

3 March 2021

Mr J Doyle  
Chair  
Sydney Western City Planning Panel  
via email

**Re: Georges Cove Marina (PPS-2018SSW027) - additional information**

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Dear Mr Doyle,

We are writing on behalf of Benedict Industries Pty Ltd in regards to the Georges Cove Marina application that has been provided by Liverpool City Council (Council) to the Sydney Western City Planning Panel for determination (PPS-2018SSW027).

This letter provides:

- information in response to the Council's recommendation that the application be refused based on the application of Clause 7 of State Environmental Planning Policy No 55—Remediation of Land (SEPP 55); and
- comments on the proposed conditions.

## Application of SEPP55

As you will be aware, towards the end of Section 6.1.2 of the Council's Planning Panel Report, the Council summarises its assessment of contamination of the site as:

Given the above, in spite of the data gaps in the existing documentation, based upon the Site Auditor's advice as well as GTAs from NSW EPA, it is believed that sufficient information has been submitted for Council to be satisfied that Clauses 7(1), 7(2), 7(3) and 7(4) of State Environmental Planning Policy No. 55-Remediation of Land have been addressed. No objections are therefore raised with the proposed development, subject to conditions of consent [emphasis added].

and concludes this section with:

... whilst Council's Environmental Health Section has raised no objections with the submitted documentation, the Parties have obtained independent advice into the matters raised and following consideration of legal advice, Council's position remains that the legal test has not been satisfied. For this reason, the development application cannot be supported due to unresolved legal position on matters concerning SEPP 55.

In Section 7 of the report the Council concludes:

In conclusion, the subject Development Application has been assessed having regard to the matters of consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979 and is considered satisfactory except for SEPP 55 and, as such, the subject application is recommended to be determined for refusal...

There is universal agreement (including by the Applicant) that there is some site contamination and that further detailed assessment and remediation is appropriate. However, the site has low contaminant and soil gas levels, water quality in the dredge pond is similar to the Georges River and that remediation is feasible and practical as summarised in the conclusion (Section 5) of the Site Audit Report 282 (Appendix D7 of the Environmental Impact Statement (EMM 2019)).

However, an informative detailed site investigation cannot be conducted until earthworks are conducted on the site, including moving the large stockpiles on the south of the site to allow access to the underlying material. The landform is incomplete as some future land is currently water and vice-versa such that it is impossible to test it in its final, buildable form.

The Council's recommendation for refusal is solely based on legal advice that it sought that indicated that the requirements of SEPP55 Clause 7 have not been met and the Council is satisfied in all other matters.

The Council's legal advice does not concur with Mr L. Walker's (Partner, MinterEllison) legal advice of 18 February 2021 that is attached to this letter. Mr Walker's opinion is that Council and the consent authority can be satisfied that there is sufficient information and protections in place to form the requisite opinion required by clause 7 of SEPP 55. Further, Mr Walker advises that the Council's legal advice is overly cautious to the extent that if was applied, the requirements of Clause 7 could never be met for any industrial or extractive site.

A Site Audit Report and Site Audit Statement were prepared for the development by EPA Site Auditor, Dr I. Swane. In his letter of 16 February 2021, that is attached to this letter, Dr Swane has confirmed his advice that, in his professional opinion as a highly experienced Site Auditor, that the site can be made suitable for the proposed development and that the site can be practically and feasibility rehabilitated.

In response to the Council's legal advice that the requirements of SEPP55 Clause 7 precludes granting consent for the project, Dr Swane explains the role of a Site Auditor and a Site Audit Statement and lists 15 approvals for which he was the EPA Accredited Site Auditor where contamination investigations and/or remediation plans were required as a consent condition, as post-approval requirements, and that this is the only real option (a reasonable consent condition) for the marina. Dr. Swane notes that consent-conditioning staged studies are commonplace (he has given many examples in his attached letter) and that the Council's legal advice is unusual given that Council consents are routinely issued for other developments in similar circumstances.

