



Appeals Convenor
Environmental Protection Act 1986

**REPORT TO THE
MINISTER FOR ENVIRONMENT**

**APPEALS IN OBJECTION TO THE CONTENT OF, AND RECOMMENDATIONS
IN, AN ENVIRONMENTAL PROTECTION AUTHORITY REPORT**
**REPORT 1657: TIMS THICKET LIQUID WASTE FACILITY UPGRADE
CITY OF MANDURAH**

PROPONENT: CITY OF MANDURAH

Appeal Numbers 060/19.001-17 of 2019

July 2020

Appeals Summary

This is a report on 17 appeals lodged in objection to the report and recommendations of the Environmental Protection Authority (EPA) on the proposal by the City of Mandurah to upgrade and recommence liquid waste operations at the Tims Thicket Waste Management Facility (TTWMF), located approximately 20 kilometres (km) south of the City of Mandurah.

The appellants raised concerns in respect to the risk of emissions and discharges to the environment, replacing Ministerial Statement 375 with a revised Ministerial Statement, potential impacts to flora and fauna, and the adequacy of the EPA's assessment process.

In responding to the appeals, the EPA advised that:

- in response to community concerns, the City of Mandurah modified the proposal during the EPA's assessment process and designed a closed pond system which does not discharge liquid waste to the environment
- potential emissions and discharges to the environment can be appropriately assessed and controlled under Part V of the EP Act through the Department of Water and Environmental Regulation's licensing process
- it is unlikely that the proposal would have a significant impact on flora and vegetation and terrestrial fauna.

It is considered that the EPA assessed the proposal consistent with the requirements under the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016*.

In summary, the EPA in Report 1657 concluded that the proposal could be managed to meet its environmental objectives, provided there is satisfactory implementation by the City of Mandurah of the recommended environmental conditions.

Having regard to the information presented in the appeals, it is considered that the EPA's assessment of the proposal was appropriate, considered the concerns raised in the appeals and its conclusions were supported by the available information.

It follows that reassessment of the proposal by the EPA is not considered necessary, however, it is recommended that the Minister allows the appeals to the extent that the recommended conditions are amended as follows.

Recommendation

It is recommended that the Minister allows the appeals to the extent that the recommended conditions are amended as follows:

- the proposal description is amended to apply to the entire project, being the liquid waste facility, quarry and Class 1 inert landfill.

The final wording of recommended changes to the conditions should be determined by the Minister in consultation with relevant decision making authorities under section 45 of the EP Act.

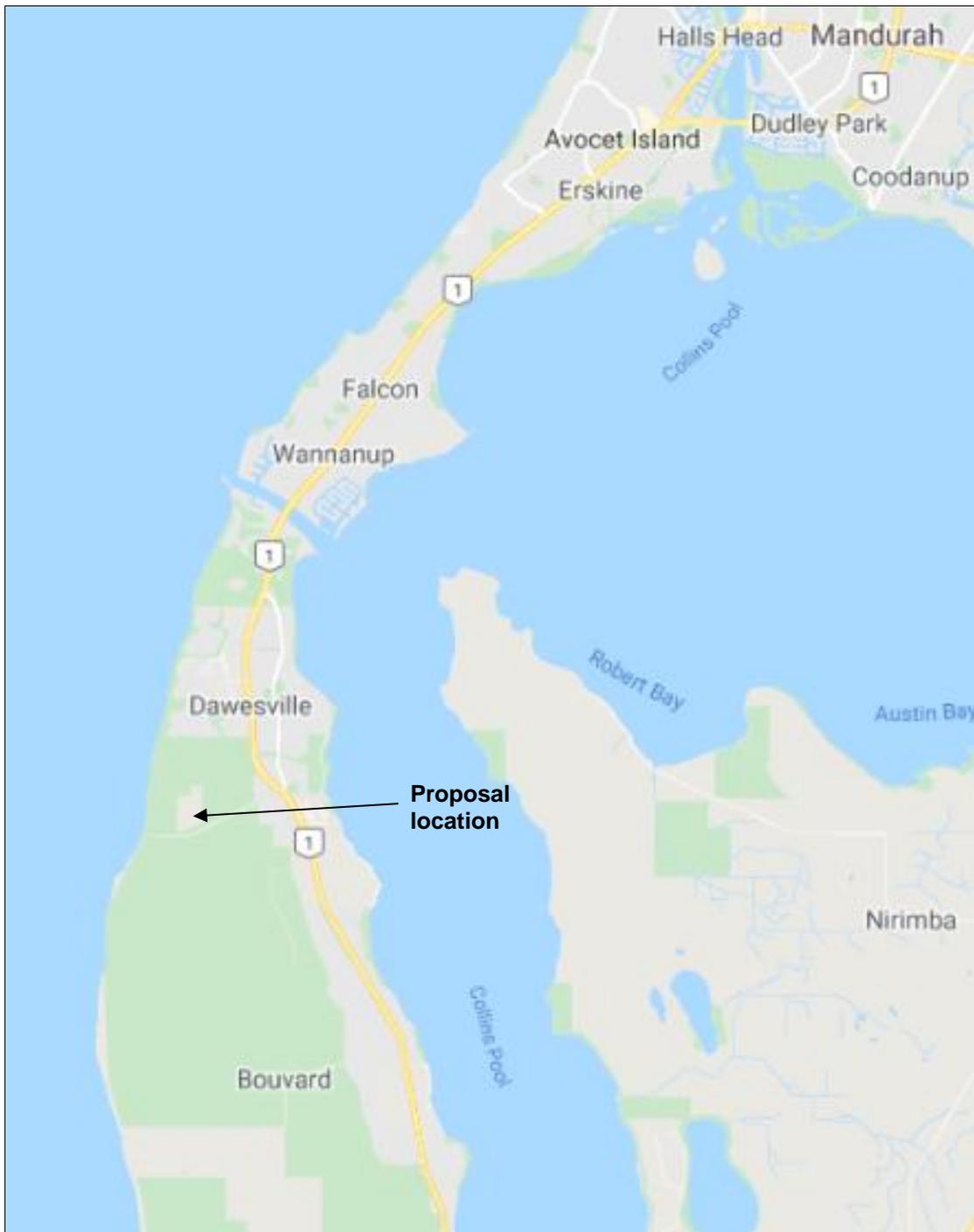
INTRODUCTION

This report relates to 17 appeals lodged in objection to the contents of, and recommendations in, the report of the Environmental Protection Authority (EPA) in respect to a proposal by the City of Mandurah (the proponent) to upgrade and recommence liquid waste operations at the Tims Thicket Waste Management Facility (TTWWMF), located approximately 20 kilometres south of the City of Mandurah. The location and development envelope of the proposal are shown in Figures 1 and 2 respectively.

