



## **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 CONTENT OF, AND RECOMMENDATIONS IN, AN  
ENVIRONMENTAL PROTECTION AUTHORITY REPORT**

**EPA REPORT 1619: PILBARA EXPANSION STRATEGIC PROPOSAL**

**PROPONENT: BHP BILLITON IRON ORE PTY LTD**

Appeal Number 019.001–013 of 2018

**November 2018**

## Appeal Summary

This report relates to 13 appeals in objection to the content of, and recommendations in, Report 1619 of the Environmental Protection Authority (EPA) for the Pilbara Expansion Strategic Proposal by BHP Billiton Iron Ore Pty Ltd (proponent).

In its assessment of the strategic proposal, the EPA took into account the impacts to its key environmental factors, the proponent's proposed mitigation measures, the relevant principles of the *Environmental Protection Act 1986*, and the extent to which the impacts to the key environmental factors are manageable. The EPA concluded that the strategic proposal is environmentally acceptable and recommended that the proposal may be implemented subject to its recommended conditions. The EPA also considered that if the implementation of future proposals under the strategic proposal is in accordance with its recommended conditions, then the future proposals can meet its objectives for the key environmental factors.

The majority of appellants sought for the strategic proposal to be remitted to the EPA for assessment of the impacts of dust and noise on Port Hedland, for re-assessment of the factor 'Air Quality' in relation to asbestos, silica and particles as PM<sub>2.5</sub>, and for the EPA's recommended conditions to be strengthened through the application of light detection and ranging (LiDAR) technology as the primary method for dust monitoring and application of further dust control and monitoring methods.

In responding to the appeals, the EPA noted that the strategic proposal as referred is to develop new mining operations and associated activities within a specified boundary that does not include Port Hedland, and that the proponent's port operations are regulated under other statutory processes. The EPA advised that the issue of dust at Port Hedland was therefore considered to be outside the scope of its assessment of the strategic proposal, and that it identified through its assessment that asbestos and silica were unlikely to have the potential to cause significant environmental impacts in the context of the strategic proposal.

Having regard for the information provided during the appeals investigation, including information from the appellants, the proponent and the EPA, the Appeals Convenor considered that the EPA's report was appropriately confined to the strategic proposal as referred and that its assessment of the strategic proposal in respect to air quality issues, and its conclusion that the likely environmental effects in respect to air quality issues are not so significant as to be environmentally unacceptable if implemented in accordance with its recommended conditions, were reasonable.

The Appeals Convenor also considered that the EPA has recommended appropriate conditions to ensure that dust generated during the implementation of the strategic proposal and the future proposals is effectively controlled without duplicating other regulatory processes applying to the future proposals. In this regard, the Appeals Convenor concluded that based on the available evidence, the EPA was justified in its report and recommendations.

