

Hi Michael and Lauren,

As you are aware, we are finalising our works approval application for Austral Bricks Cardup. We have engaged Strategen to prepare the application however we are struggling to complete parts of the new application form.

We would like some clarification on section 5 of the application form. The questions are very broad and we don't want to misinterpret them.

- 5.2 What is a compliance order?
- 5.2 Why do we need to provide information on infringements as these are not an admission of guilt?
- 5.3 Very difficult to answer. How far back do we go?
- Can you send us a list of breaches, infringements, compliance orders etc or how do I go about obtaining this info?

I am also concerned that the form is asking us confidential questions and that our application becomes a public document.

Can you please call me at your earliest convenience to discuss?

Thanks

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Company Background:

Austral Bricks is the largest producer of clay bricks in Australia. We have several brick making plants in every state and all of them are licenced by the state's environmental department. In WA it makes about a third of the states bricks. It has four operational brick plants in Armadale, Bellevue, Caversham and Malaga, another plant which is in the process of re-commissioning in Cardup and a works approval for a new plant in Waterloo. Having six prescribed premises, changes to the licensing process has a great affect on the company. Austral Bricks appreciates change in certain circumstances such as; if it makes management of our licences easier, or evens the playing ground, however, over the years, each time there is a reform, DER appears to make it more difficult for brickmakers to operate.

General comments:

- Austral Bricks is pleased that the department has prepared an application form, setting out the information required for a licence or works approval application.
- To prevent double up of info provided by the proponent, the application form should replace the existing form on the Industry Licensing System (ILS)
- The "Guideline for applications" should be the application form as it provides the instructions to complete the form. The application form on its own is difficult to follow.

The following comments are in relation to the "guideline for applications" which we are hoping becomes the application form.

Page No.	Part	Comment
1	Header	The legislation appears to be incorrectly cited and should read " <i>Environmental Protection Act 1986 Part V, Division 3</i> , as per the document " <i>Australian Guide to Legal Citation</i> ".
1	Application options	This document is probably a bit misleading in relation to the information required for a clearing permit and would recommend that clearing permits use a different application form. Also Clearing permits are granted under division 2 of the Act, not division 3.
1	Application options	There is no option for a new licence if a works approval was not required or obtained.
2	Prescribed premises categories	Its not very clear as to what a category of prescribed premises means and the third tick box doesn't make sense. I would recommend an explanation of prescribed premises categories in the instructions and remove the third tick box.
2	Part 1. Applicant details	Recommend that a corporate lawyer review this section to ensure the terminology is correct.
2	Part 1. Applicant details	Consider whether directors details and registered address are required to be filled out. Recommend that a current company file be submitted as an attachment instead.
3	Part 2. Premises	Would recommend keeping clearing details on a separate application.
3	Part 2. Premises	A local government area/authority is self explanatory and instruction 2.2 confuses the matter. Recommend that this instruction be removed.
4	Part 3. Proposed activities	Recommend that information relating to processes or operations be submitted whether it is "industry standard" or not. Not requiring this information as part of the initial application opens an opportunity for DER to request further information and hold up the assessment process.
5	Part 3. Proposed	Estimating the operating period in most cases is difficult to

