



Environmental Protection Act 1986

Hon Reece Whitby MLA
Minister for Environment; Climate Action

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST EPA DECISION NOT TO ASSESS: ENEABBA RARE EARTH REFINERY PROJECT

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section 100(1)(a) of the *Environmental Protection Act 1986* in objection to the above EPA decision. 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.

Appellant:	Conservation Council of Western Australia
Proponent:	Iluka Resources Limited
Proposal description:	The proposal is for the construction and operation of a new rare earth refinery which will process input material from an existing by-product stockpile at the Eneabba Mineral Sands Mine site, future Iluka feedstocks and third-party feedstocks to produce individual rare earth oxides and carbonates.
Minister's Decision:	The Minister dismissed the appeal
Date of Decision:	13 June 2022

REASONS FOR MINISTER'S DECISION

The Conservation Council of Western Australia submitted an appeal in objection to the decision of the Environmental Protection Authority (EPA) not to assess the Eneabba Rare Earth Refinery Project referred by Iluka Resources Limited.

The proposal is for the construction and operation of a new rare earth refinery at the existing Eneabba Mine Site located, about 5 kilometres south-east of the town of Eneabba and some 300 kilometres north of Perth.

The refinery will process the existing Eneabba monazite concentrate, future Iluka feedstocks and third-party feedstocks to produce individual rare earth oxides and carbonates. The refinery waste, including naturally occurring radioactive material, will be disposed of in in-ground tailings storage facilities within the proposal footprint.

The Minister understood the key concerns on appeal to be that the radiological risks from waste may be more significant than considered and that the EPA did not adequately consider other statutory mechanisms relevant to the proposal. The appellant contended that the proposal should be remitted to the EPA for formal assessment which the appellant submitted will allow for a coordinated approach to the regulation of this proposal and for public participation in its assessment.

Decision

Having considered the information available, including the EPA's response to the appeal and the Appeals Convenor's report, the Minister was satisfied that the EPA's decision not to assess the proposal was justified. The Minister came to this decision on the basis that the proposal is expected to produce only very low level waste and that in the unlikely event that intermediate level waste is identified once the proposal is operational, there are sufficient mechanisms for this type of waste to be safely regulated.

The reasons for the Minister's decision follow.

Significance of radiological impacts

The appellant contended that radiological impacts from the proposal would be more significant than considered by the EPA as intermediate level waste may be present.

The Minister noted that the proposal will generate up to 181,000 tonnes of solid waste per annum over a minimum proposal life of 20 years. This waste is identified as being very low level waste. The Minister also understood that it is possible that intermediate level waste, while not part of the waste stream, may be identified during maintenance or demolition. The proponent has advised that the volume of this waste, if it does occur, will be minute in proportion to the volume of total waste.

Advice received by the EPA from the Radiological Council indicated that while it was a possibility, intermediate level waste was not expected to occur as part of the proposal.

Based on the very low likelihood of intermediate level waste occurring, the Minister agreed that the EPA properly considered the potential environmental risks posed by the proposal in its decision not to assess.

It follows that the radiological risks of the proposal are not so significant as to warrant formal assessment by the EPA.

Other statutory processes to meet the EPA's environmental factor objectives

The appeal questioned whether the statutory processes identified can regulate radiological waste and its long-term effects, including in the absence of public review and input to conditions. Noting the Minister's finding that the potential environmental risks posed by the proposal are not so significant as to warrant assessment, he agreed with the Appeals Convenor that other statutory processes are not determinative in the decision not to assess the proposal.

In any event, if intermediate level waste is identified, the Radiological Council confirmed to the EPA that it has the power to regulate the potential impacts associated with radiation for the project and will continue to do so in collaboration with the Department of Mines, Industry Regulation and Safety (DMIRS). The Minister noted that DMIRS has confirmed that mining, processing, storage and disposal of naturally occurring radioactive materials are regulated under the *Mines Safety and Inspection Act 1994* and *Mines Safety and Inspection Regulations 1995*.

While these decision-making processes are not public and do not include public appeals, given the Minister's conclusion that the EPA was justified in forming the view that the environmental impacts associated with radiological matters were not so significant as to warrant formal assessment, the role of other decision-making authorities is not determinative. As noted, should intermediate level waste be identified once the proposal is operational, the Radiological Council has advised the EPA that it has the power to regulate that waste.

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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