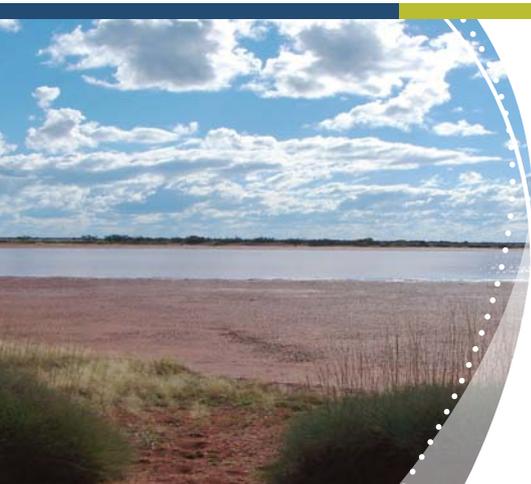




Report and recommendations of the Environmental Protection Authority



Industrial subdivision of Lot 21 Webster Road Forrestfield - inquiry under section 46 of the *Environmental Protection Act 1986* to amend Ministerial Statement 841

Alison Papagioftsis, Marilyn Cacavas,
and Robert Peters

Report 1590

December 2016

ENVIRONMENTAL PROTECTION AUTHORITY
REPORT AND RECOMMENDATIONS TO THE MINISTER FOR
ENVIRONMENT

**INDUSTRIAL SUBDIVISION OF LOT 21 WEBSTER ROAD FORRESTFIELD
- INQUIRY UNDER SECTION 46 OF THE *ENVIRONMENTAL PROTECTION
ACT 1986* TO AMEND MINISTERIAL STATEMENT 841**

The Minister for Environment has requested that the Environmental Protection Authority (EPA) inquire into and report on the matter of changing the implementation conditions relating to the *Industrial Subdivision of Lot 21 Webster Road Forrestfield* proposal in order to extend the “Commencement and Time Limit of Approval” for substantial commencement (condition 4).

The following is the EPA’s Report and Recommendations (No. 1590) to the Minister pursuant to section 46(6) of the *Environmental Protection Act 1986*.

Background

The Industrial Subdivision of Lot 21 Webster Road, Forrestfield proposal is to subdivide Lot 21 Webster Road, Forrestfield into seven (7) industrial lots as documented in Schedule 1 of Ministerial Statement 841. The EPA assessed the proposal at the level of Informal Review with Public Advice but later upgraded the assessment to Consultative Environmental Review on appeal to the Minister for Environment. The EPA considered the following key environmental factors relevant to the proposal required detailed evaluation in its Report and Recommendations to the Minister:

- Vegetation; and
- Aboriginal Heritage.

Applying the current¹ Environmental Assessment Guideline for Environmental Principles, *Factors and Objectives* (EAG 8, January 2015), these factors are now represented by:

- Flora and vegetation;
- Heritage; and
- Offsets (Integrating Factor).

The EPA concluded in EPA Report 1140 that the proposal could be implemented if there was satisfactory implementation by the proponent of the recommended conditions. This included development of a mitigation strategy

¹ This inquiry was completed before the release of the EPA’s December 2016 *Statement of Environmental Principles, Factors and Objectives* and related Factor Guidelines.

as a contribution to meeting the broader objective of protecting neighbouring areas with significant ecological value.

Subsequent to finalising appeal determinations 107-109 of 2004 (22 February 2010) the Minister for Environment approved the proposal for implementation, subject to the implementation conditions of Ministerial Statement 841 (30 September 2010).

Requested changes to conditions

Condition 4-1 of Ministerial Statement 841 requires the proponent to substantially commence the proposal within five years of the date of issue of the Statement (ie, by 30 September 2015).

The proposal has not yet substantially commenced and the proponents for the proposal, Alison Papagioftsis, Marilyn Cacavas and Robert Peters, have requested an extension of the timeframe for substantial commencement for a further five years, to 30 September 2020.

Application of relevant EPA Policies and Guidelines

In inquiring into the change to conditions, the EPA has considered relevant published EPA policies and guidelines for each of the key environmental factors identified above and the relevant matters are outlined in Table 1.

The EPA notes that other published policies and guidelines were also considered but not determined to be relevant.

Inquiry into the requested change to conditions

The EPA recommends imposing a substantial commencement timeframe implementation condition so that the conditions relating to a proposal can be reviewed within a reasonable timeframe to ensure:

- consideration is given to changes in the environment, scientific or technology knowledge arising since the initial assessment; and
- proposals are being implemented using best practice and contemporary methods so that the EPA objectives for the relevant key environmental factors are met.

