



**SUPREME COURT
OF WESTERN AUSTRALIA**

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***Save Beeliar Wetlands (Inc) & Anor v The Hon Albert Jacob MLA & Ors
(CIV 2445/2015)***

SUMMARY

This summary issued by the Court is provided as an aid to obtaining a prompt understanding of the outcome of the lengthy reasons for decision delivered in this matter. It is not an addition to, or qualification upon, those reasons and has no purpose or effect beyond that stated.

In these proceedings the applicants, Save Beeliar Wetlands Inc and Ms Carol De Barre, challenged the validity of the decision made by the Environmental Protection Authority of Western Australia (the EPA) to recommend to the Minister for Environment (the Minister) that a proposal by the Commissioner of Main Roads to extend the Roe Highway from Kwinana Freeway to Stock Road (the Proposal) may be implemented subject to certain conditions, and the decision of the Minister to the effect that the Proposal may be implemented subject to the conditions which he specified. The applicants sought judicial review of each of those decisions on a number of grounds. One of those grounds relied upon the EPA's publication of three statements of the policy which it would apply to the assessment of environmental impact. Those statements of policy were operative throughout the period during which the EPA assessed the Proposal, and at the time the EPA made its decision to recommend to the Minister that the Proposal may be implemented subject to specified conditions.

Each of the three statements enunciated a policy to the effect that in cases in which the process of assessment leads the EPA to conclude that implementation of a proposal would result in significant residual impact to critical environmental assets after all efforts to mitigate those impacts on site have been exhausted, then:

- (a) the EPA would not consider the provision of environmental offsets to be an appropriate means of rendering such a proposal environmentally acceptable; and
- (b) there would be a presumption that the EPA would recommend to the Minister that the proposal not be implemented.

In its report to the Minister following its assessment of the Proposal, the EPA concluded that implementation of the Proposal would result in significant residual impacts to critical environmental assets after all efforts at mitigation of those impacts on site had been exhausted. However, the report to the Minister made no reference to the policy which the EPA had asserted it would apply in the three relevant policy statements current at the time the EPA made its decision and presented its report to the Minister. In particular, no reference was made in the report to the proposition that in light of the EPA's conclusions with respect to the environmental impact of the Proposal, environmental offsets would not be an appropriate means of rendering the proposal environmentally acceptable, or to the proposition that there was a presumption that the EPA would not recommend to the Minister that the Proposal may be implemented. To the contrary, the report which the EPA provided to the Minister embodied the assumption that the Proposal would be environmentally acceptable if adequate environmental offsets were provided. Also, there was no reference to the policy enunciated in the three relevant policy statements in any minutes of the meetings of the EPA in which the Proposal was considered in the three years prior to the decision of the EPA as to the outcome of the assessment, nor in any briefing note provided to the EPA relating to the Proposal.

The court concluded that the EPA took no account of its own published policies at the time it made its decision and provided its report to the Minister. The court also concluded that the EPA was legally obliged to take account of the policy enunciated in its own published policy statements as a condition of the valid exercise of the jurisdiction conferred upon it by the *Environmental Protection Act 1986* (WA) with respect to environmental impact assessment. That conclusion was drawn from the proper construction of pt IV of the Act, viewed in the context of the Act as a whole. The court therefore concluded that the environmental impact assessment undertaken by the EPA was invalid.

Because the Minister's decision to allow the Proposal to be implemented subject to conditions which he specified was made in reliance upon the recommendation and report of the EPA which the court found to be invalid, the court found that the Minister's decision was also invalid. It will be for the EPA to determine, in the light of the court's reasons and current circumstances, the steps which must be taken to undertake and complete an assessment of the environmental impact of the Proposal which conforms to the obligations imposed upon the EPA by the Act.

The court dismissed all other grounds of review.

The full judgment is available on the Supreme Court of Western Australia website at:
<http://decisions.justice.wa.gov.au/supreme/supdcsn.nsf/main.xsp>