



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 1599) – JACKSON 5 AND BUNGALBIN EAST IRON ORE 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](http://www.appealsconvenor.wa.gov.au).

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<b>Appellants:</b>	Mineral Resources Limited; Hon Robin Scott MLC; Goldfields-Esperance Development Commission; Rockingham-Kwinana Chamber of Commerce; City of Rockingham; Mr G Campbell; Ms E and Ms G Sambo; Association of Mining and Exploration Companies (joint appeal with Chamber of Minerals and Energy and Chamber of Commerce and Industry of WA); Wilderness Society WA (joint appeal with Helena and Aurora Range Advocates and West Australian Family Bushwalking Club)
<b>Proponent:</b>	Mineral Resources Limited
<b>Proposal description:</b>	Development of the Jackson 5 and Bungalbin East Iron Ore mines at the Helena-Aurora Range, north of Koolyanobbing
<b>Minister's Decision:</b>	The Minister dismissed the appeals
<b>Date of Decision:</b>	24 November 2017

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### **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 in Perth and Kalgoorlie throughout the investigation process, including a site visit in August 2017.

Having concluded her investigation, the Appeals Convenor finalised a report under section 109 of the *Environmental Protection Act 1986* (the Act), setting out the background and related matters, including recommendations on how the appeals should be resolved.

By way of summary, most appellants raised concerns about the EPA's assessment of the environmental factors landforms, flora and vegetation, subterranean fauna 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 policies are vague, ambiguous and were applied in an arbitrary and inconsistent manner.

The appeal by the conservation groups expressed support for the EPA's overall recommendations, but contended that its assessment with respect to terrestrial fauna, hydrological processes and inland waters environmental quality, and social amenity (visual impact assessment), was deficient. These appellants also questioned the approval of changes to the proposal during the assessment process.

## **Landforms**

In Report 1599, the EPA concluded that the impacts to landforms are not manageable and would remain significant, as the permanent impacts to 187.2 hectares of the distinctive landforms of the Helena-Aurora Range are irreversible. Furthermore, the EPA found that the impacts would compromise the integrity of the largest, highest and steepest banded ironstone formation (BIF) Range in the Mount Manning Region with the highest biodiversity and social values.

Most appellants expressed concern at the EPA's conclusions, questioning the appropriateness of the landforms policy, consistency in the EPA's approach to assessment of landforms for other proposals, and the merits of the EPA's conclusions based on the particular facts relevant to the proposal and its local and regional context.

In relation to landforms policy, in remitting the proposal to the EPA when it was first assessed, the Minister noted that his predecessor had acknowledged that there had been relatively few proposals where the concept of landforms had been applied in the way it had been in that case. Following that decision, the EPA developed Environmental Protection Bulletin 23 Guidance on the Landform Factor, which was replaced in December 2016 by the current Landforms Environmental Factor Guideline (EFG).

In regard to these appeals 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 was of the view that the EPA appropriately applied the landforms policy in its assessment of the proposal.

The proponent raised concern that the EPA's conclusions were not based on evidence put forward through the assessment, and were inconsistent with the Landforms EFG. This element of the appeals is directed both at the EPA's determination of the level of significance of the landform itself, and the level of impact to that landform if the proposal is implemented.

On the significance of the landform, the proponent submitted that the Helena-Aurora Range is not significant locally or regionally, and is not rare or one of a few of its type. The Landforms EFG sets out six criteria against which the significance of a landform can be assessed. These include integrity, variety and rarity. In relation to integrity, the peer review conducted on behalf of the proponent concluded that while not pristine, the landform is essentially intact (being largely complete or whole).

In respect to variety, the EPA found that the Helena-Aurora Range is a significant landform in the Mount Manning Region because of the aggregation of a number of values, including its distinct physical features of large size, high elevation, steepness and tortuosity. The proponent challenged the EPA's findings, claiming that the tortuous morphology is not unique, citing an

example of a tortuous landform at Robinson Range, 540 kilometres north-northwest of the Helena-Aurora Range. Given this landform is considerably outside the local and regional context identified in the Environmental Scoping Document, the Minister agreed with the Appeals Convenor that it is not an appropriate comparison.

As to the other aspects of variety, the Minister concurred with the Appeals Convenor's conclusions that the Helena-Aurora Range is a particularly good or important example of its type, and thereby establishes a level of significance on this criterion.

In respect to rarity, the Landforms EFG defines the term by reference to the affected landform being 'one of a few of its kind'. As noted by the Appeals Convenor, the Helena-Aurora Range landform appears to be one of a number of BIF landforms in the region, and is thereby not one of a few of its kind in that context. Notwithstanding this conclusion, the landform is considered to be significant on integrity and variety grounds alone.

