

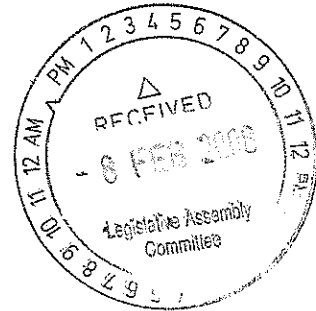
# CONSERVATION COUNCIL

OF WESTERN AUSTRALIA INC.

City West Lotteries House  
2 Delhi St West Perth WA 6005  
Phone: (08) 9420 7266 Fax: (08) 9420 7273  
Email: conswa@conservationwa.asn.au

1 July 2004

Mr Derek Carew-Hopkins  
Acting Director General  
Department of Environment  
PO Box K822  
PERTH WA 6842



Dear Mr. Carew-Hopkins,

*Meeting of DoE/CCWA  
Tuesday May 11, 2004*

On behalf of the Conservation Council, I thank you and your Corporate Executive for the time that was made available to discuss a range of issues. Please pass our appreciation on to the staff involved.

### ***Public Information***

At the meeting, you alluded to a Departmental 'policy' document that exists and informs DoE staff and the public alike of the availability of Departmental documents. We searched for this on the various, as yet to be integrated, websites used by DoE staff and found the following:

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### **Information Statement**

#### **Document Type, Availability And Accessibility**

The Department of Environmental Protection  
And the Water and Rivers Commission to form the  
**DEPARTMENT OF ENVIRONMENT**

July 2003

At the meeting, you also advised that water allocation licences were available as public information, and while they had been data-based, the next step was to make them directly accessible on line. Graeme Rundle raised the issue of public availability of the Operating Strategy tied to groundwater (bore) allocation licences, as these generally contained the compliance conditions: you indicated uncertainty about their availability status.

***Public Availability of Water Licence Information***

Accordingly, at the meeting we gave notice that the Department's availability policy and procedures would be put to the test, concerning groundwater allocation licences and the associated Operating Strategy document.

The above document availability policy states, at page 25 in tabular format that:

- A *licence to take water* is publicly available, and is [also?] available 'on Register'.
- *Licence conditions* are also publicly available.
- *Operating strategy* (if referred to as a licence condition), is likewise publicly available.

Our case study is enclosed for your information, indicating that some flaws exist.

***Post Meeting Follow Up***

Discussions have since been held with Mr. Robert Atkins of your Department and Mr Ross Belton from the Minister's Office regarding both the policy document and our case study experience. It is the Conservation Council's understanding that Mr. Atkins will follow up within the Department the apparent deficiencies that have been disclosed in the document, and both staff awareness and interpretation of it.

**In the meantime, the Conservation Council requires a copy of the following:**

- **GWL 000105696 (002)** [Millstream/West Pilbara Water Supply Scheme]
- ***Associated licence conditions***
- ***Associated Operating Strategy***

as per the above 2003 *Information Statement* currently exhibited on the public website! Would you please let us know who to contact to obtain this public information.

Yours sincerely,

**Chris Tallentire**  
DIRECTOR

ENCLOSURE: Water Licence Case Study



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## WRC WATER ALLOCATION LICENCE Case Study of Current Public Accessibility (G Rundle 30/5/04)

### **Background**

1. At a meeting between the Conservation Council of WA (CCWA) and the Department of Environment (DoE), held on May 11 2004, the issue of public access to WRC water allocation licences was raised by CCWA. The Department's Acting CEO advised that all licences were one of the Department's documents that were available to the public; action was in train to have the water licences publicly accessible on-line at the DoE website, similar to Ministerial Statements at present.
2. CCWA raised the matter also of public access to Operational Strategies, which are WRC-endorsed components of water allocation licences, and contain most of the licensee's obligations. Some doubt seemed to exist on the DoE side that Operational Strategies were regarded as being public documents.
3. Since Operational Strategy documents ran into many pages, CCWA also indicated some doubt about the capacity of an on-line service making them available. This point was left up in the air at the meeting.
4. At the meeting, CCWA concluded by giving the Department notice that it would test the existing system, and find out in fact just how accessible and public the Department's water licence information really is.

### **The Test**

5. Two licences of interest to CCWA were separately pursued by different, but experienced, enquirers:
  - *West Pilbara Water Supply Scheme (WPWSS)*, which is operated by the Water Corporation off the conjunctive water sources of the Millstream aquifer (borefield)/Harding River catchment (dam)...where the current licence no was known.
  - *Kennedy Bay golf course* (at Port Kennedy, City of Rockingham), serviced by a known borefield but licence no. and licensee name unknown.