The appellants are:

- Patricia and Klaus Peter Becker (060/19.001)
- Diane Glasson (060/19.002)
- Reginald and Carole Anderson (060/19.003)
- Ivan Wiltshire (060/19.004)
- Rachel Wells (060/19.005)
- Dennis O'Brien (060/19.006)
- Rodney H. J. Reany (060/19.007)
- Ross and Patricia Smith (060/19.009, 060/19.008)
- Mel Spinocchia (060/19.010)
- Barry Posetti (060/19.011)
- Stewart and Susanne Godden (060/19.012)
- Malcolm and Gloria Flett (060/19.013)
- Andrew Harvey (060/19.014)
- Bouvard Coastcare Group (BCCG) (060/19.015)
- Peel Preservation Group Inc (060/19.016)
- Mandurah Environment & Heritage Group (060/19.017)

Figure 1 – Proposal location



(Source: Google Maps)

Figure 2 – Development envelope of the proposal



(Source: EPA Report 1657)

The City of Mandurah proposes to change its approved project to construct and operate a liquid waste facility, limestone quarry and Class I landfill as approved under Ministerial Statement 375 (MS 375) on 29 November 1994. The TTWMF has been operational since 1995 and was accepting up to 5000 kilolitres per annum (kL/a) of liquid waste. In November 2014, the TTWMF ceased the acceptance of liquid waste due to a breach in the pond liner system and has since been operating solely as a Class I inert landfill.¹

¹ EPA, Report 1657, November 2019, page 6.

The proposal is to upgrade the existing liquid waste facility and recommence operations for the acceptance and processing of up to 5,000 kL/a of liquid waste, consisting of septage and grease trap waste.

The proposal was referred to the EPA in March 2017 and was assessed at the level of Assessment on Referral Information (ARI). During the assessment and following community feedback, the proponent requested changes to the proposal. The EPA concluded that the changes were unlikely to significantly increase any impact on the environment and gave consent to the changes under section 43A of the EP Act on 20 September 2019.

In November 2019, the EPA released its report and recommendations (Report 1657) on its assessment of the proposal, where it concluded that the proposal is environmentally acceptable and recommended a set of conditions be imposed if the proposal is approved for implementation. It was in relation to this report that the appeals were received.

OVERVIEW OF APPEAL PROCESS

In accordance with the *Environmental Protection Act 1986* (EP Act), for an appeal in respect to an EPA report, two reports relating to the matters raised on appeal are required for the Minister for Environment to determine the outcome of an appeal:

- a report from the Appeals Convenor, as required by section 109(3) of the EP Act
- a report from the EPA on the appeal, as required by section 106(1).

This document is the Appeals Convenor's report to the Minister.

In order to properly advise the Minister, the Appeals Convenor conducted an investigation into the matters raised on appeal. The investigation included:

- review of and regard for the matters raised in the appeals submitted by the appellants
- review of and regard for the report from the EPA provided on 16 January 2020
- review of and regard for the response to the appeals provided by the City of Mandurah on 22 January 2020
- a meeting and site visit with City of Mandurah's representatives on 20 February 2020
- all appellants were given the opportunity to meet with the Office of the Appeals Convenor to discuss their appeals, and meetings were held with five of the appellants at the Mandurah library on 20 February 2020
- an additional meeting with the Bouvard Coastcare Group at the Office of the Appeals Convenor on 17 March 2020
- review of and regard for the Bouvard Coastcare Group's response (received 17 March 2020) to the City of Mandurah's appeal advice
- review of and regard for the response to the EPA's section 106 report provided by the Bouvard Coastcare Group on 3 April 2020
- review of and regard for additional advice provided by the EPA on 8 July 2020
- review of relevant information, policy and guidance as considered necessary.

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.

OUTCOME SOUGHT BY APPELLANTS

The outcome sought by all of the appellants was that the Minister determine that the proposal should not be implemented. In the alternative, appellants were of the view that if the proposal is to be implemented then more stringent conditions should be applied.

It is noted that the decision as to whether or not the proposal may proceed is made through a process of consultation with decision making authorities pursuant to section 45 of the EP Act. This is a separate decision to the one before the Minister in respect to the appeals.

In this instance, the following decisions are available to the Minister in determining the appeals:

1. dismiss the appeals; or
2. allow the appeals in full or in part by:
 - remitting the proposal for assessment, further assessment or reassessment by the EPA; or
 - changing the implementation conditions recommended by the EPA.

GROUNDINGS OF APPEAL

GROUND 1: EMISSIONS AND DISCHARGES

In relation to this ground of appeal, appellants raised concerns regarding the following:

- the proposal location is unsuitable, given the proximity to nearby wetlands, residential water bores (1.5 km away), the Indian Ocean (500 metres (m) away) and the Peel Harvey Estuary (2 km away), highly porous Tamala limestone underlying the site, a height above sea level of less than 1.5 m and less than 3.5 m above the water table
- a history of groundwater contamination from leakage of the septage disposal facility when it was operating due to damaged pond liners, and the inability of the proponent and regulators to manage it
- inadequate consideration of the impacts to human health from faecal contamination of ground water bores and the local beach
- unacceptable risk to nearby vegetation from the proposed redirection of surface water flows away from the site
- increased risk of noise, odour and dust pollution, and fire from additional activities at the site.