In summary, we believe that it is clear that requirements of SEPP55 Clause 7 have been met and that the Sydney Western City Planning Panel can legally provide consent for the proposed marina.

## Draft consent conditions

The Council provided the Applicant with the opportunity to comment on the draft conditions prior to providing them to the Panel. The Applicant's comments are provided in the 22 February 2021 Council memo (the Council memo).

We provide the further responses in relation to the draft conditions in the Council memo.

## Conditions 2 and 139: signalisation of the Link Road/Brickmakers Drive intersection

As noted in our response to the draft conditions, TfNSW previously argued against the installation of traffic signals at the Link Road/Brickmakers Drive intersection at this time on the basis that the current traffic volumes are insufficient to warrant signalisation.

As described in our letter to TfNSW of 25 May 2020 (Attachment 20 of the package provided to the Panel by Council), traffic signals will be required in 2026 (ie in about 5 years hence). There is ample time for the design of the signalised intersection to be resolved concurrently with other development tasks, including the earthworks required to allow the detailed site investigation to be conducted (see comments below). As noted by TfNSW a Work Authorisation Deed (WAD) will need to be issued by TfNSW prior to the construction of these intersection so there is no risk that an unsuitable intersection will be approved or constructed.

We maintain that Condition 2 does not need to be a deferred commencement condition (that is, that the intersection must be designed and approved before any works on the marina site can be commenced) but rather could be incorporated within the body of the consent to allow other unrelated but important works to commence. We have suggested alternative wording tied into predicted traffic movements but this condition could also be tied to a date, such as delivery prior to December 2024 or prior to issuing a construction certificate for marina structures.

On a related but separate matter, we requested that the reference to the Ausroads Guide is removed from the conditions as there are intersection designs which TfNSW could approve through the WAD that may not be fully compliant with the Ausroads Guide due to site constraints. Compliance with the Ausroads Guide is best addressed by the TfNSW processes (the in-principal agreement and the WAD) is not required as a consent condition. If the intersection design agreed with TfNSW is not fully compliant with the Ausroads Guide, the consent would need to be modified to remove the reference to the Ausroads Guide from the conditions. We therefore also continue to request that it is removed at this stage.

## Condition 17: commencement of site development work

There have been extensive environmental investigations across the site. Condition 123 requires a full Phase 2 Detailed Site Investigation (DSI) to be prepared. This will inform any required amendments to the remediation action plan (RAP) and the earthworks design. The DSI may also inform the detailed design (Part B, Condition 18) and will inform the preparation of the Construction Environmental Management Plan (Part B, Condition 27). As noted in the Applicant's response to the draft conditions, earthworks are required to undertake the DSI.

We request that Condition 17 be amended to prevent a circular argument forming where a Construction Certificate (CC) cannot be issued as the Conditions in Part B need to address the findings of the DSI but the earthworks required for the DSI cannot be commenced pending the issuing of a CC.

An alternative to the previously requested wording would be to delete "excavation". This would allow excavation for the DSI but would not any structural earthworks that would require an engineered design, ie:

17. Site development work in the form of ~~excavation~~, underpinning or shoring works must not take place, until such time as a CC has been issued.

## Conditions 200 and 226: noise

Conditions 200 and 226 relate to noise levels at the boundary of the site with the adjoining residential development to the north that is being developed by Mirvac in partnership with Benedict, as represented by noise assessment location R10. As the Council notes in the memo, "It is Council understanding that noise impacts associated with the marina building upon receivers at R10 would be mitigated by acoustic measures incorporated into the design and construction of the premises and management interventions." This is correct. However, design and construction measures will reduce internal noise levels but will not reduce

external noise levels. The draft noise criteria would apply externally, which given the proximity of the residences, cannot be met.

