

31 March 2021

Lina Kakish
Manager Development Assessment
Liverpool City Council
Sent via email

Re: Georges Cove Marina (DA-611/2018) - responses to Record of Deferral

Dear Lina,

As you will be aware, the Sydney Western City Planning Panel (the 'Panel'), issued a Record of Deferral for the Georges Cove Marina application (Panel Reference 2018SSW027) meeting held on 8 March 2021, which was forwarded to us by Council on the 19 March 2021.

The Record of Deferral lists three outstanding issues.

- a) flood risks;
- b) bank protection measures; and
- c) SEPP55 compliance.

It also makes comments on some additional matters.

This letter provides response to each of the matters raised and accompanies the following documents:

- Questions Related to Flooding and Coastal Management SEPP in response to the Panel's REASONS FOR DEFERRAL email received on 19Mar2021 (Tooker & Associates, 31 March 2021);
- Georges Cove Marina Remediation Strategy and Remedial Action Plan (EMM Consulting Pty Limited (EMM), 26 March 2021); and
- Interim Advice Report for Georges Cove Marina RAP, 146 Newbridge Road, Moorebank - Statutory Site Audit 282 (Ian Swane & Associates, 28 March 2021).

Flood risks and bank protection measures

Flood risks (Items 1 to 22) and bank protection measures (Items 23 to 27) are addressed in NPC's attached letter.

SEPP55 compliance

We understand that a prime concern of the Panel is whether the requirements of Clause 7 of the State Environmental Planning Policy No 55—Remediation of Land can be met by the Panel in light of the data gaps identified in the Site Audit Statement (SAS 282) prepared by the EPA-accredited Site Auditor, Dr I. Swane, on 27 April 2019.

To address these concerns, an amended remedial action plan (RAP) has been prepared by EMM Consulting Pty Limited (EMM) to address the condition that a RAP Addendum be prepared. The amended RAP provides the remediation actions, including additional site investigations, required to make the site suitable for the intended land uses. The RAP includes an Acid Sulfate Soil Management Plan (ASSMP) and an Asbestos Management Plan (AMP).

Given that **new guidelines** for *Consultants Reporting on Contaminated Land Contaminated Land Guidelines* were issued by NSW Environment Protection Authority (EPA) in 2020, a fully amended RAP (EMM 2021) has been prepared. The RAP (EMM 2021) addresses the new EPA (2020) guidelines and matters raised in the Site Audit Report (SAR 282).

Chapter 14 of the RAP provides the steps that would be completed during the remediation of the site. This includes a program for collecting additional site data, in the place of a stand-alone Detailed Site Investigation.

Importantly, Section 14.4 of the RAP provides five specific **hold-points** that will ensure that remediation of the marina site is conducted with appropriate oversight from the Site Auditor and a geotechnical engineer.

The proposed hold-points are following:

1. removal and validation of all hotspots identified as an outcome of the site investigation scope;
2. completion of sorting, scraping and excavation of all unsuitable fill material including ACM for offsite disposal and then picking of scraped areas for possible ACM;
3. completion of capping;
4. completion of marina basin and site land forming works; and
5. completion of validation sampling.

These hold-points will ensure that the further investigations and site remediation are completed to the satisfaction of the Site Auditor.

The Site Auditor provided Interim Advice on 28 March 2021 that the RAP (EMM 2021), “Provides a practical and feasible remediation strategy to make the Site suitable for its intended marina / mixed use.”

Outstanding issues

The outstanding issues identified in the Record of Deferral the Panel are addressed below.

28. The site adjacent to a river has been partially filled in the past with waste materials so that its contamination history must be carefully understood in the assessment of a project involving major works and a change of use. Potential adverse impacts of disturbance both during and after construction of the marina should be fully evaluated.

The site history is summarised in Section 5.3 of the amended RAP (EMM 2021). A more detailed site history is provided in Section 6.3.1 of the *Georges Cove Marina Environmental Impact Statement* (EMM 2019).

The current marina site landform (including the dredge pond) requires bulk earthworks to achieve the final marina landform. Chapter 8 of the RAP (EMM 2021) describes the additional investigation program that will be conducted as part of the development of the marina. Some of the earthworks are required to allow further investigations to fully evaluate the potential adverse impacts of disturbance both during and after construction of the marina; for example, the existing stockpiles in the south of the site need to be removed to allow sampling of the underlying soil.

29. The Council assessment report provides conflicting advice as to whether the Panel can lawfully approve the proposed development on the basis of the information submitted.

30. On the one hand the report advises that "Council's Environmental Health Section has raised no objections with the submitted documentation" on the basis 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 ... subject to conditions of consent."

