

DATE OF DEFERRAL	Monday, 24 May 2021
PANEL MEMBERS	Justin Doyle (Chair), Angus Gordon, Greg Britton, Judy Clark and Jeff Organ
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 24 May 2021, opened at 11:12am and closed at 1:19pm.

MATTER DEFERRED

PPSSWC-2 – Hawkesbury – DA0508/18 at 374, 395 & 415 Freemans Reach Road Freemans Reach NSW 2756 (Lot 2 in DP 85885 (No. 415), Lot 4 in DP 718505 (No. 395) and Lot 2 in DP 77951 (No. 374)) – Extractive Industries (as described in Schedule 1)

REASONS FOR DEFERRAL

The majority of the Panel (The Chair, Angus Gordon and Greg Britton) voted to defer the determination of the matter until the following additional material is made available by the Applicant and Council:

a) 2D modelling

2D modelling of the river flooding in the vicinity of the site was offered at the meeting by the Applicant. The modelling might address a minimum of 1 km upstream to 1 km downstream (ie the downstream bend and the "Breakaway") for a range of Average Recurrence Interval (ARI) flood events from 6 months to 100 year (output to include water levels, water depths and velocities).

The modelling should include existing conditions (no proposed development), and then firstly consider the site should be restored to its original profile and secondly the site restored to the DA proposed profiles.

The 2D modelling should also consider the interim staging of the proposed development. The 2D model should be calibrated against the WMA (2019) flood model and a discussion of this calibration provided.

The results of the modelling should be presented in a manner which allows ready examination of the impact of the proposed development on existing flooding behaviour at key locations, such as along the opposite bank, and for consideration of the design of the works, such as the critical velocity along the low bund to assess stabilisation measures for this bund.

b) Details of the wetland area

The Applicant is to supply further details of the wetland area at the river side including Sections A,B and C (PS06-C600, PS06-C601 and PS06-C602 in the Flood Risk Management Plan report of April 2020) being extended out to the river bank to take in the wetland area between the bund and the river bank and a detailed drawing clearly showing the plan view of the location of the bund in regard to the existing contour information.

From the available information it seemed that the bund may cut out some of the existing riverside wetland particularly towards the centre of the site. The extent of the works and the mapped vegetation should clearly depict the extent of that potential conflict.

Notably, additional material was supplied after the determination meeting which included proposed amendment to the conditions, and particularly:

“The VMP should be updated to reflect the approved plans, these being the Preliminary Civil Design plans prepared by Martens & Associates Pty Ltd dated 28 April 2020.”

That proposed inclusion in the conditions would seem to propose that where inconsistent with the engineering plans, the VMP is to yield. Any requirement for the VMP to change resulting from the engineering design should be identified.

The Applicant should not assume that removal of vegetation mapped as significant in the DA will be considered to be acceptable, and the ecological results of any incursion would need to be clearly noted.

Similarly, any change to the mapping submitted with the DA should be clearly identified and justified.

c) SEPP 55

A response from the Applicant addressing the non-compliances contended in the reasons of the dissenting Panel members summarised below of the provisions of SEPP 55 with regards to contamination risk.

d) Anchoring

Suitable minimum requirements for anchoring of the dredge to withstand flood conditions should be supplied addressing water depth and velocities anticipated by the additional modelling, in a form that can be included in a draft condition.

e) Draft Conditions

Council should advise of the Conditions it recommends be imposed if the majority of the Panel considers granting consent. Any objections to those draft Conditions by the Applicant should be supplied with reasons for the objection. The conditions should address:

- i. Anchoring of the dredge.
- ii. A restriction on title to remediate any damage occasioned to adjacent properties or the river, as a consequence of the project, for the life of the project including rehabilitation.
- iii. a Condition Survey of the river (both banks) prior to any activity so as to establish the baseline conditions.
- iv. A suitable bond or other form of security to provide for remediation of affected parts of the site should the extraction site (or any stage) be left in an incomplete state for a nominated period.

The Panel expects revised information required from the Applicant as referred to above be submitted to Council within 3 weeks from the date of this deferral record. If the Applicant does not supply any requested information within that time, the Panel may move to determine the DA based on the information currently at hand.

Council is requested to update their assessment within 2 weeks of the receipt of revised information. If revised information from the applicant is not provided within that time weeks, the Panel may move to determine the DA based on the information currently at hand.

When this information has been received, the panel expects to determine the matter electronically. The Panel expects an addendum assessment report from Council limited to addressing the material and the matters raised above.

The decision to defer the matter was 3:2 in favour.

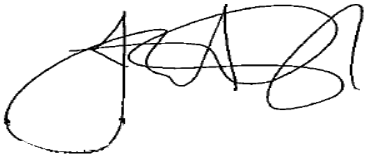




Judy Clark voted in favour of refusal on the basis that in her view the proposal is unsatisfactory pursuant to Clause 12 of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 for the following reasons:

