



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 1656: YANCHEP RAIL EXTENSION PART 2 – EGLINTON
TO YANCHEP, CITY OF WANNEROO**

PROPONENT: PUBLIC TRANSPORT AUTHORITY

Appeal Numbers 061.001-002 of 2019

February 2020

Appeals Summary

This report relates to appeals lodged in objection to the report and recommendations of the Environmental Protection Authority (EPA) (Report 1656) for the Public Transport Authority's Yanchep Rail Extension Part 2 – Eglinton to Yanchep proposal.

In summary, the concerns raised by appellants relate to impacts to the Ningana Bushland and to a threatened and a priority ecological community (TEC and PEC), the adequacy of the conditions, and the economic impact to the State budget. It was submitted that the proposal be remitted to the EPA for examination of alignment options outside the Ningana Bushland. It was also submitted that the proposal not be approved for implementation.

In responding to the appeals, the EPA noted that it can only consider the merits and environmental impacts of the proposal that has been referred. In response to concerns the alternative alignments be considered, the EPA advised that it assessed the proposal before it and concluded that it may be implemented provided the implementation is carried out in accordance with the recommended conditions and procedures. In relation to future development pressures to the TEC and PEC, the EPA advised that it will pay particular attention to any future proposal and/or scheme that has the potential to impact the communities. In relation to the offset, environmental management plan (EMP) and green bridges conditions, the EPA stood by its recommended conditions. In relation to the economic impact to the State budget, the EPA advised that its functions do not include weighing up competing social, commercial or economic benefits of a proposal against the environmental impacts.

Having regard for the information provided during the appeals investigation, including the referral documentation, and information provided by the appellants, the proponent and the EPA, the Appeals Convenor considered that the EPA's report and recommendations were appropriate and supported by the available evidence. However, the Appeals Convenor recommended that the conditions relating to the EMP and the Green Bridges Design and Management Plan (GBDMP) be amended to require the PTA to provide evidence of any third party input received, including how that input was addressed.

The Appeals Convenor also recommended that the offset conditions be amended to correct an error and an inconsistency. It was otherwise recommended that the appeals be dismissed.

Recommendations

The Appeals Convenor recommended that the appeals should be upheld to the extent that:

- condition 11-4 should be amended to require the Threatened Ecological Community 'Melaleuca huegelii – Melaleuca systema shrublands on limestone ridges (Gibson et al. 1994 type 26a)' Land Acquisition Strategy be substantially commenced within 6 months of the strategy being approved
- condition 11-3(2) should be corrected to reference the *WA Environmental Offsets Policy* (September 2011)
- conditions 6-4 and 7-3 should be amended to require the EMP and GBDMP to include evidence of any consultation undertaken, including how any input received was addressed, to provide greater transparency and certainty that QREG's input forms part of the assessment of the plans

INTRODUCTION

This report relates to appeals lodged by the Quinns Rocks Environmental Group Inc. and Sustainable Populations Australia (WA Branch) (the appellants) in objection to the content, and recommendations in, the Environmental Protection Authority (EPA) Report 1656 for the Yanchep Rail Extension Part 2 – Eglinton to Yanchep proposed by the Public Transport Authority (proponent). The location and extent of the proposal are shown in Figure 1.

Figure 1 – Location and extent of proposal (red outline)



(Source: EPA Report 1656)

The proposal involves the construction and operation of a 7.2 kilometre extension to the Joondalup railway line from the future Eglinton Station to the suburb of Yanchep in the City of Wanneroo. The proposal includes a new intermodal transit station at Yanchep, principal shared path, bridge infrastructure, and construction and access areas.

This document is the Appeals Convenor's formal report to the Minister for Environment under section 109(3) of the *Environmental Protection Act 1986* (EP Act).