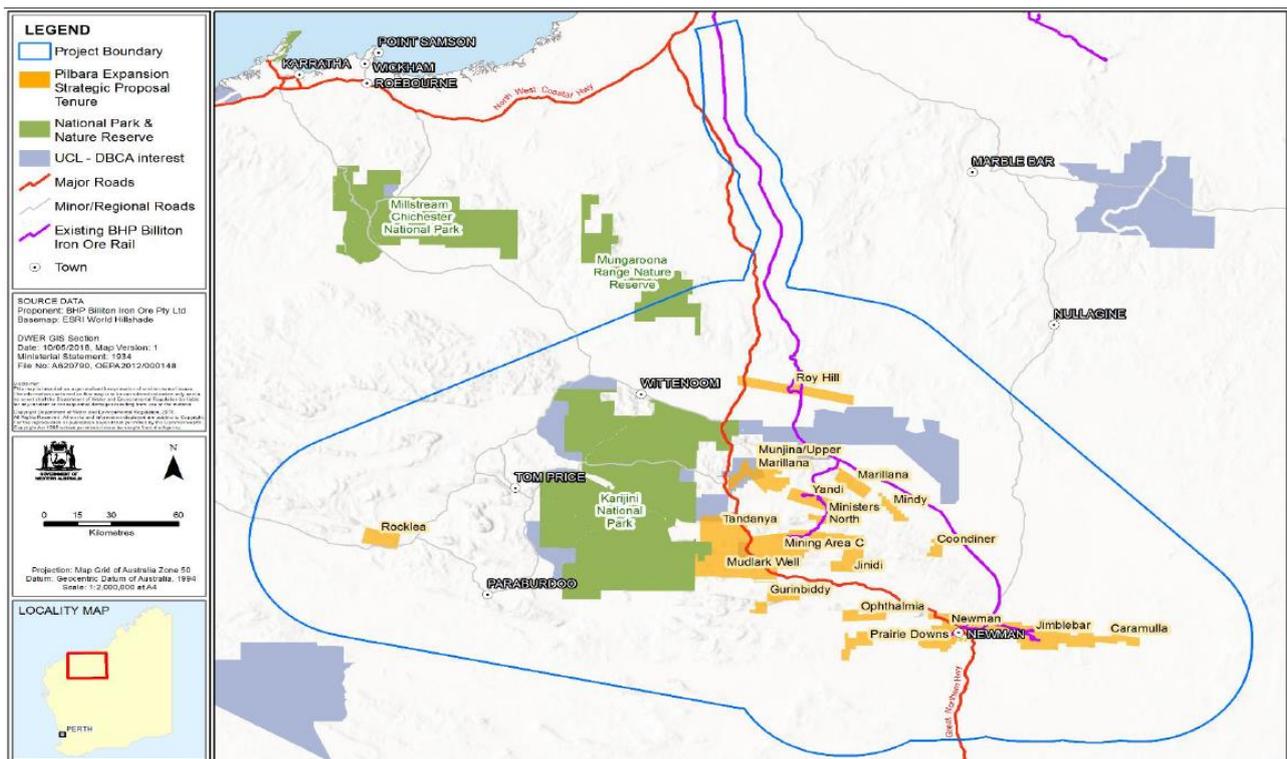
### Recommendation

The Appeals Convenor recommended that the appeals be dismissed.

## INTRODUCTION

This report relates to 13 appeals lodged in objection to the content of, and recommendations in, Report 1619<sup>1</sup> of the Environmental Protection Authority (EPA) in relation to the Pilbara Expansion Strategic Proposal by BHP Billiton Iron Ore Pty Ltd (proponent) under Part IV of the *Environmental Protection Act 1986* (EP Act). The appellants are listed in Appendix 1.

The proposal which is the subject of the EPA's report was referred to the EPA by the proponent as a 'strategic proposal' in July 2012. The proposal identifies the proponent's proposed future iron ore mining operations in the Pilbara region for the next 50-100 years. The location and extent of the strategic proposal are shown in Figure 1.



**Figure 1: Strategic proposal project footprint**

(Source: EPA Report 1619)

The strategic proposal is described by the EPA in Report 1619 as follows:

The proponent ... proposes to develop iron ore mining and associated mining infrastructure in the Pilbara. The strategic proposal identifies all new iron ore mine developments on tenements in which [the proponent] currently has an interest, as well as expansion of existing mines within the Strategic Proposal project boundary ...

The proposal is considered a strategic proposal because it identifies future proposals that, if implemented, are likely to have a significant effect on the environment.

Activities included in the strategic proposal include mining operations, rail, overburden storage areas, dams (tailings and turkey-nest style) and associated mine infrastructure.<sup>2</sup>

More specifically, the EPA defined the key characteristics of the proposal to include:

- development of 13 new mines and associated activities; and
- expansions to four existing mines and any of the 13 proposed new mines.<sup>3</sup>

<sup>1</sup> Environmental Protection Authority (2018) *Report and recommendations of the Environmental Protection Authority – Pilbara Expansion Strategic Proposal – BHP Billiton Iron Ore Pty Ltd*. Report 1619, July 2018. Government of Western Australia.

<sup>2</sup> Report 1619 page 2

<sup>3</sup> Report 1619 Table 2

The EPA identified a cumulative impact limit of 98,500 hectares (ha) for the strategic proposal, which includes clearing of native vegetation up to that amount.<sup>4</sup> While the strategic proposal is primarily directed at future mining activity, it includes associated infrastructure. On this point, the proponent's referral document *BHP Billiton Iron Ore Pilbara Expansion Strategic Proposal Environmental Scoping Document*<sup>5</sup> (ESD) states:

The Strategic Proposal also encompasses potential capacity upgrades of the Newman to Port Hedland rail line, from the Newman rail hub to the 26 km chainage mark near Port Hedland. This mark represents the boundary of the proposed BHP Billiton Iron Ore Outer Harbour development rail spur (the Western rail spur) connection to the Newman to Port Hedland mainline (approved in Ministerial Statement 890).<sup>6</sup>

After considering the referral, the EPA assessed the proposal at the level of Public Environmental Review. In July 2018, the EPA released Report 1619 which concluded that the strategic proposal is environmentally acceptable and could be implemented subject to the EPA's recommended conditions. It was from Report 1619 that the appeals were received.

This document is the Appeals Convenor's report to the Minister for Environment under section 109(3) of the EP Act.

## OVERVIEW OF APPEAL PROCESS

In accordance with section 106 of the EP Act, a report was obtained from the EPA in relation to the issues raised in the appeals. The proponent was also given the opportunity to address the matters raised in the appeals. During the appeals investigation, the Appeals Convenor consulted with the appellants and the proponent to discuss the matters raised in further detail. One appellant and the proponent requested a copy of the EPA's report on the appeals.

The environmental appeals process is a merits-based process. For appeals in relation to an EPA report and recommendations, the Appeals Convenor normally considers the environmental merits of the assessment by the EPA, based on objectives as set by the EPA as well as other environmental factors. The appeals process considers environmental significance, relevance of factors, additional information not considered by the EPA, technical errors and attainment of policy objectives. Where the development has been the subject of previous EPA assessments, those assessments and any subsequent Ministerial appeal decisions also need to be taken into account.

## OUTCOMES SOUGHT BY APPELLANTS

In summary, the appellants sought for the strategic proposal to be remitted to the EPA for assessment of the impacts of dust and noise on Port Hedland, for re-assessment of the factor 'Air Quality' in relation to asbestos, silica and particles as PM<sub>2.5</sub>, and for the EPA's recommended conditions to be strengthened through the application of light detection and ranging (LiDAR) technology as the primary method for dust monitoring and application of further dust control methods.