The EPA has discretion as to how it conducts this inquiry. The currency of the initial assessment and issue of the Ministerial Statement (that is, when it was published) is also instructive in determining the extent and nature of the inquiry under section 46. Ministerial Statement 841 was published on 30 September 2010.

Inquiry Findings

In conducting this inquiry the EPA reviewed the information provided by the proponent. In considering whether it should recommend an extension of the Time Limit for Proposal Implementation for the implementation of the proposal, the EPA also considered whether there is any new relevant information in relation to the assessment of the potential impacts of the proposal.

The EPA has assessed the information provided by the proponent, and the relevant environmental factors.

Flora and Vegetation

The subdivision of Lot 21 would result in all 1.84 hectares of the remnant vegetation being cleared. This will include:

- clearing of a Threatened Ecological Community – *Banksia attenuata* woodland over species rich dense shrublands;
- clearing of Declared Rare Flora *Conospermum undulatum* and Priority 3 flora *Isopogon drummondii*; and
- loss of fauna habitat.

The EPA's objective for the environmental factor Flora and Vegetation is:

To maintain representation, diversity, viability and ecological function at the species, population and community level.

The EPA was particularly concerned about the significant ecological values of the area with the EPA's preference for the vegetation on this site to be retained and secured for conservation. However, the EPA considered that, if Lot 21 could not be secured for conservation, the proposal could be implemented with a mitigation strategy developed as a contribution to meeting a broader objective of protecting other areas with significant ecological attributes.

Condition 7 of Statement 841 required development of a mitigation strategy which included:

- 1 A rehabilitation plan for the rehabilitation of no less than six hectares of degraded vegetation (as defined in Keighery, 1994) within Bush Forever Site 319 (reserve 37997), for a minimum period of three years;
2. Fencing of the perimeter of Lot 50 Smokebush Place, High Wycombe, and development of a management plan for the site; and
3. Funding for a university scholarship for research into methods to ensure the long-term conservation of *Conospermum undulatum* to a minimum value of \$130,000.

A mitigation strategy was developed in consultation with the Department of Parks and Wildlife (Parks and Wildlife), and endorsed by Parks and Wildlife in August 2014. The mitigation strategy was approved by the Office of the Environmental Protection Authority in October 2014.

In addition to the above, in May 2014 the Commonwealth Department of the Environment provided approval to clear and develop Lot 21 Webster Road Forrestfield under the *Environment Protection and Biodiversity Conservation Act 1999*.

The EPA considers that there has been no significant changes to the outcome for this key environmental factor, and is satisfied that existing implementation conditions 6 (Approval to Clear) and 7 (Mitigation Strategy) will continue to address the relevant environmental factor to offset the impacts of the proposal.

The EPA also considers that the implementation of the mitigation strategy is consistent with its Perth and Peel @ 3.5 Million – Interim Strategic Advice to the Minister for Environment (July 2015) under section 16(e) of the *Environmental Protection Act 1986*, which identifies the need for the

development of avoidance and mitigation of environmental impacts in long term planning.

Heritage

The EPA's objective for this environmental factor is:

To ensure that historical and cultural associations, and natural heritage, are not adversely affected.

The Department of Indigenous Affairs (DIA, now Department of Aboriginal Affairs) advised that there were no Aboriginal heritage sites located directly within Lot 21; however, there are a number of significant sites, both archaeological and ethnographic, in the general area. The DIA recommended that an ethnographic and archaeological survey of the area be conducted.

The proponent provided a commitment to undertake an archaeological and ethnographic survey of the site to determine if there are any Aboriginal Heritage sites present prior to the commencement of works.

The EPA considers that there has been no significant change to this environmental factor, and is satisfied that the existing implementation commitment 1 (Aboriginal Heritage) will continue to address the relevant environmental factor, and manage and mitigate the potential impacts of the proposal.

Offsets (Integrating Factor)

The EPA's objective for this environmental factor is:

To counterbalance any significant residual environmental impacts or uncertainty through the application of offsets.

The EPA considers that there have been no significant changes to the outcome for this key environmental factor, and is satisfied that existing implementation condition 7 (Mitigation Strategy) will continue to address the relevant environmental factor to offset the impacts of the proposal.

In consideration of the information provided by the proponent and relevant EPA policies and guidelines, the EPA considers that:

- there is no significant new or additional information that justifies the reassessment of the issues raised by the proposal;
- there has been no new significant change in the relevant environmental factors since the proposal was assessed by the EPA in Report 1140 (June 2004); and
- no new significant environmental factors have arisen since the EPA's assessment of the proposal.

The EPA is therefore satisfied that that the following existing implementation conditions and commitments will continue to address the relevant environmental factors, and manage and mitigate the potential impacts of the proposal:

- condition 7, Mitigation Strategy; and
- commitment 1, Aboriginal Heritage.

