

Environmental Protection Act 1986

Section 43A

**NOTICE OF DECISION TO CONSENT TO CHANGE TO PROPOSAL DURING
ASSESSMENT**

PERSON TO WHOM THIS NOTICE IS GIVEN

- (a) Chief Executive Officer
Public Transport Authority (ABN: 61 850 1019 576)
Public Transport Centre, West Parade
PERTH WA 6000

PROPOSAL TO WHICH THIS NOTICE RELATES:

Malaga to Ellenbrook Rail Works
Assessment No. 2238

Pursuant to section 43A of the *Environmental Protection Act 1986* (EP Act), the Environmental Protection Authority (EPA) consents to the proponent making the following changes to the proposal during assessment without a revised proposal being referred –

Amendments to the design, construction and alignment of the proposal resulting in a 37.2 hectare (ha) decrease in the development envelope from 501 ha to 463.8 ha and a 116.9 ha decrease in the development footprint from 365.9 ha to 249.0 ha (refer Schedule 1).

Changes to the defined physical elements of the proposal.

EFFECT OF THIS NOTICE:

1. The EPA considers that the change is unlikely to significantly increase any impact that the proposal may have on the environment. The proponent may change the proposal as provided for in this notice.

RIGHTS OF APPEAL:

There are no rights of appeal under the EP Act in respect of this decision.

[Signed 22 June 2020]

Dr Tom Hatton
Delegate of the Environmental Protection Authority
CHAIRMAN

Schedule 1

Change to Proposal

Element	Current Proposal	Changed Proposal (s43A)
Physical elements		
Permanent infrastructure, including: <ul style="list-style-type: none"> • Railway tracks and associated infrastructure • Malaga Station • Future Bennet Springs East Station • Whiteman Park Station • Ellenbrook Station • Construction laydown and access areas • Principal shared path, drainage structures, fencing, bridges, noise walls • Associated changes to road infrastructure at road/rail intersections, including a component of the Tonkin Highway Dive structure. 	Clearing and disturbance of up to 365.9 ha, including clearing of up to: <ul style="list-style-type: none"> • 123 ha of native vegetation in Degraded or better condition • 190 ha of native vegetation in Completely Degraded condition, within a 501 ha development envelope.	Clearing and disturbance of up to 249 ha, including clearing of up to: <ul style="list-style-type: none"> • 59.9 ha of native vegetation in Degraded or better condition • 92.2 ha of native vegetation in Completely Degraded condition, within a 463.8 ha development envelope.

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STATEMENT OF REASONS

CONSENT TO CHANGE PROPOSAL DURING ASSESSMENT

Proposal: Malaga to Ellenbrook Rail Works

Proponent: Public Transport Authority

Decision

For the reasons outlined below, the EPA has determined to consent to the proponent changing the proposal outlined in Schedule 1 attached to this Statement of Reasons.

I have also determined that no consultation or public review is necessary when considering the request to consent to the change. This is due to the nature of the changes, which would result in a decrease in the extent of the proposal from that as described in the proponent's referral documentation. In addition, the proponent's environmental review document incorporating the changes will be published for a two week public review period and the changes to the proposal will be fully assessed in the EPA's Report and Recommendations to the Minister for Environment, which will be subject to a two week appeal period.

Background

On 24 December 2019, the Public Transport Authority (the proponent) referred the proposal to the Environmental Protection Authority (EPA) under s. 38 of the *Environmental Protection Act 1986* (EP Act).

The proposal as referred was to construct and operate a new 13 kilometre (km) dual railway track between Malaga and Ellenbrook. The proposal included three new stations at Malaga, Whiteman Park and Ellenbrook with intermodal facilities at each station. A potential future station was proposed at Bennett Springs and provision for a rail stabling facility at Henley Brook within Whiteman Park was included.

The EPA determined to assess the proposal on 18 February 2020 at the level of Public Environmental Review (PER), with a two week public review period.

In advance of the EPA preparing a report on the outcome of its assessment of the proposal, the proponent has sought the EPA's consent to the proponent changing the proposal. The s. 43A change would result in a 37.2 hectare (ha) decrease in the development envelope from 501 ha to 463.8 ha and a 116.9 ha decrease in the development footprint from 365.9 ha to 249 ha (Figure 1). The proponent has also proposed changes to the defined physical elements of the proposal.



Figure 1: Development envelope showing proposed changes

Relevant Statutory and Administrative Provisions

Section 3.8 of the Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual 2016 guides what information the EPA requires from a person wanting to change its proposal during assessment.

In considering the request for consent, the EPA considered the:

- details of the proposed change
- statement of the significance of the change
- rationale for the change.

Materials considered in making this decision

In determining whether to consent to the proponent changing the proposal the EPA has considered the following:

1. The document *Malaga to Ellenbrook Rail Works Proposal, Application to change proposal under s43A*, 8 June 2020, Public Transport Authority (Rev 0).
2. Spatial data provided by the Public Transport Authority showing the revised development envelope and development footprint.
3. Spatial data provided by the Public Transport Authority at the time of referral showing the originally proposed development envelope and footprint.
4. Supporting documentation for the proposal supplied by the Public Transport Authority at the time of referral *Malaga to Ellenbrook Rail Works, Referral Supplementary Document*, December 2019, Public Transport Authority (Rev 1A).
5. Public submissions on the referral documents.

