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Suite 1, Level 4, 87 Wickham Terrace
Spring Hill QLD 4000
PO Box 10424, Adelaide Street
Brisbane, QLD 4000

Anthony Witherdin
Acting Director
Regional Assessments
Department of Planning and Environment

T +61 7 3839 1800
F +61 7 3839 1866
E info@emmconsulting.com.au
www.emmconsulting.com.au

Re: Waste Recycling Facility Moorebank – MP 05-0157 MOD 1

Dear Anthony,

We act for Benedict Industries Pty Ltd (Benedict).

Moorebank Recyclers Pty Ltd (Moorebank) is seeking to modify its approval (MP 05-0157 MOD1) for a Waste Recycling Facility (the Project) to include a condition of consent relating to lapsing of the consent. Moorebank has requested inclusion of the following condition:

This consent lapses five years after the date from which it operates, unless the Development has physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under Section 95 of the Act.

Our client objects to the addition of the above condition for the reasons given below. We note that Clause 11(1) in Schedule 6A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) states that:

An approval for carrying out a transitional Part 3A project lapses on the day that is 5 years after the repeal of Part 3A unless:

- (a) the project is physically commenced (within the meaning of section 95) on or before that day on the land to which the approval relates, or
- (b) the approval of the project is subject to a condition in force under section 75Y that provides for the approval to lapse on an earlier or later day.

Part 3A of the EP&A Act was repealed on 1 October 2011. As the Project is a transitional Part 3A project this would mean that the approval would lapse on 1 October 2016. However, Section 95(1) of the EP&A Act states:

A development consent lapses 5 years after the date from which it operates.

We note that there is an inconsistency between Clause 11(1) and section 95(1) and, presumably, this is the reason why Moorebank has requested that a condition specifying the lapsing date be inserted into the consent. Nevertheless, Moorebank does not provide sufficient justification as to why the development cannot be physically commenced prior to 1 October 2016. Also, in our opinion the intent of Clause 11(1) is to ensure that transitional Part 3A projects are undertaken in accordance with contemporary practices. Extending the timeframe for lapsing of the consent would not be in accordance with this intent.

Benedict objected to the original application. One of its primary concerns was that the Project was very dated and represented a use that was no longer suited to the present and planned uses in the surrounding area. We still consider this to be the case.

Accordingly, Benedict maintains its strong objection that the Project and maintains that it is inconsistent with the existing and planned future clearance of the area; that the Project will have adverse effects, particularly noise and traffic impacts, on existing and planned uses; and that the Project was subject to a similar clause which demonstrated the intention that it should be restricted to a time limited approval. Further, an extended commencement period would coincide with expanded residential and recreation development in the area, thus exacerbating the inconsistencies between uses.

We trust the above submission is clear but would be pleased to provide any further details that may assist you. If any clarification is needed please contact the undersigned or Rachael Thelwell, Senior Environmental Planner on 02 9493 9500.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Paul Mitchell', with a stylized, flowing script.

Paul Mitchell
Director
pmitchell@emmconsulting.com.au