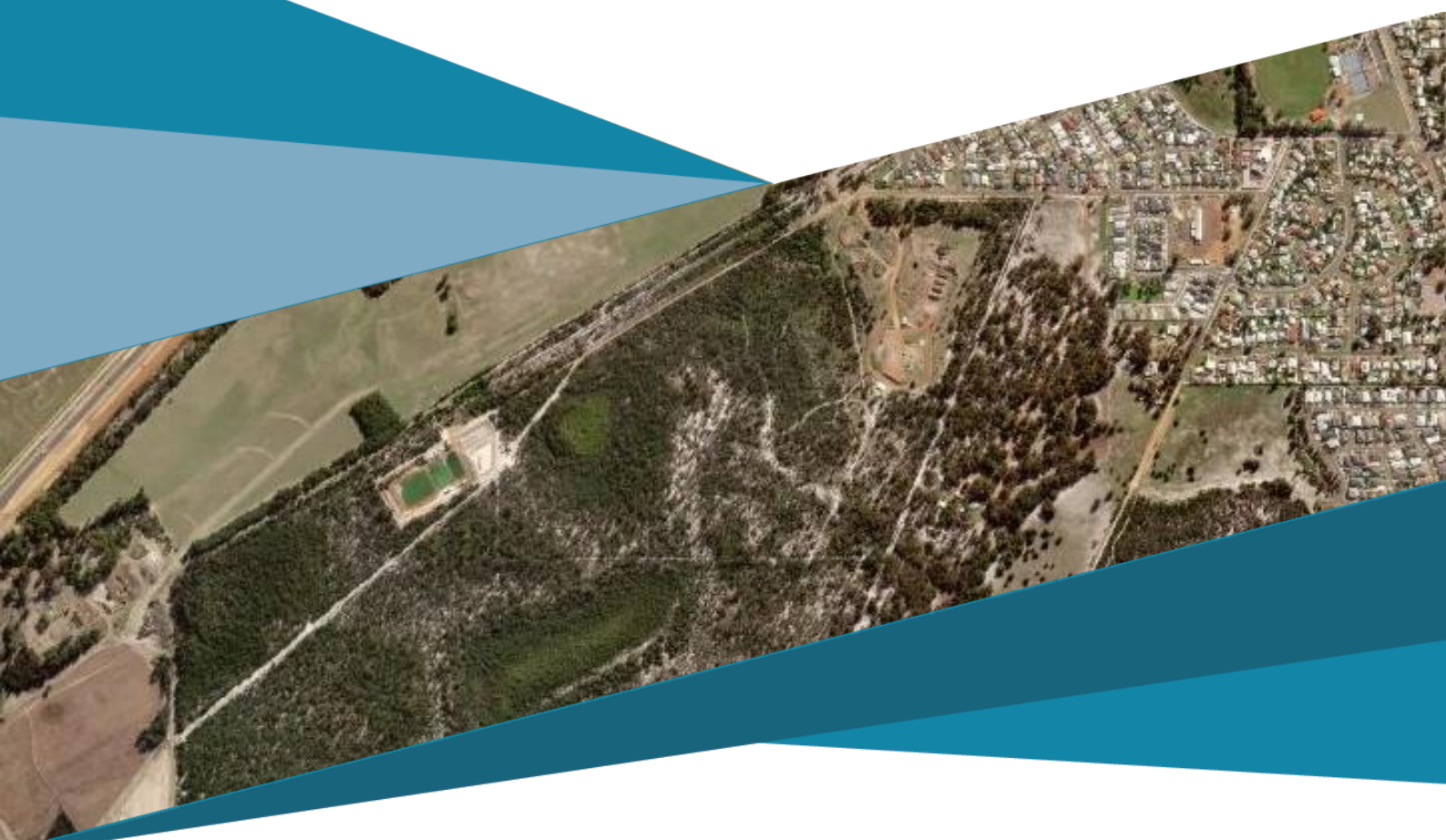




Government of **Western Australia**
Office of the **Appeals Convenor**
Environmental Protection Act 1986

Appeals Convenor's Report to the Minister for Environment

Appeal against conditions of amended Licence
L6993/1997/12 Capel Transfer Station, Lot 500 on Plan
66147 Range Road, Shire of Capel



Appellant	Mr William Biggins
Licence holder	Shire of Capel
Authority	Department of Water and Environmental Regulation
Appeal No.	036 of 2022
Date	February 2023

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This report

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Acknowledgement of Country

The Office of the Appeals Convenor acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community.

We pay our respects to all members of the Aboriginal communities and their cultures, and to Elders past, present and emerging.

