

EDUCATION, SCIENCE AND TRAINING

SENATE LEGISLATION COMMITTEE - QUESTIONS ON NOTICE 2004-2005 BUDGET ESTIMATES HEARING

Outcome: 3

Output Group: 3.2 – Assistance for science collaboration and innovation

DEST Question No. E012_05

Senator Wong asked on 2 June 2004, EWRE Hansard page 99.

Question:

Can you provide a copy of Dr Harmer's letter of response to Dr Loy stating DEST's case for maintaining our application as is?

Answer:

National Radioactive Waste Repository – Licence Application – Correspondence with ARPANSA

A copy of Dr Harmer's letter of 2 June 2004 to the CEO of ARPANSA, Dr Loy, concerning whether DEST wished to maintain its current licence application for the national repository is at Attachment A.

Attachments one to six of the letter contain Aboriginal heritage reports and clearance agreements. It is not appropriate to provide these documents as they contain material of a culturally sensitive and/or confidential nature.

On 14 July 2004 the Prime Minister announced that the Australian Government had decided to abandon a national radioactive waste repository at Site 40a near Woomera in South Australia.

The Australian Government will establish a waste management facility for the Commonwealth's low and intermediate level waste on Commonwealth land at a yet to be determined site.

The Department of Education, Science and Training has withdrawn its licence application to ARPANSA for the national repository.



Australian Government

Department of Education, Science and Training

OFFICE OF THE SECRETARY

Dr John Loy
CEO ARPANSA
PO Box 655
Miranda NSW 1490

Attn: Peter Colgan

Dear John

Thank you for your letters of 6 April 2004, 3 May 2004, 4 May 2004 and 14 May 2004 concerning DEST's licence application to site, construct and operate the national repository at Site 40a near Woomera in South Australia.

In accordance with your correspondence of 4 May 2004 we will progress the site characterisation studies as soon as practicable in order respond to some of the issues raised in the IAEA report *Radioactive Waste Safety Appraisal; An International Peer Review of the Licence Application for the Australian Near Surface Radioactive Waste Disposal Facility* and in the Nuclear Safety Committee's report on the licence application.

Our substantive responses to the range of issues raised by the IAEA review team, in public submissions and at the Public Forum will take some time to complete. In the meantime I would like to take this opportunity to respond to some of the issues raised in your letters of 19 March 2004 and 6 April 2004.

Step-by-step assessment of licence application

Your letter of 19 March 2004 requested that I confirm whether DEST wishes to proceed with the current application for the three conducts or would now wish to proceed only with an application for a licence to prepare the site at this stage. In response I would like to reiterate that the Department's preference is to proceed with the current application in its entirety for siting, construction and operation of the facility. We take this position with a clear expectation that there will be ongoing review and further public consultation processes over the life of the project as envisaged in the documents cited in the IAEA final report.

While DEST understands that the step-by-step assessment of licence applications recommended by the IAEA review team has been largely applied in the context of deep geological disposal facilities, as evidenced by the citations in the IAEA final report, we are not aware of it having been promulgated in IAEA documents dealing specifically with near surface disposal of low level radioactive waste.

However, if you prefer to approach the licensing of the conducts covered in our application in a step-by-step manner we consider that our application contains sufficient information to enable you to do this. It is assumed that any decision that did not address all of the conducts covered by the application would make clear that it did not imply any rejection of the application in respect of the excluded conducts.

More functional responsibilities within DEST

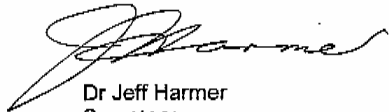
Your letter of 19 March 2004 also requested that, in response to a recommendation of the IAEA review, DEST consider a model in which a greater degree of expert knowledge is maintained within the Department.

Following on from your suggestion, a scientific officer, Dr John Harries, has been appointed to work with existing Departmental officers on various aspects of the national repository project, including the development of the safety case and other relevant aspects of the licence application. I consider that Dr Harries extensive experience as a physicist working for ANSTO on environmental and radioactive waste management issues makes him ideal for the task.

