



Environmental Protection Act 1986

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

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL AGAINST CONDITIONS OF WORKS APPROVAL W6384/2020/1 ROCKY CROSSING ASPHALT PLANT, WILLYUNG, CITY OF ALBANY**

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

This document sets out the Minister's decision on an appeal lodged under section 102(3)(a) of the *Environmental Protection Act 1986* in objection to the above works approval. 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>	Dr Richard Turner
<b>Applicant:</b>	Spinifex Crushing and Screening Services Pty Ltd
<b>Proposal description:</b>	The works approval authorises the construction and time limited operation of an asphalt manufacturing plant at Lot 104 (No. 303) Rocky Crossing Road, Willyung
<b>Minister's Decision:</b>	The Minister allowed the appeal in part
<b>Date of Decision:</b>	12 August 2021

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

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An appeal was received 2 December 2020 in objection to the conditions of the works approval granted to Spinifex Crushing and Screening Services Pty Ltd (the works approval holder) by the Department of Water and Environmental Regulation (DWER).

The works approval, granted on 16 November 2020, authorises the construction and time limited operation of an asphalt manufacturing plant at Lot 104 (No. 303) Rocky Crossing Road, Willyung (the premises).

In summary, the Minister understood the appellant's key concern to be that the location of the asphalt plant is inappropriate, and that it should be located in an industrial area. The appellant raised a number of issues in support of his concerns directed at the conditions of the works approval, most particularly in relation to the risk to nearby residents from emissions to air of hydrocarbons, odour and dust from the premises. The appellant also raised concerns that DWER did not properly assess the risk of spills and discharges to water and noise emissions.

As noted in the Appeals Convenor's report, the right of appeal in this case is in relation to the conditions of the works approval. The Minister's consideration of the appeal was therefore limited to the adequacy of the conditions relating to the construction and time-limited operations of the proposal.

## **Decision**

Having considered the information available to her, including DWER's response to the appeal and the Appeals Convenor's report and recommendations, the Minister considered the environmental risks posed by the proposal have been appropriately considered and that the conditions applied to the works approval are consistent with ensuring that relevant health and environmental standards are met.

The Minister however allowed the appeal to the extent that the rate of asphalt production should be limited to the production capacity that was assessed, which is 5,000 metric tonnes per annum and not more than 300 metric tonnes per day.

The Minister otherwise dismissed the appeal. The full reasons for her decision are set out below.

## **Health and wellbeing**

The appellant expressed concern that DWER did not adequately consider the health and wellbeing of nearby residents during its assessment of the works approval application. In response to the appeal, DWER agreed that potential impacts to health and wellbeing outside of the premises boundary are within the scope of its assessment process and were considered during the assessment.

## **Air quality**

The appellant submitted that the premises do not meet recommended separation distances set by the Environmental Protection Authority's (EPA) Guidance Statement on Separation Distances. The appellant raised concerns that emissions of hydrocarbons and odour from the premises will significantly impact nearby residents, and that DWER's risk assessment of these emissions was inadequate.

The EPA's Guidance Statement on Separation Distances provides generic buffer distances between industrial and sensitive land uses. Where buffer distances are not met, industry is expected to apply and demonstrate measures to mitigate emissions and discharges to prevent off-site impacts from occurring, and achieve acceptable environmental outcomes.

In this case, DWER advised that site specific environmental impact studies were undertaken and that modelled air emissions from the asphalt plant are well within relevant 'Ambient air quality guideline values' (AGVs) for pollutants of concern. Ambient air quality guideline values are based on the approved health guidelines of Western Australia's Department of Health and New South Wales Environment Protection Authority's published guidance.

For example, maximum predicted short-term ground level concentrations (GLCs) for the individual volatile organic compounds benzene, ethylbenzene, toluene and xylene are all less than 1 per cent of relevant AGVs, and long-term (annual average) GLCs are all less than 0.1 per cent of relevant AGVs. The Minister was advised that DWER's assessment also determined that modelled emission rates of nitrogen dioxide, sulphur dioxide, carbon monoxide, and particulates PM<sub>10</sub> and PM<sub>2.5</sub> are well within relevant AGV standards. Refer to the Appeals Convenor's report for further information.