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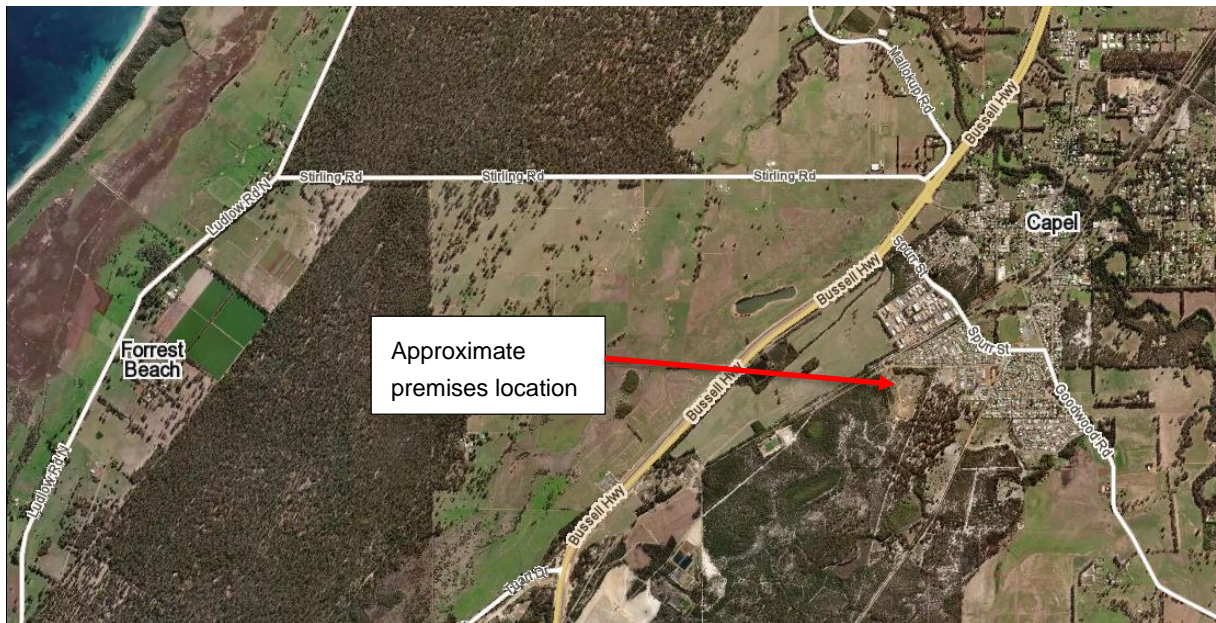
1 Executive summary

1.1 Decision under appeal

The Shire of Capel (the licence holder) holds Licence L6993/1997/12 for the Capel Transfer Station located at Lot 500 on Plan 661447, Range Road, Capel (the premises). Figure 1 shows the location of the premises.

This appeal is in objection to a decision of the Department of Water and Environmental Regulation (DWER) to amend the licence on 9 September 2022.

Figure 1 Premises location¹



The premises operates under its licence with a capacity of 2,500 tonnes per annual period for waste, which is stored or sorted pending final disposal or re-use (Category 62).

We understand from DWER's Amendment Report that in March 2022, the licence holder submitted an application to amend Licence L6993/1997/12 to include mattress shredding (separating the metal out for recycling and placing the textile into general waste bin). The shredding would be undertaken twice weekly, either on a Monday or a Thursday, before 9:30 am. A maximum of up to 40 tonnes of mattresses would be shredded at the site per year. Mattresses received would be stored in piles, no higher than 2.5 metres (m) and 5 m apart.²

DWER assessed the activity under existing Category 62 activities approved onsite and issued the revised licence in September 2022. In issuing the revised licence, we note that DWER also consolidated the licence, including updating the format and appearance of the licence, removing redundant conditions and realigned condition numbers for numerical consistency and correcting errors.

¹ Image source: whereis.com

² DWER (2022) Amendment report: L6993/1997/12, Page 1

1.2 Grounds of appeal and appellant concerns

The appellant, Mr William Biggins is a resident located to the south of the premises. Broadly, the appellant submitted that the conditions of the amended licence were inadequate and would not control windblown waste and noise emissions.

The appeal right is limited to the amendment of the licence and the appellant's concerns are listed in Table 1.

We summarise the appellant's main concerns in Table 1.

Table 1 Grounds of Appeal

Ground	Main Concerns the appellant submitted
1. Windblown waste	The appellant considered that the introduction of mattress shredding at the premises would exacerbate existing levels of windblown waste from the current operations. The appellant sought for mattress shredding be undertaken in a suitable building.
2. Noise emissions	The appellant considered that noise emissions would not be adequately managed and recommended that the amended licence conditions require the noisiest side of the plant be orientated away from residents from the north, to the southwest, and mattress shredding be undertaken in a suitable building.