Consideration

The appeals raised a range of issues in relation to emissions and discharges to the environment, which broadly relate to the following environmental factors:

- Inland Waters
- Social Surroundings

Inland Waters

Inland Waters was identified as a key environmental factor by the EPA due to potential contamination of groundwater or surface waters from seepage, leakages or spillages of liquid waste from the treatment ponds.

The EPA's environmental objective for this factor is 'to maintain the hydrological regimes and quality of groundwater and surface water so that environmental values are protected'.

In response to this ground of appeal, the EPA advised that its assessment of Inland Waters included consideration of impacts to groundwater and surface water, including potential impacts to the ocean as a receptor.

As noted above, during the assessment and to address concerns raised by the public, the proponent requested changes to the proposal under section 43A of the EP Act, which the EPA consented to. Report 1657 states that the changes include (among other things) replacing the irrigation field with an evaporation pond, which will result in a closed pond system which does not discharge treated liquid waste during operations². The EPA advised that other enhancements include an improved liner system and leak detection to reduce the risk of a pond breach and unauthorised discharge to the environment.

Report 1657 states that the upgraded liner system includes:

- a double 2 millimetre (mm) high density polyethylene (HDPE) geomembrane separated by a geonet leak detection layer, as well as a protection layer consisting of 125 mm reinforced concrete pad for each of the three refurbished anaerobic ponds
- a 2 mm HDPE lined facultative pond and protection layer of 300 mm crushed limestone
- a 2 mm HDPE lined oxidation pond and evaporation pond.³

In assessing the impacts of the proposal on Inland Waters, the EPA advised:

- the proposal is unlikely to impact on Inland Waters including the nearest public bore located 1.2 km from the site, the ocean located 500 m west of the site and conservation category wetlands such as Lake Clifton located 7 km south of the site
- there are no registered wetlands in proximity to the site, however there is a wetland locally known as the weed pit 200 m west of the site that was historically used for the Peel-Harvey Inlet algal harvesting disposal, which is not expected to be significantly impacted by the proposal
- the redirection of surface water away from the site would minimise the risk of surface water contamination and is unlikely to cause significant impacts to other areas of the environment.

In its advice, the EPA advised that the City of Mandurah is required to seek approval for a works approval and licence amendment under Part V of the EP Act for the proposed upgrades to the liquid waste facility, which may include management and mitigation measures including groundwater monitoring requirements. The EPA consulted with DWER during the assessment, who advised that potential emissions and discharges from the facility can be adequately regulated through licence conditions under Part V of the EP Act.⁴ The EPA was of the view that DWER's licensing process is the best regulatory instrument to assess and regulate emissions and discharges from landfill and liquid waste facilities.

² EPA, Report 1657, November 2019, page 6.

³ EPA, Report 1657, November 2019, page 10.

⁴ EPA, Report 1657, November 2019, page ii.

In Report 1657 the EPA stated that DWER has appropriate regulatory powers to put in place suitable emissions monitoring and mitigation conditions, and to ensure that there is appropriate compliance and enforcement of the licence conditions. The EPA recommended that, as part of the licensing process, a number of additional bores should be included in the groundwater monitoring program, including more downgradient of the proposal. The EPA expected that a target and/or limit would be applied to the licence where a high risk to a sensitive receptor is present. The EPA also considered that Part V can appropriately decommission and close the site as would occur for other similar landfill and liquid waste facilities across the state.⁵

In relation to concerns about previous operation of the TTWMF, the EPA advised that a recent audit review undertaken in July 2019 determined that the proponent is compliant with the conditions and commitments specified in MS 375 under Part IV of the EP Act. The EPA also noted that proponents are legally required to comply with Ministerial and licensing conditions under Parts IV and V of the EP Act respectively, and that failure to do so is an offence and strict penalties exist for non-compliance.

With regard to previous groundwater contamination at the site, the EPA advised:

The original liquid waste facility ceased operations in 2014 due to a breach of the pond liners, and was reported to the former Department of Environment Regulation (DER). Talis Consultants Pty Ltd was commissioned to prepare a Groundwater Investigation Report (2015), which found detectable concentrations of nutrients and trace metals including copper, zinc, nitrogen and phosphorous.

Previous advice dated February 2016 from the former DER noted that while the groundwater is marginally impacted by nitrogen and phosphorous, there is no evidence of any hydrocarbon or heavy metal impacts. The advice stated that the identified groundwater impacts do not currently pose an unacceptable risk to human health, the environment or environmental values.⁶

In response to this issue, the City of Mandurah advised:

The investigation [by Talis Consultants] involved a review of all previous groundwater monitoring results at the site between 1996 and 2015, and one further round of sampling of all monitoring bores at the site.

In order to obtain a greater understanding of the groundwater aquifer, the City has installed three additional monitoring bores (one to the west and two to the east of the septage facility) and these are sampled biannually in accordance with the other bores around the site.

Pressure transducers have also been installed at five (5) monitoring bores around the site so as to obtain a greater understanding of the groundwater flow around the site. The transducers are set to record a single groundwater level per day.⁷

Social Surroundings

The appellants contended that operation of the proposal would lead to increased noise, odour and dust emissions, and fire risk, impacting the amenity of the local area and residents. Concern was also raised about potential impacts to a nearby proposed camping and recreation area inside Yalgorup National Park (YNP).

⁵ EPA, Report 1657, November 2019, page 13.

⁶ EPA, Response to appeals, 16 January 2020, page 4.

⁷ City of Mandurah, Response to appeals, 17 March 2020, pages 2-3.

Report 1657 states that Social Surroundings was identified as a preliminary key environmental factor when the EPA decided to assess the proposal due to odour, noise and dust emissions generated by the proposal impacting residents in proximity to the site.

The EPA's environmental objective for the Social Surroundings factor is 'to protect social surroundings from significant harm'.

In its response to the issues raised under this ground of appeal, the EPA advised:

- the nearest sensitive receptor is located approximately 1.2 km east of the proposal area
- odour and dust emissions can be regulated by DWER through licensing provisions of the EP Act
- the proponent is required to comply with the *Environment Protection (Noise) Regulations 1997* (Noise Regulations)
- DBCA advised that it was not aware of any proposals for campsites in the vicinity of the proposal area.

