

STATEMENT OF REASONS

Decision maker	The Hon Keith Pitt MP Minister for Resources and Water
Decision	To declare that the land described in <u>Attachment A</u> is selected as the site for the National Radioactive Waste Management Facility.
Statutory power	Section 14(2) of the <i>National Radioactive Waste Management Act 2012</i> (Cth)
Date of decision	26 November 2021

A Background

(i) This statement

1. This statement sets out the material findings of fact referring to the evidence and gives the reasons for my decision to declare pursuant to s 14(2) of the *National Radioactive Waste Management Act 2012* (**Act**) that the land the subject of notices given in accordance with ss 18(1) and (2) of the Act, is selected as the site for the National Radioactive Waste Management Facility (**facility**). The land consists of the 210.3 hectare section described in Attachment A of the property known as **Napandee** located approximately 25 kilometres west of Kimba on the Eyre Peninsula and approximately 10 kilometres north of the Eyre Highway¹ (**Napandee Site**). The land described in Attachment A is part of the land at Napandee that has been nominated and approved for the purposes of the Act, as set out in section 1(2) of Schedule 1 to the *National Radioactive Waste Management Amendment (Site Selection, Community Fund and Other Measures) Act 2021* (Cth) (**Amendment Act**).

(ii) Process taken under the Act and reports prepared

2. From March 2015, nominations of potential sites for a facility were received in accordance with the voluntary nomination process under the Act. A total of 30 sites were nominated between 2015 and 2017.
3. Of these sites, three progressed to a detailed assessment phase. These sites were the Napandee Site and sites at Lyndhurst and Wallerberdina.²
4. Activities relating to the suitability of those sites were conducted and resulted in various findings. These activities included:
 - (a) a range of technical site studies and assessments of the three sites undertaken by the Department of Industry, Science, Energy and Resources (**Department**, previously the Department of Industry, Innovation and Science) during 2018 and 2019. The results of these assessments were peer reviewed by independent experts;

¹ Napandee is located in part of section 94, Hundred of Pinkawillinie, Certificate of Title Volume 5937 Folio 542 and was nominated by Mr Jeffrey Frank Baldock and Ms Jennifer Anne Baldock as trustee for the Tola Farm Trust (ABN 66 910 203 855).

² Napandee is part of a farming property located approximately 25 kilometres west of Kimba in South Australia, the Napandee Site being identified in Attachment A. Lyndhurst is part of a farming property located approximately 15 kilometres north-east of Kimba in South Australia. Wallerberdina is part of a cattle station located approximately 30 kilometres north-west of Hawker in South Australia.

- (b) consultation through a number of means, including engagement with individuals and groups, by ballots and surveys, and submissions; and
 - (c) compilation of the site assessment technical data and consultation data regarding the three sites in 2019 by the Department. This information was developed into the Site Assessment Report (SAR) and Community Sentiment Report (CSR), setting out the Department's assessments of the suitability of each of the three nominated and approved sites, including a comparison of the sites where necessary or relevant. Versions of these two assessments were published online in 2020.³
5. On 30 June 2021, the Amendment Act came into force. As well as amending the Act in certain respects, the Amendment Act provided that the land at each of Napandee, Lyndhurst and Wallerberdina was taken to have been nominated under s 7 of the Act on the relevant date, by the relevant person or persons who held the fee simple or Crown lease in the land (as applicable), and that the land taken to be nominated was taken to have been approved by the Minister under s 9 of the Act.
 6. In July 2021, the Department provided to me the Napandee Site Assessment Report (NSAR). The NSAR includes information from the CSR and SAR relevant to the Napandee Site, in addition to relevant other details.
 7. On 11 August 2021, I, as Minister, caused a notice in writing to be given under s 18(1)(a) of the Act to Mr Jeffrey Frank Baldock and Ms Jennifer Anne Baldock as trustee for the Tola Farm Trust (ABN 66 910 203 855), being the nominator of the Napandee Site, that I proposed to make a declaration under s 14(2) of the Act that the Napandee Site is selected as the site for a facility under s 14(2).⁴ The letter invited them to comment, as nominator of the Napandee Site, on the proposed declaration. On 12 August 2021, I caused a notice to be published in the Commonwealth Gazette and in relevant newspapers under s 18(1)(b) of the Act, stating that I proposed to make a declaration under s 14(2), that the Napandee Site is selected as the site for a facility under s 14(2).⁵ This notice invited any person with a right or interest in the land to comment on the proposed declaration by a date being at least 60 calendar days after publication of the notice, being 22 October 2021.

(iii) Statutory requirements in making declaration under s 14(2)

8. This decision is an exercise of power under s 14(2) of the Act, which provides as follows:

14(2) Subject to section 18, the Minister may, in his or her absolute discretion, declare in writing that the site approved by the Minister, or a specified part of the site, is selected as the site for a facility. The declaration may specify all or some of the rights or interests in the selected site.
9. The power in s 14(2) cannot be exercised unless s 14 applies, on the basis set out in s 14(1). I am satisfied that the Napandee Site met the requirement in s 14(1)(a) that the land has been nominated as a site for the purposes of section 7. I am satisfied that the nominated land meets the requirement in s 14(1)(b) that it is approved as a site for the purposes of s 9 of the Act.
10. Since s 14(2) is stated to be subject to s 18, I needed to be satisfied that the notice requirements in s 18(1) and (2) have been complied with. I am satisfied that the notice to the nominator of the Napandee Site, required by s 18(1)(a), has been given. I am also satisfied that the notice required by s 18(1)(b) of the Act has been published.
11. I also need to comply with the requirement in s 18(3) to take into account any relevant comments given to me, by a nominator of the land, or a person with a right or interest in the land, in response to an invitation to comment given in a notice under s 18(1). For the purposes of s 18(3), I have taken

³ Reports can be found at: <https://www.industry.gov.au/policies-and-initiatives/australian-radioactive-waste-agency/selecting-a-national-radioactive-waste-management-site>.

⁴ Letter from the Hon Keith Pitt MP, Minister for Resources and Water, to Mr Jeffrey Frank Baldock and Ms Jennifer Anne Baldock, dated 10 August 2021.

⁵ Notices published on 12 August 2021 in the Port Lincoln Times, Adelaide Advertiser, NT News, Hobart Mercury, Age, Australian, Canberra Times, Courier Mail, Daily Telegraph, Herald Sun, Sydney Morning Herald, and the West Australian.

into account all the relevant comments in submissions I received that were made in response to the notices given under s 18(1) from the nominator and from persons with a right or interest in the Napandee Site. More generally, I have also taken into account relevant submissions and comments I have received from other persons who have an interest or concern in the matter, including submissions that have been made to the Department and my predecessors and that are considered in the assessment reported in the NSAR.

B Legislation, instruments, policies

12. In making my decision, I have taken into account the following legislation, policies, international instruments, notices and other instruments:

(i) Legislation

- *National Radioactive Waste Management Act 2012* (Cth) (as in force 8 November 2021) (**Act**) (extracts are contained at [Attachment C](#))
- *National Radioactive Waste Management Amendment (Site Selection, Community Fund and Other Measures) Act 2021* (Cth) (**Amendment Act**)
- *Australian Radiation Protection and Nuclear Safety Act 1998* (Cth) (**ARPANS Act**)
- *Nuclear Non-proliferation (Safeguards) Act 1987* (Cth)
- *Racial Discrimination Act 1975* (Cth)
- *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**)
- *Public Governance, Performance and Accountability Act 2013* (Cth) (**PGPA Act**)
- *Legal Services Directions 2017*

(ii) Policies

- Site Suitability Criteria⁶
- Department of Agriculture, Water and the Environment, *Engage Early – guidance for proponents on best practice Indigenous engagement for environmental assessment under the Environment Protection and Biodiversity Conservation Act 1999*, 2016
- ARPANSA *Code for Disposal Facilities for Solid Radioactive Waste*, 2018

(iii) International instruments

- *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management*, done at Vienna on 5 September 1997, ratified by Australia in November 1998 and in force from November 2003 (**Joint Convention**)
- *United Nations Declaration on the Rights of Indigenous Peoples*, Arts 3, 11, 12, 29
- *International Convention on the Elimination of All Forms of Racial Discrimination*, Art 1(4)

(iv) Notices and instruments

- Notice, *Government Gazette*, C2014GO15513, 8 September 2014
- Notice of proposed declaration, *The Australian*, 8 September 2014
- Declaration under s 6(1) of Act, *Government Gazette* C2014GO2054, 12 December 2014
- Notice in writing from the Hon Keith Pitt MP, Minister for Resources and Water, to Mr Jeffrey Frank Baldock and Ms Jennifer Anne Baldock as trustee for the Tola Farm Trust (ABN 66 910 203 855), 11 August 2021
- Notice under s 18(1)(b) of the Act, *Government Gazette* C2021GO0649, 12 August 2021

⁶ The Site Suitability Criteria are set out in the NSAR, as discussed in paragraph 18 below, and are reproduced in paragraph 19 below.

- Notice under s 18(1)(b) of the Act, published in the *Port Lincoln Times*, *Adelaide Advertiser*, *NT News*, *Hobart Mercury*, *Age*, *Australian*, *Canberra Times*, *Courier Mail*, *Daily Telegraph*, *Herald Sun*, *Sydney Morning Herald*, *West Australian*, 12 August 2021

C Submissions and comments, evidence and other material

13. In making my decision, I have taken into account the following submissions and comments, evidence and other material, including reports:

(i) Submissions and comments received in response to notices given under s 18(1) of the Act, including evidence contained in the submissions

14. In response to the notices under s 18, I received a submission from the nominator of the land and 28 submissions from other persons, with no requests for an extension of time to make a late submission. The persons who made those submissions are listed in Attachment B. I have taken into account all of the submissions, some of which are referred to in further detail in my reasons below.