## GROUNDINGS OF APPEAL

The appeal grounds are summarised as relating to the following matters:

- the impacts of dust and noise on human health in Port Hedland should have been assessed;
- adequacy of the EPA's assessment of dust (*National Environment Protection (Ambient Air Quality) Measure* (AAQ NEPM), particles as PM<sub>2.5</sub>, asbestos and silica);
- adequacy of the EPA's recommended conditions (monitoring and control of dust emissions, compliance and reporting); and
- time limit for referral of derived proposals.

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<sup>4</sup> Report 1619 Table 2

<sup>5</sup> BHP Billiton Iron Ore Pty Ltd (2013) *BHP Billiton Iron Ore Pilbara Expansion Strategic Proposal Environmental Scoping Document*. Report prepared for the Environmental Protection Authority, November 2013.

<sup>6</sup> Proponent's ESD page 14

## GROUND 1: PORT HEDLAND PORT OPERATIONS

The majority of appellants expressed the view that the EPA's report was deficient as it excluded port operations at Port Hedland. Specifically, the appellants submitted that the impacts of dust and noise on human health in Port Hedland should have been assessed, given that the products from derived proposals would be exported through the proponent's port operations in Port Hedland.

### Consideration

Section 37B(2) of the EP Act states:

- A proposal is a **strategic proposal** if and to the extent to which it identifies –
- (a) a future proposal that will be a significant proposal; or
  - (b) future proposals likely, if implemented in combination with each other, to have a significant effect on the environment.

By section 38(3) of the EP Act, only a proponent of a strategic proposal may refer the proposal to the EPA. There is no power for a third party to refer a strategic proposal to the EPA.

A strategic proposal is assessed in the same way as a significant proposal,<sup>7</sup> and culminates in the EPA finalising a report to the Minister. The EPA's report must set out what it considers to be the key environmental factors identified through the assessment, and include recommendations as to whether or not the proposal should be implemented, and if it is recommended to be implemented, the conditions to which that implementation should be subject.<sup>8</sup>

Where a strategic proposal is approved, in respect of the future proposals, section 39B of the EP Act provides that a proponent may request the EPA to declare a future proposal to be a 'derived proposal'. The EPA is required make the declaration unless the EPA is of the view that (among other things) the environmental issues raised by the proposal were not adequately assessed when the strategic proposal was assessed, or there is significant new or additional information that justifies the reassessment of the issues raised by the proposal.

Further, section 45A(3) of the EP Act provides that:

- If the implementation agreement or decision previously made in relation to the derived proposal included implementation conditions relating generally to [two] or more future proposals, the Minister may [by way of written Notice] specify which of those implementation conditions apply to the derived proposal and, subject to sections 46 to 46C, the conditions and procedures so specified are the implementation conditions relating to the derived proposal.

As noted above, the original referral contemplated the boundaries of the strategic proposal extending along the existing Newman to Port Hedland railway corridor to a point coinciding with what was described as the boundary of the rail spur associated with the BHP Billiton Iron Ore Outer Harbour Development proposal (to which Ministerial Statement 890<sup>9</sup> relates). It is understood that the inclusion of the rail corridor to this point was to encompass possible upgrades required to the existing railway infrastructure.

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<sup>7</sup> EP Act section 40B(2)

<sup>8</sup> EP Act section 44

<sup>9</sup> Available at: <http://www.epa.wa.gov.au/0890-%E2%80%93-outer-harbour-development-%E2%80%93-port-hedland-bhp-billiton-iron-ore-bhpbio>

The proponent's ESD expressly excluded certain parts of the proponent's existing operations in the Pilbara from the scope of the strategic proposal, such as existing mines and operations at Port Hedland. In relation to the proponent's port operations, the ESD states:

Assessment of issues resulting from the export of iron ore, including cumulative impacts for landside and marine activities at Port Hedland, have been fully identified and recently assessed as part of the BHP Billiton Iron Ore Proposed Outer Harbour Development Public Environmental Review. The Outer Harbour Development is approved under Ministerial Statement 890. As consideration of these matters has already occurred, they are beyond the scope of the Strategic Proposal.<sup>10</sup>

Noting that the strategic proposal did not include port operations at Port Hedland and given that the EP Act establishes that only a proponent can refer a strategic proposal to the EPA, it is a matter for the proponent to define the nature and scope of its strategic proposal. In any event, noting the port operations are pre-existing, and would thereby appear not to be in the nature of a 'future proposal' within the meaning of section 37B of the EP Act, there is some doubt that the inclusion of the port operations could be considered as part of a strategic proposal. Additionally, it is noted that the port operations are the subject of Ministerial Statement 890 and have been the subject of a separate referral and assessment process.<sup>11</sup>

Concerns about emissions and discharges associated with the port operations are the subject of other appeals which (at the time of writing) are subject to separate appeal investigations.

## Conclusion

To the extent appellants submitted that the port operations ought to have been assessed by the EPA, it is considered that the EPA's report was appropriately confined to the strategic proposal as referred. It follows that it is recommended that this ground of appeal be dismissed.

