



Department of Communities and Justice | Legal
Locked Bag 5000
PARRAMATTA NSW 2124

21 March 2024

Our Ref: GIPA2023 [REDACTED]

[REDACTED]
By email only: [REDACTED]

**Notice of decision under the
Government Information (Public Access) Act 2009**

Dear [REDACTED]

I refer to your access application under the *Government Information (Public Access) Act 2009* (GIPA Act) received by the Department of Communities and Justice (the Department).

Following scope negotiations, you requested the following information:

For the period 1 January 2019 to 1 June 2019:

- 1. Emails sent and received by the Secretary of the DCJ that contain information about the closure of Myuna Bay Sport and Recreation Centre.*
- 2. Emails sent and received by any staff member (from the office of the DCJ secretary shared email account) about the closure of Myuna Bay Sport and Recreation Centre.*

Searches

Under the GIPA Act, agencies must conduct reasonable searches for government information requested in an access application. In response to your application, searches were conducted in the following DCJ email accounts:

- Michael Coutts-Trotter, former Secretary of DCJ
- Blair Collier, Executive Director, Office of the Secretary
- Catherine D'Elia, previously A/Secretary of DCJ
- Office of the Secretary shared mailbox.

Records identified as falling within the scope of your application have been provided to me for consideration. I consider that reasonable searches have been undertaken in response to the application in accordance with section 53 of the GIPA Act. Based on the information available to me, I am satisfied that all records that exist relevant to the application have been identified and provided to me for consideration.

Decision

I am authorised by the principal officer of the Department to decide your access application pursuant to section 9(3) of the GIPA Act.

I have decided:

- to provide you with access to some of the information (section 58(1)(a) of the GIPA Act); and
- to refuse to provide access to some of the information because there is an overriding public interest against disclosure of the information (section 58(1)(d) of the GIPA Act.

These are reviewable decisions pursuant to section 80 of the GIPA Act. Further information about your review rights is outlined below and in the enclosed factsheet.

Reason for decision

Public interest considerations in favour of disclosure

Under section 12(1) of the GIPA Act, there is a general public interest in favour of disclosing government information.

I find the following considerations in favour of disclosure are relevant to your access application:

- The statutory presumption in favour of the disclosure of government information (section 5 of the GIPA Act).
- Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance such as the closure of Myuna Bay Sport and Recreation Centre.

Public interest considerations against disclosure

The only public interest considerations against disclosure that can be considered are those in schedule 1 and section 14 of the GIPA Act. In order for the considerations against disclosure set out in the table to section 14 of the GIPA Act to be raised as relevant, the Department must establish that the disclosure of the information could reasonably be expected to have the effect outlined in the table.

I have identified the below public interest considerations against disclosure of the information, deciding that its release could reasonably be expected to:

- reveal an individual's personal information (clause 3(a));
- contravene an information protection principle under the *Privacy and Personal Information Protection Act 1998* (PPIP Act) (clause 3(b)); and
- prejudice any person's legitimate business interests (clause(4)(d)).

Consideration 3(a) – reveal personal information

Clause 3(a) of the table at section 14 as a public interest consideration against disclosure states:

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to reveal an individual's personal information.

This is a relevant public interest factor against disclosure of the names and resumes of independent experts ('the withheld information') identified to undertake a peer review of the dam wall stability report by Stantec.

In order to establish that this consideration applies, the Department has to:

- a. identify whether the information is personal information
- b. consider whether the information would be revealed by disclosing it under the GIPA Act.

Personal information is defined in the GIPA Act as being:

...information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion. [Schedule 4(4)(1) GIPA Act]

Section 15(b) of the GIPA Act provides that agencies must have regard to any relevant guidelines issued by the Information Commissioner when determining whether there is an overriding public interest against disclosure. The Information Commissioner has published *Guideline 4 – Personal information as a public interest consideration under the GIPA Act* in October 2023 which I have reviewed.

I have initially considered whether the information sought is personal information and have decided that the records are the personal information of the independent experts.

The second limb of the test requires the Department to consider whether the personal information would be revealed by disclosing it under the GIPA Act. 'Reveal' is defined in Clause 1 of Schedule 4:

reveal information means to disclose information that has not already been publicly disclosed (otherwise than by unlawful disclosure).

I have not been able to identify any evidence to suggest that the information has been publicly disclosed. I am therefore satisfied that releasing the records would reveal the personal information of the independent experts.

Accordingly, I place significant weight on this consideration against disclosure of the withheld information.

Consideration 3(b) – contravene an information protection principle

Clause 3(b) of the table to section 14 of the GIPA Act provides:

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

...

(b) contravene an information protection principle under the Privacy and Personal Information Protection Act 1998

This is a relevant public interest factor against disclosure of the withheld information.

If an agency relies on clause 3(b) of the table to section 14 as a consideration against disclosure, it must demonstrate a reasonable expectation that an information protection principle or health privacy principle would be contravened by disclosure of the information.

Section 18 of the *Privacy and Personal Information Protection Act 1998* (PPIP Act) states as follows:

an organisation that holds personal information must not disclose the information for a purpose other than the purpose for which it was collected.

The primary purpose of collecting the personal information was in relation to the engagement of independent experts to undertake a peer review of the dam wall stability report by Stantec. There are a number of exceptions under section 18 of the PPIP Act, however none appear to apply with respect to this application. In the absence of consent from the independent experts or the application of an exception or exemption to section 18 of the PPIP Act, disclosure to you of the personal information contained in the records would amount to a breach of the PPIP Act.

While I note that section 7 of the GIPA Act authorises disclosure of government information, this is only in the circumstances where the public interest is more heavily weighted in favour of disclosure. Accordingly, unless the public interest is more heavily weighted in favour of disclosure, the disclosure would amount to a breach of the PPIP Act.

I am therefore satisfied that release of the withheld information would result in the Department contravening an information protection principle of the PPIP Act. I have therefore attributed significant weight to this public interest consideration against disclosure.

Third party consultation

Under section 54 of the GIPA Act, the Department may be required to consult third parties if the information is of a kind requiring consultation. The Information Commissioner has issued a guideline 5 about consultation under section 54 of the GIPA Act which I have considered.

The Department undertook third party consultation with the three independent experts. One independent expert did not object to the release of his personal information therefore this information has been released to you. The other two independent experts did not respond to the Department therefore access to their personal information is refused.

The Department also undertook third party consultation with the following agencies as some of the information concerns their business interests:

- The Office of Sport NSW
- NSW Public Works
- NSW Premier's Office
- NSW Dams Safety
- NSW Treasury
- Origin Energy

Origin Energy have objected to the release of the report titled "Dam Break Assessment – Eraring Ash Dam" prepared by Stantec (the Stantec report) as the information contains sensitive and commercial in confidence information. I have therefore taken the objections raised by Origin Energy into consideration.

Consideration 4(d) - prejudice any person's legitimate business, commercial, professional or financial interests

Clause 4(d) of the table at section 14 states:

There is a public interest consideration against disclosure if disclosure of the information could reasonably be expected to prejudice any person's legitimate business, commercial, professional or financial interests.

To show that this is a relevant consideration against disclosure, the Department must:

- identify the relevant legitimate interest; and
- explain how the interest would be prejudiced if the information was disclosed.

The relevant legitimate interest

Origin Energy owns and operates the Eraring Power Station. The dam break assessment of the Eraring Ash Dam was commissioned by Origin Energy. The Stantec report contains sensitive and commercial in confidence information such as economic costing analysis for clean up and repair work after a breach event was to occur. It also includes business information around the workings of the power station such as information on potential business and commercial risks.

Accordingly, I am of the view that the information concerns Origin Energy's legitimate business, commercial and financial interests.

How the interest would be prejudiced if the information was disclosed

Origin Energy's business, commercial and financial interests would be prejudiced if the information contained in Stantec report were released. This is because competitors could use the information to compete with Origin Energy or use the information about the workings of the power station to Origin Energy's disadvantage.

It is noted that the release of information pursuant to a formal access application cannot be made conditionally. That is, release of information under the GIPA Act would, in effect, be "disclosure to the world at large": *Sherman v Commissioner of Police, NSW Police Force* [2016] NSWCATAD 107 at [14].

Therefore, if other competitors were to gain access to the released information, this could significantly impact on Origin Energy's legitimate business, commercial and financial interests.

I have apportioned significant weight to this public interest consideration against disclosure as the information could be highly valuable to a competitor as it contains sensitive and commercial in confidence information. To release this information publicly would prejudice Origin Energy's legitimate business, commercial and financial interests.

Balancing the public interest considerations

I have considered the relevant public interest considerations in favour of and against disclosure of the withheld information and the Stantec report. I am of the view that while some of the public interest factors in favour of release are compelling, the public interest has been met by the partial release of the information.

With respect to the public interest factors against disclosure, I have identified and provided detailed reasons and apportioned significant weight to the relevant considerations against disclosure as discussed above. On balancing the considerations, whilst I recognise there is a public interest in releasing the information to you, I find that the balance of the public interest lies in not releasing the withheld information and the Stantec report.

Processing charges

Section 64 of the GIPA Act provides that the Department may impose a processing charge for dealing with an access application at a rate of \$30 per hour for each hour of processing time for the application.

On 10 January 2024 your office was requested to pay an advance deposit of \$135 for an estimated processing time of 10 hours.

On 21 February 2024 notification of payment of the advance deposit was received by our office. The actual total time taken to process your application was 10 hours. The table below provides further information about the actual time spent processing your application.

Tasks carried out	Time	Cost
Time spent dealing with the access application, including considering the terms of your access application, searching and collating records including converting emails to pdf format	3 hours	\$90
Reviewing 217 pages of information identified as falling within the scope of the application including redacting information subject to overriding public interest against disclosure	3 hours	\$90
Undertaking third party consultation with nine third parties	2 hours	\$60
Making a decision about access to the information. This includes conducting the public interest test, preparing the notice of decision and finalising redactions of records identified for release.	2 hours	\$60
SUB TOTAL	10 hours	\$300
LESS application fee	1 hour	-\$30
Total processing charges		\$270
MINUS 50% discount in accordance with section 66 of the GIPA Act		-\$135
MINUS advance deposit received on 21/2/2024		-\$135
TOTAL processing charges outstanding		\$0

Section 66(1) provides that an applicant is entitled to a 50% reduction in the processing charge if the agency is satisfied that the information applied for is of special benefit to the public generally.

I note the [redacted] is a not-for-profit organisation. I have decided that a 50% discount applies to the application as the information applied for is of special benefit to the public. Accordingly, **no** further payment is required.

Disclosure log

If information that would be of interest to other members of the public is released in response to a formal access application, the Department must record certain details about the application in its 'disclosure log' (under sections 25 and 26 of the GIPA Act).

Please advise the Department within 20 days if you have any objections to the Department including the released information on the disclosure log. The Department will record details of the application in its disclosure log after 40 days from the date of this notice of decision.

Review rights

If you disagree with my decision or the adequacy of the searches undertaken, you may seek a review under Part 5 of the GIPA Act. You have three review options:

1. Internal review by another officer of this agency, who is no less senior than me;
2. External review by the NSW Information Commissioner; or
3. External review by the NSW Civil and Administrative Tribunal (NCAT).

You have 20 working days from the date of my decision to apply for an internal review and 40 working days from the date of my decision to apply for a review by the NSW Information Commissioner or the NCAT. To assist you, I have enclosed a fact sheet entitled '*Your review rights under the GIPA Act*'. You will also find useful information and frequently asked questions on the NSW Information and Privacy Commission's website: www.ipc.nsw.gov.au. You can also contact the NSW Information and Privacy Commission on free call 1800 472 679.

Please do not hesitate to contact me if you have any questions about this decision.

Yours sincerely,

Michelle

**Michelle Chau Hua
A/Senior Solicitor
Open Government, Information and Privacy
Department of Communities and Justice**

GIPA2023/0004310- Schedule of Documents

Page number	Description	Decision	Reason under the GIPA Act
20	Email correspondence titled "Myuna Bay – Stantec report review" dated 4 April 2019	Partial release	Clause 4(d) – reveals information that would prejudice any person's legitimate business, commercial, professional, or financial interests
39	Email correspondence titled "Myuna Bay – Stantec report review" dated 4 April 2019 (Duplicate of information on page 20)	Partial release	Clause 4(d) – reveals information that would prejudice any person's legitimate business, commercial, professional, or financial interests
52-59	CV of independent expert	Withheld in full	Clause 3(a) and 3(b) – reveals personal information
89-144	Dam Break Assessment – Eraring Ash Dam prepared by Stantec (the Stantec report)	Withheld in full	Clause 4(d) – reveals information that would prejudice any person's legitimate business, commercial, professional, or financial interests
147-152	CV of independent expert	Withheld in full	Clause 3(a) and 3(b) – reveals personal information

Information and Privacy

From: Michael Coutts-Trotter
Sent: Wednesday, 15 May 2019 6:12 PM
To: Karen Jones
Subject: Re: Myuna Bay Closure Correspondence

Does the job, although I'd use the active voice. Not 'Your concerns are noted' but 'We acknowledge your concerns' or similar.

There are some other spots where you could make similar changes to simplify language and make it more direct.

Best
MCT

Michael Coutts-Trotter
Secretary

On 15 May 2019, at 3:58 pm, Karen Jones <karen.jones@sport.nsw.gov.au> wrote:

Hi Michael,

I hope you are well.

Over the last few weeks the Office of Sport has received correspondence from local residents / business owners regarding the closure of the Myuna Bay Sport and Rec. Given that the letters have been with the Office for some time, I think it is best to respond and at least acknowledge their concerns even though the review of the Origin reports is still pending.

I would be great if you could cast your eye over the draft responses (attached). Paul O'Reilly has already provided great feedback and this has been incorporated.

If you are ok with these, I will forward them onto the Ministers Office for approval.

Thanks again.

Kind Regards,

Karen Jones
Acting Chief Executive

Level 3, 6B Figtree Drive, Sydney Olympic Park NSW 2127
Locked Bag 1422, Silverwater NSW 2128

<image001.jpg>

☎ (02) 8754 8701 | ☎ 0407 929 110

✉ karen.jones@sport.nsw.gov.au | 🌐 sport.nsw.gov.au

<image002.png> <image003.png> <image004.png> <image005.png>

Information and Privacy

From: Karen Jones <karen.jones@sport.nsw.gov.au>
Sent: Wednesday, 15 May 2019 3:58 PM
To: Michael Coutts-Trotter
Subject: Myuna Bay Closure Correspondence
Attachments: OoS Myuna Bay - template response for Ministerial correspondence.docx; Minister Sharon Myuna Bay - template response for Ministerial correspondence (002).docx

Hi Michael,

I hope you are well.

Over the last few weeks the Office of Sport has received correspondence from local residents / business owners regarding the closure of the Myuna Bay Sport and Rec. Given that the letters have been with the Office for some time, I think it is best to respond and at least acknowledge their concerns even though the review of the Origin reports is still pending.

I would be great if you could cast your eye over the draft responses (attached). Paul O'Reilly has already provided great feedback and this has been incorporated.

If you are ok with these, I will forward them onto the Ministers Office for approval.

Thanks again.

Kind Regards,

Karen Jones

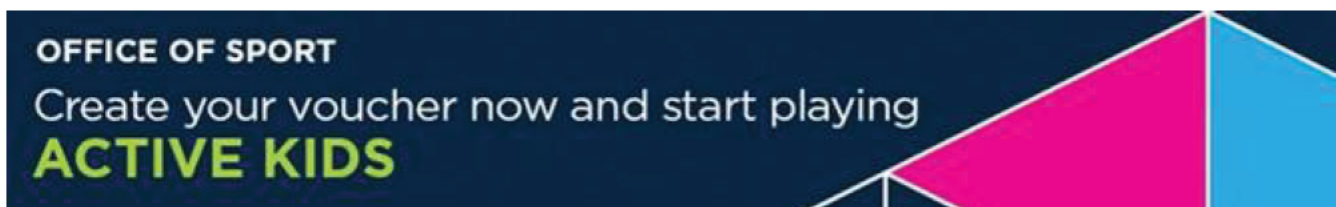
Acting Chief Executive



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✉ karen.jones@sport.nsw.gov.au | 🌐 sport.nsw.gov.au



This message is intended for the addressee named and may contain privileged information or confidential information or both. If you are not the intended recipient please delete it and notify the sender.

(FOR MINISTERIALS – TO BE SIGNED BY MINISTER)

Name
Address

Dear [salutation] [surname]

Thank you for your recent correspondence regarding the closure of the Myuna Bay Sport and Recreation Centre. The concerns you have raised have been noted.

On 28 March 2019, the Myuna Bay Sport and Recreation Centre was closed by the Office of Sport (the Office) following advice from Origin Energy that the neighbouring ash dam wall may present a risk to the safety of the employees and clients of the Centre under certain circumstances.

I have asked the Secretary of the Department of Families and Communities and Justice to coordinate an independent review of the technical reports that Origin Energy produced, and the Office relied upon when making the decision to close the centre.

The NSW Dams Safety Committee (the Regulator) will facilitate this independent review of the technical reports and this is likely to take some weeks. It is very important that this process is not rushed.

You may be assured that the NSW Government is working closely with the relevant stakeholders to ensure that the safety of its clients and staff are paramount.

Yours sincerely

John Sidoti MP
Minister for Sport, Multiculturalism, Seniors and Veterans

Name

Address

Dear [salutation] [surname]

Thank you for your recent correspondence regarding the closure of the Myuna Bay Sport and Recreation Centre. The concerns you have raised have been noted.

On 28 March 2019, the Myuna Bay Sport and Recreation Centre was closed by the Office of Sport (the Office) following advice from Origin Energy that the neighbouring ash dam wall may present a risk to the safety of the employees and clients of the Centre under certain circumstances.

The Secretary of the Department of Families and Communities and Justice is coordinating an independent review of the technical reports that Origin Energy produced, and the Office relied upon when making the decision to close the centre.

The NSW Dams Safety Committee (the Regulator) will facilitate this independent review of the technical reports and this is likely to take some weeks.

You may be assured that the Office is working closely with the relevant stakeholders to ensure that the safety of its clients and staff are paramount.

Yours sincerely

Anne Gripper
Executive Director, Sport and Recreation Services

Information and Privacy

From: Paul O'Reilly
Sent: Tuesday, 30 April 2019 12:58 PM
To: Michael Coutts-Trotter
Subject: Fwd: Eraring power station dam and the Myuna Bay Recreation Centre
Attachments: Eraring ash dam - independent review scope.docx; ATT00001.htm

Michael

In addition to my previous email, here is some more information that I did not include in the Sidoti BN because it is too much detail

These are the specifications for the Myuna Bay independent review ... written by the Director DSC.

Paul

Purpose

To complete a thorough review of available information and report back the likelihood and consequences of an uncontrolled release of material contained by Eraring ash dam.

Background

Based on the findings of a recent dam stability and dam break assessment of Eraring Ash dam, the NSW Office of Sport decided to close Myuna Bay Sport and Recreation centre for the safety of users. The Department of Family and Community Services (FACS) requires a review of available information and expert advice to assist with the longer term operations of the centre.

Scope

- Provide expert 'independent' advice on the integrity of Eraring ash dam from the effects of earthquake

- Provide advice on likelihood and consequences of dam failure particularly in layperson language and with reference to other risk contexts for comparison e.g. motor vehicles fatalities or airline industry

- Advice is to be formed based on information contained within the following reports provided by NSW Dams Safety :
 - 2018 – Stantec – Dam Break Assessment Eraring Ash Dam
 - 2019 – Stantec – Southern Embankment, Eraring Ash Dam, Geotechnical Stability Assessment
 - Electricity Commission, 1980A. Eraring Power Station. Report on Geotechnical Investigations for Myuna Bay Ash Dam Augmentation. Volume 1 of 3. Myuna Bay Ash Dam and Borrow Areas.
 - Electricity Commission, 1980B. Eraring Power Station. Report on Geotechnical Investigations for Myuna Bay Ash Dam Augmentation. Volume 3 of 3. Figures.
 - Unisearch, 1982. Analysis of Liquefaction Potential of Eraring Ash Dam. Lee IK, Valliappan S, White W, Chandrasekaran V. Prepared for Electricity Commission of NSW, Power Development Division, 26 October 1982.
 - Any other information or reports as requested by Dams Safety Committee

- Lead at least one presentation on findings to senior management.
- Provide a preliminary report of findings within 4 weeks of commencement of scope. This report may be made available to public.

Out of scope

- Field testing

Timing

- Total estimated days of 25
- Minimum total days of 15
- Must be completed within 8 weeks of commencement

Requirements

Mandatory:

- Person/s involved must have a minimum of 10 years Dams Engineering experience with understanding of ANCOLD guidelines and DSC guidelines
- Person/s involved must have tertiary Engineering qualifications
- Experience in seismic dam analysis and dam geotechnical engineering
- Experience in estimating consequences of dam failure particularly risk to life
- Must be available for immediate start

Assistance provided by agency

- FACS will provide assistance in the form of arranging meetings and interviews where required.
- DSC will provide assistance in the form of providing technical information where required.

Note on independence

This work is to be carried out independently and not have its findings, conclusions or recommendations reviewed or controlled by Origin Energy, Dept. of FACS, NSW Dams Safety Committee, other Government agencies or any other organisations associated with the Engineering Services company Stantec at any point prior to its finalisation. The final report may be made public.

Information and Privacy

From: Paul O'Reilly
Sent: Tuesday, 30 April 2019 12:46 PM
To: Michael Coutts-Trotter
Subject: Fwd: AF19/13134 Office of Sport - Myuna Bay
Attachments: TAB A Myuna Bay key points.docx; ATT00001.htm; BN to Minister re Myuna Bay.docx; ATT00002.htm

Michael

Just got your message and tried to call back:

I submitted the Sidoti briefing note on Myuna Bay yesterday afternoon. It is on its way to you.

Here is a copy (attached).

Paul O'Reilly



Myuna Bay Sport and Recreation Centre

Topic	Myuna Bay Sport and Recreation Centre has been closed, following advice from Origin Energy, that the neighbouring Ash Dam wall presents risks to public safety. This decision was made by the NSW Office for Sport.
Analysis	Minister Sidoti has committed to an independent review of the technical reports that Origin Energy and NSW Office of Sport were relying upon when the decision to close the Sport and Recreation Centre was made. The NSW Dams Safety Committee (the Regulator) will facilitate an independent review of these technical reports. This is likely to take some weeks.
To note by	2 May 2019

Minister's signature	Date
-----------------------------	-------------

Recommendation: for information only

Key issues

Minister Sidoti has initiated a review of technical reports that sit behind the decision to close the Myuna Bay Centre. These reports were commissioned by Origin Energy, the owner of the dam.

FACSAJ has engaged the NSW Dams Safety Committee (DSC) to facilitate the review of the reports, because:

- Origin Energy has offered to facilitate a review, but there is a risk that this will not be acceptable to the community as an 'independent review'
- The DSC is the Government regulator for Dam Safety in NSW
- The DSC is expert and credible
- The DSC is available to assist at this time and agrees that this is an appropriate task

The review will take between six and ten weeks. This is a highly technical process, and the reviewer will need to examine and challenge much of the technical inputs from the original reports, including any assumptions that were made.

Once the work commences DSC will be able to provide a tighter estimation of the timeframe for the review to be completed.

Background

Myuna Bay Recreation Centre closed at the end of March 2019 in response to a formal notice from Origin Energy on 5 March concerning the stability of the neighbouring Ash Dam wall, and the potential impact of that wall failing.

In consideration of their obligations under Workplace Health and Safety legislation, the Executive Team at NSW Office for Sport sought legal advice in relation to risks to workers and other persons at the Myuna Bay Recreation Centre - in light of the technical reports from Origin.

Briefing for Minister Sidoti: for information

This legal advice set out some 'reasonably practicable steps to obviate risk' and provide for its duty of care, which included a strong recommendation to close the Myuna Bay Recreation Centre.

The community and the local Member of Parliament have raised concerns about the impact of this sudden closure on the community, and firmly believe that this reaction to the Origin Energy letter is disproportionate.

On 4 April Minister Sidoti committed to undertaking an independent review of the technical reports that sit behind the decision to close the Myuna Bay Centre.

Recreation Centre relocation/construction

NSW Office of Sport are currently engaging a planning consultant to develop the scope for a new centre.

It is estimated that the timeframe for reopening a centre on a new site is 3 years. This includes:

- Re-zoning of land
- Development application
- Community co-design
- Potentially slower construction if local builders are engaged

Origin Energy has offered to fund the construction.

There are currently no plans for an interim site while this relocation/construction takes place. There are other recreation centres in the electorate.

A new site has not yet been identified, NSW Office of Sport are exploring a number sites identified by Crown Land and Origin.

Risks / contentious issues

During the visit to Myuna Bay it is likely that the Minister will be asked about the future of the site, the progress of the independent review, and likely timelines for any decisions.

It is important that the following points are highlighted

- The review must be independent, and undertaken by people with the right capability.
- The Dam Safety Committee is well placed to lead this review in the best interests of the community
- The review is a technical process and it will take at least six weeks.
- Safety is important and there will be no short cuts in this review

Detailed key messages are attached – TAB A

Consultation and communication strategy

Dams Safety Committee was consulted in the preparation of this briefing note, and the development of key messages.

Attachments

Tab	Title
A	Key messages

Briefing for Minister Sidoti: for information

Approval

Role	Electronic approval by	Date
Executive Director, Commissioning, FACS	Paul O'Reilly	29/04/19
Secretary	Michael Coutts-Trotter	

TAB A – key messages

The importance of an independent review

The closure of the Myuna Bay Sport and Recreation Centre has been a shock to this community.

I understand that people have some concerns about the technical advice that was provided to Government in the lead up to this decision.

Before any long term decisions are made about this important community facility, I will undertake a review of the decision, and an independent review of the technical advice that informed this decision.

It is important that the review is done by someone who is independent, is expert, and has credibility in the industry.

The NSW Dams Safety Committee has been asked to lead this review.

Why the NSW Dams Safety Committee?

There are a number of engineers and other consultants in the industry who are qualified to undertake this review for the Government.

My Department has asked the NSW Dams Safety Committee to lead this review and seek the services of an independent expert in this field.

The NSW Dams Safety Committee is the regulator of dams safety in NSW. They are constituted by the Parliament under legislation to ensure that dams are safe in NSW.

This means that owners of dams need to comply with the policies, procedures and directions of the Dams Safety Committee.

The Dams Safety Committee is led by a team of highly qualified engineers, who are well placed to lead the review.

How long will it take, and why so long?

I am advised that the review is likely to take between six and ten weeks.

There are some critical steps that need to be followed to ensure a proper review, including a careful analysis of each of the findings in the original technical reports, and the assumptions that sit behind those findings.

I want to be sure that this is a thorough process, and that the review is not rushed. I believe that this is what the community would expect.

Once the work commences we will soon know exactly how long it will take. Again, I am expecting some results in six to ten weeks.

I expect to have a report from the Secretary of my Department within days of the review being completed.

I will then come back to the community with further advice about the future of the Myuna Bay Centre.

TAB A – key messages

The importance of an independent review

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Information and Privacy

From: Paul O'Reilly
Sent: Friday, 26 April 2019 4:42 PM
To: Michael Coutts-Trotter
Subject: Myuna Bay

Michael

I will have a BN with key messages for the Minister on Myuna Bay by Monday evening.