Having established that the landform is significant, and the level of significance places it as the preeminent landform of its type locally and regionally, the second element of this ground of appeal is whether the EPA overstated the level of impact that will occur as a result of the implementation of the proposal. The Minister considered the information provided in respect to this issue, and was of the view that the EPA was justified in forming the view that the impacts to landforms are significant, especially in the context of the high-level values of the Helena-Aurora Range.

In relation to consistency with other decisions, the comparisons put forward in support of the proponent's appeal pre-dated the development of the landforms policy, with the most recent cases identified being from 2011. 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.

### **Flora and vegetation**

In Report 1599, the EPA found that the proposal does not meet its objective for flora and vegetation, concluding that the impacts are not manageable and among other things, would lead to a serious and irreversible threat to *Tetradlea aphylla* subsp. *aphylla* and *Lepidosperma bungalbin*.

The proponent and a number of third party appellants objected to the EPA's findings, principally on the basis that the EPA did not properly consider the available evidence, and its conclusions were inconsistent with recommendations it had made with respect to other comparable proposals in the region. In addition, concerns were raised about advice from the former Department of Parks and Wildlife in respect to the conservation status of certain species and communities, and the alleged failure of the EPA to consider the mitigation actions put forward to reduce impacts.

In relation to *Tetradlea aphylla* subsp. *aphylla*, the proponent asserted that the EPA's findings were inconsistent with its findings in respect to a mining proposal impacting on similar species at Koolyanobbing Range, some 50 kilometres south of the Helena-Aurora Range. On the available information, while the proponent was correct to identify a similar level of impact to the total number of each species, a comparison of the genetic consequences shows a significant difference between the impacts of the two proposals. In that regard, the EPA's conclusions with respect to *Tetradlea aphylla* subsp. *aphylla* are consistent with the findings of the peer review of the genetic assessment, which found that the proposal may impact on the ability of the species to adapt and persist.

In relation to *Lepidosperma bungalbin*, the proponent similarly sought to compare the EPA's assessment of this proposal to another iron ore project at Karara in the mid-west region. The

proponent contended that for the Karara proposal, the EPA recommended approval for a mine that would impact 53% of *Lepidosperma* sp. Blue Hills, whereas in the current proposal, the EPA recommended against the implementation of the proposal even though the level of impact to a similar species, *Lepidosperma bungalbin*, is only 8.3%.

A key consideration in the EPA forming the view that the proposal posed a serious and irreversible threat to *Lepidosperma bungalbin* was reference to the potential impact of the partial removal of a distinct genetic cluster associated with the Bungalbin East pit. As noted by the Appeals Convenor, no information was presented in the appeals as to the genetic consequences of the implementation of the Karara proposal, and as such, it is not possible to conclude that the assessment of the two proposals was inconsistent. In any event, the Karara proposal was assessed a number of years ago on the basis of scientific information available at that time. Noting that the EPA's assessment is of the current proposal, not past proposals, the Minister expressed satisfaction that the EPA was justified in forming the view that the proposal poses a serious and irreversible threat to *Lepidosperma bungalbin*.

As to the other flora and vegetation values contested in the appeals, the Minister considered the information provided to him, and agreed with the Appeals Convenor that the EPA's assessment of these values was appropriate, and the conclusions it reached were justified. In particular, while the proposed staging of the proposal is acknowledged, the level of impact predicted from Stage 1 is significantly greater than that contemplated in Stage 1 of the Koolyanobbing Range proposal. The Minister therefore concurred with the Appeals Convenor that the proposed staging of the implementation of the proposal does not materially alter the level of risk identified through the EPA's assessment.

In relation to concerns expressed on possible changes to the conservation status of certain species and communities, the Minister stated that any changes to threat status or classification are appropriately a matter for consideration under other legislation, and therefore do not form part of the decision on these appeals.

In respect to mitigation and offsets, the Minister considered the Appeals Convenor's advice, and found that the EPA's approach was justified by the available evidence.

### **Subterranean fauna**

By this ground of appeal, the proponent submitted that the EPA's conclusions in respect to troglofauna ignored relevant evidence, applied inconsistent and discriminatory logic, and in many instances based views on no or insubstantial evidence.

In Report 1599, the EPA considered that the proposal poses a serious and irreversible threat to the viability/survival of troglofauna species currently only identified from within the disturbance areas. The EPA considered that evidence to confirm habitat connectivity beyond the proposed impact areas is inadequate and as a result, it cannot be reliably concluded that the troglofauna species found only in the impact areas would also be found outside these areas.