(ii) Evidence, including expert reports, departmental reports and parliamentary reports

- *Napandee Site Assessment Report, July 2021 (NSAR)* prepared by the Australian Radioactive Waste Agency (**ARWA**), a division within the Department
- *Addendum to the NSAR*, 8 November 2021, prepared by ARWA (**Addendum**)
- *RPS Aboriginal Heritage Desktop Assessment Report: Kimba*, July 2018 (**RPS Report**)
- *AECOM Draft Cultural Heritage Desktop Assessment – Napandee*, 20 October 2021 (**AECOM Draft Report**)

D Reasons for decision

(i) Broad considerations

Act

15. The key provisions of the Act relevant to making this decision are ss 3, 4A, 14 and 18, which are reproduced in full in Attachment C. The power to make the declaration is conferred by s 14(2), which provides that, subject to s 18, the Minister may, in his or her absolute discretion, declare in writing that the site approved by the Minister, or a specified part of the site, is selected as the site for a facility. Section 14(2) is expressed to be subject to s 18. Section 18(1) and (2) provide for the giving of notices before deciding to make a declaration under s 14 in relation to land. Section 18(3) provides that in deciding whether to make a declaration under s 14 the Minister must take into account any relevant comments given to him or her, by a nominator of the land, or a person with a right or interest in the land, in response to an invitation in a notice given under s 18. Section 14 also has effect subject to s 9 of the *Racial Discrimination Act 1975* (Cth) (**RD Act**).
16. The object of the Act, under s 3(1), is to ensure that “controlled material” is safely and securely managed by providing for the selection of a site for a radioactive waste management facility on land in Australia, and by the establishment and operation of such a facility on the selected site. “Controlled material” is defined in s 4A(1) by reference to the definition of “controlled material” in the ARPANS Act, which is directed to identifying radioactive material. For the purposes of the Act, s 4A(2)(b) excludes high level radioactive material or spent nuclear fuel. Under s 3(2), by ensuring that controlled material is safely and securely managed, the Act gives effect to certain obligations Australia has as a party to the Joint Convention.

Policies

17. The broad Commonwealth policy⁷ is to establish a facility for the disposal of low level waste (LLW) and temporary storage of intermediate level waste (ILW).⁸ This excludes High Level Waste and spent nuclear fuel.
18. The NSAR contains information about the proposed site at Napandee, demonstrating through an evidence-based approach the suitability of the site for managing controlled material in accordance with criteria that align to the objects of the Act, and the Commonwealth's policy in determining its suitability for safely and securely managing controlled material (**Site Suitability Criteria**), including with regard to the type of controlled material to be stored at the facility. These criteria were determined through extensive review of siting guidance published by the International Atomic Energy Agency (IAEA), the multilateral agency responsible for international scientific and technical co-operation in the peaceful use of nuclear technology and nuclear power, and regulatory guidance from the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), the Commonwealth nuclear regulator. The criteria for determining the suitability of an Australian site are designed to reflect up-to-date international standards and best practice.
19. I have taken into account the Site Suitability Criteria, which are as follows:

The following site suitability criteria have been developed to enable a suitability assessment to support a decision about the site selection:

 1. *The extent to which it is reasonably likely that, at the site radioactive waste can be safely and securely managed by the establishment and operation of the NRWM facility that meets the necessary regulatory or other approvals, licences and permits;*
 2. *The extent to which the site will be cost-effective to develop, due to minimal risk mitigations necessary at the site;*
 3. *The extent to which the site demonstrates favourable site characteristics to mitigate practical and stakeholder risks associated with the discrete tasks necessary to achieve the object of the Act; and*
 4. *The extent to which there is broad community support for the NRWM facility to be hosted at the site, which will support the controlled material being safely and securely managed.*⁹
20. I recognise that the Site Suitability Criteria, which I refer to as "Criteria 1, 2, 3 and 4", are not statutory criteria and are not binding on me, but provide guidance in selecting a site in a way that is consistent with the object of the Act.
21. They are not the only matters to be taken into account. Other matters are considered below. They include relevant comments made in submissions received in response to the notices under s 18(1) from the nominator or from persons with a right or interest in the Napandee Site, which I am required to take into account under s 18(3) of the Act.
22. A number of submissions¹⁰ received in response to the s 18(1) notices included comments on the broad Commonwealth policy with respect to the management of controlled material, the types of waste to be stored, and type of facility required for this purpose. These included submissions that:

⁷ *Australian Radioactive Waste Management Framework*, April 2018, described in the NSAR p viii.

⁸ The classification of radioactive waste as LLW and ILW is set out in the ARPANSA *Guide for Classification of Radioactive Waste*, (2020), which reflects the international scheme developed by IAEA. This excludes high level radioactive material or spent nuclear fuel, referred to in the Act s 4A(2)(b). See also NSAR p 10. The proposal in Submissions 14 and 24 for a different approach based on some different classification of radioactive waste have not been adopted.

⁹ NSAR p 23.

¹⁰ Submissions 5, 6, 7, 9, 11, 12, 15, 28, 29.

- (a) questioned the need for a national facility and submitted that radioactive waste management should include the full range of future long-term management options and/or be reconsidered under current planning;¹¹
- (b) claimed that below ground storage of ILW is required by IAEA standards, ARPANSA and international best practice;¹²
- (c) argued that disposal of ILW would require a different site, and effort should be focussed on developing a suitable location for deep geological disposal,¹³ including one submission that identified Leonora in Western Australia as an alternative preferred site where this could be achieved;¹⁴
- (d) asserted that uranium mine voids should be used for storage of ILW and other radioactive waste;¹⁵
- (e) claimed that any new uranium mine should be required to include in its design the capacity to permanently store and dispose of end of life legacy nuclear waste;¹⁶
- (f) argued that the Napandee Site should not be selected, or any other site, on the basis that ILW should remain stored at the Australian Nuclear Science and Technology Organisation (ANSTO) facility at Lucas Heights while a search is conducted for a permanent disposal site;¹⁷
- (g) claimed that radioactive waste is already appropriately managed and can continue unchanged at Lucas Heights and that according to statements made by ANSTO, the Australian Nuclear Association and ARPANSA, an extension of the Lucas Heights facility will enable storage of waste for decades;¹⁸
- (h) asserted there is a need for an inventory of Australia's radioactive waste stockpiles, and apparently questioning the Department's calculation of the existing stores for radioactive waste;¹⁹
- (i) claimed that storage of ANSTO ILW at the Napandee Site would be contrary to ANSTO's duty to store ILW at Lucas Heights until the availability of a final disposal option, and ANSTO's 2015 licence to operate its interim waste store is not time limited;²⁰
- (j) asserted that it does not make sense to transport ILW located at Lucas Heights to Napandee for interim ILW storage when it will later have to be transported and relocated to a permanent disposal site (including that double handling should be avoided);²¹
- (k) claimed that siting of co-located interim above ground stores of ANSTO's ILW is not in accordance with international best practice;²² and
- (l) argued that continued use of the Lucas Heights facility is supported by "the Public Works Committee report".²³

23. In relation to paragraph [22(l)], the Parliamentary Standing Committee on Public Works (**Public Works Committee**) has recently approved expenditure for expansion of storage capacity at Lucas Heights to enable storage until 2030, referring in its report to ANSTO's acknowledgement that there

¹¹ Submission 5, 14, 20, 28.

¹² Submissions 6, 7, 12, 15.

¹³ Submissions 7, 11, 29.

¹⁴ Submission 6.

¹⁵ Submission 9, 28.

¹⁶ Submission 11.

¹⁷ Submissions 3, 5, 8, 16.

¹⁸ Submissions 3, 5, 12, 14, 17, 20.

¹⁹ Submission 7, 14.

²⁰ Submission 12.

²¹ Submissions 3, 9, 11, 12, 14, 17, 24.

²² Submission 12.

²³ Submissions 5, 12, 14, 17.

remains a need for a facility with future storage capacity which is separate from Lucas Heights and not operated by a producer of radioactive waste (as is the case with ANSTO).²⁴ The report of the Committee acknowledged that the ANSTO works would be an interim solution only, and stored waste would need to be moved to a longer term solution.²⁵ The report further acknowledges that the proposal would extend the storage capacity at Lucas Heights for approximately 10 years, and additional storage solutions would need to be sought for the further period.

