



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

Appeals Convenor's Report to the Minister for Environment

Appeal objecting to the amendment of Licence L9113/2018/1
Shenton Ridge Hard Rock Quarry, Shire of Harvey



Appellant	Dr Jorg Krone
Licence holder	B. & J. Catalano Pty Ltd
Authority	Department of Water and Environmental Regulation (DWER)
Appeal No.	043 of 2021
Date	March 2022

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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

B. & J. Catalano (licence holder) holds licence L9113/2018/1 (the licence) for Shenton Ridge Hard Rock Quarry on Coalfields Highway, Roelands in the Shire of Harvey (Figure 1).

Figure 1 Premises location map



The premises are prescribed as Category 12 (Screening etc., of material) as defined under Schedule 1, *Environmental Protection Regulations 1987*. Refer to Sections 3.1 and 3.2 for further details on the premises location, layout and description of the prescribed category.

This appeal is against the licence amendment, which authorises:¹

- increased production limit from 100,000 to 350,000 tonnes per annum (tpa)
- extension of the licence duration from 31 December 2023 to 21 September 2033
- extension of the materials stockpile area to the north, which includes expanding the boundary of the prescribed premise and a 3 metre high north eastern bund
- diversion of all contaminated stormwater from the new materials stockpile area into a new detention basin for treatment and discharge into the Green Basin prior to final discharge to the environment.

Section 3.3 discusses the background of the premises, including the licence, appeal and planning history.

Appeal rights in relation to an amendment to a licence relate only to the amendment, or matters directly consequential to that amendment (see Section 3.4 for actual amendments). See Appendix 1 for further details of the appeal process.

An appeal was received from Dr Jorg Krone in objection to the licence amendment. We summarise the appellant's main concern in Table 1.

Table 1 Ground of appeal

Ground	Main concerns the appellant submitted
Licence amendment inconsistent with planning approval	The increase in throughput from 100,000 tpa to 350,000 tpa is inconsistent with State Administrative Tribunal (SAT) final order.

¹ DWER (2021) Amendment report, Application for Licence Amendment L9113/2018/1 Shenton Ridge Hard Rock Quarry. 4 October 2021 (p1).

1.2 Key issues and conclusions

From the appellants' concerns we have identified one issue at the heart of the appeal, planning approvals. We summarise our conclusion for this issue below. Section 2 of this report then details our reasoning and Section 3 provides supporting information.

Is the licence amendment consistent with the planning context?

In 2017, SAT set aside the decision of the Shire of Harvey to refuse the quarry development and granted development approval under the Greater Bunbury Region Scheme and the Shire of Harvey District Planning Scheme No 1. While the SAT decision focused on a proposal having an extraction of between 50,000 and 100,000 tonnes of hard rock per year, this was not explicitly conditioned in the SAT final order.

The licence amendment authorises a number of changes including an increase to production limit from 100,000 to 350,000 tpa. The appellant objected to this increase, asserting that it should be limited to 100,000 tpa consistent with the SAT decision, which the appellant considered protects the land and wellbeing of the neighbours and their properties.

The appeal investigation found that DWER was not constrained by planning approvals in making its decision to amend the licence and DWER did consult with the Shire of Harvey.

During the appeal investigation, the Office of the Appeals Convenor also consulted with the Shire of Harvey. The Shire advised that the increase to 350,000 tpa does not require any changes to the SAT final order. However, noting the Shire's advice that changes to the stockpile area will require an application to amend the approved site plan, the licence holder will need to consider its obligations accordingly. The decision of DWER to approve an expansion of the premises boundary does not remove any requirements for the licence holder to obtain other required approvals.

1.3 Recommendation to the Minister

We conclude that in making the amendment, DWER was not constrained by the SAT final order and the Shire of Harvey was consulted in this regard. It is recommended that the appeal be dismissed.

2 Reasons for recommendation

2.1 Is the licence amendment consistent with the planning context?

We conclude that while planning decisions are not binding on DWER, they may be a relevant consideration in deciding whether or not to amend a licence.