## GROUND 2: ADEQUACY OF ASSESSMENT OF AIR QUALITY

By this ground of appeal, the appellants submitted that the EPA had insufficient regard to the factor of 'Air Quality', and in particular dust, in concluding that the strategic proposal was acceptable. Specific concerns raised by appellants included that the EPA failed to:

- ensure that the AAQ NEPM is applied for all mining operations within the strategic proposal boundary;
- consider or require monitoring, analysis and reporting in relation to particles as PM<sub>2.5</sub> and other contaminants of concern including asbestos, crystalline silica, manganese, hexavalent chromium, spodumene and beryllium; and
- consider or require a management plan in relation to the health risks to the proponent's employees and nearby communities from asbestos (blue crocidolite and white chrysotile) dust, and from crystalline and amorphous silica (chert, jasper, agate and quartz) dust, which may be liberated during mining activities.

## Consideration

The EPA considered air quality and dust in the context of its key environmental factors 'Social Surroundings' and 'Air Quality'. The EPA's objective for Social Surroundings is to 'protect social surroundings from significant harm' and for Air Quality is to 'maintain air quality and minimise emissions so that environmental values are protected'.

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<sup>10</sup> Proponent's ESD page 16

<sup>11</sup> Under section 38(5j) of the EP Act, a proposal cannot be referred to the EPA more than once, unless the assessment was terminated under section 40A, or has been referred as a major change to conditions under section 46B(2).

Based on its assessment, the EPA concluded that its objectives for these factors can be met provided any future proposals are implemented in accordance with its recommended conditions, including recommended Condition 11 which relevantly requires the preparation of an Air Quality Management Plan (AQMP) to meet the following objectives:

- (1) Maintain air quality and minimise emissions so that environmental values are protected, and in particular:
  - (a) meet recognised air quality standards and criteria, including:
    - (i) National Environment Protection (Ambient Air Quality) Measure for carbon monoxide, nitrogen dioxide, ozone, Sulphur dioxide, lead, particles as PM<sub>10</sub> and PM<sub>2.5</sub>; or
    - (ii) Other guidelines on a proposal specific basis as determined by the [Chief Executive Officer].<sup>12</sup>

In arriving at this conclusion, Report 1619 discusses the various matters that the EPA had regard to in its assessment of the strategic proposal, which guided its recommendations. Relevant to the appeals, these considerations included:

- the procedures set out in *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016*,<sup>13</sup> and the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual*,<sup>14</sup>
- the relevant provisions of the EP Act, including the object and principles, the EPA's objectives, and the environmental impact assessment process, as set out in section 4A, section 15 and Part IV Division 1 respectively;
- the proposal as described in the proponent's ESD and *BHP Billiton Iron Ore Pilbara Public Environmental Review Strategic Proposal*<sup>15</sup> (PER), and the modelling provided;
- the public submissions received in relation to the proponent's ESD and PER, and the proponent's response to public submissions as documented in *BHP Billiton Iron Ore Pilbara Public Environmental Review Strategic Proposal Supplementary Report*<sup>16</sup> (Supplementary Report);
- the identification of key environmental factors including (among other things) 'Social Surroundings' and 'Air Quality', the *Statement of Environmental Principles, Factors and Guidelines*,<sup>17</sup> and the relevant environmental factor guidelines;<sup>18</sup>
- the impacts of the strategic proposal on the identified key environmental factors;
- the EPA's confidence in the proponent's proposed mitigation measures; and
- the EPA's view that the impacts of the strategic proposal on the identified key environmental factors are manageable subject to implementation of its recommended conditions.

In respect to air quality impacts posed by odour and noise (considered under the factor 'Social Surroundings'), the EPA advised:

Individual mines will be required to obtain works approvals and licences under Part V of the EP Act for emissions and discharges. This will include those for emissions of noise, dust or odours.<sup>19</sup>

In respect to air quality, the EPA advised:

The EPA considers that if implementation of the future proposals that form part of the Strategic Proposal is in accordance with the objectives in Condition 11, then the future proposals can meet the EPA's objectives for this factor [Air Quality].<sup>20</sup>

<sup>12</sup> Report 1619 page 146

<sup>13</sup> Available at: <http://www.epa.wa.gov.au/administrative-procedures>

<sup>14</sup> Available at: <http://www.epa.wa.gov.au/procedures-manual>

<sup>15</sup> BHP Billiton Iron Ore Pty Ltd (2016) *BHP Billiton Iron Ore Pilbara Public Environmental Review Strategic Proposal*. Report prepared for the Environmental Protection Authority, March 2016.

<sup>16</sup> BHP Billiton Iron Ore Pty Ltd (2016) *BHP Billiton Iron Ore Pilbara Public Environmental Review Strategic Proposal Supplementary Report*. Report prepared for the Environmental Protection Authority, December 2016.

<sup>17</sup> Available at: <http://www.epa.wa.gov.au/statement-environmental-principles-factors-and-objectives>

<sup>18</sup> Available at: <http://www.epa.wa.gov.au/policy-and-guideline-type/environmental-factor-guideline>

<sup>19</sup> Report 1619 page 104

<sup>20</sup> Report 1619 page 114

The EPA also noted that impacts from emissions and discharges from any future derived proposals will be subject to other controls, with specific reference to Part V of the EP Act. In respect to dust (considered under the factor 'Air Quality'), the EPA advised:

... Derived proposals need to obtain all further approvals required under legislation, including under Part V of the EP Act. It is during this process that additional analysis will be undertaken to ensure that any derived proposal uses best-practice and that the proposal minimises emissions as far as practicable.

