



Government of **Western Australia**
Office of the **Appeals Convenor**
Environmental Protection Act 1986

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Our ref: 076-078/10
Your ref:
Enquiries: Renee Zuks
Telephone: (08) 6467 5190
Date: 30 November 2010

Mr Peter Schneider
Chief Executive Officer
Eastern Metropolitan Regional Council
PO Box 234
BELMONT WA 6984

Dear Mr Schneider:

APPEALS AGAINST EPA LEVEL OF ASSESSMENT – EASTERN METROPOLITAN REGIONAL COUNCIL – RESOURCE RECOVERY FACILITY, CITY OF SWAN

As you are aware, three appeals were lodged in objection to the Environmental Protection Authority's level of assessment for the above proposal.

The Minister has now determined the appeals, and a report of the reasons for decision is attached for your information. A copy of this information is also available to the public in the Department of Environment and Conservation's library.

If you have any queries in relation to this matter, please contact me on 6467 5190.

Yours sincerely

Anthony Sutton
APPEALS CONVENOR

Att

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Environmental Protection Act 1986

**Hon John Day MLA
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

**APPEALS AGAINST LEVEL OF ASSESSMENT -
RESOURCE RECOVERY FACILITY - EASTERN METROPOLITAN
REGIONAL COUNCIL, CITY OF SWAN**

Purpose of this document

This document sets out the Minister's decision on appeals lodged against the Environmental Protection Authority (EPA) decision to set the level of assessment of Public Environmental Review (PER) for 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.

Appellants:	Stoneville & Parkerville Progress Association Inc; Gidgegannup Progress Association Inc; and Alliance for a Clean Environment.
Proponent:	Eastern Metropolitan Regional Council
Proposal description:	Resource Recovery Facility, City of Swan
Minister's Decision:	The Minister allowed the appeals in part
Date of Decision:	29 November 2010

REASONS FOR MINISTER'S DECISION

Three appeals were received in objection to the decision by the Environmental Protection Authority (EPA) to set the level of assessment for the above proposal at Public Environmental Review (PER) with a four week public comment period.

Pursuant to section 106 of the *Environmental Protection Act 1986* (the EP Act), the Minister obtained a report from the 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 appeals.

The Minister understood that the EPA's level of assessment decision was appealed on the basis of: the complexity of the proposal; concern that the public will be excluded from the final decision-making process; the unreasonableness of the public review period; the level of assessment set for other proposals; and the public interest in the proposal.

The Minister noted that the outcome appellants were seeking from the appeals process was for the assessment to be carried out at the level of an Environmental Review and Management Programme (ERMP) and for the public review period to be extended to up to 12 weeks. Appellants also sought that the Minister request the EMRC to decide on a technology option before entering any further into the environmental review process. In the latter regard, the Minister was advised that any decision to change the proposal is ultimately for the proponent.

The Minister was aware that, at the time of its decision on the level of assessment for the proposal, EPA considerations were guided by the *Environmental Impact Assessment (Part IV Division 1) Administrative Procedures 2002*.

A PER level of assessment has typically been applied to proposals that are of local or regional significance that raise a number of significant environmental factors, some of which are considered complex and require detailed assessment to determine whether, and if so how, they can be managed.

An ERMP level of assessment has been applied to proposals of State interest that raise a number of significant environmental issues, many of which are considered to be complex or of a strategic nature, and require substantial assessment to determine whether, and if so how, they can be managed in an acceptable manner.

It follows from the above that proposals under PER and ERMP levels of assessment will both raise a number of significant environmental issues. In the case of a PER, some of the issues will be considered complex and require detailed assessment. Within this context, appellants validly raised the matter of air emissions as a significant environmental issue relevant to the proposal and the Appeals Convenor agreed that this issue is complex and will require detailed assessment.

The Minister noted also that the EPA does not dispute that the proposal raises significant and complex issues, but believes that these issues can be adequately assessed at the level of assessment of PER.

The most conspicuous difference in determining whether a PER or an ERMP level of assessment should be applied lies in the question of whether the proposal is of local, regional or State interest. The Minister agreed with the Appeals Convenor that the proposal is at least regionally significant. However, whilst the proposal may introduce technology that has not otherwise operated in Australia, and atmospheric conditions may at times carry emissions beyond the boundary of the regional Council, the Appeals Convenor was not supportive of the view that these factors raise the proposal to a level of State interest.

Appellants also raised concern regarding public involvement in the decision making processes. In considering this point, the Minister was mindful that the EMRC has convened a Community Task Force to assist with the development of a Community Partnership Agreement for the project and that the EPA is supportive of increasing the

public review period.

Taking into account the grounds of appeal, the response by EMRC and the advice of the EPA, the Minister was supportive of the conclusions of the appeals investigation that the environmental issues raised by appellants are of a scale and level of complexity that is appropriate for a PER level of assessment with an eight week review period. The Minister, therefore, allowed the appeals to the extent that the public review period is increased to eight weeks.

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*.

Prepared by: Renee Zuks

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