

21 March 2013

Major Project Development Assessment Processes
Productivity Commission
Locked Bag 2, Collins St East
Melbourne VIC 8003

26 MAR 2013

Dear Mr Lanning,

Submission re: Major Project Development Assessment Processes

Potential Conflict of Interest

A **potential conflict of interest** exists in the Productivity Commission (with Peter Harris as Chairman) considering major projects in Victoria, because of the position formerly held by Peter Harris as Secretary to the Victorian Department of Sustainability and Environment.

Victorian Desalination Project

Enclosed please find a notice dated 9/7/08, signed by Peter Harris as "Secretary to the Department of Sustainability and Environment", and headed "VICTORIAN DESALINATION PROJECT".

That notice was handed out and circulated on Bastille Day 2008 at a gathering of people opposed to the Victorian Desalination Project.

Enclosed please find a photograph of that gathering just prior to arrests being made by Victoria police.

Enclosed is a page from the Victorian Government Gazette dated 22 July 2008 regarding a "Notice of Acquisition".

You will note the mention of "The Secretary of the Department of Sustainability and Environment" and the "Desalination Project".

Further, enclosed please find extracts from the document:

**VICTORIAN DESALINATION PROJECT
ENVIRONMENT EFFECTS STATEMENT
REPORT OF THE INQUIRY**

**TO:
MINISTER FOR PLANNING**

**Inquiry:
Kathryn Mitchell – Chair
Nick Wimbush – Deputy Chair
Chris Harty ☐ Member
Garth Lampe ☐ Member
Greg Sharpley ☐ Member
4 December 2008**

being four (4) references to the Secretary to the Department of Sustainability and Environment as the project's proponent.

In addition enclosed please find an extract from the document:

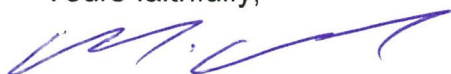
**VICTORIAN DESALINATION PROJECT ASSESSMENT
under
ENVIRONMENT EFFECTS ACT 1978
Minister for Planning
January 2009**

being a reference to The Secretary of the Department of Sustainability and Environment as the proponent of the VDP.

Enclosed please find four (4) pages being a "NOTICE OF INTENTION TO EXERCISE POWERS OF ENTRY" (with mention of the Secretary to the Department of Sustainability and Environment) and a "STATEMENT TO ACCOMPANY NOTICE OF INTENTION TO ENTER LAND", with the signature of Peter Harris on the last page.

It is a potential conflict of interest for the Productivity Commission to undertake consideration of the Victorian Desalination Project, or other Victorian projects, for which the current Chairman was the then proponent.

Yours faithfully,



Maurice Schinkel

enc.

Copy to: The Hon David Bradbury MP
Assistant Treasurer and Minister Assisting for Deregulation
The Hon Andrew Robb AO MP
Shadow Minister for Finance, Deregulation and Debt Reduction

VICTORIAN DESALINATION PROJECT

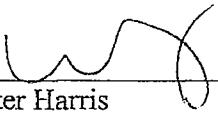
I, the Secretary to the Department of Sustainability and Environment, have determined to temporarily close the areas of road marked red in the diagram below (**Closed Area**), effective immediately. In doing so, I have acted pursuant to section 24(3) of the *Project Development and Construction Management Act 1994* as facilitating agency for the Victorian Desalination Project and in accordance with the Nomination Order dated 18 December 2007.

This action has been taken to ensure that the preliminary works on the plant site can be carried out.

Unless authorised to do so, no person is to walk, drive or otherwise access the Closed Area.



Signed:


Peter Harris

Secretary to the Department of Sustainability and Environment

Dated:

9/7/08





Victoria Government Gazette

No. S 206 Tuesday 22 July 2008
By Authority, Victorian Government Printer

Land Acquisition and Compensation Act 1986

FORM 7

S. 21
Reg. 16

Notice of Acquisition

Compulsory Acquisition of Interest in Land

The Secretary to the Department of Sustainability and Environment, being the Body Corporate established under section 6 of the **Conservation, Forests and Lands Act 1987**, acting in its capacity as the facilitating agency for the Desalination Project under the **Project Development and Construction Act 1994** (the 'Secretary'), declares that by this notice it acquires the following interest in the land described as the whole of Crown Allotment 23A, Parish of Wonthaggi, comprising 72.44 hectares and being land described in Certificate of Title Volume 03798 Folio 500.

