



Environmental Protection Act 1986

**Hon Stephen Dawson MLC  
Minister for Environment**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL AGAINST CONDITIONS OF WORKS APPROVAL W6142/2018/1 – BHP BILLITON IRON ORE PTY LTD, MINING AREA C – SOUTH FLANK**

#### **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>	Anderson UT Holdings Pty Ltd ATF Anderson Unit Trust, Hain FT Pty Ltd ATF Hain No.2 Family Trust and Michael Hain
<b>Proponent:</b>	BHP Billiton Iron Ore Pty Ltd
<b>Proposal description:</b>	Prescribed premises 'Mining Area C – South Flank' at Newman
<b>Minister's Decision:</b>	The Minister dismissed the appeal
<b>Date of Decision:</b>	4 July 2019

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

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BHP Billiton Iron Ore Pty Ltd (BHP) operates iron ore processing facilities in association with its mine at Mining Area C in the Pilbara. It now proposes to develop and operate a satellite ore body at South Flank, approximately eight kilometres south of the existing processing facilities. To facilitate this new work, BHP has sought approval for two new primary crushing plants (each 40 million tonnes of ore per annum (Mtpa)) and new bulk storage areas for diesel (4,000 cubic metres in aggregate). In addition, a new ore handling plant is proposed for Mining Area C, capable of handling 80 Mtpa.

The Department of Water and Environmental Regulation (DWER) considered BHP's application, and after undertaking a risk assessment, granted the works approval subject to conditions. In assessing the application, DWER's consideration was limited to the emissions associated with the proposed changes to the premises, namely the new ore handling plant, crushing facilities and bulk chemical storage facilities. DWER expressly did not assess emissions from activities that it considered were not directly related to prescribed activities, such as the mining of ore and waste rock disposal.

The appellant appealed the conditions of the works approval as they relate to dust emissions. Specifically, the appellant submitted that the *National Environment Protection (Ambient Air Quality) Measure* ought to have been applied to DWER's risk assessment, and that more stringent conditions relating to dust monitoring and control be applied, including a requirement for light detection and ranging (LiDAR) technology as the primary method for dust monitoring at the premises. In general, the Minister took the appeal to be based on two key concerns: first, the adequacy of conditions controlling dust in the vicinity of the premises; and second, the adequacy of conditions for managing dust through the supply chain, from point of origin to point of export at Port Hedland.

The appellant's concerns were considered by the Appeals Convenor, which the Minister understood included a meeting with the appellant in Perth. The Appeals Convenor also sought advice from DWER, and the appellant was provided with an opportunity to make submissions in response to DWER's advice.

The appeal was lodged under section 102(3)(a) of the *Environmental Protection Act 1986* (the Act), which provides any person with the right to appeal against the specification of conditions of a works approval. As the final decision maker on the appeal, it was the Minister's responsibility to consider the issues raised and form his own view as to the adequacy of the conditions applied to the works approval.

In assessing the risks associated with the construction of the new works, DWER found that dust emissions from the commissioning and operation of the new works pose a 'medium' risk at the Hope Downs Village and a 'high' risk at the Great Northern Highway.

Having concluded on the level of risk posed by the works, DWER applied a number of conditions to the works approval, including:

- processing infrastructure: the works approval includes the requirement that primary processing facilities infrastructure is constructed in accordance with the works approval holder's application documents, and includes dust emission controls;
- specified actions: the works approval includes requirements for a dust management and monitoring plan to locate and specify dust monitors, and a commissioning plan detailing construction stages and commissioning parameters and timeframes;
- monitoring: the works approval requires the installation of dust monitors; and
- reporting: the works approval includes requirements for a compliance construction report for each stage of infrastructure detailing compliance with construction requirements prior to commissioning.

The appellant challenged a number of these conditions, including those relating to the scope of the authorised emissions; management of dust control equipment; and requirements relating to monitoring, management and reporting for moisture content and air quality. The full details of these concerns are outlined in the Appeals Convenor's report.

On review of the information available, including the BHP's dust management strategies for the whole of the project area, the Minister was of a view that DWER applied appropriate conditions in the works approval to monitor and control dust and other emissions during construction and commissioning of the new infrastructure. For the reasons stated in relation to the appellant's earlier appeals in respect to related operations in Port Hedland, the Minister agreed with DWER that the use of LiDAR is not an appropriate tool for inclusion in works approvals and licences at this time.

On the concerns about dust affecting the Great Northern Highway, the Minister agreed that this is an important issue, and requires appropriate management given the remoteness of the location, the number of vehicles using the road, and applicable speed limits. In this regard, the Minister noted that DWER required BHP to develop a dust management plan to (among other things) manage risks to motorists using the highway. This plan is required to be prepared in consultation with Main Roads WA, and must include measures to limit or control operations in the event of adverse weather conditions.

From the above, the Minister agreed with the Appeals Convenor's recommendations, and dismissed the appeal accordingly.

The Minister noted that the appellant also raised other matters which were considered to be beyond the scope of the appeal right relating to the conditions of the works approval, these matters are discussed in the Appeals Convenor's report.

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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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