



25 June 2008

Maddocks
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By email and facsimile: Mathew.sherwell@maddocks.com.au, 9288 0666

Dear Colleagues

**Ocean Access Boat Ramp, Bastion Point, Mallacoota
Environmental Effects Statement**

I refer to the correspondence from you dated 19 June 2008 belatedly providing details of the experts your client intends to call at the forthcoming Panel hearing.

Apparently not being content with imposing a significant boat ramp and breakwater on a sensitive and valued coastal landscape, your client now also proposes some form of elevated access road along the beach. Our clients are outraged by the new proposal and the Council's conduct and we are instructed to respond in the following terms.

Despite all previous indications to the contrary East Gippsland Shire Council now proposes to proceed with Option 3 as identified in the exhibited EES but with a completely different access road, being the access road considered in the Coastal Engineering Solutions Report dated January 2008 ("DSE report") at figure 4(b). Your letter was the first and only indication that our client has received that your client intends to significantly alter the proposal that is the subject of the EES.

Our client has and will continue to devote a significant amount of time and resources to the preparation for the forthcoming Panel Hearing, which we note has already been adjourned once because Council was not in a position to proceed. While some refinement of proposals during the course of an environmental impact assessment is perhaps to be expected, such significant modifications within days of the Panel hearing is extraordinary.

We note that:

1. A proposed access road was covered by the EES that was put on exhibition last year for public comment. Although the new access road your client is now proposing was the subject of the DSE report made available as per Panel Directions, this occurred in the context of Council advising the Panel that they did not intend to proceed with this option. We further note that Council Minutes of 13 May 2008 record a resolution to formally reject the proposal. We are now not only in a position where submitters to the EES and any other interested member of the public have received no notice of Council's intention to proceed with a new and significantly modified proposal, but also a situation where all available indications to date suggest that the now preferred option had been carefully considered and rejected.

2. Unsurprisingly given the sequence of events outlined above, it is now very difficult to discern precisely what your client is proposing in terms of preferred options and alternatives. Given that the Council is now indicating that it has adopted the modified access road as per the DSE Report which is different to the access road accompanying Option 3 of the EES, it is now unclear as to whether the Council is now formally withdrawing the access road alignment as originally exhibited. It is also unclear what status the Options 1, 2 and 3 as originally put forward in the EES document and in particular whether and if so in what form these are alternatives that are still to be considered by the Panel .
3. As noted above, Council minutes indicate that the option now put forward was considered and rejected at a meeting on 13 May 2008. As far as our client has been able to determine, there is no record of the decision by the Council to rescind or vary this decision of 13 May 2008 and decide to support the option in the DSE report. Your letter of 19 June 2008 states that Council decided to support the facility as identified in option 3 but with the modified access road as depicted in the DSE Report at figure 4(b) on 17 June 2008. While your client's decision making processes are not a matter for the Panel, the sequence of events obviously heightens our clients longstanding concerns about the Council's capacity and resources to not only conduct the EES process but to undertake the significant responsibility of managing the development proposed.

Despite these significant issues, on balance our clients considers that it is better to proceed with the Panel hearings as scheduled, particularly as a considerable amount of time and effort has once again been devoted to these preparations which they do not wish to see wasted for a second time. However they consider that issues they have identified above cannot be left unresolved and we are instructed to request that you respond to the following questions as a matter of urgency:

1. Is it intended to place information and supporting documentation on the Council's new preferred option on public exhibition for the remainder of time before the commencement of the main hearing?
2. Does Council intend to advertise the exhibition of this information immediately and invite public comment prior to the Panel hearing?
3. Have you informed the following people in writing of the new preferred option, and provided them with the opportunity to comment (both in writing and via presentation at the hearing if they are submitting in person)?:
 - a. All original submitters to the EES.
 - b. Other relevant agencies, organisations and individuals, as specified on page 8 of the Panel Directions of 14 April 2008.
 - c. The Bidwal and Monaro people, as requested in my letter to the Panel of 3 April 2008.

Further, our ability to prepare our client's case is undermined by the lack of information about what is now proposed. Your letter of 19 June promised a survey plan by 20 June but nothing has been provided. This and other details are essential to our preparation of the case and the failure to provide them has already compromised our ability to meet deadlines for service of expert reports. It appears that you have already decided to treat deadlines in Panel Directions as optional and we are regrettably now in a position where despite our best endeavours we also will be non-compliant with the Panel's timetable.

On the perhaps generous assumption that the modified proposal outlined in your letter has been the subject of careful consideration by Council and that you have additional information to hand which has yet to be disclosed, we request that no later **Friday 27 June 2008** you provide us with all relevant supporting material for and particulars of the new proposal including the following:

1. Full details, technical specifications and appropriate assessments in relation to the new preferred option. We assume that the Council have undertaken detailed assessments including economic appraisals and engineering evaluations of the new access road, and that these will be considered by your experts in their reports. Given that these are details that should have been contained in the EES main report, and that we need to brief our experts with this information as a matter of urgency, we will require this information by close of business on **Friday 27 June 2008**.
2. Explanation of the status of the new preferred option, and how this fits within the EES and the other three options depicted in the EES. For example, given that the Council is now indicating that it prefers the modified access road as per the DSE report as different to the original access road accompanying Option 3 of the EES, is Council formally withdrawing support for the original access road in the EES? Does Council propose that this new option with the modified access road is the only option to be considered by the Panel Inquiry? Or does Council propose that options 1, 2 and 3 as contained in the EES, with the originally aligned access road, are still to be considered by the Inquiry?
3. Any recent cultural heritage assessment that has been undertaken on or around the site, and/or any draft cultural management plan that is now available.

Given the rapidly approaching date for commencement of Panel hearings, we reserve the right to take further steps to seek directions from the Panel or to pursue any other appropriate course of action without further notice in the absence of a satisfactory response to this letter.

Yours faithfully



Brendan Sydes
Principal Solicitor

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