In this case, advice from the Shire of Harvey was that the planning approval does not constrain the proposal to an annual throughput of 100,000 tpa as claimed by the appellant. Based on this, and on DWER's assessment of the risks posed by the changes, we believe DWER was justified in amending the throughput to 350,000 tpa.

Appellant's concern

The appellant considered that licence amendment, authorising a throughput of 350,000 tpa, is inconsistent with the State Administrative Tribunal (SAT) final order in *Catalano and Shire of Harvey* ([2017] WASAT 55) (SAT final order). The appellant is of the view that the SAT final order limits the throughput between 50,000 to 100,000 tpa and protects the land and wellbeing of the neighbours and their properties.

Planning approval and Extractive Industry Licence

In 2017, SAT overturned an earlier decision of the Shire of Harvey and granted development approval for the quarry under the Greater Bunbury Region Scheme and the Shire of Harvey District Planning Scheme No 1.

In relation to the nature and scale of the development approved, paragraph 18 of the SAT decision summarises the key elements of the proposal as follows:

- The extraction of between 50,000 and 100,000 tonnes of hard rock per year.
- The hard rock will be extracted by drill and blast with an excavator, involving a total of four production blasts per year.
- An average of three to four external truck movements will be generated per day with vehicles utilising existing access roads on the Site.

This scale of operation is reflected in other elements of the SAT decision.

In relation to the conditions of the development approval (SAT final order), we note that the SAT final order does not specify or limit the allowable throughput. However, the SAT final order require numerous management plans (noise, blasting, water and rehabilitation) and management measures, which are based on a throughput of 50,000 to 100,000 tpa.

While the throughput is not specified as a condition of the approval, clauses 10 to 12 of the SAT final order specify the location and extent of the quarry, processing area and stockpiles. As noted by the appellant, clause 11 of the order states:

The quarry and processing areas must be located in the respective places shown in the 'Contour and Site Survey of Proposed Quarry Lot 501 Coalfields Highway Roelands', Plan E361201B at Figure 5 of the Excavation and Rehabilitation Management Plan (Landform Research, March 2014).

The Extractive Industry Licence (EIL) granted by the Shire of Harvey, contains 13 conditions, which require compliance with management plans (blast, water, extraction and rehabilitation, noise and water), rehabilitation requirements, blasting restrictions and hours of operation.

Licence amendment

The licence amendment authorises a number of changes (see Section 1.1) including an increase to production limit from 100,000 to 350,000 tpa. The amendments made to the licence are summarised in Section 3.4.

With regard to the scale of the operation and how planning matters were considered by DWER, the Decision Report for the licence states (Section 2.2):

The statutory Planning Approval from the Shire of Harvey for the Premises limits crushing and screening (processing of material) operations to between the hours of 7am to 5pm Monday to Saturday.

The initial approved throughputs of the processing infrastructure based on the Planning Approval limited the hours of operations and accounted for an average production rate of 200 tonnes per hour, which gives an allowable throughput of 624,000 tonnes per year. Therefore, a production increase for L9113 to 350,000 tonnes per year is 56% of the approved throughput authorised under Planning Approval.

The Delegated Officer notes that the proposed throughput increase is not the result of any increase in infrastructure design capacity, but rather, as a result of operating for longer periods of time as authorised by the existing Planning Approval.

In response to appeal, DWER advised that there are no provisions under Part V Division 3 of the EP Act that constrain DWER's decision-making for prescribed premises works approvals and licences such that they must wait for or align with planning and development approvals.

Notwithstanding the absence of such a constraint, DWER advised that it does consult with local governments in an effort to ensure decisions under Part V of the EP Act are consistent with such approvals. In this case, DWER advised that it consulted with the Shire of Harvey in relation to the licence amendment. While the Shire acknowledged the management plans required by the SAT final order were based on 50,000 to 100,000 tpa, the Shire considered that there was no requirement to amend the development approval or EIL issued for the Shenton Ridge Hard Rock Quarry.