1.3 Key issues and conclusions

We summarise our conclusions for these two issues below. Section 2 of this report then details our reasoning and Appendix 1 provides a summary of the appeal process.

Do the licence conditions manage windblown waste emissions from mattress shredding?

The appellant raised concerns that DWER's assessment had not identified his property as a sensitive receptor and therefore windblown waste from mattress shredding activities were not adequately managed by the amended licence conditions.

Specifically, the appellant is concerned that condition 5 contains specific wind direction triggers to minimise windblown waste impacts for residents located to the northeast only and does not include receptors to the south of the premises, where the appellant's home is located.

Our conclusion is that the amended licence conditions regarding mattress shredding should be improved to control windblown waste for all receptors, not just those to the northeast. We recommend that condition 5 be amended to remove the wind direction triggers for ceasing activities, replacing it with a requirement for fencing/screening to be installed to contain windblown waste from mattress shredding activities.

Do the licence conditions manage noise emissions from mattress shredding?

The appellant considered that the amended licence should require mattress shredding be conducted within a suitable building and for the noisiest side of the plant to be orientated away from all local residents.

We note that the proposal would be required to conform to the *Environmental Protection (Noise) Regulations 1997* (Noise Regulations) and condition 5 restricts mattress shredding activities to 3 hours per week.

Noise emissions are anticipated to be similar in nature to those currently emitted from the premises and DWER advised that there have been no noise complaints associated with current activities at the premises. Noting that the proposal is required to comply with the Noise Regulations we have concluded no further conditions in relation to noise are required at this time. If complaints are received, it would be open to DWER to investigate and make any amendments if required.

1.4 Recommendation to the Minister

We recommend that the appeal be allowed to the extent that, consistent with the advice of DWER, condition 5 (Table 2) is amended to remove the wind direction triggers for ceasing activities, replacing it with a requirement to install fencing or a mobile litter screen to contain windblown waste from mattress shredding activities.

2 Reasons for recommendation

2.1 Do the licence conditions manage windblown waste from mattress shredding?

We conclude that amended licence conditions relating to windblown waste should be improved. We explain our reasoning below.

Licence conditions should be amended to manage windblown waste from mattress shredding

The appellant raised concerns that the introduction of mattress shredding at the premises would add to the existing levels of windblown waste. The appellant submitted that he regularly collects waste (paper, plastic, polycarbonate sheet and polystyrene), which has blown from the premises onto his property.

In its risk assessment, as outlined in the Amendment Report, DWER identified windblown waste as an emission from the acceptance, storage and processing of the mattresses and noted that the licence holder has proposed the following controls:

- Mattresses stored for a maximum of four (4) days in line with current storage arrangements.
- Undertake assessment of wind conditions each day of shredding to ensure that winds are not blowing towards residential properties.
- Waste bins are removed every four (4) days.

Based on a consequence of Minor and a likelihood of Possible, DWER determined that the risk rating for windblown waste was Medium and proposed conditions 5 and 8 to manage windblown wastes from mattress shredding. Condition 5 requires the following in relation to waste processing of mattresses:

- stored in lidded skip bins or in a hardstand surface with permeability of 1×10^{-9} m/s or less
- mattresses shredding shall be undertaken only between 7.30 am to 9.00 am on no more than two working days per week
- shredded using a Cat 2 tonne mini excavator or equivalent
- ensure mattresses shredding is not undertaken when winds are blowing northeast towards residential areas
- mattresses shall not be stored onsite longer than 4 days
- all waste from mattress shredding activities, including windborne waste, shall be collected and securely stored no later than by the end of the working day on which the shredding occurred.

Condition 8 of the licence requires the licence holder to take all reasonable and practical measures to ensure that no windblown waste escapes from the premises.

We note that in DWER's Amendment Report, the following sensitive receptors were identified:³

³ DWER (2022) Amendment report: L6993/1997/12, Page 3

Human receptors	Distance from prescribed activity
Residential Premises	The nearest residential is 360 metres away from the proposed shredding site
Environmental receptors	Distance from prescribed activity
Specified Ecosystems	Capel Nature Reserve EPP Lake Object 1129 – 2.12 hectares located on the site
TECs/PECs	Fauna - Calyptorhynchus latirostris - Carnaby's cockatoo Notamacropus Ima – Macropodidae Notamacropus - western brush wallaby Peramelidae Isoodon - quenda, southwestern brown bandicoot Threatened and priority flora - Surrounded by Banksia Dominated Woodlands of the Swan Coastal Plain IBRA Region

The Amendment Report did not include a map of sensitive receptors, but from the wording of condition 5 'Ensure mattresses shredding is not undertaken when winds are blowing northeast towards residential areas' it can be assumed that the table above refers to residences 360 m to the northeast. From the southern boundary of the premises, the appellant is located approximately 220 m to the southeast.

