



Environmental Protection Act 1986

**Hon Albert Jacob MLA  
Minister for Environment**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEALS AGAINST REPORT AND RECOMMENDATIONS – MULGA ROCK URANIUM PROPOSAL (EPA REPORT 1574)**

#### **Purpose of this document**

This document sets out the Minister's decision on appeals lodged under section 100(1)(d) of the *Environmental Protection Act 1986* in objection to the Environmental Protection Authority's Report and Recommendations in respect to the above proposal. 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](http://www.appealsconvenor.wa.gov.au).

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| <b>Appellants:</b>           | 24 Appeals were received (see Attachment 1)   |
| <b>Proponent:</b>            | Vimy Resources Limited  |
| <b>Proposal description:</b> | To mine and process four poly-metallic deposits, containing commercial grades of uranium at Mulga Rock, approximately 240 kilometres east-north-east of Kalgoorlie in the Shire of Menzies. |
| <b>Minister's Decision:</b>  | The Minister allowed the appeals in part  |
| <b>Date of Decision:</b>     | 25 November 2016  |

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#### **REASONS FOR MINISTER'S DECISION**

Pursuant to section 106 of the *Environmental Protection Act 1986* (the Act), the Minister obtained a report from the Environmental Protection Authority (EPA) on the matters raised in the appeals. The Minister also received a report from the Appeals Convenor. The Appeals Convenor's report sets out the background and other matters relevant to the appeal.

The appeals covered a wide range of matters including issues relating to human health, Aboriginal heritage, flora and vegetation, terrestrial fauna, and mine management and closure.

In relation to human health, appellants raised concerns that the EPA's assessment did not adequately address health risks to the community and workers from radiation exposure from the proposal, including risks associated with movement of contaminated groundwater from the mine which will impact on other water users in the area.

The Minister carefully considered these issues, and agreed with the Appeals Convenor that the EPA properly considered and addressed human health issues in its assessment. The Minister noted the EPA's advice and evaluation of the different exposure pathways, including from contaminated dust, water, food (bush tucker) and direct exposure to gamma radiation (workers and transport) and that the radiation exposure levels predicted under all scenarios will be below regulatory dose limits.

The Minister also noted the EPA's advice that any risks associated with radiation can be adequately managed by other agencies without the need for conditions to be applied under Part IV of the Act. Specifically, the Minister noted the requirement to submit a Radiation Management Plan to the Radiological Council under the *Radiation Safety Act 1975* to ensure that risks associated with radiation can be adequately monitored and managed.

In relation to human health issues associated with groundwater specifically, the EPA concluded that there will be no impact to water quality outside the development footprint, and conditions are recommended to achieve this outcome.

Conditions 6 and 13 recommended by the EPA require the proponent to prepare a Tailings Storage Facility Management Plan (TSFMP) covering both the above and below ground Tailings Storage Facility (TSF). The TSFMP requires the inclusion of trigger criteria, monitoring and trigger level actions to which the proponent will be subject, and the Minister expressed his expectation that the development of the TSFMP will include appropriate monitoring to assess groundwater changes against predictions from modelling as well as threshold contingency and remedial actions to be implemented if threshold criteria are exceeded.

In relation to Aboriginal heritage, a number of appellants raised concerns that the proponent failed to consult Aboriginal people with a direct and detailed knowledge of the cultural heritage values of the area, and as a result, the assessment could not be relied on to determine what values were likely to be impacted by the implementation of the proposal.

The Minister noted the EPA's advice that the proponent consulted with a relevant Aboriginal community, the Wongatha people, during the surveys undertaken for the proposal, on advice from the North East Independent Body, the consultative body for heritage matters in the region at the time that heritage surveys were undertaken. The EPA advised that this process was consistent with Guidance Statement 41 *Assessment of Aboriginal Heritage*.

The Minister also noted the proponent's advice that it has undertaken public consultation between 2008 and October 2015 which included meetings in Leonora and Menzies.

Noting the above information, the Minister was satisfied that the proponent's consultation in respect to Aboriginal heritage matters was satisfactory within the context of the Act. The Minister noted, however, that Aboriginal sites (registered or otherwise) are subject to the requirements of the *Aboriginal Heritage Act 1972* (AH Act). The proponent is thus required to meet all applicable provisions of the AH Act, which the Minister understood will include consideration by the Department of Aboriginal Affairs as to whether the level of consultation undertaken by the proponent was sufficient for the purposes of that Act.

Notwithstanding the requirements of the AH Act, the Minister agreed with the Appeals Convenor that the conditions recommended by the EPA in respect to Aboriginal heritage should be amended in the manner set out by the Appeals Convenor: specifically, that the management plan required by recommended condition 11 be amended to require the plan to be submitted before commencement of earthworks associated with the substantive implementation of the proposal.

