



# Report and recommendations of the Environmental Protection Authority



**Kemerton Silica Sand Mining –  
inquiry under s46 of the  
*Environmental Protection Act 1986*  
to amend implementation Condition 3-1  
of Ministerial Statement 703 –  
Extension of time limit for  
substantial commencement**

**Kemerton Silica Sand Pty Ltd**

Report 1454

November 2012



**EPA R&R No: 1454**

## MINISTER FOR ENVIRONMENT

### **KEMERTON SILICA SAND MINING – INQUIRY UNDER SECTION 46 OF THE ENVIRONMENTAL PROTECTION ACT 1986 TO AMEND IMPLEMENTATION CONDITION 3-1 OF MINISTERIAL STATEMENT 703 – EXTENSION OF TIME LIMIT FOR SUBSTANTIAL COMMENCEMENT (ASSESSMENT NO. 1942)**

The Minister for Environment has requested (August 2012) that the Environmental Protection Authority (EPA) inquire into and report to the Minister on Kemerton Silica Sand Pty Ltd's (KSS) proposed amendment of Implementation Condition 3-1 for the Kemerton Silica Sand Mining Proposal to extend the time limit for substantially commencing the proposal.

The following is the EPA's Report and Recommendations (No. 1454) pursuant to section 46(6) of the *Environmental Protection Act 1986* (the EP Act).

### **BACKGROUND**

In November 2005, KSS obtained authorisation under Ministerial Statement 703 to transfer the ownership of approximately 17 hectares of land (Area 1, Figure 1 of Ministerial Statement 703) that contains the Muchea Limestone Communities Threatened Ecological Community to the conservation estate and to extract silica sands from two parcels of land (Area 2 and Area 3, Figure 2 of Ministerial Statement 703) which total approximately 13 hectares.

In August 2012, KSS wrote to the EPA seeking an amendment to Implementation Condition 3-1 of Ministerial Statement 703. Condition 3-1 relates to the substantial commencement of the proposal within five years of the issue date of Ministerial Statement 703. KSS state that it has taken all reasonable and practical measures to implement the land transfer as required by Condition 5 of Ministerial Statement 703; however, the project cannot be implemented as the land transfer has not been completed. KSS is therefore requesting an extension, until two years after the date of the new Ministerial Statement, for the substantial commencement of the project to allow the land transfer to be concluded.



## ASSESSMENT OF THE PROPOSED CHANGES

The environmental regulation of the Kemerton Silica Sand Mine under Part IV of the EP Act comprises a number of standard Ministerial Conditions. The proponent is proposing to amend implementation Condition 3-1 of Ministerial Statement 703. The EPA has reviewed the KSS application and relevant Ministerial Conditions and believes that a further extension of two years for substantial commencement of the project is acceptable under the EP Act. In making this decision, the EPA has consulted with the Department of Environment and Conservation (DEC) and obtained its advice that this extension is justifiable.

A summary of this section 46 assessment is presented below:

Table 1 Kemerton Silica Sand Mining Proposal – section 46 assessment of proposed change

Existing Conditions	New Proposed Conditions	Assessment and Evaluation of Proposed Changes
<p>3 Commencement and Time Limit of Approval</p> <p>3.1 The proponent shall substantially commence the proposal within five years of the date of this Statement or the approval granted in this Statement shall lapse and be void.</p>	<p>3 Time Limit of Authorisation</p> <p>3.1 The authorisation to implement the proposal provided for in this statement shall lapse and be void two years after the date of this statement if the proposal to which this statement relates is not substantially commenced.</p>	<p>KSS has requested this time extension to enable implementation of the proposal. Delays in the land transfer are due to administrative processes beyond the proponent's control.</p> <p>This condition is amended to allow an extension, until two years after the date of the new statement, for the substantial commencement of the project.</p>
<p>3.2 The proponent shall make application for any extension of approval for the substantial commencement of the proposal beyond five years from the date of this statement to the Minister for Environment, prior to the expiration of the five year period referred to in condition.</p>	<p>3.2 The proponent shall provide the Chief Executive Officer of the Office of the Environmental Protection Authority with written evidence which demonstrates that the proposal has substantially commenced on or before the expiration of two years from the date of this statement.</p>	<p>KSS has not requested this change. Condition 3-2 of Ministerial Statement 703 has been amended, in order to be consistent with "Administrative Model Conditions" which have been developed by the Office of the Environmental Protection Authority to streamline the Administrative Implementation Conditions utilised in writing Ministerial Statements.</p>

## **EPA CONCLUSION AND RECOMMENDATION**

In view of the request by Kemerton Silica Sand Pty Ltd and the advice received from the DEC, the EPA concludes that amending Condition 3-1 and extending the period for substantial commencement of the silica sand mining project to two years after the date of the new statement is acceptable.

Having inquired into this matter, the EPA recommends to the Minister for Environment that:

- it is appropriate to amend Implementation Conditions 3-1 and 3-2 of the Ministerial Statement 703 as presented in Table 1; and
- after complying with section 46(8) of the EP Act, the Minister issues a Statement of decision to amend Conditions 3-1 and 3-2 of Ministerial Statement 703 in the manner provided for in the attached recommended Statement.



**Dr Paul Vogel**  
CHAIRMAN

12 November 12

Statement No. XXXX

RECOMMENDED ENVIRONMENTAL CONDITIONS

**STATEMENT TO AMEND CONDITIONS APPLYING TO A PROPOSAL  
(PURSUANT TO THE PROVISIONS OF SECTION 46 OF THE  
*ENVIRONMENTAL PROTECTION ACT 1986*)**

**Proposal:** Kemerton Silica Sand Mining Proposal – Additional Mining  
Areas and Transfer of Land for Conservation

**Proponent:** Kemerton Silica Sand Pty Ltd

**Proponent Address:** Corner of Treasure and Wellesley Roads  
Kemerton WA 6233

**Assessment Number:** 1942

**Previous Assessment Number:** 1573

**Report of the Environmental Protection Authority:** 1454

**Previous Report of the Environmental Protection Authority:** 1183

**Previous Statement Number:** 703

The implementation of the proposal to which the above report of the Environmental Protection Authority relates is subject to the conditions and procedures contained in Ministerial Statement No. 703, as amended by the following:

1. Changes to Conditions 3-1 and 3-2

Conditions 3-1 and 3-2 of Ministerial Statement 703 are deleted and replaced with:

**3 Time Limit of Authorisation**

- 3-1 The authorisation to implement the proposal provided for in this statement shall lapse and be void two years after the date of this statement if the proposal to which this statement relates is not substantially commenced.
- 3-2 The proponent shall provide the Chief Executive Officer of the Office of the Environmental Protection Authority with written evidence which demonstrates that the proposal has substantially commenced on or before the expiration of two years from the date of this statement.

**HON BILL MARMION MLA  
MINISTER FOR ENVIRONMENT; WATER**