



**Appeals Convenor**  
**Environmental Protection Act 1986**

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**REPORT TO THE  
MINISTER FOR ENVIRONMENT**

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**APPEAL IN OBJECTION TO THE DECISION OF THE ENVIRONMENTAL  
PROTECTION AUTHORITY NOT TO ASSESS A PROPOSAL**

**NOT ASSESSED – NO ADVICE GIVEN: MCKINLEY ROAD  
NEERABUP SAND EXTRACTION  
WITHIN GNANGARA PINE PLANTATION, CITY OF WANNEROO**

**PROPONENT: ROCLA PTY LTD**

**Appeal Number 108 of 2014**

**June 2015**

## Appeal Summary

This report addresses an appeal in objection to the decision of the Environmental Protection Authority (EPA) not to assess a proposal to establish a sand quarry within harvested pine plantation in the Gnangara-Moore River State Forest. The existing pine plantation will be cleared by the Forest Products Commission prior to the commencement of the proposed sand extraction operations.

The EPA advertised its decision of 'Not Assessed – No Advice Given' on 22 April 2014. The matters raised in the appeal relate to the potential for the proposal to have a significant effect on the environment and whether the existing regulatory processes are capable of adequately regulating the entirety of the proposal.

The key environmental concern raised by the appeal relate to the potential for regrowth vegetation in the proposal area (both native and non-native i.e. pine wildlings) to provide future foraging habitat for Carnaby's cockatoo and the impact on Carnaby's cockatoo in the event that vegetation regrowth is cleared.

The appeal investigation included consideration of the EPA's decision not to assess the proposal based on the 'Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012', including consideration of the values of the environment; the extent and consequences of the likely impacts and the presence of other statutory decision-making processes which regulate the mitigation of the potential effects on the environment.

After considering the information provided in the appeal, the advice of the EPA, the Department of Parks and Wildlife (Parks and Wildlife) and the Department of Mines and Petroleum (DMP) it is considered that the EPA was justified in forming the view this proposal was not so significant as to warrant formal environmental impact assessment and the subsequent setting of conditions by the Minister for Environment under Part IV of the *Environmental Protection Act 1986*.

In reaching this conclusion, the EPA's advice that the potential impacts can be adequately evaluated, regulated and mitigated by the DMP, Parks and Wildlife, and the Department of Water to meet the EPA's objectives for the environmental factors identified for the proposal was noted.

## Recommendation

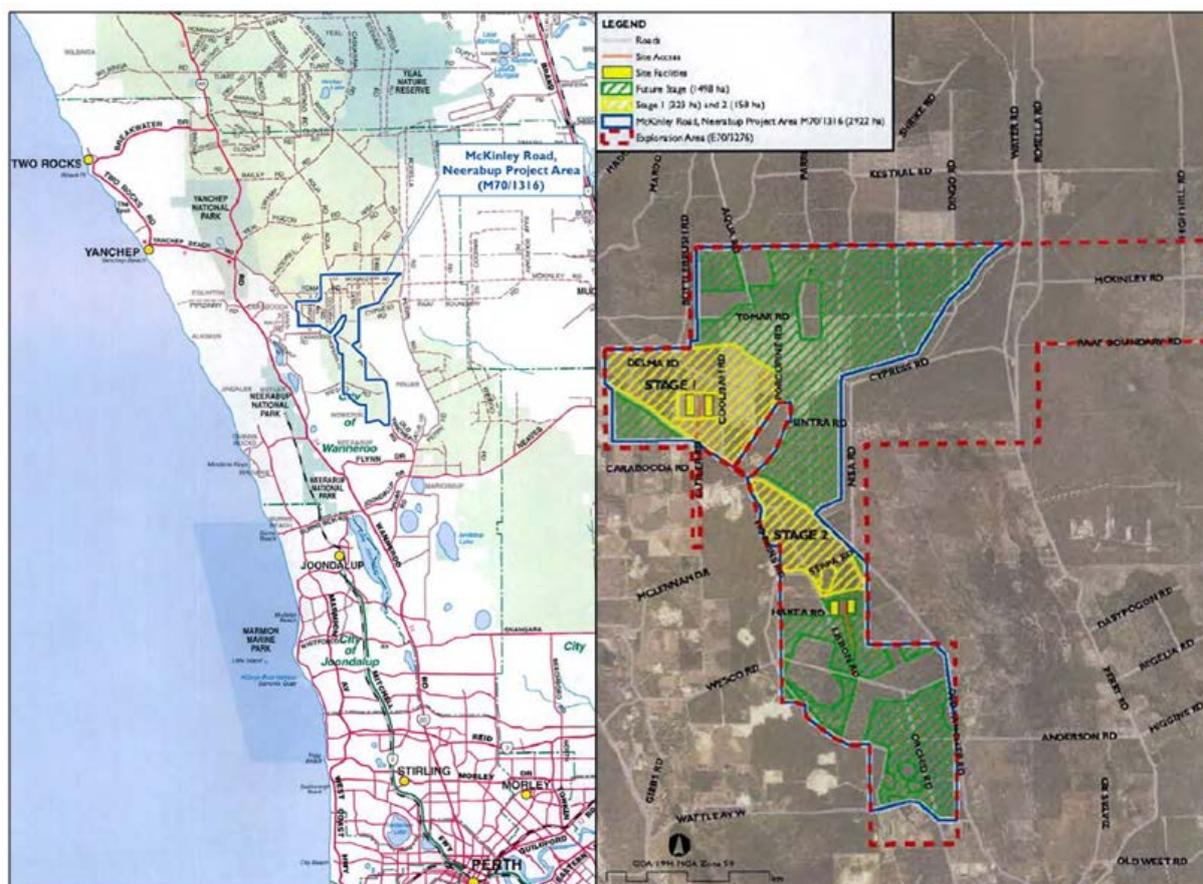
The decision of the EPA not to assess this proposal is supported and it is recommended the appeal be dismissed.

