

Confidential communication

Attn: K Thomas
The Department of Planning
23-33 Bridge Street
SYDNEY NSW 2000

16 February 2012

Attn: J Wauchope
Gadens Lawyers
Skygarden Building
77 Castlereagh Street
SYDNEY NSW 2000

Dear Sirs

Dellara Pty Ltd v Minister for Planning & Anor
Land and Environment Court Proceedings No 10928 of 2010

We refer to the above proceedings and the Joint Report on Contamination filed 16 December 2011 (“**Contamination Joint Report**”), and the Updated Joint Report on Noise filed on 22 December 2011 (“**Acoustic Joint Report**”).

Acoustic Joint Report

In the Acoustic Joint Report Mr Cooper raises concerns with our client’s acoustic assessment that did not arise in the earlier joint report. In particular, that acoustic modelling has not been undertaken for each stage of the project (Item 1), and that there is no consolidated acoustic assessment report (Item 3).

Mr Clarke’s position, as outlined in the Acoustic Joint Report, is that enough modelling has been undertaken in respect of the stages (as the models run represent the worst case scenarios) and that the acoustic documents are sufficient to undertake an assessment of the FMPPR. Nevertheless, in an effort to finally resolve the noise contention, our client has instructed Mr Clarke to complete the additional noise modelling and to prepare a consolidated acoustic report. Further, the Joint Report for extraction/emplacement identified that an adjustment to the height of machinery in the contingency stockpile was needed, and accordingly our client instructed Mr Clarke to re-run the 4 noise scenarios in the FMPPR taking into account the adjusted height to ensure that compliance with the noise criteria is maintained. We enclose, by way of service, copies of the following:

- 1 Document entitled ‘Supplementary Statement of Evidence Response to Matters Raised in the Joint Report’ prepared by Brian Clarke. The Supplementary Statement provides additional noise modelling of the further stages (scenarios) of the project and confirms that

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acoustic compliance is achieved at all stages. The modelling in the Supplementary Statement takes into consideration the outcome of the Joint Report for extraction/emplacement in respect of the placement/height of machinery; and

- 2 Consolidated Acoustics Report which consolidates all relevant information on acoustics prepared for the FMPPR into one report. Mr Clarke advises that this document contains no new information apart from that contained in the Supplementary Statement referred to at (1) above.

We understand that Mr Cooper is aware from his discussions with Mr Clarke that additional modelling was being undertaken in response to his concern. Accordingly, we suggest that Mr Clarke and Mr Cooper jointly confer in relation to the above documents prior to the hearing. Please confirm that your clients are happy to proceed on that basis.

Should leave be required for the Applicant to rely on the above information, we propose to seek leave at the hearing of this matter.

Contamination Joint Report

In the Contamination Joint Report, it was agreed between the experts that a formal document containing a SEPP 55 contamination assessment had not been prepared.

Whilst Mr Nash's expert opinion remains that the materials in the bunds have been adequately and reasonably characterised and any further testing should be done at the time of bund deconstruction, our client has, in an attempt to finally resolve this contention, instructed Mr Nash to consolidate work already undertaken into a formal SEPP 55 contamination assessment report in accordance with clause 7(2) of SEPP 55. We enclose, by way of service, Stage 1 – Investigation and Contamination Assessment prepared by Douglas Partners.

Mr Nash advises that the Stage 1 Investigation relies only on field and analytical results for the bund wall materials referred to in the 'Preliminary In-Situ Waste Classification' dated September 2009 (which was lodged as part of the EA), and no additional sampling has been undertaken. The Stage 1 Investigation also contains a formal record of information obtained in relation to the site's history as required by the Contaminated Land Management Guidelines.

As advised above, we suggest that Mr Nash and Mr Clay jointly confer in relation to the Stage 1 Investigation prior to the hearing. Please confirm that your clients are happy to proceed on that basis.

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Mr Clay's Supplementary Report

We are still obtaining instructions from our client in relation to the additional report by Mr Clay. We will let you know our instructions when they come to hand, including whether our client is agreeable for a joint conference with Mr Clay to occur prior to the hearing.

Yours faithfully

A handwritten signature in black ink, reading "Nicola Gillies". The signature is written in a cursive, flowing style.

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