### **WPSSW Licence**

6. The inquiry concerning this licence commenced with a call to DoE in Perth (switchboard). After being passed around the Perth establishment via several officers, it was revealed that water licence information needed to be obtained from the relevant DoE district/regional office....which was advised to be, in this case, at Geraldton

**[Tally so far: 5 phone calls and passed to 5 people beyond the switchboard]**

7. A call was made to DoE's Geraldton office, but the appropriate officer was unavailable. However, details of the request were taken down (viz copy of licence and associated Operating Strategy), for the Officer's return. In the meantime, it was suggested within CCWA that DoE's Karratha office was

probably a more appropriate contact point for a Pilbara licence, than Geraldton. A call to that office revealed that licences issue to Water Corp were dealt with centrally 'at DoE's Perth office...and contact details were given. A call to the Perth contact found him unavailable, so details of the request were left behind.

***[This effort had now additionally involved: another 2 phone calls and 2 more people beyond switchboards]***

A day or so later, a Perth DoE officer recontacted the CCWA caller, and explained:

- DoE does not give out copies of actual licences..."because they are tradeable"
- An inquiry had been made to the Water Corporation about providing the associated Operating Strategy.....but the Water Corporation was reluctant to provide it. DoE passed on, however, that the Water Corp would be pleased to meet with CCWA to discuss the Strategy
- Information about any water licence in the State is available off a Water Licence Register, via its DoE custodian. This takes the form of a "Licence Report", which essentially is an extract of limited information from the actual licence
- While water licence inquiries and requests for copies are now generally dealt with by DoE's district/regional offices, *the Department deals with Water Corporation licences centrally in its Perth office*. However, it also seems that DoE's central office is reluctant to provide copies of actual licences and issues "report" versions instead.

8. An email inquiry of the Licence Register custodian resulted in CCWA receiving an electronic copy of a "Licence Report" A further phone call was made to the Water Corporation, a meeting of CCWA/Water Corp was arranged to discuss the WPWSS Operational Strategy.

**9. The outcome to this point has been unsatisfactory, resulting in merely obtaining a licence extract. This not only **OMITS** the licence conditions but also gives no indication that such a thing as an Operating Strategy exists.....if a person is unaware of the existence of such instruments, they don't know what to ask for!**

***[Final effort tally for enquirer was: 8 phone calls involving 8 DoE staff; 1 email involving 1 other DoE staff; with merely the receipt of a " Licence Report" (electronically) after 5 working days from the enquiry first being initiated ]***

### ***Port Kennedy Licence***

10. The DoE switchboard in Perth was contacted, and the water licence registration section was asked for. The caller was passed around the Perth office (three Officers beyond the Switchboard), before being told that the water licensing administration had been decentralised and the sought-after information would have to be obtained from the relevant DoE district/region office The caller was then informed that the appropriate office for the Port Kennedy area (City of Rockingham) was that of the Cockburn Sound Management Council. When the correctness of this was questioned, the DoE Officer was adamant this was where the water licence details could be obtained.

***[Tally so far: 1 phone call and passed to 3 people beyond the switchboard]***

11. A call to the Cockburn Sound Management Council Office confirmed that it was an inappropriate place for seeking licence details, and the caller was referred to DoE's Kwinana Peel Region office A call to there confirmed it was the correct centre, but the appropriate Officer was currently out in the field.

12. The Kwinana Officer returned the call that afternoon, took the details of the request but indicated uncertainty about the Licence details and associated Operating Strategy were considered to be public information. Arrangements were thus made for on-going communication to be conducted by email. The Kwinana Officer subsequently advised (fairly promptly) that all of the information sought was classed by the Department as public information and could be provided. However, it was in hard-copy

form and would need to be photocopied and mailed out (the Operating Strategy was too large to realistically fax). A postal address was thus provided by return email.

13. However, needing assurance that the correct licence had been identified for the information that was about to be sent, CCWA called the Kwinana office to ascertain licence details that would confirm that the correct licence had been accessed. Details were provided and correlated with borefield /golf course details known to CCWA. The requested information duly arrived in the mail, involving a one page licence and 20-odd pages (double-sided) of Operating Strategy.