It is noted that prior to purchase of these properties the occupiers will be fully aware of the views on to the marina and this will be highly valued by many purchasers. In fact, these properties will be sold as 'premium' properties due to their proximity to the marina's boating and function centre activities, despite the slightly elevated external (but not internal) noise levels.

Hence, it is requested to amend these conditions as noted in the Applicant's response in the memo.

## Closing

We trust that the information provided in this letter and its attachments is useful to the Panel. We look forward to the Panel meeting on 8 March 2021 but please let me know if you need any further information prior to the meeting.

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized 'P' followed by a long, sweeping horizontal line.

**Philip Towler**  
Associate Director  
[ptowler@emmconsulting.com.au](mailto:ptowler@emmconsulting.com.au)

# MinterEllison

18 February 2021

Lina Kakish  
Manager Development Assessment  
Liverpool City Council  
Locked Bag 7064  
LIVERPOOL BC NSW 1871

Dear Lina

## **Georges Cove Marina - Development Application 611/2018**

We refer to the above development application and to our letter to you dated 23 November 2020 in respect of concerns that Council held at that time in respect of the obligations imposed by clause 7 of SEPP 55.

We understand that Council has sought legal advice in respect of the SEPP 55 issue (including Counsel's advice) and, despite being supportive of the application generally, may recommend refusal of the application based on concerns it still holds in respect of SEPP 55.

This letter is provided to Council to supplement my opinion of 23 November 2020 to have regard to the letter from Ian Swane & Associates dated 16 February 2021 and to a letter from Council to our client's consultant, Mr Towler, also dated 16 February 2021.

Although it is not entirely clear, we have interpreted Council's letter of 16 February 2021 as being a summary of the legal advice it has received.

We respectfully request that Council take into account the following matters when finalising the assessment report for the subject application:

1. Our client does accept that the obligations imposed by clause 7 of SEPP 55 are obligations on the consent authority and not on the applicant;
2. However, having regard to the letter from Dr Swane dated 16 February 2021, it is evident that, with respect, Council's legal advice is overly conservative and appears to proceed on the basis that there must be before the consent authority investigations that evidence a 'perfect state of affairs'. But the problem with this approach is that neither the text of the SEPP or the common law authorities indicate this is required. It is also inflexible and fails in our view to understand the geographical and scientific features of the subject site;
3. So far as we are aware, the legal advice Council has received does not rely on any common law decisions to support its position and nor does it respond to the points that we raise in our November letter in any substantive manner. In other words, it is not, so far as we are aware, relying on any legal authority to support the position it takes. We assume the advice was given prior to Dr Swane's recent letter and respectfully suggest that his letter contains further persuasive reasons as to why the consent authority can be satisfied that after remediation is carried out that the subject site can be used for the proposed marina use.
4. We do appreciate that in this circumstance a legal advisor to Council may be more inclined to express a more cautious view given the wording of clause 7 but we feel that the advice you have received is so conservative that if it were applied to any other industrial or extractive site would mean that a consent authority could never form the opinion required by clause 7. This is clearly inconsistent with the many recent examples Dr Swane has referred to in his recent letter where there have been similar site factual circumstances (ie where some investigation in a particular area has not been possible) and yet consent has been granted.



5. In our view, the matters expressed in Dr Swane's report of 16 February 2021 provide more than a sufficient basis to meet the requirements of SEPP 55 and are consistent with the reasoning expressed by Preston CJ in *Moorebank Recyclers Pty Ltd v Liverpool City Council* (2015) NSWLEC 40. Accordingly, it is our opinion that Council and the consent authority can be satisfied that there is sufficient information and protections in place to form the requisite opinion required by clause 7 of SEPP 55.

We request that this letter (and our earlier letter dated 23 November 2020) also please be provided to the Panel as part of the assessment report.

Should you have any queries or wish to discuss any aspect of this letter please feel free to contact me on 9921 4793.

