



Environmental Protection Act 1986

**Hon Stephen Dawson MLC
Minister for Environment**

MINISTER'S APPEAL DETERMINATION

APPEALS AGAINST CONDITIONS OF A WORKS APPROVAL W6020/2016/1 LIQUID WASTE FACILITY, FOREST HILL

Purpose of this document

This document sets out the Minister's decision on appeals lodged under section 102(3)(a) of the *Environmental Protection Act 1986* in objection to objection to the conditions of a works approval. 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.

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| Appellants: | Mr PM Drage Mr C Drage |
| Works Approval Holder: | O.S.I.B. Pty Ltd |
| Proposal description: | Construction of a liquid waste facility |
| Minister's Decision: | The Minister dismissed the appeals |
| Date of Decision: | 2 October 2017 |

REASONS FOR MINISTER'S DECISION

Pursuant to section 106 of the *Environmental Protection Act 1986* (the Act), the Minister obtained a report from the Department of Water and Environmental Regulation (DWER) 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.

The Minister was advised that the Office of the Appeals Convenor met with the appellants to discuss the appeals. The Appeals Convenor also discussed the issues raised in the appeals with the works approval holder.

In summary, the Minister understood that the appellants were concerned about possible impacts to surface water and groundwater, which they submitted may affect a future marron farming enterprise and residence, and the Pardenup Nature Reserve, as well as impacts to amenity as a result of odour, noise and dust from the facility. The appellants requested that DWER impose conditions for monitoring and reporting of groundwater and surface water quality. The appellants also expressed concern regarding the absence of complaint

procedures, vehicle access through a Right of Carriageway, a future marron farming enterprise and residence, and management of vermin.

As noted in the Appeals Convenor's report, the right of appeal in relation to a works approval is in relation to the conditions of the works approval. The Minister's consideration of the appeals is therefore limited to the adequacy and appropriateness of the conditions applied to the works approval for the design and construction of the facility.

In relation to impacts to surface water and groundwater, DWER undertook a detailed risk assessment for discharges to land including structural failure of the facility walls and seepage to groundwater. In response to the appeals, DWER advised that the facility is a closed system and no discharges of liquid waste or treated liquid water are permitted. Condition 3 of the works approval specifies pond lining requirements in accordance with published guidelines, and DWER considered that the proposed clay liners are sufficiently impervious to ensure that there is no impact to groundwater. DWER also advised that condition 5 requires the works approval holder to test that the compacted clay liners achieve the specified hydraulic conductivity, and to test the HDPE lining to provide quality assurance.

Due to uncertainty about the depth to groundwater, DWER advised that condition 5 requires that an independent hydrologist confirms that the base of the ponds is at least 2 metres (m) from groundwater. In addition, condition 2 requires that groundwater monitoring bores are constructed to provide information on the depth to groundwater and groundwater quality into the future.

DWER noted that surficial water was likely to be a result of soil saturation from recent rainfall and any surface water flow is expected to be in a north-easterly direction, away from the appellants' properties. DWER advised that surface water monitoring is not warranted due to the 'closed' nature of the system, the proponent's proposed stormwater and runoff management measures, and the transitory and point in time nature of surface water monitoring.

In regard to the appellants' concerns that the evaporation potential has been underestimated in the anaerobic ponds and therefore there is the potential for pond overtopping, DWER advised that while there may have been an over estimation of the evaporation rate due to the crust formation, it was generally satisfied that the water balance calculations were sufficient for the design and capacity of the ponds. In any event DWER advised that a future licence would require the applicant to meet and maintain 500 millimetres of pond freeboard as the primary control to mitigate overtopping risk.

In regard to sensitive receptors, DWER identified the nearest sensitive receptor to be 1.3 kilometres from the premises. While the Minister noted the appellants' concerns regarding potential impacts to a future marron farm and residence, DWER noted that under its *Guidance Statement: Risk Assessments (2017)*, risk assessments are considered 'point in time assessments' and as such, without any current application for planning consent, a proposed future enterprise would not have been considered as a receptor in the risk assessment. Notwithstanding this, DWER advised that although the proposed future marron farm was not considered in its risk assessment, the dam proposed for the marron farm is located 930 m from the closest infrastructure on the premises. As DWER considered risks relating to surface water and groundwater contamination to receptors closer to the premises than the dam, it is considered that DWER adequately considered receptors most likely to be affected by emissions and DWER determined the risks to be acceptable.

In relation to amenity, DWER advised that it determined that impacts from noise and dust are not expected given there is adequate separation distance from the premises to the closest sensitive receptor and the scale of the works for construction. DWER advised that noise will

be regulated through the *Environmental Protection (Noise) Regulations 1997* and dust will be regulated by section 49 and the general provisions of the Act. Should there be unreasonable emissions associated with the operation of the facility, the Minister noted that complaints can be reported to the DWER Pollution Watch 24-hour hotline on 1300 784 782.

DWER undertook a detailed risk assessment for odour and determined that based on normal operating conditions, odorous emissions from the facility are not expected to impact on receptors. In this regard, the Minister noted that DWER identified in its assessment the likely conditions to be applied in the licensing stage to reduce the risk of odour impacting on nearby receptors.

While the Minister noted the appellants' concerns around vehicles accessing the premises via the Right of Carriageway, DWER advised that this is a matter for the Shire of Plantagenet under the *Planning and Development Act 2005* and the *Planning and Development (Local Planning Schemes) Regulations*.

In relation to emissions pertaining to the operational phase of the facility, the Minister understood that a licence to operate will be required under Part V of the Act. The Minister noted that the licensing provisions provide for public comment on applications for licences and an opportunity for third party appeals in respect to conditions applies to any licence that may be issued.

Taking into account the information presented in respect to the appeals, the Minister was of the view that DWER adequately considered the potential environmental impacts of the facility and applied appropriate regulatory controls to the works approval. The Minister therefore dismissed the appeals.

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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