

**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: JW1624119

Works under Section 67, Water Act 1989 (Vic)

**Amended Submission on behalf of Southern
Rural Water**

**Property: 1075 Horseshoe Bend Road,
Torquay**

20 August 2021

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1 INTRODUCTION

- 1.1 This Submission is to assist the Panel¹ in completing its role pursuant to its appointment under section 66 of the *Water Act 1989*² pursuant to the Panel's Terms of Reference³:
- 1.2 A key role of the Panel is to consider submissions made in relation to the Application⁴, however the Terms of Reference have in the circumstances necessarily included reference to various additional background material and other matters.
- 1.3 The Panel does not determine the Application, this decision rests with the delegate of the Minister for Water and that decision will include consideration of the report requested from the Panel detailing its considerations and recommendations.
- 1.4 The role of Southern Rural Water⁵ leading up to and including this Panel proceeding is to facilitate the Panel's consideration and provide assistance with information as appropriate to all stakeholders and, in particular the Panel.
- 1.5 Southern Rural Water does not in this Submission and will not through the Panel process have a role of either support or opposition to the Application, notably Southern Rural Water cannot take such a position unless or until consideration of the Panel process and Report is taken into account in the final decision of the delegate of the Minister⁶ in respect of the Application is made.
- 1.6 This Submission will however provide historical background in relation to the private dam and its permissions, detail of the Application process and discussion of submissions.

¹ **Panel** means the panel appointed by the delegate of the Minister for Water to consider submissions in relation to the Application

² Throughout this Submission, the *Water Act 1989* is referred to as the **Water Act**.

³ **Terms of Reference** refers to the Terms of Reference dated 21 June 2021 of this Panel.

⁴ **Application** means application JW1624119.

⁵ **Southern Rural Water** refers to Gippsland and Southern Rural Water Corporation, an entity established under the Water Act.

⁶ **Minister** refers to the Minister for Water under the Water Act.

2 APPLICATION FRAMEWORK – PANEL APPOINTMENT AND ROLE

- 2.1 Section 67(1A) allows an application to the Minister to, in summary, carry out works in respect of particular private dams. These are generally referred to as “*works licences*”. This Application is a request to alter a private dam.
- 2.2 This particular private dam requires a licence for alteration, not because it is on a waterway, rather because it is of a size and capacity considered large enough to warrant licencing control that is at section 67(1A) dams which have a downstream:
- (a) 5 metres (or more) high wall and capacity of 50 megalitres, or more;
 - (b) 10 metres (or more) high wall and capacity of 20 megalitres, or more;
 - (c) wall which is 15 metres or more high, regardless of capacity.
- 2.3 Powers in respect of works licences were historically managed on behalf of the Minister by departments which preceded the current DELWP⁷. Those powers of the Minister, amongst others, have been formally delegated to various rural water corporations (like Southern Rural Water) including specified officers within such corporations. This includes the Managing Director of Southern Rural Water.
- 2.4 Section 65(1)(a) allows the Minister (or the Minister’s delegate in this case) to require public notice of various applications, including under section 67(1)(A) and invite submissions.
- 2.5 Section 66 of the Water Act allows the Minister (or the Minister’s delegate) to appoint a panel to consider submissions made in respect of an application which has been the subject of advertising under section 65.
- 2.6 The present Application relates to works which were triggered by a series of incidents including a leak from part of the dam impacting, and gaining significant attention from, residents in the locality. For this and other reasons it was considered appropriate that the community be given the opportunity not only to make submissions in relation to the Application but also have the opportunity to make those submissions through this Panel process.
- 2.7 Referral to a panel under section 66 is not a regularly used process and there is little guidance available from DELWP or otherwise as to how such a process should be carried out or the

⁷ **DELWP** means the Department of Environment, Land, Water and Planning

breadth of consideration which should be asked of the Panel. The actual terms of the referral in section 67 are limited to:

- “66(1) *The Minister may appoint a panel of persons to consider submissions made on an application to which section 65 applies.*
- (2) *Subsections (2) to (6) of section 50 apply to a panel appointed under subsection (1) as if the reference in subsection (3) of that section to a notice given under section 49(2) were a reference to a notice given under section 65(2).”*

2.8 Section 50 then references the discretion of the Minister (or delegate) to appoint a panel and, relevant for this proceeding:

- (a) subject to anything specified by the Minister (or delegate) in appointment the Panel regulating its own proceedings;
- (b) after considering all submissions referred to it, the panel must report its findings to the Minister (or delegate);
- (c) the Panel may include in its report any recommendations that it thinks fit.