31. On the other hand, the report refers to legal advice to the effect that because the audit report's conclusions are "contingent upon numerous and varied additional reports to be prepared" with numerous "data gaps" observed by the auditor, the Panel cannot reach the degree of satisfaction required by clause 7(1) of SEPP 55 to lawfully approve the development.

Mr L. Walker's (Partner, MinterEllison) legal advice of 18 February 2021, previously provided to the Council and the Panel, advises that the 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. Furthermore, 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.**

This concurs with Site Auditor's advice of 16 February 2021 that approvals are routinely granted where contamination investigations and/or remediation plans were required as a consent condition, as post-approval requirements.

32. The Panel's own consideration of the SEPP 55 reporting agrees that further clarification of the contamination risk that can presently be identified is required, albeit that the Panel expects that the known issues can be resolved.

We note the Site Auditor's 16 February 2021 summary of the contamination levels present on the marina site:

"The available data, as reviewed in the Section B SAS/SAR dated 27th 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."**

The RAP (EMM 2021) provides a staged pathway to the remediation of the site to ensure that it is suitable for use as a marina. As noted above, the RAP provides a series of hold-points to ensure that each stage of site remediation is signed off by the Site Auditor before proceeding to the next stage of remediation or development.

33. Of particular assistance would be a concise history of use of the site extracted from the existing conflicting material that highlights changes in use, more precisely describes what is known about the levels of contamination and/or treatment. The Panel would like to see and, and a long term environmental management plan that incorporates flood behaviour and potential associated impacts on stockpiles (both existing and those proposed as part of the staging of the development).

As noted above, a detailed site history is provided in Section 6.3.1 of the *Georges Cove Marina Environmental Impact Statement* (EMM 2019).

We understand that the Panel reference to ‘conflicting material’ is the conflicting advice provided by the Council’s Environmental Health Section versus the legal advice referenced by Council, as opposed to any actual conflicting material presented in the contamination reports prepared for the site.

A summary of the condition of the site and surrounding environment is provided in Chapter 6 of the RAP (EMM 2021). While the nature and extent of contamination within the site is summarised in Chapter 7.

34. Presumably, that additional information will address:

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| a) <i>Clarity in the proposed RAP as to how foreseeable contingencies (such as the results of testing of parts of the site which are presently inaccessible) will be addressed, sufficient to determine when a modification to the consent would be required.</i> |
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Contingency planning is described in Chapter 21 of the RAP (EMM 2021).

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| b) <i>Clarification of the proposed "management measures" averted to in the EMM EIS of May 2019 which the Panel understands should be undertaken prior to commencement of remediation works (see 6.3.8, p. 116).</i> |
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The amended RAP (EMM 2021) describes the measures that will be implemented prior to the commencement of remediation works noting that the Interim Advice issued by the Site Auditor on 28 March 2021 recommends that:

- “The RAP and a copy of this interim advice report be presented to the appropriate planning authority as part of a Development Application for the proposed marina development;
- The Site be remediated in accordance with the RAP and other regulatory requirements that may be imposed on remediation work conducted at the Site; and
- No changes are made to the RAP without prior written approval being given by the Site Auditor.”

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| c) <i>An earthworks plan which addresses potential impacts of any necessary stockpiling during remediation,</i> |
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A detailed earthworks plan will be developed by the successful contractor.

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| d) <i>The data gap in Area 2 and other fill areas in relation to asbestos in soil, ground water quality along south boundary and soil gas monitoring, and</i> |
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“Area 2” refers to the marina site only (as opposed to the larger area that includes the residential development site to the north).

Chapter 8 of the RAP (EMM 2021) provides the additional site investigation program, including soil, groundwater and ground gas.

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| e) <i>Whether a 'long term environment management plan' (LTEMP) is necessary that considers flood behaviour and potential flood impacts on stockpiles.</i> |
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As described in Section 19.1 of the RAP (EMM 2021), a long-term environmental management plan would be prepared if required. If prepared, it would describe the long-term management of any contamination remaining on site, for example due the implementation of a ‘cap and contain’ strategy, once construction is complete and the site is operating as a marina.

A remediation environmental management plan is provided in Chapter 19 of the RAP (EMM 2021). This includes the management of stockpiles to prevent the liberation of contaminants during flooding (Section 19.3.3 and Section 19.7).

Additional observations

35. Concerns raised traffic safety, road congestion and parking have been noted by the assessment report to be adequately managed, subject to the appropriate signalling of the intersection of Newbridge Road and Link Road being further investigated by a deferred commencement condition.

Noted, with additional comments provided below.

