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25 May 2015

The Secretary
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Attention: Robert Byrne

Dear Sir

**Proposed Small Stock Abattoir & Continued Operation of the Blayney SeaLink Cold Store Complex (Proposed Development)
137 Newbridge Road, Blayney
Application Number: SSD6594**

We act for David and Karen Somervaille, owners of "Athol" 84 Newbridge Road, Blayney. "Athol" comprises the Athol Homestead and is the location of the Athol Gardens reception centre. The homestead and the business are the most significantly impacted by the Proposed Development.

In providing their submission, our clients reserve their rights in relation to all matters including the commencement of proceedings to restrain the granting of development consent or to challenge the validity of any development consent granted.

Our clients have grave concerns regarding the honesty and adequacy of the assessment contained in the Environmental Impact Statement (**EIS**) exhibited for the Proposed Development. These concerns are based on our detailed review of the EIS and separate expert reports commissioned by our clients in the following areas:

- Á Statutory Planning;
- Á Public health;
- Á Odour;
- Á Visual impact;
- Á Heritage impact; and
- Á Noise impact.

A copy of the above reports will be provided to the Department separately.

The EIS is:

- Á in a number of respects false and misleading;
- Á incomplete;
- Á non-compliant with mandatory legal requirements; and
- Á not substantially compliant with other legal requirements,

and erroneously characterises and assesses the Proposed Development. The flaws in the EIS are so fundamental and so extensive that it cannot be relied upon as an Environmental Impact Statement under the *Environmental Planning and Assessment Act 1979* (**Act**). Any development consent granted based on that EIS would be invalid.

In our clients' view this is a continuation of a pattern of behaviour by Metzyia in respect of the operations on the site. In particular, our clients have on numerous occasions pointed out to the Council that the necessary development consents for the existing operations are not in place or have not been complied with. It is time for the requirements of the law to be complied with.

1. The proposed development has not been properly certified

The requirements for an EIS are prescribed by, *inter alia*, schedule 2 of the *Environmental Planning and Assessment Regulations 2000* (NSW) (**Regulations**). Clause 6(f) of the Regulations requires the EIS to contain:

- (f) a declaration by the person by whom the statement is prepared to the effect that:
 - (i) the statement has been prepared in accordance with this Schedule, and
 - (ii) the statement contains all available information that is relevant to the environmental assessment of the development, activity or infrastructure to which the statement relates, and
 - (iii) that (sic) the information contained in the statement is neither false nor misleading.

Contrary to the requirements of the Regulations, the statement in the EIS includes the following certification:

I certify that I have prepared the contents of this EIS and to the best of my knowledge:

- It is in accordance with clause 6 and 7 of schedule 2 of the *Environmental Planning and Assessment Regulation 2000*.
- It contains all available information that is relevant to the environmental impact assessment of the development to which the EIS relates,
- It is true in all material particulars and does not, in its representation or omission of information, **materially mislead**.

[Emphasis added]

The above certification clearly does not comply with the requirements of the Regulations. In particular, the proposition that the EIS does not 'materially mislead' falls far short of the certification required (ie it is 'neither false nor misleading') and leaves open the implication that the author accepts that the EIS may well be or is, in fact, misleading.

This is a serious issue. The EIS is the primary document that enables the public to understand the impact of the proposed development on the environment and on their health and it must be certified correctly.

2. The disclaimer on the first page of the report is inconsistent with the required certificate

The following disclaimer appears on the first page of the EIS:

This report has been prepared by SLR Consulting Australia Pty Ltd with all reasonable skill, care and diligence, and taking account of the timescale and resources allocated to it by agreement with the Client.

Information reported herein is based on the interpretation of data collected, which has been accepted in good faith as being accurate and valid.

This report is for the exclusive use of Metziya Pty Limited.
No warranties or guarantees are expressed or should be inferred by any third parties.

This report may not be relied upon by other parties without written consent from SLR Consulting.

SLR Consulting disclaims any responsibility to the Client and others in respect of any matters outside the agreed scope of the work.

The predominant purpose of an EIS is to allow unrelated parties to review the information contained within the document and to form opinions on the application which it seeks to support. The disclaimer contained on the first page of the EIS makes a mockery of this.

The first paragraph of the disclaimer is tantamount to an admission that the EIS has been prepared, not based on diligent inquiry and assessment but to some limited timeframe and budget that may not have allowed for proper investigation and assessment. Clearly perfection is not required but readers of the EIS are entitled to be sceptical where the document is so explicit in saying that the authors are not prepared to stand behind it.

Indeed the statement that it is based on interpretation of data collected which has been "accepted in good faith as being accurate and valid", is a direct contradiction of the required certification that all information is included and the EIS is neither false nor misleading. How could that certification be given by a person who has simply accepted that the data is accurate and valid? The words "in good faith" in this context appear to mean that the author trusted that the person providing the data acted in good faith.

3. The EIS is misleading, particularly in relation to Public Health risks and Q Fever

Our clients have provided a report prepared by Dr John Shepherd, a medical practitioner with over 35 years of practice in rural general practice, former medical officer for the Peterborough Abattoir and an expert in Q Fever.

