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28 September 2009

Ms Carol Hughes
Manager
Tasmanian Planning Commission
GPO Box 1691
HOBART TAS 7001

Dear Ms Hughes

WALKER CORPORATION PTY LTD
LAUDERDALE QUAY PROJECT OF STATE SIGNIFICANCE

I refer to my letter to you of 21 September 2009 and to your response of 23 September 2009 which annexed a copy of a letter from the Clarence City Council to Mr Pitt QC of 22 September 2009. I record, specifically, that the council did not itself forward a copy of its correspondence to me or any other person representing Walker Corporation Pty Ltd.

This is the response of Walker Corporation Pty Ltd.

It is not accepted that section 22 of the State Policies & Projects Act 1993 (the Act) operates in the way contended by the council in its correspondence to Mr Pitt QC.

No matter how that provision might be interpreted in the abstract, the simple fact is that in this case the Commission, by its lawfully appointed delegates, determined to hold a public hearing so that the delegates might be assisted in their preparation of the draft integrated assessment report. That public hearing was conducted in a structured, fair and entirely transparent manner. The delegates received detailed evidence, not only from the proponent, but from a number of other parties which addressed the principal identified issues.

The hearing process was entirely fair. At its conclusion the delegates thanked every person for their participation and attendance and informed all that the hearing had been of considerable benefit in providing assistance to write the draft integrated assessment report. As a consequence the hearing was adjourned, expressly, for that purpose.

The adoption of this procedure, unquestionably, gave rise to rights, interest and legitimate expectations on the part of all persons who participated in the process that the delegates would act fairly and would accord appropriate procedural fairness: *Kioa – v West* (1985) 159 CLR 550. It follows that having embarked upon this procedure no person is or was entitled to engage in private correspondence or to put further submissions to the delegates as some form of process which stands separately and apart

from the public hearing. It is clear that the public hearing was and is the process for consultation with all persons affected by the proposal including the Council.

It is to be noted that the Council took part in the hearing process although it did not appear at the hearing, or was not represented, on each day. One can well understand that the Council may have made a decision not to participate in respect of various issues or not to attend on every day: doubtless for reasons related to its particular interests.

Some of the issues the subject of the Council's letter of 22 September 2009 were specifically identified and dealt with as part of the hearing process. Other issues specifically were not: in particular the attempt to draw parallels between the proposed development at Lauderdale and other developments interstate. Indeed, doubtless it will be recalled, that the delegates consistently ruled that they would not receive evidence about, and would not entertain a debate in relation to, the relative success or failure of canal developments interstate. The plainly correct reason given during the hearing process was that the delegates are charged with considering the application by Walker Corporation Pty Ltd upon its merits.

It is well accepted that the content of the rules of procedural fairness must necessarily vary depending upon the facts and circumstances of individual cases. Thus the concept of a legitimate expectation is variable. What is clear in this case is that if the delegates intend to take into account any of the material the subject of the Council's letter of 22 September 2009 then necessarily Walker Corporation Pty Ltd (and each other person who participated as a party at the hearing) will be denied procedural fairness.

This situation cannot with respect be addressed by some direction that the parties respond to this material within a defined time frame. The issues raised by the Council concern matters which were the subject of detailed evidence, questioning and submissions at the hearing. A number of the issues now sought to be raised by the Council are contrary to the evidence which was received at the hearing. Other matters were simply ruled irrelevant.

As a consequence Walker Corporation Pty Ltd will not "*respond*" to the matters raised in the Council's correspondence by detailed comment or rebuttal. To do so would substantially, if not fatally, undermine the integrity of the hearing process, would set at nought a large amount of the evidence which was received at the hearing and, as a consequence, this would be procedurally unfair to all persons concerned.

The only appropriate course, it is respectfully submitted, is not to take into account the content of the Council's submission and the delegates should provide advice to all parties to this effect. In this regard I have read, but fundamentally disagree with, the contents of the letter from the Environmental Defender's Office to you of 28 September 2009.

Yours faithfully


S/B McELWAIN