



Report and recommendations of the Environmental Protection Authority



Sandy Ridge Facility
– inquiry under section 46 of the
Environmental Protection Act 1986
to amend Ministerial Statement 1078

Tellus Holdings Ltd

Report 1685

July 2020

Inquiry under section 46 of the *Environmental Protection Act 1986*

The Minister for Environment has requested that the Environmental Protection Authority (EPA) inquire into and report on the matter of whether the implementation conditions relating to the financial assurances in Ministerial Statement 1078 for the Sandy Ridge Facility should be changed.

Section 46(6) of the *Environmental Protection Act 1986* requires the EPA report to include:

- (a) a recommendation on whether or not the implementation conditions to which the inquiry relates, or any of them, should be changed
- (b) any other recommendations that it thinks appropriate.

The following is the EPA's report to the Minister pursuant to s. 46(6) of the *Environmental Protection Act 1986*.



Dr Tom Hatton
Chairman

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1. The proposal

The Sandy Ridge Facility (the proposal) is a dual open cut kaolin clay mine and a near-surface geological waste repository accepting Class IV and Class V waste, approximately 75 kilometres north east of Koolyanobbing. The proponent for the proposal is Tellus Holdings Ltd.

The EPA assessed the proposal at the level of Public Environmental Review, and published its Report and Recommendations (Report 1611) in December 2017. In this report, the EPA identified the following key environmental factors during the course of its assessment of the proposal:

- Terrestrial environmental quality
- Flora and vegetation
- Human health
- Terrestrial fauna
- Inland waters environmental quality.

In applying the *Statement of Environmental Principles, Factors and Objectives* (EPA 2020a) these factors are now represented by:

- Terrestrial environmental quality
- Flora and vegetation
- Human health
- Terrestrial fauna
- Inland waters.

The EPA concluded in Report 1611 that it was likely the EPA's objectives would be achieved, provided there was satisfactory implementation by the proponent of the EPA's recommended conditions.

The Minister for Environment approved the proposal for implementation, subject to the implementation conditions of Ministerial Statement 1078 (27 June 2018).

Previously approved changes to the proposal and conditions

The following changes to the proposal were approved under section 45C of the *Environmental Protection Act 1986* on 5 February 2019 (Attachment 1 of Ministerial Statement 1078):

- amendment of the development envelope from 1,004.2 hectares to 1,061 hectares to allow for relocation of groundwater abstraction infrastructure
- installation of a 1.5 megawatt solar farm for power generation
- addition of two stormwater sumps on internal roads in the infrastructure area
- reduction in the width of internal roads to the Class II landfill and along the groundwater pipeline to Carina Iron Ore Mine

- addition of an access road adjacent to Mt Dimer Road
- addition of a flood levee
- change in orientation and size of the accommodation camp.

There have been no changes to the implementation conditions since the publication of Ministerial Statement 1078.

2. Requested changes to conditions

Condition 13 of Ministerial Statement 1078 relates to the financial assurance requirements of the proposal, requiring the proponent to provide to the Chief Executive Officer (CEO) of the Department of Water and Environmental Regulation (DWER), financial assurance in the form of current insurance policies and a bank guarantee, prior to accepting Class IV and Class V waste at the project site.

In Report 1611, financial assurance and insurance was considered by the EPA under other advice and not as an environmental factor. It was noted in the report that the provision of financial assurances and insurances did not diminish the proponent's responsibility, but was intended to protect the Western Australian Government in the event that the site is abandoned or costs exceed the operator's ability to pay.

In its report, the EPA considered the potential instruments that could be used to secure the financial assurance and insurance for the proposal including:

- creation of a Crown Reservation under section 41 of *the Land Administration Act 1997* (LA Act) and Management Order (section 46 LA Act) with power to lease or licence in favour of an applicable government holding body for successive leasing to the proponent
- granting a lease (section 79 LA Act) directly to the proponent
- a performance bond required under the LA Act
- use of Part V of the *Environmental Protection Act 1986* (EP Act).

Following the publication of EPA Report 1611, the Minister for Environment considered the financial assurance requirement for the proposal, in the absence of a lease arrangement and associated financial assurance, and amended the recommended Ministerial Conditions to include condition 13 requiring financial assurance and insurance.

