

I would like to add this to my response to the question on notice from Mr Veitch as it relates to the DPIE's oversight of the project.

In my answer I mentioned our complaint to DPIE dated 10 August and this response, received from DPIE yesterday, relates to that part of the complaint asking DPIE to investigate certain statements in the Cammeray Golf Course DSI report to see whether section 10.6 of the EP&A Act has been breached. The response is very concerning as the DPIE relies on the trustworthiness of documents supplied to it to properly perform its regulatory functions. In our view the response demonstrates a total dereliction of duty by DPIE.

Such a dereliction raises particular concerns in relation to the outstanding component of our complaint, namely to whether the DPIE will require the DSI to be reviewed by an independent EPA accredited site auditor, something which should have been done, on our interpretation of the Conditions of Approval, before the preliminary work at Cammeray Golf Course commenced.

Section 10.6 provides:

*(1) A person must not provide information in connection with a planning matter that the person knows, or ought reasonably to know, is false or misleading in a material particular.*

I will deal with the DPIE's response to each of the allegations separately.

### **Allegation 1**

The section of the DSI report we complained of is extracted in this screenshot:

It is Jacobs understanding that the statement of "Known contamination" for this area (from the EIS report) is based the 'Western Harbour Tunnel and Beaches Link – Contamination Factual Report (CFR)', (AECOM and Coffey, (AEC), 2018. The reported contamination was related to Polycyclic Aromatic Hydrocarbons (PAHs) (at two locations) and asbestos containing materials (at one location). However, the location of these sample points, in relation to the investigation area (i.e. the Cammeray Golf Course) being assessed by Jacobs, was not clear. Therefore, it is not known if these sample points are located within the investigation areas (subject of this report), and this data was excluded.

The key part of the section is not the (highlighted) section quoted by the DPIE below but the preceding sentence which states that the sample points i.e. the location of the boreholes showing the exceedances is not clear and "therefore" the data was excluded.

DPIE is apparently indifferent as to whether this statement is true or not. As we stated in our complaint we believe it is unlikely to be true. There is no suggestion from the response provided that DPIE even asked the question of the maker of the statement.

### **Allegation 2**

Our complaint in relation to this was that the relevant planning certificate was likely to have put the author of the DSI report on notice that the site was formerly used as a landfill site, and that the author would have seen the certificate as part of their inquiry into the history of the site. Our complaint didn't relate to what was revealed by the 2014 certificate but what would have been revealed by the current certificate.

The DPIE apparently doesn't feel it necessary to obtain a copy of the current certificate as the starting point to its investigation or at all.

Why a response of this nature has taken three months to provide is a matter for speculation but, given that there appears to have been no investigation as to the key facts relevant to our complaints, it's difficult to see why the response could not have been provided within a week of our complaint. It's also not apparent why the balance of the complaint still hasn't been dealt with.

Regards,

John Moratelli

**From:**

**Sent:** Wednesday, 10 November 2021 5:28 PM

**To:**

**Cc:**

**Subject:** Warringah Freeway Upgrade (SSI-8863) – Cammeray Golf Course – investigation outcomes (our ref. INV-26069575)

Dear John and Diane,

Investigation outcome: False or misleading information

Following an investigation into two allegations that false or misleading information was provided in connection with a planning matter, the Department of Planning, Industry and Environment has determined that no breach has occurred. Both allegations relate to information provided in relation to contamination at the Cammeray Golf Course.

**Allegation 1**

The first allegation relates to a detailed site investigation report (**Report**) and was made in a letter from the Willoughby Environmental Protection Association (**WEPA**) dated 10 August 2021 (our ref. COM-25852717). The letter (section 2.5) identifies that the Report omitted data from the Environmental Impact Statement (**EIS**) for two relevant boreholes. The Report has been revised five times, most recently 17 September 2021.

