

16 January 2017

T 9249 4000
W brimbank.vic.gov.au

PO BOX 70
Sunshine, Victoria 3020

Attention: James Barker
Assistant Secretary
Assessments and Sea Dumping
Department of Environment and Energy

GPO Box 787
Canberra ACTY 2601

Dear Sir

Re: Solomon Heights Environmental Significance, North Sunshine, Melbourne Victoria

Following a telephone conversation with s22 of your office, I can confirm that Brimbank City Council (Council) is undertaking a range of works, with a view to resolving the environmental and future development issues and opportunities for the Solomon Heights Estate, which is located within the City of Brimbank, Victoria.

By way of background, the area comprises 32.8 hectares of industrially zoned land in North Sunshine, located on the east side of the Melbourne to Sydney freight line. Created in the 1920s the land was subdivided and sold to owners without roads and services. Today it comprises 465 lots with approximately 120 owners and remains undeveloped and un-serviced.

The key impediment to the development of the Estate is the existence of significant flora and fauna protected under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, with the majority of species located in the northern part of the Estate. An interim Environmental Significance Overlay, which requires a permit for the removal of vegetation, also applies to parts of the Estate.

The Solomon Heights area is located within the Sunshine Emerging National Employment Cluster (NEC) defined in Plan Melbourne, the strategic blueprint for the future of Melbourne and the surrounding region over next 20 years. The NEC is an area where significant growth and employment opportunities are expected. The Victorian Planning Authority (VPA) is the agency responsible for delivering and overseeing many of the directions within Plan Melbourne.

The VPA have identified the Solomon Heights area as a strategic site and requested that Brimbank City Council apply for grant monies to complete further strategic work in this area. Council have proposed to undertake *The Solomon Heights Future Directions Plan*, which will outline how the conservation area within the Estate can be delivered and also

provide a clear direction for future development opportunities, including preferred land uses, servicing and access for the southern area of the Estate. This project will include consultation and engagement with the landowners within the Estate.

If successful in receiving this grant, the project would commence at the end of February 2017 and be completed later this year.

Council also commissioned 'The Solomon Heights Biodiversity Project 2016' report (the Report), undertaken by Biosis, that has recently been completed. The Report identifies the location and condition of native vegetation and habitat, proposes a location for a permanent conservation area and informs potential management options for that area. It is proposed that the Council will consider this report at the end of February 2017.

Council will inform the landowners in the Estate of these initiatives and provide an indicative timeline for the commencement of the Solomon Heights Future Directions Plan.

If you would like further information on either of these projects or have any queries, please contact Catherine Hunichen, Acting Manager City Strategic by email: Catherineh@brimbank.vic.gov.au or telephone: 03 9249 4455.

Yours sincerely



Matt Aquilina
Acting Director City Development



26 September 2017

T 9249 4000
W brimbank.vic.gov.au
PO BOX 70
Sunshine, Victoria 3020

Mr Finn Pratt
Secretary
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601

By email to: finn.pratt@environment.gov.au

Dear Mr Pratt

Solomon Heights Estate Strategic Assessment

Brimbank City Council (Council) is aware the Department of the Environment and Energy (Department) has entered into an Agreement with Glen Ora Pty Ltd (Glen Ora), dated 5 June 2017, permitting Glen Ora to undertake a Strategic Assessment (SA) under section 146 of the *Environmental Protection and Biodiversity Conservation Act 1999 (Cth) (Act)* for the Solomon Heights Estate (Estate) located in Sunshine North, Victoria.

Council has concerns with Glen Ora being party to any SA relating to the Estate and strongly believes Glen Ora is not an appropriate proponent of the SA. For the reasons outlined below Council requests that the SA in relation to the Estate be terminated.

Background - The Estate

The Estate, in its entirety, includes 32.8 hectares of industrially zoned land (Industrial 3 Zone) in North Sunshine and lies on the east side of the Melbourne to Sydney freight line, close to the North Sunshine Industrial Precinct to the south, River Valley Residential Estate to the east and is within the Maribyrnong River Valley corridor. The Estate is also included in the Sunshine National Employment and Innovation Cluster, an area identified for future development and employment growth in *Plan Melbourne* which is the strategic blue print for metropolitan Melbourne over the next 30 years.

