

**IN THE MATTER OF the Panel
appointed by the delegate of the Minister
for Water pursuant to Section 66 of the
Water Act 1989 (Vic) to consider submissions**

APPLICATION: Works Application No. JW1624119
To construct works under section 67 of the
Water Act on or to a

OUTLINE OF SUBMISSIONS OF THE APPLICANT

A Introduction

1. On 8 April 2021, Charles and Rita Santospirito (together, the **Applicant**), as the owners and occupiers of a farming property located at 1075 Horseshoe Bend Road, Torquay, submitted an application (the **Application**) under section 67 of the *Water Act 1989 (Vic)* (the **Act**) for a licence to alter an existing private dam located at the south-east corner of 1075 Horseshoe Bend Road (the **Property**), known as ‘Pintail Dam’ (the **Dam**).
2. The proposed works comprising the relevant alteration of the Dam consist of the construction of a pipe spillway in the eastern bank of the Dam. The Application was accompanied by a Site Plan, and a Spillway Plan and Section. A Construction Plan process was subsequently provided by letter dated 21 June 2021.
3. On 21 April 2021, a panel was appointed under section 66 of the Act to consider submissions made on the Application. The Applicant now provides further materials responsive to the further information requested by the Panel in its Directions dated 2 August 2021. Those further materials are voluminous and are provided on a Google Drive accessible at https://drive.google.com/drive/folders/1U6bA1ZAY7zmfTAPvTYr6Cg73_KVU-9oo?usp=sharing and entitled “Torquay Dam” (referred to as **TD Drive**).
4. In particular, the responses to the Panel Directions are summarised in the Excel spreadsheet entitled “Torquay Farm Dam Response to Panel” (the **Response Spreadsheet**) contained on the TD Drive.

B Background

5. The Dam was constructed in 1987 with the approval and supervision of the State Rivers and Water Supply Commission, and the Department of Conservation, Forests and Lands. The Dam was originally approved to be filled by winter fill from Bream Creek (also known as Thompson or Thomson Creek), which is located to the north and east of the Property. The

winter fill was to be piped to the Dam, as the Dam is not located on the Bream Creek waterway (or any waterway).

6. Historical documents showing the original post-inspection approval of the Dam to hold 171 ML are contained in the Historical Data folder on the TD Drive.
7. The Dam is used to provide irrigation water for the commercial growing of flowers on the Property, and has been for some 44 years since its construction.
8. In 1997, the Applicant entered into an agreement with Barwon Water to purchase treated effluent from Barwon Water's Black Rock Sewage Treatment Plant, to be held in the Dam for use as irrigation. A copy of the (unexecuted) written agreement is contained in the Historical Data folder on the TD Drive and entitled "Barwon Water Agreement". The Applicant undertook the works required by the agreement to provide piping infrastructure to obtain recycled effluent from the Black Rock Sewage Treatment Plant, and has done so ever since.
9. In approximately 2009, a small-scale desalination plant located immediately to the south of the Property was decommissioned. The desalination plant was not owned by the Applicant, and the Applicant had no role in its decommissioning. The Applicant understands that the desalination plant was formerly owned by the previous owners of The Sands Torquay, a resort and golf course located to the south-east of the Property (**The Sands**), and that Barwon Water purchased the desalination plant through liquidators in 2010.
10. In approximately 2018, land to the south and southwest of the Dam was rezoned as residential, following which houses were built on properties adjacent to the Dam. The Applicant was not at any time the owner of any of the land south of the Dam. The Applicant did not procure the removal of the desalination plant, subdivide the land south of the Dam, or market or in any way profit from the creation of the residential estate.
11. On 2 October 2020, the Applicant was informed of water from the Dam being present in properties adjacent to the Dam. Subsequent investigations revealed that a disused pipe that had previously been connected to the desalination plant at the south-west corner of the Dam had not been removed or capped at the time of the plant's decommissioning, and had allowed water to escape the Dam when the Dam was at a high level. The disused pipe has now been capped and no repeat of the incident is possible.
12. As a result of the October incident, Southern Rural Water (**SRW**) issued a direction requiring the Applicant to do certain things to ensure the safety of the Dam. Consequently, the Applicant now seeks the licence the subject of the current Application in order to install a pipe spillway

at 12 metres. The Applicant has also agreed with SRW to limit the Dam to a maximum of 12 metres.

