



**Appeals Convenor**  
**Environmental Protection Act 1986**

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**REPORT TO THE  
MINISTER FOR ENVIRONMENT**

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**APPEALS IN OBJECTION TO THE AMENDMENT OF A LICENCE  
L8904/2015/1: BANKSIA ROAD LANDFILL, CROOKED BROOK**

**PROPONENT: CLEANAWAY SOLID WASTE PTY LTD**

Appeal Numbers 001.001-009 of 2020

**May 2020**

## Appeals Summary

This is a report on nine appeals received in objection to the amendment of licence L8904/2015/1 (the licence) by the Department of Water and Environmental Regulation (DWER). The licence is held by Cleanaway Solid Waste Pty Ltd (the licence holder) for operation of the Banksia Road landfill facility (the premises) in the Shire of Dardanup.

The licence amendment authorised an increase in the rate of acceptance of Category 64 solid waste at the premises from 303 000 tonnes per annual period to 350 000 tonnes per annual period. In granting the amendment DWER imposed additional conditions on the licence relating to dust, noise and windblown waste.

Appellants submitted a range of concerns and these were summarised into six primary appeal grounds; dust, operator history, noise, application of guidance, rehabilitation and necessity. Concerns relating to DWER's management of compliance, stormwater management, truck movements, cumulative amendments and assessment by the Environmental Protection Authority were also submitted but were considered beyond the scope of appeal.

The appeals investigation found that DWER's decision was based on a risk assessment of the potential emissions associated with the increased rate of waste acceptance including consideration of operator history. Based on the available evidence it was considered that the additional conditions imposed by DWER were commensurate with the level of risk identified and were generally appropriate.

## Recommendation

It was recommended that the appeals be dismissed.

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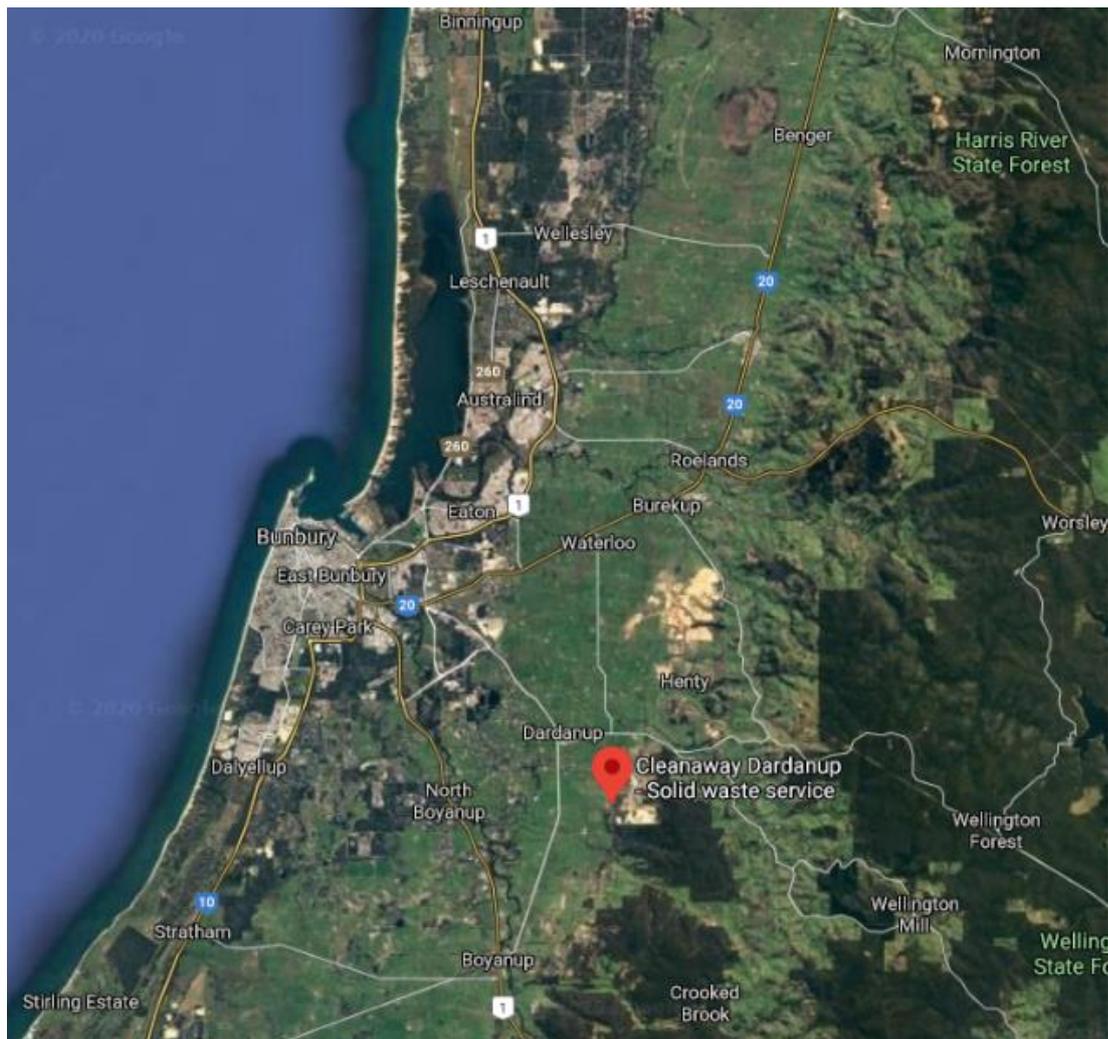
## INTRODUCTION