Noting the above, the EPA concluded that the proposal is unlikely to have a significant impact on Social Surroundings.

In relation to potential risk of fire, it is noted that DWER's risk-based approach for assessing prescribed premises under Part V of the EP Act, would include the identification and assessment of risk events (e.g. fire).

Conclusion

From the information provided in respect to this ground of appeal, the following is noted:

- in response to community concerns, the City of Mandurah modified the proposal during the EPA's assessment process and designed a closed pond system which does not discharge liquid waste to the environment
- the EPA advised that under Part V of the EP Act the City of Mandurah is required to apply for a works approval and licence amendment for the proposal
- the EPA has consulted with DWER, who advised that potential emissions and discharges from the proposal can be adequately assessed and regulated through its licensing process for prescribed premises
- the proponent is required to comply with the Noise Regulations.

Noting the above, it is considered the issues raised by this ground of appeal have been adequately assessed by the EPA and that, based on advice obtained, any potential emissions and discharges to the environment can be appropriately assessed and controlled through Part V of the EP Act.

GROUND 2: REPLACING MINISTERIAL STATEMENT 375 WITH A REVISED MINISTERIAL STATEMENT

The appellants raised a number of issues relating to MS 375, which they contend are missing from the EPA's report and recommended environmental conditions. The appellants contended that the changes recommended by the EPA do not ensure that the environmental conditions and protection afforded under MS 375 are carried through to the recommended revised Ministerial Statement. Specifically, appellants submitted that the recommended changes:

- do not restrict the use of the land to a limestone quarry and septage waste facility
- remove the requirement of Commitment 1.3 of MS 375, and recommendation made by the EPA through its Consultative Environmental Review of the original proposal as outlined in EPA Bulletin 751⁸, for the City of Mandurah to manage the adjacent reserves for 'conservation and passive recreation'
- remove the Department of Biodiversity, Conservation and Attractions (DBCA) as a decision making authority
- do not limit the hours of operation to Monday to Friday.

Consideration

This ground of appeal raises the following issues:

- proposal description
- management of the adjacent reserves for conservation and passive recreation
- hours of operation
- other changes to the implementation conditions.

Proposal description

MS 375 lists three proponents for the original proposal: the former Department of Conservation and Land Management (CALM) (now DBCA); the former Water Authority of Western Australia (WAWA) (now Water Corporation); and the City of Mandurah.

The original proposal approved under MS 375 included a change to the YNP boundary through inclusion of part of Reserve 24198 and excision of Reserve 21271. MS 375 also included the future expansion of a proposed wastewater treatment plant by WAWA and development of a limestone quarry and septage disposal facility by the City of Mandurah on the area excised from the YNP.

The current (revised) proposal relates just to the City of Mandurah elements and proposes to replace MS 375 with a revised Ministerial Statement. The recommended environmental conditions outlined in Appendix 5 of Report 1657 describe the proposal as:

'Proposal to amend Septage Disposal Facility and Quarry, Tims Thicket, City of Mandurah, which is one aspect of the subject of Statement No. 375 dated 29 November 1994⁹

Schedule 1 of the recommended environmental conditions, however, describes the proposal as being limited to 'the recommissioning and upgrade of the existing liquid waste facility located at the TTWMF'. Whilst, Table 2 of Schedule 1 refers to the liquid waste facility, Class 1 Inert landfill / Limestone quarry.

Noting the above, it is considered appropriate for the revised Ministerial Statement to apply to the entire project (Liquid waste facility, Class 1 Inert landfill / Limestone quarry), and not simply to be expressed as the 'Tims Thicket Liquid Waste Facility Upgrade'.

In relation to the appellants' concerns that the revised Ministerial Statement does not restrict the use of the land to a limestone quarry and septage waste facility, it is noted that these are matters for future processes. MS 375 does not lock in a land use forever as any new

⁸ EPA, *Proposed change to Yalgorup National Park boundary, extension to wastewater treatment site, septage disposal facility and quarry proposal, Tims Thicket, City of Mandurah, Bulletin 751, August 1994.*

⁹ EPA, Report 1657, November 2019, page 31.

proposal would need to be considered on its merits, which may include EP Act approval depending on its nature.

Management of the adjacent reserves for conservation and passive recreation

The appellants are concerned that the requirements of Commitment 1.3 of MS 375 have not been met by the City of Mandurah, and will not be carried through to the revised Ministerial Statement.

Commitment 1.3 of MS 375 states:

The City of Mandurah, in consultation with CALM and the NPNCA, will develop within 2 years of the land exchange being formalised, a management plan consistent with the management of Yalgorup National Park which encompasses the area of land excised from the National Park (which is not required for the Limestone Quarry, Wastewater Treatment Plant, and Septage Disposal Facility), the balance of Reserve 24198 and Reserve 33139. This will address public access to the beach and foreshore area and will incorporate details on rehabilitation of degraded dune areas and make specific commitments regarding the ongoing management of these areas.

In response to this issue, the EPA advised:

A recent audit review of the implementation conditions for MS 375 in July 2019 determined that the proponent is compliant with the conditions and commitments of MS 375 under Part IV of the EP Act... This includes Commitment 1.3 of MS 375, which required a management plan to be developed for the area of land excised from the Yalgorup National Park. This plan was received by the former Department of Environment Protection (DEP) on 25 January 2002 and was developed in consultation with the former Department of Conservation and Land Management. The former DEP confirmed on 21 March 2002 that this commitment had been satisfactorily been met.

Revised proposals assessed by the EPA and approved by the Minister for Environment would include the provision of a new Statement, which replaces an existing Statement. The EPA understands that realignment of the Yalgorup National Park boundary has already occurred and that there are no plans for the development of a wastewater treatment plant in the area in the near future. As such, the EPA considers it appropriate for recommendation of a new Statement to supersede MS 375, with the City of Mandurah as the only proponent, in a contemporised approach.