In January 2020, Gilbert and Tobin Lawyers, acting on behalf of the proponent, requested changes to condition 13 of Statement 1078 under section 46 of the EP Act as a result of proposed alternative financial arrangements being negotiated with the State.

In March 2020, pursuant to section 46(1) of the EP Act, the Minister for Environment requested that the EPA inquire into and report on the question of whether the implementation conditions relating to the financial assurances in Ministerial Statement 1078 for the Sandy Ridge Facility should be changed. This report satisfies the requirements of the EPA's inquiry.

3. Inquiry into changing conditions

The EPA has discretion as to how it conducts this inquiry. In determining the extent and nature of this inquiry, the EPA had regard to information such as:

- the currency of its original assessment (EPA Report 1611)
- Ministerial Statement 1078
- information provided by the proponent
- advice from relevant decision-making authorities
- any new information regarding the proposal's potential impacts on the environment.

EPA procedures

The EPA followed the procedures in the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016* (State of Western Australia 2016) and the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual* (EPA 2020b).

4. Inquiry findings

The EPA considered that the following are the key environmental factors relevant to the change to condition 13:

- Terrestrial Environmental Quality
- Inland Waters.

The other factors noted in section 1 of this report (flora and vegetation, terrestrial fauna and human health) were considered as part of this change. However, as condition 13 relates to the long-term financial assurance of the site during operations and post closure, and the approved Closure Plan includes completion criteria for flora, vegetation and fauna, and key risks associated with human health are managed through other regulations, then these factors are not considered further during this assessment.

4.1 Terrestrial Environmental Quality

The EPA's environmental objective for this factor is *to maintain the quality of land and soils so that environmental values are protected.*

Conclusions from EPA Report 1611

The proposal lies within the tectonically stable Archean Yilgarn Craton, making it a suitable location for a facility of this type. The topography of the development envelope consists of flat to gently undulating plains and low rises, and is typical of landscapes over deeply weathered granite rock.

There are no distinct surface water features within the development envelope and there is no discernible groundwater within the depth to which the waste pits will be excavated. The underlying soil structure is comprised of low permeability kaolin clays making it highly unlikely that any leachate will move from the site. Another Class V waste repository is located nearby and has not experienced any significant issues associated with the deposition of waste in this area during its operation.

EPA Report 1611 identified the potential impact to terrestrial environmental quality as soil contamination through:

- leaks or spills of waste during handling and short-term surface storage
- geological barrier failure through subsidence, instability of waste cells or seismic activity
- failure of cap integrity due to slumping of cell backfill material
- infiltration of water into waste cells causing the generation of leachate
- erosion of completed cell capping allowing water to infiltrate or waste to be exposed.

To manage these impacts, the EPA recommended the following conditions in Ministerial Statement 1078:

- schedule 1 – outlining the requirements for the volume and storage of waste on the site
- condition 6 – ensuring that only wastes from within Australia and the Australian Exclusive Economic Zone are accepted
- condition 7 – requiring preparation and maintenance of a detailed Waste Management System
- condition 8 – requiring an annual independent audit
- condition 9 – requiring preparation and implementation of a Leachate Monitoring and Management Plan.

Assessment of the proposed change to conditions

The EPA considers that the following current environmental policy and guidance is relevant to its assessment of the proposal for this factor:

- *Environmental Factor Guideline – Terrestrial Environmental Quality* (EPA 2016).

The proponent has not proposed any changes to Ministerial Statement 1078 relating to conditions concerning terrestrial environmental quality (conditions 6, 7, 8 and 9).

Given the proposed changes relate to the structure of the financial assurance provided for the proposal, and there are no proposed changes to the physical structure, methods or scale of the proposal itself, the EPA considers that there are no additional impacts to terrestrial environmental quality that are different from the original proposal. The EPA notes that the Closure Management Plan and the Leachate Monitoring and Management Plan have been approved for the project and these plans include appropriate completion criteria and provisioning for the closure and post closure monitoring of the site.