2.9 In this context, Southern Rural Water has drawn on analogies to panel processes available under other legislation, for example the *Planning and Environment Act 1987* and provided a Terms of Reference which:

- (a) necessarily requires this Panel to consider submissions made to it; and
- (b) adds some other elements which effectively form specifications to the Panel by the Minister’s delegate.

2.10 The Terms of Reference was in its final form dated 21 June 2021 and was asked to undertake the Panel process.

2.11 The Panel was asked in its deliberations to consider:

- “(a) *all matters required to be taken into account under section 68 of the Water Act;*
- (b) *in particular, matters set out at sub-paragraph (b) to (m) of section 40(1) of the Water 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.”*

2.12 The Panel was asked to provide a report incorporating various tasks. These included:

- “(a) *a response to the “Purpose” stated above;*
- (b) *an assessment of submissions considered by the Panel,*
- (c) *any other relevant matters identified in the course of the Panel’s deliberations;*
- (d) *a list of persons, agencies or other entities in respect of which submissions, information or comments were received;*
- (e) *a list of any other persons or entities consulted or heard; and*
- (f) *recommendations as to:*
- i. whether the Application ought to be approved, approved with conditions or refused;*
 - ii. if a recommendation to grant is made, recommendations as to particular conditions to be incorporated in respect of any licence which may be issued for the works and ongoing operation of the dam; and*
 - iii. any other recommendations in relation to the application as the Panel thinks fit.”⁸*

2.13 The purpose of the Terms of Reference was expressed as:

“The purpose of the Panel is to consider submissions made in respect of the Application in response to a requirement to give notice of the Application under section 65 of the Water Act.

The Panel will consider all submissions and report, provide comment, advice and recommendations to the delegate of the Minister for Water who is to determine the Application.”

2.14 The Panel was asked to submit its report to the delegate of the Minister by 30 September 2021.

⁸ “stated above” in (a) refers to the Terms of Reference.

2.15 By a letter dated 21 June 2021 Mr Fitzgerald, Managing Director of Southern Rural Water requested and thereafter appointed:

- (a) Mr Matthew Townsend – Barrister;
 - (b) Mr Mark Foster – Civil Engineer,
- as the Panel. Those appointments were accepted.

Role of Southern Rural Water

2.16 Leading up to and through this Panel process, Southern Rural Water has not, does not, should not and cannot take a position in relation to opposition or support for the current Application.

2.17 Reasons for this include:

- (a) this Panel process forms part of considerations which will come back before the delegate of the Minister who will determine the Application;
- (b) the key task of the Panel is to consider submissions of other parties in response to the advertising of the Application;
- (c) the delegate of the Minister should not and cannot take any preliminary position such as to indicate some form of pre-determination of the Application unless or until all relevant processes have been completed, including this Panel process.

2.18 Southern Rural Water will, through its representatives, provide various comment which is likely to include assessment of submissions and any evidence provided by the Applicant and all submitters which may provide observation or even critical comment in relation to such material, this designed to assist the Panel.

2.19 If experts are called by either the Applicant or submitters, Southern Rural Water, through its representatives, may have questions for those experts, again directed at assisting the Panel in its considerations.

2.20 Any submission, comment or query of Southern Rural Water through this Panel proceeding should not be taken by any participant to indicate any particular position of Southern Rural Water.

2.21 Finally, Southern Rural Water may make recommendations regarding what form any licence might take (including conditions), however, such comments can also be taken in a context of comment “if an Application” may be granted.

