



| Mine Name       | File No. | Operator                             | Activity Type | Region  | Activity Date |
|-----------------|----------|--------------------------------------|---------------|---------|---------------|
| Blackwater Mine | 1714     | B M Alliance Coal Operations Pty Ltd | Site Meeting  | Central | 16/08/2013    |

Vision: Our Industries Free of Safety and Health Incidents

## Mine Record Entry

***This report forms part of the Mine Record under s68 of the Coal Mining Safety and Health Act 1999. It must be placed in the Mine Record and displayed on Safety Notice Boards.***

***Note that inspection or audit activities conducted by the Mines Inspectorate are based upon sample techniques. It remains the primary responsibility of Mine Personnel to identify hazards, and risks associated with Operations and ensure those risks are at an acceptable level.***

Today I attended the above Mine in the company of Principal Explosives Inspector Mr Haydn Isaac to attend a site meeting following complaints from a neighbour of excessive over pressure following blasting activities. The meeting was held at the BMA Blackwater mine administration block.

Prior to accessing the area I was advised that I would need to undertake a ten minute site induction prior to entering the Administration area. A discussion was had with the Security staff about an Inspectors right of entry and the security officer was requested to ring the SSE and clarify my right of entry. This was done and entry was gained without further issue.

BMA Blackwater are reminded of the letter sent 10 August 2012 to all SSEs by the Chief Inspector of Coal Mines which advised all SSEs of their obligations to ensure unimpeded access to mines sites.

Present at the meeting were IOM Kevin Poynter, Inspector of Explosives Haydn Isaac, Paul Hemburrow, Mark Roberts, Brad Holden, Matthew Crisp.

The meeting was reminded of the Objects of the Coal Mines Safety and Health Act 1999 and who it applies to:

Coal Mines Safety and Health Act 1999 Section 5(b) which states:

The Act applies to everyone who may affect the safety or health of persons as a result of coal mining operation Section 6 of the CMSHA states:

The objects of this Act are

- (a) to protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations; and
- (b) to require that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level;

Recent complaints and findings of Inspector of Explosives Brendon Worth and Haydn Isaac were outlined and the initial actions undertaken by site were discussed. These actions and

issues were as follows::

- Design of blasts to mitigate excess over pressure and vibration especially in pre split blasts
- Monitoring of blasts and reconstruction of effects of blasting using topography, weather and blast data
- Mining having a negative effect on persons off lease.
- The voluntary suspension of blasting in that area until suitable monitoring had been installed
- Over pressure and vibration guidelines

Following discussions a number of improvements were identified and initiated. These were discussed and are summarised as;

- The purchase and installation of additional over pressure and vibration monitors
- The placement of static monitors at known sensitive receivers
- Review of blast management in the area of
  - Mitigating the effects of blasting through design
  - Incorporating learning's and review triggers into the pre firing assessment
  - Document the layout and placement of weather and monitoring stations within the blast pack
- Improve quality control of the blasting process by increased supervisor/manager engagement

Following the placement of a mobile vibration monitor in a better position to measure blasting had re-commenced in the area. Documentation was provided showing that no exceedance of over pressure and vibration guidelines had occurred although the results showed that vibration was very close to the limit in the area known as the stockyards which we were advised was within the boundaries of the mine.

Inspector Poynter raised the issue of notification of neighbours. The mine advised that notification was by Email and verbally were appropriate and provided 24 hours notice to affected neighbours. No further issues were discussed.

**Kevin Poynter**  
Inspector of Mines  
Central Region

12 March 2014

BHP Coal Pty Ltd  
Level 23 Riparian Plaza  
71 Eagle street  
BRISBANE QLD 4000



Department of  
**Environment and  
Heritage Protection**

Attn: Ryan Kinnealy

Dear Ryan

The Department of Environment and Heritage Protection (the department) has been informed of a number of incidents of non-compliance with condition D2 of Environmental Authority (EA) EPML00717813 for Blackwater Coal Mine. The department has been advised that the incidents were recorded in noise monitoring undertaken in July/August 2012 and September/October 2013.

In the event of a non-compliance with the legislation and the environmental performance standards, the department has the ability to use a number of enforcement measures. I draw your attention to Section 430 of the *Environmental Protection Act 1994* ("the Act") that states that it is an offence for the holder of an environmental authority to contravene a condition of the EA. A copy of this section is enclosed for your information.