Response to issues raised on Aboriginal heritage

In your letter of 6 April 2004 you sought further information on the Aboriginal heritage clearance process and the form and content of heritage clearance agreements applying to Site 40a. Detailed documentation concerning the heritage clearance process adopted for the project is contained in Attachment A. I would like to emphasise that it makes clear that the Kokatha native title claimant representatives did clear Site 40a for the construction and operation of the national repository.

Yours sincerely



Dr Jeff Harmer
Secretary

2 June 2004

ATTACHMENT A

ABORIGINAL HERITAGE CLEARANCES, SITE 40a

At the ARPANSA Public Forum on the application for a licence to site, construct and operate the national repository, it was indicated by a Kokatha native title claimant that the claimant group did not go through the process of any of the site clearances for the purpose of the construction of the national repository.

You have requested further information on the clearance process and the form and content of heritage clearance agreements.

Considerable effort was made by the Department during the site selection process for the national repository to consult with Aboriginal groups either with native title claims or heritage interests in the central-north region of South Australia. This was to ensure that sites selected for work were cleared of Aboriginal heritage values.

There are three native title claims over the region including and near Site 40a (Fig 1)

- Bamgarla SC 96/6
- Kokatha SC 99/2
- Kuyani SC 00/3.

There has been no determination of native title over Site 40a or the adjacent area.

A separate native title claim application by the Andamooka Land Council Association (Kokatha Gaurdi SC98/5) was not accepted by the Native Title Tribunal, and was merged with the other Kokatha claim in SC99/2. However, the Andamooka Land Council Association continued to deal separately with us on heritage matters.

While the Antakirinja Mutantjarra (SC 95/7) claim does not cover Site 40a (Fig. 1), the group has heritage interests in the area and were involved in the heritage clearance process.

From 1998 onwards the Australian Government undertook extensive consultation with Aboriginal groups on the national repository project (EIS, Main Report, Chapter 11; Chapter 1, section 1.5.3) including attending meetings with the groups, responding to written questions and inviting relevant groups to join the Regional Consultative Committee (RCC). The RCC was established by the Australian Government in 1998 to facilitate information exchange between the Government and stakeholders in the region.

The EIS notes (Main Report, Chapter 11, section 11.1.2) that *"attitudes expressed at meetings and in writing varied between and within groups and ranged from opposition to the proposal to guarded neutrality condition on cultural heritage issues being assessed appropriately, and landscapes and places of spiritual and cultural significance being properly protected.*

"In common with other community groups, organisations and individuals, concern was expressed about the risks to people and the environment from the operation of the repository and by the transport of radioactive materials to the repository. Of specific concern to Aboriginal groups was the potential for the project to adversely affect the values that the landscape of the central-north region of South Australia has for them."

Two and a half years was taken from the selection of central-north South Australia for siting studies to the commencement of the final exploration drilling to ensure that that relevant

consultation with Aboriginal Groups had been undertaken and that sites selected for investigation and associated access routes had been cleared of heritage values. As a result of the clearance process many technically suitable sites were not investigated further and the position of other sites was moved (hence sites such as Site 40 became Site 40a with some adjustment in position after the final Aboriginal heritage survey work was completed).

In all, Aboriginal groups looked at over 50 sites in the region; only 5 sites were cleared for all exploration drilling and construction and operation of the national repository.

Heritage surveys were conducted under separately negotiated heritage clearance agreements (HCAs). The aim of the clearance surveys was to determine whether potentially suitable sites nominated by the Australian Government, or suggested by Aboriginal groups, were 'areas of significance', that is, whether an area is of cultural, social or spiritual significance to Aboriginal people traditionally responsible for that area, and within the definition of "Aboriginal site" as defined in the *Aboriginal Heritage Act 1988 (SA)* and 'significant Aboriginal area' as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cwth)*.