An update from the Dam Safety Committee:

Stage 1 - they will have an informal appraisal of the reports on 2 May. This will be useful for you and Min S, but this won't be substantial enough to meet the expectation/brief of "review"

Stage 2 - Independent review will be 6-10 weeks as previously advised. It will cost between \$30k and \$50k.

The outcome of stage 1 next week will help determine the exact duration and cost of stage 2. Hopefully 6 weeks and \$30k.

I expect Office of Sport will cover this cost and I will liaise with Karen on Monday.

Regards

Paul

Sent from my iPhone

Information and Privacy

From: Paul O'Reilly
Sent: Tuesday, 23 April 2019 12:59 PM
To: Michael Coutts-Trotter
Subject: FW: Eraring power station dam and the Myuna Bay Recreation Centre

FYI Michael

Some progress from the Dams Safety Committee (DSC) ... please note the timeframe

I recommend that we go with the DSC-facilitated option, on the understanding that Origin won't then undertake their own review

I will advise the DSC accordingly, unless you have another view?

Thanks

Paul

From: Chris Salkovic <chris.salkovic@damsafety.nsw.gov.au>
Sent: Tuesday, 23 April 2019 12:53 PM
To: Paul O'Reilly <Paul.O'Reilly2@facs.nsw.gov.au>
Subject: Re: Eraring power station dam and the Myuna Bay Recreation Centre

Hello Paul, I have reviewed the request from Secretary Dept of FACS re Eraring ash dam and can confirm that the NSW Dams Safety Committee (DSC) will provide an overview on quality of the two recent Stantec reports i.e. Dam Stability and Dams Break assessment, by COB 1 May. Reference will be made to DSC and Australian National Committee on Large Dams (ANCOLD) usual requirements.

With respect to an 'independent review', we understand this would normally take the form of an independent technical review of Stantec's key inputs which formed the basis of their conclusions and findings. Being a regulator, the DSC does not carry out such reviews and usually requests owners of High consequence dams, such as Eraring ash dam, to undertake such a review which normally questions and challenges technical inputs and outputs of an analysis team, in this case Stantec. The DSC can however facilitate such a review if required particularly by Government. We estimate such a review at this stage, i.e. review of final report, would take around 6 to 10 weeks to complete.

I have spoken with Paul Baker from Origin Energy this morning who is comfortable to arrange an independent review at the request of the DSC or happy for the DSC to facilitate. I don't see the need to carry out two separate independent reviews and ask for your preference.

Thanks

Chris Salkovic | Director
Dams Safety Committee

Level 11, 10 Valentine Avenue, PARRAMATTA NSW 2150
Mail: Locked Bag 5123, PARRAMATTA NSW 2124 / Australia
Ph: 02 9842 8070 | 0403 681 645

Email: chris.salkovic@damsafety.nsw.gov.au

Web: www.damsafety.nsw.gov.au

On Thu, Apr 18, 2019 at 2:01 PM Paul O'Reilly <Paul.O'Reilly2@facss.nsw.gov.au> wrote:

Hello Chris,

You will recall we had a discussion on the phone on Tuesday, about the Eraring Dam and the closure of the neighbouring recreation centre.

We are seeking a review of the Origin Energy reports that had informed the decision of the Office of Sport to close the recreation centre.

The attached letter from the Department Secretary sets out the request in more detail.

Looking forward to hearing from you.

Many thanks

Paul O'Reilly
Executive Director
Commissioning Division
NSW Family and Community Services
Ph 0407 209 180

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Information and Privacy

From: Matt Miller <matt.miller@sport.nsw.gov.au>
Sent: Tuesday, 16 April 2019 11:17 AM
To: Nicolle Nasr
Cc: Michael Coutts-Trotter; Karen Jones; Darren Husdell
Subject: MYUNA BAY SRC CLOSURE MEDIA and RMS

Nicolle

Recent media statements by RMS on the decision not to close Wangi Road below the ash dam need to be carefully managed from a broader Government perspective.

I understand that RMS has a different risk profile and assessment model to our own WHS response, however we need to try to ensure that differing decisions within government are accurately reported so as not to fuel a new round of speculation that the decision of the Office to cease operations at the Centre is incorrect.

In forming the decision to cease operations whilst the future of the Centre was further investigated, the Office took counsel from a range of Government agencies and kept the Cluster Department (Department of Industry) apprised and included in the decision making process. The Department of Education were very clear they would shut the facility if it was a school located at the Centre site. Further having been informed of the issue, they would be advising all NSW schools to not use the Centre (effectively putting an end to its viability until the WHS risk was further tested and/ or other options explored for a new Centre). The Office also took advice from the NSW Dam Safety Committee (the Government regulator) who said whilst the likelihood of dam wall failure was very low, in the circumstances they agreed with the Office's position to shut down operations.

It may be worthwhile if we convene a meeting of agencies involved so that we have a clear Government position which allows for the different risk responses to be reflected in any public narrative. It may also be worthwhile to consider involving Lake Macquarie Council in that dialogue.

For your consideration and advice please.

Regards

Matt Miller



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Information and Privacy

From: Martin Dwyer <martin.dwyer@finance.nsw.gov.au>
Sent: Tuesday, 16 April 2019 10:34 AM
To: Paul O'Reilly;Michael Coutts-Trotter
Cc: Chris Salkovic (chris.salkovic@damsafety.nsw.gov.au)
Subject: RE: Myuna Bay Sport & Rec Centrre - Stantec Report Review

Hi Paul

Should it help your briefing of the Minister about options for the Myuna Bay Sport & Rec Centre, I can summarise the Public Works Advisory (PWA) advice for you to a sentence or two.

- PWA considered a broader and more extensive historic data set than that used by Stantec.
- The additional data makes the Stantec conclusion appear conservative. We recommend that Stantec review its report and incorporate the fuller data set available.
- From the safety point of view, PWA considers it is totally responsible and reasonable to maintain full operations of the Centre.
- PWA understands that the Office of Sport may need to consider matters other than just safety.

We will advise the Dams Safety Committee of our view.

Kind regards

Martin

Martin Dwyer BE FIEAust CPEng NER APEC Engineer IntPE(Aus) MAICD
Chief Emergency Engineer
Director, Engineering Emergency Management
Public Works Advisory | Property NSW
Department of Finance, Services and Innovation
p 02 9240 8710 | m 0401 993 933
e martin.dwyer@finance.nsw.gov.au | www.publicworks.nsw.gov.au
L4, 66 Harrington St, SYDNEY NSW 2000
PO Box N408, Grosvenor Place NSW 1220



From: Paul O'Reilly [mailto:Paul.O'Reilly2@facn.nsw.gov.au]
Sent: Friday, 12 April 2019 1:11 PM
To: Martin Dwyer <martin.dwyer@finance.nsw.gov.au>; Michael Coutts-Trotter <Michael.Coutts-Trotter@facn.nsw.gov.au>
Subject: RE: Myuna Bay Sport & Rec Centrre - Stantec Report Review

Thank you Martin. Appreciate your responsiveness on this matter today

Paul O'Reilly

From: Martin Dwyer <martin.dwyer@finance.nsw.gov.au>
Sent: Friday, 12 April 2019 12:57 PM
To: Michael Coutts-Trotter <Michael.Coutts-Trotter@facnsw.gov.au>
Cc: Paul O'Reilly <Paul.O'Reilly2@facnsw.gov.au>
Subject: FW: Myuna Bay Sport & Rec Centre - Stantec Report Review

Hi Michael and Paul,

I also sent it to the Secretary of Justice email.

Martin

From: Martin Dwyer
Sent: Friday, 12 April 2019 11:01 AM
To: Chris Salkovic (<chris.salkovic@damsafety.nsw.gov.au> <chris.salkovic@damsafety.nsw.gov.au>
Cc: ots@justice.nsw.gov.au
Subject: FW: Myuna Bay Sport & Rec Centre - Stantec Report Review

Chris,
(Chris Salkovic, Director Dams Safety Committee, 0403 681 645)

The Secretary, Dept of Justice (Michael Coutts-Trotter) has requested me forward the review by Public Works Advisory (attached) of the Stantec Report on the Eraring ash dam.

He may wish to contact you seeking the Dams Safety Committee's view about the safe ongoing operation of the Myuna Bay Sport & Rec Centre.

I have copied Michael into this email.

Kind regards

Martin
Martin Dwyer BE FIEAust CPEng NER APEC Engineer IntPE(Aus) MAICD
Director, Engineering Emergency Management
Public Works Advisory | Property NSW
Department of Finance, Services and Innovation
p 02 9240 8710 | m 0401 993 933
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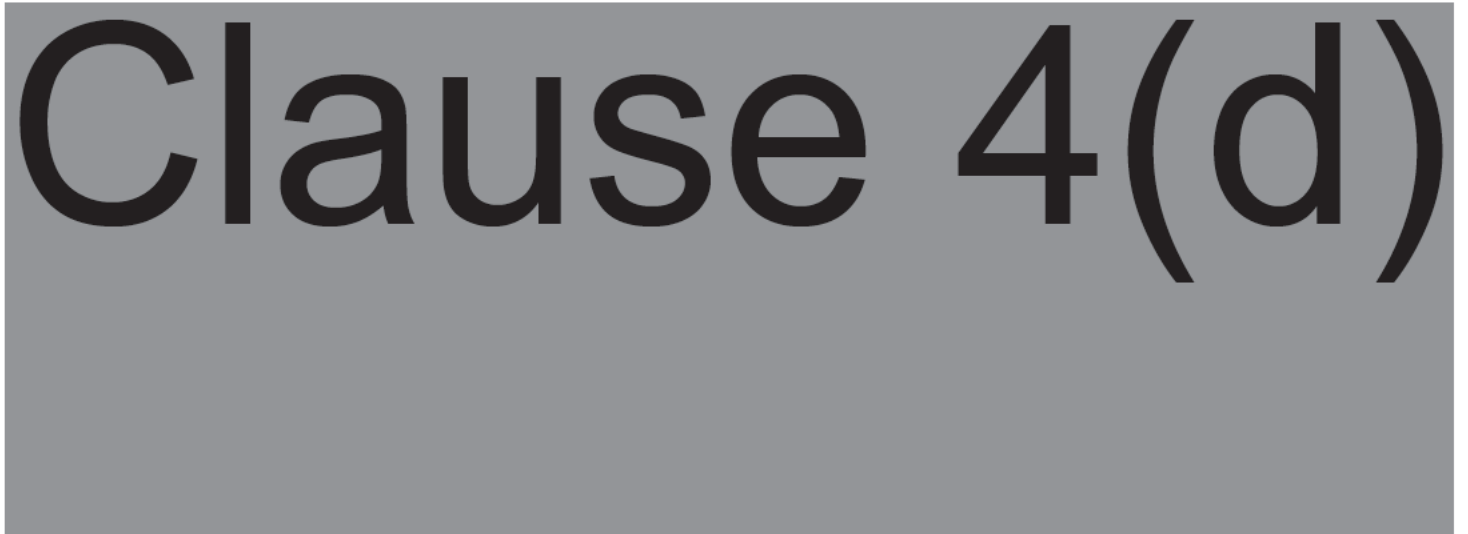
From: Martin Dwyer
Sent: Thursday, 4 April 2019 3:21 PM
To: [REDACTED] <[@klgates.com](mailto:klgates.com)>; 'Nathan Godfrey' <nathan.godfrey@sport.nsw.gov.au>
Subject: Myuna Bay - Stantec Report Review - Under client legal privilege

Under client legal privilege

Nathan,

Attached is our Stantec Review.

We wrote the following paragraph,



Martin

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Information and Privacy

From: Paul O'Reilly
Sent: Monday, 15 April 2019 8:54 PM
To: Michael Coutts-Trotter
Cc: Deborah Lovell
Subject: Myuna Bay
Attachments: 150419 BN.docx; legal advice.pdf; Premier Briefing - Myuna Bay_sec2.docx

Michael,

As discussed this morning, here is a short document with speaking points for your discussion with Minister Sidoti on the Myuna Bay issue

I have also attached:

- The legal advice
- The brief to the Premier from April

Regards

Paul O'Reilly

Closure of Myuna Bay Recreation Centre

Talking points

Background

Myuna Bay Recreation Centre has closed in response to a formal notice from Origin Energy on 5 March about the stability of the neighbouring ash dam wall, and the impact of that wall failing.

The community and the local Member of Parliament have raised concerns about the impact of this sudden closure on the community, and firmly believe that this reaction to the Origin Energy letter is disproportionate.

On 1 April NSW Office of Sport provided the Premier with some advice (attached).

On 4 April Minister Sidoti appeared on ABC Radio and committed to undertake a review of the Origin Energy technical reports that sit behind the decision.

RMS has reviewed the technical reports and has decided not to close the road that is adjacent to the Myuna Bay Centre site.

NSW Office of Sport Legal position

In consideration of their obligations under Workplace Health and Safety legislation, the Executive team at NSW Office for Sport sought legal advice in relation to risks to workers and other persons at the Myuna Bay Recreation Centre - in light of the technical reports from Origin.

This legal advice (attached) has set out some 'reasonably practicable steps to obviate risk' and provide for its duty of care:

- Revise the emergency evacuation plan
- Keep the centre open and on high alert during further study, which would include an evaluation from the Dam Safety Committee
- Partial closure pending the outcome of further study
- Permanent closure of the Myuna Bay Centre – the recommended option

Early review of technical reports

NSW Public Works Advisory (PWA) was engaged by NSW Office of Sport, and has reviewed the *Dam Wall Stability Report* that was commissioned by Origin Energy. PWA's position is that this report is "less accurate than it could be" due to the lack of important historical data, and should be undertaken again.

PWA has not reviewed the *Dam Wall Failure Impact Report*, but has advised that the *Dam Wall Stability Report* is inadequate to justify the immediate closure of the Myuna Bay Centre

PWA has sent their review to the Dam Safety Committee.

Myuna Bay Centre staff:

Ongoing staff have been presented with future employment options, including redeployment to other Recreation Centres, VR for those who cannot travel, VR swaps and retraining. Staff remain on full pay while further details of the closure process are established. NSW Office of Sport intends to retained as much staff capability in the organisation as possible.

There is a pool of 15 casual staff. 11 of these are currently in the roster and have been given a commitment that they will be paid for all of their shifts that were already rostered up to 28 April.

Note – Origin Energy has offered to fund VRs.

Recreation Centre relocation/construction

Even if the decision to close the centre is reversed, it is possible that the community will be reluctant to access the site.

It is estimated that the timeframe for reopening a centre on a new site is 3 years. This includes:

- Re-zoning of land
- Development application
- Community co-design
- Potentially slower construction if local builders are engaged

Origin Energy has offered to fund the construction.

There are no plans for an interim site while this relocation/construction takes place. There are other recreation centres in the electorate.

New site has not yet been identified, but they are exploring a number of sites identified by Crown Land and Origin.

NSW Office of Sport are currently engaging a planning consultant now to start working through the scope for a new centre.

Options to deliver on Minister's commitment to undertake an independent review

There is a risk that at the end of this period there are multiple 'peer review' reports and that they have different findings. For example:

- FACSJ can facilitate an independent peer review, working with consultants identified by Origin Energy, NSW Office of Sport or PWA.
- PWA, or a consultant identified by PWA could undertake a more detailed peer review of both reports.
- PWA have advised that the regulator (NSW Dam Safety Committee) is likely to ask Origin Energy to commission its own independent peer review of the technical reports.

Next steps for discussion with Minister:

The Minister or Secretary can write to the Dam Safety Committee seeking a single review of the technical reports that were commissioned by Origin Energy, and seeking recommendations for the Government.

FACSJ could facilitate a peer review of the legal advice, or a second opinion, given the early questions that have arisen in relation to the *Dam Wall Stability Report*.

Paul O'Reilly

15 April 2019

26 March 2019

Mr Darren Husdell
Director Human Resources
Office of Sport NSW
Level 3, 6B Figtree Drive

Sydney Olympic Park NSW 2127

Email: darren.husdell@sport.nsw.gov.au

Dear Darren,

Strictly Confidential Legal Professional Privilege Applies

Advice – Myuna Bay Sport & Recreation Centre

Thank you for your instructions.

We have been requested to provide an advice to the Office of Sport New South Wales (OOS) in respect to obligations under the *Work Health and Safety Act 2011* (NSW) (**WHS Act**) and *Work Health and Safety Regulation 2017* (NSW) (**Regulation**) following the receipt of information from Origin Energy Ltd (**Origin**) concerning its tailing dam at the Eraring power station. This advice is based upon our review of the Origin correspondence, documents of OOS and public information from Geoscience Australia.

Executive summary

1. OOS primary duty of care under the WHS Act is to ensure, so far as reasonably practicable, the health and safety of workers and other persons at the workplace.
2. OOS has received information from Origin indicating there is a risk to health and safety to persons at the Myuna Bay Centre because the Eraring Ash Dam is susceptible to liquefaction, and that it could become unstable in the event of an earthquake of 5.7 or higher on the Richter magnitude scale.
3. The duty of care is contravened where there has been a failure to take a particular measure to prevent an identifiable risk occurring. The likelihood of the risk of liquefaction occurring is foreseeable.
4. The obligation to ensure safety is strict in nature and is qualified by what is reasonably practicable.
5. The reasonably practicable measures which could be undertaken by OOS to obviate the risk include:

Special Counsel: John Rodney
john.rodney@klgates.com

T +61 2 9513 2313

Our ref: 7411812.00002

- (i) Revision of the OOS emergency evacuation plan for the Myuna Bay Centre to facilitate an emergency from a liquefaction event.
 - (ii) Keep the Myuna Bay Centre open and on high alert until findings by the relevant geotechnical, civil engineering, geoscience experts are available, including a comprehensive evaluation by the New South Wales Dam committee as to the structural integrity of the Dam are known.
 - (iii) Partial closure pending the outcome in paragraph (ii) above.
 - (iv) Permanent closure of the Myuna Bay Centre.
6. Our recommendation and the reasons for it are for OOS to close the Myuna Bay Centre.

Background

1. The Myuna Bay Sport and Recreation Centre (**Myuna Bay Centre**) operated by the Office of Sport New South Wales (**OOS**) is situated in a natural bushland setting on the western foreshore of Lake Macquarie, at Myuna Bay. The Centre provides a wide range of services, activities, facilities and accommodation options for schools, families, seniors, community programs, corporate training and other sport and recreation activities. It is also set up for and regularly caters for individuals with disabilities and special needs.
2. The Myuna Bay Centre has 16 full time employees plus approximately 10 casuals and can accommodate up to 240 people (overnight) and can have a maximum of 1000 people on site for day use activities and events.
3. OOS has received information from Origin¹ which indicates the material beneath the Eraring Ash Dam is susceptible to liquefaction, and that it could become unstable in the event of an earthquake of 5.7 or higher on the Richter magnitude scale. If the Dam collapses a substantial area of the Myuna Bay Centre would be affected.
4. We understand the Dam is an earth-filled dam (also called an earthen dam or terrain dam) made of compacted earth and soils and thus assume the reference to the 'material beneath the dam' consists of compacted earth and soils.
5. Origin has proposed to OOS the Myuna Bay Centre be relocated at Origins' cost, and the time for establishment of relocation is estimated to be 2 to 3 years.
6. On 29 December 1989 an earthquake measuring 5.6 on the Richter magnitude scale occurred in Newcastle. It was one of Australia's most serious natural disasters, killing 13 people and injuring more than 160. One aftershock (M 2.1 on the Richter scale) was also recorded. The epicentre was located at Boolaroo, a suburb on the western side of Lake Macquarie, located 19 kilometres west of Newcastle's central business district and approximately the same, straight line, distance from the Myuna Bay Centre. The effects were felt over an area of around 200,000 square kilometres in

¹ Letter dated 5 March 2019 from Greg Jarvis, Executive General Manager, Origin Energy Ltd

NSW, with isolated reports of movement in areas up to 800 kilometres from Newcastle.²

7. There have been at least 4 other earthquakes of a magnitude 5 or greater in the surrounding Hunter region since European settlement in 1804.

OOS primary duty of care

8. OOS is a person conducting a business or undertaking (PCBU) for the purposes of the WHS Act and Regulation. OOS primary duty of care under the WHS Act is to ensure, so far as reasonably practicable, the health and safety of workers and other persons at the workplace, which relevantly includes OOS employees, clients, subcontractors, and persons who may be visiting a sport and recreation centre but not attending scheduled activities.³ In particular the duty requires that persons are not put at risk from OOS business or undertaking, regardless of OOS state of knowledge, and applies equally to trespassers, and paying clients.
9. It is not necessary that there is a particular accident causing or not causing damage, or that a person is actually injured to establish a breach of the duty. What is required is the creation of a risk. A risk is a risk, it either exists or it does not. The WHS Act is directed to obviating risks to safety in the workplace either by eliminating or minimising the risk to protect from the dangers presented by the risk. This requires OOS to take a proactive approach in the management of risk. The Courts have made it clear the duty does not extend to unknown or unidentifiable risks.

Is there a risk to health and safety?

10. The risk which arises is the liquefaction of the Dam which occurs when a saturated or partially saturated soil substantially loses strength and stiffness. This could arise in different ways, such as in response to an applied stress from shaking during an earthquake (an example given by Origin) or other sudden change in stress condition, in which the compacted earth and soil material that is ordinarily a solid behaves like a liquid.
11. It should also be noted Origin confirms the Dam '*is susceptible to liquefaction*' and it has implemented measures to increase the safety of the Dam and will undertake remediation to improve stability of the Dam. On its face this information suggests the integrity of the Dam could already be compromised. Other environmental events such as extreme rain levels and subsidence from the nearby coal mining operations and the continued expansion and collection of ash sediment could also be factors impacting upon a change in stress condition and Dam safety.
12. We apprehend OOS may point to reliance upon the likelihood of, or foreseeability of a liquefaction event only occurring in the event of a 5.7 or higher magnitude earthquake and that an event similar to the Newcastle earthquake is only predicted to reoccur between 50 to 1000 years.⁴ We caution against this approach and the reasons are

² Dhu T and Jones T (eds.) 2002 *Earthquake Risk in Newcastle and Lake Macquarie* Geoscience Australia Record 2002/15, Geoscience Australia, Canberra

³ section 19(1) & (2) WHS Act

⁴ Dhu T and Jones T (eds.) 2002 *Earthquake Risk in Newcastle and Lake Macquarie* Geoscience Australia Record 2002/15, Geoscience Australia, Canberra

this. Origin has not confirmed it will take a 5.7 magnitude (or higher) earthquake to make the Dam wall unstable. To the contrary, it is an earthen dam and the constituent barrier is comprised of compacted earth and soil material and is thus susceptible to liquefaction from stress conditions.

13. The Geoscience Australia report concludes the calculated earthquake hazard in the Newcastle and Lake Macquarie region is higher than the hazard suggested by the Australian earthquake loading standard, AS1170.4-1993. Further, the *'frequency with which earthquake events have occurred in the Hunter region suggests that earthquakes pose a genuine threat to the communities there'*.
14. Recent evidence supporting this conclusion is the occurrence of five earthquakes in a three day period in the Upper Hunter between 15 and 18 September 2018. According to data from Geoscience Australia, the tremors measured from between 3.4 magnitude to 2.7 magnitude. The 3.4 event was the strongest EPSO (Edward Pigot Seismic Observatory) ground motion logged since April, 2014.
15. The Geoscience Australia report indicates a greater part of the Newcastle and Lake Macquarie area consists of 'regolith' which includes dust, soil, broken rock, and other related materials and is typically made up of material that is weathered away from the underlying rock. That is, there is generally no immediate solid base beneath the topsoil. The report notes *'regolith in the study region causes a significant increase in the earthquake hazard, and differences in the regolith thickness can cause quite dramatic variations in the hazard and risk across the study region.'*⁵

Qualification of reasonably practical

16. The obligation to ensure safety is strict in nature and is qualified by what is reasonably practicable and means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant factors.
17. Section 18 of the WHS Act helpfully sets out the definition for what is reasonably practicable in relation to eliminating or minimising a risk to health and safety. The section lists a number of factors which are a useful guide, although these are not exhaustive, of what constitutes reasonable practicability and is premised upon the risk assessment process. We set out section 18 below:

*In this Act, **reasonably practicable**, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:*

- (a) *the likelihood of the hazard or the risk concerned occurring, and*
- (b) *the degree of harm that might result from the hazard or the risk, and*
- (c) *what the person concerned knows, or ought reasonably to know, about:*
 - (i) *the hazard or the risk, and*

⁵ Dhu T and Jones T (eds.) 2002 *Earthquake Risk in Newcastle and Lake Macquarie* Geoscience Australia Record 2002/15, Geoscience Australia, Canberra

- (ii) *ways of eliminating or minimising the risk, and*
 - (d) *the availability and suitability of ways to eliminate or minimise the risk, and*
 - (e) *after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating the risk, including whether the cost is grossly disproportionate to the risk.*
18. This requires OOS to identify the risk, consider and assess the risk and ensure steps are taken to eliminate the risk so far as is reasonably practicable, and if not to practicable to eliminate, to minimise the risk so far as is reasonably practicable. The question of what is reasonably practicable will arise at each step of the risk assessment process. On the other hand, it could not be reasonably practicable to take precautions against a hazard or risk which could not have been in existence.
 19. The state of knowledge applied to the definition of reasonably practicable is objective. The Courts have ruled it is that which is possessed by persons generally (other public and private sport and recreation operators) who are engaged in the relevant field of activity and not by reference to the actual knowledge of a PCBU in specific circumstances such as OOS.
 20. The reasonably practicable requirement applies to matters which are within the power of OOS to control, supervise and manage. The notion of reasonable practicability is not limited to simply preventing something that is reasonably foreseeable. In our view the duty is to protect against **all** risks if that is reasonably practicable.
 21. Is it also important to note that the WHS Act does not require OOS to take all possible steps. However this does not import a passive approach should be taken to the detection of risk. The Courts have noted PCBU's should adopt a proactive approach to safety matters. It is not a question of whether the PCBU did envisage a particular danger, but rather whether it should have.⁶⁶
 22. The duty is contravened where there has been a failure to take a particular measure to prevent an identifiable risk occurring. The likelihood of the risk of liquefaction concerned occurring is foreseeable.

What reasonably practicable measures are available?

23. When determining what measures are required, consideration must be given to what is within the power of OOS to perform or check. A PCBU may be found to have control over a relevant matter if they have the capacity to do so, whether that capacity is exercised or not. Although OOS does not have control of the Dam site the question remains whether OOS is in a position to implement measures to ensure, so far as is reasonably practicable, the safety of workers and others at the Myuna Bay Centre from the risk of liquefaction of the Dam.
24. The reasonably practicable measures which could be undertaken to obviate the risk include:
 - (i) Revision of the OOS emergency evacuation plan for the Myuna Bay Centre. We note your instructions OOS has undertaken a revision of the emergency evacuation procedures.