## INTRODUCTION

This report relates to an appeal lodged by Rocla Pty Ltd (appellant) in objection to the decision by the Environmental Protection Authority (EPA) not to assess its proposal to establish a sand quarry within the 2,922 hectare (ha) McKinley Road Neerabup Project Area (Mining Tenement M70/1316), City of Wanneroo (the proposal).

The proposal is located within the Gngangara-Moore River State Forest (currently used for pine plantation) approximately 45 kilometres (km) north of Perth (Figure 1). The Gngangara-Moore River State Forest is vested in the Conservation Commission of Western Australia (Conservation Commission) and managed by the Department of Parks and Wildlife (Parks and Wildlife).

**Figure 1 – Site location and proposal overview**



(Source: RPS 2014)

The existing pine plantation will be cleared by the Forest Products Commission (FPC) prior to the commencement of the proposed sand extraction operations. In March 2015, the proponent advised that approximately 70% of the proposal area had been cleared. The proposal will provide in excess of approximately 100 million tonnes of building, concrete and fill sand, in addition to limestone, from an excavation area of 1,979 ha, over the 50+ years projected life of operations. The proposed sand extraction will be undertaken in stages over the life of the proposal.

The EPA advertised its decision of 'Not Assessed – No Advice Given' on 22 April 2014, noting that the proposal is not so significant as to warrant formal assessment considering the following factors:

1. Bush Forever sites are avoided and buffers proposed, and sand extraction is a permitted use in a groundwater protection area subject to management conditions.
2. Licencing by the Department of Water (DoW) and a Department of Mines and Petroleum (DMP) Mining Proposal are required to ensure proposal implementation is consistent with that referred and the site is rehabilitated.<sup>1</sup>

It was against this decision that the appeal was received. 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**

A report was obtained from the EPA in relation to the issues raised in the appeal. The Appeals Convenor sought further advice from the EPA with respect to the additional information provided by the appellant during the course of the appeal investigation. The Appeals Convenor also sought advice from Parks and Wildlife, the DMP and the FPC during the appeal investigation.

Representatives of the Office of the Appeals Convenor met with the appellant on a number of occasions to discuss the appeal. The appellant requested, and was provided with, copies of the EPA advice and provided additional information in response which reinforced the appellant's views as stated in the appeal. During the appeal the appellant provided the following reports in support of its appeal:

1. 'McKinley Road Project Area. Natural Regeneration of Cleared Pine Plantations in Nowergup, Western Australia' (2014). Report prepared by PGV Environmental (PGV Environmental).
2. 'Perth & Peel Development Outlook & Sand Supply Needs Analysis' (2014). Report prepared by RobertsDay.

## **OUTCOME SOUGHT BY APPELLANT**

The appellant requested the proposal be remitted to the EPA for assessment at the Assessment on Proponent Information category A (API(A)) level of assessment under section.

The appellant subsequently submitted that, should it be considered that the constraint on basic raw material supply is an issue of regional significance to the Perth Metropolitan Region, the potential for the proposal to meet the forecast shortfall in supply of basic materials enables the project to be assessed at the Public Environmental Review (PER) level of assessment.