The EPA notes that the Part V Environmental Regulation licensing process will include further assessment, regulation and mitigation of air emissions, as well as assessment of the proposed technology to ensure best-practice will be implemented.<sup>21</sup>

The future proposals contemplated in the strategic proposal are primarily new iron ore mines, and expansions to existing mines. The EPA's reference to 'licencing' under Part V of the EP Act is taken to be a reference to section 56 of the EP Act, which provides that a person who causes an emission from prescribed premises commits an offence unless the person is a holder of a licence, and any emissions that occur are in accordance with the conditions of such a licence. The types of premises which are 'prescribed' for the purposes of Part V of the EP Act are set out in Schedule 1 of the *Environmental Protection Regulations 1987* (EP Regulations).<sup>22</sup>

While the list of prescribed premises does not include activities for the extraction of iron ore, it includes activities that are generally associated with mining, such as 'processing and beneficiation of metallic or non-metallic ore' (Category 5) and 'mine dewatering' (Category 6).

In the event emissions from future mining activities contemplated by the EPA's report are not the subject of licences under Part V of the EP Act, this is expected to be taken into account by the EPA in its considerations as to whether a future proposal is a derived proposal under section 39B of the EP Act.

In relation to the consideration of particles as PM<sub>2.5</sub>, to the extent the appellants' concerns relate to activities that are proposed within the boundaries of the strategic proposal, the EPA noted:

Given it has existing mining operations in the Pilbara, BHP has been collecting air quality data within the Newman townsite, along with background monitoring data from outside the townsite. Based on recordings from a monitoring station, in places most remote from mining operations the background PM<sub>10</sub> concentration is 18 µg/m<sup>3</sup> versus a National Environmental Protection (Ambient Air Quality) Measure ... standard of 50 µg/m<sup>3</sup>. For total suspended particulates ... the measured background level is 33 µg/m<sup>3</sup> versus a relevant standard of 90 µg/m<sup>3</sup> and a limit of 150 µg/m<sup>3</sup>.<sup>23</sup>

In assessing risks from particulate emissions, the EPA identified nine sensitive receptors of concern. The EPA noted that the identified receptors are located in the eastern part of the project boundary close to the proponent's existing tenements, and stated that receptors such as lookouts, recreation sites and rest stops represent areas where people's exposure to any air quality impacts would be short-term.

While it is acknowledged that the EPA's report does not specifically discuss emissions of particles as PM<sub>2.5</sub>, recommended Condition 11 (see above) requires the proponent to meet the AAQ NEPM for particles as PM<sub>2.5</sub>, as part of the objective for the AQMP. In relation to particulates, the AAQ NEPM sets the maximum concentration standard for particles as PM<sub>10</sub> at 50 micrograms per cubic metre (µg/m<sup>3</sup>) averaged over one day and at 25 µg/m<sup>3</sup> averaged over one year, and for particles as PM<sub>2.5</sub> at 25 µg/m<sup>3</sup> averaged over one day and at 8 µg/m<sup>3</sup> averaged over one year.

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<sup>21</sup> Report 1619 page 113

<sup>22</sup> EP Regulations regulation 5

<sup>23</sup> Report 1619 page 107

In relation to the appellants' concerns in respect to risks posed by asbestos and silica, the EPA advised that these emissions were not identified as having the potential to cause significant environmental impacts. The EPA considered that any potential health risks to the proponent's employees can be adequately managed under the relevant legislation, such as the *Mines Safety and Inspection Act 1994* and *Occupational Health and Safety Act 1984*, consistent with its approach taken in other assessments.<sup>24</sup>

The EPA also advised that its recommended conditions include a requirement for a mine closure plan to be prepared in accordance with *Guidelines for Preparing Mine Closure Plans*,<sup>25</sup> which sets out a number of key principles and approaches in planning for mine closure, and requires proponents to demonstrate how they have identified and managed issues relating to materials characterisation (including for fibrous and asbestiform materials).

For its part, the proponent advised that it undertakes risk assessments and manages risks of asbestos and silica consistent with the relevant legislation and in accordance with its *Hazardous Fibrous Materials, Reactive Ground and Dust Management Plan*, and reports its hygiene monitoring results on a quarterly basis to the Department of Mines, Industry Regulation and Safety (DMIRS).

The proponent advised that asbestos content is determined by sampling and analysis of iron ore at the mines during exploration activities, and by reviewing all planned drill/blast holes against referencing data and visual inspection of the drill cones during mining activities. The proponent advised that following blasting, any potential asbestos material is separated and treated in accordance with *Management of fibrous minerals in Western Australian mining operations*<sup>26</sup>.

It is noted that the DMIRS website<sup>27</sup> contains a number of documents, standards, safety bulletins and guidance relating to the management of asbestos on mine sites.

## Conclusion

Taking the above into account, it is considered the EPA's assessment of the strategic proposal in respect to air quality issues was appropriate. In particular, it is considered that any future proposal will be required to meet the AAQ NEPM for air quality or such other standard approved by the Chief Executive Officer (CEO), which includes particles as PM<sub>2.5</sub>.