24. While understanding these submissions express concerns about the broad Commonwealth policy on the management of controlled material and the availability of options and technical feasibility for permanent disposal of ILW, I am satisfied that:

- (a) consistently with the object of the Act, which includes ensuring the establishment of a facility for the safe and secure management of controlled material in Australia, selection of a national facility for the disposal of LLW and temporary storage of ILW should not be deferred or excluded on account of the desirability of finding solutions for permanent disposal of ILW (nor is there any obligation to do so under the Act);
- (b) a below ground facility is required for permanent disposal of ILW, but is not required for the temporary storage of ILW;
- (c) the Napandee Site will provide for near surface disposal of LLW and above ground temporary storage of ILW in accordance with domestic and international standards for the disposal and storage of radioactive waste²⁶ and the broad Commonwealth policy as to the type of facility needed;
- (d) in making this decision I am to proceed on the basis that the purpose of the Act is to select a site that has been nominated and approved and establish a national facility at that site; and
- (e) regardless of the planned extension of capacity at Lucas Heights for a further period, it will not have adequate storage space over the long term, noting that ANSTO informed the Public Works Committee, and the Committee accepted, that there is a need for a facility with future storage capacity additional to the facility at Lucas Heights.²⁷

(ii) Technical suitability

25. Criterion 1 concerns the extent to which it is reasonably likely that controlled material can be safely and securely managed at the site by the establishment and operation of a facility that meets the necessary regulatory or other approvals, licences and permits. This involves a technical risk assessment of the suitability of a site for safe and secure management of controlled material as required by the objects of the Act. Criterion 1 evaluates the site by reference to regulatory requirements and guidance of ARPANSA, the Australian Safeguards and Non-Proliferation Office (ASNO) and the IAEA. Those regulatory requirements are in accordance with international best practice and apply to applications for ARPANSA licences, ASNO permits and approvals under the EPBC Act.

26. I have taken into account that the NSAR and updated information in the Addendum found that the Napandee Site meets Criterion 1 of the Site Suitability Criteria with regard to characteristics such as climate, location and geology.²⁸ I have also taken into account that results of the investigations of the characteristics of the site, set out in the NSAR, are applicable to the whole of the Napandee Site.²⁹ The proposal is to acquire a 210.3 hectare part of the land nominated. The decision not to

²⁴ Parliamentary Standing Committee on Public Works *Report 8/2021*, October 2021, [3.18], [3.26], [3.32].

²⁵ See footnote 24 above.

²⁶ IAEA Safety Standards for protecting people and the environment, *The Management System for the Disposal of Radioactive Waste*, June 2008. https://www-pub.iaea.org/MTCD/Publications/PDF/Pub1330_web.pdf

²⁷ Parliamentary Standing Committee on Public Works *Report 8/2021*, October 2021.

²⁸ The NSAR provides that there are exclusionary and non-exclusionary criteria (p 53 – 65). No exclusionary criterion applied so as to exclude the Napandee Site.

²⁹ NSAR p 24 – 25.

acquire the whole of the nominated land is to allow the nominators to retain access along the eastern boundary to their remaining land, and to preserve trees along that strip of land. The facility (including community uses, buffer zone, car park, utilities and supporting infrastructure) is currently estimated to occupy approximately 160 hectares only,³⁰ however the exact size and location of the facility on the Napandee Site is subject to final facility design which could be influenced by a number of factors such as changes to the inventory, indigenous heritage factors and any issues arising from more detailed site characterisation surveys. Submission 14 claims that there is no attempt to utilise or demonstrate a net benefit analysis required under the National Health and Medical Research Council *Code of Practice for the near-surface disposal of radioactive waste in Australia*, 1992 (**NHMRC Code**) and the ARPANS Act. The NHMRC Code is superseded (as discussed paragraph 36 below). I am satisfied the risk assessment approach in the NSAR is appropriate.

27. For the purposes of Criterion 1, the NSAR also assessed the likelihood of meeting the requirements of the EPBC Act and found there was a low or very low risk that there would be concerns about any particular site characteristic, technical factor or measurement. In this regard I also take into account the conclusions relating to heritage values reached in the *Cultural Heritage Desktop Assessment – Napandee National Radioactive Waste Management Facility Aboriginal Heritage*, 20 October 2021 which has been prepared in draft by AECOM (**AECOM Draft Report**). This is discussed further below.
28. The NSAR concluded that the Napandee Site is technically suitable as a site for a facility to safely and securely manage controlled material in accordance with relevant regulatory requirements.³¹ I have accepted these findings.
29. I am satisfied that a radiologically and environmentally safe and secure facility for the storage and disposal of controlled material can be designed, constructed and operated at the Napandee Site. I am also satisfied, as to Criterion 1, that the characteristics of the Napandee Site permit the long-term safety of the site, with each characteristic involving either a low and acceptable, or a not significant long-term risk to people and the environment from the management of controlled material at the site.³²
30. I consider that the application of Criterion 1 takes into account Australia’s obligations under the Joint Convention, in particular Articles 11 and 13, including that the proposed facility:
 - (a) will provide effective protection of individuals, society and the environment by applying, at a Commonwealth level, suitable protective measures as approved by ARPANSA in the framework of the ARPANS Act which have due regard to internationally endorsed criteria and standards as required by Article 11(iv);
 - (b) is selected by a process that has taken into account the biological, chemical and other hazards that may be associated with radioactive waste management at the facility, as required by Article 11(v);
 - (c) has been evaluated by reference to site-related factors that could affect its safety during its operating lifetime and as a disposal facility after closure, as required by Article 13(1)(i); and
 - (d) has been evaluated as to its likely safety impact on individuals, society and the environment, taking into account the possible evolution of the site conditions of disposal facilities after closure, as required by Article 13(1)(ii); and
 - (e) aims to avoid imposing undue burdens on future generations, as required by Article 11(vii).
31. A number of the submissions received in response to the s 18(1) notices made assertions with respect to the technical suitability of the Napandee Site. These are now considered.

³⁰ NSAR p 12.

³¹ NSAR p 45.

³² NSAR p 45.

32. Submissions 6, 8 and 15 submit that since the Napandee Site is proposed for temporary storage of ILW, the proposal contradicts the IAEA standard that the problem of dealing with radioactive waste should not be passed to future generations. However, the selection of a site for a facility for temporary storage of ILW, which is for decades, embraces the obligation in Article 11(vii) of the Joint Convention of aiming to avoid imposing undue burdens on future generations.
33. Submission 6 submits that there is insufficient planning to enable selection of the Napandee Site and a failure to develop a safety case for it. I am satisfied that the planning has been extensive, involving a statutory process and with close consultation with regulatory agencies and the commissioning of expert reports, including with regard to safety, which have been utilised in preparing the NSAR. The comment in Submission 6 that the Napandee Site is seismically active is not consistent with the expert assessment of a low risk of earthquake and active faulting made in the NSAR,³³ with specialist inputs from Geoscience Australia, AECOM, ANSTO and Jacobs Engineering Group, and review by ARPANSA, ANSTO, AECOM and CSIRO, which I accept to be correct. Submission 6 submits that the Napandee Site cannot ensure that no damage or deterioration of any property in the Kimba region particularly by way of any spillage or escape of nuclear material will occur. Safety concerns of this kind underpin the standards applied under Criterion 1. The submission does not lead me to doubt the risk assessment in the NSAR, for a range of safety factors, as being low or very low or not applicable.
34. Three submissions express concern as to safety on the assumption that an above ground facility will pose a particular risk. Submission 19 submits that an above ground facility presents a danger to the land and to future generations of South Australians. Submission 21 submits that the proposal for any facility should be abandoned as it presents a danger to South Australians. Submission 24 opposes the proposal because of the danger of accidents and emission of radioactive particles with effects on the environment, humans and animals. I am satisfied that the relevant safety standards are properly addressed in the proposal, and accept the risk assessment with regard to safety in the NSAR. Indeed the concept design that has been chosen is consistent with international best practice for disposal of LLW and storage of ILW, with similar designs safely and successfully used in Spain, France, Belgium, the UK, the USA and Canada (and various other countries).
35. Submissions 5, 14 and 17 submit that the Napandee Site is not proximate to the site of generation of most nuclear waste, and radioactive waste management should reduce unnecessary double handling of ILW. Submission 9 submits that there should be compliance with the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (**Basel Convention**). The Basel Convention is not applicable, since it excludes radioactive waste from its coverage.³⁴ Submission 10 submits that ILW should not be double handled to be temporarily stored again when it can be securely and safely stored at Lucas Heights. Submission 12 submits that transfer of ILW to the proposed Napandee Site is contrary to international best practice, does not comply with ARPANSA Committee advice and compromises safety and security in South Australia. I am satisfied that the selection of this site for the national facility will enable a transition from the current position of multiple storage units across Australia with ad hoc temporary solutions for managing controlled material. The Napandee Site offers a safe and purpose-built facility for consolidated waste management consistent with international best practice. Submissions 5, 6, 11 and 12 submit that there is no information about proposed transport corridors for the controlled material and their safety. I regard arrangements for the safe and secure transport of controlled material as a necessary part of planning, where the detailed requirements will be determined in accordance with regulatory requirements of ARPANSA, ASNO and under the EPBC Act, as applicable. I am not satisfied that there is an impediment to meeting the requirements.
36. Submissions 10 and 25 oppose use of agricultural land for an above ground facility. Submission 8 comments that the Napandee Site contravenes “ARPANSA guidelines” which state that nuclear waste should not be stored on agricultural land. Submission 14 submits that the Napandee Site does

³³ NSAR p 59.

³⁴ Article 1(3) of Basel Convention.

not meet the criterion in the NHMRC *Code*³⁵ which states that a site for this purpose should be located in a region which has little or no potential for agriculture. I am satisfied that in the NSAR the characteristic of the Napandee Site as agricultural land has been considered, including in the risk assessment relating to obtaining approval under the EPBC Act.³⁶ Further, The NHMRC Code has been superseded by the ARPANSA *Code for Disposal Facilities for Solid Radioactive Waste*, 2018 (**ARPANSA Disposal Code**) and *Code for Radiation Protection in Planned Exposure Situations*, 2020. The ARPANSA Disposal Code lists relevant site selection criteria, and additional non-radiological site selection criteria. One of the additional criteria is that the immediate vicinity of the facility has little or no potential for agriculture. However, the ARPANSA Disposal Code also states that while this criterion should be considered, it need not be complied with.³⁷ I am satisfied that the NSAR gives adequate consideration to agriculture as a site characteristic.³⁸ I consider the impact on local agriculture below, in relation to Criterion 2.

