26 February 2003

The Secretary
Parliamentary Standing Committee on Public Works
Parliament House
CANBERRA ACT 2600

Supplementary Submission RE:

'RANDWICK DISPOSAL AND RATIONALISATION PROJECT INTERIM WORKS AT RANDWICK BARRACKS, SYDNEY NSW', & 'STATEMENT OF EVIDENCE AND SUPPORTING PLANS FOR PRESENTATION TO THE PARLIAMENTARY STANDING COMMITTEE ON PUBLIC WORKS DEPARTMENT OF DEFENCE'

Dear Ms Courto,

I refer to the supplementary Defence Statement of Evidence, CANBERRA ACT January 2004, (noted above) and my previous submission, dated 23 March 2003.

(http://www.aph.gov.au/house/committee/pwc/randwick/Submissions/sub6.pdf)

## Concerns

My additional concerns about the proposed works are;

1. **Asbestos**

Defence note in 24,25 and 26.

"Preparation of Land for Disposal

24. While the bulk of works to prepare the land for sale will be conducted as part of the main Randwick Barracks works, some of this work will be required in order to complete the interim works. This will include some clearing and removal of vegetation.

25. Limited remediation works have progressed on the overall site with the demolition of a number of asbestos cement sheet clad buildings. Ultimately, the remediation of all land contaminated as a result of past Defence activities will be required, including the removal of hazardous materials. The remediation of contaminated land is required to ensure contaminated substances do not pose any adverse future health or environmental risk to future users of the site. The predominant contamination on site is asbestos cement sheeting.

26. It is intended that the site will be remediated to a standard suitable for the proposed land use. Certification of the land for its proposed use will be sought from a NSW Environmental Protection Authority accredited Site Auditor. "

Defence is still in denial concerning asbestos fibre on this site. Since the previously deferred Joint Committee hearing date, **new anecdotal accounts** from long term local

residents indicate the site was used for storage of **both new** asbestos lagging, **and old** lagging material, removed from vessels undergoing refit at Garden Island.

All lagging material is dangerous, and 'strip-out' lagging material even more so, due to corrupted form, and structure. Asbestos particles that kill are usually invisible.

It is not possible to asses the 'financial benefits' of the Defence proposal without transparency as to possible risks. Defence has consistently resisted requests for the release the Site Storage Manifest, and Site and Employee health history statistical information, to the public. May I respectfully request the Committee instruct Defence to table, and publish all storage history detail and **all** site contamination information?

Over the past two years Defence's '*limited remediation works'* ('26.') have simply resulted in a vast pile of contaminated material straddling the middle of the site, which has blown over hundreds of properties in Randwick, South Coogee and Maroubra, and caused dust storms making front page 'News' in the local press.

Dangerous contaminated material has consistently been double, triple, and even quadruple handled on the site and now Defence propose it be moved again.

"16. Several stockpiles of contaminated soil lie within the proposed site and these will require removal from the immediate site.

Defence should have removed all this material from the site proper, entirely, and long ago. It seems clear Defence may have the intention of recycling it for, in Defence parlance '*beneficial reuse'*. This is not acceptable

Defiance's comments in '25 ' are misleading and deficient. **Misleading** in the obvious Defence desire to down play the word '**fibre**', as in '**asbestos fibre**', and clearly deficient as noted below.

"..The predominant contamination on site is asbestos cement sheeting"

This statement is quite at odds with Defence own documentation, in too numerous occurrences to detail here, and also at odds with the sworn evidence put before the Land and Environment Court, (which Defence did not dispute.)

**Financial & Legal, ..the Risks.**

In it's consideration of the financial risks and benefits of this 'disposal', may I respectfully request the Committee consider further legal implications of the disposal, and in particular, impacts of contamination and airborne material to the residents living along Holmes street, who immediately adjoin the nominated area, and also, the wider questions of the 'risk', and the risk implications of Randwick City Councils 'additional' consent conditions, made **alternate** to those set by the Land and Environment Court.

Just one look at the visible effect of construction and gross site disturbance will bring these issues to sharp focus.

Defence submissions in 24, 25, and 26, this 'development' is still subject to the findings of the Land and Environment Court 'Commonwealth of Australia v Randwick City Council[2001] NSWLEC 79 (27 April 2001)' Talbot J.

His Honor, Talbot J, found ;

. . .

'60. There is **widespread concern in relation to the contamination of the site with asbestos and how its remediation will affect their properties**.' (emphasis added)

. . .

'83. There is no direct reference to site audits in SEPP 55. Clause 7 of SEPP 55 places the obligation to be satisfied that the land is suitable for the proposed purpose squarely upon the consent authority. In the light of the doubts generated by Mr Heggie, **the Court is not prepared at this point to defer to the site auditor in respect of the acceptable level of asbestos fibres as proposed by the application**. Nevertheless, this is not to say that there never can be circumstances where a council would be entitled to rely on a site audit statement provided that in doing so it assumes the ultimate responsibility to be satisfied in accordance with cl 7 of SEPP 55.' (emphasis added)

. . .