This report relates to nine appeals received in objection to the amendment of licence L8904/2015/1 (the licence) by the Department of Water and Environmental Regulation (DWER). The amendment authorised an increase in the rate of acceptance of Category 64 solid waste at Cleanaway Solid Waste Pty Ltd's (the licence holder) Banksia Road landfill facility (the premises) from 303 000 tonnes per annual period to 350 000 tonnes per annual period. The approved design capacity remained unchanged. The premises is located in the Shire of Dardanup with Dardanup the closest town site (Figure 1).

The appellants are:

- Valerie Brandstater
- Thomas Garbelini
- David and Raelene Birch
- Dardanup Environmental Action Group
- Heather Elliott
- Jill Cross
- Ellen Lilly
- Russell Sheridan
- Dianne Webster and Wayne Webster

**Figure 1 – Location of premises**



(Source: Google Maps)

The licence was originally granted to the licence holder in August 2015 to replace ceased licence L7439/1998/9. Subsequent amendments to the licence occurred in October 2015, May 2016, July 2016, April 2017, February 2018, February 2019 and June 2019, before the current amendment was made in December 2019.

The February 2018, February 2019 and June 2019 amendments were published as amendment notices rather than being published as consolidated versions of the licence. This meant that the amendment notices had to be read in conjunction with the April 2017 version of the licence in order to piece together the current licence conditions. The current amendment was published as a consolidated version of the licence incorporating the April 2017 version and the three amendment notices.

In its assessment of the December 2019 licence amendment, DWER noted that other than the increased annual amount of waste accepted at the premises, the prescribed categories and licence duration remained unchanged as did the design of the facility, including the containment infrastructure. The key condition amendments required as a result of the change to the amount of waste accepted at the premises included conditions relating to dust, noise and windblown waste.

## OVERVIEW OF APPEAL PROCESS

In accordance with the *Environmental Protection Act 1986* (EP Act), two reports relating to the matters raised on appeal are required for the Minister for Environment to determine the outcome of an appeal:

- a report from the Appeals Convenor, as required by section 109(3) of the EP Act
- a report from the decision-making authority of the decision under appeal, as required by section 106(1).

This document is the Appeals Convenor's report to the Minister.

In order to properly advise the Minister, the Appeals Convenor conducted an investigation into the matters raised on appeal. The investigation included:

- review of and regard for the matters raised in the appeals submitted by the appellants
- review of and regard for the report from DWER provided under section 106 of the EP Act
- a meeting with the licence holder on 14 January 2020
- a teleconference with an appellant on 9 March 2020
- meetings with six of the appellants at the Sanctuary Golf Resort in Bunbury on 10 and 11 March 2020
- review of and regard for the response to DWER's s106 report provided by the licence holder on 27 March 2020
- review of other information, policy and guidance as considered necessary.

### Scope of Appeal

The environmental appeals process is a merits-based process. Appeal rights in relation to an amendment to a licence relate only to the amendment and those requirements that might be consequential to the amendment, but do not extend to elements of the licence that were not amended.

In this case, the licence was amended in a number of ways:

- increased the amount of waste able to be accepted at the premises from 303 000 to 350 000 tonnes per annual period
- included new conditions in relation to dust, noise and windblown waste
- consolidated three previous amendment notices into the amended licence and contemporised a number of conditions
- included consequential numbering amendments to existing conditions

It is considered that the scope of the appeal relates only to the increase in the amount of waste accepted and the consideration of the adequacy of the conditions to manage the emissions and discharges that arise due to this change.

It is considered that the previous amendments that have now been consolidated into this instrument as well as other amendments that have not materially changed the requirements, such as numbering amendments, are outside the scope of the appeal.

Appellants raised a number of other matters that are also considered beyond the scope of appeal, this includes matters relating to DWER's management of compliance, stormwater management, truck movements, cumulative assessment of the premises and the requirement for a strategic assessment by the Environmental Protection Authority (EPA). For completeness these matters are described in further detail at 'Other matters' at the end of this report.

## **OUTCOME SOUGHT BY APPELLANTS**

The appellants are seeking for DWER's decision to be overturned (i.e. that the amendment not be allowed).

## **GROUND OF APPEAL**

It is considered that there are six primary appeal grounds; dust, operator history, noise, application of guidance, rehabilitation and necessity. These grounds are considered in turn in the following sections.

### **GROUND 1: DUST**

Appellants submitted a number of concerns relating to dust including:

- the use of Bunbury wind data in the risk assessment;
- the use of leachate/stormwater for dust suppression;
- the abstraction and use of groundwater for dust suppression; and
- the need for additional dust controls.