On flora and vegetation, the Minister considered the Appeals Convenor's advice, and agreed that the EPA's assessment of this factor was satisfactory. In particular, the Minister noted the EPA's advice that the available information on vegetation communities provided sufficient certainty to assess the significance of both direct and indirect impacts on the vegetation communities within the Yellow Sandplain Priority Ecological Community, including potential impacts on the undescribed *Hakea* species. Given the Excellent to Pristine condition of the vegetation in the wider project area, the Minister agreed with the EPA that an additional outcome should be included in condition 8 requiring the proponent to eradicate any weeds introduced as a result of the implementation of the proposal.

The Minister also agreed with the Appeals Convenor that recommended conditions 8 and 12 should be amended to the extent that the outcomes required by Condition 8-1 and 12-1 are more clearly defined to allow threshold criteria to be developed and applied within the respective management plans.

Concerns in relation to fauna were raised by a number of appellants, particularly in respect to possible impacts to the sandhill dunnart, listed as endangered under the *Wildlife Conservation Act 1950*. In its report, the EPA concluded that the proposal will impact on less than one percent of the habitat of the species and the EPA recommended objective based conditions that require the proponent to minimise impacts to the species as far as practicable. The recommended conditions also include a requirement for the proponent to continue a camera trapping program to obtain more information about the presence of the species in the vicinity of the proposal area. Noting this information, the Minister agreed with the Appeals Convenor that while the implementation of the proposal is unlikely to have a significant impact on the species, that the objective for condition 9-1 in relation to the camera trapping program should be amended to more clearly specify the purpose, that is to provide information on the sandhill dunnart's use of the area and inform management action to minimise impacts.

Appellants also raised concerns related to the long-term management and stability of the site following closure. Some appellants contended that uranium tailings pose a unique and long term risk to the environment and public health and did not accept that the regulatory framework in place could adequately manage these risks in to the long term.

In this regard, the Minister noted that the majority of tailings will be stored underground in mined pit voids, which the EPA considered to present the safest storage methodology and as noted above, groundwater quality is the subject of conditions which require the proponent to ensure that there are no impacts to water quality outside the development envelope.

The stability and integrity of the above ground TSF is also subject to conditions that require the proponent to identify and meet trigger criteria for the landform and take contingency actions in the event that the landform is found not to be meeting modelled projections. This mechanism provides additional confidence that the outcome of condition 14 (that the landform is stable for 10,000 years post-closure of the TSF) is met by the proponent.

Therefore, the Minister agreed with the Appeals Convenor that the management and mitigation of the impacts of tailings associated with the proposal has been properly considered and the EPA's evaluation of contamination from the above and below ground TSFs demonstrates that the risks associated with the proposal can be managed.

The proposal will also be subject to the requirements of the *Mining Act 1978*, which the Department of Mines and Petroleum has advised can regulate mine closure for this proposal via a Mine Closure Plan. In addition, the Radiological Council will regulate the radiological aspects of the transport, mine closure and post closure monitoring, worker safety and public safety.

In relation to other issues raised by the appeals, the Minister considered the Appeals Convenor's advice, and determined the appeals accordingly.

It follows from the forgoing that the Minister determined to partly allow the appeals by amending conditions 5, 8, 9, 10, 11, 12, 13 and 14 in the manner recommended by the Appeals Convenor and as detailed in her report. The Minister otherwise dismissed the appeals.

The precise wording of the amended conditions will be determined through the consultation process under section 45(1) of the Act.

Having determined the appeals, section 45 of the Act requires that the Minister consult with relevant decision making authorities to seek agreement as to whether or not the proposal may be implemented, and if so, the conditions to which the implementation of the proposal should be subject.

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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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**LIST OF APPELLANTS**

| <b><i>Appeal</i></b> | <b><i>Appellant</i></b>                     |
|----------------------|---|
| 050/16               | Joe Vallentine                              |
| 051/16               | Beth Tilley                                 |
| 052/16               | Paul Longva                                 |
| 053/16               | Christine Jeffries-Stokes                   |
| 054/16               | Janice Scott                                |
| 055/16               | Kerrie-Ann Garlick                          |
| 056/16               | Walkatjurra Walkabout                       |
| 057/16               | Sandra Evans                                |
| 058/16               | Richard Evans                               |
| 059/16               | Marcus Atkinson                             |
| 060/16               | Geoffrey Stokes                             |
| 061/16               | Glen Cook                                   |
| 062/16               | Libby (Namila) Carmody                      |
| 063/16               | Luke Skinner                                |
| 064/16               | Linda Ray                                   |
| 065/16               | Toshiko Morinaga                            |
| 066/16               | Cassandra Schmitt                           |
| 067/16               | Karen Davis                                 |
| 068/16               | Prudence Robertson                          |
| 069/16               | Robert Gulley                               |
| 070/16               | Conservation Council WA                     |
| 071/16               | Environment House                           |
| 072/16               | Wildflower Society of Western Australia Inc |
| 073/16               | Brenda Conochie                             |