

## DETERMINATION AND STATEMENT OF REASONS

### SYDNEY WESTERN CITY PLANNING PANEL

<b>DATE OF DETERMINATION</b>	Friday, 7 May 2021
<b>PANEL MEMBERS</b>	Justin Doyle (Chair), Angus Gordon, Bruce Thom, Wendy Waller and Nathan Hagerty
<b>APOLOGIES</b>	Hannah Power and Doug Lord
<b>DECLARATIONS OF INTEREST</b>	<p>Justin Doyle: The Panel Chair disclosed that he had represented the opposing party in unrelated property Supreme Court litigation concerning land in a different part of Sydney, but did not see that work as likely to impact on his assessment of the DA such as to generate a conflict of interest.</p> <p>Peter Harle: declared a conflict of interest as this proposal was discussed at the council meeting and he participated in the discussion.</p>

Papers circulated electronically on 19 April 2021.

#### MATTER DETERMINED

2018SSW027 – Liverpool – DA-611/2018 at 146 Newbridge Road, Moorebank – Construction and operation of a Marina (Georges Cove Marina) (as described in Schedule 1)

#### PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

#### Development application

The panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

#### REASONS FOR THE DECISION

1. The Panel concurs with the assessment contained in the Council staff assessment report to the effect that the proposed marina use of the site is compatible with existing and anticipated surrounding land uses located around Newbridge Road to the north and Georges Fair residential estate to the west. As such it represents an appropriate adaption and re-use of this exhausted sand extraction facility.
2. Together with contribution of the proposed kiosk, commercial, tourist, recreational and club facilities, the new marina will offer a useful facility for boat users of the George's River and will add to the commercial and social life of the Moorebank area. Notably, the proposal has a degree of local support with four public submissions in favour of the development including one from the Moorebank Residents Action Group.
3. The proposal is associated with a voluntary planning agreement entered into with the Council which will see a number of beneficial contributions and works including a vegetation management plan (VMP) to upgrade the natural presentation of the waterfront in conjunction with the Landscape Concept Plan and Landscape Cross Sections. A bike/pedestrian path and passive recreation facilities are to be created

with associated public easements, as well as improved pedestrian access along Newbridge Road. In the context of that proposed work, the Panel accepts the Council's advice that the EIS have adequately addressed potential ecological impacts on the River Flat Eucalypt Forest & Swamp Oak Floodplain Forest, and the estuarine environment.

4. The Panel is satisfied from the various material addressing contamination submitted (including the site audit statement and a site audit summary report, and Site Audit Report 282 as prepared by Dr Ian Swane) that contamination can be adequately managed on site to as to allow the site to be made suitable for the land uses proposed by the marina development. The Panel however retains reservations as to whether the material submitted in that regard adequately addresses the issue of the data gaps identified in the Council assessment report, the protocol to be followed in the event of contamination being unearthed during the proposed works or unexpectedly during a flood. A deferred commencement condition is therefore proposed to allow the issue of contamination to be further investigated prior to the consent becoming operative.
5. The Council assessment notes that the proposed new fuel tanks are to be installed above the flood line. Clarity is required in that regard as to which flood line is referred to (noting that if the 1:100 flood level is used then the tanks might be inundated in a greater than 1% chance flood. That risk should be addressed, and is allowed for in the deferred commencement condition proposed below.
6. The proposal has been positively assessed by Council's Design Excellence Panel which generally supported the proposal as a positive contribution to the public nature of the waterfront development, due to its enhanced retail and public facilities, concluding that the completed development will allow for an appropriate and well-resolved functional marina facility
7. The Panel accepts the Council's positive assessment of the proposal when measured against Clause 6 Consent to disturb bushland zoned or reserved for public open space and 9 Land adjoining land zoned or reserved for public open space of *State Environmental Planning Policy No 19—Bushland in Urban Areas*, and the objectives of that instrument.
8. The site of the facility is mapped as being within the "coastal zone" subject to the *SEPP (Coastal Management) 2018* applies to the development and clause 15 of that SEPP raises a high bar for the approval of any DA to which it applies. Specifically, development consent 'must not be granted' unless the Panel is satisfied that the proposal before it "*is not likely to cause increased risk of coastal hazards on that land or other land*". With that strong directive, the Panel's report supporting its decision to defer determination of the DA on Monday, 8 March 2021 examines in detail significant concerns that the Panel holds about the location of the wet area berth component of the facility within a river subject to regular and severe flooding which can be predicted in severe cases to overtop the revetment and raise the river level by several metres with significant water velocities. The uniqueness of such a facility in NSW was discussed and the engineering challenges of securing the planned 186 high value watercraft in such an environment was raised. A second issue of the difficulty of constructing the rock revetment within the boundaries of the development site so as not to encroach onto the river bed which the Applicant does not own was raised.
9. The Panel cautiously accepts the advice from the Applicant's engineer Mr Mark Tooker in that regard that it is possible to engineer the proposed wet berth facility to allow for the risks threatened by major floods, and to construct the proposed rock revetment and associated works without unacceptable impacts while staying within the boundaries of the property. In order to meet the Panel's expressed concerns there were however additional commitments and revised proposals given by Mr Tooker at the determination public meeting. Accordingly deferred commencement conditions are seen as appropriate to allow for documentation of those commitments to the satisfaction of the consent authority as set out below.
10. Notably, the revised engineering will result in a number of piles driven into the sea bed which will project a significant height above the river surface in anticipation of the raised level of the River which