Interest Acquired: That of Joseph Schellekens and all other interests.

Published with the authority of the Secretary to the Department of Sustainability and Environment.

Dated 22 July 2008

For and on behalf of the
Secretary to the Department of
Sustainability and Environment
BERNARD TOULET
Director – Property Services

SPECIAL

Environment Effects Act 1978

**VICTORIAN DESALINATION PROJECT
ENVIRONMENT EFFECTS STATEMENT**

REPORT OF THE INQUIRY

TO:

MINISTER FOR PLANNING

Inquiry:

Kathryn Mitchell – Chair

Nick Wimbush – Deputy Chair

Chris Harty - Member

Garth Lampe - Member

Greg Sharpley - Member

4 December 2008

EXECUTIVE SUMMARY

1. In response to the continuing drought and the need for water security, the Victorian Government released the next stage of its plan for water in June 2007 - *Our Water Our Future: The Next Stage of the Government's Water Plan*. This Plan provides long-term solutions to secure Victoria's water supplies by:

- Diversifying and boosting water supplies in Melbourne;
- Networking water resources across the State through the Water Grid; and
- Enabling a rapid and flexible response to changing water needs.

As part of this Plan, the Victorian Government announced on 19 June 2007 its intention to develop a Seawater Reverse Osmosis Desalination Plant near Wonthaggi to augment Melbourne's water supply, as well as other regional supply systems. This decision was informed by Melbourne Water's Seawater Desalination Feasibility Study (2007), which investigated the feasibility of desalination as an option to augment Melbourne's water supply.

2. The Minister for Planning appointed an Inquiry on 3 September 2008 under the provisions of the Environment Effects Act 1978, to consider the Environment Effects Statement (EES) for the Victorian Desalination Project, in accordance with Terms of Reference (dated 19 August 2008). The Inquiry comprised Ms Kathryn Mitchell (Chair), Mr Nick Wimbush (Deputy Chair), Mr Chris Harty, Mr Garth Lampe and Mr Greg Sharpley. The Proponent for this Project is the Secretary, Department of Sustainability and Environment (DSE), on behalf of the Minister for Water.
3. The proposed works comprise four main components- these are a Desalination Plant with the capacity to produce 150 to 200 gigalitres (GL) drinking water per annum; Marine Structures for the seawater intake and the saline concentrate outlet associated with the plant; a pipeline to transfer water from the plant to Melbourne's water supply network; and power supply infrastructure to supply electricity for the plant and associated infrastructure. These components have been assessed in accordance with the Inquiry's Terms of Reference and the Project Objectives.
4. The Inquiry is considering the EES on the basis of what is referred to as the Reference Project. That is, there is no final project in place, but rather a concept of what the Victorian Desalination Project (VDP) may include. The Project is subject to a tendering process, and at the time of writing, two tenderers have been selected to provide a final bid. The Government has adopted a Public Private Partnership (PPP)

1. INTRODUCTION

Victoria is facing a critical water crisis. It has experienced higher temperatures and record low rainfall for the past ten years. It has been in drought for many years and there is no sign that drought conditions are abating. Less rainfall means less run-off and results in a significant reduction in the amount of water available to Victorians. At the same time, Victoria is grappling with climate change. The Government has proposed a number of projects to enhance Victoria's water supply, one of which is to build a Seawater Reverse Osmosis Desalination Plant near Wonthaggi.

This project, known as the Victorian Desalination Project (VDP), is the subject of an Environmental Effects Statement and is under review by this Inquiry.