Both boreholes are identified in the contamination technical working paper included as Appendix M to the EIS (**Contamination EIS**) as containing fill material, with benzo(a)pyrene concentrations above the adopted levels at one borehole (B337\_0.1-0.2) and asbestos at the other borehole (B340\_0.05-0.25). As quoted in the letter, early versions of the Report stated "*it is not known if these sample points are located within the investigation areas (subject of this report), and this data was excluded.*"

The Report identified benzo(a)pyrene concentrations above the adopted level at one borehole (BH15\_D\_CGC at 1mbgl) where “*a distinct ‘asphalt’ odour and asphalt ‘layer’*” was present. The Report stated “*observation of similar fill across the investigation area combined with the heterogenous nature of fill suggests that there is the potential for unexpected contamination to be encountered in other areas*” and “*and/or asbestos containing materials to also be present within fill*”.

The Department considers that the Report identified the omission of the EIS data for the two boreholes. The Department further considers that the Report identified the potential for benzo(a)pyrene and asbestos contamination to be present. Therefore, the Department concluded that no breach has occurred.

## **Allegation 2**

The second allegation relates to the Contamination EIS and was made in a letter from WEPA dated 12 September 2021 (our ref. COM-28000550). The letter refers to an assessment, planning certificate and construction management plan prepared in 2014 (copies of which were supplied to the Department) and identifies that the Contamination EIS “*avoids mentioning that the site may have been a former landfill site*”.

The assessment supplied summarised correspondence from 2000 as “*the NSW EPA and North Sydney Council could not confirm if the site was formerly used as a landfill. The NSW EPA suggested that it was considered prudent that North Sydney Council assess if the site was ever developed as a landfill.*”. The assessment reviewed historical aerial photography from 1930. The assessment acknowledged information loss prior to 1930 and between aerial photographs and described the site as “*unoccupied and grassed*” from 1930 then “*used for recreational purposes*” from 1961. The planning certificate supplied stated the “*land may have been used in the past for a potentially contaminating activity*”. The management plan supplied stated at this stage “*there is no requirement to notify the NSW EPA of the site contamination.*”

The Contamination EIS identified “*unsealed areas next to the Warringah Freeway*” as “*moderate to high contamination risk*” and stated “*contamination is likely to be associated with the current and historical particulate matter deposition from large volume traffic flows using the Warringah Freeway and filling of some of these areas with material of unknown quality during the construction of the Warringah Freeway*”. The potential contaminants identified were “*heavy metals (mainly lead), hydrocarbons (mainly PAH), asbestos*”.

The Department considers that the 2014 documents were inconclusive regarding any past use as a landfill. The Department further considers that the Contamination EIS identified the potential for contaminated fill material to be present. Therefore, the Department concluded that that no breach has occurred.

### Investigation ongoing: Conditions of approval

I would like to assure you that the Department is continuing its investigation of the Detailed Site Investigation report conditions included in the *Western Harbour Tunnel*

& *Warringah Freeway Upgrade* infrastructure approval (SSI-8863) and the Department will provide the outcome of this investigation once it is concluded.

### Project complaints

Should you, or the community, have any concerns as a result of construction activities associated with the project, the Department encourages you to raise these concerns directly with the Warringah Freeway Upgrade project via phone: 1800 931 189 or email: [whtbl@transport.nsw.gov.au](mailto:whtbl@transport.nsw.gov.au) in the first instance.

The Department receives compliance concerns via its Major Projects website, using the 'Make a Complaint' webform available under the Compliance tab for this project. The projects webpage is: [www.planningportal.nsw.gov.au/major-projects/project/10451](http://www.planningportal.nsw.gov.au/major-projects/project/10451).

Kind regards,

### **Senior Compliance Officer**

Planning & Assessment | Department of Planning, Industry and Environment  
Locked Bag 5022 | PARRAMATTA NSW 2124  
[www.dpie.nsw.gov.au](http://www.dpie.nsw.gov.au)