In summary, Commitment 1.3 requires that a management plan (consistent with the management of YNP) be developed for the area of land excised from the YNP (which is not required for the Limestone Quarry, Wastewater Treatment Plant, and Septage Disposal Facility), the balance of Reserve 24198 and Reserve 33139 (see Appendix 1). As noted above, the EPA advised that the former Department of Environmental Protection (DEP) confirmed on 21 March 2002 that a management plan was developed in consultation with CALM, and that Commitment 1.3 had been satisfactorily discharged.

The EPA assessed the original proposal at the level of Consultative Environmental Review and provided its report and recommendations in Bulletin 751 to the Minister for the Environment in August 1994. It is noted that the proponent's *'Response to issues raised in public submissions'*¹⁴, attached to Bulletin 751, states:

- 2.1.3.2 The balance of the land to be excised from the National Park will be managed for conservation and passive recreation (Commitment 1.3). This will be formalised through the incorporation of this zoning in the Town Planning Scheme. Any future rezoning of the land would require public input through an amendment to the Town Planning Scheme...
- 2.1.3.3 Management objectives for the land excised to the north of Tim's Thicket Road will be detailed in a management plan for the area (Commitment 1.3). This plan

¹⁴ EPA, Bulletin 751, August 1994, Appendix 2.

will be developed by the City of Mandurah in consultation with CALM and the NPNCA and, once accepted, will be binding on Council.

It is noted that the implementation of the management plan required by Commitment 1.3 is a matter for the City of Mandurah to undertake in accordance with the plan's requirements. As noted above, any amendment to the local Town Planning Scheme to change the zoning and land use of reserves adjacent to the TTWMF is a matter for the relevant planning authorities to consider under other statutory processes.

In relation to concerns that DBCA is not included as a proponent in the recommended conditions, the EPA has advised that the realignment of the YNP boundary, as required under Condition 3 of MS 375, has already occurred.

It is also noted that the EPA has identified the Minister for Environment as a decision making authority for the proposal¹⁵. The Minister's decision-making role arises from the *Biodiversity Conservation Act 2016* in relation to the taking or disturbing threatened species. By section 45(1) of the EP Act, the Minister for Environment is required to consult with relevant decision-making authorities and reach agreement as to whether or not the proposal may be implemented, and if so, the implementation conditions to which it should be subject. During the section 45 consultation process, the Minister would normally seek comments from DBCA, as a portfolio agency with an interest in the proposal.

Hours of operation

The hours of operation at the TTWMF are currently limited to Monday to Friday 7 am to 5 pm, through Commitment 3.3 of MS 375. It is noted that this requirement has not been included in the recommended conditions.

During officer-level discussions between the Office of the Appeals Convenor and the City of Mandurah, the City's representative advised that the TTWMF currently operates Monday to Friday, 7 am to 4 pm. It was indicated that the City intends to maintain these operating hours if and when the liquid waste facility commences operation.

It is noted that DWER's risk-based approach for assessing prescribed premises under Part V of the EP Act includes the identification and assessment of risk events—for example, the risk of noise or odour emissions. It is understood that DWER will then determine regulatory controls appropriate for the risk to the environment, public health or amenity, which may include limiting the hours of operation.

In this regard, it is noted that Condition 1.2.3 of Licence L6860/1995/11 issued by DWER for the TTWMF premises for Category 13 (Crushing building material) and Category 63 (Class I inert landfill site) specifies that 'crushing is to be limited to within the hours of 7 am and 4 pm on weekdays'.

Other changes to the implementation conditions

As noted above, many of the requirements of MS 375 have already been met, others are no longer relevant, boilerplate conditions remain and have been contemporised in the recommended conditions, and several can be managed by DWER through its licensing process or by other statutory processes. However, from the information provided during the appeal investigation, it appeared that some of the statutory requirements of MS 375 relating to the quarry remain outstanding. During officer-level discussions, the City of Mandurah indicated the intention to retain the option to quarry part of the proposal area in the future.

¹⁵ EPA, Report 1657, November 2019, Appendix 5.

Further advice was sought from the EPA on these matters.

In summary, the EPA advised that:

- the proponent submitted a revised rehabilitation plan to DWER in December 2019, however the plan has not been reviewed pending determination of the appeals
- as the excavated quarry is used for the purposes of a Class I landfill, requirements for closure and rehabilitation of the premises can be imposed by DWER under Part V of the EP Act
- the proponent is required to comply with the *Contaminated Sites Act 2003* (CS Act) to ensure that any sites that are classified as contaminated are remediated
- approval under a Ministerial Statement does not exempt the proponent from planning requirements, such as development approval for the quarry, which may include conditions on rehabilitation
- in the latest Compliance Assessment Report submitted to DWER on 20 December 2019, the proponent stated that no blasting has been necessary at the quarry. Should blasting be needed in the future, the City would be required to comply with the *Environmental Protection (Noise) Regulations 1997* and *Dangerous Goods Safety (Explosives) Regulations 1997*
- in relation to retaining a buffer around the quarry, the TTWMF is located within a larger reserve that is heavily vegetated, creating a wide natural buffer around the site.

Noting the above, the EPA recommended that the conditions and proponent commitments of MS 375 which relate to the quarry should not be retained in the revised Ministerial Statement, as other statutory mechanisms are available to manage and regulate the quarry.

Conclusion

Taking into account the foregoing, it is considered that the EPA has had regard for the environmental issues raised under this ground of appeal. Notwithstanding, it is recommended that the appeal be allowed to the extent the conditions proposed by the EPA for the revised Ministerial Statement are amended as follows:

- the proposal description is amended to apply to the entire project, being the liquid waste facility, quarry and Class 1 inert landfill.

GROUND 3: FLORA AND FAUNA

The appellants contended that the EPA's assessment of flora and fauna was inadequate. Appellants submitted that reserves and YNP near the proposal provide significant habitat for flora and fauna, including a peacock spider species (*Maratus flavus*), ringtail possum, Carnaby's black cockatoo, tuart woodland threatened ecological community and thrombolites at Lake Clifton. Appellants were of the view that the proposal could result in significant impacts to these flora and fauna values. Appellants asserted that the City of Mandurah has not undertaken adequate environmental surveys of the area to inform the EPA's assessment.