37. Submission 6 comments that the Napandee Site will probably fail to get the necessary licences for selection and construction and submission 15 comments that ARPANSA cannot license the site to store ILW. However Criterion 1 incorporates the standards that need to be met and undertakes a risk rating as to whether regulators will be concerned about particular characteristics of the Napandee Site. While there can be no guarantee in advance as to the decisions regulators will make, the risk assessment provided to me in the NSAR indicates that regulatory approval is attainable.
38. Submission 4 submits that an Environmental Impact Statement (EIS) process should be undertaken under the EPBC Act, since the project is a “nuclear action” and the NSAR does not meet the requirements of an EIS. The EPBC Act does not operate to regulate, hinder or prevent activities by the Commonwealth authorised by s 11 of the Act for the purpose of selecting a site on which to conduct and operate a facility. However, referral and approval under the EPBC Act is required to construct and operate the facility and decommission it (assuming the responsible Minister determines it a controlled action). The NSAR assesses the Napandee Site as likely to meet EPBC Act requirements,³⁹ and I note that further steps are required as set out at paragraph 87. The Addendum to the NSAR provided to me clarifies certain new information concerning EPBC Act considerations, from off-site investigations undertaken in 2021. On the basis of the NSAR and the new information, I am satisfied that the necessary approval under the EPBC Act is attainable and that the necessary comprehensive and rigorous assessments will be undertaken at the appropriate time.

Conclusion

39. On the basis of the data and its analysis against Criterion 1 in the NSAR and Addendum, I am satisfied that the characteristics of the Napandee Site make it technically suitable as a site for the safe and secure management of controlled material in accordance with relevant regulatory requirements.

(iii) Cost effectiveness

40. Criterion 2 of the Site Suitability Criteria evaluates the extent to which the proposed site will be cost-effective to develop, due to minimal risk mitigations necessary at the site.
41. By operation of the Act, if I declare under s 14(2) that a site is selected, rights or interests in the site that are specified in the declaration are acquired by the Commonwealth or extinguished.⁴⁰ The Act requires the Commonwealth to pay a reasonable amount of compensation to a person whose right or interest has been acquired, extinguished or otherwise affected. The Act also requires a reasonable

³⁵ NHMRC Code [2.4.2](h).

³⁶ NSAR p 68.

³⁷ ARPANSA *Code for Disposal Facilities for Solid Radioactive Waste*, October 2018, [3.3.22](a).

³⁸ NSAR p 68 – 84.

³⁹ NSAR p 66-84.

⁴⁰ Act s 19(1).

amount of compensation be paid if the operation of the Act would result in acquisition of property otherwise than on just terms.⁴¹

42. To the extent that making a declaration is an approval of proposed expenditure to establish the facility, s 71 of the PGPA Act requires that I be satisfied that the expenditure is a proper use of relevant money. Similarly, the accountable authority making a decision to agree to establish the facility and pay a reasonable amount of compensation to acquire the Napandee Site, is required to comply with the principles of s 15 and 23 of the PGPA Act and with the *Legal Services Directions* 2017 where applicable.
43. Cost effectiveness first requires estimation of the financial costs. The NSAR identifies that the financial costs are comprised of two components: the compensation costs (initial and future) associated with acquiring the land; and the cost of constructing the facility and enabling infrastructure. A detailed business case was undertaken in 2018 and is discussed in the NSAR.⁴²
44. As to the first cost component, a reasonable amount of compensation to discharge the Commonwealth's liability for acquisition and extinguishment of rights and interests in the Napandee Site was assessed by independent land valuations commissioned by the Department in July 2019, and by the nominator. From the Addendum I have been provided, I understand that further valuations were commissioned, one by the Department and one by the nominators in August and September 2021. I understand that a compensation amount has now been agreed between the Department and the nominator of the Napandee Site. This amount consists of a single payment to discharge the Commonwealth's liability under section 35 with respect to the nominator and to any independent third party mortgagor or entity operating an agricultural business on the site. There are no active mining or exploration licences relating to the site. If other rights and interests are identified after site selection and claims for compensation are made, any compensation payable under the Act will be determined on a case by case basis.
45. Submission 8, by a farm owner in the Kimba area, claims that she will suffer a loss of income. Submission 6 submits that the presence of a facility at the Napandee Site will have a detrimental and financially devastating effect on the significant agricultural industry in the region. Submission 6 also submits that the Napandee Site proposal cannot ensure the payment and adequate recompense to any property owner or user incurring any loss or damage including a deterioration in value or loss of use through the proposed facility. The Senate Economic References Committee report found that in light of overseas experience, there was unlikely to be any impact on the region's agricultural reputation.⁴³ I find this is a reasonable assessment.
46. As to the second component, the cost of constructing the facility includes estimates for risk mitigation works, such as contingencies related to flood or geotechnical risks.⁴⁴ Submission 14 submits that a construction cost of \$325 million is high by comparison with the cost of a similar facility already built in Canada. However it is not possible to engage in a meaningful comparison where costs are incurred in the construction of different facilities in different countries at different times. I accept the estimates in the NSAR.
47. Cost effectiveness was evaluated in the NSAR using a risk assessment approach. The results for the Napandee Site were favourable, in that there was a low risk for both the compensation component and for the cost of construction component.⁴⁵ I am satisfied that the risk assessment used in the NSAR to assess cost effectiveness is an appropriate approach.
48. Submission 11 submits that the proposal is not justified because the Parliamentary Standing Committee on Public Works has found that ANSTO has capacity to safely and securely manage

⁴¹ Act ss 35, 36.

⁴² NSAR p 92.

⁴³ Senate Economics Legislation Committee Report – *National Radioactive Waste Management Amendment (Site Specification Community Fund and Other Measures) Bill* 2020, [2.111] (p 51).

⁴⁴ NSAR p 89-104.

⁴⁵ NSAR p 35-36.

radioactive waste at Lucas Heights for decades, and this is a safer and cheaper temporary solution, and that if safe and effective storage is already available and in use it is unnecessary, risky, divisive and a waste of public money to pursue the storage at the Napandee Site. I have considered earlier, and rejected, the option of simply relying on the facility at Lucas Heights, on the basis of the broad Commonwealth policy. While Submissions 6 and 14 submit that the siting at the Napandee Site will not have economic benefits for the local economy, I am satisfied that employment benefits and opportunities for research, including relating to agriculture, are built into the proposal.⁴⁶

Conclusion

49. I am satisfied that the cost assessment in the NSAR, together with the compensation and further information in the Addendum to the NSAR, provide a proper estimate of costs of acquisition of the Napandee Site. I am satisfied that land acquisition and compensation costs are either predictable or unlikely to be significant compared to the overall project costs. I am also satisfied that the costs of technical risk mitigations for Napandee are within the existing costings for the facility. I find that the Napandee Site will be cost-effective to develop.

(iv) Site characteristics and practical and stakeholder risks and concerns

50. Criterion 3 of the Site Suitability Criteria is concerned with the extent to which a site for a proposed facility demonstrates favourable site characteristics to mitigate practical and stakeholder risks associated with the discrete tasks necessary to achieve the object of the Act.
51. The NSAR considers criterion 3 in relation to the facility's pre-operational phase (10 years), operational phase (100 years) and post-operational phase (following de-commissioning, 300 years).⁴⁷ An assessment of the site characteristics other than those related to regulatory approvals, costs and community sentiment, was conducted against practical, legal and stakeholder management considerations. In this context the NSAR refers to ten factors relevant to the safe and secure management of controlled material over the three phases and conducted a risk assessment in relation to those factors. The factors are: Aboriginal cultural heritage and native title; transport and road use; noise, dust, visual and other disturbance; security; utilities supply; future land use and activities; additional land or property acquisitions; environment; socio-economic factors; community relationships and stakeholder management.
52. All but three factors are rated as a low or minor risk. Aboriginal cultural heritage and native title is rated a medium risk, largely because of the strong preference to achieve cooperation of the Barngarla People in a cultural heritage assessment and in light of the history of opposition of the Barngarla Determination Aboriginal Corporation (BDAC) to the facility. The factor of utilities is rated as a medium risk because of uncertainties as to works. The factor of community relationships and ongoing stakeholder management is rated a medium risk on account of matters similar to those affecting the other two factors.
53. Other stakeholder risks were raised in some of the submissions made in response to the s 18(1) notices. Submission 4 comments that there should be a review of Australia's role in the nuclear fuel cycle and its implications for the storage of radioactive waste, having regard to the *Nuclear Waste Storage Facility (Prohibition) Act 2000* (SA) and its principle of keeping Australia "nuclear free", and the history of uranium mines in remote areas and the fallout of the Maralinga tests. Submission 11 submits that the proposal for the facility is illegal under South Australian law. Submissions 5, 12, 14, 21 and 24 submit that radioactive waste management should be consistent with State and Territory laws and leading international practice. However, the Act provides that State and Territory laws relating to radioactive material, use of land and certain related matters have no effect to the extent that they would regulate, hinder or prevent activities authorised under the Act by the Commonwealth and other parties in relation to the selected site.⁴⁸

⁴⁶ NSAR p 125 – 127.

⁴⁷ NASR p 105.

⁴⁸ Act s 23, 24.

