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By email: laeisc@parliament.wa.gov.au

Mr Tim Hughes
 Principal Research Officer
 Economics and Industry Standing Committee
 Legislative Assembly
 Parliament of Western Australia
 Parliament House Perth WA 6000

Dear Mr Hughes

**Legislative Assembly Standing Committee Inquiry into 2011 Kimberley Ultramarathon
 Delaware North El Questro Pty Ltd**

We act for Delaware North El Questro Pty Ltd (**DNC**), the owner and operator of El Questro Wilderness Park & Resort (**El Questro**).

We refer to Dr Michael Nahan's letter of 9 March 2012 addressed to Mr Tim Smith, DNC's Chief Executive Officer, inviting DNC to make a submission to the Inquiry. On behalf of our client we hereby deliver its submission, and thank the Inquiry for the opportunity to be heard.

A. Introduction

DNC does not propose to deliver an extensive written submission. It believes that the Inquiry is likely to be best assisted by the contemporaneous accounts of its staff at El Questro who had contact with representatives of RacingThePlanet (**RTP**) prior to the 2011 Kimberley Ultramarathon and who were in a position to make first-hand observations. Their statements, it is hoped, will afford the Inquiry an insight into some aspects of the event about which it may not otherwise be readily able to inform itself.

It is not DNC's intention to trespass on the Inquiry's role by expressing conclusions as to the quarters in which any responsibility may lie for the outcome of the event. Nor is it proposed to attempt to summarise in the body of this submission the matters which emerge from the attached statements, with

the exception of the principal conclusions of fact which DNC submits at part B below should be found.

Accordingly, we attach as annexures, to form part of this submission, statements made by the following employees of DNC who are and were at the time of the incident members of its staff employed at El Questro Wilderness Park & Resort (**El Questro**):

1. Michael Gerard Bass – Wilderness Park Manager.
2. Daniel Laurence Jewell – Maintenance Supervisor.
3. Samantha Louise McCarthy – Night Auditor.
4. Dale John Watson Niblett – Operations Manager.
5. Larissa Virginia White – Tour Guide.
6. Katrina Anne Wright – Manager, Emma Gorge Resort.
7. Rachel Balderson – Assistant Activities Co-ordinator and Tour Guide. Ms Balderson is currently on extended leave and is not contactable. Her statement is provided on the basis that although unsigned it is materially in the form earlier settled by her.

It will be seen that the involvement of DNC staff and use of El Questro property was peripheral to the 2011 Kimberley Marathon. This is in contrast to the event staged by RTP in 2010, much of which was run over El Questro's property. El Questro had little involvement in the 2011 event save for permitting RTP to use the air strip at Emma Gorge as a starting point for the race, and holding antecedent discussions with representatives of RTP for that purpose. A number of the attached statements include by way of background the witnesses' experience of the 2010 Kimberley Ultramarathon staged by RTP.

It will be noted that several of the statements contain hearsay rather than direct evidence. We have not attempted to excise such hearsay material, preferring to record each witness's own account in full, including opinions and hearsay.

DNC wishes to record its disappointment that the 2011 Kimberley Ultramarathon ended in the manner it did, with injury, trauma and suffering to the runners concerned, and indeed to their family, friends and the wider community. It notes also that the events of 2 September 2011 have caused great distress to its staff at El Questro.

DNC submits that the Inquiry should find as facts the matters set out below in part B relating to its own narrowly confined involvement in the 2011 Kimberley Ultramarathon. It makes no submission as to whether the Inquiry should make findings critical of or adverse to the interests of RTP or any other person or body associated with or involved in the 2011 event. As a tourism operator, however, DNC is acutely aware of its duties and responsibilities for the safety of its employees and invitees. Accordingly, it makes submissions in part C as to recommendations to be made by the Inquiry in relation to future events of this type.

B. Submissions as to findings of fact

On the basis of the evidence appearing in the attached statements, DNC submits that it is properly open to the Inquiry to make the following findings of fact relating to its own role:

1. DNC is the occupier of El Questro station, in the East Kimberley region of Western Australia, under lease from the Western Australian Government. It operates El Questro as a wilderness tourism resort.
2. In May 2010 RTP staged a running event in the Kimberley region. Much of the course run by the participants was over El Questro property, and to a limited extent El Questro acted as host to the participants but was not involved in the planning or execution of the event itself.¹
3. In mid-2011 staff at El Questro became aware that RTP was planning to hold a running event in the Kimberley region later that year. As DNC had received no direct contact or information from RTP concerning the event, on 22 August 2011 El Questro's Operations Manager contacted a representative of RTP by email seeking information about RTP's plans. Unlike the 2010 event, El Questro staff were not requested or expected to provide any personnel or support services for the 2011 event, save for providing accommodation on normal commercial terms to any participants who were booked to stay at El Questro Resort.²
4. On 27 August 2011 El Questro staff informed representatives of RTP that they could use the airstrip at Emma Gorge as the starting point for the 2011 Kimberley Ultramarathon, and

¹ Statement of Dale Niblett, paragraphs 4 – 6; statement of Rachel Balderson, paragraphs 6 – 10; statement of Michael Bass, paragraph 7; statement of Katrina Wright, paragraphs 4 – 8.

² Statement of Michael Bass, paragraph 10; statement of Dale Niblett, paragraphs 9 & 10.

advised them that thereafter the runners should run towards Kununurra (the finishing point) along the Gibb River Road or a service track beside the Gibb River Road.³

5. The 2011 Kimberley Ultramarathon runners began the race at Emma Gorge airstrip, on El Questro property, and shortly thereafter moved off the property and onto Gibb River Road or a service track beside that road.⁴
6. The entrapment of the runners occurred outside El Questro property.⁵
7. Representatives of RTP were alerted by El Questro staff to the existence of fires in the area well in advance of 2 September 2011. Further, fires in the area were detectable from satellite imagery on publicly available websites, and on both the day prior to and the day of the event were visible from the Gibb River Road between Emma Gorge and Kununurra.⁶

C. Submission as to recommendations to be made by the Inquiry

DNC submits that all future events similar to the 2011 Kimberley Ultramarathon to be held on public land in Western Australia should be subject to oversight and control by the relevant local municipal authorities. Permits issued by those authorities should be required before such events can be held, and should be issued only after submission to and approval by police, fire and emergency services authorities of all necessary risk assessment, safety and organisational arrangements and plans including maps of proposed routes. Further, where any part of such events is proposed to be conducted on or adjacent to privately occupied land, the landholder(s) should be provided in advance with copies of all relevant permits and plans.

³ Statement of Michael Bass, paragraph 13; statement of Katrina Wright, paragraphs 10 & 11.

⁴ Statement of Dale Niblett, paragraph 8; Statement of Katrina Wright, paragraph 12; Statement of Michael Bass, paragraph 9, 13 & 19.

⁵ Statement of Michael Bass, paragraph 15 & 20. Whilst the precise point of the entrapment is not known to DNC, it is expected that this will be the subject of evidence given by others to the Inquiry.

⁶ Statement of Michael Bass; Statement of Larissa White.

The Standing Committee is invited to contact either Fatmir Badali or William Southey of our office should it require further information or if DNC can be of further assistance.

Yours faithfully

Gadens Lawyers

William Southey
Special Counsel
for **GADENS LAWYERS**

Att

THE COMMITTEE HAS RESOLVED NOT TO PUBLISH THE
ANNEXURES TO THIS SUBMISSION