1.1 The Inquiry

The Minister for Planning appointed the Inquiry on 3 September 2008 under the provisions of the *Environment Effects Act 1978*, to consider the Environment Effects Statement (EES) for the Victorian Desalination Project. The Inquiry comprised:

- Kathryn Mitchell: Chair
- Nick Wimbush: Deputy Chair
- Chris Harty: Member
- Garth Lampe: Member
- Greg Sharpley: Member

The Inquiry has been greatly assisted in its work by the Office of Planning Panels Victoria, but specifically Michael Crossman (Panel Associate), Laura Agius (Administration Assistant), Adrian Williams (Panel's Business Manager) and Rebecca Price (Senior Project Officer). Additionally, it retained the services of Chris Wren SC to provide legal advice.

The Proponent for this project is the Secretary, Department of Sustainability and Environment (DSE), on behalf of the Minister for Water. The proposed works comprise a Desalination Plant with the capacity to produce 150 to 200 gigalitres (GL) of potable water per annum, marine structures for the seawater intake and the saline concentrate outlet associated with the plant, a pipeline to transfer water from the plant to Melbourne's water supply network, and power supply infrastructure for the plant.

The Inquiry is considering the EES on the basis of what is referred to as the

2. THE PROPOSAL

This chapter provides the strategic context for the Project, an overall summary of the four key components of the proposal and outlines implications of the procurement approach for the EES and the Inquiry.

2.1 Background

In response to the continuing drought and the need for water security, the Victorian Government released the next stage of its plan for water in June 2007 - *Our Water Our Future: The Next Stage of the Government's Water Plan*. This Plan provides long-term solutions to secure Victoria's water supplies by:

- *Diversifying and boosting water supplies in Melbourne;*
- *Networking water resources across the State through the Water Grid; and*
- *Enabling a rapid and flexible response to changing water needs.*

As part of this Plan, the Victorian Government announced on 19 June 2007 its intention to develop a Reverse Osmosis Desalination Plant near Wonthaggi to augment Melbourne's water supply as well as other regional supply systems. This decision was informed by Melbourne Water's *Seawater Desalination Feasibility Study* (2007), which investigated the feasibility of desalination as an option to augment Melbourne's water supply.

In September 2007, the Victorian Premier and Minister for Water announced that the Project would be delivered as a Private Public Partnership (PPP) in accordance with the Government's *Partnership Victoria* policy framework.

By Order in Council dated 18 December 2007 under the *Project Development and Construction Act* 1994 (Vic), the Secretary, Department of Sustainability and Environment (DSE) was nominated as the "facilitating agency" and the project's proponent. Under this Act, the responsible Minister (the Minister for Water) and the Secretary have powers to "govern, co-ordinate and implement the Project".

The Secretary DSE submitted a referral to the Minister for Planning to determine whether the Project required assessment under the *Environment Effects Act* 1978. The Minister for Planning decided on 28 December 2007 that an EES was required to document the environmental effects of the Project.

TERMS OF REFERENCE FOR INQUIRY

UNDER SECTION 9(1) OF THE *ENVIRONMENT EFFECTS ACT 1978*

VICTORIAN DESALINATION PROJECT

1. PURPOSE

The Inquiry is to inquire into the environmental effects of the works known as the Victorian Desalination Project (the "Project"), as contemplated by section 9(1) of the *Environment Effects Act 1978* (EE Act), in order to assist the Minister for Planning to make an assessment of the environmental effects of those works under that Act.

2. BACKGROUND

The Proposal

As part of the *Our Water Our Future: The Next Stage of the Government's Water Plan*, the Victorian Government announced on 19 June 2007 its intention to develop a reverse osmosis Desalination Plant near Wonthaggi to augment Melbourne's water supply as well as other regional supply systems. The Government intends that the plant will be operational by the end of 2011.

The Government's decision was informed by the *Seawater Desalination Feasibility Study* (2007) conducted by Melbourne Water, which investigated the feasibility of desalination as an option to augment Melbourne's water supply. The objective of the project is to provide water security for Victoria's growing population and economy by introducing supply from a rainfall-independent source.

The proposed works comprise a Desalination Plant with the capacity to produce 150 to 200 gigalitres per annum, marine structures for the seawater intake and the saline concentrate outlet associated with the plant, a pipeline to transfer water from the plant to Melbourne's water supply network, and a power supply infrastructure to supply electricity for the plant and associated infrastructure (see Attachment 1). The proposed site for the plant adjoins Williamsons Beach, west of Wonthaggi. A more complete description of the proposal is provided in the Environment Effects Statement (EES) prepared by DSE.