In addition, before making a declaration that a future referred proposal is a derived proposal, the EPA may refuse to make such a declaration where certain criteria are met, including where environmental issues raised by the proposal were not adequately assessed when the strategic proposal was assessed.

It follows that it is recommended that this ground of appeal be dismissed.

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<sup>24</sup> For example: Environmental Protection Authority (2014) *Koodaideri Iron Ore and Infrastructure Project – Mount Bruce Mining Pty Limited*. Report 1533, November 2014. Government of Western Australia.

<sup>25</sup> Department of Mines and Petroleum / Environmental Protection Authority (2015) *Guidelines for Preparing Mine Closure Plans*. Version 2, May 2015. Government of Western Australia.

<sup>26</sup> Department of Mines and Petroleum (2015) *Guideline – Management of fibrous minerals in Western Australian mining operations – Second edition*. Resources Safety, Department of Mines and Petroleum, Government of Western Australia.

<sup>27</sup> Available at: <http://www.dmp.wa.gov.au/Safety/Guidance-about-fibrous-mineral-6877.aspx>

### GROUND 3: ADEQUACY OF RECOMMENDED CONDITIONS IN RELATION TO AIR QUALITY

Broadly, one appellant submitted that the EPA failed to recommend adequate conditions to control dust generated from within the strategic proposal boundary, and requested a number of amendments and additions to the EPA's recommended conditions in respect to the control of dust relevant to the strategic proposal and submitted that additional requirements be included with respect to compliance and reporting, as summarised below:

- control of dust emissions, through considering dust as a 'General' rather than 'Specified' emission, additional requirements relating to the installation and operation of dust control equipment at point sources, and that a definition for 'iron ore' be added which states that bulk materials are not to contain asbestos or asbestiform materials;
- monitoring of dust emissions, through additional requirements relating to the installation and operation of moisture analysers and a LiDAR monitor as well as the determination of triggers for reportable events and management actions;
- compliance and reporting, through the following:
  - Condition 4-2 should be changed to require the Compliance Assessment Plan to include an Air Quality Compliance Assessment Plan which contains at least all of the requirements referred to in Condition 11 and requires their performance;
  - Condition 4-3 should be changed to require the implementation of the strategic proposal to be dependent on approval of the Compliance Assessment Plan (including the requested Air Quality Compliance Assessment Plan) required under Condition 4.2;
  - Condition 4-5 should be changed to require the proponent to also advise the public of any potential non-compliance, where so contemplated or required by any of the requested Air Quality Compliance Assessment Plan provisions or by Condition 11;
  - Condition 4-8 should be changed so that the provision for the proponent to review and revise the Compliance Assessment Plan (including as or when directed by the EPA) is dependent on no requirements and obligations being amended or diminished in respect to the requested Air Quality Compliance Assessment Plan or requirements under Condition 11; and
  - an additional requirement requiring reportable non-compliance to be reported direct to the Minister; and
- Condition 11-1 should be changed to require the proponent to ensure that air quality is achieved and emissions minimised so that (among other things) the AAQ NEPM is not exceeded, and requirements included in relation to limiting emissions.

#### Consideration

As outlined previously in this report, sections 39B and 45A of the EP Act provide for the EPA to declare a future proposal to be a derived proposal (under an approved strategic proposal), and for the Minister to notify which of the implementation conditions are relevant to that derived proposal. Section 39B also provides for the EPA to refuse to declare a future proposal to be a derived proposal for specified environmental reasons.

Following its assessment of the strategic proposal, the EPA recommended a suite of conditions that would apply to those future proposals that are declared to be derived proposals (if the strategic proposal is approved). The EPA's recommended conditions include requirements relating to compliance and reporting, public availability of information, preparation of environmental management plans, rehabilitation and decommissioning, and offsets. The EPA's recommended conditions limit the future proposals under the strategic proposal to those described in Schedule 1.

In relation to the appellant's submission that the EPA failed to recommend adequate conditions with respect to the management of dust, it is considered that the EPA's recommended Condition 11 is directed towards controlling dust emissions from the implementation of future proposal activities.

In this regard, recommended Condition 11 requires the proponent to prepare an AQMP to address impacts on air quality, including from dust and other emissions due to vegetation clearing, mining (including blasting), and materials handling, stockpiling, transport, crushing and screening activities. As outlined previously in this report, Condition 11 also specifies that the AQMP is to meet the EPA's environmental objective for the factor 'Air Quality', and in particular meet the AAQ NEPM or other guidelines on a proposal case-by-case basis as determined by the CEO.

Specifically, the AQMP is to contain (among other things) triggers and thresholds to ensure early warning monitoring and management actions, and reporting if the specified environmental outcomes are not achieved, and is to be submitted to the CEO within six months of the date of issue of a Notice under section 45A of the EP Act or as otherwise agreed in writing by the CEO, and prior to ground disturbing activities, in accordance with recommended Conditions 6-1 and 6-2.

On the basis of the above, it is considered that the EPA's recommended conditions relating to air quality, and in particular the requirement for the derived proposals to meet recognised air quality standards including the AAQ NEPM, are sufficient to ensure effective dust control without further prescribing mechanisms by which the specified outcomes are to be achieved.