## **GROUNDINGS OF APPEAL**

The appellant submitted the EPA's decision not to assess the proposal failed to consider the impact of the proposal over the life of the project and that, as a consequence of undertaking sand extraction activities throughout the 50+ years quarry life, the proposal will have a significant effect on the environment. The appellant contended that the EPA should have

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<sup>1</sup> Environmental Protection Authority 2014. 'Weekly record of determinations for S38 Referrals, S16 and/or S46 advice', dated 15 April 2014.

determined that the proposal required assessment and then considered the issue of significance in setting the level of assessment.

The appellant advised that while the FPC proposes to clear large portions (e.g. 100 ha at any one time) of the proposal area, the proponent's sand extraction activities will be limited to approximately 30 ha at any one time resulting in large tracts of previously vegetated areas potentially being 'exposed' for extended periods (e.g. 20+ years). In order to access the sand resource, any remnant vegetation and vegetation regrowth that occurs will need to be cleared. In addition, any clearing of remnant and regrowth vegetation will occur within an environmentally sensitive area, as defined in section 51A of the EP Act.

In support of its appeal, the appellant commissioned an assessment of natural regeneration after pine plantation clearing within the proposal area (PGV Environmental Report)<sup>2</sup> and contended that this provides 'clear evidence' of native vegetation and remnant native regrowth within plantation areas post-harvesting. The appellant is of the view that this assessment identifies a greater level of native vegetation regeneration than previously understood by the proponent, the FPC or the EPA. The appellant submitted that this new information is significant as it provides strong evidence of the future requirement for vegetation clearing and particularly clearing of vegetation that could become a significant foraging source for Carnaby's cockatoo.<sup>3</sup>

The appellant contended that an approval of the proposal under Part IV of the EP Act would provide long term certainty over the 50+ years of the proposal, whereas regulatory processes, specifically clearing permit requirements under Part V of the EP Act and mining tenement/mining proposal approvals requirements under the *Mining Act 1978* (Mining Act), will not fully address the proposal and are incapable of adequately regulating the entirety of the proposal. Specifically,

- that clearing permits are currently granted for no longer than 10 years during which time regrowth vegetation may become more environmentally significant than is presently the case, and consequently there is no guarantee that further clearing permits can be obtained on the same terms as the initial permit, providing little certainty; and
- that approval of a mining proposal for a Mining Lease cannot approve mining operations for the entire term of the proposal (50+ years) as a Mining Lease has a term of 21 years.

The appellant also contended that the wider policy considerations relevant to decisions under section 45 of the EP Act, such as the strategic importance of Basic Raw Materials (BRM), will not be available should the proposal not be assessed. The appellant contends that formal assessment of the environmental factors by the EPA, followed by a decision by the Minister and other decision making authorities taking into account broader social and economic considerations is appropriate in this case.

## CONSIDERATION

It is considered that this proposal raises two key issues:

1. The significance of environmental impact that will be caused if the proposal is implemented; and

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<sup>3</sup> *Calyptorhynchus latirostris* listed as 'Endangered' under the *Environment Protection and Biodiversity Conservation Act 1999* and 'Specially protected fauna' under the *Wildlife Conservation Act 1950*.

2. Whether the impacts identified can be adequately managed through other processes without the need for formal assessment under Part IV of the EP Act.

These issues will be considered in turn.

### Significance of the effect of the proposal on the environment

The key environmental concern raised by the appeal relates to the potential for regrowth vegetation at the site (both native and non-native i.e. pine wildlings) to provide future foraging habitat for Carnaby's cockatoo. In its response to the appeal, including in response to the additional information provided by the appellant during the appeal investigation, the EPA stated that the impacts of the proposal were not so significant as to warrant formal assessment under Part IV of the EP Act.

In its report with respect to the appeal, the EPA advised,

- the proposal area is comprised solely of pine plantation and no existing native vegetation will be cleared as part of the proposal;
- FPC advised that regrowth within pine plantations was likely to be pine wildlings, however some native vegetation regrowth may occur if areas are left exposed for long periods of time;
- the type and amount of regrowth that will occur would be dependent on the existing soil profile and the likelihood of seed transfer by fauna from surrounding areas; and
- based on information in the Referral<sup>4</sup> and the advice of the FPC, it is unlikely that significant native vegetation regrowth would occur once the pine plantations are cleared and the EPA noted that DMP could deem a future clearing application to be significant and refer it to the EPA for consideration at that time.

The EPA also provided advice with respect to the PGV Environmental Report. The EPA acknowledged that while there is potential for some regrowth of native vegetation over time, and that this may provide foraging habitat for Carnaby's cockatoo, given the staged nature of the proposal (30 ha at a time) the EPA considered that potential impacts were deemed not to be so significant as to warrant formal assessment under Part IV of the EP Act. The EPA concluded that the additional information provided by the proponent would not cause the EPA's advice with respect to the appeal to change.