3 BACKGROUND

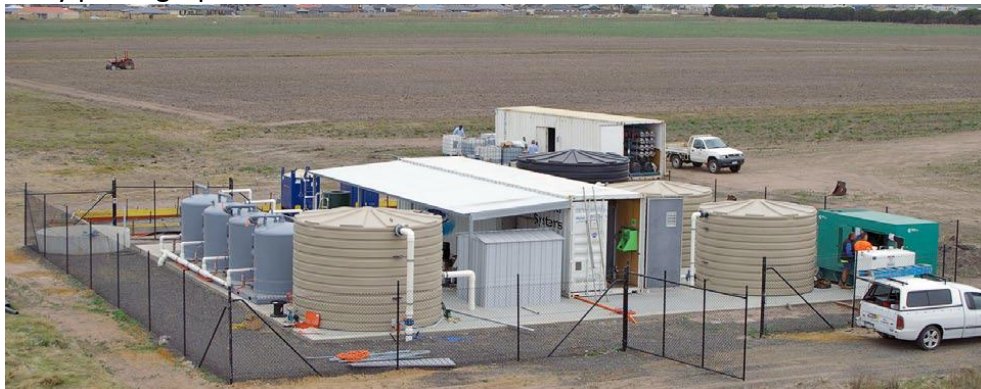
- 3.1 The farm on the Property grows and supplies flowers. It is understood the property was purchased in approximately 1986 and the dam was constructed after that. It is a “turkey nest” dam, namely built above ground level, therefore has a very limited catchment, its inflows rely upon direct rainfall and any pumping into the dam from relevant rights, these include an initial diversion licence (from Bream Creek) granted by the former Rural Water Commission in 1987. In more recent years it apparently includes:
- (a) recycled water from Barwon Region Water Corporation (**Barwon Water**); and
 - (b) until more recently, stormwater receival and return arrangement with the nearby Sands Golf Club.
- 3.2 Water from the dam is then utilised both on the flower farm and also supplied to the Sands Golf Club and a local turf farm through what are referred to as “third party user agreements”. That is, ostensibly, the supply is from Barwon Water, albeit it is stored within the dam on the Property, mixed with other water and then supplied to the Sands Golf Course and the turf farm.
- 3.3 The relevance of the supply arrangements to this Application may be limited, however, we have asked the Applicant’s representative for detail regarding that to assist the Panel’s understanding of this aspect.
- 3.4 Internal dimensions of the dam are some 26 metres in length x 150 metres in width. **Attached** are figures from the report of Hunter Geotechnical (commissioned by Southern Rural Water⁹) providing various figures to assist understanding.
- 3.5 The aerial photographs show the proximity of the residential area and also note a former desalination plant which is on, what is now, residential land.
- 3.6 Also **attached** are various photographs showing the relationship to the residential development and the impacts on particular properties, together with various photographs of the dam embankment, pump shed and pipelines.
- 3.7 When the Dam was built it predated both any requirement for registration of the Dam under the Water Act and the nearby residential subdivision. The Dam was to assist the operation of a flower farm on the Property, initially associated with a section 51 surface-water licence

⁹ Figures and photographs attached to report of Hunter Geotechnical dated 8 October 2020 in the form of a letter to Joe Matthews, Manager Dam Safety, Southern Rural Water.

(Winter-fill from Bream Creek) and later also to serve as a water storage for the receipt and distribution of recycled water to both the Property and third-party users

- 3.8 When amendments were made to the Water Act requiring the registration of a Dam such as this (under potentially hazardous dam provisions), this Dam was not registered.
- 3.9 In 2009 the Planning Scheme was amended to allow residential development up to the boundary of 1075 Horseshoe Bend Road, Torquay. The Dam is located at the boundary of this property, meaning that the amendment allowed houses to be constructed backing on to the dam. That Planning Scheme amendment was referred to Southern Rural Water and Southern Rural Water did not object to the amendment or seek any setback of development from the abuttal to the Dam.
- 3.10 Post 2009, a desalination plant (then located at what became one or more of the new residential lots) was decommissioned, leaving a pipe running through the Dam wall which was not removed or, apparently, adequately blocked. Advice indicates this plant was established to reduce salt levels in the recycled water, apparently installed by and for the benefit of, an entity on behalf of the golf course.

Early photograph of Desal Plant taken from the dam.



- 3.11 Importantly, this Panel cannot and is not tasked with a review of the incident leading up to or in October 2020 or necessarily what followed. It does create the main trigger for the subsequent directions issued against the Property owner and in turn leads to this Application. It is probable the Panel may choose to comment on the former desalination pipe insofar as its now removal or blocking, combined with works proposed in the Application will render the dam sufficiently safe. That is a comment in relation to the Application, not any aspects of responsibility, culpability or liability.
- 3.12 In 2017 (apparently based on concern of local residents regarding works being conducted on the Dam) Southern Rural Water undertook an inspection of the Dam which required an independent expert opinion in relation to the safety of the Dam wall. That opinion was obtained,

confirming appropriate structural integrity of the Dam, noting the report also recommended 5 yearly technical reviews of that structure. The former desalination plant pipe was not discovered.

