

# HENRY DAVIS YORK

3 April 2017

Our Ref SMJ/3143252

**BY EMAIL** [ian@depa.net.au](mailto:ian@depa.net.au)

Mr Ian Robertson

Secretary

The Development and Environmental Professionals' Association

106/118 Great North Road

FIVE DOCK NSW 2046

Dear Mr Robertson

**City of Sydney - Industrial Dispute lodged by Depa  
IRC File No. 2016/00327944**

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We refer to your letter of 20 March 2017, and the mention of this matter before the NSW Industrial Relations Commission (**NSWIRC**) on 21 March 2017.

We understand that there are three outstanding issues. The City is pleased to be able to respond to each of those issues as set out below.

1. In your letter of 20 March 2017, you sought an explanation of how the steps now taken by the City will prevent an external contractor or subcontractor from drilling holes in fire doors, and potentially releasing asbestos, without the City having been given notice of that intention, as well as an ability to determine whether the work should proceed or whether it should occur off-site.

As was made clear in our letter of 9 March 2017, the City has committed to implementing all the recommendations set out in the report by Grant Management Consultants. To do so, the City developed a detailed implementation plan. A copy of that plan, together with an updated status report on each action item, was presented to the NSWIRC on 17 February 2017.

The implementation plan shows the steps taken to ensure that high risk work at Town Hall House (including any work on fire doors or materials containing asbestos) is identified in advance by the Facility Manager (currently Brookfield Global Integrated Solutions (**BGIS**)).

In particular, the implementation plan shows that Recommendation 2 has been implemented by amending the BGIS work order process to require the BGIS Facility Manager to review work orders prior to any contractor(s) being engaged. As part of this review, the BGIS Facility Manager is now required to identify any high risk work (which includes any work on fire doors or materials containing asbestos).

The BGIS Facility Manager is also required to review the adequacy of the Safe Work Method Statement and to issue permits as required. In the case of work which might be required on materials containing asbestos (such as the relevant fire doors), this will necessarily require consideration of appropriate safety precautions to prevent exposure to asbestos fibres (including consideration of whether such work should best occur off-site outside the Town Hall House environment).

The implementation plan also requires further notification steps which must be undertaken before any such high risk work can proceed. These steps include:

- The BGIS Facility Manager is required give advance notification to the City, on a weekly basis, of all high risk work scheduled at Town Hall House. This advance notification requirement has been imposed as an aspect of the compliance verification process implemented in respect of Recommendations 3 and 5. This requirement would include advance notification to the City of any work which might be required on any of the relevant fire doors.
- The City is conducting (and is required to continue conducting) regular verification checks to ensure compliance with procedures which have now been implemented (Recommendations 3 and 5).
- BGIS has issued a communications memorandum to contractors instructing that additional tasks beyond those listed on any work orders are not to be undertaken without prior approval by the BGIS Facility Manager (Recommendation 7). BGIS has revised and strengthened its contractor toolbox talks and induction procedures to reinforce this expectation. In addition, the implementation plan records that the City is already conducting verification audits on selected jobs to ensure high risk work is not being conducted outside approved work order specifications.

As a result, it is clear that the processes now in place prohibit an external contractor or subcontractor from drilling holes in any relevant fire doors, and potentially releasing asbestos, without the City having been given notice of that intention, as well as an ability to determine whether the work should proceed or whether it should occur off-site.

In addition, the implementation plan also records that other steps have been taken to ensure that the presence of asbestos in the relevant fire doors is brought to the attention of external contractors and subcontractors, and that contractors and subcontractors are better trained in awareness of asbestos risks. These steps include:

- Implementation of improved labelling on all fire doors at Town hall House containing asbestos. This has also been verified by inspection by the City (Recommendation 1);
- Updating of the permit systems imposed by both BGIS and the City for external contractors and subcontractors performing building and facilities management work so as to include reference to asbestos and other hazardous materials (Recommendation 8); and

- Hosting of asbestos awareness training by the City for some BGIS staff (which occurred on 30 November 2016). The BGIS Corporate Safety team is also developing further asbestos awareness training for delivery to BGIS staff and contractors. In addition, competency based asbestos awareness training has delivered to City staff working with materials containing asbestos. In February 2017, an external consultant also delivered asbestos awareness training to City staff managing contractors working at the City's sites (Recommendation 9).

In the circumstances, the City is confident that implementation of these revised processes and procedures will ensure that external contractor or subcontractor will not drill holes in any relevant fire doors at Town Hall House without the City first having been given notice of that intention, as well as an ability to determine whether the work should proceed or whether it should occur off-site.

