

Licence documentation
Strategy and Reform
Department of Environment Regulation
Locked Bag 33
CLOISTERS SQUARE WA 6850

STRATEGEN SUBMISSION REGARDING THE DRAFT LICENCE DOCUMENT

Strategen is pleased to provide a submission to the Department of Environment Regulation (DER) on the Licence and Works Approval Application Form and Guideline for Applicants which is currently being advertised for public comment as part of the Draft Licence Documentation.

Strategen is a leading environmental consultancy in Western Australia and provides a wide range of environmental approvals services to our clients in the land development, mining, industry and infrastructure sectors.

Strategen notes that a suite of licence documentation has been published by DER which includes the following items:

- application form for works approvals/licences
- licence template
- conditions library (sample)
- guideline for applications.

The following submission relates to the Application Form and the Guideline for Applications. Strategen has no specific comment on the licence template and conditions library, however we hope that these are updated as needed in response to consultation on other aspects of DER reform; for example, consultation on the *Guidance Statement: Separation Distances*, and the proposed *Guidance Statement: Environmental Risk Assessment Framework* (due for release in November 2015).

Standardised applications

Strategen supports the DER in its development of a standardised application form for Licence and Works Approval applications under the *Environmental Protection Act 1986* (EP Act). The application form and guidance provides more specific and standard requirements for proponents than has previously existed with regard to licence and works approval applications under the EP Act. Previously there has been no approved manner or form for applications and this reform provides useful guidance on the information required from applicants.

Concurrent applications

The second major advantage of the reform is that the application form allows for concurrent application for both works approval and licence and for the concurrent assessment and licensing of multi-category premises within a single approval instrument. This streamlining of the process is supported by Strategen.

Part 5: Fit and competent operator

The new application form sets out some extensive requirements for the applicant to demonstrate that they are a 'fit and competent operator'.

The requirement is overly detailed, with the company and each director having to provide a full history in relation to the following:

- *Has the applicant ever been convicted of an offence under the EP Act or its subsidiary legislation or similar legislation in Australia?*
- *Has the applicant been issued with one or more penalty infringement notices or compliance orders under the EP Act or its subsidiary legislation?*
- *Has the applicant ever breached any conditions of licence or works approval under the EP Act or its subsidiary legislation?*
- *Has the applicant ever had an equivalent works approval or licence from this State or elsewhere that was suspended and/or cancelled?*
- *Does the applicant have previous experience, or are there key personnel with previous experience, in relation to activities in the proposal?*

The Guideline for Applicants states that "each director must complete this section as an individual, and include their previous history as directors of other companies". There is no time limit on this requirement.

The third dot point above is ambiguous in what constitutes a 'breach', i.e. is it a potential non-compliance noted in an audit or does it require a formal breach notice from the Department? This point may require legal advice. If a broader interpretation of a breach is taken, then this requirement is particularly onerous as breaching a licence condition is not unusual and in many instances, Directors may not even have been aware that a breach occurred.

The DER Consultation paper, *Licence Documentation* (September 2015), states that:

The application form requires operational details of the applicant in order to inform DER's risk-based assessment. Applicants with demonstrated appropriate operational capability and environmental performance will likely require a lower level of regulatory control to be applied in the licence conditions.

On this basis, it appears that historical information on selected specific aspects of compliance is intended to inform an assessment of likely future performance regardless of:

- the length of time since the breach or non-compliance
- the relevance of the type and location of the activity that resulted in the breach or non-compliance to the activity that is the subject of the application
- any extenuating circumstances that resulted in the breach or non-compliance
- any business improvement undertaken since the breach or non-compliance
- any change in management/governance since the breach or non-compliance.

Strategen is concerned that presenting the requested information in a public document could result in the information being taken out of context and could unfairly affect the reputation of applicants and their Directors. Strategen recognises that it may be appropriate to take into account the recent environmental compliance status and performance of a company; however, this requirement may be more feasible if it is limited to a short timeframe (e.g. two years) and limited to publicly available information. More relevant information for use in assessing a fit and competent operation would be the proposed environmental management (policy and environmental management system or similar) of the subject of the application.

The statement that “applicants with demonstrated appropriate operational capability and environmental performance *will likely require a lower level of regulatory control to be applied in the licence conditions*” must be interpreted to mean that new entrants to an industry or companies expanding their activities into different or parallel fields would be subject to a higher level of regulatory control. These additional requirements, whether they be monitoring or reporting, are likely to add costs to projects and potentially act as a disincentive for new investment. The fairness of penalising new and potentially innovative investments in an industry in comparison to requirements on the expansion or amendment of existing industry is arguably not consistent with a merit-based assessment and approval process.

The potential for additional requirements on small or new operators was reinforced in verbal feedback from DER that large operators would not have to report all historical breaches and other information relevant to Part 5 of the Application Form due to the scale of information that could be provided.

Strategen supports transparent processes for environmental impact assessment and decision making. However, the information required in the application in its current form may present a significant reputational risk for proponents. In its current format, Strategen does not support the publication of the information required in Part 5 of the form under the ‘Fit and Competent operator’ section.

Other comments

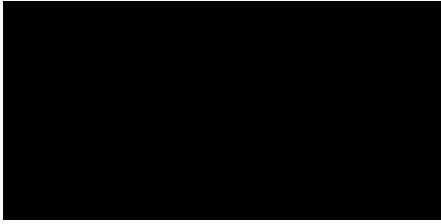
1. The form in its current format could be made more user-friendly for online compilation and submission. The inclusion of check boxes and the ability to format text and amend tables within sections would be useful.
2. Please clarify whether a supporting document is acceptable to be submitted with the form.
3. There appears to be difficulties in entering text into some sections of the form.
4. The application form and guidance is targeted to new Works Approvals and Licences; however, it also needs to be used for amendments and renewals. Additional guidance regarding the use of the form for this purpose would be useful.

Unknown elements of the information required

Key guidance on aspects of the information required such as risk assessment and the assessment framework has not yet been published by DER. Therefore, no comment can be made on these aspects of the application form.

Strategen appreciates the opportunity to provide these comments to the DER and looks forward to working constructively with the Department in the regulatory reform process and assessment of proposals.

Yours sincerely



TIM BOWRA
GENERAL MANAGER & SENIOR PRINCIPAL
18 November 2015