



Environmental Protection Act 1986

Hon Stephen Dawson MLC
Minister for Environment

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST THE REPORT AND RECOMMENDATIONS OF THE ENVIRONMENTAL PROTECTION AUTHORITY PILBARA EXPANSION STRATEGIC PROPOSAL (EPA REPORT 1619)

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 100(1)(d) of the *Environmental Protection Act 1986* in objection to the Environmental Protection Authority's report and recommendations in respect to the above proposal. 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:	C. Towsey; Pathfinder Exploration Pty Ltd; D. Jacoby; K. Jacoby; A. Johnston; J. Ford/Port Hedland West End Action Group; J. Taylor; L. Taylor; A. Jacoby; Pier Hotel Port Hedland; D. Moloney; Anderson UT Holdings Pty Ltd ATF Anderson Unit Trust, Hain FT Pty Ltd ATF Hain No.2 Family Trust and M. Hain; and Port Hedland Community Progress Association.
Proponent:	BHP Billiton Iron Ore Pty Ltd
Proposal description:	The Pilbara Expansion Strategic Proposal identifies the proponent's proposed future iron ore mining operations in the Pilbara region for the next 50-100 years.
Minister's Decision:	The Minister dismissed the appeals.
Date of Decision:	26 November 2018

REASONS FOR MINISTER'S DECISION

Pursuant to section 106 of the *Environmental Protection Act 1986* (the Act), the Minister obtained a report from the Environmental Protection Authority (the EPA) on the matters raised in the appeals. The Minister also received a report from the Appeals Convenor. The Appeals Convenor's report sets out the background and other matters relevant to the appeals.

As outlined in the Appeals Convenor's report, the appeal right in relation to an EPA report and recommendations considers environmental significance, relevance of factors, additional information not considered by the EPA, technical errors and attainment of policy objectives.

In summary, the appeals raised concerns in relation to the scope of the EPA's assessment, in particular regarding the exclusion of Port Hedland from the strategic proposal, the adequacy of the EPA's assessment of the environmental factor 'Air Quality', and the suitability of the recommended conditions to control dust emissions and health risks associated with the export of mine products through Port Hedland. Appellants sought for the strategic proposal to be remitted to the EPA for further assessment.

The proposal the subject of this appeal is a strategic proposal. Relevant to this appeal, section 37B(2) of the Act states that a proposal is a 'strategic proposal' where it identifies a number of future proposals that are likely, if implemented in combination with each other, to have a significant effect on the environment.

Section 38(3) of the Act provides that the proponent of a strategic proposal may refer that proposal to the EPA. No other person can refer a strategic proposal to the EPA.

The above statutory framework establishes that the referral of a strategic proposal to the EPA is solely in the domain of a proponent, and as such, it is for the proponent to define the future proposals that form part of the strategic proposal.

In this case, the proponent referred a strategic proposal for the development of future mines and associated infrastructure within the Pilbara. The strategic proposal did not include operations at the Port Hedland port. Given the 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 Act, there is some doubt that the inclusion of the port operations could be considered as part of a strategic proposal, as suggested by appellants.

For the above reasons, it was the Minister's view that to the extent the appeals relate to the port operations which are not in the contemplation of the strategic proposal, the Minister considered they are outside of the scope of the appeal. As such, the Minister has dismissed the appeals to that extent.

Some appeals raised issues that were related to elements of the proposal assessed by the EPA, including in respect to the adequacy of the EPA's assessment of dust and recommended conditions, and the time limit for derived proposals. The Minister considered these matters, and determined the appeals in the manner recommended by the Appeals Convenor. In short, the Minister considered that the risks identified in respect to particles as PM_{2.5}, asbestos and silica were appropriately assessed by the EPA, and that appropriate conditions can be applied to ensure the environment is protected.

In addition to the above, the Minister noted that any future proposal under the strategic proposal requires referral to the EPA. At that stage, the EPA is empowered to consider whether the environmental risks posed by that future proposal were considered at the time of the strategic assessment. If the EPA at that time forms the view that, for example, the environmental issues raised by the referred proposal were not adequately assessed when the strategic proposal was assessed, the EPA may refuse to declare that proposal to be a derived proposal. In such a case, the proposal would be assessed as a new proposal in the usual way.

It follows from the above that the Minister dismissed the appeals. The Minister will now consult with relevant decision-making authorities under section 45(1) of the Act as to whether or not the strategic proposal should be implemented, and if so, the conditions to which the implementation of future derived proposals should be subject.

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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