⁶⁶ *WorkCover v Kellogg (Aust) Pty Ltd [1999] NSW IRComm 453*

- (ii) Keep the Myuna Bay Centre open and on high alert until findings by the relevant geotechnical, civil engineering, geoscience experts are available, including a comprehensive evaluation by the New South Wales Dam committee as to the structural integrity of the Dam are known.
 - (iii) Partial closure pending the outcome in paragraph 24(ii) above.
 - (iv) Permanent closure of the Myuna Bay Centre.
25. In our view given the logistics and resources available to OOS associated with evacuating up to 1000 people from such a vast area, including from activities being undertaken on Lake Macquarie, or during the night in such an emergency is unlikely to be an effective strategy for mitigating an earthquake hazard. It also is understood Origin has indicated an impact time of approximately 7 minutes if the Dam is ruptured.
 26. For the reasons stated in paragraph 25, we do not recommend the option in paragraph 24(ii) above.
 27. The conundrum for OOS in adopting the partial closure option pending the availability of expert reports or permanent closure is this. Partial closure will not obviate the requirement for persons to attend at the Myuna Bay Centre. These could include security and maintenance contractors who will necessarily need to be accompanied by OOS staff. Although it is anticipated there would be a minimal number of persons involved they are still subject to the risk to health and safety which remains foreseeable.
 28. In considering whether the economic consequence factors in section 18(e) are so prohibitive and grossly disproportionate to the risk, that mitigation measures should not be undertaken, the High Court has stated the duty cast upon the PCBU is "*no more than making a value judgement in light of all the facts, of what was known at the relevant time, balancing the likelihood of the risk occurring against the time, cost and trouble necessary to avert the risk.*"⁷
 29. We are therefore recommending the closure option. On its face OOS will need to expend considerable resources if it takes the closure option. This is an important consideration. In balancing the decision of cost, time and effort against the nature, likelihood and gravity of the risk, it is important to note the offset contained in the offer from Origin to relocate the Myuna Bay Centre. It would seem most, but perhaps not all of the relocation costs, would be met by Origin.
 30. In the event Origin reneges on its offer our advice would not change. The Courts have long acknowledged Government departments and authorities hold a special position, often referred to as 'the availability of the resources of the State', when it comes to being proactive and vigilant in meeting their safety obligations despite any budgetary constraints.
 31. In our view, if a Court was required to consider the measures available to OOS to eliminate the risk, doubtless it would find OOS, in conjunction with the Origin offer,

⁷ *Slivak v Lurgi (Aust) Pty Ltd (2001) 205CLR 304* and applied by the Court of Appeal, NSW in *Powercoal Pty Ltd v Industrial Relations Commission of NSW (2005) 145 IR 327*

had within its power the control, and available and suitable ways to eliminate the risk. A failure to adopt those measures would result in a contravention of the WHS Act.

32. In light of the above we advise OOS would not have an available defence in the event of enforcement proceedings.
33. Further, it would not be a defence to rely upon the prediction of an earthquake in 50 to 1000 years. Although it is not possible to predict the precise timing, location and size of an earthquake to a sufficiently high degree of accuracy, seismic monitoring and research provide the basis for forecast modelling and hazard assessment and mapping. Geoscientists are able to identify particular areas of risk and, if there is sufficient information, to make probabilistic forecasts about the likelihood of earthquakes happening in a specified area over a specified period. The conclusion of Geoscience Australia is the Hunter and Lake Macquarie region are susceptible to earthquakes.

Consultation, coordination and cooperation

34. It is instructive to highlight OOS safety obligations concerning consultation, representation and participation. The reasons are these. Both OOS and Origin must, so far as reasonably practicable, consult, co-ordinate and co-operate activities with the other where they have safety duties in relation to the same matter. The relevant duty in the circumstances is to ensure the workplace is safe and without risk from liquefaction of the Dam.
35. The lessons from recent cases highlight the importance of the interface between respective PCBU's in discharging this duty. In particular it is not enough to discharge OOS safety obligations by assuming Origin will undertake a risk assessment and conduct the remedial works set out in its correspondence to eliminate or minimise the risks of liquefaction of the Dam.
36. To the contrary Origin has commenced this process and it is now incumbent upon OOS to respond in accordance with its safety obligations.

Officer liability

37. An Officer as defined in the WHS Act includes a Director and Secretary of a corporation appointed under the *Corporations Act 2011 (Cth)* and an Officer of the Crown and Public Authority. In our view OOS Directors and the Executive Officers are caught by the definition. In respect to managerial positions a common thread reflected throughout the definition of Officer is a person who makes or participates in making decisions that affect the whole or substantial part of the business or undertaking.⁸
38. It is also important to note the definition of Officer excludes a Minister of the Crown. This has the potential to create tension between the safety obligations of OOS and its Directors and Officers and the Executive of government, should the court of public opinion apply pressure for the Minister of Sport to intervene in the decision-making process. We highlight this because it is possible there will be considerable public outcry with the loss of such a grand facility. We of course would be happy to discuss and advise on this matter separately should you require.

⁸ section 4 WHS Act

39. An Officer of a PCBU must *exercise due diligence* which includes *taking reasonable steps* to ensure the PCBU complies with its obligations under the WHS Act. Officers of OOS owe a continuous duty to ensure OOS compliance.

Were reasonable steps taken?

40. In our view *due diligence* does not require the Officer to take all possible steps but requires more than just going through the paces. It does not require perfection but does require an Officer to take reasonable steps to act with due diligence. It is an objective test to be looked at in the face of the facts.
41. The Courts have observed *due diligence* requires an Officer to be pro-active about work, health and safety matters. Officers should also understand and be actively engaged in the governance and quality systems of the PCBU.
42. In our view the action of the OOS Directors and the Executive Officers to close the Myuna Bay Centre is not only prudent but discloses minds were directed to the knowledge of safety matters, understanding hazards and risks associated with OOS operations and making available the resources to eliminate or minimise those risks.

Recommendation

43. Our recommendation and the reasons for it are for OOS to close the Myuna Bay Centre.

Thank you again for your instructions. Should you have any queries please do not hesitate to contact me.

Yours faithfully



John Rodney

Special Counsel

Earthquake Risk in Newcastle and Lake Macquarie Geoscience Australia

Summary and Conclusions

The results of our work are dependent upon the accuracy and appropriateness of both the data collected and the models applied in our risk assessment. Further refinement of the models may change some of these results, however, they are a good indicator of the trends and nature of earthquake risk in Newcastle and Lake Macquarie. Our conclusions from this study are:

1. The calculated earthquake hazard in the Newcastle and Lake Macquarie region is higher than the hazard suggested by the Australian earthquake loading standard, AS1170.4-1993;
2. The regolith in the study region causes a significant increase in the earthquake hazard, and differences in the regolith thickness can cause quite dramatic variations in the hazard and risk across the study region;
3. The annualised loss for the study region is of the order of 0.04% or \$11 million per year;
4. The majority of the annualised earthquake risk in the study region is from events that have annual probabilities of occurrence in the range of 0.02 to 0.001 (return periods of 50 - 1,000 years); The risk varies with building construction type, and unreinforced masonry structures have higher average risks per building than other construction types. Brick veneer buildings contribute about half of the total risk. This is partly because they comprise a large proportion of buildings in Newcastle and Lake Macquarie. Timber frame buildings with timber, fibro and other light wall claddings contribute approximately onequarter of the risk. A further one-sixth of the risk is contributed by unreinforced masonry buildings;
5. Damage to residential buildings contributes the vast majority of the risk (approximately 91%). This is largely because residential buildings comprise the vast majority of all buildings in Newcastle and Lake Macquarie;
6. The 1989 Newcastle earthquake had an economic impact with a return period of the order of 1,500 years. According to our models, approximately 82% of all annualised risk in Newcastle and Lake Macquarie is due to events with lesser economic impacts than the 1989 earthquake. Thus, events like the 1989 earthquake, or even more catastrophic events, make only a small contribution to the earthquake risk in the region when considered on an annualised basis. However, rare but catastrophic events are very important to emergency managers and the insurance and reinsurance industries;
7. Annualised risk varies considerably across Newcastle and Lake Macquarie. It depends on the nature of the underlying regolith, the composition of the building stock and building usage in particular areas. Our results suggest that the suburbs most at risk in Newcastle, determined by a percentage of the total value of buildings and contents in the suburb, are Broadmeadow, Carrington, Hamilton, Hamilton East,

Hamilton North, Hamilton South, Islington, Maryville, Stockton, The Junction, Warabrook and Wickham. In Lake Macquarie the suburbs most at risk are Belmont South, Blacksmiths, Caves Beach, Marks Point, Pelican, Swansea and Teralba. Further research into the building parameters for unreinforced masonry construction types may change these conclusions, especially in older suburbs such as Newcastle, Newcastle East, Newcastle West and Cooks Hill.

Other Lake Macquarie suburbs such as Cooranbong, Dora Creek, Estelville, Fassifern, Holmesville, Killingworth, Redhead, Toronto and Warners Bay also had high annualised risk in our results, but the results are less reliable because survey rates were low in these suburbs, and the regolith site modelling is inferior to that in Newcastle;

8. Over half of the earthquake risk is from moderate-magnitude earthquakes, with moment magnitudes around 5, that occur less than 30 km from the study area. This conclusion has implications for emergency management in the lower Hunter. It may be appropriate to prepare for the possible impacts of such events rather than on catastrophic events that have an extremely small probability of occurring;
9. In general, the risk of casualties from earthquakes is low. However, we do not rule out the possibility that casualties in future events could be caused by damage to a single building, or a small number of buildings. It is extremely unlikely that any event capable of causing widespread casualties will occur in the study region;
10. The results also have implications for the earthquake risk facing larger Australian cities such as Sydney, Melbourne and Adelaide. This is due to a number of factors, including similarities between the earthquake hazard in Newcastle and Lake Macquarie and other parts of Australia, and similarities between the urban environments, particularly the composition of the building stock;
11. The earthquake risk to Newcastle and Lake Macquarie may be reduced gradually over time by improved building construction practices, attrition of vulnerable building stock such as unreinforced masonry, and by reducing vulnerability of existing buildings through renovations constructed to modern code standards;
12. Good building practice may be the single, most important, long-term factor in reducing economic losses and casualties from earthquakes in Newcastle and Lake Macquarie. It should be emphasised that a great deal of variability was included in the models used to generate these results. To some degree this variability was incorporated to account for our lack of knowledge about the various models used in the study. The effect of high levels of variability is to increase the estimates of risk. Future studies on the earthquake risk in the region should focus on improving the models that have been used. This will allow for the variability in the models to be decreased, which will most probably result in a decrease in the estimated risk.
13. A study of earthquakes in the Hunter has assessed the region to be at moderate risk of experiencing future tremors. Similar events, were they to occur today in populated areas, would certainly cause significant damage. The frequency with which these events have occurred in the Hunter region suggests that earthquakes pose a genuine threat to the communities there.
14. This study presents the most comprehensive and advanced earthquake risk assessment undertaken for any Australian city to date. It has focused on the economic losses caused by damage to buildings from earthquake ground shaking, and not on the impacts from other, secondary hazards such as soil liquefaction and

surface faulting. The study has adopted a probabilistic approach that makes allowances for the variability that is inherent in natural processes as well as the uncertainty in our knowledge. The results from this project will assist decision-makers involved in local and state government, policy development, the insurance industry, engineers, architects, and the building and finance industries to manage potential damage and loss of life from earthquakes in Newcastle and Lake Macquarie. The results also have implications for the earthquake risk facing larger Australian cities such as Sydney, Melbourne and Adelaide. This is due to a number of factors, including similarities between the earthquake hazard in Newcastle and Lake Macquarie and other parts of Australia, and similarities between the urban environments, particularly the composition of the building stock.

TRIM/RM8 REF

Closure of the Myuna Bay Sport and Recreation Centre

To advise the Premier of the impact of the closure of the Myuna Bay Sport and Recreation Centre on the Aussie-Kiwi water skiing challenge.

Recommendation

That the Premier notes the advice.

Approved
Matt Miller, Chief Executive, Office of Sport, Ph.
8754 8701
Date:

Approved
Secretary
Date:

Comments:

Key Information

Sequency of events March 2019

5 March

- Origin Energy ("**Origin**") advised the Office of Sport that the ash dam wall at Eraring Power Station presented an unacceptable risk to users of the Myuna Bay Sport and recreation Centre ("**Centre**"), asked for the site to be shutdown and offered to pay to relocate client events in the short term, and provide a new facility in the long term.

19 March

- Between receipt of the letter on 5 March and 19 March, the Office undertook a significant number of due diligence activities, including seeking WHS legal advice, engaging Public Works Advisory and other related experts, independent expert review of emergency management planning, reviewing reports provided by Origin and engaging directly with Origin Energy. Under the WHS legislation the PCBU for the Office of Sport is the Executive who can be held individually personally liable for any WHS breaches.
- As a consequence of these investigations and ongoing informal discussions with Origin, the Office of Sport wrote to Origin on 19 March seeking access to further technical information and engineering analysis.

27 March

- After receiving and reviewing analysis, Office of Sport had a meeting with Origin and advisers. Origin advised that
 - the dam wall is at risk in the event of a significant earthquake and as a result Origin will be undertaking significant remedial work to rectify the dam wall and construct a toe buttress at a cost of tens of millions of dollars.
 - Origin Energy has advised that the remediation of the dam wall will take up to 18 months and that their Board believes that the risk to the Centre during this time is unacceptable to them. On this basis, the Board's decision was to grant an "open

Closure of the Myuna Bay Sport and Recreation Centre

cheque book” for restitution so that any financial impediment for the Government did not become a barrier to the decision making process.

- they were requiring their own staff entering the site to go through a case by case risk assessment

28 March

- Office of Sport reviewed information and assessment with the Dam Safety Committee
- Office of Sport provided a brief to the Department of Industry to advise that, as the responsible safety nominee, they had decided to close the centre as of Friday afternoon.
- the reason was that:
 - while dam failure was improbable, the impacts would be catastrophic for any occupants of the centre
 - the nature of the use of the site reduced options for evacuation in the event of failure
 - Origin had offered to pay to relocate events and provide a new centre in the long term, which changed the risk/cost trade-off
- Office of Sport was asked to provide a communications and implementation/business continuity plan to address the needs of clients with current and upcoming bookings.
- Department of Industry advised DPC of the proposed upcoming closure (Tim Reardon and Amy Brown), and DPC advised that Amy Brown would brief the Premier's Office.

29 March

- Dol provided Amy Brown and Tim Reardon with the brief from Office of Sport confirming closure of the centre.
- DPC Communications contacted Dol to ask to be kept informed of any communications.
- Office of Sport prepared draft communications in consultation with Origin, and began arranging alternative arrangements for clients, for advice once the release had been issued.
- Origin issued its statement at approximately 12.30pm advising of the risk and thanking Government for agreeing to close the centre immediately.
- Office of Sport consulted with Department of Industry and DPC on communications. DPC provided proposed suggestions.
- In the afternoon, Office of Sport took further steps to speak with clients and sought to accommodate their needs. The water ski event was flagged as the most immediate, and options were discussed for the event to access the lake from other locations to finish their planned on-water activities. No other suitable sites for this event were identified..
- Office of Sport advised that they had spoken with the organisers of the water ski event and whilst the organisers expressed surprise at the urgency, they were accepting of the need to act as requested and appeared to have no concerns about relocating their dinner off the centre site, or about finishing the event early.

30 March

- At the request of the New Zealand team, the team was relocated to Rydges at Sydney Airport as it was more convenient for the airline departure at 7am Monday morning.

31 March

- Email received by Office of Sport at 7.23 pm from the Australia team organizer (Lisa Beare) expressing extreme disappointment and anger at the decision.

Closure of the Myuna Bay Sport and Recreation Centre

Aussie – Kiwi water skiing challenge

The 2019 Aussie-Kiwi challenge is an annual championship that is hosted bi-annually by each country. The challenge was being held at Myuna Bay from 28 March – 31 March 2019. Access to the water skiing competition was via the Myuna Bay Centre, where competitors were residing.

At approximately 3:00 pm on 29 March Office of Sport contacted the organiser of the Aussie Kiwi Challenge, Mr Neil O'Toole, to inform him the Centre had been closed. Competitors and their families were provided alternative accommodation at hotels in Newcastle from 29 March – 1 April. The remainder of the water skiing events were cancelled. Event organisers were offered a full refund of the uses of the Centre facilities for their entire booking, and organisers were advised competitors out of pocket expenses were also being met.

Financial Implications

Origin Energy will fund the closure of the existing Myuna Bay Sport and Recreation Centre and relocate all existing activities to alternate locations at Origin's cost pending permanent alternate premises being found and a new Centre being built also at their cost. The Office will be seeking to recoup the costs incurred from the cancellation of the event from Origin Energy.

Communication and/or Stakeholder Engagement Strategy

The Communication strategy is in implementaion

Endorsed	Veronica Lee, Executive Director, Corporate Services, Ph. 8754 8708
Date endorsed	1 April 2019
Consultation	N/A
Is the Communications team aware of this brief	<input checked="" type="checkbox"/> Communications team has been consulted on this brief <input checked="" type="checkbox"/> Potential media interest in this brief <input type="checkbox"/> Media release required <input checked="" type="checkbox"/> Communication and/or Stakeholder Engagement Strategy required

Information and Privacy

From: Kelly Rodger <Kelly.Rodger@justice.nsw.gov.au> on behalf of Office of The Secretary <ots@justice.nsw.gov.au>
Sent: Friday, 12 April 2019 1:51 PM
To: Office of the Secretary
Subject: FW: Myuna Bay Sport & Rec Centre - Stantec Report Review
Attachments: Myuna Bay Ash Dam Letter.pdf

Hi Jay,

I spoke with Martin and received this email today. Could you please review (and action if necessary).

Kind regards,
Kelly

Kelly Rodger | Administration Officer
Office of the Secretary | Department of Justice
Locked Bag 5111, Parramatta NSW 2124 | T: 02 8061 9230
Kelly.Rodger@justice.nsw.gov.au | www.justice.nsw.gov.au

From: Martin Dwyer [mailto:martin.dwyer@finance.nsw.gov.au]
Sent: Friday, 12 April 2019 11:01 AM
To: Chris Salkovic (chris.salkovic@damsafety.nsw.gov.au)
Cc: Office of The Secretary
Subject: FW: Myuna Bay Sport & Rec Centre - Stantec Report Review

Chris,
(Chris Salkovic, Director Dams Safety Committee, 0403 681 645)

The Secretary, Dept of Justice (Michael Coutts-Trotter) has requested me forward the review by Public Works Advisory (attached) of the Stantec Report on the Eraring ash dam.

He may wish to contact you seeking the Dams Safety Committee's view about the safe ongoing operation of the Myuna Bay Sport & Rec Centre.

I have copied Michael into this email.

Kind regards

Martin
Martin Dwyer BE FIEAust CPEng NER APEC Engineer IntPE(Aus) MAICD
Director, Engineering Emergency Management
Public Works Advisory | Property NSW
Department of Finance, Services and Innovation
p 02 9240 8710 | m 0401 993 933
e martin.dwyer@finance.nsw.gov.au | www.publicworks.nsw.gov.au
L4, 66 Harrington St, SYDNEY NSW 2000
PO Box N408, Grosvenor Place NSW 1220



From: Martin Dwyer
Sent: Thursday, 4 April 2019 3:21 PM
To: [redacted]@klgates.com'; [redacted]@klgates.com>; 'Nathan Godfrey' <nathan.godfrey@sport.nsw.gov.au>
Subject: Myuna Bay - Stantec Report Review - Under client legal privilege

Under client legal privilege

Nathan,

Attached is our Stantec Review.



Martin

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Information and Privacy

From: Paul O'Reilly
Sent: Friday, 12 April 2019 12:25 PM
To: Michael Coutts-Trotter
Subject: follow up questions - Myuna Bay

Michael,

Some comments on your two questions:

1. Rec centre staff:

This advice was given to the Minister on 4 April re staff:

“Representatives from the Office of Sport Executive met with staff on 3 April 2019. The staff were presented with their future employment options, which included redeployment to other Sport and Recreation Centres (noting there are three Centres within reasonable proximity to the Myuna Bay Centre), voluntary redundancies if staff are unable to travel to a different Centre, an option for redundancy swaps and consideration of re-training opportunities. It was reiterated that staff remain on full pay whilst details of the Centre shutdown arrangements are clarified and further discussions are had with each individual staff member.

The Office of Sport continues to work closely with the affected staff to manage their future employment given that the Centre is likely to be out of operation for up to three years. The Office of Sport’s preferred position is to retain the valuable capability of its existing staff where that can be achieved.”

Further advice from NSW Office of Sport today:

There is a plan to relocate ongoing staff to three neighbouring rec centres in the electorate

- VR calculations are underway, and Origin has offered to pay for VRs
- There is a pool of 15 casual staff. 11 of these are currently in the roster and have been given a commitment that they will be paid for all of their shifts that were already rostered up to 28 April

2. Implementation plan and timeframe for relocation/construction/go live at new rec centre

New site has not yet been identified, but they are exploring a number sites identified by Crown Land and Origin

They will engage a planning consultant now to start working through the scope for a new centre

It is estimated that the timeframe for reopening a new centre is 3 years. This includes:

- Re-zoning of land
- Development application
- Community co-design
- Potentially slower construction because local builders to be engaged

There is also some potential for the original site to come back online as a second site after the dam wall is remediated (2yrs)

There are no plans for an interim site while this relocation/construction takes place. The nearest rec centre is 34kms away

On face value, I think that the Office of Sport needs a tighter plan re business continuity

Regards

Paul

Information and Privacy

From: Paul O'Reilly
Sent: Friday, 12 April 2019 9:11 AM
To: Michael Coutts-Trotter
Subject: FW: Myuna Bay - Stantec Report Review - Under client legal privilege
Attachments: Myuna Bay Ash Dam Letter.pdf

Michael,

The advice from Public Works Advisory to Sport ...

Lead at PWA is Exec Dir - Rebecca Fox

T: [\(02\) 9240 8714](tel:0292408714) | M: [0466 466 178](tel:0466466178) | E: rebecca.fox@finance.nsw.gov.au

From: Veronica Lee <veronica.lee@sport.nsw.gov.au>
Sent: Friday, 12 April 2019 8:45 AM
To: Paul O'Reilly <Paul.O'Reilly2@fac.s.nsw.gov.au>
Cc: Karen Jones <karen.jones@sport.nsw.gov.au>
Subject: FW: Myuna Bay - Stantec Report Review - Under client legal privilege

Paul

Please find attached the report. This was an early engagement and then everything moved very quickly post this. Note this advice was also received post the decision to shut down the Centre.

I am not clear what expertise PWA has in tailings dams.

Let me know if you have any questions.

Regards
Veronica

Veronica Lee | Executive Director, Corporate Services

Office of Sport
Level 3, 6B Figtree Drive, Sydney Olympic Park NSW 2127
☎ (02) 8754 8708 | ✉ veronica.lee@sport.nsw.gov.au



From: Nathan Godfrey
Sent: Thursday, April 04, 2019 4:16 PM
To: Anne Gripper <anne.gripper@sport.nsw.gov.au>; Veronica Lee <veronica.lee@sport.nsw.gov.au>; Matt Miller <matt.miller@sport.nsw.gov.au>
Subject: Myuna Bay - Stantec Report Review - Under client legal privilege

FYI attached review from PWA, to be tabled at the meeting today.

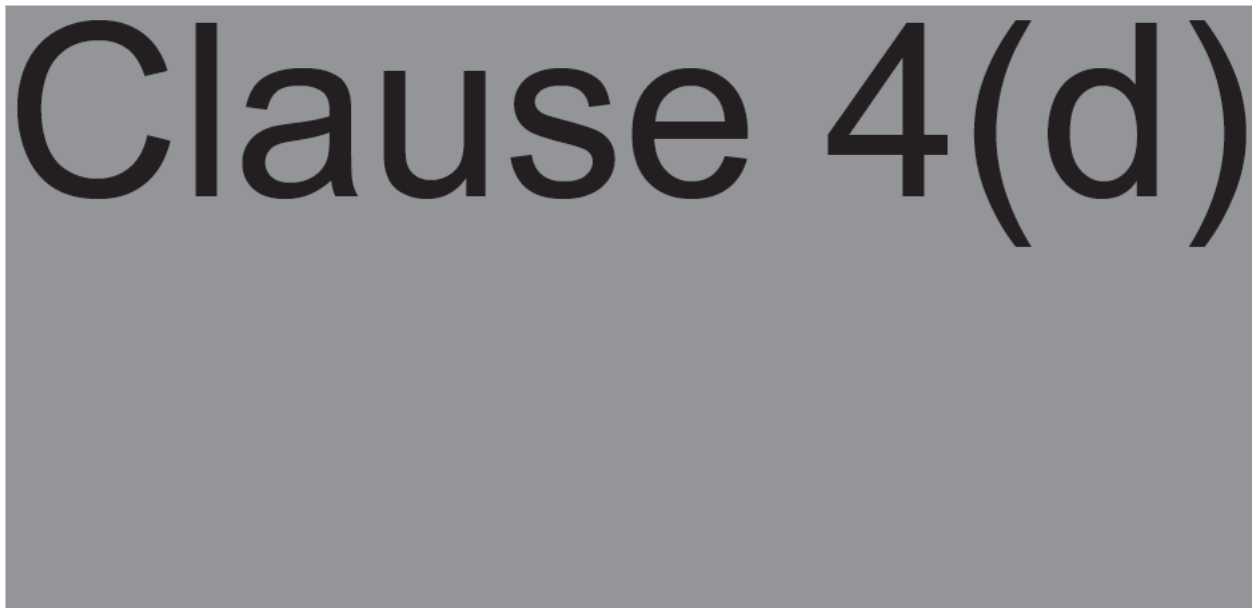
Begin forwarded message:

From: "Martin Dwyer" <martin.dwyer@finance.nsw.gov.au>
To: [redacted]@klgates.com" [redacted]@klgates.com>, "Nathan Godfrey"
<nathan.godfrey@sport.nsw.gov.au>
Subject: Myuna Bay - Stantec Report Review - Under client legal privilege

Under client legal privilege

Nathan,

Attached is our Stantec Review.



Martin

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This message is intended for the addressee named and may contain privileged information or confidential information or both.

Nathan Godfrey
Director of Operations & Programs
NSW Office of Sport
Level 3, 6B Figtree Drive
SYDNEY OLYMPIC PARK NSW 2127

Dear Nathan

ERRING POWER STATION, MYUNA BAY ASH DAM – IMPLICATIONS FOR SAFE OPERATION OF MYUNA BAY SPORT & RECREATION CENTRE

Engagement of NSW Public Works Advisory:

The NSW Office of Sport (Nathan Godfrey) initially contacted Public Works Advisory (PWA, Martin Dwyer) on 8 March, and met with PWA (Martin Dwyer & George Samios) on 12 March to discuss correspondence from Origin Energy Limited (Letter Jarvis/Miller, 5 March 2019). The letter proposed closure of the Myuna Bay Sport & Recreation Centre due to concerns that “material beneath the Dam is susceptible to liquefaction and the Dam wall may be unstable in the event of an Operating Basis Earthquake (~5.7 on the Richter magnitude scale); and in the event that the Dam wall breaks, it is likely to pose a serious threat”.

The NSW Office of Sport had responded to the letter by:

- 1) Immediately developing and implementing an appropriate emergency evacuation plan for the Centre; and
- 2) Seeking expert technical advice (PWA) to fully inform themselves of the safety implications for ongoing operation of the Centre.