Yours faithfully

**MinterEllison**

A handwritten signature in dark ink, appearing to be 'LW', is written over a faint, light-colored rectangular stamp or watermark.

Luke Walker  
Partner

Partner: Luke Walker T: +61 2 9921 4793  
luke.walker@minterellison.com

Benedict Industries Pty Ltd  
PO Box 431  
FRENCHS FOREST NSW 1640

Attention: Mr Ernest Dupere – General Manager

16 February 2021

SA282\_210216\_Interim advice  
Site Audit 282

Dear Sir

**INTERIM ADVICE FOR STATUTORY SITE AUDIT 282 – GEORGES COVE MARINA, 146 NEWBRIDGE ROAD, MOOREBANK (8 pages)**

## **1. Introduction**

This report provides Benedict Industries Pty Ltd ('Benedict') with interim advice as part of Site Audit 282 that was commenced on 9/11/18 by Dr Ian Swane, a Site Auditor accredited under the Contaminated Land Management ('CLM') Act. The advice forms part of a statutory site audit being conducted for 12.357 ha of land that forms the southern part of the Benedict property at Lot 70 in DP 1254895, 146 Newbridge Road, Moorebank NSW. This land is to be subdivided from Lot 70 to form a new Lot 3 to be zoned RE2 'Private Recreation' and redeveloped for a mixed use marina development (the 'Site').

The purpose of this report is to provide a site auditor's opinion on the suitability of existing site contamination data and assessments for determining whether:

- The Site can be made suitable for its proposed land use;
- The Site can be remediated in a practical and feasible manner; and
- It is reasonable, from a contaminated site practitioner's perspective, for The City of Liverpool ('Council') to manage contamination issues associated with the proposed development by issuing a Development Consent at this time.

The purpose of this report is also to provide technical information that can be used by Benedict when assessing the legal merits for Council to issue a Development Consent for the Site at this time.

## **2. Opinion on whether the Site can be made suitable**

In my opinion, contamination can be remediated and the Site made suitable for the proposed development in a feasible and practical manner. This is because:

- a) The historical data indicate that the Site has no history of chemical use and has been predominantly used for dredging of sand;
- b) Fill placed at the Site consists mainly of sandy / clayey soils containing some construction and demolition waste, which has a low leachate generation potential;
- c) Average contaminant levels in existing soils at the Site are likely to be below the EPA-approved Soil Investigation Levels (SILs) appropriate for the intended land uses to a 95% level of confidence based on the available contamination data, the physical description of the soils at the Site and absence of any physical evidence of significant contamination;
- d) No contaminant hot-spots were identified by previous investigations;
- e) The presence of unknown hot-spots can only be identified as part of a validation program undertaken as part of the development's earthworks program. This is because of the inability of discrete investigation techniques to locate such contamination in a practical manner;

## IAN SWANE & ASSOCIATES P/L

- f) There is a low risk of odorous or stained shallow sediments being present in significant quantities that may impact the suitability of the Site for the intended land uses;
- g) Landfill gas (LFG) levels at the Site are likely to be low to non-existent and, if present, would be capable of being addressed by the proposed development, as demonstrated by the remediation work being undertaken in the adjacent Benedict land. This is because of the data collected in the local area and the nature of the proposed development; and
- h) I know that many sites in Sydney with similar types of soils and contaminants of concern have been successfully remediated and made suitable for sensitive land uses. This is because I have been remediating contaminated land in NSW since 1987 and a NSW site auditor since the scheme began in 1997.