36. Notably, with that condition imposed, TfNSW raises no objection to the proposed development for the purposes of clause 104 of SEPP Infrastructure 2007. Use of Newbridge Road by construction traffic has been found to be acceptable, noting that access will improve when construction of the link road bridge is complete. Indeed, traffic impacts from the marina would be expected to be less than the heavy vehicle movements associated with the existing recycling centre and quarry use. Taking those matters into account, the considerations of clause 101 are seen to have been sufficiently addressed.

Noted.

37. In that regard bank stabilisation works that are proposed as part of the development, with enhancement of the estuarine vegetation on the inside of the revetment wall to be encouraged as part of those works is in part to be protected by large rocks placed along the foreshore inside the "harbour". With the measures outlined in a Vegetation Management Plan under the VPA for the site, the Panel accepts the Council's advice that the biodiversity of the Georges River will be adequately protected and enhanced as the site is rehabilitated.

Noted.

38. Notably the consent conditions will implement and be consistent with the General Terms of Approval issued by NRAR as part of the integrated development process associated with the Water Management Act 2000.

Noted.

39. With those matters satisfactorily addressed the Panel agrees with the Council assessment that (subject to the issues of flood risk identified above being resolved) considerations raised by Greater Metropolitan Regional Environmental Plan No. 2 - Georges River Catchment have been addressed.

Noted.

40. There are disputed conditions identified by the Council assessment staff.

41. One area of dispute relates to a requirement to obtain in-principle approval for the installation of traffic control signals at the intersection of Brickmakers Drive and new Link Road from TfNSW. With the time allowed by the deferral of determination of the DA, clear advice as to the position of TfNSW as to the required timing of the intersection works should be able to be sought and obtained.

It is noted that construction of the link road bridge and a priority-controlled Link Road/Brickmakers Drive intersection have commenced under DA 24-2017.

Council's response to the requested change in conditions (Memo, B. Santana, 22 February 2021) is based on an **incorrect assumption** regarding the Warrant Assessment. The memo states (bottom p3):

“However, the assessment of traffic impacts of all five developments appears to be unrelated to the assessment of the requirements for a signalised intersection at the Brickmakers Drive/Link Road Intersection. At this stage, Council does not accept the changes to this condition.”

The “five developments” are listed in Section 1.2 of the letter from EMM to TfNSW, 2 March 2020 [Council Report Attachment 19]:

- Moorebank Cove Residential Estate (Benedict Site);
- Moorebank Recycling Facility (EQ Site) [the site has been sold and the development will not proceed];
- Georges Cove Marina (Benedict Site);
- Georges Cove Marina residential development (Benedict Site); and
- B6 Corridor mixed-use development (Benedict Site).

The Signalisation Warrant Assessment is based on:

- The Total Traffic volume (in 2026) = Traffic volume (2020 tube count) x traffic growth rate + peak hour Development Traffic (as provided in Section 1.2 of the letter from EMM to TfNSW, 25 May 2020 [Council Report Attachment 20]).
- The ‘Development traffic’ from the five developments is 450 peak hour movements on Link Road (as provided in Table 1 of the letter from EMM to TfNSW, 2 March 2020 [Council Report Attachment 19]).
- That is, the Total Traffic on which Signalisation Warrant Assessment is based, includes the Development Traffic from the five developments.

The Total Traffic volume meets signalisation warrant in 2026 on the assumption that all five developments are fully operational.

It is requested that Condition 2 is **not a deferred commencement condition** as it was proposed by Applicant to ‘future proof’ the development. The requirement to signalise the intersection will arrive only after 2026 as all five developments are highly unlikely to be operational by 2026.

Also, if included as a deferred commencement condition, we believe that the requirement to obtain TfNSW in-principal agreement for the layout of the future signalised intersection **prior to any site works occurring** could delay important site works while that could reasonably be commenced in parallel with obtaining TfNSW’s in-principal agreement.

We have also requested removal of Austroad Guide reference as this is redundant and is better addressed by TfNSW and the Work Authorisation Deed process.

As signalisation of the intersection is not required immediately, it is requested that Condition 139 is deleted.

42. Another issue relates to the property boundaries where a nominated LA10 noise level as emitted from the licensed premises is to be achieved. In general, the Panel would expect that noise impacts would be appropriately regulated for all residential neighbours, but anticipates that further discussions will lead to agreement as to the terms of the acoustic conditions.*

We reference our previous response on this matter as provided in the Council’s memo of 22 February 2021 and look forward to these discussions.

We trust that this information assists and we look forward to discussing at the upcoming Panel meeting.

Yours sincerely

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

Dr Philip Towler
Associate Director

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