



Environmental Protection Act 1986

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

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST EPA DECISION NOT TO ASSESS: DERBY BARGE FACILITY, SHIRE OF DERBY-WEST KIMBERLEY

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 100(1)(a) of the *Environmental Protection Act 1986* in objection to the above EPA decision not to assess. 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:	Hon Robin Chapple (retired Member for the Mining and Pastoral Region) and Environs Kimberley
Proponent:	Colonial Marine Consultants Pty Ltd
Proposal description:	Development of the Derby Barge Facility at the Port of Derby.
Minister's Decision:	The Minister dismissed the appeals.
Date of Decision:	10 June 2021

REASONS FOR MINISTER'S DECISION

The proposal is for the development of a barge facility, to relocate the proponent's existing operations at the Port of Derby. The Environmental Protection Authority (EPA) considered that the likely environmental effects of the proposal were not so significant as to warrant formal assessment because of the small extent and the minimal predicted impacts, also noting that other statutory processes are relevant.

The Minister understood the key concerns raised in the appeals included impacts to mangroves, coastal processes, dredging, comprehensive environmental assessment, public engagement, a tidal weir and land access. Broadly the appellants contended that potential impacts associated with the proposal require formal assessment by the EPA.

Decision

Having considered the information available, including the EPA's responses to the appeals and the Appeals Convenor's report, the Minister considered the EPA's decision not to assess the proposal was appropriate. The Minister also noted that other approvals apply to the proposal, including *Part V Division 2 (Clearing) of the Environmental Protection Act 1986*. The Minister therefore decided to dismiss the appeals.

The Minister noted that an appellant raised matters relating to vessel safety, however they were considered to be beyond the scope of the appeal.

Mangroves

The Minister understood that the appellants considered that impacts to mangroves from the proposal had not been adequately assessed by the EPA and that alternative locations should have been considered to avoid disturbance to mangroves.

The EPA advised that it considered the proposal as referred and in this case formed the view that impacts to mangroves from construction are small and localised. The EPA considered that there was relevant and adequate information to assess the potential environmental impacts from the proposal on benthic communities and habitat including an evaluation of potential impacts to mangroves from the proposal.

In relation to the direct impact to mangroves, an appellant identified potential discrepancies in the information available. In responding to the appeals, the EPA clarified that there will be a loss of 2.35 hectares (ha) of the mangrove community, not 1.75 ha as published in the EPA's decision not to assess. Notwithstanding this error, the EPA advised that it did consider the full 2.35 ha in the spatial data it relied on to make its decision.

The EPA maintained its view that impacts represent a small incremental loss of mangrove community within a broader expanse of intact mangrove communities and habitats in King Sound. The EPA also noted that a native vegetation clearing permit will be required which can consider impacts to mangroves at that time.

In relation to sedimentation, the Minister accepted the EPA's advice that the proposal will not significantly affect the sedimentation processes in King Sound and impacts can be managed by the proponent's mitigation and management measures.

Coastal processes and dredging

Appellants raised concerns that the EPA had not adequately assessed the impacts on coastal processes and considered it was unclear how dredging would be managed.

In relation to potential impacts on coastal processes, the Minister noted that the proposal is located within an existing disturbed area and next to an existing jetty. The EPA advised that minimal impacts to tidal currents are anticipated, and coastal processes can be considered in the development approval, which will be required under the *Planning and Development Act 2005*.

The Minister understood the potential impacts from dredging are anticipated to be small, localised, and short term. The proponent proposed management and mitigation measures to manage dredging activities, including sediment sampling, and testing of fill and rock materials, which the EPA found to be adequate.

Tidal weir and land access rights

The Minister understood that an appellant raised concerns that the proponent's referral documentation showed a tidal weir as part of the proposal and that there was no consideration of the potential environmental impacts. The EPA and the proponent clarified that the tidal weir does not form part of this proposal and would require separate approvals should this be progressed in the future.

Concerns were also raised relating to the proponent's access rights to all of the proposed development area. The EPA advised that a formal lease, issued by the Department of Transport and Kimberley Ports Authority, would be required.

Environmental assessment and public engagement

The appellants considered that the EPA should formally assess the proposal as this would allow for the consideration of alternative locations, design optimisation and public input into management plans.

In relation to alternative locations and designs, the EPA advised that it could only consider the proposal as referred. The Minister was aware that there has been opportunity for public input, including the EPA's seven-day public comment period. The Minister was advised that there will be opportunities for engagement with interested parties in the development of management plans required under other regulatory processes such as a development approval.

In summary, noting the small scale of the proposal, that any predicted impacts are expected to be localised and short term, and that there are other regulatory processes in place that can consider them, the Minister determined that the EPA was justified in deciding that the proposal was not so significant as to warrant formal assessment.

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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