



4 June 2018

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By email: [dean.litis@asx.com.au](mailto:dean.litis@asx.com.au)

Dear Mr Litis

The Board of Environmental Clean Technologies (ASX:ESI) (ECT or Company) provides the following responses to the ASX Query dated 31 May 2018.

1. *Is the MPA a binding agreement or merely a memorandum of understanding that documents a relationship of goodwill between the parties which may lead to legally binding agreements in the form of sub agreement referred to above?*

The MPA (now referred to as an MOU) is not merely a MOU and its function has been explained more fully in the announcement of 31 May.

Whilst ECT is bound to the confidentiality of the document, ECT has provided the Table of Contents below to exemplify the scope and content of the agreement which is directly relevant to its function as a signed agreement between the parties.

The MOU has both terms that are binding and terms (which are subject to conditions precedent) and hence non-binding.

The commercial terms will be transposed to the sub agreements (referred to in the table of contents below as the 'structure and funding documents')

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As exemplified above, the MOU sets out the party's agreement to comprehensive commercial terms related to the structure, funding, governance and intellectual property management of the Pilot Plant Project (R&D Phase) and subsequent Special Purpose Vehicle (Commercial Phase).

Further, it specifies that following execution of the MOU, the parties have agreed to draft, review and execute the detailed sub agreements on the terms set out in the MOU. This reinforces that the document is functioning as a heads of agreement.

The requirement for sub agreements to be executed as a condition precedent of financial close has been stated most recently in announcements on 17 May 2018, 29 May 2018 and 30 May 2018.

The MOU does set out several essential obligations between the parties including the following:

#### 4 Project Structure and Funding

- 4.1 Documentation
- 4.2 Key Terms
- 4.3 Conditions precedent to the Structure and Funding Documents

#### 16 Assignment and Dealings

#### 17 Default, termination and rescission

#### 18 Limitation of liability

#### 19 Confidentiality

#### 20 Dispute determination

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#### 22 General

The role of the sub agreements has been detailed consistently in prior Company announcements. Our announcement on 30 May 2018 stated, "Following execution of the detailed sub-agreements the commencement of project works will be funded and able to commence." This statement is clear in that the sub agreements are required to be executed prior to commencing project works.

2. *Why has the 'sunset date' of 31 July 2018 (as stated in the 17 May 2018 announcement) and reiterated in subsequent ESI announcements been extended to the end of August? Why was the extension and the reasons for the extension not explained in the Announcement?*

Sunset date is the last date on which the MOU can expire.

Financial close is achieved on execution of all the sub agreements.

It is important to note that the sunset date and financial close are hence two separately defined terms in the MOU.

The MOU specifies that it will expire on the earlier of

- a) the sunset date;
- b) on financial close; or
- c) termination by default by the parties to the agreement.

Our Indian partners requested the extension to the sunset date for the MOU to the end of August 2018. Their legal advisers were concerned that if the sunset date was set at 31 July and financial close was subsequently missed by even one day, then the MOU would expire, and a new agreement would be

required that would necessitate initiating the approval process again which would have delayed the project further than the potential one-month extension mentioned in our announcement.

NLCIL and NMDC have directly stated their desired target to review, approve and execute the sub-agreements before financial close on 31 July. ECT has agreed to and supports this date.

The reason the extension to the sunset date was not explained is twofold;

- the parties agreed that the target for financial close would be 31 July (as separate to the sunset date of 31 August) and;
- should additional time be required, the Company did not consider that a modest delay of one month was a material change to a lengthy and complex process in the context of a 4-year interaction that has culminated in the delivery of an unprecedented deal in India by an Australian company. In the Company's view all material aspects were progressing satisfactorily as was evidenced by the signing of the agreement on 30 May 2018.

3. *When did ESI first become aware of that the 'sunset date' had been extended to 31 August 2018?*

27 May 2018, circa 7:30am AEST, ECT was supplied with the penultimate draft of the agreement, inclusive of (for the first time) a proposal to extend the sunset date to 31 August, which was to be submitted to the NLCIL and NMDC boards for endorsement on 28 May.

28 May 2018, circa 9:30pm AEST, ECT received verbal confirmation that the proposal to extend the sunset date to 31 August had been endorsed by the NLCIL and NMDC Boards.

4. *Does ESI consider the information contained in the announcement in relation to the extension of the 'sunset date' to be information that a reasonable person would expect to have a material effect on the share price or value of its securities?*

No. Refer question 2 above.

5. *If the answer to question 4 is "no" please advise the basis for that view.*

Refer question 2 above.

6. *If the answer to question 4 is "yes", please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe ESI was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps ESI took to ensure that the information was released promptly and without delay.*

Not applicable give the answer to question 5.

7. *Please confirm ESI is in compliance with the Listing Rules and, in particular Listing Rule 3.1.*

Yes

8. *Please confirm that ESI's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of ESI with delegated authority from the board to respond to ASX on disclosure matters.*

Yes

Please do not hesitate to contact me should you have any further queries.