- 3.13 On Friday 2 October 2020, Southern Rural Water was advised of a flow from the ground of water on properties in Pintail Drive, including advice that at least 1 resident was forced to pump water from that resident's property. Thereafter Southern Rural Water, in association with DELWP and SES, consulted and action was initiated to:
- (a) evacuate local residents from their homes given a concern of Dam failure; and
 - (b) to reduce the risk of Dam failure Southern Rural Water instructed a reduction in the level of the Dam which took place. By 5.00pm Sunday 4 October 2020 the level was reduced sufficiently to allow residents to return home.
- 3.14 Southern Rural Water actions included liaison with residents, including a series of face to face meetings, and website updates to respond to enquiries from residents.
- 3.15 Southern Rural Water issued a direction under section 80 of the Water Act identifying particular issues and directing the owner of the Property:
- (a) to operate the Dam at a water level no higher than "12 metres" (a reduction in height);
 - (b) by 9 October 2020 establish a methodology to be considered for approval by Southern Rural Water regarding surveillance markers to ensure the Dam remains at the directed safe level;
 - (c) requiring daily visual inspections and record keeping of the Dam and requiring immediate reporting of seepage to Southern Rural Water;
 - (d) to maintain a log of the inspections required and provide that to Southern Rural Water weekly;
 - (e) provide an initial report, by 5.00pm Friday 9 October 2020 by an engineer with Dam safety experience to identify further mitigation measures likely to be required.
- 3.16 Southern Rural Water issued a further Direction under section 80 of the Water Act directing the property owner:
- (a) any continued operation of the dam must be at full supply level which is no higher than EL 12 metres as noted in the datum on the site plan in the report of Australian Geotechnical Testing numbered AGTE17463, December 2017 (AGT Report);

- (b) no inflow to the dam is permitted other than from the Black Rock Treatment Plant or the drainage sump to the west of the dam;
- (c) a daily visual inspection of the dam and dam wall must take place, including taking written and/or electronic records of:
 - i. details of when, what, how and who carried out, in relation to the inspection itself; and
 - ii. any changes to the dam wall, including any ponding, seepage, cracking or other changes; and any changes must be immediately reported to the Corporation;
- (d) the record of visual inspections as required under must be provided on a daily basis through electronic reporting, as required by the Corporation until otherwise directed by the Corporation;
- (e) to maintain the banks of the dam in a manner which allows for easy visual inspection, including regular mowing of the slopes of the banks and keeping the swale drain cleared to facilitate observation of any cracking or seepage;
- (f) to notify the Corporation of any likely or actual incident related to the dam or other dam infrastructure that impacts, or has the potential to impact, neighbouring or nearby properties, immediately upon becoming aware of such incident or potential incident;
- (g) to procure the completion of a comprehensive report ("Report") and that Report:
 - i. must include a peer review by an independent expert in dam safety, that expert to be approved by the Corporation;
 - ii. must include a Dam Safety Review;
 - iii. must include a Dam Break Analysis;
 - iv. must include a finalised Dam Safety Emergency Plan;
 - v. must include an appropriate assessment of failure modes and dam break analysis of both the current operating level and future proposed operating levels;
 - vi. must include full and complete details of each and every proposed action or work designed to achieve a situation where the dam can be operated without hazard; and

vii. should be in a form so as to support an application for a works licence under section 67 of the Act.

(h) make an application for a licence to carry out works on the private dam, under section 67 of the Act; or 10.2 cease the operation of the dam and decommission it, this also requires an application under section 67 of the Act.

3.17 Initially the Property owner lodged an application with the Victorian Civil and Administrative Tribunal (**VCAT**) in respect of the later Direction, effectively as a holding action. That application has now been withdrawn, the Applicant effectively accepting the directions.

3.18 The Application was made on 8 April 2021.

4 APPLICATION

- 4.1 The Application under section 67(1A) was made on 8 April 2021 and allocated No. JW1624119.
- 4.2 The Application was advertised in the Geelong Advertiser on 27 May 2021 and was the subject of a letterbox drop to a broad resident group on 31 May 2021 (some 120 addressees) and an email was sent to the Torquay Dam Community Group.
- 4.3 The Application was also provided to key entities or agencies including the Surf Coast Shire, the Corangamite CMA, Barwon Water, EPA and DELWP.
- 4.4 There has been no response from any agency, other than DELWP which was received late and is referenced in the following Chapter 5, Submissions.
- 4.5 Multiple submissions have been received. These are detailed in Chapter 5, Submissions.
- 4.6 The Managing Director and delegate of the Minister determined to appoint a Panel to hear submissions and other matters set out in the Terms of Reference as part of the Application process.
- 4.7 The Application material includes the relevant Application forms, plans and is also informed by the various reports required or requested through the Directions.
- 4.8 The principal element of the Application is the construction of a spillway which will permanently control the level of the dam, effectively at what is intended to be a safe operating level.
- 4.9 The Panel are referred to the Application material and the plans and these will be further addressed during Southern Rural Water's Submission and no doubt otherwise, through the Panel hearing.
- 4.10 Also intended to be addressed through the Panel hearing is reference to the form of any section 67 licence, if one were to be either recommended by the Panel or subsequently determined by the Minister's delegate.
- 4.11 It is emphasised any provision of a licence format or reference to potential conditions contains no suggestion that Southern Rural Water has come to a view of even preliminary support for the Application. Such material comments are, to adopt the legal jargon, is "without prejudice" to the recommendations of the Panel or any subsequent determination of the Minister's delegate.