The Secretary of the Department of Sustainability and Environment (DSE) is the project's proponent, on behalf of the Minister for Water, as the 'facilitating agency' nominated by an Order in Council on 18 December 2007 under the *Project Development and Construction Management Act 1994*.

Relationship to the EES process

The Minister for Planning decided on 28 December 2007 that an EES was required under the EE Act to document the environmental effects¹ of the Victorian Desalination Project. The EES has been

¹ Under the seventh edition of the *Ministerial guidelines for assessment of environmental effects* (June 2006) (i.e. the "Ministerial Guidelines"), environment for the purposes of assessment includes the physical, biological, heritage, cultural, social, health, safety and economic aspects of human surroundings, including the wider ecological and physical systems within which

VICTORIAN DESALINATION PROJECT

ASSESSMENT

under

ENVIRONMENT EFFECTS ACT 1978

Minister for Planning

January 2009

1 Introduction

1.1 Purpose of this document

This document is the assessment of environmental effects ("Assessment") under the *Environment Effects Act 1978* (EE Act) for the proposed Victorian Desalination Project (VDP), including a seawater desalination plant west of Wonthaggi, Bass Coast, Victoria, together with associated water transfer and power supply infrastructure. It represents the final step in the Environment Effects Statement (EES) process under the EE Act by providing advice to decision-makers on the likely environmental effects of the proposal, their acceptability and how they should be addressed through statutory decisions.

This Assessment will inform the statutory decisions required under Victorian law for the Project to proceed; in particular approval of a Works Approval Application (No. WA64404) for the desalination plant under the *Environment Protection Act 1970* (EP Act) and approval for use and development of land under the *Planning and Environment Act 1978* (P&E Act). It will also be provided to the Australian Government Minister for the Environment, Heritage and the Arts, as part of the accredited assessment process under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), to inform his decision whether to approve the VDP under that Act.

1.2 Project description

As part of the *Our Water Our Future: The Next Stage of the Government's Water Plan*, the Victorian Government announced on 19 June 2007 its intention to develop a reverse osmosis (RO) desalination plant near Wonthaggi to produce drinking water from seawater. This will both augment Melbourne's water supply (as well as other regional water supply systems) and provide additional security by introducing a supply from a rainfall-independent source. It is the Government's intention that the plant and associated infrastructure will be operational by the end of 2011.

The Secretary of the Department of Sustainability and Environment (DSE) is the proponent of the VDP, on behalf of the Minister for Water, as the 'facilitating agency' nominated by an Order under the *Project Development and Construction Management Act 1994*.

The proposed VDP works comprise a desalination plant with the capacity to produce 150 to 200 gigalitres (GL) of drinking water per year, marine structures for the seawater intake and the saline concentrate outlet associated with the plant, a pipeline to transfer water from the plant to Melbourne's water supply network in Berwick, and a power supply infrastructure to supply electricity for the plant and the Booster Pump Station as well as ancillary infrastructure. The VDP's components are presented in Figure 1.

The Government has adopted a Public Private Partnership (PPP) as the procurement method for the project in accordance with the Government's Partnership Victoria policy framework. The PPP tender process is being conducted concurrently with the EES process. Consequently, the EES is based on concept proposals for the works that comprise the project. The final designs for the project works will not be available until mid 2009 when the successful bidder is chosen.



Department of Sustainability and Environment

PO Box 500
East Melbourne Victoria 3002
Telephone: (03) 9637 8000
Facsimile: (03) 9637 8100
ABN 90 719 052 204

NOTICE OF INTENTION TO EXERCISE POWERS OF ENTRY

**TO: PETER BROWN, LYNETTE WHITLAM AND ALL OTHER INTERESTED
PARTIES**

RELEVANT PROPERTY: 85 EDEN RD GLEN FORBES VIC

Volume 10562 Folio 521

Melbourne Water Corporation has delegated certain statutory powers to the Secretary to the Department of Sustainability and Environment (the Secretary) for the purposes of the Victorian Desalination Project under an Instrument of Delegation dated 20 March 2008. In particular, Melbourne Water Corporation has delegated to the Secretary its power to authorise persons to enter land for the purposes of sections 133(1) and 133(2) of the *Water Act 1989* (Vic) and section 74 of the *Land Acquisition and Compensation Act 1986* (Vic).