EPA Conclusions and Recommendations

Having inquired into this matter, the EPA submits the following recommendations to the Minister for Environment:

1. That it is appropriate to amend condition 4 of Ministerial Statement 841 to allow for the timeframe for substantial commencement of the *Industrial Subdivision of Lot 21 Webster Road Forrestfield* proposal to be extended by a further five years, to 30 September 2020; and
2. That, after complying with section 46(8) of the *Environmental Protection Act 1986*, the Minister issues a statement of decision to change condition 4 of Statement 841 in the manner provided for in the attached recommended Statement.

OEPA MIN2015-0580

Table 1 – Relevant EPA Policies and Guidelines

Process/ Factor	Policies and guidelines considered relevant	Applied Yes/No	Comments
Change to conditions	Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012.	Yes	The Administrative Procedures provide the principles and practices around the environmental impact assessment process undertaken by the Office of the Environmental Protection Authority.
Change to conditions	Environmental Assessment Guideline (EAG) 1 <i>Defining the Key Characteristics of a proposal</i> , May 2012.	Yes	EAG 1 focuses on how to define the key proposal characteristics. EAG 1 was applied when considering whether the information provided by the proponent showed that there was no significant change in the key characteristics of the proposal.
Change to conditions	EAG 8 - <i>Environmental principles, factors and objectives</i> , January 2015.	Yes	EAG 8: <ul style="list-style-type: none"> • communicates the EPA’s environmental principles, factors and associated environmental objectives; • describes the EPA’s framework for environmental principles, factors and objectives and how they link to EPA guidance; and • outlines the EPA’s expectations for applying environmental principles, government environmental policies, factors, objectives and guidance through environmental impact assessment. In considering the change to conditions EAG 8 was applied when: <ul style="list-style-type: none"> • confirming the key environmental factors identified for the original assessment in the current policy context; • determining whether the identified environmental factors are still relevant and if any new factors should be considered; and • preparing advice on whether the EPA’s environmental objectives can be met.
Change to conditions	EAG 9 - <i>Application of a significance framework in the environmental impact assessment process</i> , January 2015	Yes	EAG 9 describes how the EPA makes decisions, throughout the entire EIA process, on the likely significance of impacts of a proposal. The guideline was applied when assessing the nature, significance and degree of the changes.
Change to conditions	EAG 11 - <i>Recommending environmental conditions</i> , August 2015.	Yes	EAG 11 describes the EPA’s approach to preparing recommended proposal implementation conditions. The guideline was applied when preparing the recommended implementation conditions.
Change to conditions	Environmental Protection Bulletin (EPB) 11 - <i>Consultation on Conditions</i>	Yes	EPB 11 describes the EPA’s requirements to consult with key decision making authorities and the proponent on recommended implementation conditions.

Process/ Factor	Policies and guidelines considered relevant	Applied Yes/No	Comments
	<i>Recommended by the EPA, March 2012.</i>		The guideline was applied when the OEPA consulted with the proponent on changes to conditions.
Flora and Vegetation	<i>Guidance Statement 51 – Terrestrial Flora and Vegetation Surveys for Environmental Impact Assessment in Western Australia, June 2004.</i>	Yes	<p>The objective of the Guidance Statement is to ensure surveys are planned and designed appropriately, and the analysis, interpretation and reporting is of suitable quality and consistent methodology to enable the EPA to judge the impacts of proposal on flora and vegetation, and that the environment, in particular significant flora and vegetation biodiversity, is identified and protected.</p> <p>The guidance was applied when assessing the changes to the implementation conditions. The proponent has not proposed any changes to the design and implementation of the proposal. Existing condition 7 of Ministerial Statement 841 should continue to address impacts on terrestrial flora and vegetation through implementation of the mitigation strategy.</p>
	<i>Position Statement 2 – Environmental Protection of Native Vegetation in WA, December 2000.</i>	Yes	<p>The objective of the Position Statement is to ensure no known species of plant is caused to become extinct as a consequence of the changes to proposal and the risks to threatened species are considered to be acceptable; no association or community of indigenous plants ceases to exist as a result of the changes to the proposal; and the onsite and offsite impacts of the changes to the proposal are identified and the proponent demonstrates that these impacts can be managed.</p> <p>The guideline was applied when assessing the changes to the implementation conditions. The proponent has not proposed any changes to the design and implementation of the proposal. Existing condition 7 of Ministerial Statement 841 should continue to address the relevant environmental factors, and manage and mitigate the potential impacts of the proposal.</p>
	<i>Position Statement 3 – Terrestrial Biological Surveys as an Element of Biodiversity Protection, March 2002.</i>	Yes	The objective of this Position Statement is that Proponents shall demonstrate that all reasonable measures have been undertaken to avoid impacts on biodiversity, where some impact on biodiversity cannot be avoided the proponent shall demonstrate that the impact will not result in unacceptable loss.
	<i>Environmental Protection Bulletin No. 20 - Protection of naturally vegetated areas through planning and development, December 2013.</i>	Yes	<p>The purpose of this Bulletin is to set out the EPA's view on the design of urban and peri-urban development proposals in order to protect naturally vegetated areas. This guideline was applied to determine if the existing implementation conditions would satisfactorily meet the EPA's objective for this environmental factor as there have been no changes to the proposal, or the authorised extent of clearing.</p>
Terrestrial Fauna	<i>Guidance Statement 56 – Terrestrial Fauna Surveys for Environmental</i>	Yes	The purpose of this guidance statement is to provide direction and information on general standards and protocols for terrestrial fauna surveys. No additional surveys