### 3. Opinion on the practicality and feasibility of remediation

In my opinion, the Site can be remediated in a practical and feasible manner. This is because:

- a) Of the reasons given in **Section 2**;
- b) The marina development will involve a major earthworks program that will significantly alter the current landform. This means the existing quality of shallow soils will not be relevant to the risks posed by contamination in the final landform and that such data would best be obtained as part of a validation program undertaken during or upon completion of the bulk earthworks; and
- c) It should be feasible to manage the presence of additional contamination and/or Unexpected Finds encountered during bulk earthworks by including an appropriate contingency plan and Unexpected Finds protocol, as normally done as part of a remediation strategy;
- d) A large portion of the land mass required by the proposed development does not physically exist at the present time (**Figure 1**), while a large amount of the existing land mass is to be excavated and moved. Consequently, the best time to remediate and validate the land that will form the developed Site will be during the bulk earthworks phase of the project;
- e) It is not practical to undertake further investigation at this time to accurately delineate the extent of contamination that may need to be remediated because of the landform changes required by the proposed development;
- f) A staged Development Consent could be issued, as is often done, that allows remediation and bulk earthworks to be completed, with a Section A site audit statement (SAS) to be used prior to the commencement of building construction;
- g) It is common practice for all types of Planning Authorities in NSW to allow additional investigations and even remediation action plans (RAPs) to be undertaken as a condition of consent, as shown in **Section 4**; and
- h) The site audit scheme was established to address the very risk that is of concern to Council. As stated in Section 1.1 of the EPA (2017) site auditor guidelines:

*'The objectives of the NSW Site Auditor Scheme are to:*

- ensure that public health and the environment are protected through proper management of contaminated sites, particularly during changes of land use*
- improve access to technical advice on contaminated sites for planning consent authorities and the community by establishing a pool of accredited site auditors*
- provide greater certainty for planning consent authorities and the community through the independent review by those auditors of contaminated site assessment<sup>1</sup> and remediation reports, and reports that validate the successful completion of the assessment or remediation.'*



16/02/2021

## IAN SWANE & ASSOCIATES P/L

### ■ Figure 1 Site Layout

(Source: EMM 16/02/21)



## IAN SWANE & ASSOCIATES P/L

### 4. Opinion on ability for contamination issues to be managed by a Consent

In my opinion, it is reasonable for Council to manage contamination issues associated with the proposed development by issuing a Development Consent at this time. This is because:

- a) The EPA and SEPP55 only require a site to be investigated to a sufficient extent that allows a site auditor to conclude that:
  - i. The site can be made suitable for its proposed land use; and
  - ii. The site can be remediated in a practical and feasible manner.
- b) The EPA<sup>1</sup> requires the site auditor when issuing a Section B SAS to:
  - i. Draw conclusions on the nature and extent of contamination;
  - ii. Assess suitability of plans relating to the investigation, remediation or management of land;
  - iii. Assess whether the site can be made suitable for a specified land use or uses if the site is remediated or managed in accordance with the implementation of a specified plan; and
  - iv. By certifying that a site can be made suitable for a use or uses if remediated or managed in accordance with a specified plan, the auditor declares that, at the time the audit was completed, there was sufficient information satisfying guidelines made or approved under the CLM Act to determine that implementation of the plan was feasible and would enable the specified use(s) of the site in the future.
- c) EPA-guidance does not require a site to be fully investigated and for the location of all contamination to be identified. This is because the contamination risks and remediation needs for land are site-specific. Requiring every site to be fully investigated would be wasteful and in some cases problematic. The need to use a site-specific investigation approach tailored to the needs of a site is an approach reflected in the Contaminated Land Management Act, since it requires:
  - i. Section 3(2): *'Particular objects of this Act are: .... (d) to ensure that contaminated land is managed with regard to the principles of ecologically sustainable development.'*
  - ii. Section 9(3): *'Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. ... Ecologically sustainable development can be achieved through the implementation of the following principles and programs: ... Environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.'*

The opinions I have made in this report are supported by an analysis of development consents issued by NSW Planning Authorities for my statutory site audits undertaken in 2020 – 2021 and which will appear in my Site Auditor's annual report to be issued to the NSW EPA in July 2021. The results of my analysis are summarised in **Table 1**.