### **Consideration**

DWER's amendment report acknowledged that the increased rate of waste acceptance has the potential to generate increased dust emissions impacting upon sensitive receptors. Potential sources of dust are described by DWER as including the transport, unloading and covering of waste, and vehicle movements on unsealed ground. Seven residential premises were listed as sensitive receptors in the report, with the closest being 0.5 kilometres south of the premises boundary. The report also listed the adjacent Dardanup Conservation Park as a sensitive receptor among a number of other environmental receptors.<sup>1</sup>

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<sup>1</sup> DWER, Licence L8904/2015/1 Amendment Report, 17 December 2019, pages 8-9.

The amendment report outlines that DWER considered 9am and 3pm wind roses from the Bunbury meteorology site. It was noted that several residential receptors are in line with the pathway of prevailing morning easterly winds. Health and amenity impacts were cited by DWER as potential impacts from the dust emissions.<sup>2</sup>

Taking into account likelihood and consequence, DWER concluded that the risk rating for dust emissions was 'medium'. DWER found that existing regulatory controls in conjunction with proposed licence holder controls are likely to be sufficient for mitigating emissions at the tipping face of the active cell. In relation to the laydown area DWER found that it comprises a large surface area of exposed sandy material and that minimal dust mitigation measures are undertaken for this area.<sup>3</sup>

Noting its findings, DWER replaced condition 1.4.13 of the licence with new conditions 1.4.15 to 1.4.22. Previous condition 1.4.13 required the licence holder to actively manage fugitive dust emissions on the premises by:

- application of dust suppressant chemicals;
- application of stormwater or leachate via a sprinkler system or water cart to the active tipping area;
- application of stormwater via a water cart;
- sealing of roads; and/or
- use of a street sweeper.

New conditions 1.4.15 to 1.4.22 require the licence holder to:

- bituminise the main and southern haul routes by 31 July 2020;
- apply water via water cart to trafficable areas and use a street sweeper upon bituminised trafficable areas;
- apply water or leachate via water cart to the active tipping area;
- during operational hours undertake targeted wetting down of material during disposal and burial at the active tipping area where the licence holder is aware that such material has the potential to generate fugitive dust;
- as far as practicable apply a dust suppressant material to non-vegetated areas, landfill batters and within the laydown area when such areas have the potential to generate fugitive dust;
- by 31 October of each annual period undertake an assessment of the potential for dust emissions generated within the premises and detail proposed controls for areas identified as high dust risk areas;
- submit the above assessment to DWER within 14 days of its completion; and
- ensure all operational vehicles pass through a wheel wash prior to exiting the premises.

#### Use of Bunbury wind data in the assessment

One of the concerns raised by appellants was that DWER's risk assessment was based on irrelevant wind data having utilised information from a coastal weather station (i.e. Bunbury) instead of information from a station closer to the premises and the Darling Scarp (i.e. Dardanup).

In response to this matter, DWER obtained data from the Dardanup weather station and noted that the wind rose:

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<sup>2</sup> DWER, Licence L8904/2015/1 Amendment Report, 17 December 2019, pages 9-10, 14.

<sup>3</sup> DWER, Licence L8904/2015/1 Amendment Report, 17 December 2019, page 14.

... shows that wind conditions are predominantly easterly throughout the year with wind speeds predominantly in the range 8-15 km/h. Bunbury wind conditions, as presented in the amendment report, are predominantly easterly in the morning and westerly in the afternoon with higher wind speeds in the 20-30 km/h range recorded over a significant proportion of readings.<sup>4</sup>

DWER advised that while the Dardanup data provides a more accurate representation of wind conditions, it considers its risk assessment remains valid for the type of emissions under consideration (i.e. fugitive dust). This is because the source, pathway and impact to receptors remain unchanged. DWER advised that it considers controls can be imposed to decrease the likelihood of dust risk events and that the controls ultimately imposed took into account the level of risk the activity poses to public health and the environment.<sup>5</sup>

DWER's assessment did contemplate the impact of easterly winds to sensitive receptors. Therefore the most relevant information obtained from the Dardanup weather station is that easterly winds are likely to be more regular at the premises than in Bunbury. The potential impacts from more regular easterly winds however needs to be considered taking into account the controls imposed by DWER.

DWER has imposed a range of conditions targeted at prevention of dust lift off including the sealing of haul roads and the application of water, leachate and dust suppressant material. These requirements apply regardless of wind direction and therefore are still considered appropriate.

DWER has also imposed a condition requiring annual assessments of dust generation potential and preparation of proposed controls for high risk areas. This information is required to be submitted to the CEO of DWER who then has the ability to initiate further amendments to the licence if required. It is considered that this allows responses to actual wind and dust lift off conditions experienced on site to occur.

Given the above, DWER's view that the new wind data from Dardanup does not materially change the risk assessment or render the controls imposed redundant is supported.

#### Use of leachate/stormwater for dust suppression

Several appellants raised concern with the use of leachate for dust suppression and the associated potential impacts to human health, livestock and the environment. It was submitted that the risk associated with leachate emissions to air needs to be assessed including determination of the composition of spray particles. Some appellants also raised concern with the use of potentially contaminated stormwater.

