



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST REPORT AND RECOMMENDATIONS OF THE ENVIRONMENTAL PROTECTION AUTHORITY REPORT 1656 – YANCHEP RAIL EXTENSION PART 2 – EGLINTON TO YANCHEP

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 100(1)(d) of the *Environmental Protection Act 1986* in objection to the Environmental Protection Authority's Report and Recommendations in respect to the above proposal. This document is produced by the Office of the Appeals Convenor for the Minister but is not the Appeals Convenor's own report, which can be downloaded from the Appeals Convenor's website at www.appealsconvenor.wa.gov.au.

Appellants:	Quinns Rocks Environmental Group Inc Sustainable Population Australia (WA Branch)
Proponent:	Public Transport Authority
Proposal description:	To construct and operate a 7.2 kilometre extension to the Joondalup railway line from the future Eglinton Station to Yanchep in the City of Wanneroo.
Minister's Decision:	The Minister allowed the appeals in part
Date of Decision:	3 March 2020

REASONS FOR MINISTER'S DECISION

The proponent, the Public Transport Authority (PTA), intends to construct and operate a 7.2 kilometre extension to the Joondalup railway line from the future Eglinton Station to Yanchep in the City of Wanneroo. The alignment of the proposal includes a 2.9 kilometre section through the Ningana Bushland site, which is also identified as Bush Forever site 289.

Two appeals were received raising concerns about the assessment and recommendations of the Environmental Protection Authority (EPA) as they relate to impacts to the Ningana Bushland and to a threatened and a priority ecological community, the adequacy of the conditions, and the economic impact to the State budget. It was submitted that the proposal should be remitted to the EPA for examination of alignment options outside the Ningana Bushland. It was also submitted that the proposal should not be approved for implementation.

Having considered the information available, including the EPA's response to the appeals and the Appeals Convenor's report, the Minister considered that the EPA's assessment was appropriate and its conclusions and recommendations were supported by the available evidence.

The Minister decided, however, to allow the appeals to the extent that conditions relating to the content of the Environmental Management Plan (EMP) and Green Bridges Design and Management Plan (GBDMP) be amended to require the PTA to show evidence of any third party input received, including how that input was addressed.

The Minister also directed the offset conditions be amended to correct an error and an inconsistency. The Minister otherwise decided to dismiss the appeals.

The full reasons for the Minister's decision follow.

Alternative alignments and impacts to a threatened and a priority ecological community

The appeals raised concerns with the chosen alignment through the Ningana Bushland, and the impacts to threatened ecological community (TEC) SCP 26a and priority ecological community (PEC) FCT 24.

The Minister understood that the PTA considered at least three alternatives to the proposal: an 'at grade' alignment located along the edge of Bush Forever site 289; tunnel construction along the referred alignment; and viaduct construction along the referred alignment. It is understood that PTA's decision to proceed with the referred proposal was based on a range of factors, including that all three alternative options have the potential to result in substantial environmental impacts.

In Report 1656, the EPA noted that the TEC SCP 26a is listed as 'endangered', and that as a result, all known occurrences are habitat critical. In this case the proposed clearing will affect less than 0.1 per cent of the previously known extent of the community. The EPA also noted that the development of the previously approved Yanchep Rail Extension Part 1 will result in the loss of approximately one per cent of the community, and that a number of previously identified occurrences are located in areas proposed for industrial development or resource extraction. The Minister accepted the EPA's advice, therefore, that the ecological community faces increasing and ongoing pressures from development. The EPA recommended that conditions be applied to the proposal to offset the impact from the current proposal.

In relation to the PEC, the EPA acknowledged that while this proposal will impact on four per cent of the mapped extent of the community in the north-west corridor, when considered cumulatively with the Yanchep Rail Extension Part 1, the total potential impact is 29.7 ha or nine per cent of the current north-west corridor extent. The EPA considered, however, that the impacts are not likely to be significant and that an offset would not be required. The EPA identified that the primary risk to the PEC appears to be from future land development proposals in the region.

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. Future significant proposals or scheme amendments relevant to these communities are subject to referral to the EPA, and consistent with its advice on this proposal, the Minister expects the EPA to continue to provide strong, evidence-based advice to government on the implications of future developments.