Q Fever is a serious disease with high infectivity, and a death rate of 2% in hospital cases.

Dr Shepherd's report clearly illustrates that:

- Á the Health Risk Assessment (HRA) contained within the EIS is simply wrong and in places is misleading;
- Á the HRA has not been competently prepared;
- Á the site is plainly unsuitable for use as a goat abattoir; and
- Á the transport route proposed is also unsuitable because of the serious risk of the spread of Q Fever along that route which passes sensitive receptors including children, the sick and the elderly.

A copy of Dr Shepherd's report will also be provided to the Department of Health and the Environment Protection Authority.

Dr Shepherd's report has been peer reviewed and is supported by eminent practitioners and academics in the field of immunology and infectious diseases.

In his abstract Dr Shepherd says the following:

The author is a medical practitioner with over 35 years' experience in rural general practice with a particular understanding of Q fever gained through years of experience working with abattoirs and sale yards. During the course of his career he has dealt with one large scale outbreak of Q fever in Jamestown in 2004. He was used many times to assist and advise the Peterborough Abattoir.

He has received no consideration, financial or otherwise, for providing this report. He provides this report solely out of professional responsibility and as a concerned citizen. He is passionate about the topic which is apparent from this critique.

The spread of Q fever is a serious issue to be taken into consideration in determining whether to grant development consent to application SSD6594. Q fever is debilitating, has a high level of infectivity and can be acute in humans, with a 2% death rate in hospital cases.

The author has considered the health risk assessment (**HRA**) which accompanies application SSD6594. He concludes that the HRA is simply wrong, and in places is misleading, and is not backed by a single relevant research article. The fact that the authors of the HRA are insufficiently qualified to provide the opinions contained within that document is of particular concern. The HRA contains a number of misstatements and systematically underplays the risks arising from the proposed development. In his view, the EIS and HRA should be rejected.

The matters of concern which are raised in the critique/submission that follows cannot, in the author's opinion, be sufficiently dealt with by way of condition, nor are the mitigation strategies identified in the HRA sufficient. In his opinion, the site is not suitable for a feral goat abattoir, and the transport route is similarly unsuitable, particularly because it passes a number of sensitive receptors including schools, the hospital and attached nursing home, and finally the retirement village.

In the last 2 years a mass of epidemiological evidence has been accumulated concerning the risks of placing a new abattoir for any Q fever host animal within 5 km of a population centre, subject to wind conditions. The author sincerely believes that any further consideration of this proposal, or granting of permission to proceed, would be an abrogation of the social duty of the relevant planning authority.

The Q fever risk of the Proposed Development is a most serious issue. The deficiencies of the HRA mean:

- Á the conclusions regarding the impacts on the community are unsound;
- Á the mitigation measures proposed are insufficient;
- Á the public have been misled;
- Á there is no sound basis for forming a view as to the appropriate conditions to be imposed were the Proposed Development to be approved; and
- Á any development consent granted based on the EIS as it currently stands would clearly be open to challenge.

The HRA should be redone by suitably qualified experts acceptable to the Department of Health and the EIS re-exhibited.

The proposed activity is, in fact, a highly hazardous activity because of the Q fever risk outlined above. Were it to be approved people would be exposed to a significant risk in circumstances that would be entirely preventable if a proper health risk assessment were prepared. Those people are entirely reliant on the relevant NSW Government agencies to properly assess and consider the Q fever issues, to impose conditions and to enforce conditions. Given, that the issue has been clearly and specifically raised and given the degree of risk and the degree of reliance it is hard to see how the Minister and the other relevant authorities could with any credibility say they owe no duty to those people to ensure their safety.

The starting point for satisfying that duty is to get a proper health risk assessment and exhibit it as part of a proper Environmental Impact Statement. Unfortunately, because the HRA and EIS generally are so grossly inadequate, it is impossible for members of the community, the Planning Assessment Commission, the Department and the Minister to now properly formulate conditions of consent that would ensure the safety of public and private health and property.

Our clients put the Minister and the relevant regulatory authorities on notice and reserve their rights to take such action as may be necessary.

The Proposed Development consists of:

- À the construction and operation of a small stock abattoir;
- À the continued operation of the cold store facilities and the consolidation of the development consents relating to those facilities; and
- À a pipeline for treated waste water.

The correct characterisation of the so called "development" is that there are at least 2 separate developments: the small stock abattoir and the cold store facilities.

The assessment undertaken in the EIS largely focuses on the abattoir and for the most part ignores the cold store facilities and the pipeline. The cold store facilities of themselves do not qualify as SSD as they do not have the necessary Capital Investment Value (**CIV**).

The cold store facilities do not form part of the abattoir use. At most there is a relationship of customer and service provider between the two distinct purposes. The concept of the cold store and abattoir comprising one development is a fiction – likely designed to ensure that the 'project' meets the minimum CIV requirements; in the absence of a Quantity Surveyors certification, we do not know.

Further, it is not open to the Applicant to rely on clause 8 of the *State Environmental Planning Policy (State and Regional Development) 2011* because this can only operate when there is a single 'proposed development'. Here there are two.