4.2 Inland Waters

The EPA's environmental objective for this factor is *to maintain the hydrological regimes and quality of groundwater and surface water so that environmental values are maintained.*

Conclusions from EPA Report 1611

The proposal area is characterised as semi-arid, with little rainfall occurring over the site. There are no channels or creeks in the development envelope. No groundwater table was discernible during the drilling of boreholes at depths between 21 to 49 metres below ground level and no groundwater users (or bores) are located in the local area.

During the assessment of the original proposal, the proponent proposed mitigation measures to reduce the potential impact to inland waters including:

- the use of covered and bunded areas for unloading, handling and temporary storage of the waste received

- diversion levees and operational bunding to divert water flows
- presence of kaolin clays at the base and walls of the voids
- segregation of wastes within the waste cells by a five metre internal compacted clay wall
- capping and compacting a three meter layer of low permeability clay to prevent ingress of rainfall.

Given the absence of surface and groundwater receptors and the proponent's mitigation measures, the EPA considered in Report 1611 that there was unlikely to be any residual impact on inland waters and no conditions specific to inland waters were set by the EPA. The Leachate Monitoring and Management Plan required by condition 9 is relevant to both terrestrial environmental quality and inland waters.

Assessment of the proposed change to conditions

The EPA considers that the following current environmental policy and guidance is relevant to its assessment of the proposal for this factor:

- *Environmental Factor Guideline – Inland Waters* (EPA 2018).

Given the proposed changes relate to the structure of the financial assurance provided for the proposal, and there are no proposed changes to the physical structure, methods or scale of the proposal itself, the EPA considers there are no additional impacts to inland waters that are different from the original proposal. The EPA also notes that Leachate Monitoring and Management Plan required by condition 9 of Ministerial Statement 1078 has been approved and includes requirements for the early detection and long-term monitoring of leachate, management options and contingency actions in the event that leachate is detected. This is considered to be leading practice for this type of facility.

4.3 Other conditions

Ministerial Statement 1078 contains other conditions not related to the key environmental factors discussed above. These conditions are either standard conditions or relate to matters outside the EPA's authority. The EPA's recommendations regarding these other conditions are that they remain unchanged.

5. Other advice

The EPA also notes the advice from DWER in relation to the arrangements the proponent is negotiating with the State as an alternative to the bank guarantee required by condition 13. This advice is attached at Appendix 2.

6. Conclusions and recommendations

Change to condition 13

Based on the memorandum from DWER referred to in section 5 above, the EPA understands that the proponent is in the process of negotiating alternative financial assurances arrangements with the State which will apply during the operational phase as well as the institution control periods to ensure that the State's interests are protected. These alternative financial assurances are beyond the knowledge and expertise of the EPA and have not been considered for the purpose of this inquiry and report.

However, the EPA notes that the development of the Financial Assurance Deed (FAD) linked to the lease of the facility is consistent with its 'Other advice' in Report 1611 on the facility and what was originally proposed by the proponent.

Conclusions

In relation to the environmental factors, and considering the information provided by the proponent and relevant EPA policies and guidelines, the EPA concludes that:

- There are no changes to the proposal.
- There is no significant new or additional information that changes the conclusions reached by the EPA under any of the relevant environmental factors since the proposal was assessed by the EPA in Report 1611 (December 2017).
- No new significant environmental factors have arisen since its assessment of the proposal.
- The impacts to the key environmental factors are considered to have remained unchanged and are therefore manageable, based on the requirements of existing conditions.

Recommendations

Having inquired into this matter, the EPA submits the following recommendations to the Minister for Environment under s. 46 of the EP Act:

1. The Minister consider the alternative financial assurance arrangements that the proponent is negotiating with the State before deciding whether or not to amend condition 13 of Ministerial Statement 1078.
2. In deciding whether to amend condition 13, the Minister should also consider obtaining advice from other government agencies including the Department of Planning, Lands and Heritage and the Department of Treasury.
3. While retaining the environmental requirements of the original conditions of Ministerial Statement 1078, it is appropriate for the Minister, in consultation with Decision Making Authorities, to decide on the requirement for a financial assurance condition within Ministerial Statement 1078.
4. After complying with s. 46(8) of the EP Act, the Minister may issue a statement of decision to amend condition 13 of Statement 1078.

