



18 November 2011

Hon. Brian Ellis MLC
Chair
Standing Committee on Environment & Public Affairs
Parliament House
PERTH WA 6000

Dear Sir

**PETITION NO. 131 – CEMENT OR LIME MANUFACTURING
LOT 52 (80) NOWERGUP ROAD, NOWERGUP**

Thank you for your letter dated 20 October 2011 requesting the City's comments on the above petition from Mrs Sabine Winton.

The concerns and complaints raised in Mrs Winton's petition relate to the Department of Environment and Conservation's (DEC's) handling of past and recent applications by Lime Industries for 'cement and lime manufacturing' on Lot 52 Nowergup Road, Nowergup. The City has no comment to make on the Department's dealings on that matter as they do not relate to the statutory responsibilities of the City

I do, however, attach for your information a copy of the City's self-explanatory submission to the DEC dated 15 September 2011 objecting to its issuance of a licence to Lime Industries. Since then, the DEC has written to the City advising that it intends to defer granting approval of an application for that licence until such time as appropriate planning approvals are issued. A copy of the DEC's letter is attached. Some of the issues raised in Mrs Winton's petition may no longer be applicable as a result of the DEC's decision on this matter.

You may also wish to note that the City is now reviewing the application for development approval submitted on behalf of Lime Industries for various existing and proposed activities on Lot 52. That application will be processed in due course and in accordance with the City's District Planning Scheme No. 2 (DPS 2).

Finally, I advise that the City is also considering taking enforcement action against the owner of Lot 52 (Lime Industries) and an occupier of the property for an alleged ongoing breach of DPS 2. However, that alleged breach is unrelated to the DEC licensing issues raised in Petition No. 131.

I trust this advice addresses your queries.

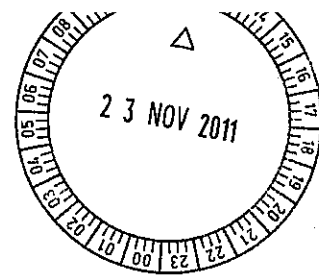
Yours sincerely



Daniel Simms
CHIEF EXECUTIVE OFFICER

Attach:
cc: Elected Members

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File Ref: 3593 (11/95299)
Your Ref:
Enquiries: Tristan Bruyn - 9405 5305

15 September 2011

Department of Environment and Conservation
Locked Bag 104
BENTLEY DC WA 6983

Attention: Jessica French

**SUBMISSION AGAINST DEC RENEWAL OF LICENCE FOR LIME INDUSTRIES
PTY LTD – LOT 52 (90) NOWERGUP ROAD, NOWERGUP**

I refer to Lime Industries Pty Ltd's recent application for the re-issue of their Department of Environment and Conservation (DEC) licence for 'cement or lime manufacturing' at the above property (DEC Ref: L8441/2010/2) which was published in the West Australian on Monday 8 August 2011.

This letter is to confirm the City's opposition to the renewal of a licence for cement or lime manufacturing on Lot 52 Nowergup Road, Nowergup by the DEC.

As it cannot be demonstrated or proven that the current development was in operation prior to the gazettal of the WA planning legislation in September 1956, the approval of a development application is required prior to any development commencing on this site.

The applicant for Lot 52 Nowergup Road, Nowergup, Lime Industries Pty Ltd, has lodged a retrospective development application with the City of Wanneroo for extractive industry and additions. It is therefore premature for the City to comment on the re-issue of the DEC licence associated with this proposal as it does not have approval under District Planning Scheme No.2 (DPS 2) or any other relevant planning legislation.

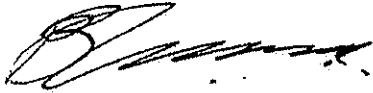
Though an application has been lodged, the City has not issued a development approval for 'cement or lime manufacturing' at Lot 52 Nowergup Road, Nowergup and as such recommends that the DEC does not issue any new licence, for the manufacture of cement or lime on Lot 52 Nowergup Road, Nowergup. The City, through its Lawyers, has written to Lime Industries Pty Ltd regarding the unauthorised use of the land. A copy of that letter is enclosed for your reference.

The City has not provided any comments on the environmental issues or Environmental Management Plan associated with this licence proposal as this would be inappropriate considering there is no valid planning approval for the intended use.

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The City urges the DEC to reject the licence application as there is no valid planning approval for the use which the licence has been applied.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Pas Bracone', with a stylized flourish at the end.