The department is currently considering enforcement actions regarding this matter.

As a result of this assessment, you are hereby invited to provide the department with BHP Coal Pty Ltd reasoning on why the department should not take enforcement action, in relation to this alleged breach of EA condition.

Please provide a written response, including the requested information, marked for the attention Sue Burt, PO Box 3028 Emerald QLD 4720. This information must be provided to the department by 19 March 2014.

Should you fail to respond to the department by this date, enforcement action may be taken against you without further notice, in accordance with the departments Enforcement Guidelines.

These Guidelines can be found on our website at:

<http://www.ehp.qld.gov.au/management/pdf/enforcement-guidelines.pdf>.

Should you have any questions regarding the content of this letter please contact Sue Burt of the department on (07) 4987 9377.

Yours sincerely

Sch 4 - signature

**Sam Tarlinton**  
**Manager**  
**Environmental Services Mining, Central Region**

**Environmental Protection Act 1994**

**430 Contravention of condition of environmental authority**

(1) This section applies to a person who is the holder of, or is acting under, an environmental authority.

(2) The person must not wilfully contravene a condition of the authority.

Maximum penalty—

(a) if the authority is a level 1 authority—2000 penalty units or 2 years imprisonment;  
or

(b) if the authority is a level 2 authority—300 penalty units.

(3) The person must not contravene a condition of the authority.

Maximum penalty—

(a) if the authority is a level 1 authority—1665 penalty units; or

(b) if the authority is a level 2 authority—250 penalty units.

(4) In a proceeding for an offence against subsection (2), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (3), the court may find the defendant guilty of the offence against subsection (3).

(5) In this section—

**level 1 authority** means—

(a) an environmental authority (mining activities) for a level 1 mining project; or

(b) an environmental authority (chapter 5A activities) for a level 1 chapter 5A activity.

**level 2 authority** means—

(a) an environmental authority (mining activities) for a level 2 mining project; or

(b) an environmental authority (chapter 5A activities) for a level 2 chapter 5A activity.



26 March 2014

Manager  
Environmental Services Mining  
Department of Environment & Heritage Protection  
99 Hospital Road  
Emerald QLD 2013

Attn: Ms Sue Burt

Dear Sue,

**Blackwater Mine  
Noise Monitoring – Environmental Authority (EA) EPML00717183**

We refer to your pre-enforcement letter dated 12 March 2014.

Your letter makes reference to two noise monitoring events undertaken in July / August 2012 and September/ October 2013. We respond to each of these monitoring events as follows.

In July / August 2012 noise monitoring was conducted by BHP Billiton Mitsubishi Alliance (BMA) following contact from neighbouring landowners. This monitoring was conducted proactively and voluntarily by BMA and not pursuant to a request from the Department under condition D3 of the EA.

In correspondence to the Department dated 23 August 2013, BMA outlined facts regarding concerns raised by neighbouring landowners in 2012 and actions taken to address those concerns. BMA subsequently implemented noise abatement measures including machinery movements, stockpile and overburden placement, to mitigate noise levels generated by mining operations, in line with condition D6 of the EA. BMA considers the circumstances associated with the 2012 noise monitoring event to have been closed out.

Following a request from the Department dated 6 September 2013, in accordance with Condition D3 of the EA, BMA undertook noise monitoring to address concerns raised by neighbouring landowners.

As submitted in our letter to the Department dated 11 December 2013, the independent expert concluded no breaches against the recommended criteria were recorded during the

monitoring period. The basis for this conclusion is discussed in the report with recommended criteria.

The noise abatement measures proactively implemented by BMA, as described above, are in line with the recommendations of the independent expert report following the completion of the noise monitoring in September / October 2013 and remain in place at the mine.

To act on the recommendations of the expert report submitted on 11 December 2013, BMA intends to progress discussion with the Department to amend the Noise Schedule in the Blackwater Mine EA to adopt the recommended criteria and appropriately represent existing mining operation and background noise levels.

BMA has fully complied with the Noise Monitoring conditions under the EA, as triggered by the request for monitoring from the Department (letter dated 6 September 2013). To re-iterate:

- Noise monitoring has been conducted by BMA and the report submitted as requested by the administering authority in accordance with Condition D3;
- Monitoring and reporting was conducted with due consideration of the most recent version of the Department's Noise Measurement Manual in accordance with Condition D5; and
- In accordance with Condition D6, BMA has embarked upon and is continuing complaint resolution negotiations with the relevant landholders, with the aim of resolving their concerns regarding alleged nuisance related impacts of Blackwater Mine operations.