The appellant challenged how the requirement in condition 5 to 'Ensure mattresses shredding is not undertaken when winds are blowing northeast towards residential areas' would manage windblown waste impacting his property located south of the premises. The appellant sought for the mattress shredding to be undertaken within a suitable building to contain the windblown waste.

In response to the appeal, DWER reviewed condition 5 and was of the view that the requirement to cease operations based on wind direction is not an appropriate control for windblown waste as even light winds, would require cessation of operation. On this basis, DWER recommended condition 5 be amended to remove the aspect requiring wind direction triggers for ceasing activities and to include a requirement for the installation of fencing or mobile litter screen to contain windblown waste from mattress shredding.

Noting that condition 5 is restricted to manage impacts to residents in the northeast, and impractically requires mattress shredding cease even in light winds, we consider DWER's recommendation as a practical solution to control waste emissions at the source for all receptors. On this basis we recommend that condition 5 is amended as recommended by DWER.

While the appellant sought for shredding activities to be undertaken within a suitable building, we consider that with the adoption of the recommended amendment above and the requirements of conditions 5 and 8, mattress shredding can be adequately managed for windblown waste emissions.

We understand that the appellant's concerns relating to windblown waste have originated from current activities at the premises. Condition 8 of the licence requires the licence holder to take all reasonable and practical measures to ensure that no windblown waste escapes from the premises. The licence holder and DWER are now aware of these concerns and the appellant is encouraged to lodge future complaints with the licence holder or DWER should this problem persist. Licence condition 20 requires the licence holder to record complaints and how they were addressed.

2.2 Do the licence conditions manage noise emissions from mattress shredding?

We conclude that the amended licence conditions are considered adequate as they relate to noise emissions. We explain our reasoning below.

Conditions relating to noise are adequate

In its risk assessment, DWER identified noise as an emission from the shredding, crushing and screening of materials and vehicle movements and noted that the licence holder has proposed the following controls:

- Shredding to occur between hours 7:30 am to 9:00 am, on a Monday and a Thursday
- The nearest residential is 360 m away from the proposed shredding site
- Noisiest side of plant will be oriented away from the residents
- Regular inspection of plant will be undertaken to ensure its acoustic properties.

Based on a consequence of Minor and a likelihood of Possible, DWER determined that the risk rating for noise emissions from mattress shredding was Medium. DWER proposed condition 5 to manage noise emissions from mattress shredding, and we note that in relation to management of noise emissions condition 5 requires:

- mattress shredding shall be undertaken only between 7.30 am to 9.00 am on no more than 2 working days per week
- shredded using a Cat 2 tonne mini excavator or equivalent.

The appellant sought for mattress shredding activities to be undertaken in a suitable building to manage noise emissions and considered that the licence holder's commitment to orientate the noisiest side of the plant away from residents, should be a condition of the amended licence with reference to residents from the north to the southwest.

We understand that the licence holder is required to meet the provisions of the Noise Regulations for all activities, including mattress shredding, and these provide measurable limits in the form of specific assigned noise levels. DWER has advised that the licence holder can meet the requirements of the Noise Regulations during mattress shredding activities without the need to enclose the activity in a shed or other building.

Noting the provision of the Noise Regulations, we consider that no further conditions are required in relation to noise. However, we do recommend that the licence holder acknowledges the residence to the south and ensures that its noise management commitments include this receptor.

Appendix 1 Appeal process

The Minister assesses the merits of a decision

Environmental appeals follow a merits-based process. This means the Minister can consider all the relevant facts, law and policy aspects of the decision and decide whether it was correct and preferable.

However, for appeals relating to a licence amendment, the Minister can only consider matters directly linked to the amendment. Appeal rights do not extend to parts of the licence that were not amended.

A merits review cannot overturn the original decision to grant a licence. But if the appeal is upheld, the licence conditions might change or an amendment might not go ahead.

We report to the Minister, as does the decision-making authority

To decide an appeal's outcome, the Minister for Environment must have a report from both:

- the Appeals Convenor [see section 109(3) of the EP Act], and
- the authority that originally made the decision under appeal [see section 106(1) of the EP Act].

To properly advise the Minister in our report, our investigation included:

- a review of the appeal
- a review of the amended licence and DWER's amendment report.
- a review of the section 106 report from DWER
- a telephone meeting with the appellant
- two video meetings with the licence holder
- reviewing other information, policy and guidance as needed

Document	Date
DWER, Amendment Report for L6993/1997/12	September 2022
DWER, Licence L6993/1997/12	September 2022
DWER, section 106 response to the appeal	December 2022