As part of the appeal investigation, we sought advice on the scope of the planning approval from the Shire of Harvey. Consistent with its advice to DWER, the Shire advised that:

- the SAT Approval does not restrict production to a maximum 100,000 tpa
- the proposed increase in production to 350,000 tpa is not contrary to the SAT Approval
- the proposed increase in the stockpile area will require the submission to the Shire of an application to amend the approved site plan only.

On the last point, the Shire advised that (at the time of its advice) an application to amend the approved site plan for the increase in the stockpile area had not been received.

It follows from the above that the Shire is of the view that the increase to 350,000 tpa does not require any changes to the SAT final order, but the licence holder will need to submit an application to amend the approved site plan for the increase in the stockpile area. These are ultimately matters for the Shire of Harvey, and the licence holder has been made aware of the Shire's position, which is also reflected in the Amendment Report. The decision of DWER to approve an expansion of the premises boundary does not remove any requirements for the licence holder to obtain other required approvals.

The appellant was also of the view that the SAT final order protects the land and the wellbeing of neighbours and their properties, therefore licence conditions must be consistent with the order. This matter was discussed further with the appellant, and he noted that due to the quarry, the potential for tourism opportunities on his land were impacted.

We note that the licence holder is required to comply with its obligations under the SAT final orders, the compliance with which is a matter for the Shire of Harvey. On the information available through the appeal we consider DWER assessed impacts from dust, noise and contaminated stormwater discharge in amending the licence and appropriately included additional conditions manage emissions (see section 3.4).

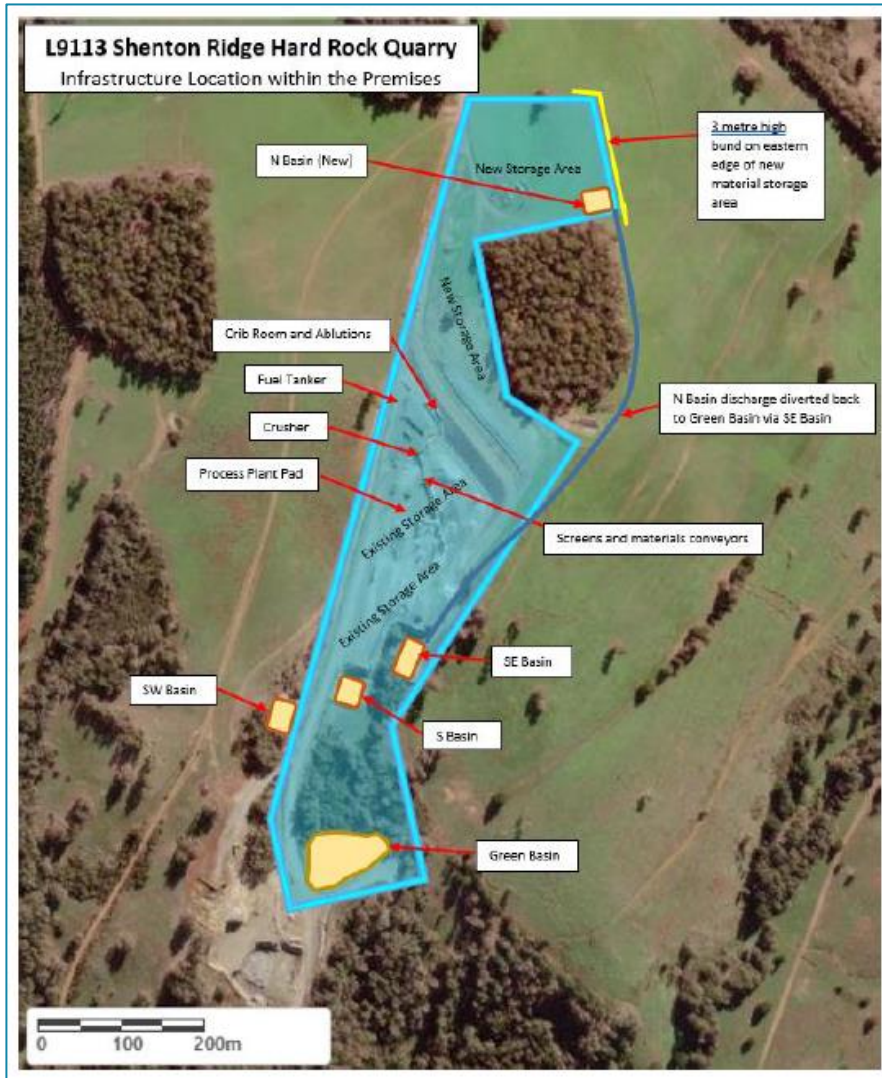
We conclude that DWER is not constrained by planning and development approvals from amending the licence. In any event, the Shire has advised that on the key issue raised by the