BMA considers that with full appreciation of the history, facts and circumstances and the ongoing complaint resolution negotiations being pursued by BMA in accordance with the EA (which should be permitted to run their course), no enforcement action is warranted from the Department.

If you wish to discuss further, please do not hesitate to contact myself or Ryan Kinnealy in Brisbane (07 33292969).

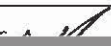
Yours faithfully

Sch 4 - signature

Clinton Theil  
Manager HSE Execution  
**BHP Billiton Mitsubishi Alliance**

## Compliance program - audit report

This report is to be completed for every compliance inspection/audit undertaken (including site inspection and desktop review). The information in this report is to be used to update the relevant record/s in Ecotrack, and to obtain approval for compliance/enforcement action.

|                               |                                                                                                                   |                    |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------|--------------------|
| Officer Name: Jacinta Griffin | Signature: <br>Sch 4 - signature | Date: 20 June 2014 |
| Officer Name: Sue Burt        | Signature: <br>Sch 4 - signature | Date: 20 June 2014 |

### Administration

|                   |                                       |
|-------------------|---------------------------------------|
| Ecotrack Case No. | 175979                                |
| Supervisor        | Recommendations Approved:<br>Comment: |

### GENERAL INFORMATION

#### Person and location details

|                                                                                           |                                            |
|-------------------------------------------------------------------------------------------|--------------------------------------------|
| Person/<br>organisation/<br>development name<br>(where relevant)                          | BMA operating mine for<br>BHP Coal Pty Ltd |
| Location<br>(incl. street address,<br>lot/plan, tenure,<br>estate, LGA where<br>relevant) | Blackwater mine                            |
| Inspection focus/<br>agency interest                                                      | General                                    |

#### Description of activity and permit

|                                                                   |                                                                 |
|-------------------------------------------------------------------|-----------------------------------------------------------------|
| Type of activity<br>(e.g. ERA, park<br>visitor activity)          | Mining black coal, mineral<br>processing                        |
| Permitting body                                                   | Department of Environment<br>and Heritage Protection<br>(EHP)   |
| Permit No.                                                        | EPML00717813                                                    |
| Permit effective<br>date                                          | 3 April 2014                                                    |
| Permit Act/type<br>(e.g. EP Act /<br>registration<br>certificate) | EP Act (Chapter 5)/ Site<br>Specific Environmental<br>Authority |

### PRE-INSPECTION INFORMATION (N.B. refer to audit plan where relevant)

|                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Environmental risk                                                | High                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Last inspection date                                              | 20 October 2010                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| General description of<br>location and surrounding<br>environment | <p>The BMA Blackwater mine is located near the town of Blackwater, Qld. The general landuse surrounding the mine is grazing and rural.</p> <p>The mine site is separated into two areas: northern and southern leases. The southern leases are in care and maintenance, whilst the northern leases are still operating.</p> <p>The current Plan of Operations (PoO) has recently been approved from 30 June 2014 until 1 July 2015. It was noted on the current PoO that there have been ongoing resolution of noise complaints  s78B(2)</p> |
| Description of activity                                           | Blackwater mine operations comprise an open cut coal mine with surface equipment and a coal washing plant. There is a tailings dam that is nearing capacity and there is a proposal for current open cut pits between Ramps 10 and 12 to be converted into a tailings storage facility.                                                                                                                                                                                                                                                                                                                                           |

|                                                  |                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                  | A land rehabilitation project has been completed on an overburden area between Ramps 56 and 58 on the southern leases that are in care and maintenance. A batter of 1:10 is a limiting factor of the rehabilitation slope and in this area BMA are constrained by the access road. A research project for the side wall of the rehabilitated landform contained truck tyres. |
| <b>Outstanding issues and/or non-compliances</b> | There is ongoing resolution of the noise complaint s78B(2) to the west of the open cut pits between Ramps 10 and 18 where some blasting is occurring. Regular noise monitoring is being undertaken with weekly noise downloads.                                                                                                                                              |
| <b>Current enforcement measures</b>              | No enforcement measures in place at time of inspection.                                                                                                                                                                                                                                                                                                                      |