are not shown in depictions of the development in the DA material. The Panel has concluded that in the riverine environment, that additional incursion into views of the development are acceptable and do not substantially alter the development.

11. The Panel is concerned to ensure that should any “end effects” arise whereby the construction of the rock revetment leads to increased erosion on adjoining properties or the build up of sand, they are clearly the responsibility of the owner of the marina who will be obliged to remedy them at its own cost. A positive covenant is proposed in that regard, which is also to be the subject of a deferred commencement condition.
12. Further issues which the Panel is satisfied can be resolved in the implementation of the development, but ought to be documented before the consent becomes operative are:
  - a) Provision for the monitoring of construction work by an appropriately qualified and independent person so that issues of flood impacts on the property and adjoining properties, stormwater runoff, groundwater seepage, sediment and pollutant deposition in the basin that arise can be addressed.
  - b) Because the precise earthworks required by the contamination remediation works and the rock revetment are to still to be resolved, the “acid sulfate soil management plan” submitted with the DA should be reviewed before the consent becomes operative to ensure no issue arises,
  - c) Where it is necessary to open the basin to the Georges River, it should be governed by known protocols,
  - d) The positioning, design and maintenance of the fuel tanks should take into account the potential for flood waters to exceed the 1:100 year flood, having regard to applicable standards or precedents for fuel storage facilities.
13. There is some confusion in the RAP as to whether a long term environmental management plan (LTEMP) is to be provided or not. In some parts of the RAP the LTEMP is described as a document that might be produced should circumstances warrant it, whereas at others it seems to be assumed that it will be provided (see p.93 of the RAP and the 12 bullet points of what it will include for example). The Panel sees long term management of the risk of encountering contamination as required, and propose clarification of the issue to Council’s satisfaction as part of the proposed deferred commencement conditions.

## DEFERRED COMMENCEMENT CONDITION

### CONDITIONS

The development application was approved subject to the conditions in the council assessment report with the following additional deferred commencement condition and changes to the recommended ordinary conditions:

#### *Deferred Commencement Conditions*

The consent is **not to operate** until the applicant satisfies the consent authority, in accordance with the regulations, as to:

- A. An environmental management plan (and any associated update to the remedial action plan (RAP)) reviewed and approved by a Site Auditor accredited under the Contaminated Land Management Act 1997 (CLM Act) is to be provided to the satisfaction of the Council with regards to contamination (and potential contamination) of any part of the site during and after construction in accordance with applicable guidelines made or approved by the NSW EPA under the Contaminated Land Management Act 1997, having regard to the potential effects of any contaminants on public health, the environment and building structures. That material is to include, address, or be informed by:

