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Hon. Lily D'Ambrosio
Minister for Climate Action
Minister for Energy and Resources
Minister for the State Electricity Commission
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Dear Minister D'Ambrosio

MINING LICENCE - AVONBANK

Horsham Rural City Council (HRCC) is writing with regard to the proposed Mining Licence for the Avonbank Mineral Sands Project and is seeking an update on progress of the application and clarification on key issues that will affect our community.

The proposed Avonbank Mineral Sands Mine is a significant development for Horsham Rural City and the Wimmera region, and it is important that the social, environmental and economic impacts are appropriately considered and managed.

As outlined in our submission to Earth Resources Regulator (now Resources Victoria), there are a number of key issues including:

- Mining Licence Area
- Council's role
- Compliance
- Rehabilitation
- Rehabilitation Bonds
- Further consultation
- MRSDA requirements

Accordingly, we seek clarification on these matters prior to any decision on the mining license application.

Mining Licence Area

HRCC has strong concerns that the WIM Base Area (WBA) is located outside the proposed license area, and the development and operation of the WBA will not be subject to the same regulation as inside the licence area. Council is of the view that the WBA must be included in the mining licence area so that the same regulatory frameworks and compliance resources can be applied.

The work program states:

Secondary processing will be undertaken outside of the mining licence area within the WBA. At the WCP, the desliming cyclone will separate the <20 µm material (fine tailings) from the ore slurry. The fine tailings will report to the thickener for treatment, whilst underflow (containing the HMC) will gravitate to the surge bin.

The definition of mining in section 3 of the *Mineral Resources Sustainable Development Act 1990 (MRSDA)* is as follows:

"mining" means extracting minerals from land for the purpose of producing them commercially, and includes processing and treating ore;

Having regard to this definition, it would be unreasonable and unlawful to exclude the WBA from the scope of any mining licence for the Avonbank mine. Any processing of ore must be regarded as 'mining' and in Council's view requires a licence under the MRSDA.

We note the discussion of this issue by the Inquiry and Advisory Committee (IAC). The IAC is not understood to have been comprised of legally qualified members. The question is whether processing of ore constitutes mining for the purposes of the MRSDA. The IAC made no finding that processing was not mining.

Exclusion of the railway hardstand

I am advised that the proposed mining licence area includes the railway hardstand adjoining the WIFT that is already the subject of Schedule 3 to the Special Use Zone, but excludes the area proposed for inclusion within Schedule 9 of the Special Use Zone for the proposed processing area planning scheme amendment. Council's view is that this is illogical and is prone to create confusion when administering the planning scheme.

Council's role

We reiterate our view that the State Government should be the regulatory authority for all mining related activity through the *Mineral Resources (Sustainable Development) Act 1990* and the *Planning and Environment Act 1987*. Council has consistently submitted that it does not have the resources or expertise to regulate or enforce technical aspects of mining approvals.

The WBA was assessed as part of the EES process and should be subject to the same environmental management framework and approvals as the mine itself. It would not be appropriate for the technical aspects of the WBA to be regulated under a planning scheme amendment. That should focus only on regular town planning issues (e.g. road maintenance, traffic generation, parking, hours of operation, tree protection zones etc.).

As one particular example, EMM AQ-05: HMC Stockpile Management sets out a range of technical measures related to the moisture content of ore stockpiles when transported between the mine and the WBA. This type of condition simply does not belong within a planning approval and should be part of the mining licence conditions. As another example, measures relating to radiation management (eg RD-08) are administered under the *Radiation Act 2005*. The planning scheme includes no relevant referral triggers relating to this Act. It is not appropriate to include *Environmental Management Measures* (EMMs) in a planning instrument relating to this management measure.

There are many examples within the draft EMMs that warrant express comment. Some of the EMMs apply 'project wide.' To the extent that project wide EMMs are included, they must be regulated under the mining licence, as the key approval for the project.

Compliance

Mining activity presents a range of risks to our community and the environment as is outlined in the *EES Inquiry and Advisory Committee Report 2023* and the over 100 *Environmental Management Measures* (EMMs) identified. It is essential to ensure any mining activity adheres to this environmental assessment and that the Mining License MIN008642 and all relevant management measures are incorporated into the mining conditions.

Council have yet to be provided with a copy of model conditions, or receive any details from Resources Victoria on how each of these EMMs will be implemented through a mining licence or work plan. We also note that these measures will have ongoing compliance requirements, and we request assurances that adequate monitoring and compliance resources will be located in the municipality or the local region.