The Estate was created in the 1920s, and the land was subdivided (into residential sized allotments of approximately 570 – 590m²) and sold to owners with no provision of infrastructure or services. Today it comprises of 465 lots with approximately 120 owners and is yet to be developed for industrial purposes.

The key constraint to the development of the Estate is the presence of significant flora and fauna values that are protected under the Act. The highest valued environmental matters exist in the northern part of the site, generally described as the area north of Whitehill Avenue (Northern Area), however they apply across the entire area, as shown in **Attachment 1** - Constraints Map. Past discussions between the Department and Council officers have indicated that the northern area of the Estate is unlikely to be developed in the future.

Additional site constraints also shown in **Attachment 1** includes the Australian Rail Track Corporation (ARTC) inland rail, the Melbourne Airport Environs Overlay and Environment Significance Overlay, included in the Brimbank Planning Scheme, the Exxonmobil Oil Pipeline, existing uses with adverse amenity potential and land owner fragmentation.

Glen Ora

Delisted in 1931 and subsequently reinstated in 2015, Glen Ora as the original subdivider of the Estate is asserting legal ownership of a portion of the road network within the southern part of the Estate, being the area south of Whitehill Avenue and north of Munro Avenue (Southern Area). Council disputes this assertion and the matter is currently before the Supreme Court of Victoria.

Glen Ora is proposing development of the Southern Area for industrial purposes, utilising the existing road layout and subdivision pattern. To progress this development proposal, a SA is required to resolve flora and fauna removal and offsets.

Glen Ora's suitability as a proponent is questioned due the fact that Glen Ora has no responsibilities for the implementation of a policy, plan or program in relation to the Southern Area. This is highlighted by the fact that Glen Ora has not established ownership of the roads and is not the owner of land in the Southern Area. This casts doubt over Glen Ora's ability to fulfil the requirements outlined in the SA Terms of Reference or implement recommendations or actions required as an outcome of the SA.

Given the above circumstances it is questionable whether Glen Ora has the capacity to undertake a SA due to the limited and contested rights claimed within the Estate.

Consequences of proceeding with Glen Ora Strategic Assessment

The SA proposed by Glen Ora relies heavily on Council providing a solution for the Northern Area, despite Council not engaging in any direct discussions with Glen Ora on the matter.

In the absence of Council support, a viable integrated development plan that achieves a balanced outcome for the Estate is unlikely. Allowing the Glen Ora SA to progress under the Act will tend to give lot owners an unjustified belief that development of the Southern Area will proceed, and when these expectations are unable to be fulfilled, experience suggests the blame is likely to fall on Council.

Council does not wish to be represented as a partner to the Glen Ora SA and believes Glen Ora's approach misrepresents Council's position, undermining Council's ability to undertake orderly planning for the entire Estate.

In addition, allowing a SA to be conducted solely in the Southern Area will not acknowledge connections with the nationally significant vegetation in the Northern Area, the land to the east and the Maribyrnong River Valley habitat corridor.

Council's Approach

As part of its ongoing examination of issues within the Estate, Council commissioned BIOSIS Pty Ltd to undertake an extensive biodiversity study that identified the location and quality of vegetation within the Estate.

This work has been undertaken in conjunction with the Victorian Planning Authority's *'Streamlining for Growth'* programme grant, which has facilitated the engagement of private sector expertise to assist Council in developing a draft Precinct Plan, for the whole of the Estate. This draft Precinct Plan has involved extensive and ongoing environmental inquiry and public consultation.

In addition to the BIOSIS study, a further assessment of the Estate has been commissioned to ascertain the amount of native flora and fauna throughout the Estate on a per lot basis and is scheduled to be completed by late November 2017.