In response to this matter, DWER advised:

The activities of recirculation of leachate within the leachate ponds through irrigation and recirculation onto the landfill active tipping face are existing within the premises, having been previously assessed in the April 2017 amendment.

The risk profile from the amendment application for this activity remains unchanged given the negligible increase in leachate spray volumes. The closest sensitive receptor is approximately 1.5 km south west of the tipping face (where leachate is applied for dust suppression) which constitutes adequate separation to mitigate the risk of fugitive leachate droplets impacting sensitive receptors. It is considered that leachate droplets are unlikely to travel beyond the premises boundary, given the location of the tip face.

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<sup>4</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 5.

<sup>5</sup> DWER, Response to Appeals 001/20, 12 February 2020, pages 5-6.

The use of leachate and stormwater for dust suppression was already approved in a prior version of the licence as evidenced by condition 1.4.13 of the April 2017 version. DWER's position that the increase in spray volumes is likely to be negligible as a result of the amendment is supported. Noting this and the separation distance to the closest sensitive receptor, DWER's view that the risk profile from the amendment remains unchanged is supported.

#### Use of groundwater for dust suppression

One of the appellants submitted that groundwater should not be abstracted and used for dust suppression noting it is a precious resource and therefore should not be wasted on such activities. It was submitted that the volume of waste accepted should be tied to the amount of stormwater available for dust suppression.

DWER has advised that the premises is located outside of a proclaimed area under the *Rights in Water and Irrigation Act 1914* (RIWI Act) and is therefore not subject to requirements for groundwater licensing.<sup>6</sup>

The RIWI Act is the primary legislation for regulating the abstraction and use of groundwater. Noting DWER's advice that groundwater licensing requirements do not apply at the site, this matter has not been considered further.

#### Additional dust controls

Two appellants submitted that all dust creating activities should be required to cease during strong wind conditions. One appellant raised concern that there are no controls for overnight dust generation and another submitted that no dust should be allowed to enter the Dardanup Conservation Park or neighbouring properties.

As outlined earlier, DWER has assessed the risk of dust impacts from the amendment and applied a number of additional controls to mitigate the impacts. This includes controls that are relevant towards mitigating the risk of dust lift off. For example, the licence holder is required to apply a dust suppressant material to non-vegetated areas, landfill batters and the laydown area when such areas have the potential to generate fugitive dust. Dust suppressant materials provide longer term suppression and are therefore relevant for preventing dust lift off overnight and during high winds. Requirements to seal the main and southern haul routes also provide for the prevention of dust lift off regardless of wind conditions and time of day.

During operational hours the licence holder is required to undertake targeted wetting down of material during disposal and burial at the active tipping area where the licence holder is aware that such material has the potential to generate fugitive dust. This requires consideration by the licence holder of wind conditions.

Based on the available evidence, DWER's view that the dust controls imposed are commensurate with the level of risk is supported.

### **Conclusion**

From the above it is considered that DWER has assessed the risk of additional dust emissions arising from the amendment including consideration of the effects of easterly winds. DWER has imposed additional conditions on the licence to mitigate dust impacts including controls targeted at the prevention of dust lift off and controls requiring annual reviews and responses to actual conditions experienced on site. The use of leachate and

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<sup>6</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 7.

stormwater for dust suppression is a pre-existing activity and the amendment is not considered to result in a material change to the risk profile for this aspect. Furthermore there is no requirement for the licensing of groundwater abstraction for use for dust suppression. Therefore it is considered that DWER has assessed dust emission risks associated with the amendment and applied additional controls commensurate with the level of risk identified.

## **GROUND 2: OPERATORY HISTORY**

All nine appellants raised concerns relating to the level of compliance observed at the premises. Appellants noted that, as outlined in DWER's amendment report<sup>7</sup>, the licence holder accepted 327,671 tonnes of Category 64 solid waste during 2018. This was in exceedance of the 303,000 tonnes per annual period limit in force at the time. Appellants submitted that DWER needed to take enforcement action and that the licence holder should not instead be rewarded with an increased annual limit. In addition to the tonnage exceedance, compliance issues were raised relating to dust, windblown waste, perfluoroalkyl and polyfluoroalkyl substances (PFAS), stormwater and weeds.

### **Consideration**

DWER's published guidance outlines that operator history is a relevant consideration for the assessment of applications. DWER's Guidance Statement: Risk Assessments (February 2017) states that operator history is a relevant consideration in establishing risk context and in determining risk likelihood criteria.

In responding to the appeals DWER advised that operator history was considered in assessing the amendment application. DWER advised that complaints received in relation to the premises were considered as well as information from site inspections. Also considered were the submission and content of Annual Audit Compliance Reports and Annual Environmental Reports. DWER advised that:

- The licence holder self-reported eight non-compliances related to waste acceptance, waste processing and windblown waste, and implemented corresponding corrective actions.
- A further six non-compliances represented administrative issues including the late submission of reports and the provision of inadequate information. Administrative matters were addressed and closed.
- Some matters regarding non-compliance with the licence are currently under investigation in accordance with the Department's Compliance and Enforcement Policy (Interim), July 2017.<sup>8</sup>

DWER advised that the context and level of non-compliances contributed to the application of further regulatory controls to the licence in relation to dust and windblown waste.<sup>9</sup> In relation to context it is noted that the licence holder has self-reported non-compliances.