The groups with which the HCAs were negotiated were

- Antakirinja, Bamgarla and Kokatha Native Title Claimant Groups, working jointly under the same legal representatives
- Andamooka Land Council Association, with separate legal representation
- Kuyani Association, represented by an adviser.

The HCAs were intended to provide a framework by which a heritage clearance could be obtained from each of the relevant groups. The work area clearance reports set out the clearances obtained.

Under the HCAs the field teams nominated by the various groups inspected and assessed (clearance work) the various proposed repository sites and their access routes (work areas) and in written reports advised the Department of the details of each work area inspected, assessed and cleared or not cleared by the field team. An area was only to be identified as not-cleared for works if it was an area of significance.

The HCAs contained a provision that, in the event a work area was not cleared, the Department was able to nominate alternative work areas away from areas of significance. In several cases the Aboriginal groups designated alternative areas that were contiguous with or close to the original area; Site 40a was identified in this manner by the rotation of Site 40.

The following HCA's were negotiated:

ABORIGINAL GROUPS	DATE HERITAGE CLEARANCE AGREEMENT SIGNED
Antakirinja, Bamgarla and Kokatha	11 May 1999
Antakirinja, Bamgarla and Kokatha	12 May 2000
Andamooka Land Council Association	24 June 1999
Kuyani Association	25 March 1999

The initial HCA agreement with the Antakirinja, Bamgarla and Kokatha was superseded by the 12 May 2000 agreement. Under the initial agreement, the relevant Aboriginal groups cleared sites for investigation and drilling in stage 1 (one drill hole was placed on the corner of 11 sites, including Site 40). As the original agreement was superseded and the resulting clearance report is confidential the documents are not provided.

Following the failure to obtain clearance for some groups for further work, in November 1999 the Australian Government referred a number of potential repository sites to the South Australian Minister for Aboriginal Affairs under Section 12 (4) of the *Aboriginal Heritage Act 1988 (SA)* for the determination of their heritage significance. The South Australian Government then started an assessment process, which involved public consultation.