Consideration

The EPA's environmental objective for the factor Flora and Vegetation is 'to protect flora and vegetation so that biological diversity and ecological integrity are maintained.'¹⁷ For the factor

¹⁷ EPA, *Environmental Factor Guideline: Flora and Vegetation*, December 2016, page 2.

Terrestrial Fauna, the EPA's objective is 'to protect terrestrial fauna so that biological diversity and ecological integrity are maintained'.¹⁸

The EPA advised that:

- flora and vegetation was previously considered during the original CER as outlined in EPA Bulletin 751
- flora and vegetation and fauna surveys were undertaken in and around the proposal area to support the original CER assessment, and no priority fauna were identified
- a total of three hectares of clearing was approved under MS 375 for the septage disposal facility
- disturbance from refurbishment of ponds would not be occurring outside the TTWMF, and is unlikely to impact on YNP
- as *Phytophthora* is known to occur in the general vicinity, the EPA recommended appropriate dieback management be implemented through recommended Condition 6 (Disease hygiene management), including weed management.

In relation to tuart woodlands, Report 1657 states they are located south of the proposal area and were not expected to be impacted.

Noting the above, the EPA concluded that it is unlikely that the proposal would have a significant impact on Flora and Vegetation and Terrestrial Fauna.

Conclusion

Taking into account the above, it is considered that the EPA had regard to potential impacts to Flora and Vegetation and Terrestrial Fauna in its assessment, and considered the matters raised in this ground of appeal. Its view that the impacts to these environmental factors can be managed, provided the recommended conditions are implemented, is supported by the available information. It is therefore recommended that this ground of appeal be dismissed.

GROUND 4: EPA ASSESSMENT PROCESS

The appellants raised a number of issues with respect to the EPA's assessment of the proposal, which are summarised to include:

- public consultation
- consideration of alternatives
- accuracy of Report 1657.

Public consultation

The appellants contended that public consultation with community members during development and assessment of the proposal was inadequate, particularly with BCCG and nearby residents. The appellants also contended that the EPA and the City of Mandurah failed to adequately inform and consult with the public on modifications to the proposal made under section 43A of the EP Act. The appellants were also concerned that the public was not properly informed about the consequences of replacing MS 375 with a revised Ministerial Statement.

¹⁸ EPA, *Environmental Factor Guideline: Terrestrial Fauna*, December 2016, page 2.

Consideration

Report 1657 states that:

- the EPA considered the proposal in accordance with the requirements of the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016*¹⁹ (Administrative Procedures) and *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual 2016*²⁰ (Procedures Manual)
- the EPA advertised the referral information for the proposal for public comment in April 2017 and received 24 submissions. All submissions requested that the proposal be assessed at the level of 'Public Environmental Review'
- the proponent consulted with government agencies during the preparation of the referral documentation
- in March 2019, the proponent's request to change the proposal under section 43A of the EP Act was advertised for public comment. One public submission was received, which raised concerns relating to impacts to Inland Waters, conservation significant flora and fauna, and in relation to a proposed green waste transfer station and community consultation. These issues were the subject of the proponent's *Tim's Thicket Liquid Waste Facility Upgrade: section 43A response to public comments document*²¹.

In relation to consultation, the EPA advised that the proponent's request to change the proposal during the assessment was submitted to address public concerns raised regarding a proposed irrigation area in the referred proposal. As noted in Ground 1, the modifications included removal of the irrigation component and inclusion of a pond system to reduce potential impacts to Inland Waters.

Specifically in relation to consultation with the BCCG, the EPA advised that:

The EPA has acknowledged community interest in the proposal and has consulted with the relevant community group (BCCG) about the proposal to ensure that relevant issues are adequately addressed. On 5 October 2017, the EPA wrote to the BCCG requesting further details on the environmental concerns for consideration during assessment. On 28 March 2019, EPA Services of DWER noted that the BCCG did not provide a submission about the change to proposal application and wrote to the BCCG inviting comment on the application. EPA Services also contacted the BCCG on the day of the release of Report 1657 on 27 November 2019 to advise about the release of the report and the appeals period. The EPA considers that the public consultation during assessment has been appropriate...

The EPA notes the City of Mandurah has previously met with the BCCG about the proposal, however the community still has concerns about the adequacy of public consultation from the City of Mandurah. Hence, the EPA has noted in its report under *Section 6: Other Advice* recommending more ongoing consultation between the proponent and the community in the future. The EPA has also advised that in the future when sewerage is installed within the areas from where the facility receives waste, that the facility be appropriately closed and rehabilitated with community agreement on the final land use.

During the appeals investigation the Appeals Convenor met with representatives of BCCG, who advised that BCCG had provided a submission to the EPA on the proposed changes to

¹⁹ Western Australian Government, *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016*, Western Australian Government Gazette, 13 December 2016.

²⁰ EPA, *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual 2016*, December 2016.

²¹ Talis, *Tim's Thicket Liquid Waste Facility Upgrade: section 43A response to public comments*, 2019.

the proposal under section 43A of the EP Act. It was indicated that BCCG's submission included the written support of over 110 local residents. In response, the EPA advised that while the BCCG submission had been considered as a single submission, the additional comments from the community had been noted in the EPA's consideration of the proposal.

The EPA's Administrative Procedures and Procedures Manual provide guidance on the processes and procedures for the assessment of proposals under Part IV of the EP Act. In accordance with section 2.2 of the Administrative Procedures, the EPA published the referral documentation on 6 April 2017 for a seven day public comment period²². As noted above and consistent with its Procedures Manual, the EPA also released information on the proposed changes to the proposal for public comment in March 2019. Report 1657 indicates that the significant environmental issues identified during the consultation process were taken into account by the EPA during its assessment of the proposal.

In Report 1657, the EPA recommended an increase in ongoing consultation between the City of Mandurah and the community in the future, in relation to the TTWMF. The EPA also advised that, in the future when local septic systems are replaced with reticulated sewerage, the liquid waste facility should be decommissioned and rehabilitated, with appropriate community agreement on the final land use.