OVERVIEW OF APPEAL PROCESS

In accordance with section 106 of the EP Act, a report was obtained from the Environmental Protection Authority (EPA) in relation to the issues raised in the appeals. The proponent requested a copy of the EPA's report and provided a response which was considered during the investigation. The Appeals Convenor also consulted the appellants and the proponent in relation to the issues raised in the appeals.

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.

In deciding an appeal against the content of, and recommendations in, an EPA report, the Minister can either:

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

OUTCOMES SOUGHT BY APPELLANTS

The Quinns Rocks Environmental Group Inc. (QREG) seeks the proposal be remitted to the EPA for full examination of proposal alignment options outside the Ningana Bushland Bushforever Site (BF Site 289). QREG also seeks a number of amended recommended conditions.

Sustainable Populations Australia (WA Branch) (SPAWA) seeks the proposal not be approved by the Minister. As outlined in the preceding section, such an outcome is not available to the Minister on appeal, however, the appeal grounds submitted by SPAWA have been considered in terms of determining whether the issues raised warrant remittance of the proposal to the EPA or amended recommended conditions.

GROUND OF APPEAL

A total of six appeal grounds were submitted as follows:

- Ground 1 – The proposal should be remitted to the EPA for full examination of potential alignment options outside BF Site 289.

- Ground 2 – Bushland should be retained and managed and not cleared noting the presence of a threatened and a priority ecological community.
- Ground 3 – Recommended offset conditions 11-3 and 11-9 should be amended to specify timeframes for delivery and/or identify penalties if land acquisitions are not being implemented within 3 to 5 years of publication of the Ministerial Statement.
- Ground 4 – The recommended Environmental Management Plan (EMP) condition 7 should be amended to:
 - require public consultation on the EMP prior to referral to the CEO of the Department of Water and Environmental Regulation (DWER) for approval
 - require the EMP be made publically available after approval by the CEO
 - require the EMP monitoring footprint be extended to at least 20 metres from the proposal footprint or more depending on the site geomorphology
- Ground 5 – The recommended green bridges conditions should require long term maintenance requirements and designs that do not separate the bridges from adjoining habitat.
- Ground 6 – The proposal will result in an economic impact on the state budget noting its relationship to urban sprawl and population growth.

The consideration of each appeal ground is documented in the following sections.

GROUND 1: ALTERNATIVE ALIGNMENTS

QREG submitted that full examination of alternative alignments of the proposal which avoid BF Site 289 should occur noting that tunnelling and viaduct options did not appear to have been fully considered. QREG submitted that biodiversity will continue to decline if conservation areas are not adequately linked.

Consideration

In response to this appeal ground the EPA advised that it can only consider the merits and environmental impacts of the proposal that has been referred. The EPA advised that the proponent's consideration of alternative alignments was noted and that it understands the option selected by the proponent took into account:

- avoidance of environmental values
- engineering constraints
- cut and fill requirements
- track length and gradient
- noise and visual amenity
- train speed
- cost

The EPA advised that it has assessed the proposal and has concluded that the proposal may be implemented, provided the implementation is carried out in accordance with the recommended conditions and procedures. The EPA advised that the Minister for Environment has the opportunity to consider the broader merits of the alignment in reaching an agreement with other decision making authorities under section 45 of the EP Act on whether the proposal should be implemented.

In response to the appeals, the proponent expressed their view that the consideration of alignment options and construction methods was adequately addressed in an attachment¹ to the proponent's response to public submissions. Section 4.2 of the document outlines that three alternatives to the version of the proposal referred were considered; an at grade alignment located along the edge of BF Site 289, tunnel construction along the referred alignment, and viaduct construction along the referred alignment.