Process/ Factor	Policies and guidelines considered relevant	Applied Yes/No	Comments
	<i>Impact Assessment in Western Australia</i> , June 2004.		were required, however, the Guidelines were used to determine if the existing implementation conditions would satisfactorily meet requirements.
	Technical Guide - <i>Terrestrial Vertebrate Fauna Surveys for Environmental Impact Assessment</i> , September 2010.	Yes	The purpose of this guidance is to ensure adequate data of a high standard is obtained for environmental impact assessment. No additional surveys were required, however, the Guidelines were used to determine if the existing implementation conditions would satisfactorily meet EPA objectives.
	<i>Environmental Protection Bulletin No. 20 - Protection of naturally vegetated areas through planning and development</i> , December 2013.	Yes	The purpose of this Bulletin is to set out the EPA's view on the design of urban and peri-urban development proposals in order to protect naturally vegetated areas. No additional surveys were required; however, the Guidelines were used to determine if the existing implementation conditions would satisfactorily meet EPA objectives.
Heritage	<i>Guidance Statement No. 41 – Assessment of Aboriginal Heritage</i> , April 2004	Yes	The purpose of this guidance statement is to provide information for which the EPA considers when assessing proposal where Aboriginal Heritage is a relevant environmental factor. No additional surveys were required; however, the Guidance Statement was used to determine if the existing implementation conditions would satisfactorily meet EPA objectives.
Offsets	<i>WA Environmental Offsets Policy</i> , September 2011.	Yes	The objective of this policy is to ensure that environmental offsets are applied in specified circumstances in a transparent manner to engender certainty and predictability while acknowledging that there are some environmental values that are not readily replaceable and it serves as an overarching framework to underpin environmental offset assessment and decision making in Western Australia.
	<i>WA Environmental Offset Guidelines</i> , August 2014.	Yes	The purpose of this guideline is to clarify the determination and application of environmental offsets in Western Australia.
	<i>Environmental Protection Bulletin No. 1 – Environmental Offsets</i> , August 2014.	Yes	The purpose of this guideline is to clarify how the EPA will consider offsets through the environmental impact assessment process.

RECOMMENDED ENVIRONMENTAL CONDITIONS

**STATEMENT TO CHANGE THE IMPLEMENTATION CONDITIONS APPLYING TO
A PROPOSAL
(Section 46 of the *Environmental Protection Act 1986*)**

INDUSTRIAL SUBDIVISION OF LOT 21 WEBSTER ROAD, FORRESTFIELD
SHIRE OF KALAMUNDA

Proposal: The subdivision of Lot 21 Webster Road, Forrestfield, into 7 industrial lots, as documented in Schedule 1 of Ministerial Statement 841.

Proponent: Alison Papagioftsis, Marilyn Cacavas, and Robert Peters

Proponent Address: Level 2, 307 Murray Street, Perth 6000

Report of the Environmental Protection Authority: 1590

Preceding Statement/s Relating to this Proposal: 841

Pursuant to section 45 of the *Environmental Protection Act 1986*, as applied by section 46(8), it has been agreed that the implementation conditions set out in Ministerial Statement No. 841, be changed as specified in this Statement.

1. Condition 4 of Ministerial Statement 841 is deleted and replaced with:

4 Time Limit for Proposal Implementation

4-1 The proponent shall not commence implementation of the proposal after 30 September 2020, and any commencement prior to this date must be substantial.

4-2 Any commencement of implementation of the proposal, on or before 30 September 2020, must be demonstrated as substantial by providing the CEO* with written evidence, on or before the 30 September 2020.

*"CEO" means the Chief Executive Officer of the Department of the Public Service which is responsible for the administration of section 48 of the *Environmental Protection Act 1986*, or his delegate.

Albert Jacob MLA

MINISTER FOR ENVIRONMENT; HERITAGE