New windblown waste conditions added to the licence include requirements to operate and maintain litter control screens, to install and maintain chain wire fencing so as to capture windblown waste, and to collect litter from control screens, perimeter fencing, roads and vegetation within the premises. Expanded dust conditions added to the licence are listed under Ground 1 of this report.

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<sup>7</sup> DWER, Licence L8904/2015/1 Amendment Report, 17 December 2019, page 6.

<sup>8</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 12.

<sup>9</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 12.

## Conclusion

DWER has imposed additional controls in relation to windblown waste being one of the aspects where non-compliance was reported. DWER advised that additional controls were also applied in relation to dust based on compliance information. Based on the available evidence, DWER's view that operator history has been taken into account in assessing the licence amendment application is supported. Matters relating to DWER's management of compliance, including the outcomes of its investigations, are considered beyond the scope of an appeal against a licence amendment and are discussed further at 'Other matters' at the end of this report.

## GROUND 3: NOISE

By their appeal, one appellant submitted that noise monitoring should be carried out at their property to establish current emissions before approving the amendment. Another appellant submitted that seasonal changes and changes to the operating cell face result in changes to noise impacts and therefore monitoring should be required to detect such changes and ensure emissions are within acceptable limits.

## Consideration

In granting the amendment, DWER accepted the findings of noise modelling commissioned by the licence holder which indicated the proposed waste acceptance rate increase will not increase noise emission levels from the premises. DWER considered however that compliance of the existing operation should be demonstrated by noise measurement at noise sensitive receptors, rather than by noise modelling.<sup>10</sup> As a result, DWER imposed condition 2.5 on the licence which required the licence holder to validate the noise modelling and assess compliance against the *Environmental Protection (Noise) Regulations 1997* (the Noise Regulations). The findings were required to be reported to DWER along with a plan to rectify any identified non-compliances.

In relation to the concern that validation should be required prior to granting the amendment, DWER advised that condition 2.5 provides an outcome based control whereby emissions are limited to those specified within the Noise Regulations. DWER made reference to the fact that any identified non-compliances are required to be rectified through a plan as required by condition 2.5.4 of the amended licence.<sup>11</sup>

Noise modelling informs the risk profile of a premises and in this case DWER has reviewed the modelling and accepted the findings. Any residual risk associated with the modelling accuracy is addressed by the requirement placed on the licence holder to validate that modelling and then take any necessary actions required to ensure compliance. The licence holder is ultimately required to comply with the assigned levels set out in the Noise Regulations. Therefore it is considered that the risk has been assessed and adequate conditions applied to control the identified risk.

In relation to the second issue raised on appeal, being that some form of ongoing monitoring should be required, DWER acknowledged that noise emissions may change over time due to things such as relocation of machinery, modification of vehicle routes and changes to active cell and tip faces. As a result, in responding to the appeals DWER recommended inclusion of a condition requiring noise assessment monitoring be undertaken following significant changes in operations at the premises that may alter emissions to sensitive receptors.<sup>12</sup>

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<sup>10</sup> DWER, Licence L8904/2015/1 Amendment Report, 17 December 2019, pages 12-13.

<sup>11</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 8.

<sup>12</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 8.

The licence holder objected to DWER's recommendation noting 'significant changes' are not defined. The licence holder advised that the required noise validation has since been completed and showed compliance with the Noise Regulations for all hours. The licence holder submitted that significant operational changes or expansions broadly require the submission of a licence amendment or works approval application and would generally be supported by a noise assessment if the activity proposed had a noise component to it.<sup>13</sup>

The licence holder's objection was forwarded to DWER for comment. In responding DWER advised that it had commenced a technical review of the noise validation work. DWER found that the validation work was inconclusive in establishing compliance with the Noise Regulations.<sup>14</sup>

DWER advised that additional information is required from the licence holder in relation to the validation and that further discussions will be held with the licence holder to resolve the outstanding issues.

In relation to the licence holder's view that a licence amendment or works approval application would be required in the event of significant operational changes, DWER further advised that it accepted that in most circumstances the licence holder's view is correct and that noise impacts would be assessed as part of the application. Noting this and that further discussions are required on the validation work, DWER recommended that no additional conditions relating to noise are placed on the licence at this time. DWER advised that in resolving the validation issues, should DWER identify a need for additional controls to mitigate noise emissions, such controls will be imposed through a DWER initiated licence amendment which will be subject to normal appeal rights.<sup>15</sup>

## Conclusion

The licence holder is required to comply with the relevant assigned levels in the Noise Regulations. The most recent advice from DWER is that further work is required to determine compliance at the premises but that should additional control measures be required, they will be implemented through a licence amendment.

Noting the current situation, it is recommended that no changes are made to the licence conditions relating to noise at this time.