Public Works Advisory Initial Approach to the Engagement:

PWA noted that:

- The Dam is a prescribed dam, and that it is not currently on the NSW Dams Safety Committee list of high risk dams.
- The Origin Energy advice (referring to the Stantec report) that the Dam was vulnerable to an earthquake of 5.7 represented a very significant change to the risk rating for the Dam.
- The dam has a 40-year history of safe performance and regular, 5-yearly, comprehensive 3rd party surveillance.
- An appropriate emergency response plan for the Centre had been put in place.

We proposed to follow up on all technical reports relevant to the Dam's safety.

PWA advised the NSW Office of Sport to immediately request Origin to release/grant access to:

- The Stantec report (with annexures)
- Surveillance reports
- Dam safety emergency plans
- Dam break studies
- Permission to access relevant information held by the NSW Dams Safety Committee, and
- Information on the remediation works proposed.

PWA discussed requesting the NSW Dams Safety Committee to provide comment on the dam's safety as an option for the NSW Office of Sport.

Following email correspondence, commencing 25 March, PWA (Martin Dwyer & Michael Neville) met with Origin (Greg Jarvis & Glenn Orgias) on 28 March, where they undertook to provide all requested documents and requested PWA complete their review within three weeks.

Receipt of Relevant Reports and Documentation:

In relation to understanding the liquefaction potential of the Dam and its foundations, the following geotechnical reports were reviewed:

- Stantec, 2019. *Southern Embankment, Eraring Ash Dam, Geotechnical Stability Assessment*. Report Prepared for Origin Energy Eraring Pty Ltd, Project 300001103, Final_Rev2, 194pp, 8 March 2019. (received from the NSW Office of Sport 22 March)
- Electricity Commission, 1980A. *Eraring Power Station. Report on Geotechnical Investigations for Myuna Bay Ash Dam Augmentation. Volume 1 of 3. Myuna Bay Ash Dam and Borrow Areas*. March 1980. (received from John Braybrooke 2 April)
- Electricity Commission, 1980B. *Eraring Power Station. Report on Geotechnical Investigations for Myuna Bay Ash Dam Augmentation. Volume 3 of 3. Figures*. March 1980. (received from Origin 2 April)
- Unisearch, 1982. *Analysis of Liquefaction Potential of Eraring Ash Dam*. Report by Lee, I.K., Valliappan, S., White, W. and Chrandrasekaran, V., prepared on behalf of Unisearch Limited for Electricity Commission of NSW, Power Development Division, 26 October 1982. (received from Origin 2 April).

Commentary on the Reports and Documentation:

The initial correspondence from Origin to the Office of Sport (Letter Jarvis/Miller, 5 March 2019) states that material beneath Myuna Bay Ash Dam "is susceptible to liquefaction and the dam wall may be unstable in the event of an Operating Basis Earthquake (~5.7 on the Richter magnitude scale)," and that this conclusion was based on a commissioned report by a third-party expert, Stantec Inc. (Stantec). On review of the Stantec report, we could find no such nomination of 5.7. The Stantec report defines the Operating Basis Earthquake as having a magnitude of 6.4 M_w (noting the difference magnitude scales).

The Stantec report used twenty (20) CPT probe results to interpret geotechnical profiles beneath the dam. Although the report states that three (3) boreholes were drilled as part of the investigation, there are no borehole locations recorded on Figure 3-1 of the report and no borehole logs appended. The Stantec geotechnical model is completely interpretive. Electricity Commission (1980A) presents logs of three (3) relevant diamond boreholes (LMAD1/D3, LMAD1/D4 and LMAD1/D5), three relevant auger boreholes (EAD3/A7, EAD3/A18 and EAD3/A35), and five (5) Dutch Cone Test probes (EAD3/C5, EAD3/C20, EAD3/C18, EAD3/C22 and EAD3/C27). Critically, the only sandy horizons encountered by the Electricity Commission, interpreted as likely to suffer liquefaction is the ash deposits at the top of each borehole. These investigations were along the approximate alignment of Stantec Section 2, and provide data and insitu/laboratory test results able to be correlated with Stantec CPT's L14, L15, L16 AND L17.

Approximately sixty-two (62) summary soil test results of Undisturbed samples from foundation auger boreholes across the embankment site are presented in Electricity Commission (1980A). These results vary with material type, but generally show higher strength parameters than those adopted in the Stantec report. These data should be used to update the adopted Stantec soil parameters.

Unisearch (1982) found that the ash layer beneath the dam had satisfactory Factors of Safety against liquefaction for normalised ground accelerations of 0.2g from the 6.9 M_w El Centro earthquake of May 1940.

The Stantec report is less accurate than it could be due to the absence of extensive historical data. The incorporation of past Electricity Commission investigation data would enhance the Stantec foundation geotechnical model, especially regarding foundation material types and material strength properties. Use of an enhanced geotechnical model would provide greater confidence in opinions* presented on liquefaction potential.

Subsequent Actions

On 29 March, the Office of Sport announced the immediate closure of the Centre to allow Origin to undertake remediation works.

Recommendations

The NSW Office of Sport provide this review to Origin with a recommendation that it provided to the Dams Safety Committee.

PWA provide Origin with a copy of the Electricity Commission, 1980A report.

Origin should request Stantec to update its report and incorporate all relevant historical geotechnical data and update its geotechnical stability and liquefaction assessment. Origin should advise all downstream affected parties of any changes to the Dam status.

The Office of Sport request Origin to provide an updated Stantec report, so that the Office of Sport can be fully informed about the medium and longer term future for the Centre.

Further Assessment

Ideally, the updated Stantec report should be available for review within 3 months. Public Works Advisory would be happy to assist the Office of Sport to review the updated report for quality and completeness and its implications for the Centre.

Yours sincerely



Martin Dwyer
Director, Engineering Emergency Management

4th April 2019

*Opinion is derived from consideration of relevant available facts, interpretations and analysis and/or the exercise of judgement (Institution of Engineers Australia, 1987. Guidelines for the Provision of Geotechnical Information in Construction Documents, 19p).

Information and Privacy

From: Paul O'Reilly
Sent: Friday, 12 April 2019 8:13 AM
To: Michael Coutts-Trotter
Subject: Myuna Bay update

Michael,

An update on the Myuna Bay issue.

The peer review process is coming together.

I am chasing the consultants today, with a view to locking in the review process by tonight or Monday. I understand that we can expect the review to be completed within days, once the consultant starts work.

I understand my role is simply to facilitate the peer review of the two technical reports, and that others will manage the review of the Office of Sport decision-making process etc. Please let me know if I have got that wrong.

Some risks that I have picked up overnight:

1. According to Office of Sport the regulator (Dam Safety Committee) requires Origin to undertake a peer review of the Dam Stability Report. This is normal process. They were about to undertake this peer review but have now paused it because of the Minister's commitment to undertake his own review. The regulator may still require Origin Energy to undertake a peer review, because this is normal process.

Important to remember that Origin (and the regulator) still have a problem with the dam failure risk regardless of whether the sport centre stays or goes ... so it is possible that at the end of this there are two separate peer review reports, potentially with conflicting findings.

2. John Sidoti's commitment on ABC Radio 4 April - urgently commission an independent expert review of the advice (the reports) received by Origin Energy. Whoever is assigned to the review is to be independent and is at arms' length from Origin Energy and is qualified.

The experts that we were given to me to choose from are very qualified, but they were identified by Origin Energy. There could be a concern that this compromises their independence ... counterpoint is that there are a limited number of independent tailings dam specialists, and that Origin commissions independent reviews with consultants on a regular basis ... again, this is a normal requirement of the regulator. I think this OK, but would appreciate your view.

Further mitigation ... I have asked the Public Works Advisory agency in DFSI to run a QA lens over the peer review (scope and choice of consultant).

Thanks

Paul

Information and Privacy

From: Matt Miller <matt.miller@sport.nsw.gov.au>
Sent: Thursday, 11 April 2019 5:47 PM
To: Michael Coutts-Trotter
Subject: RE: MYUNA

Done and connected with him just now

I will liaise with Paul unless I think we are on a sensitive matter that you also need to know

Matt Miller



From: Michael Coutts-Trotter <Michael.Coutts-Trotter@fac.s.nsw.gov.au>
Sent: Thursday, April 11, 2019 5:45 PM
To: Matt Miller <matt.miller@sport.nsw.gov.au>
Subject: Re: MYUNA

I've got a call into him now.

Michael Coutts-Trotter
Secretary
NSW Department of Family and Community Services

On 11 Apr 2019, at 5:25 pm, Matt Miller <matt.miller@sport.nsw.gov.au> wrote:

I have not heard from Peter I think you said was going to be your "point guard" on Myuna

Regards

Matt Miller
Chief Executive

Level 3, 6B Figtree Drive, Sydney Olympic Park NSW 2127
Locked Bag 1422, Silverwater NSW 2128

<image001.jpg>

☎ (02) 8754 8701 | ☎ 0419 720 822

✉ matt.miller@sport.nsw.gov.au | 🌐 sport.nsw.gov.au

<image002.png> <image003.png> <image004.png> <image005.png>

<image006.jpg>

Information and Privacy

From: Matt Miller <matt.miller@sport.nsw.gov.au>
Sent: Thursday, 11 April 2019 5:25 PM
To: Michael Coutts-Trotter
Subject: MYUNA

I have not heard from Peter I think you said was going to be your "point guard" on Myuna

Regards

Matt Miller

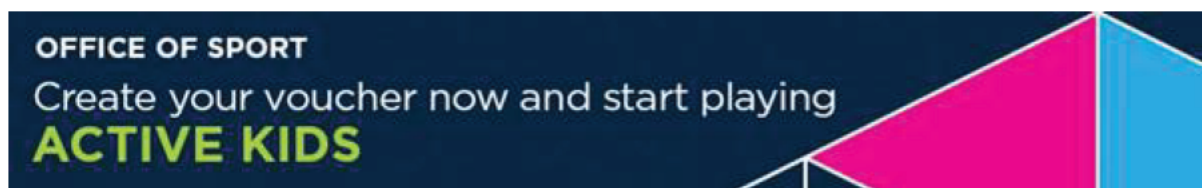
Chief Executive



Level 3, 6B Figtree Drive, Sydney Olympic Park NSW 2127
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☎ (02) 8754 8701 | ☎ 0419 720 822

✉ matt.miller@sport.nsw.gov.au | 🌐 sport.nsw.gov.au



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Information and Privacy

From: Matt Miller <matt.miller@sport.nsw.gov.au>
Sent: Thursday, 11 April 2019 5:21 PM
To: Michael Coutts-Trotter
Subject: FW: MYUNA BAY PEER REVIEW STATUS
Attachments: [REDACTED]

Matt Miller



From: Matt Miller
Sent: Thursday, April 11, 2019 8:36 AM
To: michael coutts-trotter (michael.coutts-trotter@facns.nsw.gov.au) <michael.coutts-trotter@facns.nsw.gov.au>
Subject: FW: MYUNA BAY PEER REVIEW STATUS

Michael

I have deleted the two reports and will send them separately

Matt Miller



From: Matt Miller
Sent: Wednesday, April 10, 2019 6:08 PM
To: michael coutts-trotter (michael.coutts-trotter@facns.nsw.gov.au) <michael.coutts-trotter@facns.nsw.gov.au>
Cc: 'Nicolle Nasr' <nicolle.nasr@parliament.nsw.gov.au>
Subject: MYUNA BAY PEER REVIEW STATUS

Michael

Further to our conversation earlier this afternoon, I agree that it makes more sense for the peer review process to be led by the Department as it provides a stronger sense of independence than if the Office of Sport auspiced the review work.

As you are aware, there are two reports which are central to the consideration of the operational safety of the Centre under ash dam wall failure. One report relates to dam wall stability and the other relates to the modeling of the impacts of dam wall failure on surrounding areas (Dam Break Assessment Report).

I have attached the two reports as provided by Origin Energy.

I have also attached the CVs of three independent experts which I am advised would be appropriate to undertake a peer review of the dam wall stability report by Stantec.

I am advised these three experts are not appropriate to conduct a peer review of the Dam Break Assessment Report. I am currently seeking names of possible experts to assist the Department with this latter review.

I expect to be able to provide further advice tomorrow on names for the latter review.

If I can assist further, please do not hesitate to contact me any time on mobile

Regards

Matt Miller

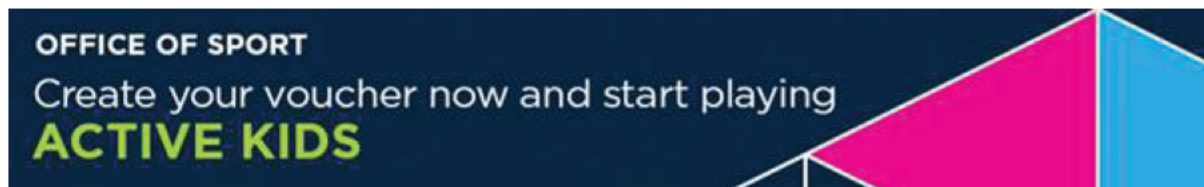
Chief Executive



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Information and Privacy

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Sent: Thursday, 11 April 2019 5:21 PM
To: Michael Coutts-Trotter
Subject: FW: MYUNA BAY PEER REVIEW STATUS
Attachments: Williams D J Prof-Professional CV-2019.pdf

Michael

Don't know why but this has bounced back

Matt Miller



From: Matt Miller
Sent: Thursday, April 11, 2019 8:36 AM
To: michael coutts-trotter (michael.coutts-trotter@fac.nsw.gov.au) <michael.coutts-trotter@fac.nsw.gov.au>
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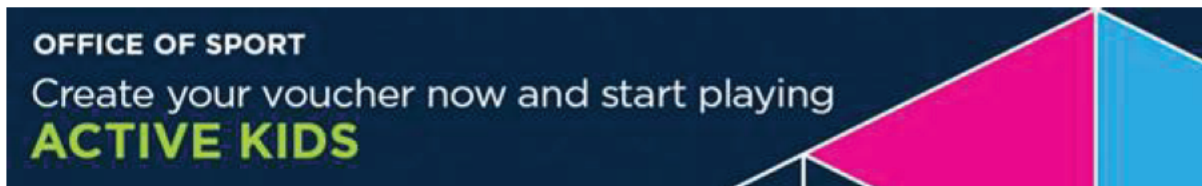
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Curriculum Vitae

Professor David J Williams

BE (Hons I), PhD, FIEAust, MAusIMM, CPEng, RPEQ
 ABN: 61 643 455 470
 C/- School of Civil Engineering
 The University of Queensland QLD 4072

Telephone: (07) 3365 3642

Mobile: 0417 193 591

Facsimile: (07) 3365 4599

Email: D.Williams@uq.edu.au

Website: <http://geotechnical.civil.uq.edu.au/>

Professor David Williams is a Chartered and Registered Professional Engineer with over 40 years of experience. His discipline area is Geotechnical Engineering, and he is internationally recognised for his expertise and experience in mine waste management and mine closure. He is particularly recognised for his expertise in tailings dams, and the closure and rehabilitation of tailings dams and waste rock dumps, including the design of covers. He carries out high-level reviews of and provides expert advice and opinion on tailings dam designs, tailings and waste rock facility closure, and the closure and rehabilitation of open pits.

He authored in 2016 the Tailings Management Handbook, as part of the Commonwealth Leading practice sustainable development program for the mining industry. He is on the Working Party for the Australian National Committee for Large Dams Guidelines on Tailings Dams – Planning, Design, Construction, Operation and Closure published in 2012 and commissioned to write updates.

QUALIFICATIONS

1979	PhD, Soil Mechanics	University of Cambridge, England
1975	BE (Hons I), Civil Engineering	Monash University, Australia

AWARDS/DISTINCTIONS/FELLOWSHIPS

1996	Japan Society for the Promotion of Science Fellow
1995	The University of Queensland Collaborative Research Travel Grant
1995	Australian Minerals and Energy Environment Foundation (AMEEF) Travelling Scholarship
1993	Australian Research Fellow (Industry)
1992	AMEEF Environmental Excellence Award (Individual)
1990	Masuda Fellow for Collaborative Research in Japan, Jan-Feb
1989	The University of Queensland Collaborative Research Travel Grant

MEMBERSHIPS

- From 2015 Member, Australasian Institute of Mining and Metallurgy
- From 2015 Registered Professional Engineer of Queensland (RPEQ)
- 1986-1987 Member, National Committee, Australian Geomechanics Society
- 2007-2008
- From 1984 Member, Queensland Committee, Australian Geomechanics Society, Chair in 1986
- From 1980 Member, Australian Geomechanics Society
- From 1980 Member then Fellow, Institution of Engineers, Australia

EMPLOYMENT HISTORY

- 2007 – Present Professor of Geotechnical Engineering
 Founder and Director of Geotechnical Engineering Centre
 Manager of the Large Open Pit Project
 School of Civil Engineering
 The University of Queensland
- 1994 – 2007 Associate Professor of Geomechanics
 Department of Civil Engineering
 The University of Queensland
- 1990 – 1994 Senior Lecturer in Geomechanics
 Department of Civil Engineering
 The University of Queensland
- 1983 – 1989 Lecturer in Geomechanics
 Department of Civil Engineering
 The University of Queensland
- 1980 – 1983 Geotechnical Engineer
 Melbourne and Brisbane
 Golder Associates Pty Ltd
- 1979 – 1980 Engineer
 Country Roads Board (CRB) of Victoria
- 1976 – 1979 Research Student
 University of Cambridge, England
- 1972 – 1976 Engineer, Cadet Engineer, CRB, Victoria

SUMMARY OF CONSULTING COMMISSIONS

Board and Expert Panel Memberships

- Member of the Expert Panel commissioned to investigate the technical causes of the failure of Tailings Dam I at the Córrego de Feijão Mine in the State of Minas Gerais, Brazil on 25 January 2019
- Member of Independent Technical Review Board for Rio Tinto Alcan Yarwun Residue Management Area Embankment Raise Designs from 2016
- Member of Independent Technical Review Panel of Life-of-Mine Tailings Storage Facility at Glencore's McArthur River Mine, Northern Territory, Australia from 2015
- Member of Northern Territory EPA Board, from 2012 to 2014

Peer Reviews of Major Projects

- Sole Independent Expert Geotechnical Reviewer for Unity Mining Limited from 2016
- Sole Independent Expert Geotechnical Reviewer for Bluestone Mines Tasmania JV Pty Ltd from 2015
- Sole Reviewer of Proposed Integrated Waste Landform Design for Central Eyre Iron Project in 2015
- Sole Independent Expert Geotechnical Reviewer for Rio Tinto Alcan Gove Residue Disposal Area from 2015
- Sole Independent Expert Geotechnical Reviewer and Annual Dam Inspections for QAL Residue Disposal Area and Ash Dams from 2013
- Sole Independent Expert Geotechnical Reviewer for Rio Tinto Alcan Yarwun Residue Management Area from 2013
- Led International Peer Review for the South Deposit TSF at Savage River Mine in Tasmania in 2012/13
- Sole Independent Expert Geotechnical Reviewer for Rio Tinto Alcan Weipa Tailings Storage Facilities in 2012 and 2014
- Peer Review of Harvey Creek Non-Erodable Waste Rock Dump Design for Ok Tedi Mining Limited in 2010/11
- Member of Expert Peer Review Team for Rio Tinto Alcan Weipa Tailings Storage Facilities from 2009
- Member of the International Technical Advisory Group reporting to the South Australian Government on Rehabilitation of Brukunga Pyrite Mine from 2007
- Led International Peer Reviews for the Savage River Rehabilitation Project in Tasmania in 2002, 2005, 2009 and 2013
- Led International Peer Review on handling acid generating waste rock dumping and dump closure strategies at Cadia Hill Gold Mine in New South Wales in 2002/3

- Member of the Peer Review Team for Stage 2 of the Stuart Oil Shale Project at Gladstone in Queensland in 2004
- Peer Reviewer of the rehabilitation of the San Manuel Copper Mine tailings facility in Arizona, USA in 2004
- Member of the 2005 Peer Review Team that reviewed future red mud disposal, containment and rehabilitation at QAL at Gladstone in Queensland in 2005
- Geotechnical Reviewer of the breach of the co-disposal dam at Burton Coal in Queensland in 2005
- Peer Reviewer of the conceptual closure plan for Worsley Alumina red mud storage in Western Australia in 2005
- Peer Reviewer for waste rock dump covers for Century Mine in North Queensland from 2007
- During 2006, David was an Expert Advisor to the EIS team for the Olympic Dam Expansion Project in South Australia, providing expert input on disposal, hydrology and closure issues for both waste rock and tailings

Expert Witness

- Expert witness through Corrs Chambers Westgarth Lawyers, in relation to coal washery rejects used as filling for residential sub-division purposes
- Expert witness through McCullough Robertson Lawyers, in relation to the failure of a concrete arch reclaim tunnel beneath a coal stockpile
- Expert witness in relation to professional misconduct cases brought by the Queensland Professional Engineers Registration Board
- Numerous expert witness commissions related to residential and commercial building footing failures and slope instability

Consultancies

Professor David John Williams is widely sought for his expert input, in particular to mine waste disposal and mine site rehabilitation and remediation at operating mines throughout Australia and overseas. In Australia, he has consulted on numerous coal mines throughout Queensland and New South Wales; on Red Dome Gold Mine closure, Kidston closure, Osborne waste disposal, Ivanhoe Cloncurry mine closure, Phosphate Hill gypsum disposal, QERL processed waste storage facility closure, and Century Zinc Mine waste rock dumping in Queensland; Cadia Hill Gold Mine waste rock dumping and dump closure in New South Wales; Mt Morgans Gold Mine co-disposal, WMC Resources' nickel operations tailings closure and Minara heap leaching in Western Australia; waste disposal issues at the Ballarat East and Heathcote gold mines in Victoria; and a review of ARD treatments at Savage River Mine in Tasmania. Overseas he has consulted on tailings depositional design and water balance for the Kori Kollo Mine in Bolivia, a review of co-disposal of tailings and waste rock at Porgera Gold Mine and the closure of Misima Gold Mine in PNG, waste disposal design for the Goro Nickel project in New Caledonia, and advice on co-disposal for the Martabe Project in Indonesia.

David has been involved in material characterisation testing and the design of numerous mine waste covers throughout Australia, and the design, installation and monitoring of lysimeters and mine waste covers at Kidston Gold Mines, WMC Resources' Mt Keith Nickel Operations, QERL's Stuart Oil Shale Project, a large-scale trial waste rock dump at Cadia Hill Gold Mine, and a large-scale trial tailings cell at Jubilee Nickel Mine.

David has been invited to visit numerous mining regions and individual mines throughout Australia, and in Canada, the USA, Brazil, South Africa, UK, China, Chile, PNG, New Caledonia, Spain and Mozambique.

MAJOR RESEARCH ACHIEVEMENTS

From 1989, Professor Williams carried out research under NERDDC and ACARP Projects on the characterisation of the deposit formed on the pumped co-disposal of combined washery wastes, which has since been adopted at numerous coal mines in Australia and Indonesia.

From 1996, David developed the store/release cover system suited to seasonally dry climates, for application to covering acid generating rock dumps at Kidston Gold Mine in north Queensland, and has had a long-term involvement in researching and monitoring this cover system, as evidenced by his numerous papers on his research on this topic. The store/release cover system on the tops of the Kidston rock dumps has been shown to limit percolation to less than 1% of rainfall, and to support a sustainable vegetation cover comparable to that occurring along water courses in the area. He was also involved in the development of a rehabilitation strategy for the side slopes of the rock dumps at Kidston designed to maximise geotechnical and erosional stability while promoting vegetation, and analysed the wetting up by rainfall infiltration and subsequent drain-down of and seepage from the rock dumps. Store/release covers have now been adopted at numerous mine sites in dry climates worldwide.

From 1999 to 2001, David led ACARP Project C8039 to develop a risk assessment and cost-effectiveness analysis for the rehabilitation of Bowen Basin coal mine spoil. The results of the project were reported in a Literature Review and Commentary and Project Final Report, plus a spreadsheet-based risk assessment and cost-effectiveness analysis, available at: www.uq.edu.au/civil/. In 2006, David undertook a closure study for Xstrata's new Rolleston Coal Project in the Bowen Basin Coalfields.

David has since 2000 been involved in the closure design for the waste rock dump at Cadia Hill Gold Mine in New South Wales, including studies on the use of mixtures of benign trafficked rock and tailings as an alternative cover material, to overcome the shortage of suitable natural materials. In 2002/3, he led an international peer review of the rock dumping operation and closure plan. In 2004, David was successful in an ARC Linkage grant application with Cadia totalling over \$ 700,000 over 3 years, which has led to the construction of a 15 m high, world-class, demonstration, instrumented rock dump covering 7,000 m². The instrumentation includes a full weather station, 24 lysimeters at the base of the dump to monitor seepage, lysimeters on the top surface to monitor rainfall infiltration and three store/release trial covers constructed using natural and mine waste materials. To date it has shown that about 70% of the rainfall incident on the traffic-compacted top of the dump infiltrates, with the majority going into storage within the dump during the first year, and only small amounts percolating to the base of the dump. The behaviour of the cover trials has to date been dominated

by the moisture state at which they were constructed. Monitoring of the instrumented rock dump is expected to continue for at least 10 years.

From 2000 to 2003, David was a principal researcher into the physical and geochemical nature of acid generating waste rock dumps in Southern Carolina, USA (Rio Tinto's Ridgeway Mine) and Sudbury, Canada (Inco's Whistle Dump), sampled as they were being excavated and moved to a pit.

From 2001 to 2005, David led an ARC Spirt research project with industry partner WMC Resources focussed on an assessment of the long-term seepage and runoff from mine tailings storage facilities, to facilitate lease surrender. This included the monitoring of trial covers on tailings over the duration of the project and large-scale laboratory column testing and numerical analyses. Natural salt pan and rocky slope analogues under the same climatic and similar geochemical conditions were also studied to point to sustainable approaches for rehabilitating the tailings storage facilities.

From 2010, David has led three ACARP Projects, C19022, C20047 and C25040, investigating the settlement and stability of high coal mine spoil, the behaviour of problematic clay-rich coal mine tailings, and the behaviour of "mud" derived from spoil on wetting-up.

David has been sponsored by mining companies and consultants to visit numerous mining regions and mine sites worldwide, both to impart and extend his knowledge. Since 2000, he has developed a relationship with the International Network for Acid Prevention (INAP), and has contributed to INAP-sponsored research and development projects and workshops involving mine sites in the USA, Canada, Australia and PNG.

Research funding has totalled over \$10 million, including funding from ARC, ARC-SPIRT, ARC Linkage, NERDDC, ACARP-AMIRA, ACARP, MIM CRA-ATD, Kidston Gold Mines, BHP Coal and WMC Resources, Cadia Holdings, Jubilee Mines NL. Professor Williams has over 300 refereed publications, including three book chapters, over 100 refereed journal articles and over 200 refereed conference publications, plus numerous research and consulting reports. About two-thirds of these publications are in the mine waste field.

SELECTED PUBLICATIONS

Geotechnical News Articles

David Williams. (2018). Tailings management accounting – Should net present value be applied tailings management? *Geotechnical News*, September 2018, 16-18.

David Williams. (2018). Effective tailings disposal and storage design using instrumented column testing. *Geotechnical News*, June 2018, 27-30.

David Williams and Timothy Rohde. (2008). Field measurements of mine rock dump rainfall infiltration and base seepage. *Geotechnical News*, March 2008, 47-51.

