

March 26, 2020

Assyrian Schools Limited  
c/o - PMDL  
Attn: Kim Legras

By email

Dear Kim,

**RE: PROPOSED ST PETER AND PAUL ASSYRIAN PRIMARY SCHOOL – RESPONSE FAIRFIELD CITY COUNCIL SUBMISSION LAND CONTAMINATION.**

Martens and Associates (MA) have prepared this letter to address Council's submission regarding the suitability of the site for the proposed development as it relates to the issue of land contamination.

It is acknowledged that the site is contaminated with asbestos impacted material. This material was initially observed during investigation works which informed Council's approval of the land subdivision that created the subject lot. As a result of the identified contamination on Lot 2321 a restriction on title was placed on the site requiring the contamination issue to be resolved prior to the development of the site.

**PAST INVESTIGATIONS and REPORTING**

Two investigations of site contamination have been undertaken on the land which now forms Lots 2320 and 2321. One by SESL (2015) and a Detailed Site Investigation by Martens (July 2018). In these investigations a total of 40 locations were investigated (14 by SESL and 26 by Martens).

As Council states under E. Environmental Management in their October 1, 2019 letter, a compliant investigation of 3 ha site requires analysis of 40 locations based on NSW EPA (1995) sampling guidelines. The investigations completed to date have assessed a total of 40 locations and are therefore compliant with NSW EPA (1999) Sampling Guidelines. It is unclear why Council therefore concludes that they have inadequate information to assess the contamination status of the site.

Investigations by Martens were designed to address limitations in the investigations as undertaken by SESL (2015), in particular to better characterise the areas of previous filling and market garden use in the west of the site. Historical aerial photograph review identified that, as late as 1994, there were very severe erosion gullies in the western portion of the site. In 2007, in the same area, market gardens were operating. It is surmised that the gullies were filled, likely introducing the observed asbestos containing material (ACM) fragments observed on the site. Martens (2018) concluded the site required remediation.

A Remedial Action Plan (RAP) was prepared by Martens (August 2018). This RAP provides a methodology for the remediation and validation of the site. Provided the reconditions of this RAP are implemented the contamination on the site shall be remediated and the site shall be rendered fit for the intended use.

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## **SEPP 55 – Remediation of Land**

SEPP 55 provides a statewide planning approach to the remediation of contaminated land. Clause 7 of the SEPP requires:

### **7 Contamination and remediation to be considered in determining development application**

(1) A consent authority must not consent to the carrying out of any development on land unless—

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

(3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

(4) The land concerned is—

- (a) land that is within an investigation area,
- (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
- (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—
  - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
  - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

When considering clause 7 it is clear that, with the provided documentation, that the consent authority can be satisfied it has complied with the requirements of SEPP 55. As required [clause 7(1)(a)] a review of provided documentation (with testing complying the NSW EPA (1995) sampling design guidelines allows the consent authority to consider the site's contamination status and, by reading the RAP, [clause 7(1)(b)] be satisfied it "...will be suitable, after remediation) for the purpose for which development is proposed..." and may impose development consent condition requiring the remediation of the site in accordance with the RAP and therefore [clause 7(1)(c)] it may be "satisfied that the land will be remediated before the land is used for that purpose".

## **CONCLUSION**

We therefore conclude that the consent authority has adequate information to allow for an assessment of the site's land contamination status in accordance with the requirements of SEPP 55. By conditioning the implementation of the site Remedial Action Plan (RAP) as provided by Martens (2018) the consent authority shall be satisfied that the site shall be rendered fit for the intended use. Therefore, in accordance with the provisions of SEPP 55, we recommend the consent authority address the matter of land contamination on the site by way of consent conditions as follows:

Prior to issue of the first construction certificate:

- A site validation report be provided to the consent authority confirming that site remediated and validated has been undertaken to remediate land contamination identified in the Martens (2018) DSI. The Validation report is to confirm that the remediation works have been undertaken in general accordance with the Martens (2018) Remedial Action plan and that the site has been rendered fit for the intended use.

If you have questions regarding this response please contact the undersigned in our offices.

**For and on behalf of**

**MARTENS & ASSOCIATES PTY LTD**



**ANDREW NORRIS**

Director, Principal Engineer