



Environmental Protection Act 1986

**Hon Bill Marmion MLA
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST THE REPORT AND RECOMMENDATIONS OF THE ENVIRONMENTAL PROTECTION AUTHORITY RED HILL QUARRY DEVELOPMENT (REPORT 1381)

Purpose of this document

This document sets out the Minister's decision on appeals lodged in objection to the report and recommendations of the Environmental Protection Authority (EPA) for 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:	Mr W Macham Cement Concrete and Aggregates Australia Hanson Construction Materials Pty Ltd
Proponent:	Hanson Construction Materials Pty Ltd
Proposal Description:	Red Hill Quarry Development, located on Lot 11 Toodyay Road, Red Hill, and approximately 25 kilometres north east of Perth on the Darling Plateau. The proposal is to extend the existing quarry to the north west, increase the quarry area by approximately 75 hectares, and increase the quarry throughput to 1,500,000 tonnes per year.
Minister's Decision:	The Minister allowed the appeals in part.
Date of Decision:	16 December 2011

REASONS FOR MINISTER'S DECISION

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

By way of summary, the key concerns raised relate to potential impacts to Aboriginal heritage sites, landscape and visual amenity, and fauna and fauna habitat.

The Minister noted that the following matters were raised in the appeals:

- concern regarding the lack of information provided during the assessment of the proposal with respect to flora and fauna, and the regulation and management of the existing quarry operations;
- objection to the EPA's report, including that the assessment was inconsistent with the information submitted, relevant policy and previous assessments;
- concern that the EPA's recommendations would impact on quarry development generally, and increase the cost of providing basic raw materials to the housing industry; and
- the view that the EPA is not the appropriate body through which impacts to Aboriginal heritage sites should be considered.

Aboriginal heritage sites

By this appeal ground, the Minister noted that two appellants contested the EPA's role under the EP Act in making recommendations regarding Aboriginal heritage sites, and concluded that to be consistent with previous decisions, the proper approach for the proposal would be to note that the proponent must comply with the *Aboriginal Heritage Act 1972*.

During the appeal process, the proponent agreed that the EPA had the capacity to consider Aboriginal heritage to be a key environmental factor and that the EPA is required to make recommendations on a key environmental factor. The proponent was of the view however that Aboriginal heritage issues can be managed under the *Aboriginal Heritage Act 1972*.

In its report, the EPA noted that the sites as a whole constitute a representation of the culture and life of the Aboriginal people and that sites used for the collection of traditional bush tucker and medicine would be cleared. The EPA also considered advice from the Department of Indigenous Affairs that the combination of sites such as those at Red Hill are rare in the Metropolitan area. In Report 1381 the EPA noted that the likely impact of implementing the proposal would be the destruction of the Aboriginal heritage sites. The EPA therefore concluded that the proposal cannot be managed to ensure that changes to the biophysical environment do not adversely affect historical and cultural associations and thus the proposal does not meet the EPA's objective for Aboriginal heritage sites. In response to the appeals, the EPA advised that the location of the Aboriginal heritage sites makes the quarry extension to the north unable to be implemented if these sites are to be protected.

The EPA agreed with the appellants that it may be preferable for Aboriginal heritage issues to be resolved through comprehensive consultation and negotiation between proponents and the relevant Aboriginal groups. However, the EPA was of the understanding that the Aboriginal groups had expressed concerns and opposition to the destruction of the sites. Also, the EPA stated that the proponent has been unwilling to change the proposal in order to protect the sites. The EPA advised that at

the time of publishing Report 1381, it had not been informed of any agreement being reached between the proponent and the Aboriginal groups.

During the appeals process, the proponent provided details of consultation undertaken with Aboriginal people from September 2008 to April 2011. The proponent advised that it continues to engage in negotiations and, subsequently advised that it had withdrawn its application under section 18 of the *Aboriginal Heritage Act 1972* to remove the sites.