In relation to the appellant's contention that the use of LiDAR monitoring should be required, it is noted that irrespective of the type of monitor used, the EPA's recommended Condition 11 requires that the strategic proposal meets recognised air quality standards, including the AAQ NEPM. It is considered unnecessary that the recommended conditions in this case prescribe the use of a particular type of monitor as it would be open to the EPA to assess the adequacy of the AQMP when assessing compliance, and it is considered that the prescription of a particular technology has the potential to limit best practice outcomes over time.

In relation to compliance and reporting, it is noted that the EPA's recommended conditions require the proponent to:

- prepare and maintain a Compliance Assessment Plan which is to be submitted to the CEO at least six months prior to the first Compliance Assessment Report or implementation of the proposal, whichever is sooner, and which contains specified information in relation to compliance assessments and Compliance Assessment Reports;<sup>28</sup>
- following CEO approval of the Compliance Assessment Plan, assess compliance with the conditions in accordance with the Compliance Assessment Plan, and retain reports of all compliance assessments and make these reports available on request of the CEO;<sup>29</sup>
- advise the CEO in writing of any potential non-compliance, including exceedance of threshold criteria and/or failure to implement management actions, within seven days;<sup>30</sup>
- submit a Compliance Assessment Report annually by 1 October each year addressing compliance in the previous financial year (or as otherwise as agreed by the CEO), which contains specified information in relation to compliance, non-compliances and corrective/preventative actions and availability;<sup>31</sup> and
- review the Compliance Assessment Plan at its discretion and as/when directed by the CEO, and implement the revised Compliance Assessment Plan following EPA approval of it.<sup>32</sup>

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<sup>28</sup> Recommended Conditions 4-1 and 4-2

<sup>29</sup> Recommended Conditions 4-3 and 4-4

<sup>30</sup> Recommended Condition 4-5

<sup>31</sup> Recommended Conditions 4-6 and 4-7

<sup>32</sup> Recommended Conditions 4-8 and 4-9

Noting this context, it is considered that the EPA's recommended conditions require the proponent to assess and report on compliance with the recommended conditions, including in relation to the manner and extent to which the proponent has met recognised air quality standards and addressed air quality issues in accordance with its AQMP. As a result, specifying certain particulars (such as an Air Quality Compliance Assessment Plan) that are already provided for under the EPA's recommended conditions, including recommended Condition 11, is considered to be redundant.

The EPA's recommended conditions also require the proponent to submit a Compliance Assessment Plan at least six months prior to the first Compliance Assessment Report or implementation of the [relevant derived] proposal. As a result, noting that the EPA's recommended conditions would apply to those future proposals that are declared to be derived proposals (if the strategic proposal is approved), a requirement for a Compliance Assessment Plan to be approved by the CEO prior to implementation of the strategic proposal is considered unlikely to have any environmental benefit.

In relation to one appellant's request that breaches of the recommended conditions are reported to the Minister, it is considered that this request is redundant. Section 48(1a) of the EP Act requires the CEO, on becoming aware of a breach of a Ministerial condition, to report the non-compliance to the Minister. No additional reporting is therefore necessary, as it would duplicate existing statutory requirements.

In relation to public availability of Compliance Assessment Reports, the EPA's recommended conditions require the proponent to make all validated environmental data and other information (except the particulars of a secret formula or commercially sensitive information) relevant to the assessment and implementation of the strategic proposal publicly available within a reasonable time period approved by the CEO after the issue of the Section 45A Notice and for the remainder of the life of the proposal.<sup>33</sup> These requirements also relate to the public availability of compliance matters including in relation to air quality.

In any event, it is noted that other statutory processes are likely to apply to the future proposals, such as licensing of prescribed activities under Part V of the EP Act, and through legislation administered by DMIRS including the *Mining Act 1978*, *Mines Safety and Inspection Act 1994*, *Dangerous Goods Safety Act 2004* and associated regulations. Additional assessment and dust controls can also be applied to the future proposals through these processes.

In relation to one appellant's request that fugitive dust is not a 'Specified Emission', it is noted that Report 1619 does not state this, and that the terminology cited by the appellant appears to reflect terminology applied by the Department of Water and Environmental Regulation in licences issued under Part V of the EP Act.

## Conclusion

Taking into account the above, it is considered that the EPA has recommended appropriate conditions to in relation to dust control and management during the implementation of the strategic proposal and the future proposals.

For these reasons, it is recommended that this ground of appeal be dismissed.

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<sup>33</sup> Recommended Conditions 5-1 and 5-2

## GROUND 4: TIME LIMIT FOR REFERRAL OF DERIVED PROPOSALS

By this ground of appeal, one appellant submitted that the EPA's recommended Condition 1-1 and Schedule 1 Table 2 should be changed to include a 10, 20, 30 or potentially 40 year timeframe in which the strategic proposal will be able to support a derived proposal. The appellant submitted that the insertion of this timeframe is appropriate to ensure changes and advancements in technology, biology and other matters are reflected in approvals. The appellant also submitted that Schedule 1 Table 2 should be revised to add in missing items 1 and 2.

