ground; a hospital; a sanatorium, home or institution for the care of persons, a rehabilitation centre, home or institution for persons requiring medical or rehabilitative treatments; education (school, college, university, technical institute, academy or other educational centre, lecture hall or other premises used for the purpose of instruction); public worship; a tavern, hotel, club premises, reception lodge or other premises that provide accommodation for the public; aged care; child care; and prison or detention centre'.

⁶ Available at: <http://www.epa.wa.gov.au/proposals/roe-highway-stage-8-extension>

⁷ Available at: <http://www.epa.wa.gov.au/proposals/perth-darwin-national-highway-swan-valley-section>

⁸ GHD Pty Ltd (2018) *Main Roads Western Australia – High Street Fremantle Upgrade Project – Noise Impact Assessment*. Unpublished report prepared for Main Roads Western Australia, September 2018. Referral documentation Appendix H.

⁹ EPA Report 1630, pages 19-20.

¹⁰ State Planning Policy 5.4, section 5.1.

¹¹ State Planning Policy 5.4, section 5.2.2.

The EPA also noted that section 5.3 of State Planning Policy 5.4 sets out the outdoor noise criteria that apply to proposals for new major roads, however states that these criteria do not apply to proposals for redevelopment of existing major roads. The redevelopment of major roads is subject to the approach outlined in section 5.4.1:

- (1) A screening noise assessment and, if necessary, a detailed assessment should be conducted in accordance with the guidelines.
- (2) Practicable noise management and mitigation measures should be considered in accordance with sections 5.6 and 5.8 of this policy, having regard to—
 - the existing transport noise levels;
 - the likely changes in noise emissions resulting from the proposal; and
 - the nature and scale of the works and the potential for noise amelioration.
- (3) The proponent should prepare a noise management plan for the redevelopment works in accordance with the guidelines, and in consultation with the state environmental agency and local government.¹²

Sections 5.6 and 5.8 of State Planning Policy 5.4 describe a range of noise mitigation measures to meet the noise criteria, and acknowledge that in some instances it may not be reasonable and practical to meet the noise criteria and that alternative measures may need to be considered.

Report 1630 notes that as the proposal is for the redevelopment of an existing road the noise criteria specified in the State Planning Policy 5.4 may not be relevant. Notwithstanding this, the EPA noted that the proponent's noise impact assessment referred to current guidelines for noise monitoring and assessment, including the noise criteria specified in section 5.3 of State Planning Policy 5.4, as a means of predicting the likely effectiveness of implementing the proposal with noise walls, versus scenarios without noise walls.¹³

In this regard, the proponent's noise impact assessment concluded that currently more than 75 per cent of sensitive receptors are exposed to traffic noise levels exceeding the noise criteria, and that this would be reduced to 20 per cent if the proposal is implemented with the construction of noise walls. In relation to traffic noise impacts at residences on Holland and Forrest Streets, the noise impact assessment found that current traffic noise levels at a monitoring site on Holland Street are within the noise criteria, and would continue to be so if the proposal is implemented with noise walls.

In response to the appeal, the EPA provided the following advice:

The advice from DWER (Environmental Noise) ... on this matter states that:

"It can be read from the proposal that the proposed upgrade is to improve road safety and the general flow of traffic for all road users travelling into and out of Fremantle. It does involve changes in alignment, particularly around the intersection of High Street and Stirling Highway, but does not involve the increase of traffic-carrying capacity. It does not involve the increase of the road traffic noise levels at most of the existing residences either. Therefore, the application of the SPP5.4 noise standards to this proposed upgrade may be arguable."

Notwithstanding the above, the EPA has adequately considered the noise impacts of the proposal, having particular regard to the existing noise levels, the predicted noise levels in the future and the feasibility of the noise walls (incorporated in schedule 1 of the recommended conditions) in order to ensure the noise amenity of nearby residents are maintained, and in some cases improved. ...

The EPA has had regard to both the noise criteria and the range of noise mitigation measures set out in SPP 5.4 during its assessment. ...

The EPA noted in its Report and Recommendations that the proposal would serve to reduce traffic noise levels at the existing residences along the upgraded section of High Street. The reduction in traffic noise levels also applies to residences in Holland Street and Forrest Street, both east and west of Stirling Highway. ...

¹² State Planning Policy 5.4, section 5.4.1.

¹³ EPA Report 1630, pages 19-20.

