



Environmental Protection Act 1986

Hon Amber-Jade Sanderson MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST REPORT AND RECOMMENDATIONS OF EPA REPORT 1703 – SHARK BAY MAINTENANCE DREDGING

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section 100(1)(d) of the *Environmental Protection Act 1986* in objection to the above report. 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:	Shark Bay Prawn Trawler Operators' Association
Proponent:	Shark Bay Resources Pty Ltd
Proposal description:	The proposal is to undertake dredging and seabed levelling activities to restore navigable depths. The proposal involves seabed levelling of up to 10,000 cubic metres in the berth pocket, and maintenance and capital dredging of up to 80,000 cubic metres in the entrance channel with offshore disposal of the dredge material.
Minister's Decision:	The Minister allowed the appeal in part
Date of Decision:	12 October 2021

REASONS FOR MINISTER'S DECISION

An appeal was received from the Shark Bay Prawn Trawler Operators' Association against the Environmental Protection Authority's (EPA) report and recommendation for the above proposal. The Minister noted the Association was supported by the Western Australian Fishing Industry Council Inc during the appeal investigation.

The appeal was based on concerns about the EPA's assessment of the proposal, including the location of dredge spoil disposal. In summary, the appellant sought for the EPA to assess a disposal site outside of Shark Bay. The appellant requested a new condition requiring that the proponent avoid key ecological windows for scallop spawning, being between May and July. If this period could not be avoided, the appellant requested additional monitoring of saucer scallop abundance before and after the disposal activity.

Decision

Having considered the information available to her, including the EPA's response to the appeal and the Appeals Convenor's report and recommendation, the Minister was satisfied that the EPA's assessment of the proposal was generally appropriate given the small scale and short duration of the activity.

However, noting that there was some uncertainty as to whether the identified zone of high impact from dredge spoil disposal will intersect with a seasonal extension to the Denham Sound boundary of the Shark Bay Scallop managed fishery, the Minister agreed with the Appeals Convenor that an additional condition should be applied to the proposal requiring the proponent to avoid spoil disposal between May and July. This additional requirement will minimise and mitigate potential impacts to a key ecological window for this species.

The Minister otherwise dismissed the appeal. The reasons for her decision are below.

EPA's assessment

The Minister was advised that the proponent referred the proposal to the EPA in June 2020 and that the EPA decided to assess the proposal based on the documentation provided along with additional supporting information. The proponent submitted analysis of several options for dredge disposal locations, including offshore and on land. The EPA assessed the referred proposal, including the preferred disposal location adjacent to the entrance channel, and had regard for:

- the previous use of this location as a dredge spoil disposal site,
- the location being largely bare sand and rubble, minimising impacts to seagrass,
- the short duration and localised extent of the disposal activities,
- the low severity of the expected turbidity plume, and
- the minimisation measures already adopted by the proponent to reduce the impact of the activity.

The Minister was advised that the proponent and EPA did consider an option to dispose of spoil in waters outside of Shark Bay, however for the reasons above, did not find that it was necessary. Noting the limited extent and duration of the proposed activity, the EPA's conclusion was appropriate.

Overall, the EPA concluded that the proposal, including the disposal of dredge spoil at the selected location, could meet its objectives for relevant environmental factors, and recommended that the proposal be implemented subject to conditions.

Impacts to commercial fisheries

The Minister acknowledged the appellant's specific concerns about the potential impact of dredge disposal on saucer scallops and other commercial fisheries in the area.

In this regard, the Minister understood that the proponent provided modelling of sedimentation caused by disposal activities, in accordance with *EPA Technical Guidance – Protection of benthic communities and habitats*. The modelling determined the extent, duration, and severity of sedimentation, and identified a zone of high impact of approximately 2 hectares and a zone of moderate impact of 27 hectares in the vicinity of the disposal area. The proponent also undertook hydrodynamic plume modelling to predict the extent, duration, and severity of turbidity plumes.

The Minister was advised that the results from this modelling indicated that within the zone of high impact, sedimentation levels may impact marine fauna, including saucer scallops, and maximum turbidity levels are likely to occur for up to 24 hours, returning to background levels within 28 days. The EPA had regard for these results in the context of the environmental values present, and considered:

- the small spatial extent of the zone of high impact and what it might mean for scallops, prawns, and snapper,
- the tolerance of turbidity of prawns and crabs,
- the exposure thresholds of snapper eggs and larvae to suspended solids,
- the natural mortality rates of snapper eggs and larvae.

While the EPA acknowledged that there may be impacts to scallops within the zone of high impact, the EPA has required the proponent to ensure that outside of the zone of high impact, there is no irreversible impact to benthic communities and habitats. The EPA has also recommended the proponent undertake monitoring to demonstrate this outcome is achieved, along with conditions requiring that water quality return to previous conditions within one month of the activity.

In relation to the appellant's concern about key ecological windows for scallop spawning, the EPA determined not to include a condition restricting the timing of activities due to the difficulty of choosing an optimal time for all species.

However, the Minister noted that the Appeals Convenor's investigation identified that there is some uncertainty around the boundaries of the Shark Bay Scallop managed fishery, and that a seasonal extension (Denham Sound Extension 2) may intersect with the zone of high impact, were it to be open to trawling.

In the context of this uncertainty and noting that the proponent has committed to undertaking the proposed activities outside of the key ecological window for scallop spawning, the Minister considered that an additional condition to this effect should be required.

Next steps

The Minister will now commence consultation with relevant decision-making authorities as to whether or not the proposal may be implemented, and the conditions which apply to any such implementation, under section 45(1) of the *Environmental Protection Act 1986*. The final wording of the conditions applying to the proposal's implementation will be determined through that process.

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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