'86. The threat to human health from asbestos fibres is not in dispute. The Court is left in a state of uncertainty about the acceptable level of asbestos fibres in soil on land to be used for residential purposes. Until there is more information which **removes the doubts left following evidence in this case**, common sense dictates that it should take the precaution of requiring that the soil be asbestos free (Alumino (Aust) Pty Ltd v Minister Administering the EP&A Act 1979 & Ors (NSWLEC, Talbot J, 29 March 1996, unreported)).' (emphasis added)

'87. If the applications are otherwise acceptable, in the absence of further evidence, a condition to this effect should be imposed in order to meet the stringent requirements of cl 7 of SEPP 55.'

This Court decision was, FINAL.

So far as I am aware, neither Defence nor Randwick City Council applied to the Court for further consideration of the 'asbestos free' finding.

Notwithstanding Randwick City Council's powers to set conditions, and that they sort the 'concurrence of some other person or authority', namely the NSW Department of Health, in drafting the conditions, there is serious concern as to the legal 'validity' of the 'new' condition. If it is a nullity, with no weight, as is believed, **the site development can only proceed if it is asbestos free**, and this includes **asbestos FIBRES.**

**We have a clear finding from the Court, that the site be asbestos free.**

From Randwick Council we have a 'new' modified consent condition, which by implication clearly attempts to **exclude** the Court finding, and, in effect, read carefully, the condition actually implies **the site can have as much asbestos as you like, so long we can't find it**.

It is hard to comprehend the Court envisioning this sanction.

This the 'additional condition is **not** an 'improvement' as is required by Council's Act(s), particularly when considered along with the intrinsic requirement that Randwick City Council must consider '**all other risks'**.

The practical thrust, or meaning, of the 'new' consent condition, and the inclusions of the word '**or**' in that condition, is at odds with, and is also '**preemptive**' of the Land and Environment Court's operative finding.

The use of the phrase '**no unacceptable health risks**' within to condition is simply not acceptable. This is a housing development.

What does the phrase '**no unacceptable health risks'** mean? A **search of ALL Laws, Acts, Regulations, and Court Cases in the whole body of Australian Law, since Federation**, reveals one, just **one** other example of the use of the phrase, and the meaning is still obscure to me.

Conversely, one might ask, what is 'an acceptable health risk' when the contaminant is a Schedule 1 carcinogen?

What is the precedent for a Local Government body, partially funded by ratepayers, setting alternative conditions to a Court finding, in particular, to matters related to health, and again, in this case also 'Schedule 1', carcinogens?

What was the 'necessity' for Randwick City Council to make the consent changes? Was it a Defence imperative?

May I respectfully request that the Committee request Defence table to the Committee, and make public, all correspondence with Randwick City Council concerning contamination.

## Groundwater

Groundwater contamination barley rates two words from Defence, from my reading of available information; both Randwick City Council and Defence have indicated onsite testing has taken place.

In his finding His Honor Talbot J, said ..

" 89. The Court agrees with Mr Heggie that the cause of groundwater contamination should be explored. If that investigation proves that groundwater quality will not decline further, then remediation is not necessary. **On the evidence before the Court, however, such a conclusion cannot be drawn.** (Emphasis added)

Defence must **prove** 'that groundwater quality will not decline further'. This has not happened.

**(More) Spin**

Defence note in 10..

'10. To meet sales revenue targets set by Government, Defence must decontaminate, remediate and dispose of several small portions of land within the disposal precinct (Stage 1B and part of Stages 5 and 6). Attachment 2 identifies the sites and Attachment 3 provides concept drawings of the proposed works. The work must meet the identified commitments to Randwick City Council, and optimise the returns to revenue from the sale of land.'

The process of selling off the land in question in dribs and drabs is unsafe, both to local residents and 'new' residents moving onto the site. The areas nominated by Defence for sale are at the immediate rear of homes along Holmes Street.

There have been numerous resident complaints, and front-page local media coverage of the dangerous dust emanating from the site, there, and specifically, if Defence continue it's 'remediation' practices, and ignore residents again, in this new case, with residents living in very close proximity, at their back fence, **more media coverage is a certainty**.

Defence's comment in '10'; '*and optimise the returns to revenue from the sale of land*', is simply laughable.

This so called 'development' has been in train since at least 1996. In 2004, some eight (8) years hence, the net tangible result for the millions Defence expended, is the 'commencement of construction' of some eighty odd homes.

For all their 'expertise', over eight years this would amount to an average construction of a mere ten homes per year, a task easily mastered by two builders, with a van, a ladder, and a couple of fit labourers.

Hardly rocket science.

This is a bad and unsafe development, on land, which should be the part of the Common wealth. Defence have not demonstrated any natural aptitude for the role they thought they were suited, and should be constrained to the specific tasks nominated by their own Act.

The Australian community cannot afford the inexpert gunboat adventurism and arrogance of this Department, and it's ongoing behaviour, just like another Rogue State.

Yours Sincerely

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