



20 March 2017

Mr Stephen Jauncey
Partner
Henry Davis York

Dear Mr Jauncey

depa and others vs City of Sydney - IRC 2016/327944

Thank you for your letter of 9 March on behalf of the CEO of the City.

The assurance sought

You have asserted that the City, in responding to the recommendations of the Independent Review, has effectively provided the assurance we are seeking from the CEO to all staff that steps have been taken to ensure that no one from an external contractor or subcontractor will drill holes in fire doors and potentially release asbestos fibres without the City having been given notice of this intention, the acknowledged control of the timing and circumstances of the proposed work, including if it should proceed, or if would should occur off-site where possible etc.

But you don't provide that assurance either to the three unions in that explicit way, nor do you propose to provide the assurance in that explicit way to staff.

We are all aware of the Implementation Plan but it is both unreasonable and unrealistic to expect that employees of the City should comb their way through the recommendations and the steps that have been taken in response to the recommendations, to achieve a feeling of comfort that this fiasco won't occur again. I think it largely impossible to identify the recommendation and the action arising from the recommendation that you say satisfies our concerns.

I note that you do not make reference to the particular recommendations, nor the action that has been taken that you say effectively provides this assurance, but you don't provide the assurance.

That's not good enough. And it's really not good enough in your first paragraph to so vigorously qualify the unequivocal and explicit commitment we are looking for here. You say that City has given "clear assurances etc" but these purported assurances are not sufficiently clear without you specifically identifying the relevant recommendation and actions. You will need to convince us that this is the case.

But then you say "**to seek to ensure** that there is no repetition of the incident which occurred at Town Hall House on 7 October 2016". Why do you add the words "to seek" when what we are

looking for is an assurance. All you do is qualify the City's intentions when you say "to seek to ensure". We want an assurance, not weasel words.

The City got off lightly with the recommendations from the Grant Report. Most of the recommendations target the contractor and there is nothing in the Report acknowledging that the City retains the responsibility for the health and safety of its employees, notwithstanding that it contracts out work that affects health and safety.

We want an assurance beyond the operational kind of recommendations made by Grant that provides a proper acknowledgement that this will not happen again, not that the city will "seek" to "ensure" that it doesn't.

The City needs to identify those recommendations and the actions from the recommendations that provide what we are looking for. Please do so.

The requested extracts

Thank you for providing the documents and some extracts. I am interested in whether these documents have been subsequently changed from preceding documentation of intended processes or contractual arrangements to reflect the asbestos contamination fiasco. Have they? I would like you to demonstrate if you say they have, that they have and if they haven't, doesn't it encourage our impression of the City's indolence and lack of interest in this area that they haven't made any changes?

I provide below some proposed additions to those documents that we recommend, prepared by the USU but with support of the other unions:

Amendments to the City of Sydney 'Expression of Interest - Facilities Management document' **Clause 1.4**

- Add the following point: *"To ensure that high risk work is managed with the highest level of diligence and care, including but not limited, to asbestos work."*

Clause 8

- Add the following point to "Quality and Risk" Criteria: *"Demonstration of how high risk work, including but not limited to, asbestos work will be managed and implemented in the delivery of the services."*

Clause 9

- Add Clause:
 - Title: Asbestos Related Work
 - Content: *"Council requires that, without exception, all contractors will notify council of any asbestos related work prior to commencement of the work and will follow any policies or procedures prescribed by council in relation to this work."*

Amendments to the City of Sydney 'Expression of Interest Returnable Forms - Facilities Management document'

Part 9

- *"How will your organisation mitigate the dangers of high risk work such as, but not limited to, asbestos work?"*

Your proposed email from the CEO

1. You trivialise the risk associated with the fiasco by describing it as “traces of asbestos” when there was contamination in 14 sites by loose asbestos fibres (the most dangerous form of asbestos) and that eventually the City decided, on professional advice based on the evidence, that Town Hall House needed to be closed for two days for the cleanup to take place. The reality of the significance of the cleanup, the shutdown of business on two days, confronts us with the significance of the contamination. The CEO’s email needs to acknowledge this.
2. You used a number of expressions in the Commission on the last occasion which came close to acknowledging the catastrophic collapse of processes and procedures. You said there were “failures at various levels”, that the City’s communication of 7 October “was not as prompt or clear” as it should have been, that decisions were made on “incomplete information” and we would like these words incorporated in the CEO’s acknowledgement email.
3. We would like reference to the continuing proceedings in the Industrial Relations Commission as a result of dispute proceedings filed by one of the unions with members of the Council and supported by the others. The continual disrespect shown to these proceedings by the City borders on contempt and the CEO’s continued reluctance to acknowledge the role of the IRC is an attempt to rewrite history.
4. The CEO’s reference to reporting to the JCC and the Health and Safety Committee is only half the story, isn’t it, and the full story should be told.
5. The final paragraph is pious and self-seeking and we will be pressing for a proper expression of regret and apology. What, it’s not just John Howard who doesn’t like to use the word “sorry”?
6. We want the clear and unequivocal undertaking that the steps that have been taken will ensure that the sort of contamination in those 14 areas that resulted from the catastrophic failure of procedures and communications won’t happen again.

We will be pressing for these things on Tuesday.

Yours sincerely



Ian Robertson
Secretary