The appellant was given an opportunity to respond to the EPA's additional advice. In its response, the appellant submitted that the EPA failed to give proper consideration to the new information, in particular,

- the reference by the EPA to 'potential' regrowth is inconsistent with the findings that regrowth will occur;
- evidence that the level of native vegetation regeneration is greater than previously identified by the proponent, FPC and EPA; and
- in referring to an active mining area of 30 ha at any one time, the EPA failed to take into account the time lag between clearing and reestablishment of native vegetation/foraging habitat which may be approximately eight years and therefore the area of reduced foraging habitat would be in the order of 240 ha, not 30 ha.

The appellant also noted that the EPA's response appears only to relate to regrowth of native vegetation, and failed to consider whether clearing of pine wildlings involves an impact

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<sup>4</sup> RPS 2014. 'Environmental Assessment. McKinley Road Neerabup Sand Extraction'. Prepared for Rocla Quarry Products.

to Carnaby's cockatoo. In this regard, and noting the limitations in methods as stated in the PGV Environmental Report, the PVG Environmental report indicates that three of the five blocks surveyed contained pine seedlings following clearing and the density of pines was very low (no more than 2% cover). Therefore it could be considered that pine wildings are not likely to form a significant portion of regrowth post-harvesting.<sup>5</sup>

In relation to the appellant's concern about reduced foraging habitat once its operations commence, it is noted that the proposal area is within the broader Strategic Assessment of the Perth-Peel Region (Strategic Assessment)<sup>6</sup> which the EPA advises will address Matters of National Environmental Significance. This includes a strategic plan for the protection of matters such as the Carnaby's cockatoo and it is noted that the EPA's expectation is that the proponent would consult with relevant decision-making authorities to align with the objective and outcomes of the Strategic Assessment.

The 'Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012' (Administrative Procedures), states that 'In determining whether a proposal is likely to have a significant effect on the environment, whether the proposal would meet the EPA's objectives for environmental factors and consequently whether or not a referred proposal should be assessed', the EPA may have regard to a number of factors including, amongst other things, the presence of other statutory decision-making processes, which regulate the mitigation of the potential effects on the environment to meet the EPA's objectives and principles for environmental impact assessment.<sup>7</sup>

The 'Environmental Assessment Guideline for Application of a significance framework in the environmental impact assessment process', further states that 'The EPA will consider the potential of other regulators to mitigate environmental impacts to meet the EPA's environmental objectives only where the likely environmental effects of a proposal on a factor are not so significant as to warrant formal assessment of the factor'.<sup>8</sup>

Taking the above into account and given the potential environmental impacts relate primarily to clearing of native vegetation it is considered that the EPA's conclusion that the proposal is not so significant as to warrant formal environmental impact assessment under the EP Act is supported.

#### Other statutory decision-making processes

The EPA advised that the EPA's objectives for the preliminary environmental factors relevant to the proposal can be met with a high level of confidence and that potential environmental impacts can be adequately evaluated, regulated and mitigated by the DMP, Parks and Wildlife, and the DoW.

In relation to the appellants submission that assessment under Part IV provides greater certainty, it is noted that Part IV approvals can be the subject of review at any time by request of the Minister to the EPA under section 46 of the EP Act and it would be expected that, as environmental values change over the life of a proposal, conditions and standards applying to the proposal may also be subject to review and amendment. The EPA's advice

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<sup>5</sup> PGV Environmental 2014, p. 11 and Appendix 1.

<sup>6</sup> In July 2011 the Strategic Assessment of the Perth-Peel Region in accordance with the *Environmental Protection and Biodiversity Act 1999* was initiated by the Western Australian Ministers for Planning and Environment and the Commonwealth Minister for the Environment. The Strategic Assessment will focus on the impacts of future urban development activities, infrastructure corridors, transportation and basic raw material extraction.

<sup>7</sup> Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012, Section 7.

<sup>8</sup> Environmental Protection Authority 2015. 'Environmental Assessment Guideline for Application of a significance framework in the environmental impact assessment process. Focusing on the key environmental factors' (EAG9), p. 7.

that it does not see the simplification of regulatory obligations as a reason to formally assess and manage a proposal under Part IV of the EP Act is noted.