David Williams. (2006). Why waste rock piles will seep for many years after being covered? *Geotechnical News*, September 2006, 49.

Ai Binh Tran, Pamela Fines, Stuart Miller, **David Williams** and Ward Wilson. (2003). Hydrologic and geochemical characterization of two full-scale waste rock piles – A Joint University/Industry Research Program Sponsored by INAP. *Geotechnical News*, September 2003.

David Williams. (2002). Addressing the Expectations for Mine Site Rehabilitation of Stakeholders of the Minerals Industry? An Australian Perspective. *Geotechnical News*, October 2002.

David Williams. (2001). What is co-disposal? *Geotechnical News*, April 2001.

Books and Book Chapters

Williams, D.J. (2016). *Tailings management: Leading practice sustainable development program for the mining industry*. Canberra, ACT Australia: Commonwealth of Australia.

Williams, D.J. (2015). Placing soil covers on soft mine tailings. In: *Ground Improvement Case Histories: Compaction, Grouting and Geosynthetics*, 51–81. Kidlington, Oxford United Kingdom: Elsevier.

Williams, D.J. (2005). Chapter 17: Placing covers on soft tailings. In: *Ground Improvement-Case Histories*, 491-512. Eds B. Indraratna and Chu Jian. Elsevier.

Williams, D.J. (2001). Chapter 30: Assessment of Embankment Parameters. In: *Slope Stability in Surface Mining*, 275-284. Eds W.A. Hustrulid, M.J. McCarter and D.J.A Van Zyl. Society for Mining, Metallurgy, and Exploration, Inc., Littleton, Colorado, USA.

Williams, D.J. (1996). Chapter 7: Minimisation and Management of Solid Wastes. In: *Environmental Management in the Australian Minerals and Energy Industry*, 157-188. Ed D.R. Mulligan. Sydney, UNSW Press in association with Australian Minerals and Energy Environment Foundation, 1996.

Selected Refereed Journal Articles

Xu, Y., Methiwala, J., **Williams, D.J.** and Serati, M. (2018). Strength and consolidation characteristics of clay with geotextile-encased sand column. *Proceedings of the Institution of Civil Engineers: Ground Improvement*, **171**(3): 125-134.

Shokouhi, A., Zhang, C. and **Williams, D.J.** (2018). Settling, consolidation and desiccation behaviour of coal tailings slurry. *Mining Technology: Transactions of the Institute of Mining and Metallurgy*, **127**(1): 11p.

To, P., Scheuermann, A. and **Williams, D.J.** (2018). Quick assessment on susceptibility to suffusion of continuously graded soils by curvature of particle size distribution. *Acta Geotechnica*, **13**(5): 1241-1248.

Llano-Serna, M.A., Farias, M.M., Pedroso, D.M., **Williams, D.J.** and Sheng, D. (2018). An assessment of statistically based relationships between critical state parameters. *Geotechnique*, **68**(6): 556-560.

Marques, E.A.G., **Williams, D.J.**, Assis, I.R. and Leao, M.F. (2017). Effects of weathering on characteristics of rocks in a subtropical climate: weathering morphology, in situ, laboratory and mineralogical characterization. *Environmental Earth Sciences*, **76**(17): 602.

Shokouhi, A. and **Williams, D.J.** (2017). Volume change behaviour of mixtures of coarse coal reject and tailings. *Transactions of the Institution of Mining and Metallurgy, Section A: Mining Technology*, **126**(3): 163-176.

Van Wijk, I., **Williams, D.J.** and Serati, M. (2017). Development and application of sustainability models for unsealed road pavements. *Transportation Research Record*, 2657: 89-98.

Ghamgosar, M., Erarslan, N. and **Williams, D.J.** (2016). Experimental investigation of fracture process zone in rocks damaged under cyclic loadings. *Experimental Mechanics*, 1-17.

Tun, Y.W., Pedroso, D.M., Scheuermann, A. and **Williams, D.J.** (2016). Probabilistic reliability analysis of multiple slopes with genetic algorithms. *Computers and Geotechnics*, **77**, 68-76.

Karlovsek, J., Schwing, M., Chen, Z., Wagner, N., **Williams, D.J.** and Scheuermann, A. (2016). Dielectric measurement method for real-time monitoring of initial hardening of backfill materials used for underground construction. *Journal of Geophysics and Engineering*, **13**(2): S19-S27.

Schwing, M., Wagner, N., Karlovsek, J., Chen, Z., **Williams, D.J.** and Scheuermann, A. (2016). Radio to microwave dielectric characterisation of constitutive electromagnetic soil properties using vector network analyses. *Journal of Geophysics and Engineering*, **13**(2): S28-S38.

Barast, G., Razakamanantsoa, A.-R., Djeran-Maigre, I., Nicholson, T. and **Williams, D.J.** (2016). Swelling properties of natural and modified bentonites by rheological description. *Applied Clay Science*, **142**: 60-68.

- Serati, M., Alehossein, H. and **Williams, D.J.** (2016). Theoretical treatment of disc cutters subjected to general cutting forces. *Journal of Engineering Mathematics*, **100**: 25p.
- Indrawan, I.G.B., **Williams, D.J.** and Scheuermann, A. (2016). Effects of saline coal seam gas water on consistency limits, compaction characteristics and hydraulic conductivities of clays used for liners. *Engineering Geology Special Publication*, **27**(1): 227-237.
- Llano-Serna, M. A., Farias, M. M., Pedroso, D. M., **Williams, D. J.** and Sheng, D. (2017). An assessment of statistically based relationships between critical state parameters. *Geotechnique*, **16**, 5p.
- Marques, E.A.G., **Williams, D.J.**, Assis, I.R. and Leao, M.F. (2017). Effects of weathering on characteristics of rocks in a subtropical climate: weathering morphology, in situ, laboratory and mineralogical characterization. *Environmental Earth Sciences*, **76**(17): 602.
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- Zbik, M.S., **Williams, D.J.** and Trzciński, J.T. (2017). Micelle-like microaggregate morphology in framework of gelled montmorillonite. *Membrane Science and Technology*, **7**(1): 4p.
- Van Wijk, I., **Williams, D.J.** and Serati, M. (2017). Development and application of sustainability models for unsealed road pavements. *Transportation Research Record*, 2657: 89-98.
- Indrawan, I.G.B., **Williams, D.J.** and Scheuermann, A. (2016). Effects of saline coal seam gas water on consistency limits, compaction characteristics and hydraulic conductivities of clays used for liners. *Engineering Geology Special Publication*, **27**(1): 227-237.
- Trzcinski, J.T., **Williams, D.J.** and Zbik, M.S. (2015). Can hydrocarbon contamination influence clay soil grain size composition? *Applied Clay Science*, **109-110**: 49-54.
- Serati, M., Alehossein, H. and **Williams, D.J.** (2015). Estimating the tensile strength of super hard brittle materials using truncated spheroidal specimens. *Journal of the Mechanics and Physics of Solids*, **78**, 123-140.
- Zbik, M.S., **Williams, D.J.**, Song, Y-F and Wang, C.C. (2015). How the hydro-gel flocculation microstructure changes. *Colloids and Surfaces A: Physicochemical and Engineering Aspects*, **469**, 11-19.
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Information and Privacy

From: Paul O'Reilly
Sent: Thursday, 11 April 2019 8:56 AM
To: Michael Coutts-Trotter
Subject: Re: MYUNA BAY ORIGIN REPORT1

Thanks Michael

Meeting with Paul V now, who also wants to discuss Myuna Bay. Will call Matt Miller after that

Paul

Sent from my iPhone

> On 11 Apr 2019, at 8:53 am, Michael Coutts-Trotter <Michael.Coutts-Trotter@facns.nsw.gov.au> wrote:

>

>

> From: Matt Miller <matt.miller@sport.nsw.gov.au>

> Sent: Thursday, 11 April 2019 8:37 AM

> To: Michael Coutts-Trotter <Michael.Coutts-Trotter@facns.nsw.gov.au>

> Subject: FW: MYUNA BAY ORIGIN REPORT1

>

>

>

> Matt Miller

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>

> From: Matt Miller

> Sent: Wednesday, April 10, 2019 6:08 PM

> To: michael.coutts-trotter

> (michael.coutts-trotter@facns.nsw.gov.au<mailto:michael.coutts-trotter@

> facns.nsw.gov.au>)

> <michael.coutts-trotter@facns.nsw.gov.au<mailto:michael.coutts-trotter@

> facns.nsw.gov.au>>

> Cc: 'Nicolle Nasr'

> <nicolle.nasr@parliament.nsw.gov.au<mailto:nicolle.nasr@parliament.nsw

> .gov.au>>

> Subject: MYUNA BAY PEER REVIEW STATUS

>

> Michael

>

> Further to our conversation earlier this afternoon, I agree that it makes more sense for the peer review process to be lead by the Department as it provides a stronger sense of independence than if the Office of Sport auspiced the review work.

>

> As you are aware, there are two reports which are central to the consideration of the operational safety of the Centre under ash dam wall failure. One report relates to dam wall stability and the other relates to the modeling of the impacts of dam wall failure on surrounding areas (Dam Break Assessment Report).

>

> I have attached the two reports as provided by Origin Energy.

>

> I have also attached the CVs of three independent experts which I am advised would be appropriate to undertake a peer review of the dam wall stability report by Stantec.

>

> I am advised these three experts are not appropriate to conduct a peer review of the Dam Break Assessment Report. I am currently seeking names of possible experts to assist the Department with this latter review.

>

> I expect to be able to provide further advice tomorrow on names for the latter review.

>

> If I can assist further, please do not hesitate to contact me any time

> on mobile

>

> Regards

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>

> Matt Miller

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> Chief Executive

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Information and Privacy

From: Matt Miller <matt.miller@sport.nsw.gov.au>
Sent: Thursday, 11 April 2019 8:38 AM
To: Michael Coutts-Trotter
Subject: FW: MYUNA BAY ORIGIN REPORT 2
Attachments: Stability Assessment_ERAD_Southern Embankment_TLG_Final_Rev2G.pdf

Categories: Yellow category

Matt Miller



From: Matt Miller
Sent: Wednesday, April 10, 2019 6:08 PM
To: michael.coutts-trotter (michael.coutts-trotter@fac.s.nsw.gov.au) <michael.coutts-trotter@fac.s.nsw.gov.au>
Cc: 'Nicolle Nasr' <nicolle.nasr@parliament.nsw.gov.au>
Subject: MYUNA BAY PEER REVIEW STATUS

Michael

Further to our conversation earlier this afternoon, I agree that it makes more sense for the peer review process to be lead by the Department as it provides a stronger sense of independence than if the Office of Sport auspiced the review work.

As you are aware, there are two reports which are central to the consideration of the operational safety of the Centre under ash dam wall failure. One report relates to dam wall stability and the other relates to the modeling of the impacts of dam wall failure on surrounding areas (Dam Break Assessment Report).

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I expect to be able to provide further advice tomorrow on names for the latter review.

If I can assist further, please do not hesitate to contact me any time on mobile

Regards

Matt Miller

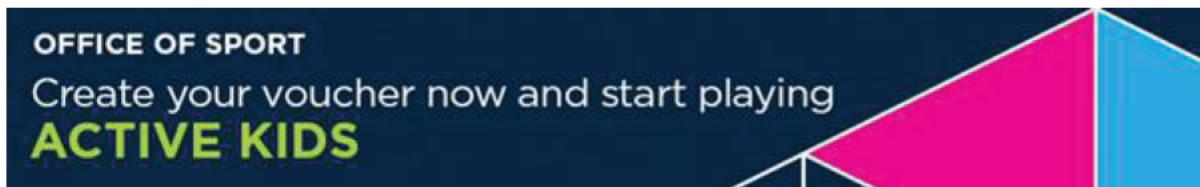
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Information and Privacy

From: Matt Miller <matt.miller@sport.nsw.gov.au>
Sent: Thursday, 11 April 2019 8:37 AM
To: Michael Coutts-Trotter
Subject: FW: MYUNA BAY ORIGIN REPORT1
Attachments: 2018 - Stantec - Dam Break Assessment Eraring Ash Dam FINAL.pdf

Categories: Yellow category

Matt Miller



From: Matt Miller
Sent: Wednesday, April 10, 2019 6:08 PM
To: michael.coutts-trotter (michael.coutts-trotter@fac.s.nsw.gov.au) <michael.coutts-trotter@fac.s.nsw.gov.au>
Cc: 'Nicolle Nasr' <nicolle.nasr@parliament.nsw.gov.au>
Subject: MYUNA BAY PEER REVIEW STATUS

Michael

Further to our conversation earlier this afternoon, I agree that it makes more sense for the peer review process to be lead by the Department as it provides a stronger sense of independence than if the Office of Sport auspiced the review work.

As you are aware, there are two reports which are central to the consideration of the operational safety of the Centre under ash dam wall failure. One report relates to dam wall stability and the other relates to the modeling of the impacts of dam wall failure on surrounding areas (Dam Break Assessment Report).

I have attached the two reports as provided by Origin Energy.

I have also attached the CVs of three independent experts which I am advised would be appropriate to undertake a peer review of the dam wall stability report by Stantec.

I am advised these three experts are not appropriate to conduct a per review of the Dam Break Assessment Report. I am currently seeking names of possible experts to assist the Department with this latter review.

I expect to be able to provide further advice tomorrow on names for the latter review.

If I can assist further, please do not hesitate to contact me any time on mobile

Regards

Matt Miller

Chief Executive



Level 3, 6B Figtree Drive, Sydney Olympic Park NSW 2127
Locked Bag 1422, Silverwater NSW 2128

☎ (02) 8754 8701 | ☎ 0419 720 822

✉ matt.miller@sport.nsw.gov.au | 🌐 sport.nsw.gov.au



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Clause 4(d)

Information and Privacy

From: Matt Miller <matt.miller@sport.nsw.gov.au>
Sent: Thursday, 11 April 2019 8:36 AM
To: Michael Coutts-Trotter
Subject: FW: MYUNA BAY PEER REVIEW STATUS
Attachments: Williams D J Prof-Professional CV-2019.pdf; [REDACTED]

Categories: Yellow category

Michael

I have deleted the two reports and will send them separately

Matt Miller



From: Matt Miller
Sent: Wednesday, April 10, 2019 6:08 PM
To: michael.coutts-trotter (michael.coutts-trotter@facns.nsw.gov.au) <michael.coutts-trotter@facns.nsw.gov.au>
Cc: 'Nicolle Nasr' <nicolle.nasr@parliament.nsw.gov.au>
Subject: MYUNA BAY PEER REVIEW STATUS

Michael

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Regards

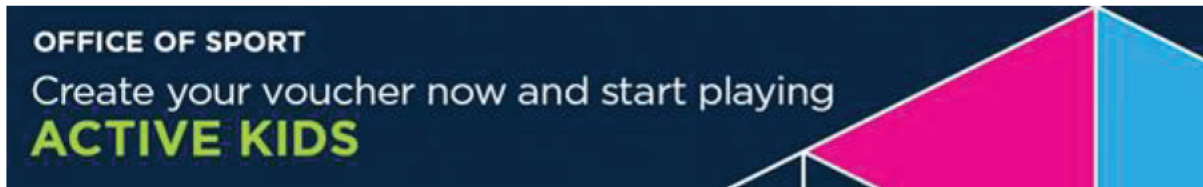
Matt Miller



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clause 3(a) 3(b)

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clause 3(a) 3(b)

clause 3(a) 3(b)

clause 3(a) 3(b)

Information and Privacy

From: Matt Miller <matt.miller@sport.nsw.gov.au>
Sent: Thursday, 4 April 2019 5:08 PM
To: Michael Coutts-Trotter
Cc: Petra Kathagen
Subject: Min Brief on MYUNA BAY Sport and Rec Centre Shutdown
Attachments: MYUNA BAY SRC SHUT DOWN.docx; MInister Brief Myuna Bay.docx

Hi Michael

Attached is a brief and key messages prepared for Minister Sidoti on this issue, which as I briefly advised on Tuesday, has been a sensitive issue since the decision of the Office of Sport to shutdown the Centre last Friday for workplace health and safety concerns.

I am providing these documents to you so you are aware of the background and current state of play.

I will keep you apprised of any significant developments going forward now our cluster alignment is clear.

Regards

Matt Miller
Chief Executive
Office of Sport

My signature block has disappeared so fyi my mobile is 0419720822)

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TRIM/RM8 REF

Shut down of the Myuna Bay Sport and Recreation Centre

To advise the Minister for Sport, Multiculturalism, Seniors and Veterans on the shut down of the Myuna Bay Sport and Recreation Centre.

Recommendation

That the Minister notes the advice on the shut down of the Myuna Bay Sport and Recreation Centre.

Matt Miller, Chief Executive, Office of Sport, Ph.
8754 8701
Date:

Minister Sidoti
Date:

Comments:

Key Information

The Office of Sport action in shutting down the Myuna Bay Sport and Recreation Centre on 29 March 2019 was a considered response to address a critical emergent Work Health and Safety (WHS) issue taken after due diligence by the Office and mindful of its legal obligations under WHS legislation.

On 5 March 2019 the Office of Sport received correspondence from Origin Energy advising of a safety risk to the Myuna Bay Centre from the Eraring Power Station's ash dam, and the risk that the dam wall may break should there be significant seismic activity in the area.

Origin Energy advised in their letter that they would take steps to secure the Dam for the future, however to increase safety the Office of Sport should:

- Shut down the existing Myuna Bay Sport and Recreation Centre and relocate all existing activities to alternate locations at Origin Energy's cost pending permanent alternate premises being found: and
- Agree to relocate the Centre onto nearby Origin Energy owned waterfront land. Origin Energy is undertaking a detailed feasibility assessment of a nearby site and, if it proves acceptable to all parties, is willing to construct a new facility on that site to replicate the current Centre, at Origin Energy's cost. A preliminary analysis indicates that new facilities could be available to be used in approximately 24-36 months.

The Office of Sport has undertaken a number of activities since receipt of Origin Energy's letter including seeking legal advice on Work Health and Safety (WHS) obligations, engaging Public Works Advisory and other related experts, independent expert review of emergency management planning, reviewing reports provided by Origin Energy and engaging directly with Origin Energy.

Shut down of the Myuna Bay Sport and Recreation Centre

Based on the information gathered during these activities, the decision was made on Thursday 28 March 2019 to shut down the Myuna Bay Sport and Recreation Centre by COB Friday 29 March 2019. The decision to shut down the Centre was to mitigate the serious potential risk to staff and clients from any potential failure of the Eraring Power Station Ash Dam. The decision was also taken in the context of providing time to explore options relating to the long-term future of the Centre.

Supporting Analysis

Risk

Origin Energy's modelling suggests that if the dam wall was compromised, a large percentage of the Centre would be covered in a mix of ash and water with no precise information on how long it would take for the Centre to be inundated. The speed of the inundation is dependent upon the viscosity of the ash and water mix.

Both Origin Energy and the Office of Sport acknowledge that although the likelihood of such events occurring may be low, the consequences could be catastrophic.

Legal Advice

The legal advice concludes that the Myuna Bay Sport and Recreation Centre should be closed. Further the advice states that based on the circumstances the Office of Sport would not have an available defence in the event of enforcement proceedings.

Work Health and Safety

The *Work Health and Safety Act 2011* (the Act) is designed to ensure the health, safety and welfare of workers and other people who could be affected by the work of an organisation.

Under the Act, the Office of Sport is the "Person conducting a business or undertaking" and the officers are:

- Chief Executive
- Executive Director, Corporate Services Group
- Executive Director, Sport and Recreation Services Group
- Executive Director, Sports Infrastructure Group
- Executive Director, Sport Development Group
- Anyone acting in one of these roles may also be considered an officer under the Act for the duration of their relieving period

The Premier and/or Minister are not considered "officers" for the purposes of WHS. Therefore under the Act the Core Executive Team at the Office of Sport would be held individually personally liable for any WHS breaches.

Officers of the Office of Sport have a legal responsibility under the Act to exercise due diligence to ensure the organisation is health and safety compliant. Breaches of these requirements can result in financial and custodial penalties imposed personally.

The following is an assessment against the criteria of what is reasonably practical in the context of WHS obligations:

- a) The likelihood of the hazard or risk concerned occurring – **low**
- b) The degree of harm that might result from the hazard or risk – **multiple deaths**
- c) What the person concerned knows or ought to reasonably know about the hazard or risk, and how to eliminate or minimise the risk – **the Office of Sport has been advised by**

Shut down of the Myuna Bay Sport and Recreation Centre

Origin Energy of the risk, has reviewed the relevant reports and is aware of the risk

- d) The availability and suitability of ways to eliminate or minimise the risk – **the risk is able to be eliminated by closing the centre and relocating it. Origin Energy has agreed to fully fund the costs of closing the centre and relocating it to a new site**
- e) After assessing the extent of the risk and available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk – **there is no financial cost to the NSW government of eliminating this risk and therefore there is no basis not to eliminate the risk**

Based on this assessment the Office of Sport, in terms of its WHS obligations, had no option but to shut down the Centre.

Outcome of the meeting with Origin Energy on 27 March 2019

A determining factor in the decision to shut down the Myuna Bay Sport and Recreation Centre was the outcomes of a meeting with Origin Energy on 27 March 2019. At this meeting Origin Energy reiterated that the dam wall is at risk in the event of a significant earthquake and that there was no guaranteed evacuation window of seven minutes as previously advised in earlier meetings.

Origin advised that they will be undertaking significant remedial work to rectify the dam wall and that the cost of this work is estimated to be in the millions. This work will be undertaken regardless of whether a decision is made to shut down the Centre or not. The work is estimated to take up to 24 months and the Origin Energy Board believes that the risk to the Myuna Bay Sport and Recreation Centre during this time is unacceptable to them.

On this basis, the Origin Energy Board decided to grant an “open cheque book” for restitution so that any financial impediment for the NSW Government did not become a barrier to the decision making process.

Origin Energy further advised that it had taken unprecedented steps at considerable cost to ensure safe operating procedures have been implemented regarding staff access to the dam wall and surrounding areas, including engaging an engineering expert who undertakes an analysis on every occasion that an employee enters the defined dam zone.

Origin Energy also advised that they had previously advised NSW Government political staff members for roads and sport, the Lake Macquarie Mayor, and Local Member Greg Piper. The extent of advice provided by Origin Energy to these parties is a point of contention between these parties. The extent of the advice by Origin Energy cannot be confirmed by the Office of Sport.

Current Issues

Myuna Bay Centre Future

Future options for the Centre include relocation to a site within the local area that is not potentially impacted by any ash dam wall failure or return to the existing site post remediation works on the ash dam wall by Origin Energy.

The Office of Sport has commenced exploring potential sites for relocation of the Centre within the local area with Origin Energy. The option of returning to the existing site is dependent on the remediation works to the ash dam wall and subsequent advice on the adequacy of these works from Origin Energy once they have been completed.

Shut down of the Myuna Bay Sport and Recreation Centre

Both of these options mean that the Centre will not be operating for at least two years and possibly up to three years.

Myuna Bay Sport and Recreation Centre Staff

On 11 March staff were made aware of the safety risk identified by Origin Energy and understood further work was being conducted by Office of Sport staff to verify the risk. In the interim, the Myuna Bay staff worked with operations and WHS staff to update the emergency evacuation plan.

On 28 March the Myuna Bay management team were informed by the Executive Director Sport and Recreation of the decision to shut down the Centre on 29 March 2019. It was agreed at that meeting that the staff would be informed about the shut down from the Centre Manager on the morning of 29 March 2019. Staff participated in a teleconference with HR that afternoon, and the Employee Assistance team were available on site if required.

Representatives from the Office of Sport Executive met with staff on 3 April 2019. The staff were presented with their future employment options, which included redeployment to other Sport and Recreation Centres (noting there are three Centres within reasonable proximity to the Myuna Bay Centre), voluntary redundancies if staff are unable to travel to a different Centre, an option for redundancy swaps and consideration of re-training opportunities. It was reiterated that staff remain on full pay whilst details of the Centre shutdown arrangements are clarified and further discussions are had with each individual staff member.

The Office of Sport continues to work closely with the affected staff to manage their future employment given that the Centre is likely to be out of operation for up to three years. The Office of Sport's preferred position is to retain the valuable capability of its existing staff where that can be achieved.

Briefing the Local Member - Mr Greg Piper, MP

Mr Greg Piper MP has publicly objected to the closure of the Centre and has started a local petition. Representatives from the Office of Sport Executive met with Mr Greg Piper MP on 3 April 2019 and explained that work health and safety obligations meant that there was no alternative but to shut the Centre immediately. It was advised that the Office of Sport is having ongoing discussions with Origin Energy about compensation including whether the proposed remediation work would reduce the risk to a level where it may be safe to resume use of the existing site or the opportunity to build a new centre on a site nearby.

Management of Future Bookings

Closure of the Centre means a short-term loss of clientele and the need to manage the impacts of the inconvenience that will be caused. Communication with impacted clients commenced on 29 March and is ongoing. Financial losses are being recorded to ensure compensation from Origin Energy.

Review of Origin Energy Reports

The Office of Sport is taking action to engage independent consultants to review Origin Energy's reports a preliminary approach has been made to both GHD or Golder Associates who have recent demonstrated experience with a similar dam in Victoria.

Financial Implications

Origin Energy will compensate for the closure of the Myuna Bay Sport and Recreation Centre including the relocation of all existing activities to alternate locations pending

Shut down of the Myuna Bay Sport and Recreation Centre

permanent alternate premises being found and a new Centre being built also at their cost. It will be necessary to develop and agree a binding agreement that addresses the financial and economic impacts of the decision. The Executive Director Corporate Services is meeting with Origin Energy on 4 April to commence these negotiations.

Communication and/or Stakeholder Engagement Strategy

A communication strategy both internal and external has been implemented. The Office is also working closely with Origin Energy on there communication with the media. Other government agencies affected by the decision were also advised.