## GROUND 4: APPLICATION OF GUIDANCE

One appellant submitted that DWER failed to consider its own guidance in deciding to grant the amendment. Reference was made to the following DWER documents:

- Guidance Statement – Environmental Siting (November 2016)
- Guideline – Industry Regulation Guide to Licensing (June 2019)

In relation to the Environmental Siting Guidance Statement it was submitted that the amendment should be disallowed as discharge of waste within a Specified Ecosystem is occurring in the adjacent Dardanup Conservation Park. In relation to the Guide to Licensing it was submitted that DWER should not have accepted the proposed waste acceptance rate increase as a licence amendment and that instead the licence holder should have made an application for a works approval.

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<sup>13</sup> Cleanaway, Response to DWER Appeal Response, 27 March 2020.

<sup>14</sup> DWER, Response to request for further information, 8 May 2020.

<sup>15</sup> DWER, Response to request for further information, 8 May 2020.

## Consideration

The Siting Guidance Statement provides a non-exhaustive list of Specified Ecosystems. This list includes conservation parks managed by the Department of Biodiversity, Conservation and Attractions (DBCA) of which the Dardanup Conservation Park is one. The Siting Guidance Statement outlines that Specified Ecosystems are indicative environmental receptors which will be considered in risk assessments undertaken by DWER.<sup>16</sup>

In responding to the appeals, DWER advised that the Dardanup Conservation Park was considered as an environmental receptor in the risk assessment undertaken for the amendment.<sup>17</sup> This is evidenced by Table 6 of DWER's amendment report which lists the Dardanup Conservation Park.<sup>18</sup>

DWER advised that the likely emissions and discharges associated with the amendment were considered for the Dardanup Conservation Park drawing attention to the fact that additional controls were imposed on the licence relating to dust and windblown waste.<sup>19</sup> For example, condition 1.4.13 imposed on the licence relates to the Dardanup Conservation Park requiring the installation of a 1.8 metre high chain wire fence to prevent waste entering the park. In relation to dust, DWER imposed a range of conditions targeted at prevention of dust lift off including the sealing of haul roads and the application of water, leachate and dust suppressant material. Such controls are considered relevant for mitigating the risk of dust impacts to the park.

The Siting Guidance Statement generally only applies to the assessment of applications for new prescribed premises or for new licences for existing premises.<sup>20</sup> Noting this and that DWER has contemplated impacts to the Dardanup Conservation Park as a result of the amendment including by applying additional controls, it is considered that DWER had appropriate regard for its Siting Guidance Statement.

In relation to whether the licence amendment application should have been submitted as a works approval application, the Guide to Licensing outlines that:

The Department will retain discretion on whether a works approval or licence amendment application is appropriate. In determining whether a change to a premises requires a works approval or a licence amendment, the Department will consider whether:

- there is a change to the prescribed premises category, or the addition of a new premises category;
- it involves additional works and new emission sources not previously assessed;
- there are changes to containment structures not previously assessed; and
- the scale of the works, and the time required to assess the impact of the proposed change is considerable.

The appellant asserted that a new category of waste (Category 61) was permitted by DWER through prior amendments, that additional works will be required in future to account for the increase, that the additional waste is a new emission source, and that the scale of the facility and timeframe for the waste source is considerable.

In responding to this matter, DWER advised:

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<sup>16</sup> DWER, Guidance Statement – Environmental Siting, November 2016, page 2.

<sup>17</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 9.

<sup>18</sup> DWER, Licence L8904/2015/1 Amendment Report, 17 December 2019, page 9.

<sup>19</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 10.

<sup>20</sup> DWER, Guidance Statement – Environmental Siting, November 2016, pages 1-2.

Due to the nature of the proposal, in that no new emission sources were identified and no specified works or changes to containment infrastructure were proposed, the application was accepted and determined as a licence amendment.<sup>21</sup>

Appeal rights only apply to the amendment and not past or future amendments. The amendment authorised an increase in the rate of acceptance of Category 64 solid waste from 303 000 tonnes per annual period to 350 000 tonnes per annual period. The prescribed premises categories were not amended nor the duration of the licence nor the containment infrastructure. Furthermore no new emissions sources were identified by DWER noting acceptance and burial of solid waste is a pre-existing source. Therefore DWER's position to accept and determine the application as a licence amendment is supported.

## Conclusion

It is considered that DWER has had regard for both the Siting Guidance Statement and the Guide to Licensing in deciding to grant the licence amendment.

## GROUND 5: REHABILITATION

Several appellants questioned why rehabilitation was not addressed in the amendment. It was submitted that visual amenity impacts are significant noting the prominence of the facility in the landscape owing to its elevation and location. The implications of the amendment for final cell height was raised as an issue.

Appellants also raised concern with the minimal amount of rehabilitation undertaken at the facility to date and it was suggested that a bond should be charged to ensure rehabilitation is ultimately completed. Flow on impacts attributable to the lack of rehabilitation such as dust and tourism impacts were also raised as concerns.

## Consideration

In relation to the implications of the amendment for cell height, it is noted that the design of the facility was not amended. DWER's response to the appeals explains the effect of the amendment on the facility design in further detail as follows:

The increase in waste acceptance does not alter the nature and extent of the final contours of the landfill cells, as the final landfill form and slopes have been previously provided and assessed, as depicted in Figure 1, Appendix 13 of the April 2017 Decision Report...