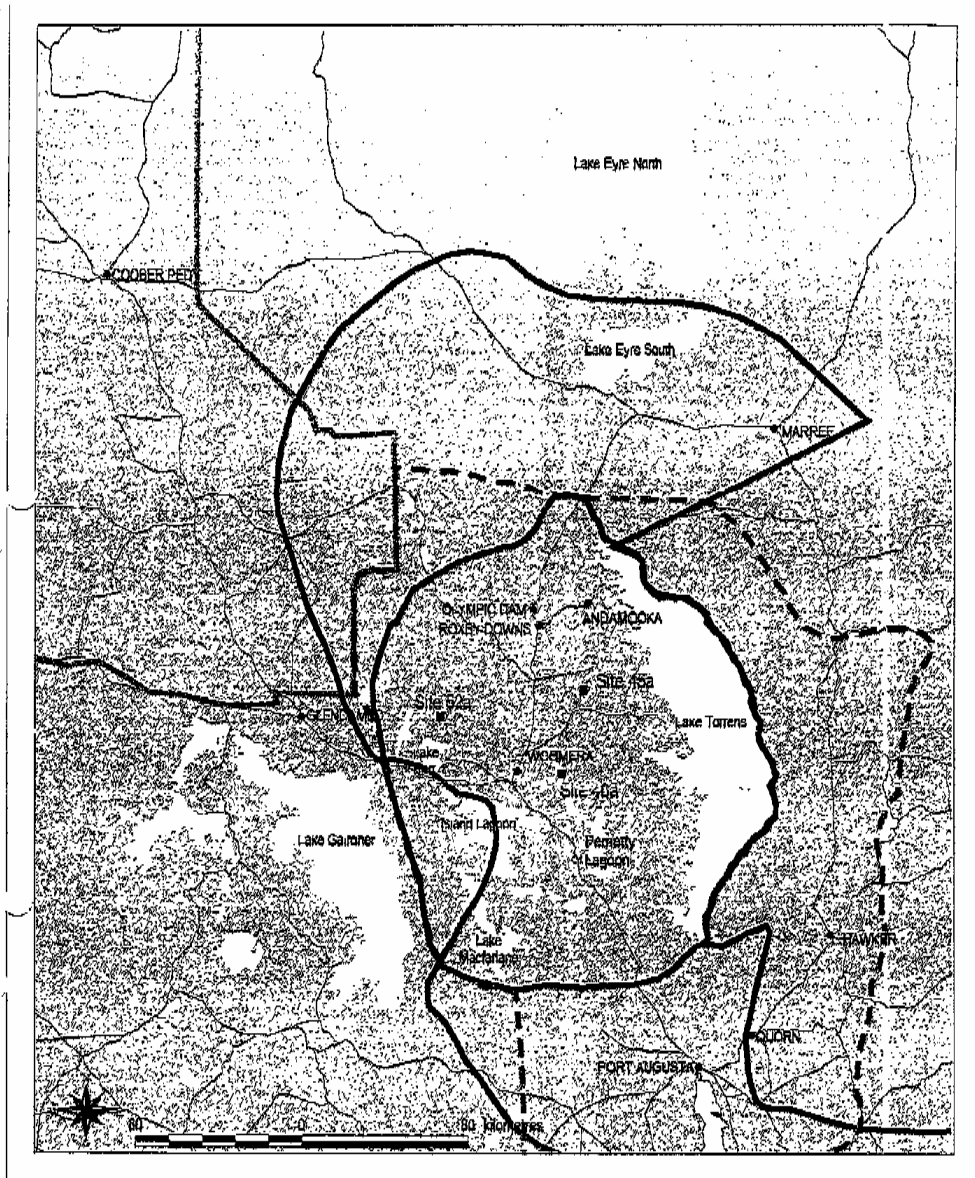
However, before the end of the process, a second HCA was concluded in May 2000 with the Antakirinja, Bamgarla and Kokatha Aboriginal groups to clear five sites for stage 2 and 3 drilling, and the construction and operation of the national repository (Attachment 1). The resulting clearance report is at Attachment 2 (with information not relevant to Site 40/40a deleted and names deleted for privacy reasons). That the clearance is for drilling, construction and operation of the repository is indicated from references on pages 2 (reference to all Works as defined in the HCA, which includes stages 1, 2, and 3 and construction and operation of a national repository), pages 12-13 (construction appears to have been used as a general term to cover both construction and operation), and 18-19 of the clearance report (both construction and operation are referred to on page 19). A particular access route associated with Site 40a was also cleared; this is the route to the site which has been acquired by the Australian Government.

The position of Site 40 was moved slightly as a result of the clearance (see Attachment 2, page 13).

Previous inspections undertaken by the Kuyani and the Andamooka Land Council Association were with respect to Site 40, prior to its relocation resulting from the inspection by the Antakirinja, Bamgarla and Kokatha Aboriginal groups.

Under the 25 March 1999 agreement (Attachment 3), the Kuyani native title claimants cleared Site 40. They expressed no objection to this site, or to the area directly to the north/northwest, for the national repository (Attachment 4) where Site 40a is broadly located.

The 24 June 1999 agreement (Attachment 5) with the Andamooka Land Council Association and the relevant parts of the clearance report (Attachment 6) are provided on a **confidential** basis. There is a copyright on the report, but legal advice indicates that this does not prevent us from providing you with a copy, but that you are not to further publish it.



- Towns
- Potential Repository Sites
- Roads
- ◉ Salt lakes

- SC000/3 - Kuyani
- SC95/7 - Antakirinja Native Title Claim
- SC95/4 - Bamgarla Native Title Claim
- SC99/2 - Kokatha Native Title Claim

Figure 1
Native Title claims of August 2001