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LAWYERS
MELBOURNE | GEELONG

ABN: 26 965 814 421

Wednesday, 20 June 2018

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

BY EMAIL: ASherman@rk.com.au ;

WITHOUT PREJUDICE

Dear Sirs,

Proposed works at Walkerville Retarding Basin

We confirm that we await a response from you following Council's meeting scheduled to take place on 27 June 2018.

In an effort to resolve this matter we are instructed to inform you of the following proposal.

1. In the event that the following occur within 3 years of the date of entry into an agreement embodying the broad principles below, our client is prepared at that time to withdraw its current claim for damages and/or injunctive relief and execute a release in favour of Council.
2. Council acquire other land from Ansevata at a price fixed by an independent valuer. The particular location of this other land to be further discussed between the parties.
3. Council construct at its cost on the land so acquired a 50ML dam and associated wetlands.
4. The new dam is constructed and maintained in accordance with the requirements of SRW and other sound engineering and water management practices.
5. Subject to agreement and upon giving 7 days written notice Council is entitled to take and use water from the new dam for road making purposes in the Walkerville and Cape Liptrap region only.
6. Council grant to Ansevata (and any subsequent owner of the Ansevata land) the right to take and use water from the new dam in perpetuity.
7. Each of the parties do all things reasonably required to ensure each of the parties obtains all necessary permits or licences.

8. Each of the parties enter into a new “water taking agreement” which provides for amongst other things:
 - a. Council warrants that the water in the new dam is and will be fit for irrigation and stock purposes in accordance with the criteria set out in Dr Bennet’s recent report;
 - b. Subject to the agreement, Ansevata has free and unfettered access to all the water in the new dam at no cost to it;
 - c. If each of Ansevata and Council agree, third parties such as the CFA may take and use water from the new dam.
 - d. Sampling from incoming water from the estate is to be done monthly in summer and quarterly in winter in accordance with the SRW and EPA guidelines, all results to be provided to **Ansevata and SRW**.
9. Council pay to Ansevata its legal costs and disbursements, including experts’ fees, incurred to date in pursuing its claim. Those costs are currently estimated to be about \$85,000.00.
10. The new dam is to be in place and operative by **1 April 2019** to allow the dam to fill.

The above proposal is set out in broad terms. Clearly each of our clients will need to agree on the specific terms of an agreement which better reflects the proposal set out above and identifies a process to bring the agreement to fruition. To this end a useful starting point may be the draft MOU “Promontory Views Estate - Wetland Proposal” previously prepared by you.

If your client is prepared to commit to entering into such a process our client is prepared to withhold the issue of proceedings until an agreement is entered into or the process fails or does not proceed in a manner acceptable to our client. We would anticipate that a process in the form of a mediation would be required to resolve the details of the agreement.

If your client does not state that it is prepared to commit to a process and each of the broad principles as set out in the above proposal by 5pm on 3 August 2018 our client will not thereafter be amenable to entering into an agreement in the terms contained in this letter and the proposal will lapse automatically.

We note that the pursuit of an agreed resolution to the differences between our clients as set out in this letter is consistent with our client’s attempts over the years to try and foster a more collaborative relationship, including:

- adjourning previous VCAT proceedings to negotiate settlement;
- offering to arbitrate after your client initially took water from the dam without authority to do so;

- meeting with your client's CEO and Director of Engineering on site prior to the development application decision and expressly agreeing that retarding basin was completely separate to development proposal;
- settling of previous Supreme Court proceedings ;
- meeting with Mayor and CEO on site in a further attempt to negotiate a settlement of the current dispute;

We await your response by no later than 5pm on 3 August 2018.

Yours faithfully

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