14. The outcome was satisfactory, but the exercise revealed that:

- The DoE Perth contact point lacked sufficient knowledge to divert the initial enquiry direct to the correct source area
- While the Regional Officer was uncertain if the information sought was classed as being public, quickly resolved the issue by consulting Departmental guidelines and promptly got back to the caller
- When re-contacting the CCWA caller (by email), the DoE Officer could also have attached a "Licence Report" and asked for confirmation that this was the correct licence being sought.

*[Final effort tally for enquirer was: 4 phone calls, involving 5 DoE staff; one return email; with the information sought being satisfactorily received (by post) within 4 working days of the enquiry being initiated.]*

## **Basic Conclusions**

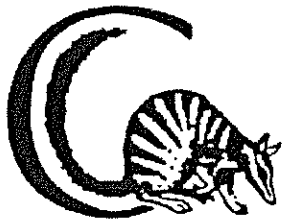
In this test of the public information system, success or failure appeared basically to depend upon how aware DoE staff was of the Department's policy on the release of documents. With the merger of several entities, this issue had been tackled recently and a common policy document was developed for the whole of the new agency.....called an **"Information Statement"** (July 2003). Essentially it lists a range of departmental documents and shows via 'yes/no' columns if each is publicly available on request, OR needing FOI processes to be pursued instead. While this policy document is available to all as an on-line service at the 'DEP' website, it seems to be difficult to find...even if you happen to know it exists. Additionally, water resources staff in the merged agency may be more conditioned to searching the still existing 'WRC' website.

Thus, at the end of one enquiry line, the DoE Officer new of and located the Information Statement, verifying an obligation to provide the information sought. At the end of the other enquiry line, this knowledge was apparently lacking, and the DoE Officer acted on a *belief* # that the information sought could not be given out to the public. As the enquirer also was uncertain of the right of access consequently was not assertive.

*# A follow-up about this belief detected Officer concern, so a meeting was arranged with the staff involved. It was revealed that this particular unit of DoE had long staff continuity with water allocation licensing and familiarisation with associated legislation. The CCWA "test" had alerted them for the first time to the 2003 Departmental "Information Statement". There is a belief that the recent DoE Information Statement, which allows the public disclosure of full license information, is in conflict with provisions of the Rights in Water and Irrigation Act. It was agreed that this was an issue that that unit needed to pursue and have resolved within the agency. However, CCWA should now formally flag with the Department its stakeholder interest in this issue!*

During the test, DoE staff were courteous and attempted to be helpful. Any time delays in responses (which seemed only minor) appeared to be a symptom of tight resourcing.

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13 September 2004

Mr Derek Carew-Hopkins  
A/Director General  
Department of Environment  
PO Box 822  
Perth WA 6842

Dear Mr. Carew-Hopkins,

***Public Availability of Water Licence Information  
(Your ref, CEO 822/04)***

Thank you for your letter of August 9, explaining that the Department of Environment is unable to readily provide to the public, on request, details of Water Licence information, for legal reasons.

The Conservation Council has since discussed this situation further with Mr. Andy Lawson of your Department, and has reviewed the *Rights in Water and Irrigation Act* and its regulations. Even after doing so, we have been unable to find any "legal reason" for the Department not to be forth coming with this information. Therefore please advise us of the exact basis for the "legal reason" you cannot provide this information to the public.

Neither are we aware of any policy reason for not releasing the information. From our experience, the basis of environmental management of the licensed utilisation of a water resource is in the actual conditions and Operating Strategy (see WRC *Statewide Policy No. 10*), and none are likely to be regarded as commercially or otherwise sensitive to the extent of denying ready public scrutiny.

It is of interest that the Register already is obliged to make publicly available any recorded convictions of a licensee under the Act. Making publicly available water licence conditions should be seen as being no different than existing public access to the conditions of the Department's emission and other industrial licences that are also aimed at ensuring proper environmental management.

Nor does there seem to be any rationale for denying ready public access to licence conditions that are based on the tradability of water rights, or on the commercial use of water licences as security. This information is already readily available in the Register; and the situation is not unlike that of freehold land, which is both tradeable and the *Certificate of Title* also records security encumbrances. However, copies of *Certificates of Title* are still made readily available on public demand! Please let us know of any policy reason why the information should not be provided to the public.

Please be aware that we consider the issue of public access to information very seriously. Therefore, depending upon the reasons you provide (if any) for NOT providing the information, we may seek to have the relevant law or policy changed.

Yours sincerely

**Chris Tallentire**  
DIRECTOR

cc Mr. Robert Atkins