



Environmental Protection Act 1986

**Hon Stephen Dawson MLC**  
**Minister for Environment**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEALS AGAINST REPORT AND RECOMMENDATIONS OF ENVIRONMENTAL PROTECTION AUTHORITY – PILBARA ENERGY GENERATION POWER STATION (EPA REPORT 1686)**

#### **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 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](http://www.appealsconvenor.wa.gov.au).

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<b>Appellants:</b>	Professor Alex Gardner Gondwana Property Pty Ltd Conservation Council of Western Australia Inc.
<b>Proponent:</b>	Pilbara Energy (Generation) Pty Ltd Commodities Pty Ltd
<b>Proposal description:</b>	The proposal is for the installation and operation of a 165 megawatt gas-fired power station adjacent to the existing Solomon iron ore mine in the Pilbara
<b>Minister's Decision:</b>	The Minister allowed in part the appeals
<b>Date of Decision:</b>	22 January 2021

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

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Pilbara Energy (Generation) Pty Ltd (PEG) proposes to install and operate a 165 megawatt (MW) power station adjacent to the Solomon iron ore mine in the Pilbara. The Solomon mine is operated by Fortescue Metals Group Ltd (Fortescue), and PEG is a wholly owned subsidiary of Fortescue.

The power station will primarily be used to provide electricity to the North Star magnetite project (also known as Iron Bridge), which Fortescue owns with joint venture partner Formosa Steel IB Pty Ltd. In that regard, Fortescue has lodged a request under section 45C of the *Environmental Protection Act 1986* (the Act) to remove a 221 megawatt (MW) power station from the proposal description for North Star. Fortescue submitted that substituting the North Star power station with the PEG proposal the subject of this appeal will yield significant savings in total greenhouse gas emissions.

The concerns raised by the appellants are set out in detail in the Appeals Convenor's report. In summary, appellants expressed concern about the status of the North Star power station and the appropriateness of the Environmental Protection Authority (EPA) recommending approval of a proposal that will increase net greenhouse gas emissions when urgent reductions are required. Each appellant submitted that, based on relevant scientific information, policy and statutory context, the EPA should have either recommended against the proposal being implemented, or otherwise recommended the proposal achieve net zero greenhouse gas emissions from commencement.

### **The Minister's decision**

On the basis of the information available to the Minister, while there were some shortcomings in the EPA's assessment of the proposal, he did not consider any of these (individually or in combination) warrant remitting the proposal to the EPA for further assessment.

The Minister has varied the EPA's recommended conditions in order to improve transparency and confidence in the proponent's greenhouse gas management plan. This includes a requirement for a revised plan to be submitted at least once every five years. The Minister has further strengthened the conditions to make it clear that responsibility for approval of revised greenhouse gas management plans will sit with the Chief Executive Officer (CEO) of the Department of Water and Environmental Regulation.

A final decision on whether or not the proposal may be implemented, and if so, the conditions to which it should be subject, will be made under section 45 of the Act. Consistent with the EPA's advice in response to the appeals, this process will consider if the residual greenhouse gas emissions from the proposal are acceptable and/or aligned with current policy settings, taking into account the many sources of greenhouse emissions and reduction opportunities in the State.

The Minister also agreed with the Appeals Convenor that, in the event this proposal is approved, he will initiate a request to the EPA to review the conditions applying to the North Star proposal to align with the intent of the section 45C application as it relates to operational power generation for that proposal. The Minister will also request the EPA to consider the extent to which the conditions for North Star should be amended to prioritise use of electricity generated by the power station the subject of this appeal, for the reasons identified by the Appeals Convenor.

It follows that the Minister has allowed the appeals in part, by varying the EPA's recommended conditions consistent with the above description. The full reasons for his decision follow.

### **What is the proposal?**

The proposal the subject of this appeal is the installation and operation of a 165 MW gas-fired power station adjacent to the existing Solomon iron ore mine.

As noted by the Appeals Convenor, the section 45C application referred to above is not limited to removing the 221 MW power station, but includes adding up to 40 MW of diesel generation. This is not reflected in either the greenhouse gas management plan or the EPA's Report. While this omission is unfortunate, the EPA advised that the emissions associated with removing the 221 MW were not relied on as part of its assessment. The Minister accepted this advice, and proceeded on the basis that neither the savings referenced by the removal of the 221 MW power station, nor the addition of up to 40 MW of diesel generation, were relied on by the EPA.

That then leaves the substantive issues raised by appellants in respect to the EPA's assessment of the PEG proposal. In short, the appellants were of the view that the EPA failed to properly consider the effect the residual emissions would have on the WA environment, and in so doing, failed to properly apply policy and fulfil its statutory functions.

### **What are the residual emissions from the proposal?**

The EPA's assessment found that the residual scope 1 emissions over the life of this proposal, after mitigation, will be about 9.6 million tonnes carbon dioxide equivalent (CO<sub>2</sub>-e).