Pas Bracone
MANAGER PLANNING IMPLEMENTATION

Enc. Letter from Minter Ellison dated 15 September 2011

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15 September 2011

Jackson McDonald Lawyers
PO Box M971
PERTH WA 6843

LEVEL 49 CENTRAL PARK 152-158 ST GEORGES TERRACE PERTH
GPO BOX A39 PERTH WA 6837 AUSTRALIA
DX 124 PERTH www.minterellison.com
TELEPHONE +61 8 9429 7444 FACSIMILE +61 8 9429 7666

Attention: Mr Julius Skinner

Dear Sir

LOT 52 (90) NOWERGUP ROAD, NOWERGUP: UNAUTHORISED LAND USE

We act for the City of Wanneroo (City) and refer to your letter of 6 July 2010 to our client and your client's letter to our client of 19 May 2011.

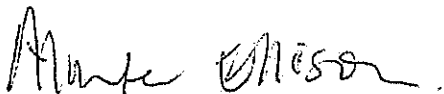
It is the City's opinion that your client's current uses of the site are unlawful as there is no evidence to substantiate the claim to a non-conforming use right. To establish the existing use rights, it is necessary for you to provide reasonable evidence which, on the balance of probabilities, shows that the use was lawfully commenced prior to the inception of the relevant planning controls.

In light of the above, I am instructed as follows:

1. The City will now review and, if acceptable and complete, proceed to assess and ultimately determine that application, referring it to the Western Australian Planning Commission for determination under the MRS.
2. Lodgement of the application does not authorise the continuation of any existing unapproved or unlawful activities on the site, in particular the mine site driver training operation. If your client does not cease all unauthorised operations on site within 14 days, the City will undertake further action to enforce compliance with the City's District Planning Scheme No. 2, without further notice to you.

If you have any queries in relation to this letter please contact me on 9429 1585.

Yours sincerely



MINTER ELLISON

Contact: Glen McLeod Direct phone: +61 8 9429 7587
Email: glen.mcleod@minterellison.com
Our reference: 601467415

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Government of Western Australia
Department of Environment and Conservation

Your ref: L8441/2010/1
Our ref: DEC10063
Enquiries: Jessica French
Phone: 9333 7524
Fax: 9333 7550
Email: jessica.french@dec.wa.gov.au

Mr Peter Menchetti
Director
Lime Industries Pty Ltd
PO Box 1544
OSBORNE PARK PRIVATE BOXES 1000-2000 WA 6916

Dear Mr Menchetti

ENVIRONMENTAL PROTECTION ACT 1986 – LICENCE L8441/2010/1

Dunstan Lime Kilns
Lot 52 on Diagram 80476, Nowergup Rd
NOWERGUP WA 6032

I refer to your application for an *Environmental Protection Act 1986* licence dated 2 August 2011 for the above mentioned premises.

The City of Wanneroo wrote to the Department of Environment and Conservation on 15 September 2011 advising that no development approval has been issued for "cement or lime manufacturing" for Lot 52 Nowergup Road, Nowergup and that it is the City's belief that the current use of the site is not lawful. DEC understands that you have lodged a retrospective development application and the City is now considering this application.

Given this advice, DEC has determined to put your application for licence on hold until such time as the City makes a decision on the development application. Under section 57(4a) of the *Environmental Protection Act 1986*, "If a decision making authority makes a decision that has the effect of preventing the implementation of a proposal to which an application for a licence made under subsection (1) is related, the CEO does not have to perform any duty imposed under subsection (3) while that decision has effect."

Should the City refuse to grant planning approval for lime manufacturing at the premises, DEC does not have to make a decision on the licence application under Section 57(4a) of the Act.

DEC is also aware that Lime Industries are undertaking crushing and screening of limestone on Lot 52 without a relevant authorisation from DEC and that this activity is also subject to the development application lodged by Lime Industries. Crushing and screening of material is a category 12 prescribed activity under Schedule 1 of the *Environmental Protection Regulations 1987* and requires a works approval and licence from DEC. DEC will also consider the decision of the City on this activity prior to requesting Lime Industries to submit an application for licence for this prescribed activity.

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Swan Region Industry Regulation Booragoon
181-205 Davy St Booragoon, WA 6154
Phone: 9333 7510; Fax: 9333 7550
Locked Bag 104, Bentley Delivery Centre WA 6983
www.dec.wa.gov.au

Should you have any questions relating to the above, please do not hesitate to call Jessica French of the Swan region on 9333 7524.

Yours sincerely



Carissa Ailken
Assistant Works Approval and Emissions Licensing Section
Licensing and Permitting Branch
Environmental Regulation Division

28 September 2011

Cc: City of Wanneroo

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