



Environmental Protection Act 1986

**Hon Albert Jacob MLA
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST DECISION OF THE ENVIRONMENTAL PROTECTION AUTHORITY NOT TO ASSESS BROOME PORT AUTHORITY PROPOSAL

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section 100(1)(a) of the *Environmental Protection Act 1986* in relation to the decision of the Environmental Protection Authority not to assess a 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.

Appellant:	Louise Middleton
Proponent:	Broome Port Authority
Proposal:	Clearing of up 24.55 hectares of native vegetation in order to undertake various commercial purposes developments on Lot 616, Lot 1221 and Port Drive road reserve, in the Shire of Broome.
Minister's Decision:	The Minister dismissed the appeal
Date of Decision:	29 May 2014

REASONS FOR MINISTER'S DECISION

Pursuant to section 106(1)(a) of the *Environmental Protection Act 1986* (the Act), the Minister obtained a report from the Environmental Protection Authority (EPA) on the matters raised in the appeal. The Office of the Appeals Convenor investigated the appeal, which the Minister was advised included discussions with the appellant and the proponent.

After considering the appeal, the Appeals Convenor submitted her report to the Minister under section 109 of the Act. This report sets out the background and other matters relevant to the appeal.

The key concerns raised in the appeal related to the environmental values of the site, and historical management by the Broome Port Authority (BrPA), the adequacy of the public consultation, and cumulative impacts. The Minister noted that the appeal also raised matters relating to the BrPA's environmental management plan. The Minister understood that appellant sought for the proposal to be remitted to the EPA for formal assessment.

The Minister noted the specific elements of the environmental values identified in the appeal, which included the impacts of clearing, and impacts in respect to rare flora, Yawuru Conservation Estate, Aboriginal heritage, stormwater management, coastal processes, climate change, Roebuck Bay (including the Ramsar-listed site), ecological corridors, dinosaur footprints, marine fauna, erosion and quarantine risks, as outlined in the Appeals Convenor's report.

The EPA identified 'Inland Waters Environmental Quality' and 'Flora and Vegetation' as preliminary environmental factors relevant to the proposal, for the reasons stated in the EPA's public advice. The Minister noted the EPA's advice that this proposal is unlikely to have a significant effect on the environment, and that the potential impacts associated with the proposal can be further evaluated, regulated and mitigated by the Department of Environment Regulation (DER), the Shire of Broome and the Kimberley Joint Development Assessment Panel to meet the EPA's objectives for these factors.

The Minister noted that there are a number of statutory mechanisms applicable to the management and regulation of the clearing of native vegetation, taking of rare flora, contaminated sites, and discharges to the environment. The Minister also understood that proponents of proposed developments are required to comply with the BrPA's management plans, development guidelines, standard operational procedures and Tenant Environmental Management Requirements, as well as obtaining necessary planning approvals, works approvals and licences.

In respect to consultation, the Minister noted that the EPA advertised and invited public submissions on the referred proposal consistent with requirements of the Act. The Minister also noted that the BrPA's application for the clearing permit was open to public comment, and that any applications for works approvals and licences for proposed developments will be open to public comment.

In respect to cumulative impacts, the Minister noted the tenant requirements as described above. The Minister was also satisfied that the DER has had regard to the cumulative impacts of the clearing of native vegetation in its assessment of the BrPA's application for the clearing permit.

Considering the information presented to him in respect to the appeal, the Minister was satisfied that the EPA had appropriately identified the environmental factors relevant to the proposal. Noting the regulatory mechanisms that apply in this instance, the Minister was also satisfied that the potential environmental impacts associated with this proposal are not so significant as to warrant a formal assessment under Part IV of the EP Act. The Minister therefore dismissed the appeal.

In respect to the other matters raised in the appeal, the Minister was of the view that these are beyond the scope of the appeal rights in respect to the EPA's decision not to assess the proposal. The Minister referred to the Appeals Convenor's report which contains advice on these matters.

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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