Consistent with its original assessment of the proposal (Report 1611), the EPA has not recommended a condition relating to Financial Assurance of the facility.

However the EPA has provided a suggested statement (Appendix 1) for the Minister to consider during deliberations on the changes to the conditions.

References

EPA 2016, *Environmental Factor Guideline – Terrestrial Environmental Quality*, Environmental Protection Authority, Perth, WA.

EPA 2018, *Environmental Factor Guideline – Inland Waters*, Environmental Protection Authority, Perth, WA.

EPA 2020a, *Statement of Environmental Principles, Factors and Objectives*, Environmental Protection Authority, Perth, WA.

EPA 2020b, *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual*, Environmental Protection Authority, Perth, WA.

State of Western Australia 2016, State of Western Australia 2016, *Western Australian Government Gazette, No. 223*, 13 December 2016.

APPENDIX 1: Identified Decision-Making Authorities and Suggested Environmental Conditions

Identified Decision-Making Authorities

The following decision-making authorities have been identified for the purposes of s. 45 as applied by s. 46(8) of the *Environmental Protection Act 1986*:

Decision-making Authority	Legislation (and Approval)
1. Minister for Environment	<i>Biodiversity Conservation Act 2016</i> (Taking of protected flora and fauna)
2. Minister for Water	<i>Rights in Water and Irrigation Act 1914</i> (Groundwater abstraction licence)
3. Minister for Aboriginal Affairs	<i>Aboriginal Heritage Act 1972</i> (Section 18 approval)
4. Minister for Mines and Petroleum	<i>Mining Act 1978</i> (Mining Lease)
5. Minister for Planning and Lands	<i>Land Administration Act 1997</i> (Section 79 General Purpose Lease)
6. Chief Executive Officer, Department of Water and Environment Regulation	<i>Environmental Protection Act 1986</i> (Works Approval and Licence and Clearing Permit) <i>Environmental Protection (Controlled Waste) Regulations 2004</i>
7. Mining Registrar, Department of Mines, Industry Regulation and Safety	<i>Mining Act 1978</i> (Mining Proposal)
8. State Mining Engineer, Department of Mines, Industry Regulation and Safety	<i>Mines Safety and Inspection Act 1994</i> (Mining Proposal)
9. Chief Dangerous Goods Officer, Department of Mines, Industry Regulation and Safety	<i>Dangerous Goods Safety Act 2004</i> Dangerous Goods Safety (Storage and Handling of non-explosives) Regulations 2002
10. Secretary, Radiological Council of Western Australia	<i>Radiation Safety Act 1975</i> (Certificate of Registration/Disposal Permit)
11. Chief Health Officer, Department of Health	<i>Health Act 1911</i> Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974
12. Chief Executive Officer, Shire of Coolgardie	<i>Planning and Development Act 2005</i> (Planning approvals) <i>Building Act 2011</i> (Decision maker for permits and development approvals) <i>Local Government Act 1995</i>

Note: In this instance, agreement is only required with DMAs 1 - 5 since these DMA/s is/are a Minister/s.

Suggested Environmental Conditions

STATEMENT TO CHANGE THE IMPLEMENTATION CONDITIONS APPLYING TO A PROPOSAL (Section 46 of the *Environmental Protection Act 1986*)

SANDY RIDGE FACILITY

Proposal: The proposal is to construct and operate a dual open cut kaolin clay mine and a near-surface geological waste repository accepting Class IV and Class V waste, approximately 75 kilometres north east of Koolyanobbing.

Proponent: Tellus Holdings Ltd
Australian Company Number 138 119 829

Proponent Address: Suite 2, Level 10, 151 Castlereagh Street
SYDNEY NSW 2000

Report of the Environmental Protection Authority: 1685

Previous Report Relating to this Proposal: 1611

Preceding Statement/s Relating to this Proposal: 1078

Pursuant to section 45 of the *Environmental Protection Act 1986*, as applied by section 46(8), it has been agreed that the implementation conditions set out in Ministerial Statement No. 1078, be changed as specified in this Statement.