# **INSPECTION RESULTS SUMMARY** (NB: refer to audit/inspection checklist where relevant)

## **Inspection Overview**

|                                                                                             |                        |
|---------------------------------------------------------------------------------------------|------------------------|
| <b>Date of inspection</b>                                                                   | 17 June 2014           |
| <b>Inspection days</b>                                                                      | 1                      |
| <b>Inspection trigger</b>                                                                   | ACP                    |
| <b>Inspection type</b>                                                                      | Compliance – Proactive |
| <b>Inspection level</b><br>(refer to appendix for definitions)                              | Level A                |
| <b>Inspection focus</b>                                                                     |                        |
| <b>Further info</b><br>(e.g. lab analysis, photos, drawings, interviews, official notebook) | N/A                    |

## **Inspection Attendees**

|                                                                        |                                                                                                                                                                                        |
|------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>EHP officer/s</b> (who undertook site inspection or desktop review) | Sue Burt, Principal Environmental Officer and Thomas Cobban, Graduate Environmental Officer, Shalini Sharma and Jacinta Griffin                                                        |
| <b>Client representative/s</b>                                         | Ryan Kinnealy, Principal Environment<br>Tracy Hennig, HSE Lead<br>Stacey Dunn, Environmental Advisor<br>Ian McLean Environmental Advisor<br>Susan – Env. Analysis and Improvement Team |
| <b>Other parties</b>                                                   | N/A                                                                                                                                                                                    |

## **Overall Findings**

|                              |                            |
|------------------------------|----------------------------|
| <b>General observation/s</b> | No observed non compliance |
| <b>Environmental risk</b>    | High                       |
| <b>Compliance behaviour</b>  | Compliant                  |

**Client Action/s Required:** None

**EHP Actions Taken/Recommended** (N.B. refer to PCAR/guidelines where relevant)

|                                                      |                                                    |                     |                              |
|------------------------------------------------------|----------------------------------------------------|---------------------|------------------------------|
| <b>Enforcement measure/s taken during inspection</b> | <b>Date issued:</b><br>N/A                         | <b>Type:</b><br>N/A | <b>Next due date:</b><br>N/A |
| <b>Further enforcement measures recommended</b>      | N/A                                                |                     |                              |
| <b>Other recommendations</b>                         | None.                                              |                     |                              |
| <b>Next inspection date</b>                          | Pre- Wet season compliance inspection Oct/Nov 2014 |                     |                              |



Department of  
Environment and  
Heritage Protection

Our Ref: 175979  
Your Ref: EPML00717813

23 June 2014

BHP Coal Pty Ltd  
Attn. Ryan Kinnealy  
PO Box 1389  
Brisbane QLD 4001

Dear Ryan,

**Proactive Environmental Compliance Inspection – Blackwater coal mine  
(EPML00717813)**

I refer to the compliance inspection of Blackwater mine conducted by officers from the Department of Environment and Heritage Protection (the department). The inspection was undertaken on 17 June 2014 as part of the department's annual proactive compliance program.

The department would like to thank the staff at Blackwater mine for making time to assist with the inspection. The inspection involved a tour of the site, in particular the newly completed land rehabilitation between Ramps 56 and 58. The department did not observe any non-compliant activity during the inspection. Please note that this inspection was not a complete audit of the site.

You are reminded that section 319 of the *Environmental Protection Act 1994* (the Act), which sets out the general environmental duty, requires anyone who carries out an activity that causes or is likely to cause environmental harm to take all reasonable and practicable measures to prevent or minimise the harm. Further, the department would like to remind you that it is an offence under section 430 of the Act for the holder of an environmental authority to contravene a condition of an environmental authority.

In that regard, you are encouraged to actively identify all of the environmental risks associated with the activities conducted on the site on an ongoing basis, and to implement strategies to effectively address them.

Should you have any further enquiries, please do not hesitate to contact Sue Burt, Principal Environmental Officer of the department on telephone number (07) 4987 9337.

Yours sincerely,

Sch 4 - signature

Christopher Loveday  
**Manager Mining**  
**Department of Environment and Heritage Protection**  
**Central Region**

RTI DL RELEASE - EHP



**BHP Billiton Mitsubishi Alliance**

8 July 2014

Manager  
Environmental Services Mining  
Department of Environment & Heritage Protection  
99 Hospital Road  
Emerald QLD 4720



Attn: Ms Sue Burt

Dear Ms Burt

**Blackwater Mine  
Environmental Authority EPML00717813**

Please find enclosed an application to amend the Environmental Authority (EPML00717813) for Blackwater Mine, including supporting information.