In addition, and given the findings of Ground 1, it is noted that the licensing provisions under Part V of the EP Act provide for public comment on licensing applications, and an opportunity for third party appeals in respect to the amendment of, or the conditions applied to a works approval or licence.

Noting the above, it is considered that the EPA has undertaken its assessment of the proposal taking into account the Administrative Procedures and Procedures Manual, and has had regard to information and comments received from the public and relevant government agencies. Notwithstanding, it is noted that the appellants have been afforded the opportunity to discuss the issues raised during the appeals and have the concerns considered.

Consideration of alternatives

Appellants questioned the need for the liquid waste facility and the economic viability of the proposal, contending that the number of local septic systems did not warrant the facilities' cost. The appellants asserted that the City of Mandurah did not consider alternatives to the proposal such as utilising existing septage waste facilities located elsewhere or Watercorp water treatment facilities.

Consideration

In its advice, the EPA indicated that the proposal is intended to provide for the long term management of liquid waste within the City of Mandurah and surrounding regions and that there are approximately 9,000 homes within the City that still utilise onsite effluent disposal systems which require maintenance and pumping out.

As noted above, during the appeals investigation the BCCG requested a copy of the EPA's report on the appeals and provided a response, which asserted that (among other things) the EPA had over-estimated the number of homes within the City with septic systems.

In response to this ground of appeal, the City of Mandurah stated:

²² EPA, Referral information, available at <http://www.epa.wa.gov.au/proposals/tims-thicket-liquid-waste-facility-upgrade>

The City has and continues to advocate for the re-establishment of the infill sewerage program in the Mandurah area. The infill sewerage program is a State Government program that is managed and funded by the state.

The City has also previously liaised with the Water Corporation who have advised that their local treatment infrastructure is unsuitable for the acceptance of septage and grease trap waste from tankers.²³

In respect to the scope of the EPA's consideration of alternatives for the proposal during its assessment process, it is noted that the precautionary principle makes reference to 'an assessment of the risk-weighted consequences of various options'. It is also noted that the Administrative Procedures outline a number of key steps during the assessment of proposals, including that the proponent must demonstrate (among other things) application of the mitigation hierarchy (avoid, minimise, rehabilitate and offset (if appropriate) impacts) in the Environmental Review Document i.e. the referral documentation in this instance.

In this regard, Report 1657 acknowledges that the City of Mandurah applied the mitigation hierarchy by identifying measures to avoid, minimise and rehabilitate potential impacts to the environment.

It is noted that the EPA can only consider each proposal referred to it on its own merits. For the current proposal, the EPA has determined that the proposed liquid waste facility can be managed to be environmentally acceptable, provided the recommended environmental conditions are implemented. In addition, the EPA has advised that a works approval and licence are a statutory requirement under Part V of the EP Act.

Accuracy of Report 1657

Appellants contended that Report 1657 contains a number of factual errors including the following:

- a. Report 1657 suggests that the pond liners were breached in 2014 while water quality results indicate this occurred in 2002, and the licence was withdrawn in 2015 as a result of groundwater contamination concerns
- b. Report 1657 states that the original proposal included acceptance of up to 28 cubic metres (m³) per day of septage, equivalent to over 10,000 m³ per annum, however the total maximum holding capacity is 6500 m³ per annum and total acceptance level of 5000 m³ per annum
- c. the pond size change mentions a reduction in volume from 6500 m³ to 5000 m³, however there is no mention of a reduced acceptance level.

Consideration

In its response, the EPA advised:

The EPA notes that there are concerns that Report 1657 includes factual errors, which are further addressed below:

- a) The EPA's report states that "In November 2014, the WMF ceased the acceptance of liquid waste due to a breach in the pond liner system..." (page 8). This is consistent with the information provided in the Groundwater Investigation Report (Talis, 2015), which states that "Transpacific Industries (the site operator) decided on 1 November 2014 to cease the acceptance of liquid waste at the site".
- b) MS 375 is based on the information provided in Consultative Environmental Review (Halpern Glick Maunsell, 1994). The proposal as described in the Consultative Environmental Review states that the expected peak volume of septage disposed at the

²³ City of Mandurah, Response to appeals, 17 March 2020, page 9.

facility is approximately 28 m³ per day. This is the maximum expected volume per day and may have some variations. The existing licence under Part V of the EP Act for the proposal included a maximum capacity of 5,000 kL/a of liquid waste.

c) The referral submitted to the EPA in March 2017 was for the design capacity of up to 6,500 kL/a of liquid waste. This was subsequently reduced back to 5,000 kL/a of liquid waste in a change to proposal under assessment through section 43A of the EP Act.

Noting the above, it is considered that the EPA has had regard for the issues raised under this ground of appeal, and that the appellants have not raised any new issues or identified any new risks which were not considered by the EPA during the assessment.

Conclusion

Given the above information, it is considered that the EPA assessed the proposal consistent with the requirements under the EPA's policy and guidance framework, and that the EPA has had appropriate regard for the issues raised under this ground of appeal. It is therefore recommended that this ground of appeal be dismissed.

OTHER MATTERS

The following matters were raised which appellants submitted were relevant to the Minister's considerations, however they are considered to be outside the scope of the appeal and as a result, they are not the subject of consideration or recommendation. The response from the EPA to these matters is provided below.

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

An appellant contended that the EPA did not adequately assess the need for the proposal to comply with the EPBC Act.

In response, the EPA stated:

Under the EPBC Act, approval is required from the Australian Government environment minister for any proposed action likely to have a significant impact on a matter protected by the EPBC Act.

The EPA notes that the proposal is located approximately 6 km from Ramsar wetlands. The proponent had made a determination that the proposal would not be significantly impacting Matters of National Environmental Significance (MNES) and did not refer the proposal to the Commonwealth Government. The EPA's assessment was not accredited under the bilateral agreement and is independent of the Commonwealth Government. Hence, the EPA's assessment did not consider MNES in accordance with the EPBC Act.²⁴

Illegal dumping

An appellant raised concern that contaminated waste had been illegally dumped in the adjacent Reserve 24198 between 1995 to 1998, which requires remediation.