Conclusion

54. I accept the risk assessment in the NSAR and regard the risks as reasonable and capable of being accommodated. I am satisfied with the Department's conclusion that the data collected and analysed against Criterion 3 supports a conclusion that the Napandee Site demonstrates characteristics that mitigate practical and stakeholder risks associated with the discrete tasks necessary to achieve the object of the Act.

(v) Aboriginal cultural heritage

55. There is no express requirement in the Act to take into account Aboriginal cultural heritage, nor is this mentioned in its objects. State laws relating to (amongst other things) archaeological or heritage values of land, premises or objects (including the significance of land, premises or objects in the traditions of Indigenous people), land use, environmental and radioactive material requirements have no effect to the extent that they would regulate, hinder or prevent activities authorised by s 23 of the Act.⁴⁹ Express provision is made in the Act for nomination of land by a Land Council or of land covered by native title,⁵⁰ but those provisions are not applicable in relation to the nomination of the Napandee Site. I am required by s 18(3) to take into account relevant comments by a nominator or a person with a right or interest in the land. Some submissions in response to the s 18(1) notices refer to Aboriginal cultural heritage. The BDAC Submission 27⁵¹ submits that I should take into account Aboriginal cultural heritage. I consider that in exercising my discretion under s 14(2) I may take into account the extent to which selection of the Napandee Site would affect the cultural heritage of the Barngarla People.
56. Submission 14 is critical of the Act, claiming that it disempowers traditional owners and others, and puts its agenda above the EPBC Act, and recommends its amendment. In making my decision I comply with the Act, whilst also taking into account the interests of traditional owners and that the EPBC Act will apply to the establishment of a facility on the Napandee Site.
57. BDAC is the registered native title body corporate under the *Native Title Act 1993* (Cth). BDAC states that it is authorised to make comments on behalf of the Barngarla People as traditional owners.⁵² BDAC is the agent for the Barngarla native title holders in respect of matters relating to traditional land. Native title is not held in the Napandee Site but is held in some areas within the Kimba LGA and the Napandee Site is within the BDAC determination area. All adult Barngarla People are eligible to be members of BDAC. While native title has been extinguished at the Napandee Site, the Napandee Site is within the Barngarla Determination Area and the Barngarla People are the traditional owners of the land in that area.⁵³ The Napandee Site has been cleared for agricultural activities, save for remnant vegetation consisting of Mallee Woodland, shrubland and pine trees in the south western corner of the site and along existing fence lines. The Napandee Site has been freehold land since 19 May 2004 and was subject to a pastoral lease over Crown land prior to that. The Barngarla People hold non-exclusive native title in areas near Napandee, including parts of the Pinkawillinie Conservation Park which is less than 1 km to the south of the Napandee Site.
58. The Register of Aboriginal Sites and Objects kept under the *Aboriginal Heritage Act 1988* (SA) (**Register**) has no record for any Aboriginal site within the Napandee Site, and there is one record within a 20 kilometre radius of the Napandee Site.⁵⁴ I recognise that the registry does not preclude unregistered heritage interests being present at the Napandee Site.

⁴⁹ Act s 24(1) and s 23.

⁵⁰ Act ss 5, 7(4), 8(1)(e),(f).

⁵¹ BDAC Submission 27, and its Attachments.

⁵² BDAC Submission 27 [8].

⁵³ Identified in *Croft on behalf of the Barngarla Native Title Claim Group v State of South Australia (No 2)* [2016] FCA 724; *Croft on behalf of the Barngarla Native Title Claim Group v State of South Australia (No 3)* [2018] FCA 552.

⁵⁴ RPS Report p 19, 27, Appendix A; NSAR p 110.

59. The Department has sought to engage with the Barngarla People, whose cooperation and input is desired to enable preparation of a comprehensive cultural heritage assessment.⁵⁵ Engagement has included a meeting of Departmental officers with BDAC on 12 August 2018 and 12 December 2020, BDAC met with the former Minister on 22 August 2019, and I along with Department officers met with BDAC on 10 December 2020 and 14 June 2021. Meetings in early 2020 with BDAC were not progressed due to other urgent business commitments by BDAC and then subsequent COVID-19 travel and meeting restrictions. BDAC preference was for only face-to-face meetings with the Department and Minister. No arrangements were able to be made for cooperation by the Barngarla People in a cultural heritage assessment to be undertaken by the Department or its consultant.
60. The Department commissioned a report by RPS Group, an expert consultant, the *Kimba National Radioactive Waste Management Facility Aboriginal Heritage Desktop Assessment Report, July 2018*, which provides a desktop assessment of Aboriginal cultural heritage values for the Napandee Site and the Lyndhurst Site (**RPS Report**). The RPS Report found that sites or objects of tangible or intangible heritage value may exist in the Napandee Site although they are not identified on the Register; that archaeological predictive mapping identified areas of potential stone artefact scatters; and recommended consultation with traditional owners, in order to ground-truth the findings and identify significant unrecorded cultural heritage sites, if present.⁵⁶ The findings of the RPS Report were taken into account in the NSAR.⁵⁷
61. BDAC has made many submissions in relation to the cultural heritage of the Barngarla People, which include a supplementary submission to the Senate Economic References Committee dated 4 July 2018, a submission to the former Minister dated 12 December 2019, and the BDAC Submission 27.⁵⁸ The first of these attached a redacted version of a report BDAC had commissioned, by Dr Dee Gorrington of the University of Queensland Culture and Heritage unit, *Preliminary report: Kimba Radioactive Waste Management Facility Heritage Assessment*, 4 June 2018 (**Gorrington Report**).⁵⁹ The second submission and the third, the BDAC Submission 27, attach unredacted versions of the Gorrington Report (save for some photos which the report states are not included). In addition, the BDAC Submission 27 included a statutory declaration by Dawn Taylor, dated 20 October 2021 (**Taylor Statutory Declaration**).
62. The Gorrington Report states that it is “preliminary”, because of lack of permission to access the Napandee Site, and so does not include archaeological data. Making observations from adjoining land identified by three male and six female BDAC representatives, the Gorrington Report identifies tangible and intangible cultural heritage values at 18 physical places in the study area (which covered both the Napandee Site and the Lyndhurst Site) indicating possible cultural heritage sites. Three of these places are located within the Napandee Site.⁶⁰ The first and second are near the south western boundary and the third is near the central western boundary. The first is a small stand of pine trees, (common in the region), that are of significance because pine trees generally are said to represent the ancient Barngarla families making their way through Barngarla country, but not explicitly linked to the Seven Sisters Dreaming story outlined in the Gorrington Report. The second is a copse of Mallee trees, which is “associated” with the Seven Sisters in the Seven Sisters Dreaming story, as are other Mallee trees in the Barngarla country. The third is a possible sandridge feature, of possible significance due to its common association with the Seven Sisters, as is the case with other sandridges in Barngarla country. The Gorrington Report also draws attention to heritage concerns regarding resource and totemic species throughout the region. It recommends that if works were commenced in the Napandee Site a detailed cultural heritage assessment should be carried out.

⁵⁵ See paragraph 62 below and the details of consultation in the NSAR, p 147 – 149.

⁵⁶ RPS report p 27-8.

⁵⁷ NSAR p 108-110.

⁵⁸ BDAC Submission 27, [47]-[81], Attachment 3.

⁵⁹ BDAC also provided a redacted version of the Gorrington Report to the Senate Economics References Committee *Selection process for a national radioactive waste management facility in South Australia*, August 2018, Submission No 56.

⁶⁰ Gorrington Report p 5, 10-18.

63. The Taylor Statutory Declaration is made by a Barngarla elder who participated in the Gorrington study. It supports the preliminary conclusions reached in the Gorrington Report, in particular referring to the significance of the pine trees, Mallee trees and possible sandridge sites within the Napandee Site. To the extent it was possible to disclose secrets acknowledged as only suitable for senior Barngarla women, Ms Taylor expresses the belief that if the facility were constructed on the Napandee Site it would 'break' the Seven Sisters Dreaming story and disable Barngarla women from going to the land to heal it or take care of it.
64. The NSAR proposes that in the event of a declaration selecting the Napandee Site, a cultural heritage assessment should be undertaken for the Napandee Site and affected areas outside it, such as those for road development, and that an Aboriginal cultural heritage management plan be developed. These steps would also be required in order to meet requirements of the EPBC Act. The NSAR recommends involvement of the Barngarla People in preparing the assessment and the plan, and that the government invites the Barngarla People to work with the Department to develop both.
65. The NSAR refers to the commissioning of a report to set the baselines for a complete cultural heritage assessment to be undertaken in the event that the Napandee Site is selected. Since the NSAR was completed, the AECOM Draft Report has been received. This updates the assessment in the RPS Report, but focusing only on the Napandee Site, together with an area of 35km radius surrounding the Napandee Site which is of interest and for investigation, including infrastructure linking the Napandee Site to Kimba and the Eyre Highway (**Surrounding Area**). The AECOM Draft Report finds that there is limited potential for unrecorded historical heritage places in the Napandee Site or the Surrounding Area, and limited potential for tangible cultural heritage values in the form of archaeological sites or deposits beneath the plough zone or in undisturbed areas of the Napandee Site. It finds that there are potential intangible cultural heritage values including sites and landforms connected to Dreaming stories and songlines, within the Napandee Site and the Surrounding Area. The intangible cultural heritage values are uncertain until they are properly identified, with the benefit of engagement with the Barngarla People.⁶¹
66. On the basis of the Gorrington Report and the Taylor Statutory Declaration, the BDAC Submission 27 submits that a comprehensive cultural heritage assessment should be conducted on the ground with traditional owners participating, and that no declaration selecting the Napandee Site should be made before this has occurred. The BDAC Submission 27 submits that after the selection of the Napandee Site, ss 23 and 24 of the Act will remove any legal requirement to ensure the preservation and protection of Aboriginal cultural heritage in relation to construction and operation of the facility.
67. I accept BDAC's submission that a comprehensive cultural heritage assessment should be conducted on the ground of the Napandee Site and Surrounding Area and their offer to participate. This is consistent with the recommendation in the NSAR, the AECOM Draft Report and the Gorrington Report. I have carefully considered BDAC's submission that a decision on selecting the Napandee Site should be deferred until such an assessment has been completed. My view is that a complete cultural heritage assessment can be undertaken as part of the process that follows a declaration selecting the site.
68. Cultural heritage considerations will be taken into account as part of the EPBC Act process as the definition of "environment" is broad and relevantly includes the heritage value of a place, as well as social and cultural aspects.

