



Environmental Protection Act 1986

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

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL AGAINST AMENDMENT OF LICENCE L8904/2015/1 BANKSIA ROAD PUTRESCIBLE LANDFILL SITE, CROOKED BROOK**

#### **Purpose of this document**

This document sets out the Minister's decision on an appeal lodged under section 102(3)(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](http://www.appealsconvenor.wa.gov.au).

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<b>Appellant:</b>	Shire of Dardanup
<b>Licence holder:</b>	Cleanaway Solid Waste Pty Ltd
<b>Proposal description:</b>	The amendment of the licence allows for the acceptance of Category 64 waste within Cell 7
<b>Minister's Decision:</b>	The Minister allowed the appeal in part
<b>Date of Decision:</b>	31 August 2021

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#### **REASONS FOR MINISTER'S DECISION**

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The Shire of Dardanup appealed against the decision of the Department of Water and Environmental Regulation (DWER) to amend the above licence held by Cleanaway Solid Waste Pty Ltd (Cleanaway). The amendment was made in May 2020 and authorised the burial of waste within Cell 7 at the Banksia Road landfill facility (the premises) located near Dardanup.

The Minister noted the appellant sought improvements to the licence conditions relating to odour, dust and stormwater with additional matters raised relating to compliance.

#### **Decision**

Having considered the information available to her, including DWER's response to the appeal and the Appeals Convenor's report, the Minister decided to allow the appeal to the extent that additional conditions are imposed on the licence relating to odour. The Minister otherwise decided to dismiss the appeal.

The full details of her decision follow.

## Background

In response to the appeal, DWER advised that the construction and operation of Cell 7 was assessed in a prior amendment granted in April 2017. Cleanaway subsequently constructed the cell and in March 2020 submitted construction compliance documentation along with an application to amend the licence to commence the cell's use.

DWER advised that it granted the amendment as it was satisfied the compliance documentation demonstrated Cell 7 was constructed in accordance with the licence requirements.

The Minister noted that the appeal right against a licence amendment only relates to the amendment that was made or matters directly consequential to that amendment.

In this regard, the Shire submitted that amendments should by nature include a review of operations at the premises generally to ensure an appropriate level of risk is being maintained. It is within this context the Minister understood the Shire considered that current information demonstrated conditions relating to odour, dust and stormwater needed to be improved.

## Reasons for decision

In relation to odour, DWER acknowledged that its *Guidance Statement: Odour Emissions* (June 2019) should have been considered in its decision to authorise the operation of Cell 7. Upon review of the appeal, DWER recommended that additional conditions be imposed on the licence to mitigate the risk of odour emissions.

As part of her investigations, the Appeals Convenor consulted with Cleanaway on the practicalities of the conditions recommended by DWER and concluded that conditions should be included requiring:

- odour from the premises does not unreasonably interfere with the health or wellbeing of persons not on the premises;
- highly odorous waste be immediately buried and covered; and
- the active tipping area be limited to an area no greater than 1,800 m<sup>2</sup>, or two areas no greater than 1,800 m<sup>2</sup> each for periods of up to three months when transitioning between cells.

The Minister agreed with the Appeals Convenor and considered that such conditions were appropriate towards mitigating the risk of odour emissions and therefore the Minister allowed the appeal to the extent that these conditions are added to the licence.

In relation to dust and stormwater, the Minister noted the Shire was of the view that in the absence of WA guidance, DWER should impose conditions consistent with the Environment Protection Authority Victoria publication *Best Practice Environmental Management – Siting, design, operation and rehabilitation of landfills* (Publication 788.3, August 2015). The Shire submitted that dust and stormwater complaints made by the public demonstrate non-compliance by Cleanaway and that these matters were not being adequately managed.

In response to the appeal, DWER outlined that improvements to the licence conditions relating to dust were made in the amendment prior (December 2019) which authorised an increase in the waste acceptance rate. In determining appeals against this amendment (appeal 001/20),

the then Minister for Environment agreed with DWER that the licence conditions relating to dust were commensurate with the level of risk identified.

The Minister was also advised that dust monitoring undertaken by DWER in 2020 at a principal complainant's residence confirmed that dust emissions were less than relevant national standards.

Therefore, based on the available evidence, including that the use of Cell 7 does not materially change the dust emission risks identified and addressed through prior amendments, the Minister was satisfied that the dust conditions imposed on the licence remain commensurate with the level of risk identified.

In relation to stormwater, the primary concern related to the infrastructure constructed along the southern boundary of the premises abutting the Dardanup Conservation Park where substantial runoff and associated erosion has occurred.

While the Shire contended that the runoff was largely originating from the premises boundary, condition 1.2.1 of the licence already relevantly requires that stormwater arising within, or which has had contact with, the active landfill area and the areas of the premises where landfilling, waste acceptance and processing and leachate containment occurs, must not discharge beyond the premises boundary.

Therefore, the Minister considered that the licence included adequate conditions to mitigate the risk of contaminated stormwater discharging from the premises boundary. The management of compliance with licence conditions is a separate matter for DWER to administer and beyond the scope of appeal against a licence amendment.

Additionally, the Minister understood that, in April 2021, the Shire granted an amended Development Approval to modify the stormwater infrastructure to address erosion concerns along the southern boundary.

### **Other matters**

By its appeal, the Shire also submitted that DWER failed to consider exercising its discretion under s59B(8) of the *Environmental Protection Act 1986* (EP Act) to abstain from making a decision on the amendment while Cleanaway was in non-compliance with its Development Approval conditions. The Shire also sought for errors in the licence Instrument Log to be corrected and for the licence to include a description of the history of non-compliance at the premises.

With regard to these matters, the Minister accepted the advice of DWER and the Appeals Convenor that:

- compliance with the *Planning and Development Act 2005* is a matter for the Shire;
- the licence Instrument Log does not contain errors as suggested by the Shire; and
- the appeal right extends to the licence conditions and not other information such as a description of the premises compliance history.

### **Next steps**

DWER will now give effect to the Minister's decision in accordance with section 110 of the EP Act by amending the licence. The precise wording of the additional conditions will be determined by DWER.

The Minister noted that the Environmental Protection Authority published its determination to assess Cleanaway's 'Banksia Road Landfill, Dardanup - Construction and Operation of Landfill Cells 9, 10 and 12A' proposal on 9 August 2021. The proposal is a continuation of the current operations and includes the establishment of additional landfill cells within the existing premises boundary.

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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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