Attachments (Tabs)

Nil

Endorsed	Veronica Lee, Executive Director, Corporate Services, Ph. 8754 8708
Date endorsed	3 April 2019
Author	Karen Jones, Executive Director, Sport Infrastructure Group
Date prepared	3 April 2019
Consultation	The Office of Sport has engaged with a number of government agencies, including Industry, Education, Public Works Advisory, the Dam Safety Committee and various independent experts.
Is the Communications team aware of this brief	<input checked="" type="checkbox"/> Communications team has been consulted on this brief <input checked="" type="checkbox"/> Potential media interest in this brief <input checked="" type="checkbox"/> Media release required <input checked="" type="checkbox"/> Communication and/or Stakeholder Engagement Strategy required

Key Messages

Office of Sport Action to **Shut Down** the Centre

- Office of Sport action in shutting down the Centre last Friday was a considered response to address a critical emergent WHS issue taken after due diligence by the Office and mindful of its legal obligations under WHS legislation
- The action to cease operation of the Centre immediately was an intercession to mitigate the serious potential risk to staff and clients from any potential failure of the Eraring Power Station Ash Dam- it is not a decision to close the Centre
- The action was also taken to in the context of providing time for the long-term future operation of the Centre to be fully explored

Myuna Bay Centre Future

- Future options for the Centre include relocation to a site within the local area that is not potentially impacted by any ash dam wall failure, or a return to the existing site post remediation works on the ash dam wall by Origin Energy
- Office of Sport has commenced initial exploration of potential sites for relocation of the Centre within the local area with Origin Energy
- A return to operations at the existing site will require amongst other things, re-consideration of the risk of ash dam wall failure and the advice from Origin Energy of 5 March 2019 to the Office of Sport
- It is expected that under either of these options the Centre will be not operated for at least 2 years and possibly up to 3 years (based on advice from Origin Energy that remediation works will take 18 months and planning approval also needs to be obtained)

Office of Sport Staff Support

- Office of Sport is working with affected staff to manage their future employment given the likely period of the Centre being out of operation may be up to 3 years
- Centre staff have been advised they will be paid whilst discussions occur on an individual basis to establish their preferred future employment arrangements
- Options being offered to staff include voluntary relocation to other Centres (noting there are 3 Centres within reasonable proximity of the Myuna Bay Centre- Point Wolstoncroft and 2 Centres on the Hawkesbury River), voluntary redundancy, and voluntary redundancy swaps; an option of retraining for staff who might wish to pursue that path will also be explored
- The Office's preferred position to retain the valuable capability of its existing staff where that can be achieved

Key Actions/ Next Steps

- Office of Sport is seeking Origin Energy approval to have the engineering reports released to enable peer review as requested by the Minister
- Office of Sport will be initiating preliminary work to scope the likely time and cost of establishing a relocated Centre (this will inform negotiations with Origin Energy and assist staff in decisions on employment options)
- Office to work with staff to settle their future employment arrangements over next few weeks
- Office of Sport to commence discussions with Origin Energy on compensation
- Office of Sport to activate community engagement on the future of the Centre after consideration of the current state of play with the Minister

Information and Privacy

From: Amy Brown <Amy.Brown@dpc.nsw.gov.au>
Sent: Wednesday, 3 April 2019 10:58 AM
To: Michael Coutts-Trotter
Subject: Fwd: Brief re closure of Myuna Bay
Attachments: image001.jpg; ATT00001.htm; A2953052 - Attachment A - Briefing to the Secretary Department of Indust....pdf; ATT00002.htm; A2953052 - Attachment B - Briefing to the Premier - 1 April.docx; ATT00003.htm; A2953052 - Brief - Premier - Closure of Myuna Bay Sport and Recreation Centre.docx; ATT00004.htm

Hi Michael

Please see attached, as discussed.

Kind regards

Amy Brown
Deputy Secretary, Commercial and Economic Group
DPC
0409 388 131

Begin forwarded message:

From: Camilla Collins <Camilla.Collins@dpc.nsw.gov.au>
Date: April 3, 2019 at 10:56:28 AM GMT+11
To: Amy Brown <Amy.Brown@dpc.nsw.gov.au>
Subject: Brief re closure of Myuna Bay

Kind regards

This email (including any attachments) may contain confidential and/or legally privileged information and is intended only to be read or used by the addressee(s). If you have received this email in error, please notify the sender by return email, delete this email and destroy any copy. Any use, distribution, disclosure or copying of this email by a person who is not the intended recipient is not authorised.

Views expressed in this email are those of the individual sender, and are not necessarily the views of the Department of Premier and Cabinet or any other NSW government agency. The Department of Premier and Cabinet assumes no liability for any loss, damage or other consequence which may arise from opening or using an email or attachment.

Briefing – operational

Topic	Closure of the Myuna Bay Sport and Recreation Centre due to a Work Health and Safety Risk
Critical date	The decision to close the Myuna Bay Sport and Recreation Centre is should be immediate.
Analysis	Under the WHS legislation the PCBU for the Office of Sport is the Core Executive Team who can be held individually personally liable for any WHS breaches. On the basis of current information the decision has been made to close the Myuna Bay Sport and Recreation Centre immediately.

Recommendations

- 1 That the Secretary note the briefing on the Work, Health and Safety (WHS) issues identified at the Myuna Bay Sport and Recreation Centre and the decision to close the Centre immediately.

➔ **Secretary's approval:**

Date:

Comments:

Key reasons

On 5 March 2019 the Office of Sport received correspondence from Origin Energy (Attachment A) advising of a safety risk to the Myuna Bay Centre from the Eraring Power Station ash dam wall, and its potential to flood the Centre should there be significant seismic activity in the area.

Origin Energy commissioned a report in 2018, prepared by Stantec, that identified possible structural issues to the ash dam if there was an earthquake registering 5.7 or higher. The largest and most recent earthquake in the Newcastle region was in 1989 and registered 5.2. Origin further advised in their letter that (in their opinion) to increase safety as well as take steps to secure the Dam for the future, the Office of Sport should:

- Close the existing Myuna Bay Sport and Recreation Centre and relocate all existing activities to alternate locations at Origin's cost pending permanent alternate premises being found: and
- Agree to relocate the Centre onto nearby Origin owned waterfront land. Origin is undertaking a detailed feasibility assessment of a nearby site and, if it proves acceptable to all parties, is willing to construct a new facility on that site to replicate the current Centre, at Origin's cost. A preliminary analysis indicates that new facilities could be available to be used in approximately 24-36 months.

The Office of Sport has undertaken a number of activities since receipt of this letter to inform its decision, including seeking WHS legal advice, engaging Public Works Advisory and other related experts, independent expert review of emergency management planning, reviewing reports provided by Origin and engaging directly with Origin Energy. Under the WHS

TRIM reference:
BN17/XXX

Division/Branch:
Corporate Services
Group

Approving officer:
Matt Miller

legislation the PCBU for the Office of Sport is the Core Executive Team and can be held individually personally liable for any WHS breaches. On this basis and the information assessed to date the decision has been made to close the Myuna Bay Sport and Recreation Centre.

Supporting analysis

Risk

Origin Energy's modelling suggests that if the dam wall was compromised, a large percentage of the Centre would be covered in a mix of ash and water with no precise information on how long it would take for the Centre to be inundated. The speed of the inundation is dependent upon the viscosity of the ash and water mix.

To validate the risk, the Office of Sport on 19 March 2019, under section 46 of the *Work Health and Safety Act 2011*, formally requested a copy of the report commissioned by Origin Energy in 2018 and any other investigations and communication with other authorities on the safety of the dam wall (refer Attachment B).

Further to this request and following a meeting with representatives from the Departments of Industry and Education a further email was sent by the Chief Executive on Wednesday 20 March 2019, to the Executive General Manager, Energy Supply and Operations, Origin Energy to request an urgent meeting with Origin Energy and representatives of Stantec. Origin was advised in writing that the purpose of the meeting was to agree a position that is able to be in put in writing by Stantec on the following:

- How imminent is the risk of a dam collapse (both with and without an earthquake); and specifically, is the integrity of the dam wall compromised currently?
- Are there circumstances where we can remain operational in the short term?
- If so, under what conditions could this occur?

Outcome of the meeting with Origin Energy on 27 March 2019

- The dam wall is at risk in the event of a significant earthquake and as a result Origin will be undertaking significant remedial work to rectify the dam wall and construct a toe buttress at a cost of tens of millions of dollars. Origin has advised that this work will be undertaken regardless of whether a decision is made to close the Centre or not.
- Origin Energy has advised that the remediation of the dam wall will take up to 36 months and that their Board believes that the risk to the Centre during this time is unacceptable to them. On this basis, the Board's decision was to grant an "open cheque book" for restitution so that any financial impediment for the Government did not become a barrier to the decision making process.
- Origin further advised that it has taken unprecedented steps at considerable cost to ensure safe operating procedures have been implemented regarding the access of Origin staff to the dam wall and surrounding areas, including engaging an engineering expert who undertakes an analysis on every occasion that an employee enters the defined dam zone.
- Origin also advised that they have detailed consultation with Roads and Maritime Services regarding the impact on Wangi Road and the owners of the nearby Myuna Bay Foreshore Reserve where a children's playground and other facilities are located.

Sensitivities/contentious issues

The immediate closure of the Myuna Bay Sport and Recreation Centre will need to be carefully managed in terms of staff and clients who are booked into the Centre. It will mean a short-term loss of clientele and the need to manage the impacts of the inconvenience that will be caused. Contingencies are currently being developed for immediate implementation. Staff will be relocated nearby Centres where able, however in the longer term it may be necessary to develop a redundancy program that would be funded by Origin.

Financial impact

Origin Energy will fund the closure of the existing Myuna Bay Sport and Recreation Centre and relocate all existing activities to alternate locations at Origin's cost pending permanent alternate premises being found and a new Centre being built also at their cost. It will be necessary to develop and agree a binding agreement that addresses the financial and economic impacts post the decision.

Consultation

The Office of Sport has engaged with a number of government agencies, including Industry, Education, Public Works Advisory, the Dam Safety Committee and various independent experts. Notwithstanding, Under the WHS legislation the PCBU for the Office of Sport is the Core Executive Team and can be held individually personally liable for any WHS breaches.

Communications

A communication strategy is in development. It is critical that this strategy be developed and promulgated in consultation with Origin Energy and other government agencies affected by the decision.

Departmental approvals

Comments:

Brief prepared by:

Position	Signature	Date
Approving officer: Matt Miller, Chief Executive		28 March 2019
Endorsing officer: Veronica Lee, ED Corporate Services Group		28 March 2019

Background

Attachments

Attachment	Title
A	Letter from Origin Energy – 5 March 2019
B	Letter from Chief Executive to Origin Energy – 19 March 2019

Please provide a hard copy to the Office of the Secretary. If this is not possible, please email secretary@industry.nsw.gov.au with the RM8 reference and specify the relevant attachments for the Office of the Secretary to print.

Received by hand

6 March 2019 @

12:25pm. *[Signature]*



5 March 2019

Attention: Matt Miller
Chief Executive of the Office of Sport (NSW)
Level 3, 6B Figtree Drive, Sydney Olympic Park
Sydney NSW 2127

Dear Matt

Myuna Bay Sport & Recreation Centre - Eraring Ash Dam Safety Considerations

I refer to our previous discussions in relation to the Myuna Bay Sport & Recreation Centre (**MBRC**) and the Eraring Ash Dam (**Dam**).

As we discussed, Origin commissioned a third-party expert, Stantec Inc. (**Stantec**), to investigate the stability of the Dam. The Stantec investigation concludes:

- that the material beneath the Dam is susceptible to liquefaction and the Dam wall may be unstable in the event of an Operating Basis Earthquake (~5.7 on the Richter magnitude scale); and
- in the event that the Dam wall breaks, it is likely to pose a serious threat to a substantial portion of the MBRC.

Although the likelihood of such events may be low, the consequences could be serious and could be a safety risk for any MBRC occupants.

Origin continues to implement operational and improvement measures to increase the safety of the Dam and will undertake remediation to improve the stability of the Dam. Work associated with the remediation has commenced with the full implementation of the remediation works estimated to take up to 24 months.

To increase safety as well as take steps to secure the Dam for the future, Origin proposes that The Office of Sport (NSW):

- 1) close the existing MBRC and relocate all existing activities to alternate locations at Origin's cost pending permanent alternate premises being found; and
- 2) agree to relocate the MBRC onto nearby Origin owned waterfront land. Origin is undertaking a detailed feasibility assessment of a nearby site and, if it proves acceptable to all parties, is willing to construct a new facility on that site to replicate the MBRC at Origin's cost. A preliminary analysis indicates that new facilities could be available to be used in approximately 24-36 months.

Origin and its Board take the safety of all parties with the utmost seriousness and Origin management have been instructed to inform you of the risks now that we have been advised of them. Origin is committed to reducing any risks as far as practicable.

We welcome further discussion with the Office of Sport (NSW) about how Origin can work with you to achieve the right outcome for the MBRC and the community.

We would be happy to discuss this further at your earliest convenience.

Yours sincerely,



Greg Jarvis
Executive General Manager, Energy Supply & Operations
Origin Energy Limited

19 March 2019

Mr Greg Jarvis
Executive General Manager
Energy Supply and Operations
Level 32, Tower 1,
100 Barangaroo Avenue
BARANGAROO NSW 2000

Dear Mr Jarvis

I am writing to acknowledge the receipt of your letter titled 'Myuna Bay Sport and Recreation Centre – Eraring Ash Dam Safety Considerations' on 5 March 2019.

The Office of Sport takes the safety of our staff and clients very seriously and will be undertaking a thorough investigation of the issues outlined in your letter. The Office of Sport is mindful of its obligations under the 2011 NSW WHS Act and notes Origin Energy's responsibilities under S.46 of that Act.

To assist with our investigation, I am requesting release of the following information from Origin Energy:

- The report from the Stantec investigation referred to in your letter including relevant annexures and appendices.
- All surveillance reports, dam safety emergency plans, and dam break studies relevant to the Eraring Power Station and its associated dams.
- An itemised account of relevant dam safety communications relating to the Eraring Power Station ash dam shared with the NSW Dams Safety Committee, local Council, or any other interested parties.
- Details of the proposed remediation works to improve the stability of the dam as stated in your letter.

If you could please provide all information directly to Nathan Godfrey, Director of Operations & Programs, Office of Sport by phone on (02) 8754 7961 and he will liaise directly with you and your team.

Yours sincerely



Matt Miller
Chief Executive

Closure of the Myuna Bay Sport and Recreation Centre

To advise the Premier of the impact of the closure of the Myuna Bay Sport and Recreation Centre on the Aussie-Kiwi water skiing challenge.

Recommendation

That the Premier notes the advice.

Approved
Matt Miller, Chief Executive, Office of Sport, Ph.
8754 8701
Date:

Approved
Secretary
Date:

Comments:

Key Information

Sequence of events March 2019

5 March

- Origin Energy ("**Origin**") advised the Office of Sport that the ash dam wall at Eraring Power Station presented an unacceptable risk to users of the Myuna Bay Sport and recreation Centre ("**Centre**"), asked for the site to be shutdown and offered to pay to relocate client events in the short term, and provide a new facility in the long term.

19 March

- Between receipt of the letter on 5 March and 19 March, the Office undertook a significant number of due diligence activities, including seeking WHS legal advice, engaging Public Works Advisory and other related experts, independent expert review of emergency management planning, reviewing reports provided by Origin and engaging directly with Origin. Under the WHS legislation the responsible person for the Office of Sport is the Executive who can be held individually personally liable for any WHS breaches.
- As a consequence of these investigations and ongoing informal discussions with Origin, the Office of Sport wrote to Origin on 19 March seeking access to further technical information and engineering analysis.

27 March

- After receiving and reviewing analysis, Office of Sport had a meeting with Origin and advisers. Origin advised that
 - the dam wall is at risk in the event of a significant earthquake and as a result Origin will be undertaking significant remedial work to rectify the dam wall and construct a toe buttress at a cost of tens of millions of dollars.
 - Origin has advised that the remediation of the dam wall will take up to 18 months and that their Board believes that the risk to the Centre during this time is unacceptable to them. On this basis, the Board's decision was to grant an "open

Closure of the Myuna Bay Sport and Recreation Centre

cheque book” for restitution so that any financial impediment for the Government did not become a barrier to the decision making process.

- they were requiring their own staff entering the site to go through a case by case risk assessment.

28 March

- Office of Sport reviewed information and assessment with the Dam Safety Committee
- Office of Sport provided a brief to the Department of Industry to advise that, as the responsible safety nominee, they had decided to close the centre as of Friday afternoon.
- The reason was that:
 - while dam failure was improbable, the impacts would be catastrophic for any occupants of the centre
 - the nature of the use of the site reduced options for evacuation in the event of failure
 - Origin had offered to pay to relocate events and provide a new centre in the long term, which changed the risk/cost trade-off
- Office of Sport was asked to provide a communications and implementation/business continuity plan to address the needs of clients with current and upcoming bookings.
- Department of Industry advised DPC executives of the proposed upcoming closure, and DPC advised that it would brief the Premier's Office.

29 March

- Dol provided DPC executives with the brief from Office of Sport confirming closure of the Centre.
- DPC Communications contacted Dol to ask to be kept informed of any communications.
- Office of Sport prepared draft communications in consultation with Origin, and began arranging alternative arrangements for clients, for advice once the release had been issued.
- Origin issued its statement at approximately 12.30pm advising of the risk and thanking Government for agreeing to close the centre immediately.
- Office of Sport consulted with Department of Industry and DPC on communications. DPC provided proposed suggestions.
- In the afternoon, Office of Sport took further steps to speak with clients and sought to accommodate their needs. The water ski event was flagged as the most immediate, and options were discussed for the event to access the lake from other locations to finish their planned on-water activities. No other suitable sites for this event were identified.
- Office of Sport advised that they had spoken with the organisers of the water ski event and whilst the organisers expressed surprise at the urgency, they accepted the need to act as requested and appeared to have no concerns about relocating their dinner off the centre site, or about finishing the event early.

30 March

- At the request of the New Zealand team, the team was relocated to Rydges at Sydney Airport as it was more convenient for the airline departure at 7am Monday morning.

31 March

- Email received by Office of Sport at 7.23 pm from the Australia team organizer (Lisa Beare) expressing extreme disappointment and anger at the decision.

Closure of the Myuna Bay Sport and Recreation Centre

Aussie – Kiwi water skiing challenge

The 2019 Aussie-Kiwi challenge is an annual championship that is hosted bi-annually by each country. The challenge was being held at Myuna Bay from 28 March – 31 March 2019. Access to the water skiing competition was via the Myuna Bay Centre, where competitors were residing.

The option to close the Centre formed part of discussions both internally and externally (with other Government agencies), however the due diligence process was not completed until 28 March when the decision was made to close the Centre. The final decision was informed by these discussions, analysis of information and consideration of communications and business continuity plans.

At approximately 3:00 pm on 29 March Office of Sport contacted the organiser of the Aussie Kiwi Challenge, Mr Neil O'Toole, to inform him the Centre had been closed. Competitors and their families were provided alternative accommodation at hotels in Newcastle from 29 March – 1 April. The remainder of the water skiing events were cancelled. Event organisers were offered a full refund of the uses of the Centre facilities for their entire booking, and organisers were advised competitors out of pocket expenses were also being met.

Whilst the disruption to the water skiing competition was unfortunate, Office of Sport was mindful that it could equally be criticized for continuing to allow access to the Centre once it had been determined in the interests of safety that closure of the centre was necessary, and reasonably practicable.

Financial Implications

Origin will fund the closure of the existing Myuna Bay Sport and Recreation Centre and relocate all existing activities to alternate locations at Origin's cost pending permanent alternate premises being found and a new Centre being built also at their cost. The Office will be seeking to recoup the costs incurred from the cancellation of the event from Origin.

Communication and/or Stakeholder Engagement Strategy

The Communication strategy is in implementation.

Endorsed	Veronica Lee, Executive Director, Corporate Services, Ph. 8754 8708
Date endorsed	1 April 2019
Consultation	N/A
Is the Communications team aware of this brief	<input checked="" type="checkbox"/> Communications team has been consulted on this brief <input checked="" type="checkbox"/> Potential media interest in this brief <input type="checkbox"/> Media release required <input checked="" type="checkbox"/> Communication and/or Stakeholder Engagement Strategy required

Closure of Myuna Bay Sport and Recreation Centre

Issue:	Provide the Premier with key information regarding the closure of Myuna Bay Sport and Recreation Centre
Analysis:	Key information has been summarised from two documents: 1) Brief to Chief Executive of Office of Sport to the Secretary of the Department of Industry regarding Eraring Ash Dam (28 March), and 2) Brief from Chief Executive of Office of Sport to the Premier regarding sequence of events (1 April)

Key reasons

Attachments provide relevant information on the closure of the Myuna Bay Sport and Recreation Centre

- The attached briefs include the following key information regarding the closure of Myuna Bay Sport and Recreation Centre:
 - Chief Executive of Office of Sport was made aware of a safety issue with respect to the Myuna Bay Sport and Recreation Centre on 5 March 2019. Office of Sport then commenced its own investigations.
 - Prior to the conclusion of those investigations and after a meeting with Origin Energy (27 March), Chief Executive of Office of Sport made a decision to close the centre. It is unclear as to the reason why the centre needed to be closed the very next day (28 March).
 - The Department of Premier of Cabinet and the Premier's Office were briefed in an urgent fashion on the evening of 27 March and morning of 28 March respectively.
 - Origin issued a statement at 12.30pm on 29 March. At 3pm that day the organiser of the Aussie-Kiwi challenge (an annual championship hosted by Myuna Bay Sport and Recreation Centre) was informed by the Office of Sport that the centre would be closed, with no notice.
 - The outgoing Secretary of Department of Industry and incoming Secretary of the Stronger Communities Cluster have been consulted as to appropriate further action.

Supporting information

List of attachments

- Attachment A – Brief dated 28 March to Chief Executive of Office of Sport to the Secretary of the Department of Industry regarding Eraring Ash Dam
- Attachment B – Brief dated 1 April from Chief Executive of Office of Sport to the Premier regarding sequence of events

Consultations undertaken in preparing this brief

Person consulted	Issue
Mat Jones	Confirmation of sequence of events

Recommendations and actions

- Note** the information included in attachments (**Attachment A and Attachment B**).

DPC final approver:	Never Submitted
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	Tim Reardon, Secretary
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Responsible Action Officer:	Camilla Collins, Senior Executive Adviser, Commercial and Economic Group, 9228 4161
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Information and Privacy

From: Michael Coutts-Trotter
Sent: Wednesday, 1 May 2019 9:49 AM
To: Nicolle Nasr
Subject: Re: Myuna Bay



With my best regards,

Michael Coutts-Trotter
Secretary
NSW Department of Family and Community Services

On 1 May 2019, at 8:38 am, Nicolle Nasr <Nicolle.Nasr@minister.nsw.gov.au> wrote:

Thank you Michael – Minister will be visiting Lake Macquarie accompanied by the local member this Friday FYI.

Kind regards
Nicolle

From: Michael Coutts-Trotter <Michael.Coutts-Trotter@facs.nsw.gov.au>
Sent: Tuesday, 30 April 2019 5:21 PM
To: Nicolle Nasr <Nicolle.Nasr@minister.nsw.gov.au>
Cc: Blair Collier <Blair.Collier@facs.nsw.gov.au>
Subject: Myuna Bay

Hi Nicolle,

Signed hard copy of this briefing note will be with you tomorrow morning. Hope this hits the mark.

With my best regards,

MCT

Michael Coutts-Trotter
Secretary
NSW Department of Justice
NSW Department of Family and Community Services

<image001.jpg> <image002.jpg> <image003.jpg> <image004.jpg>

Security Statement

Information and Privacy

From: Michael Coutts-Trotter
Sent: Tuesday, 30 April 2019 5:21 PM
To: 'nicolle.nasr@minister.nsw.gov.au'
Cc: Blair Collier
Subject: Myuna Bay
Attachments: BN to Minister re Myuna Bay.docx; TAB A Myuna Bay key points.docx

Hi Nicolle,

Signed hard copy of this briefing note will be with you tomorrow morning. Hope this hits the mark.

With my best regards,

MCT

Michael Coutts-Trotter
Secretary
NSW Department of Justice
NSW Department of Family and Community Services





Myuna Bay Sport and Recreation Centre

Topic	Myuna Bay Sport and Recreation Centre has been closed, following advice from Origin Energy, that the neighbouring Ash Dam wall presents risks to public safety. This decision was made by the NSW Office for Sport.
Analysis	Minister Sidoti has committed to an independent review of the technical reports that Origin Energy and NSW Office of Sport were relying upon when the decision to close the Sport and Recreation Centre was made. The NSW Dams Safety Committee (the Regulator) will facilitate an independent review of these technical reports. This is likely to take some weeks.
To note by	2 May 2019

Minister's signature	Date
-----------------------------	-------------

Recommendation: for information only

Key issues

Minister Sidoti has initiated a review of technical reports that sit behind the decision to close the Myuna Bay Centre. These reports were commissioned by Origin Energy, the owner of the dam.

FACSAJ has engaged the NSW Dams Safety Committee (DSC) to facilitate the review of the reports, because:

- Origin Energy has offered to facilitate a review, but there is a risk that this will not be acceptable to the community as an 'independent review'
- The DSC is the Government regulator for Dam Safety in NSW
- The DSC is expert and credible
- The DSC is available to assist at this time and agrees that this is an appropriate task

The review will take between six and ten weeks. This is a highly technical process, and the reviewer will need to examine and challenge much of the technical inputs from the original reports, including any assumptions that were made.

Once the work commences DSC will be able to provide a tighter estimation of the timeframe for the review to be completed.

Background

Myuna Bay Recreation Centre closed at the end of March 2019 in response to a formal notice from Origin Energy on 5 March concerning the stability of the neighbouring Ash Dam wall, and the potential impact of that wall failing.

In consideration of their obligations under Workplace Health and Safety legislation, the Executive Team at NSW Office for Sport sought legal advice in relation to risks to workers and other persons at the Myuna Bay Recreation Centre - in light of the technical reports from Origin.

Briefing for Minister Sidoti: for information

This legal advice set out some 'reasonably practicable steps to obviate risk' and provide for its duty of care, which included a strong recommendation to close the Myuna Bay Recreation Centre.

The community and the local Member of Parliament have raised concerns about the impact of this sudden closure on the community, and firmly believe that this reaction to the Origin Energy letter is disproportionate.

On 4 April Minister Sidoti committed to undertaking an independent review of the technical reports that sit behind the decision to close the Myuna Bay Centre.

Recreation Centre relocation/construction

NSW Office of Sport are currently engaging a planning consultant to develop the scope for a new centre.

It is estimated that the timeframe for reopening a centre on a new site is 3 years. This includes:

- Re-zoning of land
- Development application
- Community co-design
- Potentially slower construction if local builders are engaged

Origin Energy has offered to fund the construction.

There are currently no plans for an interim site while this relocation/construction takes place. There are other recreation centres in the electorate.

A new site has not yet been identified, NSW Office of Sport are exploring a number sites identified by Crown Land and Origin.

Risks / contentious issues

During the visit to Myuna Bay it is likely that the Minister will be asked about the future of the site, the progress of the independent review, and likely timelines for any decisions.

It is important that the following points are highlighted

- The review must be independent, and undertaken by people with the right capability.
- The Dam Safety Committee is well placed to lead this review in the best interests of the community
- The review is a technical process and it will take at least six weeks.
- Safety is important and there will be no short cuts in this review

Detailed key messages are attached – TAB A

Consultation and communication strategy

Dams Safety Committee was consulted in the preparation of this briefing note, and the development of key messages.

Attachments

Tab	Title
A	Key messages

Briefing for Minister Sidoti: for information

Approval

Role	Electronic approval by	Date
Executive Director, Commissioning, FACS	Paul O'Reilly	29/04/19
Secretary	Michael Coutts-Trotter	

TAB A – key messages

The importance of an independent review

The closure of the Myuna Bay Sport and Recreation Centre has been a shock to this community.

I understand that people have some concerns about the technical advice that was provided to Government in the lead up to this decision.

Before any long term decisions are made about this important community facility, I will undertake a review of the decision, and an independent review of the technical advice that informed this decision.

It is important that the review is done by someone who is independent, is expert, and has credibility in the industry.

The NSW Dams Safety Committee has been asked to lead this review.

Why the NSW Dams Safety Committee?

There are a number of engineers and other consultants in the industry who are qualified to undertake this review for the Government.

My Department has asked the NSW Dams Safety Committee to lead this review and seek the services of an independent expert in this field.

The NSW Dams Safety Committee is the regulator of dams safety in NSW. They are constituted by the Parliament under legislation to ensure that dams are safe in NSW.

