



Environmental Protection Act 1986

Hon Stephen Dawson MLC
Minister for Environment

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST REPORT AND RECOMMENDATIONS OF THE ENVIRONMENTAL PROTECTION AUTHORITY EAST ROCKINGHAM WASTE TO ENERGY REVISED PROPOSAL (EPA REPORT 1624)

Purpose of this document

This document sets out the Minister's decision on an appeal 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.

Appellant:	Jane Bremmer
Proponent:	New Energy Corporation Pty Ltd
Proposal description:	The proposal includes changes to an approved project (Ministerial Statement 994) to construct and operate a waste to energy facility in East Rockingham.
Minister's Decision:	The Minister dismissed the appeal.
Date of Decision:	14 February 2019

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 appeal. The Minister also received a report from the Appeals Convenor, setting out the background and related matters to the appeal, and including recommendations on how the appeal should be resolved.

In summary, the appellant raised objection to the EPA's assessment on a number of grounds, including that it relied on outdated policy and guidance, did not adequately consider relevant policy, such as the waste hierarchy, mis-described the nature of a proposal to develop a waste to energy facility at Eastern Creek in New South Wales, and failed to properly assess air emissions and related risks.

In relation to relevant policy, the appellant submitted that the EPA relied on outdated information in its 2013 report *Environmental and health performance of waste to energy technologies* (the strategic advice). The appellant also submitted that the EPA failed to consider developments in the regulation of waste to energy plants in Europe where emissions standards and related matters were under review.

The Minister considered the information before him, and was of the view that the strategic advice provided appropriate contextual information relevant to the consideration of waste to energy plants in Western Australia.

The six principles identified as key to the successful operation of such plants include that they must demonstrate best practice that, at a minimum, meets the European Union's Waste Incineration Directive (WID) standards for emissions at all times. Additionally, waste sourced as input must target genuine residual waste that cannot feasibly be reused or recycled.

The WID has since been replaced by the Industrial Emissions Directive (IED). The appellant submitted that as this instrument is under review, the EPA ought to have waited for the outcomes of that review process before making a determination on the revised proposal. The Appeals Convenor's report noted that a final draft of the Best Available Technologies Reference Document (BREF) relating to the IED was published by the European Union in December 2018. While in draft form, the BREF sets out (among other things) associated emission levels for various substances relevant to waste incineration plants.

The proponent of the revised proposal undertook a review of the plant's compliance with an earlier draft of the BREF. That review demonstrated that emissions from the plant will comply with the associated emission levels of the BREF, including the levels identified in the 2018 final draft.

The EPA noted that the revised proposal is 'prescribed' for the purposes of Part V of the Act, and as such, the proponent will require a works approval before commencing any works on site, and to hold a licence before any operations begin. The EPA advised requirements relating to emission limits and monitoring can be applied through that process. The EPA also noted that Schedule 1 of the recommended environmental conditions includes a requirement that emissions shall not exceed the limits specified in Annex VI of the IED or its updates. Should there be further updates, the EPA advised that the proposal would be required to meet the replaced standards.

Taking into account the available information, the Minister considered that the EPA properly considered relevant policy in forming its recommendations. Consistent with the current Government's commitments to promote the circular economy, the strategic advice makes clear that waste to energy plants should be designed to accept only genuine residual waste. To this end, the Premier and the Minister recently launched the *Waste Strategy 2030*, which includes a commitment to achieve a 75 per cent rate of material recovery by 2030 through the implementation of various initiatives, including a third kerbside bin for Food Organics and Garden Organics (FOGO) by 2025.

In relation to the Eastern Creek proposal, the appellant was correct in noting that the throughput of the proposal considered by the Independent Planning Commission was 552,500 tonnes of waste material per annum, being what was originally described as Stage 1 of that proposal. The EPA's report incorrectly quoted a volume twice this size, reflecting both Stages. Notwithstanding this error, the Minister agreed with the Appeals Convenor that the EPA's conclusions with respect to the Eastern Creek proposal remain justified. This is for the reason that the Eastern Creek facility was proposed to be located in closer proximity to a significantly larger number of sensitive receptors than is the case for the East Rockingham site, and the type of waste material to be accepted at that facility included material types likely to comprise a significant proportion of hazardous substances.

In relation to emissions and air quality, the Minister considered the information the appellant put forward, together with the response of the proponent and the EPA. The Minister also noted, in particular, the EPA's advice that emissions from the premises are best regulated through the works approval and licensing provisions under Part V of the Act. On the basis of this information, the Minister was of the view that the EPA's assessment of air quality was appropriate, and that it properly considered the risks posed by the revised proposal, including cumulative impacts.

It is expected that, consistent with the EPA's advice and with the strategic advice, future consideration of a works approval and licence for the premises will include a thorough examination of the proposal against contemporary best practice standards, and appropriate limits and monitoring requirements will be applied to ensure the protection of the environment and human health.

It follows from the above that the Minister considered the EPA's assessment of the revised proposal was appropriate, and its recommendations justified. The Minister therefore dismissed the appeal.

The Minister will consult with relevant decision-making authorities under section 45(1) of the Act as to whether or not the revised proposal should be implemented, and if so, what conditions should be applied to that implementation.

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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