In response, the EPA stated:

The EPA's assessment is for the upgrade and recommencement of the existing liquid waste facility, which is located adjacent to Reserve 24198. The proposal initially included an irrigation area at Reserve 24198 for the disposal of excess treated liquid waste as part of the upgrades. However, following public concerns regarding potentially contaminated waste at Reserve 24198, this aspect was removed from the current proposal to reduce the risk to Inland Waters.

²⁴ EPA, Response to appeals, 16 January 2020, pages 12-13.

The EPA notes that Reserve 21498 has been subject to historical landfilling, however the site is not currently classified under the *Contaminated Sites Act 2003* (CS Act). Under the CS Act, land owners, occupiers and persons who caused contamination must report known or suspected contaminated sites to the DWER. However, anyone else may report known or suspected contamination. The DWER inquires into each report and determines the appropriate classification, which may provide restrictions on use and remediation requirements where applicable.²⁵

CONCLUSIONS AND RECOMMENDATIONS

The EPA in Report 1657 concluded that the proposal could be managed to meet its environmental objectives, provided there is satisfactory implementation by the City of Mandurah of the recommended environmental conditions.

Having regard to the information presented in the appeals, it is considered that the EPA's assessment of the proposal was appropriate and its conclusions were supported by the available information.

It follows that reassessment of the proposal by the EPA is not considered necessary, however, it is recommended that the Minister allows the appeals to the extent that the recommended conditions are amended as follows:

- the proposal description is amended to apply to the entire project, being the liquid waste facility, quarry and Class 1 inert landfill.

The final wording of recommended changes to the conditions should be determined by the Minister in consultation with relevant decision making authorities under section 45 of the EP Act.

Emma Gaunt
APPEALS CONVENOR

Investigating Officer:
Michael Power, Senior Appeals Officer

²⁵ EPA, Response to appeals, 16 January 2020, page 14.

APPENDIX 1

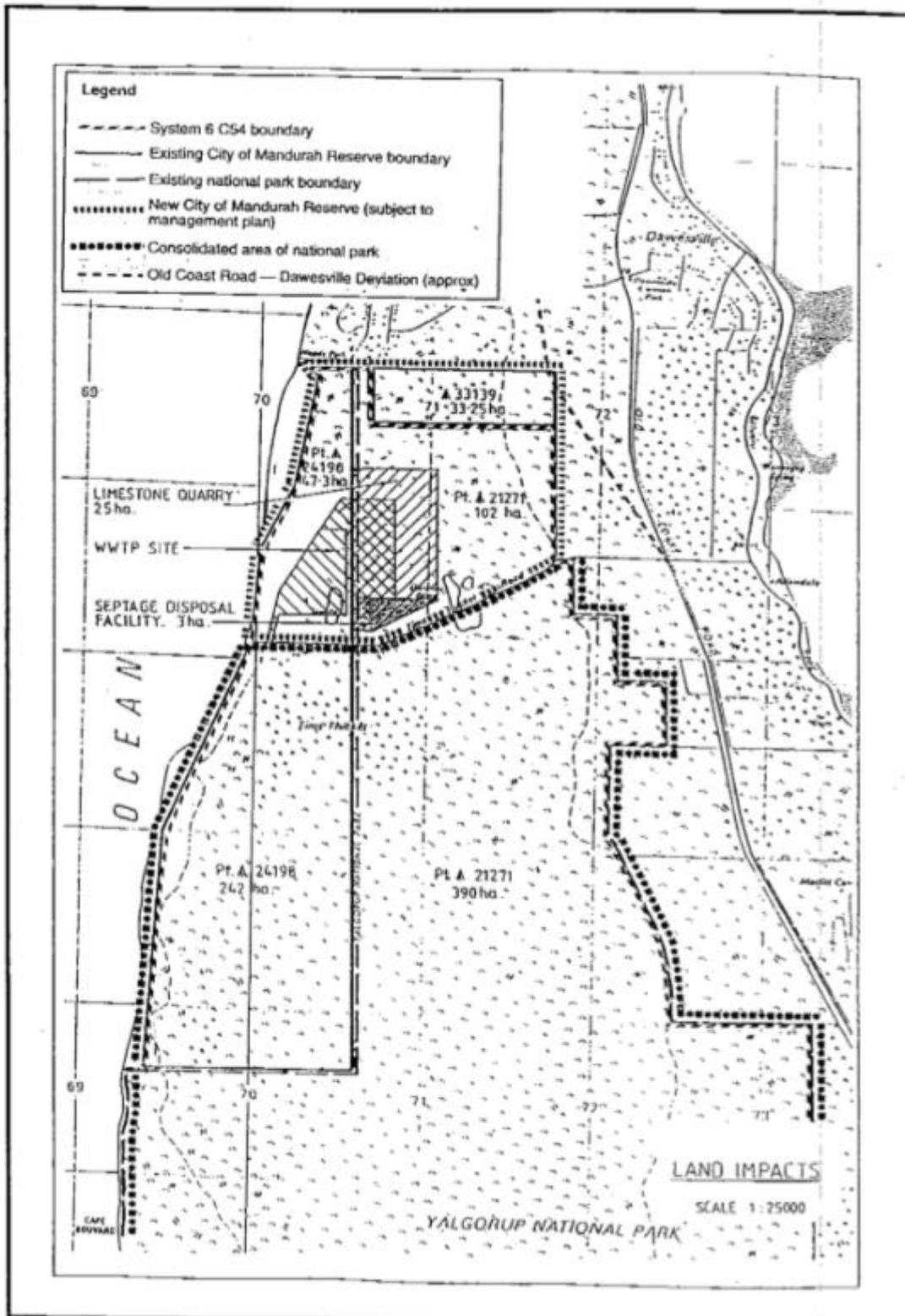


Figure 2. Location of proposed national park boundary realignment, extension to existing wastewater treatment plant site, quarry site and septage disposal facility site.

(Source: MS 375, 1994)