Council has invested significant dollars into developing the WIFT and WAL Hub which has supported global agricultural business to invest in the precinct. Any failure to ensure compliance to EMM's particularly in relation to dust, radiation, cross contamination and railway access, poses a risk to these businesses and the local and regional economy.

It should be noted that to Council's knowledge, none of these adjacent businesses have been directly notified by the state government of the possibility of a mining related processing facility being located in the WIFT precinct, outside a mining licence area.

While there is a compensation regime under Part 8 of the MRSDA, it does not apply in circumstances where dust or ore particulates causes a nuisance by cross contamination. Council regards this as a material risk which may give rise to land use conflict and in extreme cases, litigation.

To the extent that a public authority may owe a duty of care to the owners of land affected by mining activity (including processing of ore) to avoid economic loss, Council believes the risks to agribusinesses relying on the WIFT is acute. To this end, a proper risk assessment would balance the loss of agricultural land, compensation under Part 8 and the risk of economic losses in the event that crops are contaminated by processing activities.

Furthermore, Council notes that the *Environment Protection Act 2017* allows members of the public to seek civil remedies where affected adversely by activities which affect the environment (including any breach of the General Environmental Duty). If airborne particulates are not adequately controlled, the processing proposal may be exposed to the risk of litigation from affected businesses.

Rehabilitation

The Wimmera contains some of the most productive cropping agricultural land in Australia and we note it was identified as a potentially significant impact in the EES with progressive mining, agricultural rehabilitation trials and ongoing research proposed to manage the social, environmental and economic impacts. This is the single biggest concern for our farming community and future generations, and successful agricultural rehabilitation must form part of the Mining Licence conditions.

Council has little confidence in rehabilitation trials previously undertaken by WIM Resources. To the best of Council's knowledge, methodology applied in these trials was not independently or scientifically assessed.

The MRSDA is flawed in that the statement of economic significance for agricultural land to be mined is not required before a licence is issued (s 26A). That statement should be provided in advance of the grant of a mining licence. Council seeks clarity as to how and when this statement will be provided to affected landowners, and the likely timeframe for any work plan.

During a recent presentation to Council, Resources Victoria indicated that landholder agreements are the usual method of managing rehabilitation which appears at odds with the Ministers' ESS Assessment that clearly identifies a range of mitigation measure relevant to agriculture including:

- SL-12 - Agricultural baseline assessment
- RH-02 - Rehabilitation Research Plan
- RH-01 - Rehabilitation Plan
- RH-0A - Rehabilitation monitoring
- SE-02 - Environmental Management System and Community Engagement Plan

Council requests urgent clarification that any licence would ensure the proper integration of the IAC recommendations relating to rehabilitation. Council also requests confirmation of how these important matters will be integrated into any mining licence and what authority with the skills and knowledge in agriculture will be responsible for monitoring these requirements.

Council also wishes to better understand areas where groundwater recharge within the mined pit may constrain the conversion of land back to productive agricultural use.

Council notes that the proposed rehabilitation strategy for the Latrobe Valley coal mines is itself the subject of a proposed Environment Effects Statement. Our community should not have to wait until the mine is decommissioned in order to understand what the rehabilitation obligations will be, and how they will be secured. In order to provide the community with certainty, Council urges Resources Victoria and the Minister to provide transparent advice as to how the requirements of any rehabilitation plan will give effect to the IAC recommendations before any mining licence is approved.

Council notes the rehabilitation milestones that form part of the EES (refer chapter 22). Section 22.8 of the EES provides:

- Key rehabilitation completion milestones include:
- Rehabilitation operations completed by year 7 in Block A.
 - Rehabilitation operations completed by year 18 in Block B.
 - Rehabilitation operations completed by year 26 in Block C.
 - Rehabilitation operations completed by year 31 Block D.
 - WBA decommissioning completed by year 32.
 - Site closure of all Project areas, including the PoP, by year 36.

It is expected that the complete cycle from topsoil disturbance, mining, backfill, topsoil placement and seeding will take less than 4 years for each mining cell. The Rehabilitation Plan to be prepared will provide further detailed milestones with consideration to the Ministers assessment and landholder engagement during the secondary approvals phase.