Conclusion

69. In making a decision under s 14(2), I consider that I am able to take into account Aboriginal cultural heritage on the basis of the RPS Report, the AECOM Draft Report and the Gorrington Report coupled with the Taylor Statutory Declaration. I also note that the area of the land intended to be acquired for the facility may provide flexibility to locate the facility on the Napandee Site in a manner that minimises impact on any identified cultural heritage. Having considered this material and the comments in the BDAC Submission 27, including the evidence in its attachments, I find that

⁶¹ AECOM Draft Report p 51.

selection of the Napandee Site accommodates and respects Aboriginal cultural heritage values. I also find that arrangements for a complete cultural heritage assessment, with further opportunity for participation of traditional owners and evaluation in accordance with the requirements of the EPBC Act, provides an additional check and review in later stages of decision-making under the Act and other legislation. I am satisfied that as set out in the NSAR, arrangements are in place to enable, upon the selection of the Napandee Site, progression of planning for a cultural heritage assessment by independent consultants, who have already been engaged, and will continue to seek to work with BDAC and the Barngarla People in undertaking that assessment.

(vi) Consultation

70. Criterion 4 in the Site Suitability Criteria is directed to taking into account the extent to which there is broad community support for the NRWM facility to be hosted at the Napandee Site, which will support the controlled material being safely and securely managed. The Act does not require me to determine whether there is “broad community support” for the facility at any proposed site, nor does the Act require me to take into account Criterion 4. However Criterion 4 has been included as one of the Site Suitability Criteria, which I propose to take into account, because it assists in pursuing the object of the Act of ensuring that controlled material is safely and securely managed. I have a duty under s 18(3) of the Act to take into account any relevant comments given to me by a nominator of the land, or a person with a right or interest in the land, in response to a notice under s 18(1). I have taken into account the submissions made in response to the notices, as required by s 18(3).
71. There have been a number of consultation processes relating specifically to the Napandee Site. These consultation processes have included surveys and ballots with certain eligibility criteria, as well as a national and open public submissions processes. This consultation process is detailed in the NSAR.⁶²

National open submission process

72. I go beyond the statutory duty in s 18(3) of the Act by considering the consultation on the Napandee Site that has occurred in a process that commenced four years ago, and involved various sectors of the community.
73. Submission 5 submits that the process for selection of a site for the facility has involved a “highly prescriptive and exclusionary consultation approach” and advocates that the consultation should be open to all parties with an interest in the issue. However, I am satisfied that a variety of consultation mechanisms have been used, in a manner which is designed to encourage the provision of comment rather than exclude it, and which has permitted participation by any person. This included an open submission process from 1 August 2018 to 12 December 2019, where the Department sought submissions from the general public via its website and other mechanisms. In the same period, five petitions were presented opposing the siting of a facility in the Kimba LGA or in South Australia, with a sixth petition in January 2021, seeking a postal survey or referendum of South Australians.⁶³
74. In order for consultation to be meaningful I now review the outcomes of those consultation processes relating specifically to the Napandee Site. This is done in an order that is convenient, to an extent chronological, and not intended to suggest the relative importance of the views of the individuals or sectors of the community that responded. I do not take any survey, ballot, public submission process or particular submission to be representative of the views of all persons with a right, interest or concern regarding the proposal to locate the facility at the Napandee Site.

Nominator

75. The nominator was consulted, by a notice under s 18(1)(a) of the Act. Submission 18, from the nominator, supports the selection of the Napandee Site.

⁶² NSAR p 143-144.

⁶³ NSAR p 151-156.

Immediate neighbours

76. The ten neighbours sharing a boundary with the Napandee Site all support the location of the facility, as provided in the neighbour survey as set out in the NSAR. This support continues in the comments made in response to the s 18(1) notices. Submission 1 from the daughter of the nominator, who with her family resides on a property neighbouring the Napandee Site, fully supports its selection. Submission 2, from the direct neighbour to the Napandee Site and partner in farming business of the nominator, is very supportive of the selection. Submission 22, from a co-owner of a farm across the road from the Napandee Site, and partner in the organisation currently farming the Napandee Site, fully supports the proposal.
77. A neighbour survey of property holders within a 5 km radius of the Napandee Site was conducted by a research firm commissioned by the Department (**Neighbour Survey**).⁶⁴ The nomination period to nominate eligibility for the survey was commenced on 4 November until 12 December 2019, and the survey was then conducted from 13 December 2019 and completed on 19 December 2019. There was a high rate of response by the owners of the 24 eligible land parcels, being 91.6%. Of these responders, 75% gave an affirmative answer supporting the selection.⁶⁵ This survey was designed to capture sentiment of those on the land at the survey start date (4 November 2019). In December 2019, the eligibility guidelines were amended to ensure that native title holders who were on the land consistently with the criteria at that point in time were eligible to participate. Unfortunately, I understand that the timing of the amended guidelines was such that BDAC was unable to arrange for its members to participate and I recognise that the Neighbour Survey does not reflect the views of BDAC or its members. BDAC Submission 27 states that this evidenced targeted avoidance of engagement with the Barngarla People. I acknowledge the timing of the changes to the guidelines meant that eligible Barngarla People did not have time to enable them to participate in this particular survey, and I have taken this into account in my consideration of the survey results.

Information provided to community

78. The Department conducted numerous local community engagement activities including information sessions, webinars with specialists, town hall meetings and tailored heritage, agricultural and economic/business development events, including visits by over 230 local residents to ANSTO's Lucas Heights facility in order to assist them gain insight into radioactive waste management and nuclear medicine and research. This program of consultation was taken into account in the NSAR.⁶⁶ Submission 17, from the Flinders Local Action Group, submits that the local community has not been properly informed so as to enable it to respond and comment on the proposal for the Napandee Site and that what is required is an independent assessment of the proposal. However the provision of background material has been integral to the consultation program.

Kimba Council ballot

79. In August 2018, the local government association in which Napandee is located, the District Council of Kimba (**Council**), proposed to test community support for the facility, by arranging for the Australian Electoral Commission (**AEC**) to conduct a ballot amongst residents and rate payers within the local government area (**LGA**) (the Napandee Site being located within that LGA). The Council chose to conduct the ballot in accordance with the franchise provisions under the *Local Government (Elections) Act 1999* (SA) (**LG Act**) applying to the election of councillors, by requiring voters to be enrolled because they were residents or ratepayers in the LGA in order to respond to the ballot (**Council Ballot**).
80. BDAC, as the registered native title body corporate under the *Native Title Act 1993* (Cth), opposed the Council Ballot. BDAC is the agent for the Barngarla native title holders in respect of matters in the BDAC determination area, which includes some areas within the LGA. The Napandee Site is within the BDAC determination area. Native title has been extinguished in the Napandee Site but is

⁶⁴ NSAR p 138-140.

⁶⁵ NSAR p 138-9.

⁶⁶ NSAR p 134.

held in some areas within the LGA. All adult Barngarla People are eligible to be members of BDAC. Although BDAC's members hold native title in respect of several parcels of land within the LGA, this did not in itself provide eligibility to vote in accordance with the franchise provisions in the LG Act (though members were potentially eligible to vote in their own right as ratepayers or residents). BDAC obtained an interlocutory injunction from the Supreme Court of South Australia to restrain the holding of the Council Ballot and following termination of its complaint to the Australian Human Rights Commission, brought proceedings in the Federal Court for a declaration that the proposed Council Ballot was a contravention of the RD Act.⁶⁷ The Federal Court held that the Council's decision as to the franchise did not involve an act of direct or indirect discrimination based on the Aboriginality of BDAC's members. Moreover the Council's choice of the same franchise as applied in council elections was reasonable. The Full Federal Court dismissed BDAC's appeal, stating that membership of BDAC was not a characteristic that excluded any person from the franchise, but rather holding native title rights was not a qualifying criterion.⁶⁸

81. The AEC conducted the Council Ballot for the Council in October 2019, with 824 eligible voters and a participation rate of 90.41%. In response to the question whether the voter supported the proposed facility being located at one of the nominated sites in the community of Kimba (Lyndhurst or Napandee), 61.58% (452 participants) voted Yes.
82. Submissions 5, 14, 21 and BDAC Submission 27 contend that the Barngarla People were "excluded" from voting in the Council Ballot vote, and therefore there has been no consultation with Aboriginal people. The Federal Court held that the Barngarla People were not excluded from the Council Ballot and could be eligible if they met the franchise as ratepayers or residents. The Council Ballot was also not the exclusive means for consultation. On numerous occasions the Barngarla People were consulted on an individual basis and as a group represented by BDAC. BDAC also arranged for a ballot of their own members, the results of which are detailed in the NSAR and discussed below. Submission 20 is that the Council Ballot was non representative. The Council Ballot reflects the views of ratepayers and residents in the Kimba LGA and is representative in that respect. The Council Ballot is one of a number of mechanisms that has been pursued with the aim of consulting with persons and entities in all sectors of the community. Traditional owners have been consulted in other ways and their views considered, as discussed below.
83. As to submissions from the broader community in response to the s 18(1) notices, Submission 13, from a resident citizen in South Australia, supports the proposal for a facility in South Australia, in order to facilitate nuclear energy generation in the future so as to mitigate climate change. Submission 25 submits that the South Australian Nuclear Fuel Cycle Royal Commission Citizens Jury verdict in November 2016 opposed South Australia's expansion of its role in the nuclear fuel cycle.⁶⁹ Submission 11 claims a failure to consult the wider Eyre Peninsula and along the transport corridors. However the earlier complete program of community consultation undertaken by the Department was not restricted to residents in the Kimba LGA and was open to these wider communities.