- a) The proposal involves significant changes to and interference with the current landform, existing vegetation and adjacent riverbank through sand extraction, excavation, stockpiling and importation of fill. This is incompatible with the existing and approved rural, rural-residential and agricultural land uses in the vicinity of the proposed development, and would also have a negative impact on the scenic, environmental and ecological qualities of the Hawkesbury River for an extended period of time (10 years).
- b) Measures proposed by the applicant to avoid or minimise the incompatibility between the proposal (being an extractive industry) and the established and existing uses characteristic of the RU2 Rural Landscape Zone under Hawkesbury Local Environmental Plan 2012:
 - i. fail to provide an acceptable level of certainty that the ongoing operation of the proposed sand extraction and processing facility will not have significant adverse environmental impacts, and
 - ii. are over reliant on self-management and plans of management that contain a complex matrix of ongoing requirements that would be difficult for Council to monitor and enforce, noting that further complexity in relation to ongoing management/mitigation requirements would arise from concurrent compliance with the General Terms of Approval (GTAs) issued by the relevant agencies.
2. Approval of the proposal would set an undesirable precedent for similar applications along the Hawkesbury River in circumstances where there is a reasonable likelihood that sand deposits exist on other lots with a Hawkesbury River frontage in the vicinity of the subject site, in the context that the cumulative impacts of sand extraction on the Hawkesbury River are uncertain.
3. The Preliminary Site Investigation Report prepared by Martens Consulting Engineers dated November 2018 accompanying the DA concludes on page 14 that “the site condition does not meet SEPP 55 criteria and a detailed site investigation will be required to determine COPC (Contaminants of Potential Concern)”, and includes the following recommendation on page 15 “To address potential identified AECs (Areas of Environmental Concern) and COPCs a detailed site investigation (DSI) including soil sampling and testing is recommended”.
4. Pursuant to Clause 7 of State Environmental Planning Policy 55 – Remediation of Land, the findings of the PSI warrants submission of a DSI prior to any consent being granted in order to be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. No DSI has been submitted which is unacceptable under the provisions of Clause 7 of State Environmental Planning Policy 55 – Remediation of Land.

Jeff Organ similarly voted for refusal listing his reasons as:

1. The application does not address the issue of precedent should the adjoining lands be found to be suitable for resource extraction and concurrent works were then to take place as a consequence. Concurrent activity and cumulative impacts of resource extraction, particularly where multiple extraction pits may be open at any given time pending rehabilitation is likely, have not been considered.

2. The proposal does not identify the source or availability of fill material to remediate the extraction areas. The impact and volume of traffic movements is likely to be of a different profile to the controlled vehicle movements generated by the extraction activity. The proposal does not provide any certainty over the timely availability to source and receive suitable material in line with the extraction sequence, noting that stockpiling of material is not proposed.
3. The proposal will result in substantial impacts and changes to the existing riverine landform, with attendant impacts on vegetation and potential for erosion on adjoining and opposite properties.
4. The proposal is likely to adversely affect the nearby areas scenic, environmental and ecological qualities. The duration of the proposed activity, whilst time limited, is such that significant flood events may occur outside of the simple probability assessment of flood likelihood over that period.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Angus Gordon
 Greg Britton	 Judy Clark
 Jeff Organ	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-2 – Hawkesbury – DA0508/18
2	PROPOSED DEVELOPMENT	Extractive Industries: Sand Extraction and Processing Facility, Road Works, Site Works, Ancillary Office, Fencing, Landscaping and Site Rehabilitation
3	STREET ADDRESS	374, 395 & 415 Freemans Reach Road Freemans Reach NSW 2756 (Lot 2 in DP 85885 (No. 415), Lot 4 in DP 718505 (No. 395) and Lot 2 in DP 77951 (No. 374))
4	APPLICANT/OWNER	Applicant: Greener Valley Sands Pty Ltd Owner: Mr Anthony Muscat (395 Freemans Reach Road)
5	TYPE OF REGIONAL DEVELOPMENT	Crown development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Extractive Industries SEPP); ○ State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP); ○ State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP); ○ State Environmental Planning Policy No. 55 – Remediation of Land (SEPP No. 55); ○ State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP No. 30); ○ State Environmental Planning Policy No. 44 – Koala Habitat Protection (SEPP No. 44); ○ State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP No. 64); ○ Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (SREP No. 20); ○ Sydney Regional Environmental Plan No. 9 – Extractive Industry (SREP No. 9); ○ Hawkesbury Local Environmental Plan 2012 (HLEP). • Draft environmental planning instruments: <ul style="list-style-type: none"> ○ Draft State Environmental Planning Policy (Remediation of Land); ○ Draft State Environmental Planning Policy (Environment). • Development control plans: <ul style="list-style-type: none"> ○ Hawkesbury Development Control Plan 2002 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Environmental Planning and Assessment Regulation 2000 (EP&A Regulation). • Coastal zone management plan: State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP); • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development

		<ul style="list-style-type: none"> Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 28 April 2021 Late submission uploaded into the portal: 24 May 2021 Written submissions during public exhibition: 124 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Christine Watson on behalf of Community Group Hawkesbury Environment Network, Councillor John Ross and Bill Sneddon Council assessment officer – William Pillion Consultant: Claire Jones Advisian On behalf of the applicant – Daniel Martens Martens & Associates, Mo Shahrojhian Martens & Associates Total number of unique submissions received by way of objection: 124
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: Monday, 7 September 2020 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, Louise Camenzuli, Judy Clark and Jeff Organ <u>Council assessment staff</u>: William Pillion and Cristie Evenhuis <u>Consultants</u>: Claire Jones and & Alex Pappas Advisian Briefing: Monday, 29 March 2021 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Greg Britton and Angus Gordon Site inspection: Thursday, 6 May 2021 <ul style="list-style-type: none"> <u>Panel members</u>: Judy Clark and Jeff Organ <u>Council assessment staff</u>: William Pillion Site inspection: Thursday, 13 May 2021 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair) and Angus Gordon <u>Council assessment staff</u>: [Names] Site inspection: Sunday, 23 May 2021 <ul style="list-style-type: none"> <u>Panel members</u>: Greg Britton Final briefing to discuss council's recommendation: Monday, 24 May 2021 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Greg Britton and Angus Gordon, Judy Clark and Jeff Organ <u>Council assessment staff</u>: William Pillion and Cristie Evenhuis <u>Consultants</u>: Claire Jones Advisian
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to assessment report