6. The Proposed Development is not permissible

The EIS states that the Proposed Development is permissible with consent within the IN1 General Industrial zone (paragraph 2.4). This statement is at best overly simplistic and at worst wrong. The EIS characterises the use as 'livestock processing industry'. Under the *Blayney Local Environmental Plan 2012 (Blayney LEP)* livestock processing industry is defined as:

livestock processing industry means a building or place used for the commercial production of products derived from the slaughter of animals (including poultry) or the processing of skins or wool of animals, derived **principally from surrounding districts**, and includes abattoirs, knackeries, tanneries, woolscours and rendering plants.

[Emphasis added]

However, the EIS is replete with references to feral goats being sourced from all over New South Wales and Queensland. The use clearly falls outside of the above definition and is therefore not permissible within the zone on that basis.

Further, the proposed turkey nest dam, to be used for holding waste water, will be connected to and form an integral part of the abattoir. It is located in the RU2 Rural Landscape zone. This use is prohibited in that zone.

The EIS fails to address these issues in any detail at all.

7. The Quantity Surveyor's Report has not been exhibited alongside the EIS

To qualify as SSD, development must have a minimum CIV of \$30 million. So as to substantiate claims regarding CIV, the proponent was required to provide a report from a qualified Quantity Surveyor. Despite numerous searches of the Department's website, we have been unable to locate the relevant Quantity Surveyor's report but we assume one exists.

The Act requires the whole EIS be exhibited. The Director General's Requirements requires the EIS to be accompanied by a Quantity Surveyor's report as part of the EIS. Failure to exhibit the Quantity Surveyor's report alongside the EIS is a fatal flaw and requires re-exhibition of the EIS and exhibition of the Quantity Surveyor's report.

8. The EIS has not fully analysed the Proposed Development nor has it provided a full description of the measures proposed to mitigate any adverse effects of the Proposed Development

Clause 7(1)(d)(iv) of Schedule 2 of the Regulations requires the EIS to provide a full description of the measures proposed to mitigate any adverse effects of the development. The EIS fails to satisfy this requirement, particularly in relation to Q fever risks, waste water, noise, and visual impact. In relation to these impacts, the EIS merely notes that mitigation measures can be undertaken but does not provide full and proper details of these mitigation measures to allow adequate assessment.

9. The Proposed Development requires modification of the Cadia Valley Operations Cadia East development consent (in so far as it relates to the Dewatering Plant) – Approval 06_0295

The EIS notes that 'in principle support' has been garnered from Cadia Valley Operations (CVO) to receive treated effluent from the Proposed Development. Such an agreement would necessitate a modification to the development consent for the CVO De-watering plant – the EIS is silent on any such modification.

Development consent for the CVO De-watering plant was first granted on 6 January 2010, and has been modified a number of times since. However, all of these modifications predate the application for consent for the Proposed Development. Inevitably, and as a matter of logic, the current development consent for the CVO De-watering plant cannot envisage or encompass CVO accepting treated effluent from the Proposed Development. Receipt of the treated effluent by CVO is clearly outside the terms of its development consent and necessitates its modification.

Further, the agreement by CVO to accept the treated effluent is in principle only and is not binding. Consequently, the in principle agreement should be given little if any weight. What is required, if the solution for the treatment and disposal of waste water is to be accepted, is a binding and unconditional agreement between Metziya Pty Ltd, the proposed operator of the abattoir and Cadia Valley Operations Pty Ltd. Absent that, there is no commitment in the EIS as to how waste water will be managed and there is no assessment of that management approach.

Also, in passing, we note that the EIS discusses that the alternative of transporting meat product by rail was considered, including utilising the rail siding at the site. This rail siding was approved as part of the Cadia East development, and not for use in connection with the SeaLink facility. The impacts of the rail siding were only assessed in connection with its use to load dewatered concentrate which is transported to the site by slurry pipeline.

10. The EIS does not comply with the requirements of schedule 2 of the of the Environmental Planning and Assessment Regulations 2000 (NSW) (Regulations) and is not sufficient to assess the impacts of the Proposed Development under s79C of the Environmental Planning and Assessment Act 1979 (NSW) (Act)

By treating the proposed abattoir, the continued use of the cold store facilities and the pipeline as one development, the EIS fails to adequately assess each component of the Proposed Development, as required by s79C of the Act. The EIS merely assesses the abattoir in relation to a number of the impacts and is silent on many impacts arising from the cold store facilities or the wastewater pipeline.

Our clients are gravely concerned that the Proposed Development will continue the blatant disregard of the requirements of the planning system already displayed by the proponent. We are instructed that the proponent has failed to comply with conditions of development consent in the past on numerous occasions. For example, we are instructed that the conditions of development consent have not been complied with for the following approvals granted to the proponent in relation to this land: DA59/01/02, DA23/01/03, DA125/02/03, and DA155/2008.

Further to the above, we are instructed that development consent DA9/2008 has now lapsed, yet the proponents seek to have this consent included in the current proposed consolidated consents for the SeaLink development.

For these reasons and those outlined in the specialist reports provided by our client development consent must be refused.

Yours faithfully



Patrick Ibbotson
Partner