



Environmental Protection Act 1986

**Hon Amber-Jade Sanderson MLA
Minister for Environment; Climate Action**

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST AMENDMENT OF LICENCE L8937/2015/1 UTAH POINT MULTI-USER BULK HANDLING FACILITY

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 102(3)(a)&(b) of the *Environmental Protection Act 1986* in objection to the above licence amendment. This document is produced by the Office of the Appeals Convenor for the Minister but is not the Appeals Convenor's own report, which can be downloaded from the Appeals Convenor's website at www.appealsconvenor.wa.gov.au.

Appellants:	Pilbara Ports Authority Anderson UT Holdings Pty Ltd ATF Anderson Unit Trust, Hain FT Pty Ltd ATF Hain No.2 Family Trust and Michael Hain
Licence Holder:	Pilbara Ports Authority
Proposal description:	The amendment authorised an increase in the annual throughput for bulk material loading or unloading from 21.35 million tonnes per annum (Mtpa) to 24.10 Mtpa (an increase of 2.75 Mtpa), including up to 3 Mtpa of spodumene ore as an approved bulk material.
Minister's Decision:	The Minister dismissed the appeals.
Date of Decision:	4 June 2021

REASONS FOR MINISTER'S DECISION

Pursuant to section 106 of the *Environmental Protection Act 1986* (the Act), the Minister obtained a report from the Department of Water and Environmental Regulation (DWER) on the matters raised in the appeals. The Minister also received a report from the Appeals Convenor. The Appeals Convenor's report sets out the background and other matters relevant to the appeals.

Two appeals were received in objection to the conditions applied to the amended licence issued by DWER in relation to the Utah Point Multi-User Bulk Handling Facility.

The key concerns related to removal of the 'Material Change conditions' from the licence, the adequacy of the dust monitoring and management conditions applied to the amended licence, and the adequacy of DWER's risk assessment.

Having considered the information available, including DWER's response to the appeals and the Appeals Convenor's report and recommendation, the Minister decided to dismiss the appeals. The Minister was of the view that DWER's assessment of the potential risks was generally appropriate and that the conditions applied are consistent with its objective of ensuring that dust emissions from the premises are not increased in the short term and the current risk level is not exceeded as a result of throughput increases.

The full reasons for the Minister's decision follow.

Monitoring

In relation to the third-party appellant's request that the licence include a condition requiring the use of Light Detection and Ranging (LiDAR) monitoring, DWER advised that the main strength of LiDAR is that it provides good spatial representation of airborne particles, however it is limited in that it is not Australian Standard compliant and cannot measure the actual concentrations of particles in the air. The use of LiDAR as a management tool is being investigated through the development of the Dust Management Guideline for bulk handling facilities at Port Hedland. The Minister did not consider there is a need to include LiDAR as a monitoring requirement at this time.

The Minister also noted that dust speciation was being investigated as one of the potential monitoring tools with other monitoring technologies through the development of the Dust Management Guideline. DWER advised that licence conditions relating to monitoring and the analysis of dust samples are designed to ensure relevant scientific standards and regulatory protocols are met and it was therefore not appropriate to include the option for community stakeholders to undertake dust speciation analysis as a licence condition.

In responding to the appeals, DWER advised that particles as PM₁₀ are the basis of its risk assessment, as PM₁₀ remains the dominant particle size in Port Hedland's ambient air that presents a risk to human health. Particles as PM_{2.5} are a fraction of PM₁₀ particles and are therefore expected to be present in the emission profile. The Minister was also advised that DWER's assessment of risk did not assume that particulates as PM_{2.5} could not be generated from bulk ore handling activities.

The Minister understood that a number of hazards sometimes present in spodumene ores were considered by DWER in its assessment of the licence amendment, including respirable crystalline silica, muscovite and asbestos. DWER advised that concentrations of asbestos recorded during occupational hygiene monitoring conducted at hoppers, conveyors, stockpile areas and stackers at the premises identified that maximum recorded asbestos concentrations were below Safe Work Australia standards by a factor of 10. DWER also advised that concentrations of asbestos from the premises are expected to reduce with distance.

The Minister was satisfied that the regulatory controls relating to dust emissions were generally appropriate and commensurate with achieving DWER's objective of ensuring that dust emissions from the premises are not increased in the short term and the current risk level is not exceeded.

Risk Assessment

The Minister understood that DWER followed its *Guidance Statement: Risk Assessments* in assessing the risk of dust to human health and that it took the approach of assessing 'dust' as an emission, which includes the impact of PM₁₀, PM_{2.5} and the other impacts raised in one of the appeals. DWER advised that it took into consideration the conclusions of the *Port Hedland Air Quality Health Risk Assessment for Particulate Matter* when determining 'consequence' and 'likelihood'. The Minister was also advised that DWER had regard to the State Government endorsed continuation of an air guideline value for Port Hedland of 24-hour PM₁₀ of 70 µg/m³ (excluding natural events) in all residential areas.

Based on the information before her, the Minister was satisfied that DWER's assessment regarding the risk of cumulative fugitive dust emissions was justified.

Removal of 'Material Change conditions'

The Minister understood that when the 'Material Change conditions' were placed on the licence in 2016, it was considered that the risk of increased emissions due to the limited authorised scope of change would be insignificant. DWER advised that it has since identified that the continued and regular application of the conditions presented the unintended potential for environmental risk. Given the existing elevated ambient PM₁₀ concentrations in Port Hedland have resulted in a 'High' risk rating being applied to all risk assessments of existing Category 58 operators, DWER determined that 'Material Change conditions' had the potential to result in significantly increased and therefore unacceptable risk and consequently would not be continued.

The Minister noted that DWER has developed 'Trial Shipment conditions' in consultation with the port authorities, including Pilbara Ports Authority, to enable trialling of the handling of new bulk granular materials not previously assessed and authorised under a licence. The Minister also noted that DWER was continuing to consult with port authorities to develop additional conditions as an alternative to the 'Material Change conditions'.

Based on the available evidence, the Minister supported the Appeal Convenor's advice that DWER was justified in removing the 'Material Change conditions' at this time. The Minister also noted the Appeals Convenor's advice that the licence holder can apply for a licence amendment to increase the total throughput at the premises.

Other Matters

With respect to concerns about inadequate consideration of economic surroundings and the loss of property value and property buy back, the Minister accepted the Appeals Convenor's advice that these matters are beyond the scope of appeal, the reasons for which are detailed in the Appeals Convenor's report.

Note: this decision is published pursuant to the terms of section 110 of the *Environmental Protection Act 1986* and regulation 8 of the *Environmental Protection Regulations 1987*.

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