- 4.12 Finally, the matter of process after the Panel reports and then after the Minister's delegate makes the decision, there are rights of review of that decision in VCAT for either:
- (a) the Applicant, if refused; or
 - (b) resident submitters, if granted.

5 SUBMISSIONS

- 5.1 Rather than seeking to repeat individual submissions and respond to them individually, this summary addresses key issues raised through those submissions.
- 5.2 Broadly, but not surprisingly, the submissions covered similar issues, some of which were directly relevant to this Panel's consideration, some peripherally relevant and some not relevant.
- 5.3 As to submissions which are not strictly relevant to this Panel's consideration, they are however entirely understandable in all of the circumstances.
- 5.4 Broadly there were some 9 individual, including some similar, submissions with multiple attached documents, including in some cases video footage.
- 5.5 There are also some 18 submissions from individual owners which were identical, however, also canvassed the key issues or themes through the submissions.

Incident of October 2020

- 5.6 All submitters raised the concerning events which occurred in October 2020, namely what now has largely been accepted as flows from the dam, facilitated through or because of, the former pipe serving the desalination plant.
- 5.7 A number of consequences arise due to this incident which form separate aspects to the submissions, including:
 - (a) creating the spectre of uncertainty around the integrity of the dam;
 - (b) financial consequences both immediate and potential long term impacts;
 - (c) a lack of confidence regarding the dam operator's operation.

Comment

- 5.8 Strictly, this Application and this part of that Panel proceeding is not intended to address the actual incident, including not an appropriate forum to address apportionment of responsibility or liability.
- 5.9 The October 2020 incident is relevant insofar as whatever steps were taken following the incident to stop that flow of water from that pipeline, permanently, steps to assess whether that pipeline flow has had or may have any longer term impact on the integrity of the dam and finally

as to the works proposed under this Application, whether they also address that Dam integrity and/or have any relevance relating to that pipeline flow.

- 5.10 Outside this Panel process, that flow of water from one person's land onto others may bring with it particular rights which those affected parties may consider. Such consideration will clearly be impacted by what rectification of the potential for re-occurrence has occurred.

Rezoning of the Residential Estate

- 5.11 The proposition is that the land in question should not have been rezoned given the presence of the Dam and the actual or potential risk it presented or presents.
- 5.12 Whilst not relevant to this Application process, or Panel, it should be noted that the mere presence of the dam would not have and apparently did not, influence the decision makers considering that rezoning. Those decision makers being the Council as the Planning Authority, however the Minister for Planning as the ultimate approver of an amendment which allowed the rezoning and residential development.
- 5.13 Southern Rural Water had been given to understand that the owner of the dam was also the developer of the land which forms part of the estate, however representatives of the Applicant have advised otherwise. Further there remains uncertainty as to who removed the desalination plant. The Applicant's representatives have indicated it was not decommissioned by the Applicant. The comments in this paragraph which previously attributed the Applicant as the developer, with potential involvement in the removal of the desalination plant, have changed from the first version of this Submission based on advice recently provided on behalf of the Applicant.
- 5.14 These are not, however, matters directly relevant to the consideration of this Application.
- 5.15 The presence of the residential estate does, however, impact risk assessment in relation to this dam, as it would in relation to any large dam.

Potential for Dam Relocation

- 5.16 Submitters are aware of a proposition advanced that the Applicant may, at some time in the future, make application for and construct a dam in another part of the Property, or nearby property. The implication is that the current dam would become redundant and might be removed.

Comment

- 5.17 Broadly, the benefit of such an approach is that it would remove the spectre of the presence of the dam in the longer term and provide a greater peace of mind to the residents.
- 5.18 If this Application was refused, with a potential next step of a direction to remove the current dam, then the need for an alternate dam (or substantially adversely impact the farm operations) would be high.
- 5.19 The consideration of an alternate dam is arguably outside considerations in respect of this Application, in particular this process is to establish whether, or not, the works proposed will result in a dam which operates and exists appropriately safely.
- 5.20 It is highly (legally) questionable whether, if the works licence is granted, whether it could incorporate a condition requiring the future removal of this dam. Particularly given the initial works licence (as opposed to any subsequent registration) relates to works to be completed.