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<sup>1</sup> Part IV: Explanatory notes in SAS proforma



16/02/2021

**IAN SWANE & ASSOCIATES P/L**

**Table 1 Summary of Consent Conditions Relevant to Site Contamination in Dr Swane's Current Statutory Site Audits (Sheet 1 of 2)**

Site Audit ID	Property Address	Area (ha)	Main contamination issues	Consent Authority	Consent		Contamination reports referenced?		How did consent manage contamination risks?
					Number	Date	ESAs <sup>(1)</sup>	RAP <sup>(2)</sup>	
229	111 Cessnock Rd, Weston	0.8	Asbestos, cyanide, flouride, soil gas (CO <sub>2</sub> )	Cessnock Council	DA 8/2008/343/1	2/12/2011	Yes	Yes	Remediation in accordance with approved RAP (Cond 21); Site audit to certify remediated site suitable for proposed land use (Cond 21)
233	Part of The Hermitage Estate, 810 - 812 Camden Valley Way, Gledswood Hills	5.63	Asbestos	Camden Council	DA/2016/1180/2	20/12/2016	No	Yes	Remediation to be in accordance with approved RAP (Cond 19)
262	Sugarcube & Honeycombe development, Erskineville (Value \$46.5 M)	0.68	Chlorinated solvent soil gas, asbestos, lead	City of Sydney	D/2015/154	24/09/2015	No	No	Deferred consent issued; Additional DSI to be undertaken in accordance with SA's advice (Cond 2); Revised RAP to be prepared/approved by SA & Council (Cond 3) & an unqualified Section B SAS issued (Cond 4); Consent not to operate until Council notifies deferred consent conditions met; New information on site contamination to be notified to Council/PCS (Cond 92); Land to be remediated in accordance with a RAP approved by Council & SA (Cond 98); Section A SAS to be issued at end of remediation & prior to commencement of built form (Cond 99)
264	Georges Cove Residential Estate, Moorebank	22.3	LFG <sup>(3)</sup> , asbestos & other demolition waste, ammonia	Liverpool Council	DA-24/2017	24/06/2020	Yes	Yes	Staged consent issued (Cond 2); Site to be remediated in accordance with RAP & SA advice (Cond 86); New information on site contamination/remediation to be notified to Council/PCA (Cond 89); Section A SAS to be issued at end of remediation & prior to commencement of built form (Cond 147)
269	Patons Lane Resource Recovery Centre, Orchard Hills	60.3	Asbestos	Land & Enviro Court, Penrith Council	MP09_0074	29/08/2012	Yes	No	Staged consent issued (Cond 32); A contamination & asbestos management plan to be prepared for perimeter bund construction, a Section B SAS issued by SA before work, & then a Section A SAS to be issued at end of remediation (Cond 7)
274	Riverstone Scheduled Land Precinct A, Stages 1 & 3	10.8	Asbestos, metals	Blacktown Council	SPP-17-00001	30/11/2017	No	Yes	Implement RAP (Conds 8.1.2 & 10.2, 10.5); Unexpected finds to be properly managed (Conds 10.3 & 10.4); Remediation work to be subject of site audit (Cond 12.5)
	Stage 2	6.25			SPP-17-00011	13/12/2018	No	Yes	Submit updated contamination report to Council (Cond 5.9); Implement RAP (Conds 9.2, 9.5 & 12.15); Unexpected finds to be properly managed (Conds 9.3 & 9.4); Remediation work to be subject of site audit (Conds 11.1 & 12.4)
276	Stage 2 & 3, Greenview Estate, Horsley	3.5	Asbestos, metals	Wollongong Council	DA-2017/53	26/10/2018	No	No	Work to be completed prior to CC issued included site contamination report for asbestos, a contaminated soil management plan (Conds 41 & Cond 49.9), a dam water and sediment contamination report (Cond 72), & a site management program (Cond 73); Work to be completed prior to subdivision certificate included a remediation & validation report (Cond 102)
277	Stage 6 Bonnyrigg Urban Renewal Project, Landcom	3.7	Asbestos, metals	Fairfield Council	422.1/2017	2/07/2018	No	No	A DSI & RAP to be prepared prior to commencing engineering work (Cond 5); All imported fill to be validated (Conds 86 & 87); a SA to issue a SAS prior to OC (Cond 28)
278	Westconnex Stage 3A Motorway - St Peters Interchange	3.4	LFG, asbestos, metals, ammonia	NSW Department of Planning	SSI 7485	17/04/2018	No	No	PSI & DSIs needed to be undertaken (Cond 181); a SA to issue a SAS at end of project (Conds E182 E183)
280	451-471 West Dapto Rd, Horsley	11.0	Asbestos, OCPs, pathogens, ammonia, metals	Wollongong Council	DA-2020/16	30/06/2020	No	No	Data gap investigation to be completed following demolition (Cond 118); RAP to be prepared & approved by SA (Cond 10); SA to issue a SAS at end of remediation (Conds 10 & 165); Work to be completed prior to CC included a CEPM (Cond 40), an unexpected finds protocol (Cond 45), a dam water/sediment contam report (Cond 91)
282	George's Cove Marina, Moorebank	13	Asbestos, metals	Liverpool Council	Consent not yet issued				