On the information available to the Minister, the implementation of the proposal will result in the loss of a portion of the TEC and PEC, and impacts to Ningana Bushland. In the view of the

EPA, these impacts are acceptable subject to conditions requiring offsets, green bridges, an EMP, and a revegetation management plan. The Minister was satisfied that the EPA adequately assessed the impacts to these values, and considered the conditions appropriate to manage those impacts.

EMP and green bridges conditions

By this ground of appeal, it was submitted that there should be a requirement for the public to be involved with preparation of the EMP, and that the green bridges conditions should be strengthened.

In relation to the EMP, a similar outcome was requested in appeals against the EPA's previous report on the Yanchep Rail Extension: Part 1 – Butler to Eglinton proposal. As an outcome of that appeal, the Minister wrote to the Minister for Transport (as the Minister responsible for the PTA), requesting that the PTA closely liaises with the Quinns Rocks Environmental Group (QREG) through the next phases of development of the EMP. The Minister understood that consultation for the Part 1 proposal occurred, but how that consultation was considered in the EMP was not known to QREG as the EMP was yet to be approved.

The Minister noted that the EPA recommended a similar approach in response to the current appeals, but understood that QREG had concerns about the less formal approach and the lack of a demonstrated outcome for the Part 1 proposal.

In relation to the green bridges conditions, the Minister noted concerns exist around a conceptual design drawing showing a bridge being separated from adjoining vegetation by a track. It is understood that the track in the drawing is a four metre wide limestone track proposed to be constructed to provide maintenance and bushfire/emergency access for the PTA, the Department of Biodiversity, Conservation and Attractions, the WA Planning Commission and the Department of Fire and Emergency Services.

Despite the drawing, the Minister noted that recommended condition 6-2 states that green bridges shall directly connect areas of intact native vegetation to provide a continuously vegetated link. Therefore the Minister considered that the conditions as recommended are adequate to address the concerns raised. The PTA advised that it will examine ways to incorporate the emergency access track into the green bridges.

On balance, the Minister did not consider it necessary to require public consultation on the EMP as a condition, noting the good working relationships understood to exist. However, in response to the appeals PTA outlined that evidence of consultation for the Part 2 proposal will be provided to the EPA, and that the PTA will consult QREG on the GBDMP. Given this the Minister decided that conditions 6-4 and 7-3 should be amended to require the EMP and GBDMP to include evidence of any input received, including how that input was addressed. The Minister considered this will provide greater transparency and certainty that QREG's input forms part of the assessment of the EMP and GBDMP.

Offset delivery timeframes

By this ground of appeal, it was submitted that the conditions should be amended to specify offset delivery timeframes as well as penalties for delays.

In response to this matter, information provided by both the EPA and the PTA suggests that significant progress has been made towards satisfying the offset requirement, in the event the proposal is approved. The Minister understood that identification and acquisition of potential offset properties has already occurred.

The appeal investigation found an error in condition 11-3(2) where reference to the policy was omitted, therefore the Minister directed this be corrected. An inconsistency was also identified in the conditions in that a six month timeframe for substantial commencement was only applied to one of the required offset strategies and not the other. The Minister therefore directed that condition 11-4 be amended to add a six month substantial commencement timeframe consistent with condition 11-11.

Given the information before him, and that the *Environmental Protection Act 1986* (the Act) contains enforcement provisions in relation to non-compliance with implementation conditions, the Minister considered no further amendments to the offset conditions were warranted.

Economic impact to State budget

By this ground of appeal it was submitted that the economic impact to the State budget from the proposal requires consideration.

In response to this ground of appeal, the EPA advised that its functions do not include weighing up competing social, commercial or economic benefits of a proposal against the environmental impacts.

The EPA's role is to provide advice to government on the environmental issues raised by the proposal. Its functions do not extend to providing commentary or advice of an economic or financial kind.

A final decision on whether or not the proposal should be approved under the Act will be made under section 45 in due course. Through this process, broader commercial and social matters can be considered.

Next steps

The changes the Minister has made to the conditions will be finalised, and consistent with section 45(1) of the Act, the Minister will commence consultation with relevant decision making authorities as to whether or not the proposal may be implemented, and if so, the conditions to which the proposal's implementation should be subject.

Note: this decision is published pursuant to the terms of section 110 of the *Environmental Protection Act 1986* and regulation 8 of the *Environmental Protection Regulations 1987*.

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