A draft Precinct Plan will be completed by late 2017, outlining the appropriate future development of the Estate. Further consultation will be undertaken with property owners prior to consideration of a final Precinct Plan by Council in early 2018.

Council looks forward to further engaging with the Department on this matter and would welcome the opportunity to discuss a more suitable alternative to the Glen Ora SA in achieving the common objective of an appropriate environmental assessment of the Estate.

If you require any further information please contact Stuart Menzies, Director City Development on (03) 9249 4077 or at Stuartme@brimbank.vic.gov.au.

Yours sincerely



Helen Morrissey
Interim Chief Executive Officer



Helen Morrissey
Interim Chief Executive Officer
Brimbank City Council
PO Box 70
Sunshine, Victoria 3020

Dear Ms Morrissey

Thank you for your letter of 26 September 2017 to Mr Finn Pratt, Secretary of the Department of the Environment and Energy. Mr Pratt has passed your letter to me for response. I appreciate the Council's interest in ensuring positive outcomes for the Solomon Heights Estate, and note the matters set out in your letter.

The Department's role is to assess proposals referred for consideration under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), including proposals that may be assessed under a strategic assessment, where a proponent wishes to pursue that approach. Further information on strategic assessments is available on the Department's website at: <http://www.environment.gov.au/protection/assessments/strategic>.

In the case of the Solomon Heights Estate (the Estate), a strategic assessment presents a means of consolidating the various separate of urban development proposals put forward by Glen Ora Pty Ltd. This is a preferable to the Department separately assessing multiple referrals for various actions to be undertaken within the Estate, which would result in poor environmental outcomes and a duplicative administrative burden.

Terms of reference for a Strategic Assessment Report have been agreed between the Department and Glen Ora. It is now up to Glen Ora to meet the Department's requirements set out in the Strategic Assessment Agreement and the Terms of Reference for the Strategic Assessment, and subsequently to demonstrate that it can meet the requirements of any approved Strategic Assessment Plan, including environmental offsets.

In the event that the Department approves the Strategic Assessment Plan, Glen Ora would still need to meet requirements of all levels of Government in relation to development of the Estate, including resolution of the rights to develop the road network.

Department officers have been involved in long term discussions with Council over this matter. The Department would welcome further opportunities to discuss this matter with your staff, including the options available to Council. My point of contact in relation to this matter is s22 [REDACTED], Director of the Victoria and Tasmania Assessment Section, ph 02 6275 s22 [REDACTED], s22 [REDACTED]

Yours sincerely

James Barker
Assistant Secretary
Assessments and Governance Branch
20 October 2017

s22

From: Lunn, Victoria [mailto:victoria.lunn@nortonrosefulbright.com] **On Behalf Of** Guild, Alexandra
Sent: Monday, 20 November 2017 12:33 PM
To: Barker, James <James.Barker@environment.vic.gov.au>
Cc: s22 helenm@brimbank.vic.gov.au
Subject: FW: Solomon Heights - strategic assessment (2855011)[NRF-APAC.FID2009243]

Dear Mr Barker

Please find attached correspondence sent earlier today, however a typo was made in your email address when originally sent.

Kind regards

Alex

From: Lunn, Victoria **On Behalf Of** Guild, Alexandra
Sent: Monday, 20 November 2017 10:12 AM
To: 'james.barker@environment.vic.gov.au'
Cc: s22 'helenm@brimbank.vic.gov.au'
Subject: Solomon Heights - strategic assessment (2855011)[NRF-APAC.FID2009243]

Dear James

Please find attached correspondence in relation to the above matter.

Kind regards

Alex

Alexandra Guild | Special Counsel
Norton Rose Fulbright Australia
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20 November 2017

Email: james.barker@environment.gov.au

James Barker
Assistant Secretary
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Department of Environment and Energy
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Your reference:

Our reference:

2855011

Dear Mr Barker

Solomon Heights - strategic assessment

We act for Brimbank City Council in relation to the 'Solomon Heights' estate in Brimbank.