From the information provided, the Minister noted that up to 21 species of troglofauna identified from the development area have not been found outside that area and only limited surveys were undertaken for troglofauna outside the development area. The Minister noted that this was in part due to restrictions on accessing these areas for surveys.

The proponent submitted that there is a high level of confidence that the 21 species will be identified in parts of the Helena-Aurora Range outside the development area, noting that there is a widespread occurrence of habitat suitable for troglofauna within the Helena-Aurora Range.

While this submission was acknowledged, and it is possible that further surveys could reduce or eliminate uncertainties regarding these species, the large number of species that are at issue is

significantly more than that which has been identified in other proposals. In addition, while access issues are noted, the level of survey effort outside the development footprint is significantly below the requirements of the applicable subterranean fauna policy. Given this, the Minister was of the view that the EPA's assessment of this factor was justified.

### **Social surroundings**

Like the concerns raised on landforms, a number of appellants expressed concern at the EPA's conclusions, questioning the appropriateness of the objective applied to the social surroundings factor.

The conservation groups submitted that, while they agreed with the EPA's recommendations in respect to this factor, the EPA's assessment did not sufficiently consider visual impacts on the basis that the visual impact assessment contained a number of deficiencies.

In Report 1599, the EPA concluded that the impacts to this factor are not manageable and would remain significant due to (among other things) the extent of impacts to registered and potential Aboriginal heritage sites; permanent and temporary restriction of access to the Helena-Aurora Range; and ongoing impacts to park users associated with mining operations, including noise, light spill and dust for the 15 to 20 year life of the proposal.

Ms E Sambo and Ms G Sambo expressed concern that as representatives of the Sambo family group of the Gubrun People, they were not consulted by the EPA in respect to the location and significance of Aboriginal heritage sites. They also expressed concern that the EPA considered all heritage sites, places and locations to be of equal importance to Aboriginal people, notwithstanding that some mythological and mythological elements of sites potentially impacted by the proposal are unknown to the Gubrun People.

In relation to the consultation undertaken for the proposal with Aboriginal people, the EPA advised that the proponent followed the EPA's consultation requirements as described in its Administrative Procedures. The Minister noted that this included extensive consultation between the Sambo family and the proponent, which was made available to the EPA through the assessment process. The Minister noted advice that because of the extensive nature of the information provided by the Sambo family through the proponent, the EPA was of the view that it had sufficient information available to it to complete its assessment of this factor.

The Minister also noted that there was opportunity for members of the public to comment during an eight-week public review period and that a copy of the environmental review document was provided to the appellants during this time.

In relation to the surveys which identified additional sites of potential heritage significance, while the Minister acknowledged the Sambo family's concerns about the timing and nature of these surveys, the Minister was of the view that it was appropriate for the EPA to consider this additional information, and to make recommendations on that information accordingly.

Taking into account the information provided, the Minister considered that the EPA had regard to Aboriginal heritage in its assessment of the proposal, and that based on the information presented to it, the EPA's approach was consistent with its published guidance for this factor.

However, noting advice from the then Department of Aboriginal Affairs that impacts to Aboriginal heritage are able to be managed through the provisions of the *Aboriginal Heritage Act 1972*, and the EPA's advice that the Minister for Aboriginal Affairs is a decision making authority for this proposal, the Minister considered that Aboriginal heritage affected by the proposal can be further considered through the consultation process established under section 45(1) of the Act.

In relation to amenity and in particular potential visual impacts from the proposal, the Minister was of the view that the EPA's assessment was justified, having regard to comments from the former Department of Parks and Wildlife in respect to the likely success of rehabilitation measures.

### **Other environmental factors**

The joint conservation group's appeal raised other concerns with the EPA's report, including in respect to hydrological processes and terrestrial fauna.

In relation to these matters, the Minister indicated that he considered the Appeals Convenor's advice, and determined to dismiss these elements of the appeals in accordance with her recommendations.

### **Process matters**

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 community interest.

The Minister noted that he had considered these issues, and 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 concluded that the EPA's assessment of the environmental impacts from the proposal was appropriate. In particular, the Minister was of the view that the available evidence supports the conclusion that the Helena-Aurora Range is a significant landform and that the proposal will likely pose a serious and irreversible threat to *Tetratheca aphylla* subsp. *aphylla*, *Lepidosperma bungalbin*, and 21 species of troglofauna.

It follows that the Minister dismissed the appeals.

### **Next steps**

Having determined the appeals, section 45(1) of the Act requires that the Minister consult 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.

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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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