Condition 13 of Ministerial Statement 1078 is changed by adding condition 13-11:

13 Financial Assurance Requirements

13-11 The proponent is not required to comply with condition 13-1(2) of Ministerial Statement 1078 if the proponent enters into a Deed with the State that allows the State to recover [from a Trust] any costs referred to in paragraphs (a) to (d) of section 86E(1) of the *Environmental Protection Act 1986*.

APPENDIX 2: Memorandum from DWER



Government of **Western Australia**
Department of **Water and Environmental Regulation**

Memorandum

TO: Tom Hatton, Chairman, Environmental Protection Authority
FROM: Dehlia Goundrey, A/Executive Director, EPA Services
DATE: 3 July 2020
RE: **Sandy Ridge Ministerial Statement 1078 – Financial Assurance**
FILE NO: DWERT4911

Background

The Sandy Ridge Facility (Project) is a dual open cut kaolin clay mine and a near-surface geological waste repository accepting Class IV and Class V waste, approximately 75 kilometres north east of Koolyanobbing. The proponent for the Project is Tellus Holdings Ltd (Tellus).

The purpose of this memorandum is to set out the nature of financial arrangements being negotiated with Tellus to further protect the State's interest, and inform a decision about whether or not an amendment should be made to condition 13 of the Ministerial Statement 1078 published on 27 June 2018 (Ministerial Statement) to facilitate this.

On the basis that the EPA has detailed knowledge of the Project, the background to the Project is not set out in this memorandum.

Following the publication of EPA Report 1611, discussions commenced between Tellus and various State departments including the Department of Planning, Lands and Heritage (DPLH), Department of Treasury and DWER regarding the most appropriate form for the financial assurance to mitigate the risk of the State having to bear any costs arising from the Project during the operational phase (of 25 years) or the lengthy institutional control phase (at least 100 years). Advice on these financial structures and arrangements have also been obtained from other government agencies, including Western Australian Treasury Corporation and Insurance Commission of Western Australia. These negotiations are in the final stages and the agreements are nearing final form.

The Ministerial Statement included condition 13 to ensure some form of financial assurance and insurances were in place to allow Tellus to commence implementation of the Project. These required Tellus to take out certain insurances and provide a bank guarantee in the amount of \$6.12 million (Bank Guarantee).

In November 2019, the DPLH executed a Crown Lease with Tellus to facilitate the implementation of the Project which contemplated that Tellus would enter into a Financial Assurance Deed (FAD) with the State.

Current Situation

The financial assurance required by condition 13 of the Ministerial Statement is currently in place, with Tellus lodging the Bank Guarantee on 9 June 2020 and providing evidence of the required insurance policies on 15 June 2020.

As you are aware, in January 2020, Gilbert and Tobin Lawyers, acting on behalf of Tellus, requested changes to condition 13 of MS 1078 under section 46 of the EP Act as a result of proposed alternative financial arrangements being negotiated with the State.

It is proposed that Tellus and the State will enter into a number of agreements, one of which is the FAD, supported by a Trust Deed and an Investment Policy Statement. Given the unique nature of the Project and the required returns, an external Trustee will be appointed to manage the Trust and its investments, in accordance with the Investment Policy Statement.

The FAD provides (amongst other things) that the Minister for Environment or the CEO of DWER will be able to recover from the Trust any cost that may be recovered under section 86E of the EP Act during the Project. This will essentially ensure that any costs that the Minister or the CEO would otherwise recover from the Bank Guarantee currently held pursuant to condition 13, will be met from the Trust.

Provided condition 13 is amended pursuant to section 46 of the EP Act to remove the requirement for the Bank Guarantee, Tellus is required under the FAD to contribute \$6.12 million as an initial amount into the Trust. Tellus is also required to make additional annual contributions to the Trust over the 25 year operation phase of Project.

In addition to any costs that the Minister for Environment or CEO of DWER may recover from the Trust, the Trust has been structured to fund the management and monitoring costs of the site over the lengthy institutional control period for the site (at least 100 years) following the operation phase of the Project.

The FAD has been drafted to supplement, and not replace, the insurance policies required by condition 13 of the Ministerial Statement and as such it is important that this requirement remains in the Ministerial Statement.

The suggested approach is to insert a further condition into condition 13 to provide that Tellus is not required to provide the Bank Guarantee if it enters into the FAD and associated agreements with the State as contemplated above.