You are HEREBY formally NOTIFIED that persons authorised by the Secretary under this delegation intend to enter land that you own and/or occupy on or after 20 August 2009 and exercise all or any of the powers under sections 133(1) and 133(2) of the *Water Act 1989* (Vic) and section 74 of the *Land Acquisition and Compensation Act 1986* (Vic) to the extent necessary to undertake surveys, geotechnical and environmental investigation, contamination testing, cultural heritage salvage works, and locating utility infrastructure and other uses incidental to or associated with such activities.

As required by section 74(2)(b) of the *Land Acquisition and Compensation Act 1986* (Vic), attached to this Notice is a Statement setting out your rights and obligations under the Act.

Dated

11 August 2009

FORM 14

S. 74(2)
Reg. 25

**STATEMENT TO ACCOMPANY NOTICE OF INTENTION
TO ENTER LAND**

1. What is this statement for?

The Authority (Melbourne Water Corporation acting through its delegate the Secretary to the Department of Sustainability and Environment) has given you notice of intention to enter your land. This statement is to tell you about your rights and obligations and the rights and obligations of the Authority.

2. The Authority has a right to enter

The Authority has the right to enter your land under section 74 of the Land Acquisition and Compensation Act 1986. The section authorises an Authority (or anyone it authorises in writing) to enter land and carry out work for the purposes of the Water Act 1989.

3. What can be done to the land

As well as entering the land, the Authority (or any person authorised) may-

- (a) remain on the land, with assistants, vehicles, machinery or equipment; and
- (b) set up trigonometrical stations, survey pegs, marks or poles and at any time alter or remove or replace them; and
- (c) dig or bore into the land and take samples of soil, rock, water or minerals.

4. Authority must try to co-operate with you

The Authority must try to co-operate with you and to cause as little harm or inconvenience or damage as possible and to leave the land in as nearly as possible the same state as before the occupation.

The Authority may only remain on the land for as long as is reasonably necessary. When it has finished, it must take away all plant, machinery, equipment, goods or buildings brought onto or erected on the land other than things that you agree may be left.

5. You must co-operate with the Authority

You must try to co-operate with the Authority. You must not interfere with any trigonometrical station, survey pegs, marks or poles. Any person who obstructs an Authority (or its authorised person or the person's assistants) may be charged with committing an offence and may be fined.

6. Claim for compensation

If you have suffered financial loss or had to pay any expenses which arose as a direct consequence of the Authority or the authorised persons entering your land, you may claim compensation by giving the Authority a notice of claim. In this case, the Department of Sustainability and Environment will receive and process any claims on behalf of Melbourne Water.

Generally, a claim must be made within 2 years of the last time the Authority or a person authorised by the Authority was on the land.


7. You may be entitled to rent

As well as any compensation, the Authority must also pay rent for any period the Authority occupies the land.

The rent must be paid quarterly or half-yearly. The amount of the rent is to be agreed between you and the Authority. If you cannot agree, then the rent is to be fixed by Victorian Civil and Administrative Tribunal or the Supreme Court.

8. Professional advice and expenses

You may like to discuss this statement with a solicitor, valuer or other professional adviser. Reasonable expenses which you have to pay because of the Authority entering your land will be paid by the Department of Sustainability and Environment (acting as Melbourne Water's delegate).

.....

Secretary to the Department of Sustainability and Environment

(acting as Melbourne Water Corporation's delegate pursuant to the Instrument of Delegation between Melbourne Water Corporation and the Secretary to the Department of Sustainability and Environment dated 20 March 2008)

Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Information Privacy Act 2000. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Manager Privacy, Department of Sustainability & Environment, PO Box 500, East Melbourne, 3002.

