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Level 61 Governor Phillip Tower
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Sydney NSW 2000

Project 71102.03 Rev1
12 October 2011
JMN:DIH

Attention: Ms. Michelle Astridge

Dear Sirs

Dellara Pty Ltd v Minister of Planning & Penrith City Council
Land and Environment Court Proceedings No 10928 of 2010
Property: 123-179 Patons Lane, Orchard Hills

Response to the Minister for Planning's Issues on the Proposed Orchard Hills Waste Management and Recycling Facility

1. Introduction

This letter has been prepared in response to issues raised by the Minister for Planning in a letter dated 10 October 2011, as set out in the section entitled 'Contamination' (pp. 1).

The author has read the Expert Witness Code of Conduct as set out in Section 31.23 of the Uniform Civil Procedures Rules 2005 and has prepared this report accordingly.

- 2. Project now proposes to substantially remove and emplace the amenity bunds on-site. As such, the proposal involves moving greater amounts of potentially contaminated material on-site when compared to previous iterations of the proposal. Reliance on a draft Asbestos Report prepared for a different proposal introduces an unacceptable element of risk to both human and environmental health.**

The fundamental aspect of any Asbestos Management Plan (AMP) is to outline the appropriate processes to handle and manage contaminated (asbestos impacted) material so as to reduce the risk to human health. Whilst the quantity of material being removed from the amenity bunds and subsequently needing assessment may be larger in the current proposal than was previously proposed (i.e. potentially more material impacted by construction and demolition waste needing to be cleared for asbestos and confirmed to be general solid waste), the process and procedures to manage this material and the material known to be impacted by asbestos is consistent for both the original proposal, which the Douglas Partners' draft AMP¹ was prepared, and the current proposal as outlined

¹ Douglas Partners Pty Ltd, 'Report on Asbestos Management Plan, Orchard Hills Waste and Resource Management Facility, Patons Lane, Orchard Hills', (ref: 71102.01) dated May 2010.

in the Further Modified Preferred Project Report (FMPPR), dated September 2011. Given this, reliance on the draft asbestos management plan remains appropriate for the FMPPR and hence does not introduce an unacceptable element of risk to both human health and the environment as contended by the respondent.

3. Previous draft Asbestos Report relies on 'preliminary' evaluations of the quantity of contaminated materials. Whilst this original sampling regime may have been appropriate for a proposal that leaves the amenity bunds substantially *in situ* it can not be validly applied to the current proposal, especially given the likely high variability of illegally dumped material. Any future evaluation must be undertaken according to appropriate standards

As expressed with respect to the previous proposal in the section entitled 'Penrith Council 1.1 (d)' of the report entitled 'Joint Meeting of Expert Witnesses Orchard Hills Facility In the Land and Environment Court of NSW No.10928 of 2010, 28th and 29th of July 2011', it was agreed that sufficient sampling had been undertaken to characterise the bunds. Hence, the material in the bunds remains characterised for both the original and current proposals as characterisation is not affected by the quantity of material that is to remain *in situ* within the bunds.

In this regard, it is highlighted that the conclusions and agreement outlined above is based on the information discussed at the joint meeting of expert witnesses and which was also presented in Section 2.4 of the author's letter dated 28 September 2011 in response to issues raised in correspondence from the respondents in letters dated 16 September 2011.

Moreover, given the variability of the 'illegally dumped material', additional testing would not be likely to provide any further certainty to the characterisation already undertaken on the material in the bund walls. Given this, the most prudent and effective approach to managing this variability is the implementation of appropriate procedures and contingency measures to allow for appropriate management and handling of the material as has been outlined in the draft AMP.

Therefore, the author maintains the opinion that the sampling regime for both the previous and current proposal is appropriate and hence further sampling is not warranted unless where required under the AMP during the construction works.

4. Letter dated 28 September was not prepared or peer-reviewed by an Occupational Hygienist

Whilst the author's letter dated 28 September 2011 was not prepared or peer-reviewed by an Occupational Hygienist, the author is a NSW accredited Site Auditor (Auditor Accreditation Number 9822) with appropriate experience and expertise in the field to make recommendations to the court on appropriate procedures for handling asbestos contaminated material and human health risk. As such, the author did not consider it warranted for this letter to be peer-reviewed by an Occupational Hygienist.

It is also noted that it is the intention of the proponent that implementation of the AMP will be subject to peer review by Mr Philip Hibbs of Philip Hibbs & Associates Pty Ltd who is an accredited Occupational Hygienist.

Yours faithfully
Douglas Partners Pty Ltd



J M Nash
Principal