This application relates to changes to the conditions in Departmental Interest: Noise and Vibration, in the Environmental Authority. Specifically, it relates to the sensitive receptor noise limits specified in Condition D2 and in Table D1.

Comprehensive noise monitoring by an independent expert highlighted the need to establish a clear and practicable noise baseline. The proposed Environmental Authority establishes clear noise limits in a format aligned with Schedule D in the Model Mining Conditions (Guideline EM944). These limits are consistent with a number of relevant guidelines that account for the impact of established operations on nearby sensitive receptors. Detailed rationale for the proposed limits is given in the enclosed report from Global Acoustics.

A series of noise mitigation measures have been put in place, including installation of a bund, movement of the haul truck go-line, and movement of stockpile and overburden placement from the original ramp-top location – all away from the nearest sensitive receptor. The proposed noise limits are assessed to be as low as practicably achievable, taking account of noise measurements with the noise mitigation measures in place.

Some of the aforementioned measurement and mitigation efforts were detailed in our response to a pre-enforcement letter on 26 March of this year. The regulator's subsequent no-enforcement decision indicates we have acted in accordance with the current conditions of this Environmental Authority. Nonetheless, there is still a need to establish practicable noise limits, and reflect these in the Blackwater Mine Environmental Authority.



BMPB/Joint Mitsubishi Alliance

Enclosed is the follo

- An independe  
assessment  
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Department
- A report fro

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Ryan Kinne

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RTI DL RELEASE - EHP

**Department Interest: Noise and vibration**

**Noise nuisance**

- D1** Noise from the mining activities activity must not cause an environmental noise nuisance at any noise-sensitive or commercial place.
- D2** All noise from the mining activities activity must not exceed the levels specified in **Table D1-(Noise limits)**, at any noise affected-sensitive place.
- D3** Noise is not considered to be a nuisance under condition D1 if noise monitoring shows that noise from the mining activity does not exceed the levels in the time periods specified in **Table D1-(Noise limits)**.

**Noise monitoring**

- D4** When requested by the administering authority, noise monitoring must be undertaken to investigate any complaint of noise nuisance within a reasonable and practicable timeframe nominated by the administering authority to investigate any complaint (which is neither frivolous nor vexatious nor based on mistaken belief in the opinion of the authorised officer) of noise nuisance at any noise-sensitive place, and the results notified within **fourteen (14) days** to the administering authority following the completion of the monitoring report. Monitoring must include:
- a)  $L_{Aeq}$ , adj, 15 mins;
  - b)  $L_{A1}$ , adj, 15 mins;
  - c) the level and frequency of occurrence of impulsive or tonal noise;
  - d) atmospheric conditions including wind speed and direction;
  - e) effects due to extraneous factors such as traffic noise; and
  - f) location date and time of recording.

Table D1 (Noise limits for a noise-sensitive place)

| Noise level dB(A)               | Monday to Sunday (including public holidays)             |            |            |
|---------------------------------|----------------------------------------------------------|------------|------------|
|                                 | 7am – 6pm                                                | 6pm – 10pm | 10pm – 7am |
|                                 | Noise measured <u>outdoors</u> at a 'Sensitive Receptor' |            |            |
| L <sub>Aeq</sub> , all, 15 mins | 40                                                       | 40         | 40         |
| L <sub>A1</sub> , adj, 15 mins  | N/A                                                      | N/A        | 45         |
|                                 | Noise measured at a 'Commercial place'                   |            |            |
| L <sub>A10</sub> , adj, 10 mins | B/g + 10                                                 | B/g + 10   | B/g + 5    |
| L <sub>A1</sub> , adj, 10 mins  | B/g + 15                                                 | B/g + 15   | B/g + 10   |

- D5** The method of measurement and reporting of noise monitoring must comply with the current latest edition of the administering authority's *Noise Measurement Manual*.
- D6** If monitoring indicates exceedence of the relevant limits in Condition D4Table D1, then the environmental authority holder must:
- address the complaint including the use of appropriate dispute resolution if required; and
  - immediately implement noise abatement measures so that emissions of noise from the activity do not result in further environmental nuisance.