In relation to the at grade alignment located along the edge of BF Site 289, the proponent noted that, in comparison to the referred alignment, it would:

- require the clearing of more native vegetation (approximately 2 hectares more)
- require a greater impact to parabolic dunes (approximately 2 hectares more)
- require speed restrictions due to track curvature
- require a substantial increase in cut/fill volumes
- have a higher risk of resulting in substantial noise issues for existing/future residential areas
- impact existing houses
- result in longer travel times making train travel less attractive

In relation to the tunnel and viaduct options, these were not considered acceptable to the proponent for the following reasons:

- both were prohibitively expensive
- both would require the construction method (i.e. tunnelling or viaducts) to be applied for the entire length of the proposal, not just for the section intersecting BF Site 289
- tunnelling would have substantial environmental impacts (including native vegetation clearing, karst areas, subterranean fauna habitat, parabolic dunes) to enable access to areas for tunnelling and future maintenance
- viaducts would have substantial environmental impacts (including native vegetation clearing, disturbance of karst areas, subterranean fauna habitat, parabolic dunes) to enable construction with larger cranes and equipment required to install viaducts and more intensive and costly future maintenance requirements

Therefore the proponent proceeded with the alignment as referred.

Conclusion

It is considered that the EPA has assessed the proposal before it, including having regard for alternatives as presented during the assessment, and decided that the environmental impacts can be managed in accordance with the recommended conditions. Noting this, it is recommended that this ground of appeal be dismissed.

¹ Public Transport Authority (2019). Response to Submissions Attachment 2 – Supporting Information – Alignment through Ningana Bushland. Rev 2. 11 October 2019. Available from http://www.epa.wa.gov.au/sites/default/files/Proponent_response_to_submissions/Attachment%202%20Supporting%20Information%20-%20Alignment%20through%20Ningana%20Bushland.pdf (accessed 22/1/20).

GROUND 2: RETENTION OF THREATENED ECOLOGICAL COMMUNITY SCP26A AND PRIORITY ECOLOGICAL COMMUNITY FCT 24

In their appeal, SPAWA referenced information presented by the EPA in Report 1656 regarding impacts to particular threatened and priority ecological communities (TECs and PECs). SPAWA submitted that if a community is threatened, clearing more of it makes it more threatened. SPAWA outlined that offsets do not create more bushland. SPAWA also submitted that it is likely wishful thinking by the EPA that bushland will be retained through planning measures noting the record of the WAPC and Landgate.

Consideration

In section 8 of Report 1656, the EPA noted concerns about cumulative impacts in relation to a particular TEC and PEC. It is this information that was referenced by SPAWA in their appeal. The TEC in question is floristic community type (FCT) SCP 26a described as *Melaleuca huegelii* – *M. systema* shrublands on limestone ridges. The PEC is the Priority 3 FCT 24 described as Northern Spearwood shrublands and woodlands.

In relation to SCP 26a, the EPA states:

The EPA is conscious that areas surrounding the development envelope are zoned as 'Urban' and 'Central city area' under the MRS and notes that areas of TEC SCP 26a have been identified in the local area that have not previously been mapped by the DBCA. The EPA also acknowledges that a significant portion of the area has not yet been developed according to its zoning.

The EPA is supportive of the implementation of land use planning measures to minimise clearing of TEC SCP 26a in the future. The EPA notes that individual occurrences of the TEC are generally small in extent and may be suitable for retention. The EPA recommends that prior to approving any structure plans, subdivisions or development proposals, the WAPC and City of Wanneroo should consult with the DBCA and consider ways in which recently mapped occurrences of the TEC (surveyed and mapped by PTA) can be best retained and managed.

In relation to FCT 24, the EPA states:

The majority of native vegetation within the north-west sub-regional planning framework area is earmarked for development. The EPA understands that within the next 10 years, vegetation clearing in the sub-region will accelerate, fragmenting otherwise intact native vegetation and reducing the extent of regional vegetation communities, including of the FCT 24 PEC.