appellant in respect to the production throughput, no further development approval is required. To the extent that site plan for the increase in the stockpile area requires amendment, that is matter between the licence holder and the Shire.

3 Supporting information

3.1 Premises location

Figure 2 Site Plan



Source: DWER Licence L9113/2012/1

3.2 Prescribed premises category

The premises are prescribed as Category 12 (Screening, etc. of material) under Schedule 1 to the *Environmental Protection Regulations 1987* (see Table 2 below). The licence amendment was granted by DWER on 4 October 2021.

Table 2 Licence L9113/2018/1 prescribed premise category

Prescribed premises category description (Schedule 1, <i>Environmental Protection Regulations 1987</i>)	Assessed production capacity
Category 12: Screening etc. of material: premises (other than premises within category 5 or 8) on which material extracted from the ground is screened, washed, crushed, ground, milled, sized or separated.	350,000 tonnes per year

3.3 Background

The Amendment Report for L9113/2018/1 provided the following planning context in relation to the premises (p2):

On 31 March 2017, the Development Approval for the material processing and quarry operations was granted for a period of fifteen years, which would commence once the Shire of Harvey issued the Extractive Industry Licence (EIL). The Shire of Harvey granted the EIL on 21 September 2018 for 15 years initially with a further five-year period once the Licence Holder demonstrates compliance with the Development Approval.

In consultation with the Shire, the department has been able to confirm that compliance with the Development Approval has been demonstrated by the Licence Holder. The Development Approval and EIL is regulated by the Shire of Harvey. The Licence will be amended to expire on 21 September 2033.

In responding to the appeal, DWER provided the following background in relation to the premises:

The Licence Holder has operated a gravel quarry in the northern part of Lot 501 on Plan 26892, Coalfields Road, Roelands for a number of years, subject to Works Approval W5709/2014/1 and Licence L8877/2015/1. The Licence Holder re-opened the Shenton Ridge Hard Rock Quarry (granite) quarry in the southern part of Lot 501 in 2018, subject to Works Approval W5828/2015/1 and Licence L9113/2018/1 (the amendment of which is the subject of this appeal).

The Licence was first issued to the Licence Holder on 21 August 2019 for the operation of crushing and screening infrastructure at the Shenton Ridge Hard Rock Quarry.

On 4 October 2021, the Licence was amended following a request from the Licence Holder to increase the production limit from 100,000 tonnes per annum (tpa) to 350,000 tonnes tpa; extend the term of the Licence to match the planning approvals granted by the Shire of Harvey (the Shire); extend the materials stockpile area further to the north away from the eastern boundary, resulting in the stockpile areas becoming 8.93 hectares (ha) which is less than the approved area of 9.358 ha; and divert all contaminated stormwater from the new materials stockpile area into a new detention basin for treatment and discharge into the Green Basin prior to final discharge to the environment.