## Notice

### *Environmental Protection Act 1994*

#### **Decision made on an application to amend an environmental authority**

*This information notice is issued by the administering authority<sup>1</sup> pursuant to section 242(3) of the Environmental Protection Act 1994 to advise of a decision made on an application to amend an environmental authority.*

To: BHP Coal Pty Ltd  
GPO Box 1389  
BRISBANE QLD 4001

Attn: Mr Ryan Kinnealy

Your reference: Blackwater Coal Mine – Noise criteria amendment  
Our reference: 175979

#### **Decision made on an application to amend an environmental authority**

##### **1. Application details**

The application to amend the environmental authority (reference EPML00717813), was received by the administering authority on 8-JUL-2014. The application relates to the proposal to change the conditions relating to noise in the Environmental Authority.

Land description: ML1759; ML1760; ML1761; ML1762; ML1767; ML1771; ML1772; ML1773; ML1792; ML1800; ML1812; ML1829; ML1860; ML1862; ML1907; ML70091; ML70103; ML70104; ML70139; ML70167; ML70329.

##### **2. Decision**

The administering authority has decided to approve the application.

##### **3. Review and appeal rights**

You may apply to the administering authority for a review of this decision within 10 business days after receiving this notice. You may also appeal against this decision to the Land Court. Information about your review and appeal rights is attached to this notice. This information is guidance only and you may

Sch 4 - signature

Date

Christopher Loveday  
Department of Environment and Heritage Protection  
Delegate of the administering authority  
*Environmental Protection Act 1994*

**Enquiries:**  
Shalini Sharma  
Senior Environmental Officer  
Environmental Services - Mining, Central Region  
PO Box 3028  
EMERALD QLD 4720  
Phone: 07 4987 9347  
Email: shalini.sharma@ehp.qld.gov.au

<sup>1</sup> The Department of Environment and Heritage Protection is the administering authority under the *Environmental Protection Act 1994*.

Decision made on an application to amend an environmental authority

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**Attachments**

Information sheet: Internal Review and Appeal to Land Court (EM1157)

RTI DL RELEASE - EHP

# Information sheet

## Environmental Protection Act 1994

### Internal review and appeal to Land Court

*This information sheet forms part of an information notice under the Environmental Protection Act 1994. It gives a summary of the process for review and appeal under the Environmental Protection Act and subordinate legislation. Refer to ss. 519 to 530 and Part 1 of Schedule 2 of the Environmental Protection Act for complete information about the process for internal review and appeal to the Land Court.*

#### Introduction

The *Environmental Protection Act 1994* (EP Act) provides for a right of internal review of certain decisions made under the EP Act. Decisions that can be reviewed are listed in Schedule 2 of the EP Act. The EP Act also provides that a dissatisfied person for a review decision listed in Part 1 of Schedule 2 of the EP Act may appeal against the original decision or the review decision to the Land Court.

#### Summary of the process for internal review and appeal to the Land Court

##### Chapter 11, Part 3 of the EP Act

##### Division 1—Interpretation

##### Section 519 Original decisions

- 1) A decision mentioned in schedule 2 is an 'original decision'.
- 2) A decision under an environmental protection policy or regulation that the policy or regulation declares to be a decision to which this part applies is also an original decision.

##### Section 520 Dissatisfied person

This section nominates the dissatisfied person for an original or review decision.

##### Division 2—Internal review of decisions

##### Section 521 Procedure for review

- 1) A dissatisfied person may apply for a review of an original decision.
- 2) The application must—
  - a) be made in the approved form to the administering authority within—
    - i) 10 business days<sup>1</sup> after the day on which the person receives notice of the original decision or the administering authority is taken to have made the decision (the 'review date'); or
    - ii) the longer period the authority in special circumstances allows; and
  - b) be supported by enough information to enable the authority to decide the application.
- 3) On or before making the application, the applicant must send the following documents to the other persons who were given notice of the original decision—
  - a) notice of the application (the 'review notice');