Class C (Recycled Water)

- 5.21 At least one submitter raised the issue that the water stored in and supplied from the dam is in part recycled water from Barwon Water. Reference is made to “Class C” water, namely a standard of waste water treatment which is less than either “Class B” or “Class A” and therefore has certain constraints around its storage and use. The property operator will be required to manage and supply the recycled water in accordance with an agreement with Barwon Water and in terms of, on the Property, an Environmental Improvement Plan (**EIP**).
- 5.22 The management of that usage is also outside the Application consideration, except potentially to the extent to note:
- (a) the introduction of a spillway may well alter the management of the recycled water on site which requires some form of amendment to the agreement with Barwon Water or the EIP;
 - (b) it may be that Barwon Water and/or the EPA need to be consulted.
- 5.23 This is why Southern Rural Water requested details of the recycled water (if any) and stormwater re-use arrangements within the dam from the Applicant.
- 5.24 It is possible, if a licence is granted, a condition might be included requiring any necessary approvals in relation to the recycled water (most likely an amended EIP) are addressed.

Future Dam Safety and Uncertainty

- 5.25 All submitters expressed concern regarding the prospect of a future with the dam on the site creating ongoing uncertainty.
- 5.26 Whilst the dam existed prior to individuals buying separate lots, the events of October 2020 have created that justifiable concern with the residents.

Comment

- 5.27 If it is established, in due course, to the satisfaction of the decision maker, that the Application and its works address concerns about the prospect of a future flow to the adjoining land or a failure of the Dam, then the perceptions of the residents are, in our respectful submission, not legally relevant. This does not mean they are not reasonably held or may not have further impact, rather it goes to the purpose of the Application process.

Southern Rural Water's Role

- 5.28 Concern is expressed regarding the role of Southern Rural Water in terms of the existence, involvement over the course of its existence, and more recent actions, in respect of the dam.

Comment

- 5.29 Given the dam pre-dates changes to the Water Act which required the registration of potentially hazardous dams, there is no statutory requirement which Southern Rural Water failed to address. The obligation to register the Dam was placed upon and remains with, the owner of a particular property (and dam) to register those dams once those requirements existed.
- 5.30 It is correct, however, that after the introduction of the requirement for registration the dam would or should have come to the attention of Southern Rural Water. Two particular occasions where that arose would have been the rezoning and then, in 2017, where Southern Rural Water required a report in relation to the Dam, which in turn arose from inspections at the request of nearby residents relating to apparent work. It would have been better if, when Southern Rural Water was dealing with the dam in those different contexts, it had taken the initiative to require the registration of the dam.
- 5.31 It is not known whether a requirement for registration would have caused any different outcomes, for example the fact that the dam was or was not registered would not have

necessarily meant the land would not have been rezoned, nor whether the redundant desalination pipeline, would have been discovered.

5.32 Again, this is not an issue impacting the decision making on this Application.

Financial Impact

5.33 Submitters are concerned about both the initial impact of the October 2020 event and what, if any, long term impact that might have on property values.

Comment

5.34 Similar to planning permit applications, this is not a factor which the decision maker or the Panel may readily consider as part of its assessment of the Application.

5.35 If the Application is granted, in its proposed or amended form, then that should bring a greater level of confidence as to the safety of the dam, however, because of the occurrence of the event and publicity associated with it, there is the natural prospect that some would retain a level of uncertainty.

5.36 In particular, some residents have delayed building on their land and, again, if the Application is granted, based on a confidence regarding the dam's safety, that any such application can and should proceed.

Submission in Favour

5.37 There was one short submission, in favour of the dam, indicating the submitter was "comfortable" with the presence of the dam.

Land Owner Failure

5.38 A number of the submitters criticised the land owner of the Dam and indicated low confidence that there would be future compliance with any conditions imposed. Reference was made to the land owner's failure to apply to register the dam and failure to properly or adequately remove the desalination plant pipeline.

5.39 There was additional reference to questions as to whether the land owner was obligated to disclose various matters, given that land owner was the vendor of the residential estate.

Comment

- 5.40 Again, these are matters which fall outside this Application process and individual submitters should consider their position in relation to whether such alleged failures impacted them, so as to give rise to rights.

Payment of Individuals' Costs

- 5.41 It appears submitters have incurred costs as a part of the impact and process. For example, one submitter seeks payment of fees payable to a geotechnical assessment company which conducted some testing and provided a report, relating to residential land.

Comment

- 5.42 This aspect falls, with a number of others, outside the ambit of this Application and individual submitters would need to consider their own rights for any such reimbursement.