In view of the above the EPA will pay particular attention to any proposal and/or scheme that has the potential to impact on the FCT 24 PEC by:

- requiring proponents and responsible authorities to address the potential cumulative impacts with other existing or reasonably foreseeable activities, developments and land uses
- obtaining advice from the DBCA about any updates to the status of the community under the *Biodiversity Conservation Act 2016*
- encouraging planning authorities to examine opportunities at the regional planning level for the ecological community to be strategically retained and managed, before deciding whether the residual impacts are significant, and whether offsets should be required

In response to this appeal ground, the EPA acknowledged that the proposed Yanchep Station site is surrounded by remnant native vegetation which is likely to contain TECs and PECs. However, the EPA advised that it can only consider the environmental factors and environmental impacts of the proposal referred. That is, the EPA cannot consider the risk of

impacts to SCP 26a and FCT 24 from future adjoining land development proposals which may be of concern. The EPA advised that it is beyond the scope of the assessment to recommend conditions to retain vegetation around the Yanchep Station site to address such concerns. However, the EPA advised that DWER will write to the Department of Planning, Lands and Heritage (DPLH) to highlight the issue and draw their attention to the EPA's advice in section 8 of Report 1656 (i.e. that particular attention should be given to future proposals).

Report 1656 outlines that the proposal will impact up to 0.05 hectares of SCP 26a and up to 13.7 hectares of FCT 24. The EPA recommended an offset for the impacts to SCP 26a noting the related Part 1 proposal would impact up to 0.94 hectares of the TEC, and that all known occurrences are critical habitat and important. The EPA did not recommend an offset for the impacts to FCT 24 noting the proportional loss is small and incremental and unlikely to significantly impact the regional extent of the community or result in a change to its conservation status.

Conclusion

In the view of the EPA, the impacts to SCP 26a and FCT 24 are acceptable subject to conditions requiring offsets for SCP 26a. It is considered that the EPA adequately assessed the impacts to these values, and that the conditions are appropriate to manage risk.

It is acknowledged, however, the EPA's observations about ongoing impacts associated with development in the area. While conditions cannot be applied to the proponent to manage development on land unconnected with the proposal, it is agreed that careful attention must be paid to how future proposals are considered in a planning and environmental impact assessment context. To this end, and to ensure these matters are considered and acted on strategically, it is considered there is merit in DPLH being apprised of the EPA's advice in section 8 of Report 1656. In addition, future significant proposals or scheme amendments relevant to these communities will be subject to referral to the EPA, and consistent with its advice on this proposal, it is expected the EPA will continue to provide strong, evidence-based advice to government on the implications of future developments.

GROUND 3: OFFSET DELIVERY TIMEFRAMES

QREG submitted that timeframes for delivery of offsets must be included in the recommended conditions as well as identification of penalties if not implemented within three to five years. QREG submitted that there have been several projects in the northwest corridor that have been allowed to proceed yet associated additions to the conservation estate have not occurred.

The construction of Neerabup Road through Neerabup National Park was cited as an example where land was to be added to the National Park but had not yet occurred despite the road already being constructed. Another example provided was the Burns Beach residential development where QREG submitted that the development is proceeding but no secure tenure for the Tamala Conservation Park has yet been achieved nor assignment of a management authority.

Noting this, it is understood that QREG is of the view that the conditions should be strengthened to ensure the offsets are delivered including within an appropriate timeframe.

Consideration

The EPA's recommended condition 11 requires the proponent to prepare and submit two offset strategies; one to counterbalance the significant residual impacts to SCP 26a (Strategy

1), and one to counterbalance the significant residual impacts to the Banksia Woodlands of the Swan Coastal Plain PEC, Carnaby's cockatoo habitat and BF Site 289 (Strategy 2).

Strategy 1 is to identify, acquire and protect an existing area of native vegetation, and to provide funds to establish and manage that area as a conservation area. Strategy 2 may involve the same approach but may also involve rehabilitation (or a combination of both) as well as research (in relation to Carnaby's cockatoo). In relation to BF Site 289, Strategy 2 must include rehabilitation, improvement and management of an area of BF Site 289 outside the proposal development envelope.