C Submissions

13. The Applicant notes the Terms of Reference of the Panel, and in particular that the Panel has been tasked with considering;
 - (a) all matters required to be taken into account under section 68 of the Act;
 - (b) in particular, matters set out at sub-paragraph (b) to (m) of section 40(1) of the Act;
 - (c) the relevant Australian National Committee on Large Dams (**ANCOLD**) guidelines; and
 - (d) safety of the Property, surrounding properties, buildings and infrastructure, residents and the public.
14. The Dam is of the “turkey nest” kind and, as noted above, does not lie on a waterway and is filled by pumping from the Black Rock Sewage Treatment Plant. In those circumstances, the Applicant submits that, for the purposes of sub-sections 68(1)(b)(i) to (iii) of the Act, the works will have no adverse effect (and no relevant effect at all) on any relevant drainage regime, in-stream uses of water, aquifer or flow of water within a waterway. For the purpose of section 68(1)(b)(iv) of the Act, the only effect of the works on the implementation of the conservation policy of the government may be the positive effect that the Dam can continue to purchase recycled effluent water for irrigation, assisting the Black Rock Sewage Treatment Plant to sell its effluent and reducing any potential demand on alternative sources of fresh water.
15. For the same reasons, the Applicant submits that there are no or minimal considerations relevant to the matters listed at (b) to (m) of section 40 of the Act. In particular, the Applicant says that the only relevant considerations are that;
 - (a) For sub-section 40(1)(b); that by ensuring the safety of the Dam, the works will maintain the existing availability of water for irrigation in the area and by continuing the current irrigation arrangements, assist in maintaining the projected availability of water in the area;
 - (b) For sub-section 40(1)(l); the works will facilitate the ongoing business of the Applicant as the purpose for which the water will be used, which provides investment and employment in the local area.

16. The Applicant notes the further information requested at Direction 15 of the Panel's Directions of 2 August 2021 as going to the considerations regarding the ANCOLD guidelines and general safety associated with the Dam (as referred to in the Terms of Reference quoted at 13(c) and 13(d) above).
17. The Applicant responds to Direction 15 with the materials contained in the TD Drive. In particular, the Response Spreadsheet refers to the paragraph numbering of the Direction with relevant responses and materials. It should also be noted that historical reports and photographs responsive to Direction 15(a)(1) are contained in the "Historical Data and Photographs" folder on the TD Drive, and that the Dam survey plan contains many of the details regarding the Dam's features referred to at Direction 15(a)(2), and 15(b)(1) and (2).

D Further matters not related to the current licence application

18. Under cover of a submission that they are not directly relevant to the current application, the Applicant also notes for completeness and the assistance of the Panel that;
 - (a) The Applicant has taken heed of various matters raised by SRW both in the section 80 Direction issued following the October incident and subsequently, and is ready and willing to do whatever is necessary to fulfil the Applicant's statutory obligations in respect of the Dam and the Applicant's purchase of water from the Black Rock Sewage Treatment Plant. The Applicant understands this may include;
 - (i) Executing a new agreement with Barwon Water;
 - (ii) Having an Environment Improvement Program approved by the Environment Protection Authority;
 - (iii) Applying for an operating licence for or otherwise registering the Dam;
 - (b) The Applicant has no plans to on-sell water from the Dam to the Sands, or any other party;
 - (c) The Applicant intends to pursue having an alternative dam constructed that will allow the Dam to be decommissioned in approximately 5 years.

E Disposition

19. The Applicant has operated the Dam safely for many years and has every confidence in the construction and operation of the Dam. The Applicant was greatly concerned by the incident of October 2020 and notes again that it was not the owner of the desalination plant or its

pipework, nor was it responsible for decommissioning the desalination plant or the rezoning of adjacent land.

20. In the circumstances, the Applicant considers that the relatively minor works the subject of this Application, in combination with the Applicant's commitment to maintaining a 12 metre level in the Dam, will be more than adequate to ensure the ongoing safety of the Dam. Consequently, the Applicant submits that the Panel ought recommend that a licence to perform the works should be issued.

F Procedure

21. Finally, the Applicant requests that if at all possible both Panel members attend the site and physically see the Dam. The Applicant notes that given current coronavirus restrictions in Victoria, it may not cause an extensive delay for the Panel's report to wait until both members can physically attend the Property.

Dated: 17 August 2021

P H CADMAN