Barngarla People and BDAC

84. Native title does not exist at the Napandee site, which is currently a freehold title. Notwithstanding, since 2017 the Department has offered to meet with representatives of the Barngarla People who hold native title rights and interests in dispersed locations within their Native Title Determination

⁶⁷ *Barngarla Aboriginal Corporation RNTBC V District Council of Kimba* [2019] FCA 1092.

⁶⁸ *Barngarla Aboriginal Corporation RNTBC v District Council of Kimba (No 2)* [2020] FCAFC 39 at [57]. A Federal Court judge had refused BDAC's application for an injunction to restrain the Council from conducting the ballot pending the disposition of the appeal: *Barngarla Aboriginal Corporation RNTBC v District Council of Kimba (No 2)* [2019] FCA 1585.

⁶⁹ Submissions from the general public to the Senate Economics Legislation Committee inquiry into the *National Radioactive Waste Management Amendment (Site Specification Community Fund and Other Measures) Bill 2020*, were concerned with particular provisions of the Bill rather than with the selection of the NRWM facility site: NSAR p 159. Of the 105 bespoke submissions, 18 were supportive of the Bill and 79 opposed it.

area across Eyre Peninsula, including within the Kimba area. From August 2017 and regularly until November 2020 the Department has sought to establish and fund a Barngarla Heritage Working Group with representatives of the Barngarla People to agree on a process for Aboriginal cultural heritage assessment of the Napandee Site.⁷⁰ BDAC, which has the sole authority to represent the Barngarla People, has not agreed to take up these opportunities. However BDAC expressed their views on many occasions since 2017, directly to the former Minister, to myself, to the Department, and to Senate Committees. I have carefully considered those representations, many of which are attachments to the BDAC submission 27 made in response to the s 18(1)(b) notice on 20 October 2021,⁷¹ which I have also taken into account.

85. I take into account Article 29.2 of the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**),⁷² which provides that “States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of Indigenous peoples without their free, prior and informed consent”.
86. The BDAC Submission 27 relies on Article 29.2 and in addition Articles 8.1, 11.1, 12.1 and 18 of UNDRIP in support of the submission that without the support of the Barngarla People there is not “broad community support”, and that to contend otherwise would be racist and exclude the traditional owners from the “community”.⁷³ Submissions 11 and 14 submit that exclusion of the Barngarla People from the Council Ballot was in conflict with Article 29 of the UNDRIP. Submissions 5 and 14 contend that Article 29 of UNDRIP requires consent by Indigenous persons before a facility is established at the Napandee Site. Submission 5 submits that a federal facility should not be imposed on an unwilling community or jurisdiction and Submission 11 submits that the omission of the Barngarla People from the franchise for the Council Ballot is in conflict with Article 29 of UNDRIP.
87. Article 29.2, along with Articles 18 and 32.2 of UNDRIP, discuss the principle of free, prior and informed consent (**FPIC**). FPIC has not been incorporated into Australian domestic law, although article 29.2 was also discussed by the Parliamentary Joint Committee on Human Rights, in the context of its scrutiny of the *National Radioactive Waste Management Amendment (Site Specification, Community Fund and Other Measures) Bill 2020*.⁷⁴ I also understand that my power to make a declaration under s 14(2) has effect subject to s 9 of the RD Act, which implements international obligations of Australia relating to equality and non-discrimination on the ground of race.⁷⁵ If I declare the Napandee Site selected, a subsequent approval must comply with the EPBC Act, whose objects include taking into account the importance of a cooperative approach to protecting and managing the environment between the Government, community, landholders and Indigenous people. Additionally, guidelines made under the EPBC Act relate to best practice in

⁷⁰ The detail of the communications with BDAC are set out in NSAR pp 146-149 and include: offers to meet with BDAC and representatives of the Barngarla People to present on the facility and provide information about the facilities and proposed assessment activities; meeting with the BDAC Board on several occasions to consult with and hear BDAC’s views; offers to set up and fund Barngarla representatives appointed by the BDAC Board to participate in a Barngarla Heritage Working Group to seek to reach an agreed process for the cultural heritage assessment to occur; offers to work together to design and undertake a cultural heritage assessment and cultural heritage management plan and to consult about any known cultural heritage values at the Napandee Site known through previous survey work; invitations to fund Barngarla representatives to visit the ANSTO facility at Lucas Heights in NSW; and offers to provide resources to identify and engage an agreed mediator to assist the parties to reach a long-term agreement.

⁷¹ BDAC Submission 27, and its Attachments.

⁷² Adopted by the General Assembly of the United Nations on 13 September 2007 as a non-binding declaration, the Australian Government having stated its support of UNDRIP on 3 April 2009 (some rights in UNDRIP already being included in human rights instruments to which Australia is a party).

⁷³ BDAC submission dated 3 April 2019 to the Senate Economic Reference Committee inquiry; BDAC Submission 27.

⁷⁴ Parliamentary Joint Committee on Human Rights Human Rights Scrutiny, Report 3 of 2020, 26 February 2020 [1.9].

⁷⁵ Act s 14(6).

consultation with Indigenous communities, including by identifying and acknowledging all relevant affected Indigenous peoples and communities; committing to early engagement at the pre-referral stage; building trust through early and ongoing communication for the duration of the project, including approvals, implementation and future management; setting appropriate timeframes for consultation; and demonstrating cultural awareness.⁷⁶

88. I take into account FPIC in the UNDRIP, and seek to comply with the RD Act, accepting that the Department has in good faith pursued a variety of mechanisms for consulting with all sectors of the community and has consistently endeavoured to consult with the Barngarla People. I also recognise the desirability of observing, even in advance of the commencement of any EPBC Act approval process, the best practice guidance under the EPBC Act. Upon review of the history of communications with BDAC set out in the NSAR, and the correspondence and submissions in the Attachments to the BDAC Submission 27, it is my view that the Department committed to early engagement with the Barngarla People and continued to seek to communicate with them. At most times this has been through BDAC's legal representative or the BDAC Board. Apart from any notice requirements under s 18(1) or taking into account relevant comments under s 18(3), I am not required by the Act in the case of a nomination of land under s 7(2) or (3) to obtain consent from traditional owners before making a declaration under s 14(2).⁷⁷
89. On 20 November 2019, BDAC provided the Department with the results of a ballot it had conducted using a private independent polling company, the Australian Election Company (**BDAC Ballot**). At the time BDAC had 209 members. There may be Barngarla People who are not members of BDAC but who are eligible to become members. The BDAC Ballot was confined to the then 209 members of BDAC. Of the 209 BDAC members eligible to vote, there was a participation rate of 39.71%. In response to the same question asked in the Council Ballot, 100% of the respondents (83 voters) voted No.
90. Submissions 4, 20 and 21 submit that the opposition of the Barngarla People has been disregarded. Submission 25 submits that the ballots held were biased. That is not the case. I take into account the results of all the surveys and ballots, including the BDAC Ballot. However the outcome of the BDAC Ballot is not conclusive of the decision I am to make.

Business

91. Between 27 November and 19 December 2019 a survey was undertaken of the views of for-profit businesses in the geographic region near the Napandee Site (**Business Survey**).⁷⁸ There were 135 participants, with support from 59.3% and opposition from 40.7%. The types of businesses expressing opposition were agriculture, forestry and fishing.⁷⁹
92. In Submission 23, the No Radioactive Waste Group on Agricultural Land in Kimba or SA, which has 400 members, submits that its members, being close neighbours of the Napandee Site, oppose its establishment on agricultural land. Submissions 5, 6 and 9, submit that there has been no consultation with Kimba grain growers, emergency services/first responders, wider regional communities, communities along transport routes between facilities currently storing nuclear waste and the Napandee Site. Again, I note that a variety of consultation methods have been used, including the general public submissions process referred to in paragraph 73 above.

Conclusion

⁷⁶ Department of Agriculture, Water and the Environment *Engage early – guidance for proponents on best practice Indigenous engagement for environmental assessments under the Environment Protection and Biodiversity Conservation Act 1999*, 2016.

⁷⁷ Cf the express consent and consultation requirements where a nomination is made under ss 5, 7(4) and 8(1)(f) of the Act.

⁷⁸ NSAR p 141-2.

⁷⁹ NSAR p 141-2.