In relation to odour, the Minister noted that DWER assessed odour emissions from the asphalt plant as medium risk of impacting the amenity of nearby sensitive residential receptors. During the assessment, DWER determined that the proposed 6.1 metre high baghouse vent stack was insufficient to manage odour emissions and required that the minimum stack height be increased to 12 metres above ground level to improve dispersion and reduce the risk of odour and air impacts on receptors. This requirement is reflected in Condition 1 (Infrastructure and equipment) of the works approval.

In addition, Condition 6 (Time limited operations requirements) includes requirements to mitigate odour emissions through the use of low sulphur bitumen and control of blue smoke.

The Minister noted that the works approval also contains conditions that require monitoring of air emissions during time limited operations in the course of commissioning, to ensure that actual emissions from the plant are consistent with modelled predictions. The works approval holder must provide the results of this monitoring to DWER for review and validation of air emissions.

As part of the appeal investigation, DWER acknowledged that there are not adequate operational controls in the works approval to limit the rate of asphalt production to the production capacity that was assessed. As a result, DWER recommended that the works approval be amended so that a plant production capacity of not more than 300 tonnes per day is specified as an operational requirement in Condition 6, Table 2, and the plant capacity specified on page 1 of the works approval is amended to read: 'Assessed production capacity' of 5,000 metric tonnes per annum.

The Minister concurred with this recommendation and was satisfied these changes ensure the works approval conditions are appropriate to manage identified risks and potential impacts to air quality.

### **Fugitive dust**

The appellant submitted that dust generated by heavy vehicles and crushing activities at the premises would significantly impact nearby residents, particularly during summer.

In response to the appeal, DWER confirmed that crushing activities were not proposed by the works approval holder and are not authorised by the works approval.

The Minister was advised by DWER that fugitive dust (i.e. dust generated from open sources) can be adequately controlled through management measures required under the works approval conditions. Dust management measures include applying water to suppress dust by water cart and sprinkler system, and through appropriate storage and handling of raw materials. Given this, the Minister considered that the requirements applied are appropriate for the control of dust emissions from the premises, and no changes to the conditions are required at this time.

The Minister noted that the works approval holder will require further approval, in the form of a licence granted under Part V of the *Environmental Protection Act 1986* (the EP Act), to authorise emissions associated with the continued operation of the asphalt plant. Dust management at the premises can be reviewed during the licence application process and regulatory controls revised if necessary.

### **Management of spills and discharges**

The appellant submitted that spills of hydrocarbons at the premises could contaminate surface water and pollute the environment.

In this regard, the works approval conditions specify infrastructure and operational controls to minimise and manage spills and stormwater contamination, including bunded storage vessels, and the containment and treatment of stormwater. The Minister noted also that unauthorised discharges of environmentally hazardous materials such as hydrocarbons are subject to the provisions of the *Environmental Protection (Unauthorised Discharges) Regulations 2004*.

On this basis, the Minister was satisfied that existing regulatory controls are appropriate and adequate to prevent and control potentially contaminated runoff from the premises polluting the surrounding environment.

## **Noise**

The appellant raised concern that noise emitted from the premises would significantly impact nearby residents.

The Minister was advised that modelled noise emissions from operations at the premises were predicted to exceed assigned levels in the *Environmental Protection (Noise) Regulations 1997* (Noise Regulations) if noise controls were not applied.

During the assessment, DWER applied a range of infrastructure and equipment controls through the works approval conditions to manage noise. With these measures applied, and planning controls under the *Planning and Development Act 2005* which limit hours of operation at the premises, the Minister was advised that noise from the premises will comply with assigned levels in the Noise Regulations.

Furthermore, Conditions 13 and 14 (Records and reporting) require the works approval holder to keep records in relation to any complaints received, including any actions taken to investigate or respond to a complaint.

On this basis, the Minister considered the conditions are appropriate to manage noise, and no additional conditions are required in the works approval.

## **Next steps**

DWER will give effect to these changes to the works approval conditions in accordance with section 110 of the EP Act.

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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*.

### **Office of the Appeals Convenor**

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