As noted by the Appeals Convenor, these emissions are based on a worst-case scenario that the power station will operate at full capacity (165 MW). Even at that capacity, the North Star proposal will require additional power, which will be obtained from other sources. This includes a future 150 MW solar installation and excess capacity at the existing Solomon power station.

The Minister agreed with the Appeals Convenor that, given the higher emissions intensity of the Solomon power station compared to the PEG power station, mechanisms that maximise the use of lower or zero emission sources should be prioritised. In that regard, if the decision makers under section 45 of the Act agree that the PEG proposal may be implemented, the Minister intends to request the EPA to undertake a review of the conditions applying to the North Star proposal, in the manner set out in the Appeals Convenor's report.

Noting that the EPA is due to review its guidance material for this factor this year, the Minister has separately requested that it consider the extent to which this guidance should be amended to require proponents to identify not only the worst-case emissions scenarios, but also likely operational emissions.

### **Did the EPA adequately assess these emissions?**

Appellants submitted that the EPA's report does not demonstrate the EPA considered relevant information, and that as a result, the proposal should be remitted to the EPA for further assessment.

The basis for these claims include that the EPA failed to correctly apply its objective for greenhouse gas emissions, the principles under section 4A of the Act, and current scientific knowledge.

The proposal the subject of this appeal is the installation and operation of a 165 MW gas-fired power station adjacent to the existing Solomon iron ore mine. Without mitigation, and on the assumption the plant will operate at maximum capacity for 40 years, GHGe from the proposal are predicted to be over 26.8 million tonnes CO<sub>2</sub>-e (670,666 tCO<sub>2</sub>-e per year).

In April 2020, the EPA published its Environmental Factor Guideline: Greenhouse Gas Emissions. This Guideline includes the EPA's objective for greenhouse gas emissions, which is 'to reduce net greenhouse gas emissions in order to minimise the risk of environmental harm associated with climate change'. The Guideline states that as a general rule, where GHG emissions from a proposal exceed 100,000 tonnes of scope 1 emissions each year measured in CO<sub>2</sub>-e, the proposal will require assessment.

Consistent with the Guideline, the EPA identified greenhouse gas emissions as a key environmental factor for this proposal and required the proponent to provide certain information. This included estimated greenhouse gas emissions, a greenhouse gas management plan outlining the proponent's contribution towards the aspiration of net zero greenhouse gas emissions by 2050, and measures to avoid, reduce or offset greenhouse gas emissions from the proposal.

The proponent's greenhouse gas management plan sets out how it intends to reduce scope 1 emissions over the life of the proposal, with a long-term target to achieve carbon neutrality in the five years ending 30 June 2045. The effect of these commitments are that scope 1 emissions from the proposal are expected to reduce from 26.8 mt CO<sub>2</sub>-e to about 9.6 mt CO<sub>2</sub>-e.

The EPA assessed the information provided by the proponent and accepted that the reduction in emissions were consistent with the EPA's objective to reduce net emissions to minimise impacts associated with climate change.

The Minister carefully considered the information provided to him in respect to the EPA's assessment, and while some shortcomings were identified, he did not believe these were sufficient to warrant remittal to the EPA for further assessment or reassessment.

The Minister came to this decision noting the EPA's view that it is difficult, if not impossible, to make a direct link between a single proposal's emissions and the environmental impacts associated with climate change in Western Australia, and that it is for the decision makers under section 45 to determine if the residual emissions from the proposal are acceptable taking into account the many sources of greenhouse emissions and reduction opportunities in the State.

### **Are the conditions recommended by the EPA adequate?**

Appellants recommended that the conditions be modified to require (among other things) all residual emissions to be offset over the life of the proposal. The Conservation Council additionally sought for reporting requirements to be modified.

For the same reasons as above, the question of offsetting the residual emissions is a matter for the decision makers under section 45 of the Act. As noted by the EPA, this provides an opportunity to consider other sources of greenhouse emissions and reduction opportunities around the State.

As to the conditions more generally, the Minister considered the EPA and Appeals Convenor's advice and agreed to allowing the appeals accordingly. This includes a new requirement for the greenhouse gas management plan to be revised and approved by the CEO at least every five years, and a new, publicly available summary plan every five years that updates benchmarking information and reduction measures implemented by the proponent.

### **Next steps**

As noted, a final decision on whether or not the proposal may be implemented, and if so, the conditions to which it may be subject, is a matter for determination under section 45 of the Act. Consistent with the EPA's advice and the Appeals Convenor's Other Advice, this may include consideration of Fortescue's broader commitments in relation to climate change.

Should the decision makers determine that the proposal be implemented, the Minister agreed with the Appeals Convenor's advice and will initiate a review of the conditions applying to the North Star proposal under section 46 of the Act. This will be in addition to the section 45C application currently on foot.

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Note: this decision is published pursuant to the terms of section 110 of the *Environmental Protection Act 1986* and regulation 8 of the *Environmental Protection Regulations 1987*.

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