This means that owners of dams need to comply with the policies, procedures and directions of the Dams Safety Committee.

The Dams Safety Committee is led by a team of highly qualified engineers, who are well placed to lead the review.

How long will it take, and why so long?

I am advised that the review is likely to take between six and ten weeks.

There are some critical steps that need to be followed to ensure a proper review, including a careful analysis of each of the findings in the original technical reports, and the assumptions that sit behind those findings.

I want to be sure that this is a thorough process, and that the review is not rushed. I believe that this is what the community would expect.

Once the work commences we will soon know exactly how long it will take. Again, I am expecting some results in six to ten weeks.

I expect to have a report from the Secretary of my Department within days of the review being completed.

I will then come back to the community with further advice about the future of the Myuna Bay Centre.

TAB A – key messages

The importance of an independent review

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I will then come back to the community with further advice about the future of the Myuna Bay Centre.

Information and Privacy

From: Michael Coutts-Trotter
Sent: Monday, 29 April 2019 3:56 PM
To: Paul O'Reilly
Subject: Re: Myuna Bay



With my best regards,

Michael Coutts-Trotter
Secretary
NSW Department of Family and Community Services

On 26 Apr 2019, at 4:42 pm, Paul O'Reilly <Paul.O'Reilly2@fac.s.nsw.gov.au> wrote:

Michael

I will have a BN with key messages for the Minister on Myuna Bay by Monday evening.

An update from the Dam Safety Committee:

Stage 1 - they will have an informal appraisal of the reports on 2 May. This will be useful for you and Min S, but this won't be substantial enough to meet the expectation/brief of "review"

Stage 2 - Independent review will be 6-10 weeks as previously advised. It will cost between \$30k and \$50k.

The outcome of stage 1 next week will help determine the exact duration and cost of stage 2. Hopefully 6 weeks and \$30k.

I expect Office of Sport will cover this cost and I will liaise with Karen on Monday.

Regards

Paul

Sent from my iPhone

Information and Privacy

From: Michael Coutts-Trotter
Sent: Tuesday, 23 April 2019 3:03 PM
To: Paul O'Reilly
Subject: Re: Eraring power station dam and the Myuna Bay Recreation Centre

Thanks Paul. No, DSC facilitated review. Can it be done more quickly? Pls have DSC advise.

Michael Coutts-Trotter
Secretary
NSW Department of Family and Community Services

On 23 Apr 2019, at 12:58 pm, Paul O'Reilly <Paul.O'Reilly2@facs.nsw.gov.au> wrote:

FYI Michael

Some progress from the Dams Safety Committee (DSC) ... please note the timeframe

I recommend that we go with the DSC-facilitated option, on the understanding that Origin won't then undertake their own review

I will advise the DSC accordingly, unless you have another view?

Thanks

Paul

From: Chris Salkovic <chris.salkovic@damsafety.nsw.gov.au>
Sent: Tuesday, 23 April 2019 12:53 PM
To: Paul O'Reilly <Paul.O'Reilly2@facs.nsw.gov.au>
Subject: Re: Eraring power station dam and the Myuna Bay Recreation Centre

Hello Paul, I have reviewed the request from Secretary Dept of FACS re Eraring ash dam and can confirm that the NSW Dams Safety Committee (DSC) will provide an overview on quality of the two recent Stantec reports i.e. Dam Stability and Dams Break assessment, by COB 1 May. Reference will be made to DSC and Australian National Committee on Large Dams (ANCOLD) usual requirements.

With respect to an 'independent review', we understand this would normally take the form of an independent technical review of Stantec's key inputs which formed the basis of their conclusions and findings. Being a regulator, the DSC does not carry out such reviews and usually requests owners of High consequence dams, such as Eraring ash dam, to undertake such a review which normally questions and challenges technical inputs and outputs of an analysis team, in this case Stantec. The DSC can however facilitate such a review if required particularly by Government. We estimate such a review at this stage, i.e. review of final report, would take around 6 to 10 weeks to complete.

I have spoken with Paul Baker from Origin Energy this morning who is comfortable to arrange an independent review at the request of the DSC or happy for the DSC to facilitate. I don't see the need to carry out two separate independent reviews and ask for your preference.

Thanks

Chris Salkovic | Director
Dams Safety Committee

Level 11, 10 Valentine Avenue, PARRAMATTA NSW 2150
Mail: Locked Bag 5123, PARRAMATTA NSW 2124 / Australia
Ph: 02 9842 8070 | 0403 681 645

Email: chris.salkovic@damsafety.nsw.gov.au

Web: www.damsafety.nsw.gov.au

On Thu, Apr 18, 2019 at 2:01 PM Paul O'Reilly <Paul.O'Reilly2@facns.nsw.gov.au> wrote:

Hello Chris,

You will recall we had a discussion on the phone on Tuesday, about the Eraring Dam and the closure of the neighbouring recreation centre.

We are seeking a review of the Origin Energy reports that had informed the decision of the Office of Sport to close the recreation centre.

The attached letter from the Department Secretary sets out the request in more detail.

Looking forward to hearing from you.

Many thanks

Paul O'Reilly
Executive Director
Commissioning Division
NSW Family and Community Services
Ph 0407 209 180

Security Statement

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Information and Privacy

From: Michael Coutts-Trotter
Sent: Tuesday, 16 April 2019 9:57 AM
To: nerida.meaney@justice.nsw.gov.au
Subject: Fwd: Myuna Bay
Attachments: 150419 BN.docx; ATT00001.htm; legal advice.pdf; ATT00002.htm; Premier Briefing - Myuna Bay_sec2.docx; ATT00003.htm

And these too pls - email and attachments

With my best regards,

Michael Coutts-Trotter
Secretary
NSW Department of Family and Community Services

Begin forwarded message:

From: Paul O'Reilly <Paul.O'Reilly2@fac.s.nsw.gov.au>
Date: 15 April 2019 at 8:54:09 pm AEST
To: Michael Coutts-Trotter <Michael.Coutts-Trotter@fac.s.nsw.gov.au>
Cc: Deborah Lovell <Deborah.Lovell@fac.s.nsw.gov.au>
Subject: Myuna Bay

Michael,

As discussed this morning, here is a short document with speaking points for your discussion with Minister Sidoti on the Myuna Bay issue

I have also attached:

- The legal advice
- The brief to the Premier from April

Regards

Paul O'Reilly

Closure of Myuna Bay Recreation Centre

Talking points

Background

Myuna Bay Recreation Centre has closed in response to a formal notice from Origin Energy on 5 March about the stability of the neighbouring ash dam wall, and the impact of that wall failing.

The community and the local Member of Parliament have raised concerns about the impact of this sudden closure on the community, and firmly believe that this reaction to the Origin Energy letter is disproportionate.

On 1 April NSW Office of Sport provided the Premier with some advice (attached).

On 4 April Minister Sidoti appeared on ABC Radio and committed to undertake a review of the Origin Energy technical reports that sit behind the decision.

RMS has reviewed the technical reports and has decided not to close the road that is adjacent to the Myuna Bay Centre site.

NSW Office of Sport Legal position

In consideration of their obligations under Workplace Health and Safety legislation, the Executive team at NSW Office for Sport sought legal advice in relation to risks to workers and other persons at the Myuna Bay Recreation Centre - in light of the technical reports from Origin.

This legal advice (attached) has set out some 'reasonably practicable steps to obviate risk' and provide for its duty of care:

- Revise the emergency evacuation plan
- Keep the centre open and on high alert during further study, which would include an evaluation from the Dam Safety Committee
- Partial closure pending the outcome of further study
- Permanent closure of the Myuna Bay Centre – the recommended option

Early review of technical reports

NSW Public Works Advisory (PWA) was engaged by NSW Office of Sport, and has reviewed the *Dam Wall Stability Report* that was commissioned by Origin Energy. PWA's position is that this report is "less accurate than it could be" due to the lack of important historical data, and should be undertaken again.

PWA has not reviewed the *Dam Wall Failure Impact Report*, but has advised that the *Dam Wall Stability Report* is inadequate to justify the immediate closure of the Myuna Bay Centre

PWA has sent their review to the Dam Safety Committee.

Myuna Bay Centre staff:

Ongoing staff have been presented with future employment options, including redeployment to other Recreation Centres, VR for those who cannot travel, VR swaps and retraining. Staff remain on full pay while further details of the closure process are established. NSW Office of Sport intends to retained as much staff capability in the organisation as possible.

There is a pool of 15 casual staff. 11 of these are currently in the roster and have been given a commitment that they will be paid for all of their shifts that were already rostered up to 28 April.

Note – Origin Energy has offered to fund VRs.

Recreation Centre relocation/construction

Even if the decision to close the centre is reversed, it is possible that the community will be reluctant to access the site.

It is estimated that the timeframe for reopening a centre on a new site is 3 years. This includes:

- Re-zoning of land
- Development application
- Community co-design
- Potentially slower construction if local builders are engaged

Origin Energy has offered to fund the construction.

There are no plans for an interim site while this relocation/construction takes place. There are other recreation centres in the electorate.

New site has not yet been identified, but they are exploring a number sites identified by Crown Land and Origin.

NSW Office of Sport are currently engaging a planning consultant now to start working through the scope for a new centre.

Options to deliver on Minister's commitment to undertake an independent review

There is a risk that at the end of this period there are multiple 'peer review' reports and that they have different findings. For example:

- FACSJ can facilitate an independent peer review, working with consultants identified by Origin Energy, NSW Office of Sport or PWA.
- PWA, or a consultant identified by PWA could undertake a more detailed peer review of both reports.
- PWA have advised that the regulator (NSW Dam Safety Committee) is likely to ask Origin Energy to commission its own independent peer review of the technical reports.

Next steps for discussion with Minister:

The Minister or Secretary can write to the Dam Safety Committee seeking a single review of the technical reports that were commissioned by Origin Energy, and seeking recommendations for the Government.

FACSJ could facilitate a peer review of the legal advice, or a second opinion, given the early questions that have arisen in relation to the *Dam Wall Stability Report*.

Paul O'Reilly

15 April 2019

26 March 2019

Mr Darren Husdell
Director Human Resources
Office of Sport NSW
Level 3, 6B Figtree Drive

Sydney Olympic Park NSW 2127

Email: darren.husdell@sport.nsw.gov.au

Dear Darren,

Strictly Confidential Legal Professional Privilege Applies

Advice – Myuna Bay Sport & Recreation Centre

Thank you for your instructions.

We have been requested to provide an advice to the Office of Sport New South Wales (OOS) in respect to obligations under the *Work Health and Safety Act 2011* (NSW) (**WHS Act**) and *Work Health and Safety Regulation 2017* (NSW) (**Regulation**) following the receipt of information from Origin Energy Ltd (**Origin**) concerning its tailing dam at the Eraring power station. This advice is based upon our review of the Origin correspondence, documents of OOS and public information from Geoscience Australia.

Executive summary

1. OOS primary duty of care under the WHS Act is to ensure, so far as reasonably practicable, the health and safety of workers and other persons at the workplace.
2. OOS has received information from Origin indicating there is a risk to health and safety to persons at the Myuna Bay Centre because the Eraring Ash Dam is susceptible to liquefaction, and that it could become unstable in the event of an earthquake of 5.7 or higher on the Richter magnitude scale.
3. The duty of care is contravened where there has been a failure to take a particular measure to prevent an identifiable risk occurring. The likelihood of the risk of liquefaction occurring is foreseeable.
4. The obligation to ensure safety is strict in nature and is qualified by what is reasonably practicable.
5. The reasonably practicable measures which could be undertaken by OOS to obviate the risk include:

Special Counsel: John Rodney
john.rodney@klgates.com

T +61 2 9513 2313

Our ref: 7411812.00002

- (i) Revision of the OOS emergency evacuation plan for the Myuna Bay Centre to facilitate an emergency from a liquefaction event.
 - (ii) Keep the Myuna Bay Centre open and on high alert until findings by the relevant geotechnical, civil engineering, geoscience experts are available, including a comprehensive evaluation by the New South Wales Dam committee as to the structural integrity of the Dam are known.
 - (iii) Partial closure pending the outcome in paragraph (ii) above.
 - (iv) Permanent closure of the Myuna Bay Centre.
6. Our recommendation and the reasons for it are for OOS to close the Myuna Bay Centre.

Background

1. The Myuna Bay Sport and Recreation Centre (**Myuna Bay Centre**) operated by the Office of Sport New South Wales (**OOS**) is situated in a natural bushland setting on the western foreshore of Lake Macquarie, at Myuna Bay. The Centre provides a wide range of services, activities, facilities and accommodation options for schools, families, seniors, community programs, corporate training and other sport and recreation activities. It is also set up for and regularly caters for individuals with disabilities and special needs.
2. The Myuna Bay Centre has 16 full time employees plus approximately 10 casuals and can accommodate up to 240 people (overnight) and can have a maximum of 1000 people on site for day use activities and events.
3. OOS has received information from Origin¹ which indicates the material beneath the Eraring Ash Dam is susceptible to liquefaction, and that it could become unstable in the event of an earthquake of 5.7 or higher on the Richter magnitude scale. If the Dam collapses a substantial area of the Myuna Bay Centre would be affected.
4. We understand the Dam is an earth-filled dam (also called an earthen dam or terrain dam) made of compacted earth and soils and thus assume the reference to the 'material beneath the dam' consists of compacted earth and soils.
5. Origin has proposed to OOS the Myuna Bay Centre be relocated at Origins' cost, and the time for establishment of relocation is estimated to be 2 to 3 years.
6. On 29 December 1989 an earthquake measuring 5.6 on the Richter magnitude scale occurred in Newcastle. It was one of Australia's most serious natural disasters, killing 13 people and injuring more than 160. One aftershock (M 2.1 on the Richter scale) was also recorded. The epicentre was located at Boolaroo, a suburb on the western side of Lake Macquarie, located 19 kilometres west of Newcastle's central business district and approximately the same, straight line, distance from the Myuna Bay Centre. The effects were felt over an area of around 200,000 square kilometres in

¹ Letter dated 5 March 2019 from Greg Jarvis, Executive General Manager, Origin Energy Ltd

NSW, with isolated reports of movement in areas up to 800 kilometres from Newcastle.²

7. There have been at least 4 other earthquakes of a magnitude 5 or greater in the surrounding Hunter region since European settlement in 1804.

OOS primary duty of care

8. OOS is a person conducting a business or undertaking (**PCBU**) for the purposes of the WHS Act and Regulation. OOS primary duty of care under the WHS Act is to ensure, so far as reasonably practicable, the health and safety of workers and other persons at the workplace, which relevantly includes OOS employees, clients, subcontractors, and persons who may be visiting a sport and recreation centre but not attending scheduled activities.³ In particular the duty requires that persons are not put at risk from OOS business or undertaking, regardless of OOS state of knowledge, and applies equally to trespassers, and paying clients.
9. It is not necessary that there is a particular accident causing or not causing damage, or that a person is actually injured to establish a breach of the duty. What is required is the creation of a risk. A risk is a risk, it either exists or it does not. The WHS Act is directed to obviating risks to safety in the workplace either by eliminating or minimising the risk to protect from the dangers presented by the risk. This requires OOS to take a proactive approach in the management of risk. The Courts have made it clear the duty does not extend to unknown or unidentifiable risks.

Is there a risk to health and safety?

10. The risk which arises is the liquefaction of the Dam which occurs when a saturated or partially saturated soil substantially loses strength and stiffness. This could arise in different ways, such as in response to an applied stress from shaking during an earthquake (an example given by Origin) or other sudden change in stress condition, in which the compacted earth and soil material that is ordinarily a solid behaves like a liquid.
11. It should also be noted Origin confirms the Dam '*is susceptible to liquefaction*' and it has implemented measures to increase the safety of the Dam and will undertake remediation to improve stability of the Dam. On its face this information suggests the integrity of the Dam could already be compromised. Other environmental events such as extreme rain levels and subsidence from the nearby coal mining operations and the continued expansion and collection of ash sediment could also be factors impacting upon a change in stress condition and Dam safety.
12. We apprehend OOS may point to reliance upon the likelihood of, or foreseeability of a liquefaction event only occurring in the event of a 5.7 or higher magnitude earthquake and that an event similar to the Newcastle earthquake is only predicted to reoccur between 50 to 1000 years.⁴ We caution against this approach and the reasons are

² Dhu T and Jones T (eds.) 2002 *Earthquake Risk in Newcastle and Lake Macquarie* Geoscience Australia Record 2002/15, Geoscience Australia, Canberra

³ section 19(1) & (2) WHS Act

⁴ Dhu T and Jones T (eds.) 2002 *Earthquake Risk in Newcastle and Lake Macquarie* Geoscience Australia Record 2002/15, Geoscience Australia, Canberra

this. Origin has not confirmed it will take a 5.7 magnitude (or higher) earthquake to make the Dam wall unstable. To the contrary, it is an earthen dam and the constituent barrier is comprised of compacted earth and soil material and is thus susceptible to liquefaction from stress conditions.

13. The Geoscience Australia report concludes the calculated earthquake hazard in the Newcastle and Lake Macquarie region is higher than the hazard suggested by the Australian earthquake loading standard, AS1170.4-1993. Further, the *'frequency with which earthquake events have occurred in the Hunter region suggests that earthquakes pose a genuine threat to the communities there'*.
14. Recent evidence supporting this conclusion is the occurrence of five earthquakes in a three day period in the Upper Hunter between 15 and 18 September 2018. According to data from Geoscience Australia, the tremors measured from between 3.4 magnitude to 2.7 magnitude. The 3.4 event was the strongest EPSO (Edward Pigot Seismic Observatory) ground motion logged since April, 2014.
15. The Geoscience Australia report indicates a greater part of the Newcastle and Lake Macquarie area consists of 'regolith' which includes dust, soil, broken rock, and other related materials and is typically made up of material that is weathered away from the underlying rock. That is, there is generally no immediate solid base beneath the topsoil. The report notes *'regolith in the study region causes a significant increase in the earthquake hazard, and differences in the regolith thickness can cause quite dramatic variations in the hazard and risk across the study region.'*⁵

Qualification of reasonably practical

16. The obligation to ensure safety is strict in nature and is qualified by what is reasonably practicable and means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant factors.
17. Section 18 of the WHS Act helpfully sets out the definition for what is reasonably practicable in relation to eliminating or minimising a risk to health and safety. The section lists a number of factors which are a useful guide, although these are not exhaustive, of what constitutes reasonable practicability and is premised upon the risk assessment process. We set out section 18 below:

*In this Act, **reasonably practicable**, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:*

- (a) *the likelihood of the hazard or the risk concerned occurring, and*
- (b) *the degree of harm that might result from the hazard or the risk, and*
- (c) *what the person concerned knows, or ought reasonably to know, about:*
 - (i) *the hazard or the risk, and*

⁵ Dhu T and Jones T (eds.) 2002 *Earthquake Risk in Newcastle and Lake Macquarie* Geoscience Australia Record 2002/15, Geoscience Australia, Canberra

- (ii) *ways of eliminating or minimising the risk, and*
 - (d) *the availability and suitability of ways to eliminate or minimise the risk, and*
 - (e) *after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating the risk, including whether the cost is grossly disproportionate to the risk.*
18. This requires OOS to identify the risk, consider and assess the risk and ensure steps are taken to eliminate the risk so far as is reasonably practicable, and if not to practicable to eliminate, to minimise the risk so far as is reasonably practicable. The question of what is reasonably practicable will arise at each step of the risk assessment process. On the other hand, it could not be reasonably practicable to take precautions against a hazard or risk which could not have been in existence.
 19. The state of knowledge applied to the definition of reasonably practicable is objective. The Courts have ruled it is that which is possessed by persons generally (other public and private sport and recreation operators) who are engaged in the relevant field of activity and not by reference to the actual knowledge of a PCBU in specific circumstances such as OOS.
 20. The reasonably practicable requirement applies to matters which are within the power of OOS to control, supervise and manage. The notion of reasonable practicability is not limited to simply preventing something that is reasonably foreseeable. In our view the duty is to protect against **all** risks if that is reasonably practicable.
 21. Is it also important to note that the WHS Act does not require OOS to take all possible steps. However this does not import a passive approach should be taken to the detection of risk. The Courts have noted PCBU's should adopt a proactive approach to safety matters. It is not a question of whether the PCBU did envisage a particular danger, but rather whether it should have.⁶⁶
 22. The duty is contravened where there has been a failure to take a particular measure to prevent an identifiable risk occurring. The likelihood of the risk of liquefaction concerned occurring is foreseeable.

What reasonably practicable measures are available?

23. When determining what measures are required, consideration must be given to what is within the power of OOS to perform or check. A PCBU may be found to have control over a relevant matter if they have the capacity to do so, whether that capacity is exercised or not. Although OOS does not have control of the Dam site the question remains whether OOS is in a position to implement measures to ensure, so far as is reasonably practicable, the safety of workers and others at the Myuna Bay Centre from the risk of liquefaction of the Dam.
24. The reasonably practicable measures which could be undertaken to obviate the risk include:
 - (i) Revision of the OOS emergency evacuation plan for the Myuna Bay Centre. We note your instructions OOS has undertaken a revision of the emergency evacuation procedures.

⁶⁶ *WorkCover v Kellogg (Aust) Pty Ltd [1999] NSW IRComm 453*

- (ii) Keep the Myuna Bay Centre open and on high alert until findings by the relevant geotechnical, civil engineering, geoscience experts are available, including a comprehensive evaluation by the New South Wales Dam committee as to the structural integrity of the Dam are known.
 - (iii) Partial closure pending the outcome in paragraph 24(ii) above.
 - (iv) Permanent closure of the Myuna Bay Centre.
25. In our view given the logistics and resources available to OOS associated with evacuating up to 1000 people from such a vast area, including from activities being undertaken on Lake Macquarie, or during the night in such an emergency is unlikely to be an effective strategy for mitigating an earthquake hazard. It also is understood Origin has indicated an impact time of approximately 7 minutes if the Dam is ruptured.
 26. For the reasons stated in paragraph 25, we do not recommend the option in paragraph 24(ii) above.
 27. The conundrum for OOS in adopting the partial closure option pending the availability of expert reports or permanent closure is this. Partial closure will not obviate the requirement for persons to attend at the Myuna Bay Centre. These could include security and maintenance contractors who will necessarily need to be accompanied by OOS staff. Although it is anticipated there would be a minimal number of persons involved they are still subject to the risk to health and safety which remains foreseeable.
 28. In considering whether the economic consequence factors in section 18(e) are so prohibitive and grossly disproportionate to the risk, that mitigation measures should not be undertaken, the High Court has stated the duty cast upon the PCBU is "*no more than making a value judgement in light of all the facts, of what was known at the relevant time, balancing the likelihood of the risk occurring against the time, cost and trouble necessary to avert the risk.*"⁷
 29. We are therefore recommending the closure option. On its face OOS will need to expend considerable resources if it takes the closure option. This is an important consideration. In balancing the decision of cost, time and effort against the nature, likelihood and gravity of the risk, it is important to note the offset contained in the offer from Origin to relocate the Myuna Bay Centre. It would seem most, but perhaps not all of the relocation costs, would be met by Origin.
 30. In the event Origin reneges on its offer our advice would not change. The Courts have long acknowledged Government departments and authorities hold a special position, often referred to as 'the availability of the resources of the State', when it comes to being proactive and vigilant in meeting their safety obligations despite any budgetary constraints.
 31. In our view, if a Court was required to consider the measures available to OOS to eliminate the risk, doubtless it would find OOS, in conjunction with the Origin offer,

⁷ *Slivak v Lurgi (Aust) Pty Ltd (2001) 205CLR 304* and applied by the Court of Appeal, NSW in *Powercoal Pty Ltd v Industrial Relations Commission of NSW (2005) 145 IR 327*

had within its power the control, and available and suitable ways to eliminate the risk. A failure to adopt those measures would result in a contravention of the WHS Act.

32. In light of the above we advise OOS would not have an available defence in the event of enforcement proceedings.
33. Further, it would not be a defence to rely upon the prediction of an earthquake in 50 to 1000 years. Although it is not possible to predict the precise timing, location and size of an earthquake to a sufficiently high degree of accuracy, seismic monitoring and research provide the basis for forecast modelling and hazard assessment and mapping. Geoscientists are able to identify particular areas of risk and, if there is sufficient information, to make probabilistic forecasts about the likelihood of earthquakes happening in a specified area over a specified period. The conclusion of Geoscience Australia is the Hunter and Lake Macquarie region are susceptible to earthquakes.

Consultation, coordination and cooperation

34. It is instructive to highlight OOS safety obligations concerning consultation, representation and participation. The reasons are these. Both OOS and Origin must, so far as reasonably practicable, consult, co-ordinate and co-operate activities with the other where they have safety duties in relation to the same matter. The relevant duty in the circumstances is to ensure the workplace is safe and without risk from liquefaction of the Dam.
35. The lessons from recent cases highlight the importance of the interface between respective PCBU's in discharging this duty. In particular it is not enough to discharge OOS safety obligations by assuming Origin will undertake a risk assessment and conduct the remedial works set out in its correspondence to eliminate or minimise the risks of liquefaction of the Dam.
36. To the contrary Origin has commenced this process and it is now incumbent upon OOS to respond in accordance with its safety obligations.

Officer liability

37. An Officer as defined in the WHS Act includes a Director and Secretary of a corporation appointed under the *Corporations Act 2011 (Cth)* and an Officer of the Crown and Public Authority. In our view OOS Directors and the Executive Officers are caught by the definition. In respect to managerial positions a common thread reflected throughout the definition of Officer is a person who makes or participates in making decisions that affect the whole or substantial part of the business or undertaking.⁸
38. It is also important to note the definition of Officer excludes a Minister of the Crown. This has the potential to create tension between the safety obligations of OOS and its Directors and Officers and the Executive of government, should the court of public opinion apply pressure for the Minister of Sport to intervene in the decision-making process. We highlight this because it is possible there will be considerable public outcry with the loss of such a grand facility. We of course would be happy to discuss and advise on this matter separately should you require.

⁸ section 4 WHS Act

39. An Officer of a PCBU must *exercise due diligence* which includes *taking reasonable steps* to ensure the PCBU complies with its obligations under the WHS Act. Officers of OOS owe a continuous duty to ensure OOS compliance.

Were reasonable steps taken?

40. In our view *due diligence* does not require the Officer to take all possible steps but requires more than just going through the paces. It does not require perfection but does require an Officer to take reasonable steps to act with due diligence. It is an objective test to be looked at in the face of the facts.
41. The Courts have observed *due diligence* requires an Officer to be pro-active about work, health and safety matters. Officers should also understand and be actively engaged in the governance and quality systems of the PCBU.
42. In our view the action of the OOS Directors and the Executive Officers to close the Myuna Bay Centre is not only prudent but discloses minds were directed to the knowledge of safety matters, understanding hazards and risks associated with OOS operations and making available the resources to eliminate or minimise those risks.

Recommendation

43. Our recommendation and the reasons for it are for OOS to close the Myuna Bay Centre.

Thank you again for your instructions. Should you have any queries please do not hesitate to contact me.