In relation to timeframes, recommended condition 11 requires Strategy 1 to be prepared and submitted to the CEO of DWER within six months of the publication of the Ministerial Statement or as otherwise agreed by the CEO. Strategy 2 is required to be prepared and submitted within 12 months or as otherwise agreed by the CEO. Recommended condition 11-11 requires Strategy 2 to be substantially commenced within six months of the proponent receiving notice in writing that the strategy is approved. No such commencement timeframe is included for Strategy 1, however, both strategies are required to be continually implemented until the CEO has confirmed in writing that the proponent has demonstrated that objectives and targets have been met.

In response to this ground of appeal, the EPA acknowledged the recommended conditions allow offset strategies to be submitted post approval. The EPA emphasised however that the offset objectives are certain in that they require the significant residual impacts to be counterbalanced. The EPA also advised that the conditions require the strategies to be developed in context of the *WA Environmental Offsets Policy* (September 2011) which requires the proponent to develop appropriate implementation timeframes. In this regard it is noted that there is an error in recommended condition 11-3(2) where reference to the policy for Strategy 1 has been omitted. It is considered that the condition should align with the condition 11-9(3) wording for Strategy 2.

The EPA advised that the proponent has already commenced work with DBCA to identify suitable properties for acquisition. The EPA advised that four properties have been identified with qualities that may contribute to satisfying the offset requirement.

Given the above, the EPA considers that the process set out provides confidence that the impacts will be fully offset in a timely manner. Furthermore the EPA noted that section 46 of the EP Act provides a mechanism by which changes to conditions can be reviewed and agreed as required.

In relation to penalties for not delivering offsets, the EPA advised that under section 47(1) of the EP Act, the proponent commits an offence if the proposal is not carried out in accordance with the implementation conditions. In the event of non-compliance, enforcement action may be taken under the EP Act.

In response to this appeal ground the proponent advised that all offset sites proposed for acquisition have already been acquired and that implementation of the draft strategies has substantially commenced. The proponent advised that DBCA has provided in principle support for the draft strategies and consultation is in progress to finalise a memorandum of understanding, management measures and funding for all sites, including for the on-ground management for BF Site 289. The proponent advised that it is in their best interests to satisfy the offset conditions as soon as practicable and should there be any delays these are likely to be due to factors outside of the proponent's control. Noting there is no recommended condition for substantial commencement of Strategy 1, the proponent did not object to a six month timeframe being added consistent with the recommended conditions for Strategy 2.

In relation to compliance the proponent submitted that this is already addressed through recommended condition 4 including management of non-compliances. It is noted that condition 4-6 requires all potential non-compliances and corrective and preventative actions taken to be made publicly available.

Conclusion

Given the information outlined above, the EPA's position that the process set out provides confidence that the impacts will be fully offset in a timely manner is supported. Therefore, on balance, it is considered that no further timeframes should be included in the recommended conditions other than requiring Strategy 1 to be substantially commenced within six months consistent with the requirements for Strategy 2. Recommended condition 11-3(2) should also be corrected to reference the *WA Environmental Offsets Policy* (September 2011).

In relation to the identification of penalties it is considered that recommended condition 4 and the existing provisions of the EP Act provide sufficient means for enabling appropriate enforcement action to be taken where necessary.

GROUND 4: EMP CONDITIONS

By their appeal, QREG submitted the concern that the EMP will not adequately cover all relevant management issues for the proposal. Examples of issues that may be missed were provided by QREG and include:

- the risk of *Phytophthora multivora* and *P. nicotianae* dieback spread – the dieback assessment appeared to focus on *P. cinnamomi* and records of other species occur nearby at Butler and the Tamala Park refuse disposal site
- adequate monitoring of indirect impacts outside the proposal footprint (i.e. monitoring to at least 20 metres from the proposal footprint or more depending on site geomorphology)
- altered hydrology impacts
- scope of bushfire risk management techniques

Consideration

QREG previously submitted an appeal in objection to the content, and recommendations in, an EPA report for the related Yanchep Rail Extension Part 1 – Butler to Eglinton proposal (Appeal 27 of 2019; Report 1634). The appeal included a similar ground relating to the EMP conditions. One of the outcomes of that appeal was that the Minister for Environment wrote to the Minister for Transport requesting the proponent closely liaise with QREG during development of the Part 1 proposal EMP. No amendments to the conditions were made.