- a) all requirements prescribed by the NSW EPA in the General Terms of Approval dated 19th February 2020;
- b) a Phase 2 Detailed Site Investigation to be completed to meet the sampling density outlined in the NSW EPA Contaminated Sites Sampling Design Guidelines (1995) to be submitted to Liverpool City Council, Principal Certifying Authority, Appropriate Regulatory Authority and Site Auditor accredited under the *Contaminated Land Management Act 1997*.
- c) updating of the Remediation Action Plan (RAP) with a site audit statement (SAS) including a Long-Term Environmental Management Plan (LTEMP) addressing the findings of the Detailed Site Investigation meeting NSW EPA guidelines and addressing the Secretary's Environmental Assessment Requirements (SEAR 912) as issued to Council on 9/10/18. The LTEMP is to provide a site-specific framework for managing and mitigating contamination for the life of the proposal. In addition, the LTEMP shall make provisions for auditing the effectiveness of the proposed environmental protection measures and procedures for ongoing site management. The LTEMP shall require periodic inspection by an environmental / geotechnical consultant to confirm the overall integrity of environmental protection measures and ensure compliance with the requirements of the LTEMP. A copy of the revised Remediation Action Plan and LTEMP shall be submitted to the Principal Certifying Authority, Appropriate Regulatory Authority and Site Auditor accredited under the *Contaminated Land Management Act 1997*.
- d) the location and maintenance of stockpiles created during construction that might include contaminated material and their protection against flood risk,
- e) the potential that flooding of the site will occur during construction uncovering or disturbing previously unknown contaminants.
- f) procedures to be adopted in the event of any contaminant being encountered on the site during construction and for the life of the development (including a reporting protocol) and requiring an audited addendum to the remedial action plan (RAP) to be completed to address remediation of any such contaminant (and potential data gaps between the submitted PSI reports and the RAP) before construction continues,
- g) no remediation work is to proceed unless and until Council has confirmed its satisfaction with an audited RAP directed to that work and a Section B Site Audit Statement (SAS) having issued by the Site Auditor and supplied to the Council, concluding that the DSI report, the detailed plans and strategies provided by the RAP Addendum are acceptable,
- h) validation of all remediation work,
- i) a Section A SAS (including any revision recommended by the auditor to the long-term environmental plan (LTEMP)) is to be provided to Council's satisfaction at the conclusion of remediation and bulk earthworks permitted by this development consent, prior to the issue of a construction certificate for the erection of the proposed marina buildings.
- j) supervision of the implementation of the EMP during construction and in the long term if any contaminant is encountered during construction.
- k) reimbursement of costs reasonably incurred by the Council in considering the RAP, DSI and SAS.
- l) Material tracking from cradle-to-grave, and
- m) Contingency planning.
- n) known data gaps.

- B. Regular monitoring of the construction work by an appropriately qualified and independent person to take into account flood impacts on the property and adjoining properties, stormwater runoff, groundwater seepage, sediment and pollutant deposition in the basin.
- C. Acid sulphate soil management,
- D. Protocols for opening the basin to the Georges River,
- E. Material tracking from cradle-to-grave, and
- F. Contingency planning.
- G. The positioning, design and maintenance of the fuel tanks taking into account the potential for flood waters to exceed the 1:100 year flood, having regard to applicable standards or precedents for fuel storage facilities.
- H. A revised proposal for the wet berth component of the development including a statement to the effect that the marina pontoons and piles are to be designed, and constructed, so that when fully loaded with vessels (nominally the 186 vessels in a configuration and size range as specified in the application) it can withstand the loads imposed by a river flood with an AEP of 0.001% (flood level of RL 9m AHD). The proposal can include provisions to the effect that this may be achieved utilising primary piling that is designed to withstand the 1% flood (flood level of 6.1m AHD) with the primary piles fitted with telescopic extensions to cater for coping with the 0.001% flood event. The revised proposal for the wet berth component of the development adopted is to be incorporated into the construction certificate drawings.
- I. A revised proposal for the rock revetment that incorporates the design specifications included in Figures 10 to 14 of the Tooker and Associates report (which is to be incorporated into the construction certificate drawings).
- J. A construction plan for the rock revetment that indicates the proposed method of construction, including any temporary works. The construction plan is to demonstrate that both the revetment and the temporary works will be fully contained within the property boundaries and that both the construction work and any de-watering activities will not result in the release of sediment into the river.
- K. An agreement to an instrument to be registered on the title of the site that imposes an enduring obligation on the owner of the property on which the marina development is located to make good, at their expense, any damage caused to adjacent properties resulting from the presence of the rock revetment (particularly “End Effects” of the revetment on the properties immediately upstream and downstream of the subject property and any adverse impacts on the riverbank above and below water level).

Changes to the ordinary conditions

1. Condition 3 of the development consent as proposed in the staff assessment report is to be reworded to read:

**Rock Armouring**

3. The revision to the proposal for the rock revetment developed to satisfy the deferred commencement conditions is to be incorporated into the construction certificate drawings. The construction plan for the rock revetment developed to satisfy the deferred commencement conditions is to be complied with.

2. Conditions 249 is to be reworded to read:

**Piers**

- 249 The revised proposal for the wet berth component of the development produced to satisfy the deferred commencement condition is to be incorporated into the construction certificate drawings.

3. Condition 123 and 124 are to be deleted and replaced with:

The LTEMP and RAP (as resolved, updated and audited in the manner determined through satisfaction of deferred commencement condition A) are to be complied with in the carrying out of the development.

3. Condition 125 is to be supplemented with the additional words:

The requirements of this condition are subject to any revision to the documents referred to in this condition arising from the resolution of deferred commencement condition A.

