



Environmental Protection Act 1986

Hon Stephen Dawson MLC
Minister for Environment

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST REPORT AND RECOMMENDATIONS OF THE ENVIRONMENTAL PROTECTION AUTHORITY (REPORT 1598) – BLUE HILLS MUNGADA EAST EXPANSION PROJECT

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 above Report of the Environmental Protection Authority (EPA). 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:	See Appendix 1
Proponent:	Sinosteel Midwest Corporation Limited
Proposal description:	Development of the Blue Hills Mungada East Iron Ore Expansion Project, east of Perenjori
Minister's Decision:	The Minister dismissed the appeals
Date of Decision:	29 November 2017

REASONS FOR MINISTER'S DECISION

The Minister obtained a report from the Environmental Protection Authority (EPA) in response to the appeals. This report was considered by the Appeals Convenor, who consulted with the proponent and other appellants throughout the investigation process, including a site visit in September 2017.

Having concluded her investigation, the Appeals Convenor finalised a report to the Minister, setting out the background and related matters, and including recommendations on how the appeals should be resolved.

By way of summary, the appeals raised a number of concerns about the content of the EPA's report, including its assessment of the environmental factors landforms, flora and vegetation and social surroundings. Concerns were also raised in respect to the content and application of policy by the EPA, with some appellants expressing concern that the policies were vague, ambiguous and applied in an arbitrary and inconsistent manner.

Flora and vegetation

The EPA found that the implementation of the proposal could not meet its objective for flora and vegetation. Specifically, the EPA found that the identified impacts to the declared rare flora species *Acacia woodmaniorum* and a number of other priority species and communities are not manageable and would remain significant.

The majority of appellants raised objections to the EPA's findings on the basis that it did not properly consider the available evidence, and its conclusions were inconsistent with recommendations it had made with respect to comparable mining proposals in the region. The proponent also raised concerns about advice from the former Department of Parks and Wildlife (Parks and Wildlife) regarding the conservation status of certain species and communities, and the alleged failure of the EPA to consider the mitigation actions proposed to reduce impacts.

In relation to *Acacia woodmaniorum*, the proponent submitted that the assessment of the impact was inconsistent with other proposals in the region and that inadequate consideration was given to evidence that the species could be re-established. This element of the appeal relates to the proponent's commitment to translocate and re-establish at least 1,739 *Acacia woodmaniorum* plants to replace the number that will be directly or indirectly impacted by the implementation of the proposal.

Through the appeal investigation, the Appeals Convenor sought advice from the Botanic Gardens and Parks Authority (BGPA) concerning the potential re-establishment of *Acacia woodmaniorum*. In response, BGPA advised that *Acacia woodmaniorum* is a disturbance-favouring species, and based on the new information provided through the appeal, there is a high likelihood that self-sustaining populations may be able to establish in areas of low to moderate disturbance, such as tracks, drill pads and mine abandonment bunds.

However, BGPA advised that the new information does not significantly change its view that there is no demonstrated evidence of long-term success of translocation for any rare flora species on waste rock landforms, although the signs are more positive that this may succeed if the sites are well managed and designed for the purpose.

Overall, BGPA concluded that based on recent evidence that *Acacia woodmaniorum* can germinate, grow and reproduce on exploration tracks and pit-bunds without any active restoration activities being undertaken, the risk of failure of future well-managed translocation actions in these settings would be regarded as 'low', providing certain assumptions were met. This included that the results identified in the additional information were based on representative climatic conditions, not wetter than usual conditions.

The EPA also found that the implementation of the proposal will result in the removal of 2.03% of floristic community type 13 (FCT 13) and 0.06% of FCT 14, leading to a total cumulative impact of 60.23% and 67.87%, respectively. The proponent contended that given the small cumulative contribution the proposal will have on these communities, the EPA was incorrect to conclude that the impacts of the proposal are unacceptable.

In considering this ground of appeal, the Minister acknowledged the increased confidence that *Acacia woodmaniorum* can be re-established on disturbed areas, and the relatively small contribution the proposal adds to cumulative impacts to the two identified FCTs. Notwithstanding this, the Minister considered that it was open to the EPA to conclude that the proposal posed a significant residual impact to these values, and as a result, the Minister considered the assessment was appropriate.

On the other issues raised in respect to flora and vegetation, the Minister considered the Appeals Convenor's recommendations and agreed that the EPA's assessment was appropriate and took into account available evidence.