### Consideration

The proponent's ESD states:

No specific timeframe is to apply to this strategic proposal. Operations will be progressively developed over at least 50 years.<sup>34</sup>

The proponent's Supplementary Report states:

The strategic proposal presented all of BHP Billiton Iron Ore's current tenure in the Pilbara and has assessed the impact of potential mining development for the next 100 years.<sup>35</sup>

Condition 3-1 specifies that if a proposal is not substantially commenced within five years of the date of issue of a Notice under section 45A of the EP Act, the proposal may not be implemented.

The EPA confirmed that the time limit for substantial commencement applies to each derived proposal and not to the date of the Ministerial Statement for the strategic proposal (if approved). The EPA advised that while there is no time limit on the strategic proposal, practically it would come to an end once the derived proposals have been implemented, or earlier if the cumulative approved clearing for declared derived proposals reaches 98,500 ha, or if the environmental issues associated with iron ore mining in the Pilbara have changed so much that no future proposals meet the criteria laid out in section 39B of the EP Act to be declared a derived proposal by the EPA.

The proponent advised that the strategic proposal includes the proponent's life of existing assets, which by definition will be a long-term development program, and that the proposed management and assurance framework is sufficiently flexible to address foreseeable change and to address future uncertainty. The proponent considered that a shorter timeframe would limit its ability to implement the future proposals, and could result in greater environmental impacts if the future proposals are implemented simultaneously to achieve development within a shorter timeframe.

For the reasons that follow, the outcome sought by the appellant is considered to be unnecessary. Section 39B(4) of the EP Act states:

- ... the EPA may refuse to declare the referred proposal to be a derived proposal if it considers that –
- (a) environmental issues raised by the proposal were not adequately assessed when the strategic proposal was assessed; or
  - (b) there is significant new or additional information that justifies the reassessment of the issues raised by the proposal; or
  - (c) there has been a significant change in the relevant environmental factors since the strategic proposal was assessed.

In combination, these criteria provide a comprehensive mechanism to address shortcomings in the original assessment, or new information, or changes to the relevant environmental factors since the original assessment.

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<sup>34</sup> ESD page 16

<sup>35</sup> Supplementary Information page 23

For example, in the event there is a significant change in the conservation status of a species likely to be impacted by one or more of the future proposals, it would be open to the EPA to refuse to declare the proposal to be a derived proposal, thereby triggering the requirement for a full assessment of that proposal.

In addition to the above, the Minister for Environment may, at any time, request the EPA to review the conditions applying to a proposal under section 46 of the EP Act, and through that mechanism, it is open to the EPA to consider new information or changed circumstances, as are relevant to the strategic proposal, or any future proposal identified in the strategic proposal.

Given the tenor of this ground of appeal is concern that changing knowledge or new information may result in the assessment of the strategic proposal to become outdated, it is considered that such risks were in the contemplation of Parliament in enacting sections 39B(4) and 46. As such, it is not considered necessary or appropriate to apply conditions of the kind requested by the appellant at this time. Rather, the normal provisions of the EP Act are the appropriate means by which the issues raised by the appellant should be addressed into the future.

In relation to missing items 1 and 2 in Schedule 1 Table 2, the proponent advised that this is a formatting/typographical error and that no items are missing. It is noted that following determination of the appeals in this case, under section 45 of the EP Act the Minister will consult with decision-making authorities in relation to whether or not the strategic proposal should be implemented, and if so what conditions should be applied. The error in Table 2 can be resolved through this process.

## **Conclusion**

For the reasons stated above, it is recommended this ground of appeal be dismissed.

## **CONCLUSION AND RECOMMENDATION**

In reviewing the matters raised by the appellants in the context of the EPA's report and recommendations, it is considered that the EPA has:

- appropriately confined its assessment to the strategic proposal as referred;
- appropriately assessed the strategic proposal in respect to air quality issues in accordance with the EP Act and its procedures and policies, and reasonably concluded that the likely environmental effects in respect to air quality issues are not so significant as to be unacceptable if implemented in accordance with the EPA's recommended conditions; and
- recommended appropriate conditions to ensure among other things that dust generated during implementation of the strategic proposal and the future proposals is effectively controlled without duplicating other regulatory processes applying to the future proposals (including under Part V of the EP Act).

It is therefore recommended that the appeals be dismissed.

The final decision on whether or not the strategic proposal should be implemented, and the precise wording of the conditions which apply to any such implementation, is to be made under section 45 of the EP Act.

Emma Gaunt  
APPEALS CONVENOR

**Investigating Officer:**  
Emma Bramwell, Senior Environmental Officer

## APPENDIX 1

### List of appellants

- C Towsey (appellant 019.001)
- Pathfinder Exploration Pty Ltd (appellant 019.002)
- D Jacoby (appellant 019.003)
- K Jacoby (appellant 019.004)
- A Johnston (appellant 019.005)
- J Ford / Port Hedland West End Action Group (appellant 019.006)
- J Taylor (appellant 019.007)
- L Taylor (appellant 019.008)
- A Jacoby (appellant 019.009)
- Pier Hotel Port Hedland (appellant 019.010)
- D Moloney (appellant 019.011)
- Anderson UT Holdings Pty Ltd ATF Anderson Unit Trust, Hain FT Pty Ltd ATF Hain No.2 Family Trust and M. Hain (appellant 019.012)
- Port Hedland Community Progress Association Inc (appellant 019.013).