6 CONCLUSION

- 6.1 In addition to this Submission, Southern Rural Water will continue its role of assisting the Panel through the hearing and related processes.
- 6.2 It is Southern Rural Water's intention, with the consent of the Panel, to consider and address any further submission received and expert reports (scheduled for 16 August 2021).

DATED: 20 August 2021



Russell Kennedy

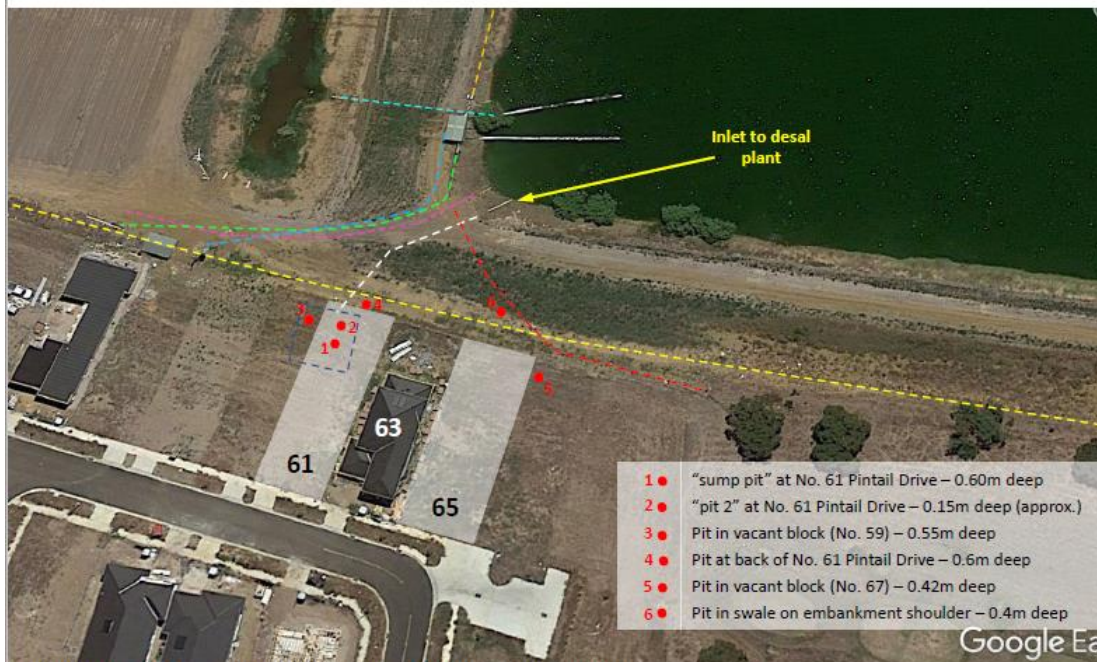
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For and on behalf of Southern Rural Water



Note: pipeline locations are approximate only and discussions with farm manager, discussions with golf course superintendent and based on aerial images.

Image from Google Earth Pro

Figure 3



Image from Google Earth Pro

Figure 4



Image courtesy of Southern Rural Water

Figure 5

Residences at Downstream Toe of Dam



Plate B1: Residences at downstream toe of dam (7:30 am Saturday 3rd October 2020)



Plate B2: Backyard at No. 81 Pintall (7:30 am Saturday 3rd October 2020)

Attachment A



Plate B3: Backyard at No. 81 Pintail, "sump pit" (11:30 am Saturday 3rd October 2020)



Plate B4: Backyard at No. 81 Pintail at 2:45 pm Saturday 3rd October 2020. (Left) sump pit and (right) pit 2.



Plate B6: Backyard at No. 83 Pintail, (top) 7:30 am Saturday 3rd October 2020, (lower) at 4 pm on Saturday 3rd October 2020. Surface water evident at 7:30 am had dried up by 4 pm.



Plate B8: Residences and vacant land at 8:30 am on Monday 5th October 2020 after approximately 13 to 16 mm of rainfall. Ponded water following rainfall in vacant land next to No. 86 Pintail (top), vacant land next to No. 81 Pintail (middle) and properties further west. Ponded water also in backyard of No. 81 and No. 83 Pintail.

Attachment A

4 of 23

Embankment – South-east corner



Plate B7: South-west corner of embankment (4 pm Saturday 3rd October 2020). Reservoir level had been drawn down at least 0.2 m by this time. Pump shed on western bank and this is close to the low point in the crest.



Plate B8: Downstream shoulder and toe of southern embankment looking west (7:30 am Saturday 3rd October 2020). Pooled water in holes dug for bike jumps.