Landforms

In Report 1598, the EPA concluded that the impacts to landforms are not manageable and would remain significant. This conclusion was on the basis that the additional 1.2% permanent impact to the Mungada Ridge from the implementation of the proposal is irreversible and would further compromise the integrity of the only largely intact distinctive banded ironstone formation (BIF) landform in the Blue Hills.

A number of appellants questioned the EPA's reliance on its landforms policy, stating that the EPA's approach was inconsistent with its approach to other assessments and failed to take into account the particular facts relevant to the proposal in its local and regional context.

In relation to landforms policy, in remitting the proposal to the EPA when it was first assessed, the previous Minister for Environment acknowledged that there were relatively few proposals where the concept of landforms has been applied in the way it had been at that time. Following this decision, the EPA developed Environmental Protection Bulletin 23, which was replaced in December 2016 by the current Landforms Environmental Factor Guideline.

The Minister considered the objections raised in respect to the policy developed by the EPA, including the definition of 'landforms', the objectivity of criteria used to determine significance, and the interrelationship between this factor and other factors. Taking this information into account, the Minister considered the Appeals Convenor's recommendations and formed the view that the EPA appropriately applied the landforms policy in its assessment of the proposal.

In relation to consistency with other decisions, the comparisons put forward either pre-date the development of the landforms policy, or in the case of the Iron Hill Deposits, are presumed to relate to a landform that the EPA deemed not to be significant. In these circumstances, and noting that environmental impact assessment is by its nature an evolving practice, the Minister did not consider these cases to be relevant to the current assessment.

The proponent also raised concern that the EPA's conclusions were not based on evidence that had been provided through the review process, and were inconsistent with the landforms policy. This element of the appeal was directed both at the EPA's determination of the level of significance of the landform, and the level of impact to that landform arising from the implementation of the proposal.

On the significance of the landform, the proponent submitted that Mungada Ridge is not significant locally or regionally, and is not rare or one of a few of its type. The landforms policy sets out six criteria against which the significance of a landform is assessed. These include integrity, variety and rarity.

The integrity criterion is directed at whether the landform is largely complete or whole. The Minister noted that the existing permanent impacts to Mungada Ridge are approximately 3% of its area, and on this basis, he was satisfied the landform is essentially intact.

In respect to variety, the EPA found that within the local area Mungada Ridge is the largest, highest and the steepest of all landforms, and is the fifth largest, second highest, third steepest of all landforms in the region.

The proponent disputed the EPA's findings that the crescent shape of Mungada Ridge is unique locally or regionally, stating that 30 similar shaped landforms were identified within the region. However, the proponent's public environmental review document concluded that Mungada Ridge is at least six times larger than the next largest crescent shaped landform in the region and on this basis, it was considered to be unique. Given this, the Minister considered that the EPA's conclusions in respect to the shape of the landform were also appropriate.

In relation to the other criteria raised by this element of the appeal, while the Minister noted that the Mungada Ridge landform appears to be one of a number of BIF landforms in the region, and is thereby not rare within the meaning of the EPA's landforms policy, the landform remains significant on the integrity and variety criteria alone.

Overall, the Minister found that the EPA was justified in concluding that the Mungada Ridge landform is significant within the meaning of its landforms policy and of very high regional value. While the level of permanent impact identified in this case is relatively small (1.2% of the total area of Mungada Ridge), the Minister considered that the EPA's conclusions in respect to landforms was justified on the basis of the high-level value of the landform itself.

Social surroundings

By this ground of appeal, appellants raised objections to the EPA's assessment of social surroundings, specifically in respect to amenity.

In Report 1598, the EPA concluded that the impacts to social surroundings are not manageable and would remain significant due to (among other things) permanent impacts to the scenic quality of the Mungada Ridge and the surrounding landscape from the construction of the mine void and the waste rock dump.

The Minister noted that the implementation of the proposal will result in a permanent pit void on Mungada Ridge and that it is proposed for the waste rock dump to be rehabilitated so that it blends with the natural landscape and is revegetated. It is also proposed for the former Mungada East pit to be backfilled and revegetated, which the proponent contends will further reduce visual impacts to Mungada Ridge.

In this regard, the Appeals Convenor noted that the visual impact assessment commissioned by the proponent assumed certain rehabilitation outcomes would be met. The Appeals Convenor also noted Parks and Wildlife advice that despite rehabilitation on previously disturbed areas of Mungada Ridge being undertaken, these areas remain visible after ten years. It was understood that it was on this basis that Parks and Wildlife expressed doubt that the predicted rehabilitation outcomes would be met.

