



Environmental Protection Act 1986

**Hon Stephen Dawson MLC  
Minister for Environment**

## **MINISTER'S APPEAL DETERMINATION**

### **APPEAL IN OBJECTION TO AMENDMENT OF LICENCE L6162/1986/15 – AUSTRAL BRICKS (WA) PTY LTD MILITARY ROAD, BELLEVUE, CITY OF SWAN**

#### **Purpose of this document**

This document sets out the Minister's decision on an appeal lodged under section **102(3)(b)** of the *Environmental Protection Act 1986* in objection to the former Department of Environment Regulation (DER) to amend 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](http://www.appealsconvenor.wa.gov.au).

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<b>Appellant:</b>	Hon Michelle Roberts MLA
<b>Licence Holder:</b>	Austral Bricks (WA) Pty Ltd
<b>Proposal description:</b>	Brickworks at Military Road, Bellevue
<b>Minister's Decision:</b>	The Minister dismissed the appeal
<b>Date of Decision:</b>	9 October 2017

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

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The Minister noted that the former Department of Environment Regulation (DER) reissued a licence to Austral with respect to the Bellevue premises in May 2015. This licence included a number of changes to controls on emissions from the premises. Austral lodged an appeal with the former Minister for Environment in objection to a number of the conditions.

In response to the appeal, DER recommended conditions be amended. Rather than this being done as an outcome of the appeal, DER undertook to amend the licence to reflect its revised position. This was done in November 2016, and it was from this decision that this appeal was received.

The Appeals Convenor's report summarises the changes to the licence given effect by DER in November 2016. Relevant to this appeal, the amendments removed requirements for ambient monitoring of hydrogen fluoride, preparation of a continuous emissions monitoring system implementation plan, and various requirements relating to management and reporting of bypass events (being occasions where gases from the kiln bypass emissions control equipment).

The appellant questioned the technical basis for DER's decision, including in respect to whether health assessments have been conducted noting the proximity of the premises to the Midland Hospital. The appellant raised specific concerns about the removal of ambient monitoring as well as changes to management and reporting of bypass events.

In response to the appeal, DER advised that the amendments reflected an appropriate risk assessment for the facility, citing the two Midland Background Air Quality studies undertaken in 2007/08 and 2011/12 as demonstrating there is no public health risk raised by emissions from the brickworks.

More recently, the Department of Water and Environmental Regulation (DWER, which assumed the functions of DER on 1 July 2017) provided updated advice in response to new monitoring data submitted by Austral. In this advice, DWER reconfirmed that the changes to the licence were appropriate, and that while the monitoring results taken from the pre-scrubber port of the stack show emission levels of hydrogen fluoride and hydrogen chloride are above the limits set in the licence, they are likely to be conservative and therefore not reflective of actual emissions during bypass events.

The new monitoring data provided by Austral was from February 2017, and included measurements of pre-scrubber concentrations of hydrogen fluoride and hydrogen chloride. Austral provided this data on the basis of its view that this sample location (being before the pollution control equipment) would be representative of emissions during bypass events. As noted in the Appeals Convenor's report, the results of this sampling show hydrogen fluoride concentration at 65 mg/m<sup>3</sup> (licence limit of 20 mg/m<sup>3</sup>) and hydrogen chloride concentration at 140 mg/m<sup>3</sup> (licence limit of 100 mg/m<sup>3</sup>).

Noting DWER's expertise in analysing and managing emissions from industrial land uses, the Minister was of the view that its explanation of the apparent exceedances is justified. However, noting its advice that the licence is currently under review, and that the test results were put forward by Austral as being reflective of the level of emissions that would be expected during bypass events, the Minister requested DWER to prioritise the review, and ensure that information Austral is currently required to keep on the time, duration, reason and potential contaminants for each bypass event is taken into account in determining the content of licence conditions.

In relation to the other matters raised in the appeal, the Minister concurred with the Appeals Convenor's recommendations and determined those matters accordingly.

It follows from the above that the Minister was of the view that the amendments made to the licence were justified, and he therefore dismissed the appeal. The Minister, however, requested DWER to ensure its current review of the licence is finalised expeditiously, noting the sampling results provided by Austral were not considered by DWER to provide a reliable basis to assess bypass emissions.

The Minister also requested DWER to include the appellant's electorate office as an interested party in the context of any future amendments to this licence.

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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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