



Minister for Environment; Youth

Our Ref: 028/09

Mr David Munut
Secretary
Bickley Ward Progress and Ratepayers Association (Inc)
C/o 156 Lacey Street
BECKENHAM WA 6107

Dear Mr Munut

APPEAL AGAINST DECISION NOT TO ASSESS – BITUMEN EMULSION PLANT - 5 MARION ROAD MADDINGTON

Thank you for your appeal on behalf of the Bickley Ward Progress and Ratepayers Association (the Association) against the decision of the Environmental Protection Authority (EPA) not to assess the above proposal.

Pursuant to section 106 of the *Environmental Protection Act 1986* (the Act), I have obtained a report from the EPA on the matters raised in the appeal. I have also received a report from the Appeals Convenor, a copy of which is enclosed for your information. The Appeals Convenor's report sets out the background and other matters relevant to the appeal.

Your appeal was the only one received in relation to this matter.

The Appeals Convenor has advised that a representative of his Office has discussed your appeal with you. As well, the Appeals Convenor sought additional advice from the Department of Environment and Conservation (DEC). The proponent has also responded to the matters raised in the appeal.

The Association's appeal raised a number of issues in objection to the EPA's decision, which are comprehensively addressed in the Appeals Convenor's report. The grounds of appeal were summarised by the Appeals Convenor as: location and buffer distances, lack of consultation, environmental impacts, impact of similar proposals, and current environmental record.

I note that the Association is seeking for the proposal to be formally assessed to ensure that there is adequate consultation with the local community and investigation of potential environmental impacts.

I am advised that the proposed site for the Bitumen Emulsion Plant in Marion Road Maddington, which is zoned Industrial under the Metropolitan Region Scheme and is located within approximately 80 metres of residential properties.

I understand that the DEC received an application for a works approval from Downer EDI Works Pty Ltd in August 2008. The application to construct a bitumen plant was being assessed under Schedule 1 of the *Environmental Protection Regulations 1987, Category 36, Bitumen Manufacturing, premises on which bitumen is mixed or prepared for use at places or premises other than those premises.*

The proposal was subsequently referred to the EPA by the Association and the EPA examined the proposal and published its decision as Not Assessed – Managed under Part V (Works Approval), which is the subject of this appeal.

Based on the referral documentation provided, the EPA stated that there are more than 25 similar projects in Western Australia which are managed under Part V of the *Environmental Protection Act (1986)* and that while some of these sites have in the past generated odour complaints, no significant environmental impacts have arisen from bitumen or asphalt processing plants.

On this basis, the EPA considered that the proposal was not expected to have a significant effect on the environment and, as a result, formal environmental impact assessment was not considered necessary.

I am informed that during the appeal investigation, the City of Gosnells refused the application for the proposed bitumen emulsion plant on the grounds that the EPA Guidance Statement 3, which provides guidance on separation distances between industrial and sensitive land uses, specifies a recommended buffer distance of 1 000 metres between asphalt plants and sensitive land uses such as residential zoned land.

I noted that the proponent stated that, as the impacts associated with the manufacturing of asphalt and bitumen are very different, it is not reasonable to apply the separation distance of 1,000 metres. However, on this important matter, I am advised that the proponent's documentation submitted during the appeals process did not provide evidence as to whether the proposed 80 metre buffer is adequate. The Appeals Convenor noted that any proposed separation distance should be supported by a scientific study based on-site and industry specific information consistent with EPA current policy.

The Appeals Convenor also noted that the documentation provided to the EPA does not appear to include critical information in relation to existing odours from current operations on the site. Further to this, the proponent did not provide details on any proposed measures designed to capture or treat bitumen fumes at the proposed site.

I also note recent advice from the DEC that at this stage it is unable to

sufficiently assess the emissions and discharges risk to the environment as further information is required.

I also understand that the EPA, in determining whether or not to assess a proposal, is guided by Section 4.1 of the *Environmental Impact Assessment Administrative Procedures 2002*. In particular, Section 4.1.2 (iii) requires the EPA to specifically consider "*the extent of emissions and their potential to unreasonably interfere with the health, welfare, convenience, comfort or amenity of people*".

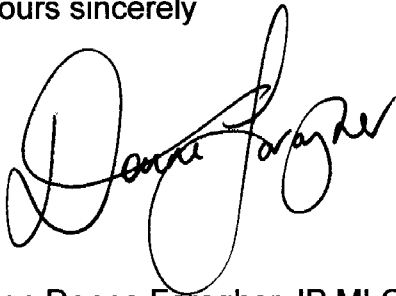
In considering the potential environmental issues associated with this proposal and the Appeals Convenor's analysis of your appeal grounds, it can be reasonably concluded that there is currently insufficient information to determine the extent of emissions and their potential to unreasonably interfere with the health, welfare, convenience, comfort or amenity of nearby residents.

I have, therefore, decided to uphold the Association's appeal to the extent that I have remitted the proposal to the EPA for the making of a fresh decision as to whether or not the proposal should be assessed.

In remitting the proposal to the EPA, it is expected that the proponent will need to demonstrate whether the 80 metre separation distance between the proposed bitumen emulsion plant and nearby residential areas is sufficient to meet noise, dust, and air quality standards, particularly odour. It is also reasonable to expect that the proponent will consult with the local community during this process.

Thank you for bringing these matters to my attention.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Donna Faragher', written in a cursive style.

Hon Donna Faragher JP MLC
MINISTER FOR ENVIRONMENT; YOUTH

Enc.

1 JUL 2009