



Environmental Protection Act 1986

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

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST AMENDMENT OF LICENCE L8194/2007/3 – ANDERSON POINT MATERIALS HANDLING FACILITY PORT HEDLAND

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.

Appellant:	Ms Lynnette Taylor
Licence holder:	Fortescue Metals Group Ltd
Proposal description:	The amendment authorises an increase in the annual throughput for bulk material loading or unloading from 175 million tonnes per annum (Mtpa) to 210 Mtpa (an increase of 35 Mtpa)
Minister's Decision:	The Minister allowed the appeal in part
Date of Decision:	15 July 2021

REASONS FOR MINISTER'S DECISION

The appellant's key concern was that an increase in throughput should not have been allowed as the conditions relating to management and monitoring of dust are inadequate. The appellant also asserted that impacts to amenity have not been adequately assessed.

Decision

The Minister considered that the Department of Water and Environmental Regulation (DWER) applied a risk-based approach to the regulation of dust emissions from the premises and applied appropriate controls directed at ensuring that there is no net increase in dust emissions from the premises because of an increase in throughput. This is consistent with DWER's published regulatory framework for Port Hedland.

While the Minister was generally of the view that the controls for dust management and monitoring are adequate, the Minister allowed the appeal to the extent that further improvements are made to the licence. These improvements are directed at requiring the

licence holder to demonstrate that any additional controls that might be required to be installed are effective in ensuring that DWER's objective of 'no net increase' in dust emissions is achieved.

Specifically, the Minister required that the licence be amended to require the licence holder to:

- undertake a review of the additional dust control infrastructure specified in Row 1 of Table 4 (Condition 8) and prepare and submit a Dust Control Validation Report with the information specified in Schedule 4, within 12 months of the submission of the Environmental Compliance Report for that infrastructure.
- submit a Dust Monitoring Report that incorporates the information specified in Schedule 6, within 15 months from the completion of the infrastructure specified in Table 4.

The Minister agreed with the Appeals Convenor that there are a number of minor inconsistencies that should be corrected in the licence to provide greater clarity. The full details are provided in the Appeals Convenor's report.

The Minister otherwise dismissed the appeal. The full reasons for her decision follow.

Regulatory controls for dust emissions

The appellant expressed concern that DWER's decision to grant the licence amendment is inconsistent with the State Government's response to the Port Hedland Dust Management Taskforce Report and DWER's statements with respect to its regulatory strategy for dust in Port Hedland.

To address the recommendations in the State Government's response to the Port Hedland Dust Management Taskforce Report for which the Department is responsible, DWER has established the Port Hedland Dust Program. DWER has now published its regulatory strategy for Port Hedland which includes short-term (5 years) and medium-term (5 to 10 years) regulatory horizons.

Consistent with its strategy, DWER advised that its objective is to ensure that dust emissions from premises licensed under the *Environmental Protection Act 1986* are not increased in the short term. DWER also advised the Minister that its current risk-based assessment approach, set out in its *Guidance Statement: Risk Assessments* (2017) and applied in this assessment, includes that industries applying to expand their operations must demonstrate that dust emissions (and therefore risk levels) will not increase because of their activities.

The Minister understood that DWER's licensing approach is not dependent on complete implementation of its regulatory strategy for Port Hedland (released in May 2021) for it to be effective and that the assessment of applications for licence amendments for throughput increases will continue to be undertaken alongside the implementation of the regulatory strategy.

In this case, the Minister understood that the licence holder submitted dust emissions modelling to demonstrate that proposed controls would reduce any additional dust generated as a result of the proposed throughput increases. DWER reviewed the modelling information and required additional dust controls through the licence amendment, which are staged to allow only incremental throughput increases to the final total throughput of 210 million tonnes per annum (Mtpa). The Minister understood that each throughput increment is coupled with the implementation of additional dust controls.

The Minister noted that in order to validate the effectiveness of proposed dust controls, and in turn validate the conclusions of the dust modelling, the licence holder is required to submit a Dust Control Validation Report. The licence holder is also required to submit a Dust Monitoring

Report to determine dust concentrations as reflected by the licence holder's boundary monitoring network. DWER advised that consideration of data from the ambient monitoring network as required in the Dust Monitoring Report will also aid in determining any connection between elevated dust levels at boundary monitors and dust levels at receptor sites.

The dust management trigger criteria have been applied to the licence for the purpose of instigating immediate investigation of site activities to identify and, if appropriate, address the source of high dust concentrations.

DWER advised that, in addition, and consistent with other licences for port operators in Port Hedland, the licence holder is required to:

- maintain a high rate of availability of dust control infrastructure
- ensure that ore moisture content is monitored and when dry, is managed to suppress dust
- manage stockpiles that have become static to ensure they do not become a source of dust
- routinely operate controls such as dust extraction, water cannons and sprays
- monitor PM₁₀ concentrations at the boundary of the premises and implement management action in response to high dust events
- investigate and report quarterly on high dust events.

Based on the available evidence, the Minister agreed with the Appeals Convenor that the regulatory controls for dust management and monitoring are generally appropriate and directed towards achieving DWER's objective of ensuring that dust emissions for the premises are not increased in the short term and the current risk level is not exceeded as a result of throughput increases.

However, noting that DWER has required the construction and/or installation of additional dust control infrastructure in the event that incremental increases in throughput result in its regulatory objective for Port Hedland not being met, as described above, the Minister has required additional conditions be applied to the licence. These require the licence holder to validate and report on the effectiveness of any additional dust control infrastructure installed, should it be required, to ensure no net increase in dust emissions from the premises.

Assessment of impacts of dust emissions on amenity

DWER's risk assessment identified that there may be a high level of amenity impacts in Port Hedland as a result of cumulative dust levels, particularly in the West End. Noting the subjective nature of dust impacts and that there are currently no specific criteria for total suspended particulate matter or dust deposition that have been established or adopted for Port Hedland, the Minister agreed with the Appeals Convenor that DWER's determination that exceedance of the Port Hedland air guideline value (health criterion) is a conservative and objective measure to justify additional regulatory controls, is reasonable.

DWER advised that the regulatory controls placed on the amended licence are expected to control and minimise all forms of dust (including, PM_{2.5}, PM₁₀ and total suspended particulate matter) from key sources at the premises, not just PM₁₀. The Minister understood that regulatory controls for the purpose of preventing and managing dust emissions for the protection of community health are therefore also expected to be protective of amenity.

Based on the information before her, the Minister was satisfied that DWER's assessment regarding the impacts of dust emissions on amenity was adequate.

The Minister also noted that air quality is likely to be impacted by other non-licence holder activities, including dust from other port operations, cleared areas, natural sources and other industrial activities. All of these sources of dust have the ability to affect amenity in Port Hedland, however, the licence regulates dust emissions from the licence holder's activities within the premises. The State Government has endorsed the Port Hedland Dust Management Taskforce's recommendation that the Town of Port Hedland work with key stakeholders to identify and mitigate dust from other non-industry sources.

Based on the available evidence, the Minister agreed with the Appeals Convenor that DWER's decision is consistent with relevant regulatory and policy frameworks.

Other Matters

With respect to the appellant's concerns about compensation to residents for the costs of cleaning, maintenance and replacement of equipment due to the impacts of dust, the Minister accepted the Appeals Convenor's advice that these matters are beyond the scope of appeal, the reasons for which are detailed in her 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*.

Office of the Appeals Convenor

Level 22, 221 St Georges Terrace
Perth WA 6000
Tel: (08) 6364 7990
www.appealsconvenor.wa.gov.au