16/02/2021

**IAN SWANE & ASSOCIATES P/L**

**Table 1 Summary of Consent Conditions Relevant to Site Contamination in Dr Swane's Current Statutory Site Audits (Sheet 2 of 2)**

Site Audit ID	Property Address	Area (ha)	Main contamination issues	Consent Authority	Consent		Contamination reports referenced?		How did consent manage contamination risks?
					Number	Date	ESAs <sup>(1)</sup>	RAP <sup>(2)</sup>	
284	Electrical Engineering Precinct, Sydney Uni, Darlingtown	0.75	Asbestos, metals, PAHs	NSW Department of Planning	SSD 8636	14/02/2019	No	No	Site contamination investigations to be undertaken & RAP prepared following demolition & prior to construction commencement (Conds C21 & C22) & approved by SA (Conds C23 & C24); Work to be completed prior to construction included a CEMP that provided a remediation strategy for contaminated soil & unexpected finds (Conds B17 & B23), an asbestos works management plan to be approved by SA (Condition B24); a SAS to be prepared prior to building occupation (Cond D27 & D28)
285	35-41 Boundary Rd, Box Hill	7.8	Asbestos, OCPs, pathogens, metals, PAHs, ammonia	The Hills Shire Council	2312/2018/ZB	24/06/2019	Yes	No	A deferred consent issued (Cond A1); RAP must be prepared & approved by SA & Council prior to consent commencing (Conds A1 & 39); Additional investigations must be undertaken if required (Cond 39); validation report to be prepared (Cond 56); a SA to review work & issue a SAS at completion of work (Cond A1).
290	GWS Giants Training Facility, Sydney Olympic Park (Note: Site a former hazardous waste landfill)	0.22	LFG, asbestos, metals	Sydney Olympic Park Authority	DA 01-01-2013	14/03/2013	No	No	SA to review all work & issue SAS at end of construction (Conds B7 & D8); competent consultant to manage/monitor LFG during construction (Conds C18, C19, D5, E9); cap & LFG drainage layer to be designed (Cond D4) & constructed (Cond C19)
291	HammondCare Stage 3, Miranda	0.5	Asbestos	Sutherland Shire Council	DA19/0576	2/06/2020	Yes	No	Soil remaining or imported to site must be investigated by environmental consultant & shown to meet EPA standards for proposed land use (Cond 12); a RAP to be prepared & approved by Council prior to work commencing (Cond 23); Site must be remediated in accordance with approved RAP (Conds 24 & 25); the SA to issue Section A SAS prior to occupation (Cond 26)
292	10 Grand Avenue, Rosehill	4.3	Chlorinated solvent soil gas, asbestos	Parramatta Council	DA/751/2019	31/07/2020	No	Yes	Site to be remediated in accordance with RAP with variations approved by Council (Conds 18, 52 & 124); Groundwater to be investigated prior to disposal (Conds 24 & 114); Contamination at UST area to be investigated following removal (Cond 26); an asbestos management plan to be prepared for the management of asbestos contaminated soil during site work (Cond 92); SA to issue Section A SAS at end of remediation (Cond 26)
294	18 Powers Rd, Seven Hills	0.67	Chlorinated solvent soil gas, asbestos	Blacktown Council	DA-19-00551	10/01/2020	No	No	Site to be investigated by competent environmental consultant (Cond 8.2); all contamination to be remediated (Cond 3.1.1); SA to review a validation report & issue a SAS certifying site suitable for proposed land use (Cond 3.1.1)

