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24 July 2003

The General Manager
The Council of the Shire of Hornsby
DX 9655 HORNSBY

Attention: M Woodward / P Hinton

By Facsimile: 9847 6980

Dear Sir

**FORMER CSR QUARRY - OLD MAN'S VALLEY
PURCHASE UNDER SECTION 36B OF THE MINES INSPECTION ACT 1901**

We refer to the abovementioned matter. We are requested to advise Council whether, under the *Mines Inspection Act 1901* ("the Mines Act"), other legislation or at common law, CSR could be found to have responsibility for the defects which Council is now obliged to rectify having regard to the fact that the above site has now passed into Council's ownership as a consequence of resumption in accordance with the *Land Acquisition (Just Terms Compensation) Act*.

Summary of advice

In our opinion, neither pursuant to the Mines Act or any other legislation nor at common law could CSR be found to have responsibility for the defects which Council is now obliged to rectify having taken ownership of the Quarry.

The facts

The facts as we understand them to be are:

1. Council became the owner of the former CSR Quarry by notice published in the Government Gazette on 25 October 2002.
2. On 13 May 2003 Council was served with a notice pursuant to section 36B of the Mines Act.
3. This notice brought to Council's attention significant shortcomings in the state of the Quarry and particularly in relation to the electrical engineering installations at the Quarry.

Noted
P.H.A.
29/7/03

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OFFICES: SYDNEY CANBERRA PARRAMATTA



4. Council has now disconnected power to the Quarry pending an audit and remedial work with the consequence that the pump in the bottom of the Quarry is now not working.

Advice

Section 36B of the Mines Act empowers an inspector or mine safety officer (who obtains any information or becomes aware of any practice at a mine that may, in his or her opinion, be relevant to the continued safe operation of the mine or the safety of the persons employed at the mine) as soon as possible to so advise the General Manager of the mine or, if the General Manager is not present at the mine, the next most senior person at the mine.

Pursuant to clause 4A, a quarry is included within the definition of a mine.

'Owner' is defined in section 4 as:

"'Owner' means a person who is the immediate proprietor or lessee, or occupier of a mine, or any part thereof, but does not include a person who merely receives a royalty, rent or fine from a mine, or is merely the proprietor of a mine, subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor, sub-contractor or tributer for the working of the mine, or any part thereof, shall be subject to this Act in like manner as if the contractor, sub-contractor or tributer were an owner, so as not to exempt the owner from any liability."

Whilst these two sections together, in our opinion, do not entitle as a technicality, the inspector to serve such a notice on the Council, in our opinion, it would be not politic for Council to raise this issue. The Mines Act makes no reference to a situation where the mine changes hands.

Section 42 deals with the abandonment of a mine.

That section requires that where any mine of which a plan and sections are required under the provisions of this Act to be deposited, is abandoned, the person who at the time of the abandonment was the owner shall, within three (3) months after such abandonment, forward to the Minister an accurate plan and sections of the workings of such mine up to the time of abandonment.

The Macquarie Dictionary defines 'abandon' as to cast away or leave personal property with no intention of reclaiming it, thereby making the property available for appropriation by any person. We do not believe that any Court would find that the resumption of a property pursuant to a statute in fact constituted abandonment.

In any event, Council should make enquiries with the relevant Department to see if there are any plans as it is our understanding that the actual Quarry has no longer been worked for some time.



Section 42 requires notice to be given of the opening and abandonment of a mine and requires that any abandoned mine or discontinued mine is to be securely protected. Council should make enquiries once again of the Department of Mines to ascertain whether or not these tasks were attended to by CSR.

Proceedings pursuant to the Mines Act are by way of criminal proceedings for failure to comply with relevant sections of the Mines Act. There is no provision for any action in respect of responsibility for the defects which Council is now obliged to rectify.

Our researches to date have not indicated any other legislation pursuant to which Council may bring such proceedings, nor is there any remedy available at common law.

In relation to the extent of information held by CSR, Council should at first instance make contact with the Department of Mines to ascertain what records are held by the Department and with Mr Don Reed of Don Reed & Associates, extractive industry consultants (ph: 9953 7710) with whom we have taken the liberty of discussing this aspect and who will be able to help Council with its enquiries.

Should you wish to discuss any aspect of this matter, please do not hesitate to contact Mrs Finn of this office.

Yours faithfully
ABBOTT TOUT

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