- b) a copy of the application and supporting documents.
- 4) The review notice must inform the recipient that submission on the application may be made to the administering authority within 5 business days after the application is made to the authority.
- 5) If the administering authority is satisfied the applicant has complied with subsections (2) and (3), the authority must, within 10 business days after receiving the application—
  - a) review the original decision;
  - b) consider any submissions properly made by a recipient of the review notice; and
  - c) make a decision (the 'review decision') to—
    - i) confirm or revoke the original decision; or
    - ii) vary the original decision in a way the administering authority considers appropriate.
- 6) The application does not stay (i.e. suspend or stop) the original decision.
- 7) The application must not be dealt with by—
  - a) the person who made the original decision; or
  - b) a person in a less senior office than the person who made the original decision.
- 8) Within 10 business days after making the review decision, the administering authority must give written notice of the decision to the applicant and persons who were given notice of the original decision.
- 9) The notice must—
  - a) include the reasons for the review decision; and
  - b) inform the person of their right of appeal against the decision.
- 10) If the administering authority does not comply with subsection (5) or (8), the authority is taken to have made a decision confirming the original decision.
- 11) Subsection (7) applies despite the *Acts Interpretation Act 1954*, s. 27A.
- 12) This section does not apply to an original decision made by—
  - a) for a matter, the administration and enforcement of which has been devolved to a local government—the local government itself or the chief executive officer of the local government personally; or
  - b) for another matter—the chief executive personally.
- 13) Also, this section does not apply to an original decision to issue a clean-up notice.

#### **Section 522 Stay of operation of particular original decisions**

- 1) If an application is made for review of an original decision mentioned in schedule 2, part 1 or 2, the applicant may immediately apply for a stay of the decision to—
  - a) for an original decision mentioned in schedule 2, part 1—the Land Court; or
  - b) for an original decision mentioned in schedule 2, part 2—the Court.
- 2) The Land Court or the Court may stay the decision to secure the effectiveness of the review and any later appeal to the Land Court or the Court.

- 3) A stay may be given on conditions the Land Court or the Court considers appropriate and has effect for the period stated by the Land Court or the Court.
- 4) The period of a stay must not extend past the time when the administering authority reviews the decision and any later period the Land Court or the Court allows the applicant to enable the applicant to appeal against the review decision.

### **Division 3—Appeals**

#### **Subdivision 1—Appeals to Land Court**

##### **Section 523 Review decisions subject to Land Court appeal**

This subdivision applies to original decisions mentioned in Schedule 2, Part 1 of the EP Act.

##### **Section 524 Right of appeal**

A dissatisfied person who is dissatisfied with the decision may appeal against the decision to the Land Court.

##### **Section 525 Appeal period**

- 1) The appeal must be started within 22 business days after the appellant receives notice of the decision.
- 2) However, the Land Court may at any time extend the time for starting the appeal.

##### **Section 526 Land Court mediation**

- 1) Any party to the appeal may, at any time before the appeal is decided, ask the Land Court to conduct or provide mediation for the appeal.
- 2) The mediation must be conducted by the Land Court or a mediator chosen by the Land Court<sup>2</sup>.

##### **Section 527 Nature of appeal**

The appeal is by way of rehearing, unaffected by the review decision.

##### **Section 528 Land Court's powers for appeal**

In deciding the appeal, the Land Court has the same powers as the administering authority.

##### **Section 529 Decision for appeals against refusals under s. 207**

- 1) This section applies if the decision appealed against is a decision under s. 207 to refuse to allow an application for environmental authority (mining lease) to proceed.
- 2) In deciding the appeal the Land Court must confirm the decision or allow the appeal.
- 3) If the appeal is allowed—
  - a) the relevant period for the administering authority to make the decision is taken to have been extended to when the decision on the appeal is made; and
  - b) the authority is taken, at the end of the period, not to have made the decision.

##### **Section 530 Decision for other appeals**

- 1) This section applies if the decision appealed against is not a decision mentioned in s. 529(1).
- 2) In deciding the appeal, the Land Court may—
  - a) confirm the decision;
  - b) set aside the decision and substitute another decision; or

- c) set aside the decision and return the matter to the administering authority who made the decision, with directions the Land Court considers appropriate.
- 3) In setting aside or substituting the decision, the Land Court has the same powers as the authority.
- 4) However, this part does not apply to a power exercised under subsection (3).
- 5) If the Land Court substitutes another decision, the substituted decision is taken for this Act, other than this subdivision, to be the authority's decision.

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<sup>1</sup> Under the *Environmental Protection Act 1994* business days—'generally, does not include a day between 26 December and 1 January in the following year'.

<sup>2</sup> For information on how to start the appeal, see the *Land and Court Rules 2000*. For information on the conduct of the mediation, see the *Land Court Act 2000*. Information is also available on the Land Court website at <[www.landcourt.qld.gov.au](http://www.landcourt.qld.gov.au)>.

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