93. BDAC Submission 27 and Submission 6 submit that there is an absence of “broad community support”.⁸⁰ As indicated in paragraph 70 above, while I take into account Criterion 4, there is no requirement under the Act to apply this test or to determine whether it is satisfied. Submissions 6, 9, 12 and 24 submit that new or further consultation with the public or specific sectors of the public is required. In considering Criterion 4, I have had regard to the objects of the Act, which include ensuring that controlled material is safely and securely managed. The nominator, and all the direct neighbours of the Napandee Site who responded to the Neighbour Survey, support its selection. I understand that this will assist in safe and secure management of controlled material as noted in the NSAR.⁸¹ Majority support has been expressed by certain sectors of the community. One of those sectors is Kimba residents and ratepayers, with a high participation rate in the Council Ballot. Another is the business community that participated in the Business Survey. Local public submissions also largely expressed support. There was low support from the agricultural sector and by ‘non-local’ submission. I take into account the significant and consistent opposition from BDAC to the selection of the Napandee Site. The BDAC Ballot had a low response rate, but 100% of votes in opposition. I am satisfied that there has been a comprehensive collection of data as noted in the NSAR and that across different sectors of the community, there is support for the facility to be located at the Napandee Site. This support has been identified in these sectors after extensive consultation that has sought out views of sectors of the community and generally persons and entities with an interest or concern, and that has provided mechanisms to facilitate the expression of those views.

E Conclusion

94. For the reasons given above, I have decided pursuant to s 14(2) of the Act to declare that the Napandee Site described in Attachment A be selected as the site for the facility. The declaration under s 14(2) specifies that all of the rights and interests in the selected site are specified for the purpose of section 14(2) of the Act, including, without limitation, I specify that an estate in fee simple is acquired.

Keith Pitt
Minister for Resources and Water

26 November 2021

⁸⁰ BDAC Submission 27, [18]-[46].

⁸¹ NSAR, p 51.

ATTACHMENT A

Description of the land declared as the site for a facility under section 14(2) of the National Radioactive Waste Management Act 2012

The land bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table below (the selected site), being part of the land nominated as a site under section 7 and approved by the Minister as a site under section 9 as set out in schedule 1, clause 1(1) table item 1 of the *National Radioactive Waste Management Amendment (Site Specification, Community Fund and Other Measures) Act 2021* and specified in Schedule 1, clause 1(2) of that Act (known as ‘Napandee’), is selected as the site for a facility under section 14(2) of the *National Radioactive Waste Management Act 2012*:

Item	Description
1	The point that is at a bearing of 270°52'40" along the Tola Road boundary, and 25 metres west from the south-east corner, of the land described in South Australian Certificate of Title Volume 5937 Folio 542, being Section 94, Hundred of Pinkawillinie, in the area named Pinkawillinie
2	Bearing 270°52'40" for 581.80 metres
3	Bearing 270°53'10" for 727.75 metres
4	Bearing 309°36'10" for 122.73 metres
5	Bearing 0°35'40" for 1440.36 metres
6	Bearing 91°53'40" for 1408.72 metres
7	Bearing 180°44'40" for 839.72 metres
8	Bearing 202°39'00" for 138.70 metres
9	Bearing 179°30'00" for 53.60 metres
10	Bearing 164°32'10" for 69.21 metres
11	Bearing 154°10'50" for 70.06 metres
12	Bearing 180°44'40" for 341.08 metres to the starting point

ATTACHMENT B

Submissions received in response to s 18(1) notices

	Name of person who made the submission	Dated
1	<i>confidential</i>	21.10.2021
2	Andrew Baldock	22.10.2021
3	Andrew Williams	05.10.2021
4	Annie McGovern	22.10.2021
5	<i>unconfirmed privacy status</i>	22.10.2021
6	<i>unconfirmed privacy status</i>	20.10.2021
7	Barry Wakelin	22.10.2021
8	Christine Mary Wakelin	22.10.2021
9	Claudia Tregoning	12.08.2021
10	<i>unconfirmed privacy status</i>	22.10.2021
11	Conservation Council SA	23.10.2021
12	David J Noonan	22.10.2021
13	David Spencer Muirhead	12.08.2021
14	Friends of the Earth Australia	22.10.2021
15	George Gear	20.10.2021
16	<i>confidential</i>	21.10.2021
17	Flinders Local Action Group	22.10.2021
18	Mr Jeffrey and Mrs Jennifer Baldock as trustee for the Tola Farm Trust (ABN 66 910 203 855)	Undated
19	Josephite SA Reconciliation Circle	16.10.2021
20	Margaret Beavis	21.08.2021
21	<i>unconfirmed privacy status</i>	15.08.2021
22	Mark Baldock	15.10.2021
23	No Radioactive Waste on Agricultural Land in Kimba or SA	22.10.2021
24	Robyn Coleman	16.08.2021
25	Sebastian Tops	Undated
26	Susanne Woolford	22.10.2021
27	Barngarla Determination Aboriginal Corporation RNTBC ICN 8603 (including 101 attachments) (BDAC Submission 27)	20.10.2021
28	<i>unconfirmed privacy status</i>	12.08.2021
29	<i>unconfirmed privacy status</i>	12.08.2021

ATTACHMENT C

Key Sections of Act

3 Object of Act

- (1) *The object of this Act is to ensure that controlled material is safely and securely managed by providing for:*
 - (a) *the selection of a site for a radioactive waste management facility on land in Australia; and*
 - (b) *the establishment and operation of such a facility on the selected site.*
- (2) *By ensuring that controlled material is safely and securely managed, this Act, among other things, gives effect to certain obligations that Australia has as a party to the Joint Convention, in particular Australia's obligations under Chapters 3 and 4 of the Joint Convention.*

4A Meaning of controlled material

- (1) **Controlled material** means controlled material within the meaning of the Australian Radiation Protection and Nuclear Safety Act 1998 that is controlled material to which subsections (2) and (3) apply.
- (2) *This subsection applies to controlled material if:*
 - (a) *it has been used in Australia, generated by activities in Australia, or sent to Australia under contractual arrangements relating to the conditioning or reprocessing of ANSTO spent nuclear fuel (within the meaning of the Australian Nuclear Science and Technology Organisation Act 1987); and*
 - (b) *it is not high level radioactive material or spent nuclear fuel.*
- (3) *This subsection applies to controlled material if it is one or more of the following:*
 - (a) *controlled material that is radioactive waste (within the meaning of the Joint Convention);*
 - (b) *controlled material that is generated as a result of activities that relate to the defence of Australia;*
 - (c) *controlled material that needs to be securely managed to prevent its use in the commission of a terrorist act (within the meaning of section 100.1 of the Criminal Code);*
 - (d) *controlled material that is generated, possessed or controlled by the Commonwealth or by a Commonwealth entity in the performance of its functions;*
 - (e) *controlled material that is generated by a State or an authority of a State;*
 - (f) *controlled material that is generated by a Territory or an authority of a Territory, or within a Territory.*

14 Minister's declaration of land as selected site or required for road access

- (1) *This section applies if:*
 - (a) *land has been nominated as a site under section 5 or 7; and*
 - (b) *the Minister has approved the nominated land, or a specified part of the nominated land, as a site under section 9.*
- (2) *Subject to section 18, the Minister may, in his or her absolute discretion, declare in writing that the site approved by the Minister, or a specified part of the site, is selected as the site for a facility. The declaration may specify all or some of the rights or interests in the selected site.*
- (3) *Despite subsection (2), the Minister must not, after the general nomination start time, make such a declaration in relation to land nominated as a site under section 5.*
- (4) *Subject to section 18, the Minister may, in his or her absolute discretion, declare in writing that all or specified rights or interests in land in a State or Territory specified in the declaration are required for providing all-weather road access to the selected site.*
- (5) *To avoid doubt, rights and interests specified in a declaration under subsection (2) or (4) may include the following:*
 - a. *rights to minerals (if any);*

- b. *native title rights and interests (if any);*
- c. *an interest in the land, being an interest that did not previously exist;*
- d. *an easement in gross (if any).*
- (6) *To avoid doubt, this section has effect subject to section 9 of the Racial Discrimination Act 1975.*
- (7) *A declaration under subsection (2) or (4) is not a legislative instrument.*

18 Procedural fairness in relation to Minister's declarations

- (1) *Before the Minister decides to make a declaration under section 14 in relation to land, the Minister must:*
 - (a) *give a notice in writing to each nominator of the land; and*
 - (b) *publish a notice:*
 - (i) *in the Gazette; and*
 - (ii) *in a daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory; and*
 - (iii) *in a local newspaper (if any) circulating in the area in which the land is situated.*
- (2) *A notice under paragraph (1)(a) or (b) must:*
 - (a) *state that the Minister proposes to make a declaration under subsection 14(2) or (4); and*
 - (b) *set out details of the proposed declaration; and*
 - (c) *if the notice is given under paragraph (1)(a)—invite each nominator of the land to comment on the proposed declaration; and*
 - (d) *if the notice is published under paragraph (1)(b)—invite persons with a right or interest in the land to comment on the proposed declaration; and*
 - (e) *specify the address to which comments may be sent; and*
 - (f) *specify the date by which comments must be received, which must be at least 60 days after the notice is given or published.*
- (3) *In deciding whether to make a declaration under section 14, the Minister must take into account any relevant comments given to the Minister, by a nominator of the land, or a person with a right or interest in the land, in response to an invitation referred to in paragraph (2)(c) or (d).*
- (4) *A reference in this section to each nominator of the land, in relation to a declaration under subsection 14(4) that rights or interests in land are required for providing all-weather road access to the selected site, is a reference to each person who nominated the selected site under section 5 or 7.*

Exhaustive statement

- (5) *This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Minister's decision whether to make a declaration under section 14.*