During the assessment of the High Street Upgrade, local residents immediately west of Stirling Highway in Forrest Street raised concern that the noise wall proposed for noise mitigation by the proponent was planned to stop short of Forrest Street. The EPA notes that the proponent agreed, in response to these concerns, that the wall be extended further north to the pedestrian underpass at Forrest Street.

The EPA has requested advice from DWER (Environmental Noise) regarding the adequacy of the scope and compliance of the proponent's noise assessment with relevant noise policies and guidelines. DWER (Environmental Noise) in its review of the proponent's noise mitigation, agreed that the proposed noise walls are able to achieve the predicted results. ...

If the decision is that the proposal may be implemented subject to implementation conditions, the authorised extent of noise walls (i.e. the minimum heights and extent) will need to be implemented as part of the proposal.¹⁴

For its part, the proponent advised that the properties most adversely affected by the proposal are south of the High Street / Stirling Highway intersection. The proponent also confirmed that the proposal is for the construction of a four-lane road only.

In response to the EPA's advice, the appellant contended that as the proposal includes a change in alignment and construction of a new turning lane it will facilitate an increase in traffic carrying capacity, and therefore fits within the scope of a noise sensitive development subject to the noise criteria specified in State Planning Policy 5.4.

The appellant gave examples of Ministerial Statements for other proposals that reference State Planning Policy 5.4 and requested that the recommended conditions be changed to include a requirement to the effect of '*to ensure the impacts to the noise amenity of existing sensitive receptors, are consistent with section 5.4 of State Planning Policy 5.4*', to address the issue of (current and future) traffic noise exceeding the noise criteria at all affected sensitive receptors.

The Ministerial Statements referred to by the appellant relate to the development of new major roads, rather than redevelopment of existing major roads.

The wording suggested by the appellant would have the effect of requiring that the implementation of the proposal is consistent with section 5.4.1 of State Planning Policy 5.4. That is, requiring the proponent to undertake a noise assessment, to consider noise management and mitigation measures with regard for current and future noise levels, and to prepare a noise management plan.

On review of the referral documentation, it is considered that the proponent has applied an approach that is consistent with that outlined in section 5.4.1. This has included a noise impact assessment, which concluded that current noise levels at sensitive receptors would not increase as a result of the proposal with the construction of noise walls, and preparation of an Environmental Management Plan,¹⁵ which outlines a number of management actions including in relation to construction noise and vibration.

Consistent with its assessment, the EPA recommended that the implementation of the proposal, if approved, should be subject to conditions requiring (among other things) noise mitigation strategies, including the construction of noise walls at specified locations and of specified heights within 18 months of the commencement of construction.¹⁶

¹⁴ EPA response to Appeal 014/19, pages 3-6.

¹⁵ GHD Pty Ltd (2018) *Main Roads Western Australia – High Street Fremantle Upgrade Project – Environmental Management Plan*. Unpublished report prepared for Main Roads Western Australia, September 2018. Referral documentation Appendix B.

¹⁶ EPA Report 1630, Appendix 4.

In relation to the appellant's concerns regarding future changes to the proposal, the EPA advised that:

Any expansion of the High Street Upgrade proposal, as suggested by the appellant, beyond that described in EPA Report and Recommendations 1630 would be a new proposal and, if referred to the EPA, the Authority will decide whether it requires assessment.¹⁷

Further to the above, the EPA advised that the Western Australian Planning Commission may need to consider planning approvals for the proposal with regard to the provisions of State Planning Policy 5.4. It is also noted that the Minister for Planning has been identified by the EPA to be a decision-making authority with whom the Minister for Environment is required to consult in relation to the implementation of the proposal.

CONCLUSION AND RECOMMENDATION

In reviewing the matters raised by the appellant, it is considered that the EPA has:

- had appropriate regard for the provisions of State Planning Policy 5.4 relevant to a major redevelopment of an existing major road in the vicinity of existing noise-sensitive land-uses, in its assessment of traffic noise impacts against the factor 'Social Surroundings'; and
- recommended appropriate noise mitigation strategies, consistent with the relevant provisions of State Planning Policy 5.4, to ensure that traffic noise impacts (as modelled) do not increase as a result of the proposal.

It is therefore recommended that the appeal be dismissed.

The final decision on whether or not the proposal should be implemented, and the precise wording of the conditions which apply to any such implementation, is to be made under section 45 of the EP Act.

Emma Gaunt
APPEALS CONVENOR

Investigating Officer:
Emma Bramwell, Senior Environmental Officer

¹⁷ EPA response to Appeal 014/19, page 4.