Yours faithfully



John Rodney

Special Counsel

Earthquake Risk in Newcastle and Lake Macquarie Geoscience Australia

Summary and Conclusions

The results of our work are dependent upon the accuracy and appropriateness of both the data collected and the models applied in our risk assessment. Further refinement of the models may change some of these results, however, they are a good indicator of the trends and nature of earthquake risk in Newcastle and Lake Macquarie. Our conclusions from this study are:

1. The calculated earthquake hazard in the Newcastle and Lake Macquarie region is higher than the hazard suggested by the Australian earthquake loading standard, AS1170.4-1993;
2. The regolith in the study region causes a significant increase in the earthquake hazard, and differences in the regolith thickness can cause quite dramatic variations in the hazard and risk across the study region;
3. The annualised loss for the study region is of the order of 0.04% or \$11 million per year;
4. The majority of the annualised earthquake risk in the study region is from events that have annual probabilities of occurrence in the range of 0.02 to 0.001 (return periods of 50 - 1,000 years); The risk varies with building construction type, and unreinforced masonry structures have higher average risks per building than other construction types. Brick veneer buildings contribute about half of the total risk. This is partly because they comprise a large proportion of buildings in Newcastle and Lake Macquarie. Timber frame buildings with timber, fibro and other light wall claddings contribute approximately onequarter of the risk. A further one-sixth of the risk is contributed by unreinforced masonry buildings;
5. Damage to residential buildings contributes the vast majority of the risk (approximately 91%). This is largely because residential buildings comprise the vast majority of all buildings in Newcastle and Lake Macquarie;
6. The 1989 Newcastle earthquake had an economic impact with a return period of the order of 1,500 years. According to our models, approximately 82% of all annualised risk in Newcastle and Lake Macquarie is due to events with lesser economic impacts than the 1989 earthquake. Thus, events like the 1989 earthquake, or even more catastrophic events, make only a small contribution to the earthquake risk in the region when considered on an annualised basis. However, rare but catastrophic events are very important to emergency managers and the insurance and reinsurance industries;
7. Annualised risk varies considerably across Newcastle and Lake Macquarie. It depends on the nature of the underlying regolith, the composition of the building stock and building usage in particular areas. Our results suggest that the suburbs most at risk in Newcastle, determined by a percentage of the total value of buildings and contents in the suburb, are Broadmeadow, Carrington, Hamilton, Hamilton East,

Hamilton North, Hamilton South, Islington, Maryville, Stockton, The Junction, Warabrook and Wickham. In Lake Macquarie the suburbs most at risk are Belmont South, Blacksmiths, Caves Beach, Marks Point, Pelican, Swansea and Teralba. Further research into the building parameters for unreinforced masonry construction types may change these conclusions, especially in older suburbs such as Newcastle, Newcastle East, Newcastle West and Cooks Hill.

Other Lake Macquarie suburbs such as Cooranbong, Dora Creek, Estelville, Fassifern, Holmesville, Killingworth, Redhead, Toronto and Warners Bay also had high annualised risk in our results, but the results are less reliable because survey rates were low in these suburbs, and the regolith site modelling is inferior to that in Newcastle;

8. Over half of the earthquake risk is from moderate-magnitude earthquakes, with moment magnitudes around 5, that occur less than 30 km from the study area. This conclusion has implications for emergency management in the lower Hunter. It may be appropriate to prepare for the possible impacts of such events rather than on catastrophic events that have an extremely small probability of occurring;
9. In general, the risk of casualties from earthquakes is low. However, we do not rule out the possibility that casualties in future events could be caused by damage to a single building, or a small number of buildings. It is extremely unlikely that any event capable of causing widespread casualties will occur in the study region;
10. The results also have implications for the earthquake risk facing larger Australian cities such as Sydney, Melbourne and Adelaide. This is due to a number of factors, including similarities between the earthquake hazard in Newcastle and Lake Macquarie and other parts of Australia, and similarities between the urban environments, particularly the composition of the building stock;
11. The earthquake risk to Newcastle and Lake Macquarie may be reduced gradually over time by improved building construction practices, attrition of vulnerable building stock such as unreinforced masonry, and by reducing vulnerability of existing buildings through renovations constructed to modern code standards;
12. Good building practice may be the single, most important, long-term factor in reducing economic losses and casualties from earthquakes in Newcastle and Lake Macquarie. It should be emphasised that a great deal of variability was included in the models used to generate these results. To some degree this variability was incorporated to account for our lack of knowledge about the various models used in the study. The effect of high levels of variability is to increase the estimates of risk. Future studies on the earthquake risk in the region should focus on improving the models that have been used. This will allow for the variability in the models to be decreased, which will most probably result in a decrease in the estimated risk.
13. A study of earthquakes in the Hunter has assessed the region to be at moderate risk of experiencing future tremors. Similar events, were they to occur today in populated areas, would certainly cause significant damage. The frequency with which these events have occurred in the Hunter region suggests that earthquakes pose a genuine threat to the communities there.
14. This study presents the most comprehensive and advanced earthquake risk assessment undertaken for any Australian city to date. It has focused on the economic losses caused by damage to buildings from earthquake ground shaking, and not on the impacts from other, secondary hazards such as soil liquefaction and

surface faulting. The study has adopted a probabilistic approach that makes allowances for the variability that is inherent in natural processes as well as the uncertainty in our knowledge. The results from this project will assist decision-makers involved in local and state government, policy development, the insurance industry, engineers, architects, and the building and finance industries to manage potential damage and loss of life from earthquakes in Newcastle and Lake Macquarie. The results also have implications for the earthquake risk facing larger Australian cities such as Sydney, Melbourne and Adelaide. This is due to a number of factors, including similarities between the earthquake hazard in Newcastle and Lake Macquarie and other parts of Australia, and similarities between the urban environments, particularly the composition of the building stock.

Closure of the Myuna Bay Sport and Recreation Centre

To advise the Premier of the impact of the closure of the Myuna Bay Sport and Recreation Centre on the Aussie-Kiwi water skiing challenge.

Recommendation

That the Premier notes the advice.

Approved
Matt Miller, Chief Executive, Office of Sport, Ph.
8754 8701
Date:

Approved
Secretary
Date:

Comments:

Key Information

Sequency of events March 2019

5 March

- Origin Energy ("**Origin**") advised the Office of Sport that the ash dam wall at Eraring Power Station presented an unacceptable risk to users of the Myuna Bay Sport and recreation Centre ("**Centre**"), asked for the site to be shutdown and offered to pay to relocate client events in the short term, and provide a new facility in the long term.

19 March

- Between receipt of the letter on 5 March and 19 March, the Office undertook a significant number of due diligence activities, including seeking WHS legal advice, engaging Public Works Advisory and other related experts, independent expert review of emergency management planning, reviewing reports provided by Origin and engaging directly with Origin Energy. Under the WHS legislation the PCBU for the Office of Sport is the Executive who can be held individually personally liable for any WHS breaches.
- As a consequence of these investigations and ongoing informal discussions with Origin, the Office of Sport wrote to Origin on 19 March seeking access to further technical information and engineering analysis.

27 March

- After receiving and reviewing analysis, Office of Sport had a meeting with Origin and advisers. Origin advised that
 - the dam wall is at risk in the event of a significant earthquake and as a result Origin will be undertaking significant remedial work to rectify the dam wall and construct a toe buttress at a cost of tens of millions of dollars.
 - Origin Energy has advised that the remediation of the dam wall will take up to 18 months and that their Board believes that the risk to the Centre during this time is unacceptable to them. On this basis, the Board's decision was to grant an "open

Closure of the Myuna Bay Sport and Recreation Centre

cheque book” for restitution so that any financial impediment for the Government did not become a barrier to the decision making process.

- they were requiring their own staff entering the site to go through a case by case risk assessment

28 March

- Office of Sport reviewed information and assessment with the Dam Safety Committee
- Office of Sport provided a brief to the Department of Industry to advise that, as the responsible safety nominee, they had decided to close the centre as of Friday afternoon.
- the reason was that:
 - while dam failure was improbable, the impacts would be catastrophic for any occupants of the centre
 - the nature of the use of the site reduced options for evacuation in the event of failure
 - Origin had offered to pay to relocate events and provide a new centre in the long term, which changed the risk/cost trade-off
- Office of Sport was asked to provide a communications and implementation/business continuity plan to address the needs of clients with current and upcoming bookings.
- Department of Industry advised DPC of the proposed upcoming closure (Tim Reardon and Amy Brown), and DPC advised that Amy Brown would brief the Premier's Office.

29 March

- Dol provided Amy Brown and Tim Reardon with the brief from Office of Sport confirming closure of the centre.
- DPC Communications contacted Dol to ask to be kept informed of any communications.
- Office of Sport prepared draft communications in consultation with Origin, and began arranging alternative arrangements for clients, for advice once the release had been issued.
- Origin issued its statement at approximately 12.30pm advising of the risk and thanking Government for agreeing to close the centre immediately.
- Office of Sport consulted with Department of Industry and DPC on communications. DPC provided proposed suggestions.
- In the afternoon, Office of Sport took further steps to speak with clients and sought to accommodate their needs. The water ski event was flagged as the most immediate, and options were discussed for the event to access the lake from other locations to finish their planned on-water activities. No other suitable sites for this event were identified..
- Office of Sport advised that they had spoken with the organisers of the water ski event and whilst the organisers expressed surprise at the urgency, they were accepting of the need to act as requested and appeared to have no concerns about relocating their dinner off the centre site, or about finishing the event early.

30 March

- At the request of the New Zealand team, the team was relocated to Rydges at Sydney Airport as it was more convenient for the airline departure at 7am Monday morning.

31 March

- Email received by Office of Sport at 7.23 pm from the Australia team organizer (Lisa Beare) expressing extreme disappointment and anger at the decision.

Closure of the Myuna Bay Sport and Recreation Centre

Aussie – Kiwi water skiing challenge

The 2019 Aussie-Kiwi challenge is an annual championship that is hosted bi-annually by each country. The challenge was being held at Myuna Bay from 28 March – 31 March 2019. Access to the water skiing competition was via the Myuna Bay Centre, where competitors were residing.

At approximately 3:00 pm on 29 March Office of Sport contacted the organiser of the Aussie Kiwi Challenge, Mr Neil O'Toole, to inform him the Centre had been closed. Competitors and their families were provided alternative accommodation at hotels in Newcastle from 29 March – 1 April. The remainder of the water skiing events were cancelled. Event organisers were offered a full refund of the uses of the Centre facilities for their entire booking, and organisers were advised competitors out of pocket expenses were also being met.

Financial Implications

Origin Energy will fund the closure of the existing Myuna Bay Sport and Recreation Centre and relocate all existing activities to alternate locations at Origin's cost pending permanent alternate premises being found and a new Centre being built also at their cost. The Office will be seeking to recoup the costs incurred from the cancellation of the event from Origin Energy.

Communication and/or Stakeholder Engagement Strategy

The Communication strategy is in implementaion

Endorsed	Veronica Lee, Executive Director, Corporate Services, Ph. 8754 8708
Date endorsed	1 April 2019
Consultation	N/A
Is the Communications team aware of this brief	<input checked="" type="checkbox"/> Communications team has been consulted on this brief <input checked="" type="checkbox"/> Potential media interest in this brief <input type="checkbox"/> Media release required <input checked="" type="checkbox"/> Communication and/or Stakeholder Engagement Strategy required

Information and Privacy

From: Michael Coutts-Trotter
Sent: Monday, 15 April 2019 10:15 PM
To: Paul O'Reilly
Cc: Deborah Lovell
Subject: Re: Myuna Bay

Thanks Paul. Will read closely tomorrow. Really grateful for your attention to this.

With my best regards,

Michael Coutts-Trotter
Secretary
NSW Department of Family and Community Services

On 15 Apr 2019, at 8:54 pm, Paul O'Reilly <Paul.O'Reilly2@fac.s.nsw.gov.au> wrote:

Michael,

As discussed this morning, here is a short document with speaking points for your discussion with Minister Sidoti on the Myuna Bay issue

I have also attached:

- The legal advice
- The brief to the Premier from April

Regards

Paul O'Reilly

<150419 BN.docx>

<legal advice.pdf>

<Premier Briefing - Myuna Bay_sec2.docx>

Information and Privacy

From: Michael Coutts-Trotter
Sent: Thursday, 11 April 2019 5:53 PM
To: Matt Miller
Subject: Re: MYUNA

Thanks Matt

With my best regards,

Michael Coutts-Trotter
Secretary
NSW Department of Family and Community Services

On 11 Apr 2019, at 5:47 pm, Matt Miller <matt.miller@sport.nsw.gov.au> wrote:

Done and connected with him just now

I will liaise with Paul unless I think we are on a sensitive matter that you also need to know

Matt Miller

<image002.jpg>

From: Michael Coutts-Trotter <Michael.Coutts-Trotter@facs.nsw.gov.au>
Sent: Thursday, April 11, 2019 5:45 PM
To: Matt Miller <matt.miller@sport.nsw.gov.au>
Subject: Re: MYUNA

I've got a call into him now.

Michael Coutts-Trotter
Secretary
NSW Department of Family and Community Services

On 11 Apr 2019, at 5:25 pm, Matt Miller <matt.miller@sport.nsw.gov.au> wrote:

I have not heard from Peter I think you said was going to be your "point guard" on Myuna

Regards

Matt Miller

Chief Executive

Level 3, 6B Figtree Drive, Sydney Olympic Park NSW 2127
Locked Bag 1422, Silverwater NSW 2128

<image001.jpg>

☎ (02) 8754 8701 | ☎ 0419 720 822

✉ matt.miller@sport.nsw.gov.au | 🌐 sport.nsw.gov.au

<image002.png> <image003.png> <image004.png> <image005.png>

<image006.jpg>

This message is intended for the addressee named and may contain privileged information or confidential information or both. If you are not the intended recipient please delete it and notify the sender.

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Information and Privacy

From: Michael Coutts-Trotter
Sent: Thursday, 11 April 2019 5:46 PM
To: Paul O'Reilly
Subject: Fwd: MYUNA BAY PEER REVIEW STATUS
Attachments: image005.jpg; ATT00001.htm; image003.jpg; ATT00002.htm; image002.jpg; ATT00003.htm; image004.png; ATT00004.htm; image006.png; ATT00005.htm; image008.png; ATT00006.htm; image010.png; ATT00007.htm; image012.jpg; ATT00008.htm; [REDACTED] v1.7.pdf; ATT00009.htm

With my best regards,

Michael Coutts-Trotter
Secretary
NSW Department of Family and Community Services

Begin forwarded message:

From: Matt Miller <matt.miller@sport.nsw.gov.au>
Date: 11 April 2019 at 5:21:26 pm AEST
To: "michael coutts-trotter (michael.coutts-trotter@facs.nsw.gov.au)" <michael.coutts-trotter@facs.nsw.gov.au>
Subject: FW: MYUNA BAY PEER REVIEW STATUS

Matt Miller

Information and Privacy

From: Michael Coutts-Trotter
Sent: Thursday, 11 April 2019 5:45 PM
To: Matt Miller
Subject: Re: MYUNA

I've got a call into him now.

Michael Coutts-Trotter
Secretary
NSW Department of Family and Community Services

On 11 Apr 2019, at 5:25 pm, Matt Miller <matt.miller@sport.nsw.gov.au> wrote:

I have not heard from Peter I think you said was going to be your "point guard" on Myuna

Regards

Matt Miller
Chief Executive

Level 3, 6B Figtree Drive, Sydney Olympic Park NSW 2127
Locked Bag 1422, Silverwater NSW 2128

<image001.jpg>

☎ (02) 8754 8701 | ☎ 0419 720 822

✉ matt.miller@sport.nsw.gov.au | 🌐 sport.nsw.gov.au

<image002.png> <image003.png> <image004.png> <image005.png>

<image006.jpg>

This message is intended for the addressee named and may contain privileged information or confidential information or both. If you are not the intended recipient please delete it and notify the sender.

Information and Privacy

From: Office of the Secretary
Sent: Wednesday, 1 May 2019 9:18 AM
To: Blair Collier;Patricia Woo;Tod Brealey
Subject: FW: EAP19/3084 - APPROVAL - MINISTER SIDOTI - Information brief - Myuna Bay Sport and Recreation Centre - AF19/13134
Attachments: Task [E976].ial

From: Jay Shiu On Behalf Of Office of the Secretary
Sent: Wednesday, May 1, 2019 9:18:04 AM (UTC+10:00) Canberra, Melbourne, Sydney
To: Minister Sidoti's Office
Cc: Office of the Secretary; Paul O'Reilly; Chloe Ware
Subject: EAP19/3084 - APPROVAL - MINISTER SIDOTI - Information brief - Myuna Bay Sport and Recreation Centre - AF19/13134

Dear Minister Sidoti's Office

This Briefing note matter from the Minister for Seniors has been progressed for you to approve in MiniAppv3. You can open the attached link to go straight to the matter. We'll send the hard copy in the bag today.

-----ALLOCATION DETAILS-----

Registration: EAP19/3084 - MINISTER SIDOTI - Information brief - Myuna Bay Sport and Recreation Centre - AF19/13134

Action to be undertaken: Information brief
Date your approval is due:
Date due to the Minister for Seniors:

Instructions: Self Generated Matter - Commissioning

Thank you.

Jay

Chi Ming Shiu (Jay)
Senior Business Support Officer, Office of the Secretary
NSW Department of Family and Community Services
A Level 4, 219-241 Cleveland Street, Strawberry Hills NSW 2012
T 02 9248 0904

Information and Privacy

From: Nicolle Nasr <Nicolle.Nasr@minister.nsw.gov.au>
Sent: Wednesday, 1 May 2019 8:40 AM
To: Blair Collier
Subject: RE: Myuna Bay

Thank you Blair.

From: Blair Collier <Blair.Collier@facs.nsw.gov.au>
Sent: Tuesday, 30 April 2019 7:09 PM
To: Nicolle Nasr <Nicolle.Nasr@minister.nsw.gov.au>
Cc: Michael Brimfield <mike.brimfield@minister.nsw.gov.au>; Manusha Reddy <Manusha.Reddy@minister.nsw.gov.au>
Subject: RE: Myuna Bay

Hi Nicolle,

Signed BN attached for your information. Hard copy will follow tomorrow.

thanks

Blair Collier
A/Director | Office of the Secretary
Department of Family and Community Services
T 02 9248 0821 | M 0428 532 904
E blair.collier@facs.nsw.gov.au
A Level 4, 219-241 Cleveland Street, Strawberry Hills NSW 2012
W www.facs.nsw.gov.au



From: Michael Coutts-Trotter
Sent: Tuesday, 30 April 2019 5:21 PM
To: 'nicolle.nasr@minister.nsw.gov.au' <nicolle.nasr@minister.nsw.gov.au>
Cc: Blair Collier <Blair.Collier@facs.nsw.gov.au>
Subject: Myuna Bay

Hi Nicolle,

Signed hard copy of this briefing note will be with you tomorrow morning. Hope this hits the mark.

With my best regards,

MCT

Michael Coutts-Trotter
Secretary
NSW Department of Justice
NSW Department of Family and Community Services



Information and Privacy

From: Nicolle Nasr <Nicolle.Nasr@minister.nsw.gov.au>
Sent: Wednesday, 1 May 2019 8:38 AM
To: Michael Coutts-Trotter
Cc: Blair Collier
Subject: RE: Myuna Bay

Thank you Michael – Minister will be visiting Lake Macquarie accompanied by the local member this Friday FYI.

Kind regards
Nicolle

From: Michael Coutts-Trotter <Michael.Coutts-Trotter@facs.nsw.gov.au>
Sent: Tuesday, 30 April 2019 5:21 PM
To: Nicolle Nasr <Nicolle.Nasr@minister.nsw.gov.au>
Cc: Blair Collier <Blair.Collier@facs.nsw.gov.au>
Subject: Myuna Bay

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Michael Coutts-Trotter
Secretary
NSW Department of Justice
NSW Department of Family and Community Services



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Information and Privacy

From: Jay Shiu
Sent: Wednesday, 1 May 2019 9:22 AM
To: Blair Collier
Cc: Office of the Secretary
Subject: RE: Myuna Bay

Hi Blair,

Hard copy will be in today's bag to Minister Sidoti's Office and TRIM updated.

Kind regards,

Jay

From: Blair Collier
Sent: Tuesday, 30 April 2019 7:10 PM
To: FACS Registration <FACS.Registration@facs.nsw.gov.au>; Chloe Ware <Chloe.Ware@facs.nsw.gov.au>; Jay Shiu <Jay.Shiu@facs.nsw.gov.au>
Cc: Paul O'Reilly <Paul.O'Reilly2@facs.nsw.gov.au>; Office of the Secretary <Officeof.theSecretary@facs.nsw.gov.au>
Subject: FW: Myuna Bay

Hi all,

FYI below emails- the signed copy of the attached has been emailed to Minister Sidoti's office (COS and DLOS).

Can you please ensure a hard copy is progressed tomorrow and update trim as required?

Many thanks

Blair Collier
A/Director | Office of the Secretary
Department of Family and Community Services
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E blair.collier@facs.nsw.gov.au
A Level 4, 219-241 Cleveland Street, Strawberry Hills NSW 2012
W www.facs.nsw.gov.au



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Sent: Tuesday, 30 April 2019 7:09 PM
To: 'nicolle.nasr@minister.nsw.gov.au' <nicolle.nasr@minister.nsw.gov.au>
Cc: 'michael.brimfield@minister.nsw.gov.au' <michael.brimfield@minister.nsw.gov.au>; 'manusha.reddy@minister.nsw.gov.au' <manusha.reddy@minister.nsw.gov.au>
Subject: RE: Myuna Bay

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A/Director | Office of the Secretary

Department of Family and Community Services

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Secretary

NSW Department of Justice

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Information and Privacy

From: Blair Collier
Sent: Tuesday, 30 April 2019 7:10 PM
To: FACS Registration;Chloe Ware;Jay Shiu
Cc: Paul O'Reilly;Office of the Secretary
Subject: FW: Myuna Bay
Attachments: D19 589036 Myuna Bay Sport and recreation centre.pdf

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Cc: 'michael.brimfield@minister.nsw.gov.au' <michael.brimfield@minister.nsw.gov.au>; 'manusha.reddy@minister.nsw.gov.au' <manusha.reddy@minister.nsw.gov.au>
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Secretary
NSW Department of Justice
NSW Department of Family and Community Services





Myuna Bay Sport and Recreation Centre

- Topic** Myuna Bay Sport and Recreation Centre has been closed, following advice from Origin Energy, that the neighbouring Ash Dam wall presents risks to public safety. This decision was made by the NSW Office for Sport.
- Analysis** Minister Sidoti has committed to an independent review of the technical reports that Origin Energy and NSW Office of Sport were relying upon when the decision to close the Sport and Recreation Centre was made. The NSW Dams Safety Committee (the Regulator) will facilitate an independent review of these technical reports. This is likely to take some weeks.

To note by 2 May 2019

Minister's signature	Date

Recommendation: for information only

Key issues

Minister Sidoti has initiated a review of technical reports that sit behind the decision to close the Myuna Bay Centre. These reports were commissioned by Origin Energy, the owner of the dam.

FACSAJ has engaged the NSW Dams Safety Committee (DSC) to facilitate the review of the reports, because:

- Origin Energy has offered to facilitate a review, but there is a risk that this will not be acceptable to the community as an 'independent review'
- The DSC is the Government regulator for Dam Safety in NSW
- The DSC is expert and credible
- The DSC is available to assist at this time and agrees that this is an appropriate task

The review will take between six and ten weeks. This is a highly technical process, and the reviewer will need to examine and challenge much of the technical inputs from the original reports, including any assumptions that were made.

Once the work commences DSC will be able to provide a tighter estimation of the timeframe for the review to be completed.

Background

Myuna Bay Recreation Centre closed at the end of March 2019 in response to a formal notice from Origin Energy on 5 March concerning the stability of the neighbouring Ash Dam wall, and the potential impact of that wall failing.

In consideration of their obligations under Workplace Health and Safety legislation, the Executive Team at NSW Office for Sport sought legal advice in relation to risks to workers and other persons at the Myuna Bay Recreation Centre - in light of the technical reports from Origin.

Briefing for Minister Sidoti: for information

This legal advice set out some 'reasonably practicable steps to obviate risk' and provide for its duty of care, which included a strong recommendation to close the Myuna Bay Recreation Centre.

The community and the local Member of Parliament have raised concerns about the impact of this sudden closure on the community, and firmly believe that this reaction to the Origin Energy letter is disproportionate.

On 4 April Minister Sidoti committed to undertaking an independent review of the technical reports that sit behind the decision to close the Myuna Bay Centre.

Recreation Centre relocation/construction

NSW Office of Sport are currently engaging a planning consultant to develop the scope for a new centre.

It is estimated that the timeframe for reopening a centre on a new site is 3 years. This includes:

- Re-zoning of land
- Development application
- Community co-design
- Potentially slower construction if local builders are engaged

Origin Energy has offered to fund the construction.

There are currently no plans for an interim site while this relocation/construction takes place. There are other recreation centres in the electorate.

A new site has not yet been identified, NSW Office of Sport are exploring a number sites identified by Crown Land and Origin.

Risks / contentious issues

During the visit to Myuna Bay it is likely that the Minister will be asked about the future of the site, the progress of the independent review, and likely timelines for any decisions.

It is important that the following points are highlighted

- The review must be independent, and undertaken by people with the right capability.
- The Dam Safety Committee is well placed to lead this review in the best interests of the community
- The review is a technical process and it will take at least six weeks.
- Safety is important and there will be no short cuts in this review

Detailed key messages are attached – TAB A

Consultation and communication strategy

Dams Safety Committee was consulted in the preparation of this briefing note, and the development of key messages.

Attachments

Tab	Title
A	Key messages

Briefing for Minister Sidoti: for information

Approval

Role	Electronic approval by	Date
Executive Director, Commissioning, FACS	Paul O'Reilly	29/04/19
Secretary	Michael Coutts-Trotter	MCT 30.4.19

TAB A – key messages

The importance of an independent review

The closure of the Myuna Bay Sport and Recreation Centre has been a shock to this community.

I understand that people have some concerns about the technical advice that was provided to Government in the lead up to this decision.

Before any long term decisions are made about this important community facility, I will undertake a review of the decision, and an independent review of the technical advice that informed this decision.

It is important that the review is done by someone who is independent, is expert, and has credibility in the industry.

The NSW Dams Safety Committee has been asked to lead this review.

Why the NSW Dams Safety Committee?

There are a number of engineers and other consultants in the industry who are qualified to undertake this review for the Government.

My Department has asked the NSW Dams Safety Committee to lead this review and seek the services of an independent expert in this field.

The NSW Dams Safety Committee is the regulator of dams safety in NSW. They are constituted by the Parliament under legislation to ensure that dams are safe in NSW.

This means that owners of dams need to comply with the policies, procedures and directions of the Dams Safety Committee.

The Dams Safety Committee is led by a team of highly qualified engineers, who are well placed to lead the review.

How long will it take, and why so long?

I am advised that the review is likely to take between six and ten weeks.

There are some critical steps that need to be followed to ensure a proper review, including a careful analysis of each of the findings in the original technical reports, and the assumptions that sit behind those findings.

I want to be sure that this is a thorough process, and that the review is not rushed. I believe that this is what the community would expect.

Once the work commences we will soon know exactly how long it will take. Again, I am expecting some results in six to ten weeks.

I expect to have a report from the Secretary of my Department within days of the review being completed.

I will then come back to the community with further advice about the future of the Myuna Bay Centre.

TAB A – key messages

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