We refer to your letter to Helen Morrissey of Council, dated 20 October 2017, responding to Ms Morrissey's letter to Finn Pratt dated 26 September 2017.

The Department has advised Council that:

It is now up to Glen Ora to meet the Department's requirements set out in the Strategic Assessment Agreement and Terms of Reference for the Terms of Reference Assessment, and subsequently to demonstrate that it can meet the requirements of any approved Strategic Assessment Plan, including environmental offsets.

Council understands that this is how strategic assessment processes work. We are not however confident about the basis of the Strategic Assessment Agreement. In particular, section 146 (1) of the Act provides (emphasis added):

The Minister may agree in writing with a person responsible for the adoption or implementation of a policy, plan or program that an assessment be made of the impacts of actions under the policy, plan or program on a matter protected by a provision of Part 3.


Council accepts that a proponent need not be a government entity. It is however clear that the proponent – the person entering into the agreement – must have responsibility for the action that is to be assessed via the strategic assessment. Glen Ora Pty Ltd has no regulatory responsibility in relation to the estate. Our understanding is that Glen Ora has limited if any contractual rights in relation to the land in the estate.

In terms of ownership of land in the estate, we note that the estate was subdivided in the 1920s and now comprises 456 lots with approximately 120 owners. We are instructed that Council has no record of Glen Ora owning any of those lots and that, as far as Council is aware, Glen Ora claims only a right of ownership in relation to roads within the estate. This claim is the subject of Supreme Court proceedings between Glen Ora and Council, and in any case, the roads comprise only a limited part of the estate.

In this context, we consider it difficult to conclude that Glen Ora has responsibility for the adoption or implementation of any policy, plan or program in relation to the estate.

APAC-#58843550-v1

20 November 2017

 NORTON ROSE FULBRIGHT

On this basis, we query whether the Minister (or in this case, the Minister's delegate) had power to enter into the strategic assessment agreement with Glen Ora, and request the Department's consideration of this matter.

We would be happy to provide any additional information that would assist the Department.

We note that the independent obligation of Glen Ora to meet the requirements of other levels of government does not mean that those requirements should not be considered in relation to the strategic assessment, and that generally a strategic assessment provides a valuable opportunity to coordinate different levels of approval. The entry by the Department into the strategic assessment with Glen Ora undermines Council's ability to effectively develop and facilitate an outcome that would be in the best interests of the community.

Please contact me if you have any questions.

Yours faithfully



Alexandra Guild
Special Counsel
Norton Rose Fulbright Australia
Partner: Sally Macindoe

Copy: s22

Director of the Victoria and Tasmania Assessment Section, Department of Environment and Energy
s22

Helen Morrissey
Interim Chief Executive Officer, Brimbank City Council
helenm@brimbank.vic.gov.au



13 December 2017

T 9249 4000
W brimbank.vic.gov.au

PO BOX 70
Sunshine, Victoria 3020

Federal Department of Environment and Energy
GPO Box 787
CANBERRA ACT 2601

Dear Sir / Madam

Solomon Heights Estate Update

At the Ordinary Council Meeting on 12 December 2017 Council resolved to defer consideration of the strategic work prepared with a grant from the Victorian Planning Authority's Streamlining for Growth Program within the Solomon Heights Estate Precinct, until current Supreme Court legal proceedings are finalised.

Council is currently engaged in Supreme Court proceedings concerning road ownership within the Precinct. The matter is scheduled to be heard in the Supreme Court from 22 May 2018.

The decision was based on recent advice from Council's legal representatives.

Council is eager to resolve the matter and will re-assess its position after resolution of the dispute.

The VPA has been notified about Council's in relation to this matter.

Please contact Council's Principal Strategic Planner, Catherine Hunichen from Monday to Wednesday on 9249 4455 or catherineh@brimbank.vic.gov.au if you would like to discuss this further.

Yours sincerely

A handwritten signature in black ink that reads "S. Menzies".