The proponent also put forward draft conditions that it submitted could be applied to the proposal to limit development over most of the proposed quarry area. The proponent submitted that these conditions would address the concerns raised by the EPA in respect to Aboriginal heritage issues. The proponent's draft conditions are detailed in the Appeals Convenor's report, and essentially limit the development of the quarry to part of proposed stages 1 and 2, and the whole of stage 12. The Minister understood that the intent of this option was to identify a mechanism which would address the EPA's concerns in respect to Aboriginal heritage, but which could be reconsidered at a later stage through a review of conditions under section 46 of the EP Act.

On the information provided, the Minister believed the EPA is empowered to consider Aboriginal heritage as a key environmental factor and for that purpose make recommendations on that factor. In this regard the Minister noted the Appeals Convenor's conclusion that the EPA's recommendations are justified and consistent with the environmental values of the site.

However, as noted above, the proponent put forward suggested conditions which would limit the extent of the proposal such that impacts on Aboriginal heritage sites would be reduced.

The Minister was of the view that impacts on Aboriginal heritage could be managed through the application of conditions, and therefore allowed this ground of appeal. Consistent with section 45(1) of the EP Act, the Minister will consult with relevant decision making authorities on whether or not the proposal should be implemented and, if that proposal may be implemented, to what conditions and procedures to protect the Aboriginal heritage sites on the property that implementation should be subject.

Visual amenity and landscape

Under this appeal ground, two appellants contended that assessment of visual amenity and landscape matters should be addressed through the planning processes under the City of Swan Local Planning Scheme No. 17; and considered that visual amenity could be adequately managed through appropriate conditions.

The Minister understood from Figure 4 in Report 1381 that the majority of the proposed development footprint is within the 'Landscape' zone of the City of Swan Town Planning Scheme 17, with the remainder of the site zoned 'Resource'. The site is zoned 'Rural' under the Metropolitan Region Scheme. The purpose of the Landscape zone in the local planning scheme is, among other things, to provide for low density rural residential development and associated rural-residential activities, recognising the visual characteristics of the landscape.

It is also noted that the EPA considered that the area is of high heritage and social significance, and meets the Guidance Statement 33 criteria for other important landscapes and landforms as it includes ridgelines, riverscapes and scarps.

The EPA also noted advice from the Department of Planning that the northern portion of the proposal contains significant landscape features, such as steep slopes, rock formations, varied and diverse vegetation communities, ridge and riverine features, and that removal of these features would have a significant impact on the landscape character of the area and would not comply with the objective of the local planning scheme Landscape zoning.

During the appeal process, the proponent submitted that the proposal area is not an area of high heritage and social significance, but acknowledged that the proposal site includes a ridgeline and, therefore, falls within the definition of important landscapes and landforms in Guidance Statement 33. The Minister was advised that the proponent also gave a presentation to the Office of the Appeals Convenor showing three-dimensional imagery of visual impacts of the proposal from various points outside the property boundaries. The Minister understood that the properties most exposed to visual impacts are those situated north west to north east of the proposed development area. The proponent advised that small modifications to the quarry boundary may be possible to further reduce visual impacts and would be considered during the detailed design phase.

The Minister also noted that the landscape and visual assessment undertaken had indicated that some modifications could be made to the proposal to reduce the visual impacts. If the area to be developed was reduced as proposed by the proponent, the visual impacts would be further reduced.

The Minister therefore formed the view that impacts on visual amenity can be managed through the application of conditions, and therefore allowed this ground of appeal.

Consistent with section 45(1) of the EP Act, the Minister will consult with relevant decision making authorities on whether or not the proposal should be implemented and, if that proposal may be implemented, to what conditions and procedures to reduce the impact on visual amenity that implementation should be subject.

Fauna and fauna habitat

The Minister understood that the three main issues raised with respect to fauna and fauna habitat included impacts to the reptile assemblage and gravelly soil heath around granite outcrops habitat; fragmentation of habitat and impacts to ecological corridors; and impacts to fauna habitat.

The proposal as assessed by the EPA would result in the clearing of 80 hectares of fauna habitat over 100 years. The proponent proposed to progressively rehabilitate mined areas once quarrying operations are concluded.