Previous Appeals

Four earlier appeals are relevant to this appeal:

1. Appeal against a decision of the Environmental Protection Authority (EPA) not to assess the hard rock quarry proposal (Appeal 028/15). The then Minister for Environment was of the view that the EPA's decision was justified.
2. Appeals against conditions of works approval granted in respect to the gravel quarry on the same property as the current appeal (Appeals 016-017/16). The then Minister noted concerns about potential impacts from dust and noise but concluded amendments to the works approval were not required. The Minister noted that there was potential for impacts during the operational phase of the activity, but that these impacts would be assessed and regulated through the licence under Part V of the EP Act. The Minister allowed the appeal to the extent that the conditions of the works approval were amended to incorporate stormwater containment infrastructure.
3. Appeal against conditions of licence granted in respect to the gravel quarry on the same property as the current appeal (Appeal 014/17). The then Minister did not consider that any of the issues raised in that case warranted changes to the licence.

4. Appeal against the conditions of a works approval in respect to the hard rock quarry (Appeal 003/18). The then Minister did not consider that any of the issues raised in that case warranted changes to the conditions of the works approval.

3.4 Licence amendments

DWER summarised the licence amendments as follows (Table 12 from the DWER Amendment Report, October 2021):

Condition no.	Proposed amendment and justification (if required)
Term of the Licence	Licence expiry amended from 31 December 2023 to expire on 21 September 2033.
2 Table 3	Amend table 3 to include a visual and noise bund of 3 metres high located on the eastern boundary of the new northern material stockpile area.
2 Table 3	Amended Table 3 to include N Basin design capacity and diversion drain to direct discharge back to the green dam via the SE basin.
3	Amended throughput tonnage to 350,000 tonnes per annual period.
7	New condition for control of dust lift-off from the cracker/metal dust stockpile using fixed reticulated sprinkler system.
8	New condition to ensure visible dust does not cross the boundary of Lot 51.
9	Amend condition 9 to include new noise monitoring location N4 as depicted in Schedule 3.
10	Amend to ensure monitoring of noise occurs within 6 of the licence amendment approval.
11	Amend to require noise monitoring assessment within 1 month of completion.
16, 19, 21 & 23 Table 9	Adjusted number within condition to reference the correct renumbered conditions
25	New conditions within 30 days of completing construction for audit report of infrastructure constructed be completed.
26	New condition describing the information required by the audit report in condition 25.
Schedule 1 premise map	New premise boundary map.
Schedule 1 boundary coordinates	New table of coordinates prepared as related to premise map boundary.
Schedule 1 – infrastructure plan	New plan including new infrastructure.
Schedule 2 – Table 10	Change approved premise production or design capacity column to 350,000 tonnes per annual period.
Schedule 2 – Table 11	Update the table to include, N Basin capacity, visual and noise bund and northern material stockpile area.
Schedule 3 – monitoring location	New plan to include N4 monitoring location
General changes	Revised licence condition's numbers and removed any redundant conditions and realigned condition numbers for numerical consistency; and corrected clerical mistakes and unintentional errors.

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. The Appeals Convenor normally considers consistency with any conditions set under Part IV of the EP Act and previous Ministerial appeal determinations, as well as new information or evidence being presented that was not previously considered.

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)].

This document is the Appeals Convenor's report to the Minister. The Appeals Convenor's investigation of the appeal included:

- a review of the appeal provided by the appellant, DWER's Amendment Decision Report, the amended licence conditions, the previous licence conditions, the SAT Decision,
- a review of the response to the appeal provided by the licence holder, which included the EIL, management plans and correspondence with the Shire of Harvey
- a review of the section 106 report from DWER, which included correspondence with the Shire of Harvey
- consultation (by letter) with the Shire of Harvey regarding planning matters
- a meeting with the appellant by telephone
- video meeting with the licence holder
- reviewing other information, policy and guidance as needed.

Table 3 Documents we reviewed in the appeals investigation

Document	Date
State Administrative Tribunal (SAT) final order in Catalano and Shire of Harvey [2017] WASAT 55	31 March 2017
Shire of Harvey: Extractive Industry Licence	7 October 2019
DWER Licence L9113/2018/1	4 October 2021
DWER Amendment Report L9113/2018/1	4 October 2021
Landform Research: Licence holder response to the appeal	17 Nov 2021
DWER, response to the appeals	25 Nov 2021
Letter from the Shire of Harvey to the OAC	18 Feb 2022