As noted by the Appeals Convenor, the visual impacts identified in this case relate to future tourism and recreational activities in the area, noting that current visitation by members of the public is highly restricted due to active mining tenure.

On the information available to him, the Minister considered that the proposal will result in permanent changes to Mungada Ridge which will likely affect visual amenity and agreed with the Appeals Convenor that it was appropriate for the EPA to consider these impacts in the context of its assessment of the proposal. However, given the significance of the impact is related to future uses of the area, the Minister stated he would consider this issue in further detail through the consultation process required by section 45(1) of the Act.

Process issues

Some appellants raised concerns over the manner in which the EPA assessed the proposal, including whether it appropriately considered and applied the principles in section 4A of the Act and whether it inappropriately relied on the 2007 Strategic Review and the reservation status of the area.

The Minister concluded that the EPA's assessment was appropriate for the reasons set out in the Appeals Convenor's report.

Other matters

A number of appellants identified the economic benefits that would flow from the proposal to the State and the local economy. The Minister agreed with the EPA that these are not matters relevant to the EPA's report. Rather, they are matters relevant to the decision on whether or not the proposal may be implemented, which are the subject of consultation under section 45(1) of the Act.

Decision

It follows from the above that the Minister found that the EPA's assessment of the environmental impacts from the proposal was appropriate and was supported by the available evidence. In particular, the Minister agreed with the EPA's conclusion that Mungada Ridge is a significant landform and that there are likely to be significant residual impacts associated with flora and vegetation values identified in its assessment. The Minister therefore dismissed the appeals.

Next steps

Having determined the appeals, section 45(1) of the Act requires that the Minister consult with other relevant decision making authorities as to whether or not the proposal should be implemented, and if so, the conditions to which it should be subject. A final decision on the proposal will be made in due course.

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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Appendix 1 – List of appellants

Grace Resources Pty Ltd (019/17-001)
Shire of Morawa (019/17-002)
KMAC Botanical and Environmental Services (019/17-003)
Morawa News and Gifts (019/17-004)
L Chappel and Partners (019/17-005)
Aquagentry Pty Ltd (T/A Morawa IGA) (019/17-006)
Rachel Bishop (019/17-007)
Phil Sprigg (019/17-008)
Dean Vose (019/17-009)
Shire of Perenjori (019/17-010)
B&J Catalano (019/17-011)
Tony Emmott (019/17-012)
Spectrolab Pty Ltd (019/17-013)
Glenn Tapscott (019/17-014)
Airlec Group of Companies Pty Ltd (019/17-015)
Greenfield Technical Services (019/17-016)
Ian Blayney MLA (019/17-017)
Openet Pty Ltd (019/17-018)
Morawa Licensed Post Office (019/17-019)
Ian and Leonie Andrews (019/17-020)
Midlands Regional Football Development Council Inc (019/17-021)
Merkanooka Farms and Haulage (019/17-022)
GH Country Courier (019/17-023)
Kintyre Holdings Pty Ltd (019/17-024)
Batavia Shipping (019/17-025)
Morawa Traders (019/17-026)
Aussie Marine Services (019/17-027)
Reliance Contracting Pty Ltd (019/17-028)
Hetherington Exploration and Mining Title Services (019/17-029)
Monyash Investments Pty Ltd (T/A Morawa Roadhouse) (019/17-030)
Lambron Contracting Pty Ltd (019/17-031)
Engenium Pty Limited (019/17-032)
Sinosteel Midwest Corporation Limited (019/17-033)
Association of Mining and Exploration Companies, Chamber of Minerals and Energy, and Chamber of Commerce and Industry Western Australia (019/17-034)
Digital Radio Systems Pty Ltd (019/17-035)
Peter Jones Investments Pty Ltd (019/17-036)
Hardman Jones Pty Ltd (019/17-037)
S&K Electrical Contracting Pty Ltd (019/17-038)
Morawa Rural Enterprises (019/17-039)
Cunningham Earthmoving & Logistics (019/17-040)
Matrix Environmental (019/17-041)
MACA Ltd (019/17-042)
Karara Mining Ltd (019/17-043)
Aurizon Operations Limited (019/17-044)
Drip Services Pty Ltd (019/17-045)