



Environmental Protection Act 1986

**Hon Donna Faragher JP MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

**AGAINST THE ENVIRONMENTAL PROTECTION AUTHORITY
DECISION TO SET A LEVEL OF ASSESSMENT OF PUBLIC
ENVIRONMENTAL REVIEW (PER) WITH A SIX WEEK PUBLIC
REVIEW PERIOD FOR THE ROE HIGHWAY EXTENSION,
KWINANA FREEWAY TO STOCK ROAD, COOLBELLUP**

Purpose of this document

This document sets out the Minister's decision on appeals lodged against the decision of the Environmental Protection Authority (EPA) to set a level of assessment of Public Environmental Review (PER) with a six week public review period. 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:

Mr Tony Weeks;
Wetlands Conservation Society;
Senator Scott Ludlam;
Ms Heather Atwell;
Mr James Shuttleworth;
South East Regional Centre for Urban Landcare;
Bocking Family;
Ms Narelle Ramage;
Conservation Council of Western Australia;
Ms Jenni Cackle;
Ms Felicity Anne McGeorge;
Urban Bushland Council WA

Proponent:

Main Roads Western Australia (MRWA)

Proposal description:

Roe Highway Extension, Kwinana Freeway to Stock Road, Coolbellup

Minister's Decision:

The Minister upheld the appeals in part.

Date of Decision:

2 November 2009

REASONS FOR MINISTER'S DECISION

A total of twelve appeals were received in relation to this matter.

Pursuant to section 106 of the *Environmental Protection Act 1986* (the EP Act), the Minister has obtained a report from the EPA on the matters raised in the appeals. The Minister has also received a report from the Appeals Convenor. The Appeals Convenor's report sets out the background and other matters relevant to the appeal.

The Appeals Convenor advised that, where possible, meetings and discussions were held with appellants and with representatives from Main Roads Western Australia (MRWA).

The proposal that is the subject of these appeals is the Roe Highway extension from Kwinana Freeway in Jandakot to Stock Road in Coolbellup.

Most appellants submitted that the level of assessment set for this proposal is inadequate, and that the proposal should be assessed more fully and more publicly at the level of Environmental Review and Management Programme (ERMP). Other appellants submitted that the proposal should be assessed through a public inquiry or that the level of assessment should be set at "Proposal Unlikely to be Environmentally Acceptable" (PUEA).

The Minister noted that appellants contended that the EPA's decision to set the level of assessment at PER for this proposal is inconsistent with its conclusion in Bulletin 1088 of February 2003. In particular, the Minister understood that appellants were concerned about the impact on the wetlands, remnant vegetation and flora, fauna, ecological linkages, Aboriginal heritage, residential amenity, and recreation and educational values of the area.

Furthermore, appellants submitted that the public review period of six weeks set by the EPA is insufficient to adequately assess and review the complex documentation involved with a proposal of this significance.

The Minister was aware that this proposal raises a number of environmental factors, many of which are reflected in the appeals. In considering these matters, the EPA is guided by the Environmental Impact Assessment Administrative Procedures (2002), which sets out the procedures for dealing with referrals and assessment of proposals.

The Administrative Procedures prescribe that the PER level of assessment will typically be applied to proposals of local or regional significance that raise a number of significant environmental factors, some of which are considered complex and require detailed assessment to determine whether, and if so how, they can be managed.

In the case of the Roe Highway Extension, both the EPA and the Appeals Convenor have advised that the PER level of assessment is in accordance with the Administrative Procedures and properly characterises the potential impacts of the proposal. The EPA did not consider it necessary to assess the proposal as an ERMP

as the environmental issues related to the proposal can be adequately considered at the PER level of assessment.

In regard to some appellants seeking a PUEA level of assessment, the Minister noted that under the EPA's Administrative Procedures a PER is a more comprehensive level of assessment involving a greater degree of public consultation. The Minister also noted that the EPA has advised that its previous advice in Bulletin 1088 was provided in the absence of a specific proposal and considered the full extent of the relevant road reserve. The EPA's view is that the area impacted by the current specific proposal, which directly impacts on less than half of the reserve, warrants formal assessment. The EPA considers that this assessment should be conducted in a manner which provides the proponent with an opportunity to demonstrate whether it can manage the potential impacts of the proposal in a manner which meets the EPA's objectives. In those circumstances, the Minister considered it appropriate that the EPA undertake an assessment at the PER level.

The Minister was also advised that a public inquiry is not warranted in the circumstances of this case. The Appeals Convenor advised the Minister that a PER level of assessment in accordance with the Administrative Procedures, in a manner that does not involve a public inquiry, provides a mechanism for the proposal to be the subject of a thorough and adequate assessment.

The Minister also noted the Appeals Convenor's advice that a public inquiry does not extend the scope of the environmental impact assessment process for this proposal to cover broader economic and social factors beyond the environmental factors which the EPA is entitled to consider under the EP Act.

However, in regard to concerns about public consultation, the Minister believed there is merit in the Appeals Convenor's recommendation that the period of public review be extended beyond six weeks. The Minister noted this view is shared by the appellants, MRWA and the EPA.

Having considered the EPA's and Appeals Convenor's advice, the Minister was of the view that the proposal can be adequately assessed through the proposed PER, with a 12 week public comment period. The Minister came to this view noting that this level of assessment is both comprehensive and provides significant opportunities for public input.

It follows that the Minister allowed the appeals to the extent that the proposal be assessed in a manner that involves the extension of the public comment period from six weeks to twelve weeks. The Minister has otherwise dismissed appeals.

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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