



LAWYERS  
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Tuesday, 22 May 2018

Andrew Sherman  
Principal  
Russell Kennedy  
Level 12, 469 La Trobe Street  
MELBOURNE VIC 3000

**BY EMAIL:** [ASherman@rk.com.au](mailto:ASherman@rk.com.au)

Dear Andrew,

### **Ansevata Nominees Pty Ltd v South Gippsland Shire Council**

Thank you for allowing us an extension of time within which to obtain our expert reports.

#### **1. Expert Reports**

- 1.1 We **enclose** by way of service copy of an expert report of Dr Darren Bennetts of Peter Jay Ramsay & Associates dated 1 May 2018 together with attachments and a supplementary report dated 21 May 2018.

#### **2. Further Documents Required**

- 2.1 Having regard to Dr Bennetts' reports, there are a number of further documents that should be provided by Council to our client. Please provide copies of the following documents:
- 2.1.1 All documents in relation to the Ancold "Guidelines Of The Consequence Categories For Dams" (2012) – consequence category determination of the subject dam;
- 2.1.2 All documents in relation to the regime of regular monitoring operation and reporting of the dam for the period January 2016 to date;
- 2.1.3 All documents in relation to the SGSC Asset Management System for the subject dam;
- 2.1.4 All documents in relation to the monitoring, surveillance, reporting and maintenance of the subject dam for the period of January 2016 to date;

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- 2.1.5 All documents relating to an appropriate and approved construction environmental management plan (CEMP) for that subject dam and the works proposed to be carried out by SGSC;
  - 2.1.6 All documents in relation to the approval of and source of water for the large water tank on the fenced access track land immediately behind the fire station which tank is labelled "reclaimed water – do not drink";
  - 2.1.7 All documents relating to the process adopted by Council for the sample retrieval whether it was undertaken in accordance with any and what guidelines;
  - 2.1.8 All documents in relation to the sample handling, storage and transport, and analytical and quality assurance methods in relation to the samples taken for the period 10 March 2016 to 23 January 2018 inclusive;
  - 2.1.9 All documents known as the chain of custody documentation for each of the samples;
  - 2.1.10 All documents relating to the methodology employed during the sampling episodes for the period 10 March 2016 to 23 January 2018.

### 3. Breach of Agreement and Pollution

- 3.1 Dr Bennetts concludes that it cannot be confidently determined that the dam water is suitable for unencumbered irrigation of pasture and crops and watering of livestock. Therefore, it must be considered that the water is unsuitable until such time that management measures can be implemented to reduce risks to acceptable levels.
- 3.2 Dr Bennetts also observes that dam water quality in Victoria is regulated by both the *Water Act 1989* and the *Environment Protection Act 1970*. These Acts require that the uses of the water that it is intended to be used should not be compromised. Dr Bennetts concludes that:

*In accordance with both the Water Act 1989 and the Environment Protection Act 1970, the water is considered to be polluted. Specifically, under the Water Act 1989, the water is considered to be potentially harmful to the health, welfare or safety of human beings and animals. Similarly, under the Environment Protection Act 1970, the water quality has been changed such that it is reasonably expected to make those waters potentially harmful to the health, welfare, safety or property of human beings and animals.*

Dr Bennetts observes that the source of the polluted water is from a combination of treated septic effluent from the adjacent estate mixed with storm water.

3.3 It also appears that this water has been polluted for some time and that Council has used the polluted water for road making purposes in the past. Further, we understand that the CFA have a water tank on the retarding basin land that accesses the polluted water and they may well be using the water unaware that it is polluted.

3.4 In order to facilitate a resolution of the cause of the pollution our client has instructed us to send a copy of each of Dr Bennetts' reports to the EPA. We **enclose** a copy of our letter to the EPA.

#### 4. Council Must Stop the Flow of Water

4.1 It is clear that:

4.1.1 the water in the dam has not been suitable for irrigation of pasture and crops and watering of livestock for some considerable period of time;

4.1.2 that your client is in breach of the "water taking agreement";

4.1.3 your client, by causing water to flow into the dam, is acting in contravention of s.16(1) of the Water Act 1989;

4.1.4 your client is polluting water in contravention of s.15 of the Water Act 1989.

4.2 We are instructed to inform you that unless your client notifies us within 14 days of the date of this letter that it proposes to stop the flow of water into the dam, pending implementing remedial measures to ensure the water flowing into the dam is not polluted and is fit for irrigation and stock use, then our client will commence proceedings seeking both damages and an order restraining the continued flow of water into the dam.

We await your response.

Kind Regards,

**WISEWOULD MAHONY**

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