2. In our letter of 9 March 2017, we provided a copy of the invitation issued by the City for interested parties to submit Expressions of Interest in providing Facilities Management services (**EOI E0217**). We also attached the proposed Facilities Management Agreement (Appendix A to EOI E0217). In addition, we noted various clauses in the EOI E0271 documentation which emphasised the high priority the City applies to the welfare and protection of staff, and which also detailed Workplace Health & Safety (**WHS**) expectations for any Facilities Management service provider (including particular expectations in relation to the management and handling of materials containing asbestos).

In your letter of 20 March 2017, you suggested certain amendments to the EOI E0217 document, as well as to the EOI "Returnable Forms - Facilities Management" document.

As explained before the NSWIRC on 21 March 2017, it is not practicable for the City to now amend the EOI E0217 document, or the EOI "Returnable Forms - Facilities Management" document. This is because those documents were released to the market in early March 2017, and reposés were required from interested parties by 11:00 am on Thursday, 23 March 2017. As a result, any amendment to those documents would require the City to re-issue a further invitation for expressions of interest. This would be likely to substantially slow the process for selecting a future provider in respect of Facilities Management services.

That said, it is important to note that EOI E02017 already envisages that a successful tenderer must give a range of contractual commitments in the proposed Facilities Management Agreement (at Appendix A to EOI E0217). These commitments deal extensively with expected standards in relation to WHS responsibilities and outcomes. They also deal specifically with the management and handling of asbestos and other hazardous materials (see, for example, items .8.2, 1.8.4, 1.9, 2.4.5, and 3.6.1). In relation to asbestos, item 2.4.12 of Schedule 3 to proposed Facilities Management Agreement would impose the following specific obligations:

*The Service Provider must undertake asbestos and hazardous materials management including:*

- (i) *finalise, review and maintain registers of asbestos and hazardous materials;*

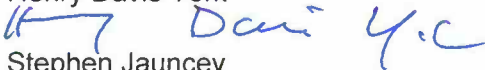
- (ii) *on request from the City, procure specialist consultants to develop management plans;*
- (iii) *undertake audits as required by legislation;*
- (iv) *inspect previously identified asbestos materials on-site;*
- (v) *review existing work site and management documentation for accuracy;*
- (vi) *report to the City on compliance;*
- (vii) *maintain documentation, work site labels and signage based on audit outcomes;*
- (viii) *undertake any action as directed by the City to ensure compliance;*
- (ix) *ensure no works are to be carried out on any building materials and plant/equipment until confirmation of the status of any hazardous building materials is received and the appropriate controls implemented;*
- (x) *develop and implement an emergency plan for the identification of suspect ACM's and include the procedures into the relevant SWMS's;*
- (xi) *in the event of asbestos removal being carried out under the contract the requirements of the 'Code of practice for the Safe Removal of Asbestos [NOHSC: 2002 (1988)]' shall be implemented;*
- (xii) *make available to the City's representative copies of all relevant licenses, notifications and permits for asbestos works/removal;*
- (xiii) *removal as provided by Work Cover under chapters 10 and 12 of the OH&S Reg 2001 prior to the commencement of such works;*
- (xiv) *suitable SWMS shall be developed and reviewed for all asbestos removal not requiring a licence; and*
- (xv) *liaise with appropriate sub-Service Provider.*

3. A revised email which the General Manager proposes to send to all employees at Town Hall House is also attached.

We hope these arrangements are now sufficient to resolve the dispute.

Yours faithfully

Henry Davis York

 Stephen Jauncey

Partner

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cc: Daniel Papps and Sean Szabo, USU, and Alycia Vasilangos, Professionals Australia

## PROPOSED EMAIL FROM CEO

Hello Everyone

You will recall in October last year that we closed down Town Hall House when ~~traces of~~ asbestos ~~was~~ere found during routine maintenance work on fire doors. As a result we conducted an independent investigation and found that there was a breakdown in some of our procedures and communications ~~with our contractors~~ that led to this incident. This meant that some initial decisions were based on incomplete information.

The investigation report made 13 recommendations with actions and we developed an implementation plan to address these issues. The actions from the implementation plan are being completed and we have reported to the Joint Consultative Committee and the Health & Safety Committee on our progress. We have also reported to the NSW Industrial Relations Commission.

If you would like to have a look at the implementation plan it ~~is~~will be attached to the Health & Safety Committee minutes this month. Among other things, the steps now implemented require contractors to give the City advance notice of any future work on the fire doors so the City can ensure appropriate procedures are implemented.

Your safety and wellbeing is very important to us and we have learnt a number of lessons from this regrettable incident to improve our procedures and avoid a similar event in the future.

Monica