With regard to the requirements for a clearing permit under Part V of the EP Act, the DMP advised, that a proponent may apply for any clearing permit duration, that the DMP will consider each application on its merits and that there is no legal impediment to the DMP issuing a purpose permit for the term of a mining tenement, subject to appropriate conditions (which could include a Land Use Management Plan if deemed acceptable). As the proposal is within State Forest, the DMP advised the EPA that it would consult with the Conservation Commission and Parks and Wildlife regarding any proposed clearing. However, the DMP also noted that given the 50+ year term of the proposal the potential changes in environmental factors at various stages are difficult to predict and it may be more appropriate for the proponent to apply for clearing permits for stages of the project.

With regard to consideration of the strategic importance of BRM to the State, it is noted that section 51O of the EP Act requires the CEO, when making a decision on a clearing permit, to have regard to the clearing principles and any planning instrument or other matter considered relevant. 'Planning instrument' is defined to include a State Planning Policy (SPP) approved under the *Planning and Development Act 2005*. BRM is currently the subject of an SPP, and it is understood this is currently under review as part of the Strategic Assessment to ensure key resource requirements are addressed. Taking this into account, it is considered that policy objectives relating to BRM can be validly taken into account by the DMP under section 51O of the EP Act.

It is also noted that the EPA advised that the proposal will require licencing by the DoW with respect to the construction of water bores and/or the taking of groundwater and that the EPA did consider the *Environmental Protection (Gnangara Mound Crown Land) Policy 1992* in making its decision.

The DMP's advice that the term of a mining lease is 21 years and that it may be renewed for further terms is noted. The DMP advised that the associated Mining Proposal which is required regardless of whether a proposal is assessed by the EPA and which is required to be approved prior to any ground disturbance activities, generally does not have an expiry date and continues to have effect for the life of the Mining Lease including any extension for the term that might be granted.

The DMP advised that the approval processes provide for a comprehensive assessment of a Mining Proposal to manage potential associated environmental impacts. The EPA noted that through the assessment process the DMP liaises with relevant regulators, such as Parks and Wildlife and the DoW, to ensure that proposed impacts are well understood and appropriate management measures are implemented. If a lease is granted, the DMP can impose legally binding conditions, endorsements and environmental performance bonds to regulate the activities to meet desired environmental outcomes.

Parks and Wildlife advised that land within a State Forest within the meaning of the *Conservation and Land Management Act 1984* (the CALM Act), requires the concurrence of the Minister for Environment before the Minister for Mines can consent to mining under the Mining Act. Parks and Wildlife advised that the nature, scale and extent of proposed mining impacts are generally key considerations in relation to the provision of concurrence.

Taking the above into account, the EPA's view that the potential environmental values associated with this proposal can be adequately evaluated, regulated and mitigated by the DMP, Parks and Wildlife, and the DoW to meet the its objectives for the environmental factors identified for the proposal is supported.

## **OTHER MATTERS**

In addition to the matters considered above, the appellant put forward a number of other considerations which it contended were relevant to the Minister forming the view that the proposal should be remitted to the EPA for formal assessment.

### **Defence under section 74A**

The appellant submitted that the decision not to assess the proposal deprives the proponent of the ability to rely on the defence provided under section 74A of the EP Act for future required action to clear regrowth that may have a significant effect on the environment. If the proposal is not assessed then a clearing permit would be required for clearing future remnant or regrowth vegetation at the site and section 74A provides equivalent status to clearing conducted in accordance with a clearing permit as it does an implementation statement.

### **Strategic assessment delays**

The appellant is also of the view that with the EPA's decision not to assess the proposal, the proposal is 'effectively left to standard decision-making processes which are themselves 'on hold pending progress on the Strategic Assessment. The appellant contended that the uncertainty around the timing of the finalisation of the Strategic Assessment could delay bringing to market critical sand resource for the Western Australian building industry and therefore the proposal should be assessed and approved under Part IV of the EP Act to avoid potential sand supply constraints.

It is unclear as to the basis of the appellant's claims that other statutory processes are on-hold pending the outcome of the Strategic Assessment. It is understood that decision making authorities can continue to assess and make decisions on proposals within the Strategic Assessment area pending the finalisation of the assessment.

## **CONCLUSIONS AND RECOMMENDATION**

For the reasons stated above, it is considered that the EPA was justified in forming the view that the environmental impacts from the proposal are not so significant as to warrant formal impact assessment and the subsequent setting of conditions by the Minister for Environment under Part IV of the EP Act.

Advice obtained from relevant Departments also supports the EPA's view that potential impacts from the proposal can be adequately evaluated, regulated and mitigated by the DMP, Parks and Wildlife, and the DoW to meet the EPA's objectives for the environmental factors identified for the proposal.

It is therefore recommended that the appeal be dismissed.

Emma Gaunt  
APPEALS CONVENOR

**Investigating Officer:**  
Stephanie Turner, Senior Environmental Officer