The Minister for Planning's assessment of the rehabilitation plan issues include the following statement, which underscores the need for care:

The IAC further highlighted that the rehabilitation plan provided with the exhibited EES is preliminary only and requires further development and approval prior to project commencement. The IAC noted that the rehabilitation plan will form part of the approvals under the MRSD Act, informed by the requirements in the EMF (including EMM RH-01), and that the incorporated document imposes some rehabilitation requirements for the WBA.

The community has not been kept informed of how the rehabilitation plan is evolving or offered a chance to comment. It is not clear if these matters have been addressed since the date of the Minister's Assessment.

The Environmental Management Framework that forms part of the EES includes an obligation that requires the rehabilitation plan to be established and implemented prior to project commencement. Given the scope and scale of the rehabilitation challenge, it is appropriate that the form of the rehabilitation plan submitted for approval under the mining licence is the subject of further stakeholder consultation.

Council seeks your assurance that further public engagement in relation to the rehabilitation plan will commence before any decision on a mining licence.

Rehabilitation bond

Given the significant area proposed to be mined, it is critical that the State adopts a rigorous approach to securing rehabilitation outcomes. The quantum and nature of a rehabilitation bond will no doubt be contentious, having regard to any rehabilitation liability assessment.

Council suggests that one way to mitigate the cost of the bond is to grant separate mining licences in respect of discrete stages and to ensure that commencement of each subsequent stage is subject to attainment of rehabilitation milestones specified in an endorsed rehabilitation plan.

Section 26(1) of the MRSDA empowers the Minister to grant a licence over a smaller area than applied for and to impose a condition requiring a rehabilitation bond. Logically a separate licence and work plan should be approved for each block described in the EES so as to ensure that there is appropriate incentives for good performance by WIM.

Council notes that the guidelines for mining licence applications state that a program of work should include technical and economic feasibility studies related to sustainable development and rehabilitation of the mineral resource. It is Council's view that the program of work available from WIM does not satisfy this requirement.

The community is currently uninformed as to how your Department will ensure that there is adequate private capital to fund rehabilitation for a project of this scale.

Regulation 15 requires that the application detail the estimated annual expenditure, for the first 5 years of the licence, to undertake the proposed program of work and rehabilitation, and include evidence of the applicant's financial capability to fund the estimated expenditure. It is not clear to Council that the application satisfies this requirement.

Further consultation

A review of the IAC report makes it clear that there was a need for significant further work before the project could proceed and all relevant approvals granted. For example, it noted concerns that no draft work plan had been exhibited with the EES. As outlined above, the rehabilitation plan was a preliminary document.

Section 40(3) of the MRSDA provides that a work plan must include a plan for consulting the community throughout the period of the licence.

While this obligation applies at the work plan stage, the community would reasonably expect further details as to the consultation process that will apply between now and the time that the work plan is lodged. This approach is consistent with the duty to consult under the MRSDA.

Mineral Resources (Sustainable Development) Act 1990

We also understand that under the *MRSD Act*, the Minister in addition to the amenity, social and environmental impacts must also consider the following:

- *The applicant is a fit and proper person to hold a license.*
- *The applicant intends to comply with the MRSDA.*
- *The applicant genuinely intends to do the work.*
- *The applicant has an appropriate program of work.*
- *The applicant is likely to be able to finance the proposed work and rehabilitation of the land.*

Council staff understand that an employee of WIM Resources involved in the planning and delivery of the project is currently the subject of a prosecution before the Horsham Magistrates' Court. Stakeholders have expressed interest in understanding whether that investigation is being considered when applying the 'fit and proper person' test. Section 16 of the MRSDA requires consideration by the Minister of whether an associate of the applicant had been convicted of certain offences.

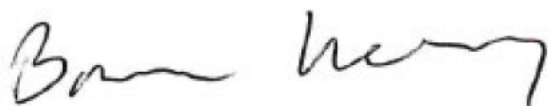
These tests are important to our community to ensure any license holder is capable of dealing fairly and openly with landholders, meeting their legislative obligations and completing the rehabilitation of productive agricultural land, and we expect the highest due diligence be undertaken to ensure WIM Resources meet these standards.

The regulation of mining is critical to our Council, we seek details on how these legislative requirements will be met prior to any decision on the Mining Licence.

Until there is further consultation to address these matters, it is difficult for Council to be satisfied that the mining licence should be granted.

Should you require any further information, please contact [REDACTED]
on mobile: [REDACTED] or email: [REDACTED]

Yours sincerely,



Cr Brian Klowss
ACTING MAYOR

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