In its assessment of this factor, the EPA found that the proposal area has regional value for fauna because it contains a range of habitats which support a significant faunal assemblage. Both the EPA and the proponent also identified that the significant habitats most affected by the proposal would be the areas of granite

outcrops with associated heaths on gravelly sands and eucalypt woodlands. The EPA's report identified that the reptile assemblage present had not been recorded anywhere else and is unique in the context of current knowledge in that it includes Coastal Plain, Darling Range and Wheatbelt species. The proponent noted that similar habitat exists in the northern portion of Lot 11 which would not be disturbed by the proposed development.

The EPA also reported that the site supports species of conservation significance and species that have declined locally due to clearing on the coastal plain. The EPA was of the view that the proposal would fragment habitats and severely reduce connectivity between remnant vegetation. In particular, the EPA was of the view that the western extension should be protected as it contains important feeding habitat for black cockatoos and provides a well vegetated corridor between the adjacent conservation areas.

In considering this appeal ground, the Appeals Convenor noted that the proponent proposed to establish a western and eastern north-south corridor, east-west corridor and buffer requirements along the Susannah Brook, however, it was noted that only the western north-south corridor was proposed to be secured under a conservation covenant. It was also noted by the Appeals Convenor that the impact to the reptile assemblage and gravelly soil heath around granite outcrops habitat has not been adequately addressed within the proposed management and mitigation measures.

Taking into account the information presented in respect to this ground of appeal, the Appeals Convenor found that the EPA was justified in forming the view that the proposal did not meet its environmental objectives for fauna and fauna habitat. The vegetation proposed to be cleared, particularly the western expansion, will impact on habitat for conservation significant fauna, including black cockatoos. While the proponent proposed to rehabilitate the area after mining, the EPA considered that this rehabilitation is unlikely to restore native vegetation that was present prior to clearing. In respect to the corridor to the west of the former quarry site at Herne Hill, it was noted that the proposed corridor is on the edge of the scarp, is sparsely vegetated and contains areas undergoing rehabilitation.

The Minister noted that similar habitat exists in the northern portion of Lot 11 which would not be disturbed by the proposed development.

The Minister was of the view that impacts on fauna and fauna habitat could be managed through the application of conditions to reduce the extent of the proposal's impacts on fauna and fauna habitat, including on-site mitigation and consideration of offsets for residual impacts, and therefore allowed this ground of appeal.

Consistent with section 45(1) of the EP Act, the Minister will consult with relevant decision making authorities on whether or not the proposal should be implemented and, if that proposal may be implemented, to what conditions and procedures to protect fauna and fauna habitat on the property that implementation should be subject.

Information provided for assessment

One appellant contended that the assessment of the biodiversity values present on the site was not sufficient, and that as such, the proposal should not be approved. In

the Minister's view, the EPA had sufficient information to make the recommendations that it made.

Other grounds of appeal and other matters

The appeals raised a number of other grounds of appeal and other matters, including procedural fairness, consideration of offsets and the application of the principles under the EP Act. One appellant also raised matters relating to the regulation and management of the existing quarry operations.

In relation to these other grounds of appeal and other matters, the Minister considered the Appeals Convenor's advice and determined these grounds of appeal in accordance with the recommendations in that advice.

Finally, the Minister received a submission regarding the adequacy of the original assessment of the Red Hill Quarry. Whilst this submission was no longer an appeal ground (having been withdrawn), the Minister intends to consider this issue further through the section 45 consultation process.

Conclusion

Having considered the grounds of appeal, the EPA section 106 report, the proponent's response, and the Appeals Convenor's report, the Minister was of the view that conditions such as those put forward by the proponent could be applied to the proposal to reasonably reduce, manage, mitigate and offset impacts on environmental factors. For this reason, the Minister allowed the proponent's appeals in part.

Consistent with section 45(1) of the EP Act, the Minister is now required to consult with relevant decision making authorities and attempt to reach agreement as to whether or not the proposal should be implemented, and if so, the conditions to which the 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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