Plate B8: Downstream shoulder and toe of southern embankment looking west (4 pm Saturday 3rd October 2020). Pooled water from water filled holes.



Plate B10: Downstream shoulder and toe of southern embankment looking east (4 pm Saturday 3rd October 2020)



Plate B11: Downstream shoulder and toe of western embankment looking north (4 pm Saturday 3rd October 2020).



Plate B12: Local wet area along western embankment circled in Plate B11 (4 pm Saturday 3rd October 2020).
Small volume of ponded water



Plate B18: Downstream shoulder and toe of southern embankment looking west, after rainfall (8:30 am Monday 6th October 2020). Pooled water in swale.

Western Swale Pond



Plate B14: Western swale pond. Below ground excavation capturing surface water runoff from paddocks. Water is pumped into the dam (to the right).



Plate B15: Surface water entry into western swale pond on residential side. Overflow of swale pond would flow south into the residential area.

Pump Shed



Plate B16: Pump shed on western bank (4 pm Saturday 3rd October 2020)



Plate B17: Inside the pump shed. Foreground and left is the pump for the northern irrigation line, middle pump is to the golf course and top pump is to the dam is the property to the west.



Plate B18: Above ground inlet lines (3 of) from the dam to the pump shed. These connect to the floating pipes shown in Plate B18. PVC pipe in foreground is pressure relief to the northern irrigation line (Plate B18).



Plate B18: (Left) Northern Irrigation line exiting mid height from the shed and then entering the ground. (Right) pipe extends below ground along the upstream edge of the western bank crest, crossing the crest at the north-west of the dam.



Plate B20: (Top) Southern outlet line exits the shed and then extends below ground along the upstream edge of the western bank crest (the pipe with the red cap is an air release valve on the pipe). (Bottom) The pipe is understood to head down the ramp and connect into the pipeline running along the site boundary (pipeline from treatment plant to upper dam).

Attachment A

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Plate B21: Power entry on western side of shed. Power lines extend below ground along the western bank crest and down the ramp to the power pole shown in Plate B20.



Plate B22: Inlet / outlet line to the golf course located on surface of crest. Extends below ground a short distance past the pvc pipe (right) and then crosses the crest of the southern bank down the downstream face to the golf course.

Attachment A

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Pipes Passing Through Embankment



Plate B23: Two pipes pass through the crest (upstream to downstream) at the south-west corner (lowered reservoir on Monday 5th October 2020).



Plate B24: Desalination offtake pipeline that was at reservoir level on Saturday 3rd October 2020. End flange (right) is not closed off (tape extended full 8 m within pipe). Pipe extends through the embankment crest approx. 1 m below crest level.



Plate B26: Part length of decalcification pipe exposed with plastic marker sheet on top of the pipe. The earthfill was in moist condition around the pipe. No seepage observed from earthfill. Pipe was near horizontal within earthfill.



Plate B26: "New" Inlet line passing upstream to downstream through the embankment crest and entry into upstream shoulder was approx. 0.3 to 0.4m below reservoir level (as at 7 am on Saturday 3rd October 2020). Extends below ground down access ramp (Plate B20).



Plate B27: Part length of pipe exposed. Pipe on a slight upslope in line heading toward crest. Loose and wet earthfill around pipe.



Plate B28: The earthfill was wet and soft around the pipe, very loose below the pipe and seepage was observed. Assessed as poorly compacted around the pipe at this location.



Plate B28: Pipeline passing through embankment at south-east corner of the dam.

Inspection of Upstream Slope of Embankment (2:30 pm on Monday 5th October 2020).



Plate B30: Southern embankment section, view looking east toward eastern bank.



Plate B31: Southern embankment section, view looking west from eastern embankment.



Plate B32: Eastern embankment section, view looking south from northern embankment.



Plate B33: Southern end of eastern embankment. Shallow clumping in upstream shoulder. Accessed as mostly pre-existing drawdown with recent toppling of steeper upper bank.



Plate B34: Southern end of eastern embankment. Shallow clumping in upstream shoulder. Assessed as mostly pre-existing drawdown with recent topping of steeper upper bank.



Plate B35: Eastern embankment downstream slope and toe region noting proximity of pine trees to the toe and the group of approx. 8 dead trees.



Plate B36: Northern embankment section, view looking west from eastern embankment.



Plate B37: Northern embankment section, view looking east from western embankment.



Plate B38: Western embankment section, view looking south from northern embankment.



Plate B38: Western embankment section toward the northern embankment. Longitudinal cracks along upstream edge of crest up to 100 mm wide. Coincident with bulge shown in Plate B38. No sign of recent movement.