**Legend:**

ESA = Environmental site assessment

SA = Site auditor

RAP = Remediation action plan

SAS = Site audit statement



Consents that did not consider contamination reports (e.g. PSI or DSI) and/or RAPs when assessing the ability of the development to remediate contamination risks and make the land suitable for the proposed development

## IAN SWANE & ASSOCIATES P/L

I consider such an analysis provides a reasonable indication of how NSW Planning Authorities address uncertainty with regards to site contamination data when issuing Development Consents. This is because the analysis is based on:

- Current remediation projects and active consents;
- 17 statutory site audits where Consents have been issued; and
- A range of NSW Planning Authorities that include Councils, the NSW Department of Planning, the NSW Land and Environment Court, and NSW statutory bodies.

The analysis shows that:

- a) It is common practice for all types of Planning Authorities in NSW to allow additional investigations and RAPs to be undertaken as a condition of consent. My analysis shows that RAPs had NOT been prepared and approved by Council in the majority (65%) of Consents. Furthermore, no mention was made of investigation reports in the majority (70%) of Consents;
- b) Consents were often issued for major developments by the NSW Government that required contamination assessments and RAPs to be prepared as a condition of the Consent;
- c) Consents were often issued for sites potentially impacted by the same contaminants of concern that required contamination assessments and RAPs to be prepared as a condition of Consent;
- d) Uncertainty with regards to site contamination data was managed in most Consents by:
  - i. Requiring a site auditor to issue a Section A SAS certifying the remediated site was suitable for the intended land use;
  - ii. Issuing a deferred / staged consent;
  - iii. Requiring contamination assessments and a RAP to be approved by the Site Auditor (and sometimes the Planning Authority) prior to the commencement of remediation work;
  - iv. Requiring remediation work to be undertaken in accordance with the approved RAP;
  - v. Requiring remediation and validation work to be completed and a Section A SAS issued prior to the commencement of building work; and
  - vi. Requiring the consultant to be a Certified Practitioner under an EPA-approved scheme.

Copies of the Development Consents for the 17 sites listed in **Table 1** are available on request.

The available data, as reviewed in the Section B SAS/SAR dated 27<sup>th</sup> April 2019, indicates that the proposed marina Site has:

- Generally low contaminant levels;
- Soil gas concentrations close to natural background; and
- A water quality in the dredge pond consistent with levels in the Georges River.



BENEDICT INDUSTRIES PTY LTD  
INTERIM ADVICE FOR SITE AUDIT 282 – PROPOSED MARINA DEVELOPMENT AT  
146 NEWBRIDGE ROAD, MOOREBANK NSW 2170

16/02/2021

## IAN SWANE & ASSOCIATES P/L

Based on my professional experience and the current practice of NSW Planning Authorities, it is reasonable for Council to issue a consent for the proposed marina development based on the current data and assessments, and to address uncertainties with regards to site contamination data by appropriate conditions in the Consent.

Yours sincerely



**Dr Ian C Swane (CPEng, CEP, CSSC)**

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