

**NORTHBANK ENTERPRISE HUB**

PTY LIMITED

ABN 77 063 271 625

28 March 2012

Peter Jamieson  
Head Regional Operations Unit – Hunter Region  
Environment Protection Authority  
117 Bull Street  
NEWCASTLE NSW 2302

Dear Mr Jamieson,

**Northbank Enterprise Hub (Major Project Application No.10\_0185)  
Environmental Assessment - Aboriginal Archaeology**

We refer to your letter 27 January 2012 to NSW Department of Planning and Infrastructure, a copy of which has been provided to us (**EPA Letter**).

Enclosed, for your information, is a copy of a letter we have sent to Chris Wilson, Executive Director, Major Projects Assessment, Department of Planning and Infrastructure responding to the comments in the EPA Letter, to the effect that NEH is in breach of section 89A of the NPW Act.

You will see from the enclosed letter that NEH is of the view that it is not in breach of section 89A of the NPW Act.

If, having considered the matters in the enclosed letter, EPA is still of the view that NEH has an obligation to notify the Director General, NEH requests EPA to inform it accordingly and provide reasons in support of that view.

NEH will then obtain further legal advice in relation to this issue.

Yours faithfully

  
**ROBIN WATERS**  
Director - Northbank Enterprise Hub

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Chris Wilson  
Executive Director  
Major Projects Assessment  
Department of Planning and Infrastructure  
GPO Box 93  
SYDNEY NSW 2001

Dear Mr Wilson,

**Northbank Enterprise Hub (Major Project Application No.10\_0185)  
Environmental Assessment - Aboriginal Archaeology**

I refer to your letter dated 14 March 2012 to Craig Marler enclosing a copy of a letter from the Environment Protection Authority to NSW Department of Planning and Infrastructure dated 27 January 2012 (EPA letter).

The purpose of this letter is to respond to the comments in the EPA Letter to the effect that NEH is in breach of s.89A of the NPW Act and is under a "final warning".

NEH takes its obligations to comply with all applicable laws very seriously, however in this circumstance we do not agree that NEH is in breach of s. 89A of the NPW Act. We highlight the history of the matter and our legal understanding of the Act, as stated below.

**History of Aboriginal Archaeological Assessment**

NEH notes there are currently two conflicting experts reports relating to Aboriginal Archaeology, both of which were submitted by NEH to DOPI, which forms the basis of the issue.

1. As part of the preparation of the EA for the Application, NEH engaged Indigenous Outcomes Pty Limited (Indigenous Outcomes) to report on Aboriginal archaeological matters.
2. Indigenous Outcomes carried out field studies in the second half of 2010 and prepared a report, dated December 2010, which was included in the EA forwarded to the Department of Planning (Indigenous Outcomes Report).
3. We note that The Indigenous Outcomes Report:
  - Identifies 4 sites on Lot 1001; and
  - Identifies 1 site on the WesTrac site (not related to Lot 1001),

Not 8 sites as claimed by EPA.

4. Because of alleged shortcomings with the Indigenous Outcomes report, reflected by the issues raised by EPA in the EA adequacy review, NEH wanted the EPA issues addressed by Indigenous Outcomes.
5. Following public allegations and a pending investigation against the Managing Director of Aboriginal Outcomes, namely Cheryl Kitchener, (on matters not related to NEH or its development) Ms Kitchener requested she be relieved as the Aboriginal Archaeological consultant for the project.

Her request was accepted by NEH.

6. NEH engaged McCardle Cultural Heritage Pty Ltd (MCH) as the replacement consultant to start afresh and carry out a thorough survey and report, specifically including the 4 sites referred to in the Indigenous Outcomes Report.
7. MCH prepared a formal written report (MCH Report) which was submitted to the Director General in further support of the Application. In summary that report states:
  - There were no Aboriginal objects found on Lot 1001; and
  - That it is unlikely that Aboriginal objects would be found noting that the topography of the land and other aspects is not conducive with the expectation of finding Aboriginal objects.
8. MCH has advised NEH that they attempted to find, without success, the previously identified sites in the Indigenous Outcomes Report. MCH suggested that it is probable that the finds were not Aboriginal objects and were more likely items from a former seabed, particularly noting the topography as mentioned above.

NEH has relied upon their expert opinion.

9. MCH also confirmed to NEH that it is standard practice for a consultant engaged to do the Aboriginal cultural heritage study to inform the Director General of the location of any Aboriginal objects found by completing the appropriate registration cards to satisfy s.89 of the NPW Act.
10. NEH (including its employees) is not personally aware of the location of any Aboriginal objects on Lot 1001. NEH (like DOPI and EPA) is only aware of what is in the Indigenous Outcomes Report.
11. Given this history, and until this issue is resolved, NEH believes registration of the 4 sites referred to in the Indigenous Outcome Report would not serve any purpose, and could in fact be misleading.

#### **NEH's understanding of s.89A of the NPW Act**

Further to the history of events stated above, we also note that Section 89A of the NPW Act states:

*"A person who is aware of the location of an Aboriginal object that is the property of the Crown or, not being the property of the Crown, is real property, and does not, in the prescribed manner, notify the Director-General thereof within a reasonable time after the*

*person first becomes aware of that location is guilty of an offence against this Act unless the person believes on reasonable grounds that the Director-General is aware of the location of that Aboriginal object."*

NEH does not have expertise in matters relating to Aboriginal Cultural Heritage and the NPW Act, and therefore relies completely on the advice of appropriately qualified external consultants who NEH understands are familiar with their obligations under s.89A of the NPW Act.

Self-evidently:

- The person who finds an Aboriginal object (in this case the archaeological consultant) is the person s.89A of the NPW Act is aimed at; and
- Consistent with this, we note it is the normal practice in such matters for the consultant to notify the Director General (and we note that this is precisely what occurred in the case of our Redlake development for the WesTrac project).

In summary:

- Whilst NEH is aware of the Indigenous Outcomes Report, NEH is not itself aware of the location of any Aboriginal objects on Lot 1001 (and based on MCH's latter report, NEH does not believe that the objects located on Lot 1001 and in the Indigenous Outcomes Report were Aboriginal objects); and
- Even if NEH is a person referred to in s.89A, in light of established industry practice, NEH had reasonable grounds to believe that the Director General was made aware in the prescribed manner by Indigenous Outcomes, and therefore NEH is not in breach of that section.

As NEH views this matter very seriously, NEH has instructed MCH to again check the locations on Lot 1001, as identified in the Indigenous Outcomes Report, and to formally address the issue within their report which will be provided in support of the EA in due course.

NEH has sent a copy of this letter to EPA under cover of a letter inviting EPA's comments.

Should you have any questions please contact NEH's representative Kurt Robinson on 04162 253 707.

Yours faithfully

  
**ROBIN WATERS**  
Director - Northbank Enterprise Hub

cc Peter Jamieson, EPA