In response to the latest appeal, the EPA has recommended that similar to the Part 1 proposal, the Minister should write to the Minister for Transport endorsing further input by QREG into the development of the Part 2 proposal EMP. In making its recommendation the EPA advised that there is merit in allowing QREG to provide suggestions and input into the development of the EMP noting QREG's local environmental knowledge and their interest in bushland management in the area.

In response to the EPA's recommendation, QREG advised that liaison occurred for the Part 1 proposal EMP, however, QREG was yet to be advised of the outcome (i.e. whether any of QREG's recommendations were investigated/included in the final approved EMP). QREG submitted that in the absence of a demonstrated outcome for the Part 1 proposal EMP, a

requirement to consult should be included in the EPA's recommended conditions as well as a requirement to make the approved EMP publically available.

The proponent advised that meetings have been held with QREG on several occasions between 2017 and 2019. The proponent considered that consultation with QREG to date has been positive in nature and acknowledged that QREG have valuable local environmental knowledge and an interest in management of BF Site 289. Evidence of consultation with QREG on the Part 1 proposal EMP was provided. It is understood the Part 1 proposal EMP has yet to be approved.

The proponent requested that condition 7 not be amended to require consultation with QREG noting such an amendment may present a risk to the construction schedule. Similar to the Part 1 proposal, the proponent proposes to provide a draft version of the EMP to QREG for review and offer establishment of quarterly meetings to discuss comments and provide project updates. The proponent advised that evidence of consultation with QREG on the EMP will be provided to the EPA.

In relation to the examples of potential management issues submitted by QREG the proponent advised:

- Whilst the dieback assessment conducted for the proposal may appear to have only targeted *P. cinnamomi*, the dieback consultant has confirmed that they interpret and map all species of *Phytophthora* and report on any other species recovered from samples taken. Therefore the proponent considers the dieback risk assessment completed to date appropriate.
- The proponent has no objection to an indirect impacts buffer zone of 20 metres within BF Site 289 for the monitoring of indirect impacts.
- Other concerns (e.g. altered hydrology and bushfire risk management) will be further addressed in the draft EMP and provided to QREG for review.

The proponent has no objections to the approved EMP being made publically available once approved. In this regard it is noted that the EPA's recommended condition 5 would require the proponent to make management plans publically available.

Conclusion

Noting the proponent's views about the value of further input from QREG, and their history of engaging QREG, it is not considered necessary, on balance, for the conditions to be amended to require consultation. However, noting the absence of a demonstrated outcome of engagement undertaken with QREG for the Part 1 proposal, and the proponent's commitment to provide evidence of consultation to the EPA, it is considered that condition 7-3 should be amended to require the EMP to include such evidence, including how any input was addressed. It is considered that this would provide greater transparency and certainty that QREG's input forms part of the assessment of the EMP.

GROUND 5: GREEN BRIDGES CONDITIONS

QREG submitted that the green bridge designs should ensure adequate integration of the bridges and the principal shared path. QREG noted that a conceptual design drawing appeared to show a path separating the green bridge from adjoining BF Site 289. Given this, QREG submitted that the recommended conditions should be amended to ensure appropriate designs.