Consideration

1. Nature of the proposed change

The changes will result in an overall decrease in the extent of the development envelope. The key changes to the development envelope are decreases in the extent of the proposal by avoiding sections of the Banksia threatened ecological community (TEC) and priority ecological community (PEC), referred to as the TEC/PEC and including a Native Vegetation Retention Area (NVRA) within the development envelope.

In advance of the EPA preparing a report on the outcome of its assessment of the proposal, the proponent has sought the EPA's consent to the proponent changing the proposal. The s43A change would result in a 37.2 hectare (ha) decrease in the development envelope from 501 ha to 463.8 ha and a 116.9 ha decrease in the development footprint from up to 365.9 ha to 249.0 ha.

2. Stage of the assessment process

The proposal is currently at the assessment stage. In June 2020 the Public Transport Authority requested to change the proposal under s. 43A of the EP Act. The EPA was awaiting the proponent's environmental review document (ERD) when the request was made to change the proposal.

3. Currency, relevance and reliability of the information, including submissions

The proposal was referred to the EPA in December 2019 and more information was received on 10 January 2020. All information submitted in support of the referral remains current, reliable and relevant. Any additional information requested by the EPA during the scoping stage will be submitted as part of the ERD and published for public review.

4. Community engagement

The proponent has and continues to engage widely with the community in relation to the proposal, including engagement with government agencies and key stakeholders. The proponent has a dedicated community consultation team and maintains a dedicated METRONET website that provides an overview of the proposal and allows interested parties to register for project updates. Environmental community groups were contacted by letter in August 2019 providing an environmental update on the greater Morley to Ellenbrook project. Further consultation and briefings with key environmental groups are planned to occur in 2020.

The EPA notes that the proposed changes will be included in the ERD to be published for public review in August 2020.

5. Level of public concern

The EPA advertised the referral information for public comment from 7 February 2020 to 14 February 2020 (inclusive). Two comments were received during the public comment period, a low level of public interest at referral stage. The EPA does not consider that the proposed changes would result in an increased level of interest in the proposal.

Consideration of Whether the Change is Unlikely to Significantly Increase Any Impact that the Proposal May Have on the Environment

The following were considered:

- Values, sensitivity and the quality of the environment which is likely to be impacted
Flora and Vegetation, Terrestrial Fauna, Terrestrial Environmental Quality, Inland Waters and Social Surroundings were considered to be preliminary key environmental factors at the time the Level of Assessment was determined. The proposed changes give no cause for additional environmental factors to be considered as the changes have the potential to impact on Flora and Vegetation, Terrestrial Fauna, Terrestrial Environmental Quality, Inland Waters and Social Surroundings.

The majority of the changes will result in decreases in the potential impacts to the identified environmental values.

- Extent (intensity, duration, magnitude and geographic footprint) of the likely impacts

The proposed change to the development envelope, which consists of additions and reductions, results in an overall decrease of 37.2 ha, from 501 ha to 463.8 ha.

Of particular importance is the reduction in the extent of likely impacts of 14.69 ha to the *Banksia* Woodlands of the Swan Coastal Plain Priority Ecological Community at two locations near the proposed Malaga Station site.

The extent of likely impacts from the changed proposal (including the extent of impacts from the small proposed additions to the development envelope) will be considered during the assessment of the proposal by the EPA.

The reduction of the development envelope area includes decreases in the extent of clearing of native vegetation. For this reason, the EPA supports the changes to the development envelope, to provide an overall decrease on impacts environmental values.

- Consequence of the likely impacts (or change)

The consequences of the likely impacts of the proposed changes on native vegetation have decreased from those proposed in the original proposal. The consequence of the changes will be considered during the EPA's assessment of the proposal.

- Resilience of the environment to cope with the impacts or change

The majority of the changes to the development envelope will result in the avoidance or minimisation of impacts to environmental values and will retain areas of native vegetation, maintaining the resilience of these areas. The EPA considers that the resilience of the environment to cope with the changed proposal remains unchanged from that of the original proposal, should it be implemented.

- Cumulative impacts with other projects

Cumulative impacts will be considered in the assessment of the changed proposal as they were to be considered during the assessment of the original proposal. The decreases in the extent of native vegetation to be cleared is unlikely to significantly change the cumulative impact at a local or regional scale.

- Connections and interactions between parts of the environment to inform holistic view of impacts of the whole environment

A holistic assessment of the changed proposal will be undertaken during the assessment stage of the proposal. The changed proposal is not expected to result in a change in impact to the ecological function and values of the area compared to what it would be if the original proposal were to be implemented.

- Level of confidence in the prediction of impacts and the success of proposed mitigation
There is no change in the level of confidence in the predicted impacts or the success of proposed mitigation as a result of the changes.
- Public interest about the likely effect of the proposal, if implemented, on the environment, and public information that informs the EPA's assessment
The EPA is of the opinion that public interest in the proposal will likely remain the same; that is, a low level of public interest and notes that the environmental review document incorporating the changes will be published for a two week public review.

Conclusion

In conclusion, the EPA considers that the change is unlikely to significantly increase any impact the proposal may have on the environment primarily because:

- The likely impacts of the proposed changes on native vegetation have decreased from those proposed in the original proposal.
- The changed proposal is not expected to result in a change in impact to the ecological function and values of the area compared to what it would be if the original proposal were to be implemented.

Schedule 1

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