### CONSIDERATION OF COMMUNITY VIEWS


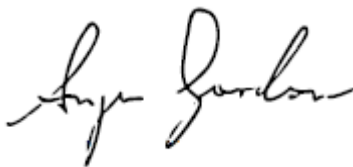



In coming to its decision, the panel considered the written submissions made during public exhibition and heard from all those wishing to address the panel.

From those submissions, it could be seen that the proposal has a degree of local support including from the Moorebank Residents' Action Group particularly due to its anticipated upgrade of the area, with four public submissions in favour of the development including one from the Moorebank Residents Action Group.

Issues of concern raised by objectors include:

- i. The sufficiency of local infrastructure
- ii. Inadequacy of detail for the bank stabilisation construction works.
- iii. Bank erosion that might be caused by refracted waves.
- iv. Adverse changes to the character of the area.

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Angus Gordon
 Bruce Thom	 Wendy Waller
 Nathan Hagerty	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018SSW027 – Liverpool – DA-611/2018
2	PROPOSED DEVELOPMENT	<p>Construction and operation of a Marina (Georges Cove Marina). The development consists of:</p> <ul style="list-style-type: none"> <li>• A maritime building which will house a dry berth facility providing 250 berths, a function centre, tourist, entertainment, recreation and club facilities, a petrol storage tank (60,000 litres) and a diesel storage tank (60,000 litres).</li> <li>• A wet berth facility for 186 craft (including casual berths) which will consist of a marina basin, rock protection of the basin and foreshore, including embellishment and revegetation of the river foreshore, construction of a navigation channel, construction of public recreational facilities on the foreshore, floating berths and walkways, fuel pumping facilities, sewage pumpout facilities and emergency berth access.</li> <li>• Construction of three external car parking areas and basement car park providing a total of 637 car spaces.</li> <li>• A private marina clubhouse.</li> <li>• Associated works and support infrastructure including power, water and sewerage.</li> </ul>
3	STREET ADDRESS	LOT 70 DP 1254895 146 NEWBRIDGE ROAD, MOOREBANK NSW 2170
4	APPLICANT/OWNER	BENEDICT INDUSTRIES PTY LTD
5	TYPE OF REGIONAL DEVELOPMENT	Designated development - marina or other related land and water shoreline facilities
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy No 19 – Bushland in Urban Areas</li> <li>○ State Environmental Planning Policy No.33 – Hazardous and Offensive Development</li> <li>○ State Environmental Planning; Policy No.55 - Remediation of Land;</li> <li>○ State Environmental Planning Policy (Coastal Management) 2018</li> <li>○ State Environmental Planning Policy (Infrastructure) 2007;</li> <li>○ State Environmental Planning Policy – (State and Regional Development) 2011</li> <li>○ Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment;</li> <li>○ Liverpool Local Environmental Plan 2008</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Liverpool Development Control Plan 2008</li> <li>○ Part 1: General Controls for All Development</li> <li>○ Part 2.10 – Moorebank East (Benedict Sands)</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Consideration of the provisions of the National Construction Code of Australia</li> <li>• Coastal zone management plan: Nil</li> </ul>

		<ul style="list-style-type: none"> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Supplementary report received: 19 April 2021</li> <li>• Council assessment report: 23 February 2021</li> <li>• Additional information received: 3 March 2021</li> <li>• Written submissions during public exhibition: 8</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ Fiona Macnaught on behalf of Moorebank Residents Action Group and Bozena Hochwaller</li> <li>○ Council assessment officer – Boris Santana</li> <li>○ On behalf of the applicant – Luke Walker, Ernest Dupere, Ian Swane and Mark Tooker</li> </ul> </li> </ul>
8	<b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Briefing: 9 September 2019 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair) and Bruce McDonald</li> <li>○ <u>Council assessment staff</u>: Boris Santana and George Nehme</li> </ul> </li> <li>• Site inspection: 9 September 2019 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair) and Bruce McDonald</li> <li>○ <u>Council assessment staff</u>: Boris Santana and George Nehme</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: Monday, 8 March 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Angus Gordon, Bruce Thom, Wendy Waller and Nathan Hagerty</li> <li>○ <u>Council assessment staff</u>: Boris Santana and George Nehme</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: Friday, 23 April 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Angus Gordon, Bruce Thom, Wendy Waller and Nathan Hagerty</li> <li>○ <u>Council assessment staff</u>: George Nehme, Lina Kakish</li> <li>○ <u>Applicant representatives</u>: Phil Tower</li> </ul> </li> </ul>
9	<b>COUNCIL RECOMMENDATION</b>	Deferral
10	<b>DRAFT CONDITIONS</b>	Nil