QREG also submitted that recent inspections of fauna underpasses installed for a previously approved project in the area (i.e. Neerabup Road through Neerabup National Park), showed

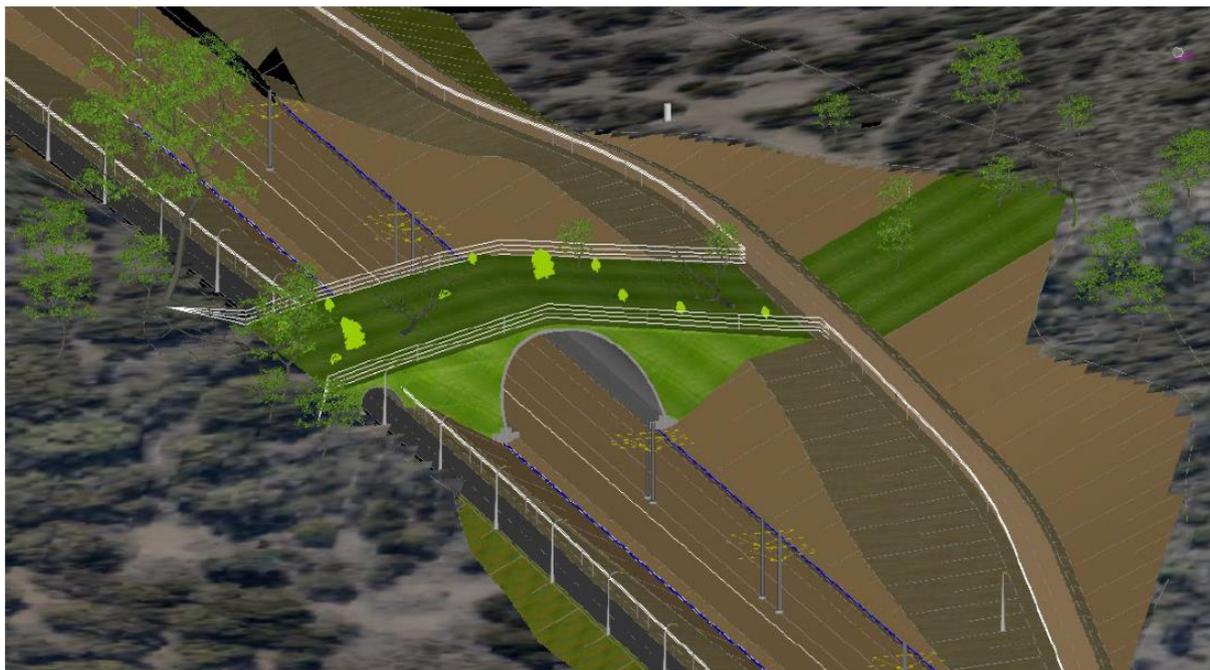
no 'furniture' present in the underpasses and that they were not being used as required/intended. Given this, QREG submitted that the recommended conditions should also be amended to ensure appropriate monitoring and management.

Consideration

The EPA's recommended condition 6 requires three green bridges to be constructed across the proposal within BF Site 289 with each being at least 30 metres wide. A green bridge is defined by the EPA as an engineered vegetated infrastructure overpass that provides an ecological linkage between areas containing environmental values. Condition 6 also requires the preparation, approval and implementation of a Green Bridge Design and Management Plan (GBDMP).

A copy of the conceptual green bridge design drawing referred to by QREG is provided as Figure 2 below. The drawing includes two paths, one on either side of the railway. During consultation with the proponent it was outlined that the design shows the principal shared path passing under the green bridge (i.e. the path on the left hand side of the railway). The proponent outlined that the path referred to by QREG is the one on the right hand side of the railway which is a proposed four metre wide limestone track. This track is proposed to provide maintenance and bushfire/emergency access for the proponent, the Department of Biodiversity, Conservation and Attractions (DBCA), the WA Planning Commission (WAPC) and the Department of Fire and Emergency Services (DFES).

