



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST AMENDMENT OF LICENCE L8904/2015/1 CLEANAWAY BANKSIA ROAD LANDFILL

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 102(3)(b) of the *Environmental Protection Act 1986* in objection to the amendment of the above licence. 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.

Appellants:

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

Licence Holder:

Cleanaway Solid Waste Pty Ltd

Proposal description:

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.

Minister's Decision:

The Minister dismissed the appeals.

Date of Decision:

15 June 2020

REASONS FOR MINISTER'S DECISION

The licence amendment against which the appeals were made authorised an increase in the rate of acceptance of Category 64 solid waste at Cleanaway's Banksia Road landfill facility.

Nine appeals against the Department of Water and Environmental Regulation's (DWER) decision were received with the key concerns raised relating to dust, operator history, noise, DWER's application of guidance, rehabilitation, necessity, stormwater, truck movements, cumulative amendments and assessment by the Environmental Protection Authority (EPA). The appeals sought for DWER's decision to be overturned.

Having considered the information before him, including DWER's response to the appeals and the Appeals Convenor's report, the Minister decided to dismiss the appeals on the basis that DWER has adequately assessed the risk associated with the amendment and imposed additional conditions to control the identified risks. The full reasons for the Minister's decision follow.

Dust

The Minister noted a number of concerns were raised in relation to dust, including DWER's reliance on Bunbury wind data in its risk assessment, the use of leachate and stormwater for dust suppression, and the adequacy of dust controls imposed.

In relation to the use of Bunbury wind data, as a result of the appeals DWER obtained data from the Dardanup weather station. In reviewing that data DWER maintained its risk assessment was valid noting that although easterly winds may be more regular at Dardanup, the impact of easterly winds had already been considered. DWER advised that the source, pathway and impact remains unchanged and that it considered controls can be imposed to decrease the likelihood of dust risk events.

In relation to the risk posed by the use of leachate and/or contaminated stormwater for dust suppression, DWER advised that this activity was approved in a prior version of the licence and advised that the increase in leachate spray volumes as a result of the amendment is likely to be negligible.

DWER imposed additional dust conditions on the amended licence including a set of more specific controls targeted at prevention of dust lift off. This included, but is not limited to, requirements to seal haul roads, apply water to trafficable areas, apply water or leachate to the active tipping face, and apply dust suppressant material to non-vegetated areas, landfill batters and the laydown area when such areas have the potential to generate fugitive dust. DWER 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 DWER which then has the ability to initiate further amendments to the licence if required.

DWER had therefore imposed a range of additional dust conditions, including controls targeted at the prevention of dust lift off. The Minister accepted DWER's findings that easterly winds were adequately considered in the risk assessment and that the increase in leachate spray volumes is likely to be negligible. Based on the available evidence, the Minister supported DWER's view that the conditions imposed are commensurate with the level of risk identified.

Operator history

The Minister understood the level of compliance observed at the premises is a key concern for appellants and was submitted as reason alone to refuse the amendment. The Minister understood appellants were dissatisfied with DWER's management of compliance at the premises generally.

Compliance with the conditions of a licence is a matter for DWER to monitor as the regulator. The Minister was advised that some matters regarding non-compliance at the premises are currently under investigation in accordance with the Department's Compliance and Enforcement Policy (Interim), July 2017.

In responding to the appeals, DWER advised that operator history (e.g. complaints, non-compliances, site inspections) was considered in its risk assessment and contributed to the application of further licence conditions in relation to dust and windblown waste. The Minister noted that the context and level of non-compliances are relevant considerations in this regard.

Based on the information before him, the Minister was satisfied that DWER has taken into account operator history in deciding to grant the amendment.

Noise

In response to concerns about noise from the premises, DWER acknowledged that noise emissions may change over time due to matters such as relocation of machinery, modification of vehicle routes and changes to active cell and tip faces. As a result, DWER initially recommended an additional condition be added to the licence requiring additional monitoring when there are significant changes to operations at the premises.

Since that recommendation was made, Cleanaway submitted new monitoring data to DWER which it claimed shows the premises complies with the assigned levels in the *Environmental Protection (Noise) Regulations 1997* (Noise Regulations). Additional advice from DWER in response to this new monitoring data indicated that based on the information provided, the results were inconclusive and could not be relied on to show that noise emissions comply with the assigned levels.

To address the uncertainty, DWER indicated it would approach the licence holder directly for additional information and determine what, if any, additional controls to mitigate noise emissions at the premises are required. Pending this review, DWER recommended that no changes are made to the licence conditions in respect to noise.

The premises are required to comply with the relevant assigned levels in the Noise Regulations. As DWER's most recent advice was that further work is required to demonstrate compliance, it is the Minister's expectation that DWER expedites any further investigations, and should additional control measures be required, that they would be implemented through a licence amendment as soon as possible.

Application of guidance

The Minister noted it was 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)

Concerns centred on the view that DWER did not consider impacts to the adjacent Dardanup Conservation Park and that DWER should have required a works approval application.

In responding to the appeals, DWER advised that the Dardanup Conservation Park was considered as an environmental receptor in the risk assessment and the Minister noted this was evidenced by Table 6 of DWER's amendment report. The Minister also noted that additional conditions were imposed on the licence to address the risk of impacts to the park including conditions relating to dust and windblown waste.

In relation to whether a works approval application should have been required, the Minister noted that 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 was a pre-existing source.

Therefore the Minister was satisfied that DWER had regard for both the Environmental Siting Guidance Statement and the Guide to Licensing in deciding to grant the licence amendment.

Rehabilitation

In response to concerns surrounding the effect of the amendment on final cell height, DWER advised that the increased rate of waste acceptance does not alter the nature and extent of the final contours of the landfill cells. In effect this means that cells are able to fill faster rather than become higher.

In relation to progressive rehabilitation of the site, the Minister was advised that a Landfill Rehabilitation and Closure Plan was submitted to DWER 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. The trial is subject to condition 1.3.3 of the licence.

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

Necessity

The Minister noted it was submitted that the licence amendment is inconsistent with the *Waste Avoidance and Resource Recovery Strategy 2030* (Waste Strategy) as well as the State Government's messaging on waste avoidance/resource recovery. The Minister understood that there are also concerns surrounding the unnecessary redirection of waste to the premises from the City of Busselton.

The Waste Strategy provides a framework for a coordinated approach towards achieving its overarching vision and objectives and targets. While the Minister noted appellants' concerns, the Minister considered that individual applications should not be considered against the Waste Strategy in isolation.

In assessing a licence amendment application, DWER must consider the environmental merits of that application. DWER has undertaken a risk assessment of the potential emissions associated with the amendment and determined that the application can be granted subject to additional controls. The Minister considered that the additional controls are commensurate with the level of risk identified by DWER and that the conditions applied are appropriate.

Other matters

In relation to concerns surrounding stormwater management, truck movements, cumulative amendments and assessment by the EPA, 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*.

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