	activities	impossible and cannot see how this is applicable to the assessment unless it is a short term proposal.
5	Part 4. Other approvals	Clarify what a major resource project is; Include another column for "unknown" as it is possible to not know if a proposal has been referred to another agency
5	Part 5. Fit and competent operator	Compliance history of directors and companies is available through an ASIC check and through DER's record keeping system. It would be more appropriate for DER to coordinate the compliance check; It is not appropriate for a company to release information regarding infringements and compliance orders as these are not a true representation of compliance because they are not an admission of guilt; It is difficult to impossible to answer 5.3 for several reasons including: <ul style="list-style-type: none"> - the timeframe has not been set. Many companies are very old and may not have a record of licence breaches; - most potential licence breaches are unconfirmed; - it has not always been a requirement to keep record of licence breaches. Even in modern licences, licensees are only required to keep record for six years if there was no effect on the environment; - Large companies, or business that have operated for a long time will unfairly appear incompetent to the general public - No where in the Act refers to a licence holders competency or compliance history as a re
7	Part 7. Siting and location	The instructions don't really make sense, and might be a bit misleading as I believe DER requires information in relation to receptors other than waterbodies and places where people live or regularly spend time e.g. ESA's, bushforever, PDSA's etc. Typo in section 7.1 and 7.2. First two words should say "is the".
7	Part 9. Submission of proposed fee calculation	The instruction is poorly worded and a recommendation would be to keep the wording consistent with the Act and Regs.
7	Part 10. Submission of application	A query as to why both a hard copy and electronic copy is required?
9	Attachments	Style of the Attachment. The boxes for the attachments can't be used so consider removing them and make the instructions for attachments into a list instead. Otherwise, they may mislead the applicant with the amount of detail required in an application. Attachment 3, instruction (a) I throughput and production capacity are the same thing. I think it should read "production or design capacity", being consistent with the Act and licence template. Attachment 3 (c) would suggest that licensing officers may require information about processes and operations, whether they are unique/non-industry standard or not.
16	Attachment 7	A 5 km radius seems excessive, and there will be a great loss of detail having such a large scale. Suggest the radius aligns with the EPA's separation distances.
17	Attachment 8	Can't comment as the assessment framework is unavailable.

18	Attachment 9	This seems to be a double up of the information provided on ILS.
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Overall comments/suggestions

We tried to use this document when applying for a recent works approval for our Cardup Plant and found that we were unable to complete section 5, even using a lawyer to review. We provided all the information required in this document, however the licensing officer required much more information in relation to industry standard processes and specifics about the design and construction of the plant. This is concerning because it is an existing premises, with a minor change (being an upgrade to the air pollution control).

Works approval and licence application packages are very complex and this application form could mislead applicants into submitting a substandard application, as what happened to us.

The process of submitting information over ILS and supporting documentation worked fine, however it was always a bit of an unknown as to what information DER actually wanted.

I would suggest:

- a tidy up of the current ILS
- checklist for the info required in the supporting documentation and a guideline for works approval and licence application packages
- a list of acceptable environmental guidelines for applicants, or a guide for choosing acceptable guidelines
- a risk assessment matrix consistent with ISO 14001 or the departments internal decision making process, to guide applicants through the decision making process, to ensure the applicant chooses the appropriate location, pollution control equipment, management and operational controls etc.

Licence template

Page	Section	Comment
General		Overuse of capital letters
1		"Year issued" is unnecessary as the date of issue is on the bottom of the page and forms part of the licence number. Same comment for "version". It forms part of the licence number
1		"Registered Business Address" is doubled up. Also better wording might be registered company address. Possibly check with a corporate lawyer.
1		ACN number, should say ACN, as the N already stands for number
1		Remove the heading for "duration" as commencement and expiry date is self explanatory
1		Heading "Premises" should be "premises address"
1	Signing block	Isn't a licence granted in respect to the emissions and discharges of the premises? The activities themselves are not licenced.
2	Premises and activities description	Typo - The premises is* located at... Activities don't fall within a category, the premises falls within a category.
2	Conditions	We do not agree with DER making the EP act a licence condition as it removes our defences in the case of emergency etc.
2	Premises	What is an "Authorised Activity"? Its not mentioned in the Act
2	Infrastructure	Risky conditioning specific infrastructure requirements and would suggest that this has nothing to do with conditioning the emissions and discharges from the premises. This does not allow companies to make choices and improve infrastructure.
3	Emissions	Difficult to follow

3	Records and Information	The calculation of fees is supplied to DER during each fee payment. Why does this need to be a condition?
4	Reports	Why use the phrase "from time to time"?
5	Definitions and interpretation	The definition of annual period is confusing
		The definition of authorised activities is confusing
		If the definition is already in the Act, why does it need to be defined in the licence?
10	Schedule 3	How will licences that contain targets be managed? The target cannot simply be converted to a limit. A limit would need to be reassessed.

General Comments:

It is very unsettling that DER proposes a completely different type of licence, which appears far more complex than current licences.

Current licences are long and difficult to follow. Referring to various definitions and sections to make sense of a condition is an issue, however this draft doesn't really seem to fix those issues.

It is also a concern that DER will be licensing activities and infrastructure requirements. Duplication of requirements already under the Act is an issue for industry in relation to defences.

Thanks for providing our company the opportunity to make comment. I hope that our comments assist your reform process.

Regards

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