The increased rate of waste acceptance generated through the amendment will only expedite the time taken to achieve these final forms, rather than altering the actual final form.<sup>22</sup>

Noting the above, visual amenity impacts of the previously approved design remain unchanged and are therefore not considered further in this report.

In relation to rehabilitation, DWER advised that a Landfill Rehabilitation and Closure Plan was submitted to the Department as part of a previous licence amendment application, whereby the construction and operation of a phytocap trial on the completed area of cell 5 was proposed. DWER further advised that:

Due to the life of the operation currently projected to 2070, final rehabilitation and land use planning is not considered appropriate at this stage. Future rehabilitation requirements will be considered upon application by the licence holder and commensurate to the potential impacts to human health and the environment.

<sup>21</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 11.

<sup>22</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 8.

The EP Act does not contain any provisions for a rehabilitation bond to be placed upon a licence holder. As such, the Department cannot consider this issue in its decision-making process.<sup>23</sup>

As shown in 'Premises map 1' of Schedule 1 of the licence, the majority of the landfill area is designated as active. Cell 5 is located within the southwest corner of this area and was approved for the phytocap trial by DWER in April 2017. The trial is subject to condition 1.3.3 of the licence. Although the rate of cells filling may increase as a result of the amendment, it is considered that the trial provides evidence that work is occurring towards progressive rehabilitation.

It is understood that further review of the adequacy of the rehabilitation methodology is required by DWER once a preferred approach is chosen by the licence holder and submitted to DWER. The licence duration to 2035 supports DWER's view that final rehabilitation and land use planning is not appropriate at this stage.

## Conclusion

Noting the duration of the licence is to 2035, and that work towards progressive rehabilitation is evident, the decision by DWER to not impose additional rehabilitation requirements on the licence at this time is supported.

## GROUND 6: NECESSITY

A number of appellants raised concerns relating to the necessity of the amendment. This includes the view that the amendment is inconsistent with the Waste Avoidance and Resource Recovery Strategy 2030 (the Waste Strategy) as well as State Government messaging on waste avoidance/resource recovery. It also includes views that the amendment facilitates unnecessary redirection of waste from the City of Busselton. It was submitted that the redirection is occurring for commercial reasons and is not required. One appellant submitted that Tellus Holdings Sandy Ridge facility should be investigated as an alternative for waste that is being directed to the premises.

## Consideration

The *Waste Avoidance and Resource Recovery Act 2007* (WARR Act) requires the development of a long term waste strategy for continuous improvement of waste services, waste avoidance and resource recovery, benchmarked against best practice. It also requires the strategy to set out targets for waste reduction, resource recovery and the diversion of waste from landfill disposal. The Waste Strategy fulfils these requirements setting out an overarching vision under which objectives and targets are set.

The *Waste Avoidance and Resource Recovery Levy Act 2007* (WARRL Act) enables regulations to be made under the WARR Act for prescribing levies that are payable in respect to waste received at disposal premises.

In responding to the appeals DWER advised that the WARR Act and WARRL Act are primarily linked to the EP Act by:

the definitions of "disposal premises" (section 3, WARRL Act), "landfill premises" (section 3, WARR Levy Regulations) and "licensed landfill" (section 3, WARR Levy Regulations). These three definitions create a relationship between the waste levy liability under the WARRL Act and WARR Levy Regulations and the licensing regime under Part V Division 3 of [the] EP Act, specifically in relation to licensed landfills under categories 63, 64 and 65 of Schedule 1 of the EP Act...

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<sup>23</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 16.

...The principles in section 4A of the EP Act do not expressly require that the licensing of prescribed premises under Part V Division 3 must take into account the policy objectives of the WARR framework, including the operation of the waste levy as an economic instrument in accordance with objective 4 of the Waste Strategy. Similarly, the basis on which the Chief Executive Officer may attach conditions to a licence does not expressly include conditions for waste avoidance, resource recovery or the diversion of waste from landfill.<sup>24</sup>

It is DWER's view that the Waste Strategy provides broad strategies that apply to state-wide behaviours and therefore individual applications should not be considered against the strategy in isolation. DWER outlined that the targets (e.g. avoid targets) are state-wide targets and should not be applied to individual applications.<sup>25</sup>

## Conclusion

The Waste Strategy provides a framework for a coordinated approach towards achieving the overarching vision and objectives and targets of the strategy. Noting this, DWER's view is supported in that individual applications should not be considered against the Waste Strategy in isolation. DWER must consider the environmental merits of the application before it. DWER has undertaken a risk assessment of the potential emissions associated with the application and determined that the application can be granted subject to additional controls.

## OTHER MATTERS

### DWER's management of compliance

Appellants expressed dissatisfaction with DWER's management of compliance at the premises generally. Appellants were of the view that greater monitoring of compliance was required at the premises.

It is understood that appellants feel DWER's attention to the premises is only drawn following the lodging of complaints by local residents. Appellants submitted that it should not be their responsibility to monitor compliance and having to do so impacts their right to quiet enjoyment of their property. It was submitted that independent monitoring and public reporting of data should occur.