Yours sincerely

*[Sent electronically without signature]*

Martin Hill  
CFO & Company Secretary



31 May 2018

**Mr Martin Hill**  
**Chief Financial Officer & Company Secretary**  
**Environmental Clean Technologies Limited**

388 Punt Road  
South Yarra VIC 3141

By email: [martin.hill@ectltd.com.au](mailto:martin.hill@ectltd.com.au)

Dear Mr Hill

**Environmental Clean Technologies Limited (“ESI”): ASX query**

ASX Limited (“ASX”) refers to the following:

- A. ESI’s announcement entitled “*Australia - India R & D Collaboration Agreement Signed*” announced on 30 May 2018 (**Announcement**) which follows three earlier related announcements made by ESI on 17, 21 and 29 May 2018. The 17 May 2018 announcement which lifted the trading halt in ESI securities stated, among other things, that the agreed terms of the Master Project Agreement (**MPA**) will be transposed to a set of detailed sub-agreements, including a Master Technology Licence Agreement, Tripartite Collaboration Agreement and NLC, NMDC and ECT Services Agreements (**Sub-agreements**). The 17 May announcement continues:

“Over the next 48 hours we will have each of the draft sub-agreements in circulation and under review by the project partners. Whilst we have targeted project financial close by 30 June, the MPA provides up until 31 July 2018 to complete the sub-agreements. Importantly, the revised date will give the parties the necessary time to complete, consider and incorporate the budget estimates and detailed project plan stemming from the completion of the Basic Engineering Design, as required.

The 31 July 2018 deadline to complete the Sub-agreements is reiterated later in the announcement as follows:

- The MPA states a ‘sunset date’ of 31<sup>st</sup> of July 2018 by which time the parties have committed to have finalised, approved and executed the project sub-agreements.

- B. In relation to completion of the Sub-agreements, the Announcement states:

**Next Steps**

The Project Agreement sets out the agreed terms for detailed sub-agreements. These include a Master Technology Licence Agreement, Tripartite Collaboration Agreement and NLCIL, NMDC and ECT Services Agreements.

Following execution of the detailed sub-agreements the commencement of project works will be funded and able to commence.

The parties are on track to deliver these agreements by the end of August and look forward to providing further updates as activities progress.

- C. The photograph on page 1 of the Announcement depicts the parties at the ‘Signing Ceremony’ holding documents entitled “Memorandum of Understanding”.

- D. ESI's share price was \$0.02 immediately prior to the Announcement. Following the Announcement, the share price fell to a low of \$0.013 on 30 May 2018 and closed at \$0.014 that day.
- E. Listing Rule 3.1, which requires a listed entity to give ASX immediately any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.
- F. The definition of "aware" in Chapter 19 of the Listing Rules, which states that:

*"an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity"*

and section 4.4 in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* "When does an entity become aware of information".

- G. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure, provided that each of the following are satisfied.

*"3.1A Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information:*

*3.1A.1 One or more of the following applies:*

- *It would be a breach of a law to disclose the information;*
- *The information concerns an incomplete proposal or negotiation;*
- *The information comprises matters of supposition or is insufficiently definite to warrant disclosure;*
- *The information is generated for the internal management purposes of the entity; or*
- *The information is a trade secret; and*

*3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and*

*3.1A.3 A reasonable person would not expect the information to be disclosed."*

- H. ASX's policy position on the concept of "confidentiality", which is detailed in section 5.8 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. In particular, the Guidance Note states that:

*"Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the listed entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it ceases to be confidential information for the purposes of this rule."*

Having regard to the above, ASX asks ESI to respond separately to each of the following questions and requests for information:

1. Is the MPA a legally binding agreement or merely a memorandum of understanding that documents a relationship of goodwill between the parties which *may* lead to legally binding agreements in the form of Sub-agreements referred to above?
2. Why has the 'sunset date' of 31 July 2018 (as stated in the 17 May 2018 announcement) and reiterated in subsequent ESI announcements been extended to 'the end of August'? Why was the extension and reasons for extension not explained in the Announcement?

3. When did ESI first become aware of that the 'sunset date' had been extended to 31 August 2018?
4. Does ESI consider the information contained in the Announcement in relation to the extension of the 'sunset date' to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
5. If the answer to question 4 is "no", please advise the basis for that view.
6. If the answer to question 4 is "yes", please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe ESI was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps ESI took to ensure that the information was released promptly and without delay.
7. Please confirm that ESI is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.
8. Please confirm that ESI's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of ESI with delegated authority from the board to respond to ASX on disclosure matters.

#### **When and where to send your response**

This request is made under, and in accordance with, Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by not later than half an hour before the start of trading (ie before 9.30 a.m. AEST) on Tuesday 5 June 2018. If we do not have your response by then, ASX will have no choice but to consider suspending trading in ESI.

You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, ESI's obligation is to disclose the information "immediately". This may require the information to be disclosed before the deadline set out in the previous paragraph and may require ESI to request a trading halt immediately.

If you wish to request a trading halt, you must tell us:

- the reasons for the trading halt;
- how long you want the trading halt to last;
- the event you expect to happen that will end the trading halt;
- that you are not aware of any reason why the trading halt should not be granted; and
- any other information necessary to inform the market about the trading halt, or that we ask for.

We may require the request for a trading halt to be in writing. The trading halt cannot extend past the commencement of normal trading on the second day after the day on which it is granted.

You can find further information about trading halts in Guidance Note 16 *Trading Halts & Voluntary Suspensions*.

ASX reserves the right to release a copy of this letter and your response on the ASX Market Announcements Platform under Listing Rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent to me by e-mail at [dean.litis@asx.com.au](mailto:dean.litis@asx.com.au). It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

#### **Listing Rules 3.1 and 3.1A**

In responding to this letter, you should have regard to ESI's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

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It should be noted that ESI's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

**Suspension**

If you are unable to respond to this letter by the time specified above ASX will likely suspend trading in ESI's securities under Listing Rule 17.3.

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

*[Sent electronically without signature]*

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**Dean Litis**  
**Principal Adviser, Listings Compliance (Melbourne)**