Stuart Menzies
Director City Development

From: s22
To: "Guild, Alexandra"
Cc: s22, s22
Subject: RE: Solomon Heights - strategic assessment (2855011)[NRF-APAC.FID2009243] [SEC=UNCLASSIFIED]
Date: Monday, 14 May 2018 4:33:29 PM
Attachments: [S034-Solomon Heights-Letter-Norton Rose Fulbright-14052018.pdf](#)

Good afternoon Alex,

Please find attached the Department's response to your correspondence dated 20 November 2017 concerning the Solomon Heights Strategic Assessment Agreement. Apologies for the delay in responding.

Regards

s22

Assistant Director
Assessments Victoria and Tasmania
Department of Environment and Energy
PH: (02) 6274 s22
Email: s22

From: Lunn, Victoria **On Behalf Of** Guild, Alexandra
Sent: Monday, 20 November 2017 10:12 AM
To: 'james.barker@environment.vic.gov.au'
Cc: s22, 'helenm@brimbank.vic.gov.au'
Subject: Solomon Heights - strategic assessment (2855011)[NRF-APAC.FID2009243]

Dear James

Please find attached correspondence in relation to the above matter.

Kind regards

Alex

Alexandra Guild | Special Counsel
Norton Rose Fulbright Australia
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Ms Alexandra Guild
Special Counsel
Norton Rose Fulbright Australia
GPO Box 4592
MELBOURNE VIC 3000

Dear Ms Guild

Solomon Heights Estate - Strategic Assessment

Thank you for your letter dated 20 November 2017 regarding Brimbank City Council's concerns regarding the basis for the Strategic Assessment Agreement entered into by the Department of the Environment and Energy (the Department) and Glen Ora Estate Pty Ltd on 5 June 2017. I apologise for the delay in responding.

The Department is responsible for the assessment of actions that are likely to have a significant impact on matters of national environmental significance. One of the pathways available to the Department in assessing these actions under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), is the strategic assessment process.

It is my understanding that Glen Ora Estate Pty Ltd proposes to develop the southern portion of the Solomon Heights site by way of building roads and providing services along the mapped road network. In entering the agreement the Department took into consideration representations from Glen Ora Pty Ltd that it has rights to develop the road network. The Department considers that its strategic assessment agreement with Glen Ora Estate Pty Ltd provides an effective framework for consolidating the multiple components of the proposed action into one assessment. Consistent with the progression of other strategic assessments under the EPBC Act, the proponent may develop a 'plan' in parallel with the assessment. The steps to be undertaken for a strategic assessment are set out in *A Guide to Undertaking Strategic Assessments* on the Department's website at <http://www.environment.gov.au/resource/guide-undertaking-strategic-assessments> (in particular see the flow chart at page 15).

Under the agreement Glen Ora is required to describe in its plan any State and local government approvals that have been or will be required to be obtained and conditions that apply to those approvals. The Strategic Assessment Report will also require consideration of local and State imposed constraints to achieving proposed avoidance, mitigation and offset measures. These requirements will ensure the strategic assessment process gives due consideration to State and local government requirements. Please be aware that any approval of the proposed action will only be for EPBC Act related matters and State and local government legislative requirements will still need to be addressed separately by the proponent.

I note that there has been ongoing discussions between the Department and Brimbank City Council representatives regarding this matter. As previously raised in these discussions, the Department is able to enter into a Strategic Assessment Agreement with other organisations. With this in mind, I encourage Council to pursue its previous suggestion of requesting a Strategic Assessment Agreement covering both the northern and southern portions of the Solomon Heights Estate, as well as the wider area between the estate and the Maribyrnong

River. The Department would welcome the opportunity to answer any questions Council may have in relation to this option.

Please note my points of contact in relation to this matter are s22 [redacted], Director Victoria and Tasmania Assessments, on email: s22 [redacted] or telephone 02 6275 s22 [redacted] or s22 [redacted], Assistant Director Victoria and Tasmania Assessments, on email: s22 [redacted] or telephone 02 6274 s22 [redacted].

Yours sincerely



James Barker
Assistant Secretary
Assessments and Governance Branch
14 May 2018