Compliance with the conditions of a licence is a matter for DWER to monitor as the regulator. Whilst concerns surrounding DWER's management of compliance and enforcement for the premises are noted, appeal rights in relation to a licence amendment do not extend to the outcomes of past or current compliance investigations or the scope of DWER's monitoring/investigation activities. The grant of a licence amendment does not prevent enforcement actions being taken by DWER and in this regard appellants may wish to liaise with DWER on the findings of its investigations. In responding to the appeals DWER acknowledged that the community may feel frustration and advised that complaints (e.g. in relation to dust and windblown waste) should be lodged with DWER rather than with the Shire of Dardanup.

### Cumulative amendments

A number of appellants raised concerns with the licence holder's approach of seeking staged cumulative amendments to the facility over time. It was submitted that this approach should not be allowed. Whilst appellant concerns are noted, the EP Act allows amendments to be made to a licence provided they are deemed environmentally acceptable. The appeals

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<sup>24</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 14.

<sup>25</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 14.

investigation therefore focuses on the environmental merits of the amendment rather than the approval pathway sought.

### Assessment by the EPA

Several appellants requested a strategic assessment of the facility including an Environmental Impact Assessment by the EPA under Part IV of the EP Act. Appellants requested that past, current and future activities at the site be assessed through this process. The EP Act sets out the process for referral of a significant proposal to the EPA for assessment. This process is separate to the appeals process and as such is not considered further.

### Stormwater management

The adequacy of stormwater management at the premises was another issue raised by the appeals. Primary concerns relate to offsite stormwater impacts including to the adjacent Dardanup Conservation Park. It is understood that a bund located on the southern border of the premises was installed previously by the licence holder to assist with capturing and containing stormwater within the premises boundary. It is understood that this has resulted in an interruption to natural surface water flows causing erosion issues within the adjacent conservation park. Surface water concentrates along a track within the conservation park running parallel to the bund before dispersing to Banksia Road and neighbouring properties.

Appellants submit that compensation and remediation of stormwater damage is required and that operations should not be permitted until an independent review is undertaken and effective management measures are developed.

In response to this matter DWER advised:

A licence amendment in May 2016 provided the authorisation of works to upgrade the existing stormwater infrastructure. These works included the construction of... a new v-drain on the southern boundary (to manage stormwater runoff from the perimeter road batter and conservation reserve along the southern boundary of the site)...

The upgrades were predominantly proposed to significantly improve the capacity of the stormwater management system to retain stormwater on the premises for beneficial use (e.g. dust and fire suppression).

The Shire of Dardanup provided Planning Approval for this infrastructure on 18 April 2016 (reference P10/26; A8241; 18/04/2016).<sup>26</sup>

DWER further advised:

In Western Australia, planning laws control the use and development of land within a particular district or region, and most new developments require approval under the State's planning laws. The *Planning and Development Act 2005* is the main legislation that governs planning in Western Australia.

Local planning schemes are administered by local governments and provide a basic template for the development of land in a local area by controlling what types of development can occur and where.

The management of uncontaminated stormwater is one such issue that sits within the remit of planning approvals. The regulation of stormwater which has not been contaminated by activities regulated under the licence (Division 3 Part V of the EP Act) is generally considered to be outside of the scope [of] Part V of the EP Act.<sup>27</sup>

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<sup>26</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 15.

<sup>27</sup> DWER, Response to Appeals 001/20, 12 February 2020, page 15.

It is considered that the primary issue at hand relates to uncontaminated stormwater. DWER is responsible for regulating the emission of contaminated stormwater. In this regard it is noted that condition 1.2.1 of the licence requires that no stormwater is authorised to discharge beyond the premises boundary if that stormwater arises within, or has had contact with, the active landfill area and the areas of the premises where landfilling, waste acceptance and processing and leachate containment occurs.

### Truck movements

DWER's amendment report indicates that an extra five truck movements are anticipated per day as a result of the increased rate of waste acceptance. One appellant submitted that increased truck movements will increase the risk of a fatal accident on Waterloo and Ferguson Roads being roads which lead to the facility.

Providing a safe road environment is the primary responsibility of the Shire of Dardanup being the responsible authority for the care, control and management of Waterloo and Ferguson Roads. It is considered that concerns about the safety of Waterloo and Ferguson Roads are best directed towards the Shire.

## **CONCLUSION AND RECOMMENDATIONS**

On balance it is considered that DWER was justified in making the licence amendment. The appeals investigation found that DWER's decision was based on a risk assessment of the potential emissions associated with the increased rate of waste acceptance including consideration of operator history. Based on the available evidence it is considered that the additional conditions imposed by DWER relating to dust, noise and windblown waste are commensurate with the level of risk identified.

DWER has advised that further work with the licence holder is required to determine noise compliance at the premises but that should additional control measures be required, they will be implemented through a CEO initiated licence amendment. Noting the licence holder is still required to comply with the Noise Regulations, it is recommended that no changes are made to the licence conditions relating to noise at this time.

Emma Gaunt  
APPEALS CONVENOR

**Investigating Officer:**  
Simon Weighell, A/Senior Appeals Officer