Figure 2 – Green bridge conceptual design drawing²



The EPA advised that, based on advice from DBCA, it considers that in order for the green bridges to maintain an ecological linkage, they should provide a continuously vegetated link to areas of intact native vegetation. This is reflected in recommended condition 6-2 which states that the green bridges shall directly connect areas of intact native vegetation to provide a continuously vegetated link. The EPA acknowledged that emergency vehicle access is

² Public Transport Authority (2019). Response to Submissions Attachment 2 – Supporting Information – Alignment through Ningana Bushland. Rev 2. 11 October 2019. Available from http://www.epa.wa.gov.au/sites/default/files/Proponent_response_to_submissions/Attachment%20%20-Supporting%20Information%20-%20Alignment%20through%20Ningana%20Bushland.pdf (accessed 22/1/20).

required along the rail alignment and encouraged the proponent to examine every opportunity to look at innovative ways to incorporate emergency access into the green bridges.

The proponent advised that it will examine innovative ways to incorporate the emergency access track into the green bridges as encouraged by the EPA. The proponent advised that alternative designs will be subject to engineering constraints, the bounds of the approved development envelope, and acceptance by DBCA, WAPC and DFES. In relation to monitoring and management of the green bridges, the proponent advised that this will be addressed through the GBDMP. The proponent noted that consultation with QREG will continue in accordance with current processes.

Conclusion

It is considered that QREG's concerns regarding the green bridges designs are already addressed given recommended condition 6-2 requires the green bridges to directly connect areas of intact native vegetation to provide a continuously vegetated link. Noting the proponent's commitments to ongoing consultation with QREG, it is considered that condition 6-4 should also be amended to require the GBDMP to include evidence of any consultation undertaken, including how any input received was addressed. It is considered that this will provide greater transparency and certainty that QREG's input forms part of the assessment of the GBDMP.

GROUND 6: ECONOMIC IMPACT TO STATE BUDGET

SPAWA submitted that population growth and urban sprawl has costs on the state budget, not only in increasing infrastructure costs but also in provision of public services such as water, power, emergencies, teachers, social workers and justice. SPAWA submitted that higher density inner urban living should be provided for as an alternative and positive net immigration should be opposed.

Consideration

In response to this appeal ground the EPA advised that its function does not include weighing up the competing social, commercial or economic benefits of a proposal against the environmental impacts of the proposal. The EPA advised that its recommendations are to be based on environmental factors alone with other factors to be considered by the Minister for Environment in reaching an agreement with other decision making authorities under section 45 of the EP Act.

Conclusion

Noting the limitations on what the EPA can consider, and that the appeal rights do not extend to the Minister for Environment's decision whether the proposal should be implemented, it is recommended that this appeal ground be dismissed.

CONCLUSIONS AND RECOMMENDATIONS

The appeal investigation found that the EPA's recommended conditions should be amended as follows:

- condition 11-4 should be amended to require the Threatened Ecological Community '*Melaleuca huegellii* – *Melaleuca systema* shrublands on limestone ridges (Gibson et al. 1994 type 26a)' Land Acquisition Strategy be substantially commenced within 6 months of the strategy being approved
- condition 11-3(2) should be corrected to reference the *WA Environmental Offsets Policy* (September 2011)

- conditions 6-4 and 7-3 should be amended to require the EMP and GBDMP to include evidence of any consultation undertaken, including how any input received was addressed, to provide greater transparency and certainty that QREG's input forms part of the assessment of the plans

It is not considered necessary, on balance, to require public consultation on the EMP and the GBDMP as a condition, noting the proponent's demonstrated history of engagement with QREG and their commitment to continue to engage.

It is recommended that the remaining appeal grounds be dismissed. The final decision on whether or not the proposal should be implemented, and on the precise wording of the conditions which should apply, is to be made under section 45 of the EP Act.

Emma Gaunt
APPEALS CONVENOR

Investigating Officer:
Simon Weighell, A/Senior Appeals Officer