COUNCIL ASSESSMENT REPORT

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| **Panel Reference** | **PPSSWC-2** |
| **DA Number** | **DA0508/18** |
| **LGA** | **Hawkesbury City Council** |
| **Proposed Development** | **Extractive Industries: Sand Extraction and Processing Facility, Road Works, Site Works, Ancillary Office, Fencing, Landscaping and Site Rehabilitation** |
| **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))** |
| **Applicant/Owner** | **Greener Valley Sands Pty Ltd****Mr Anthony Muscat (395 Freemans Reach Road)** |
| **Date of DA lodgement** | 22 November 2018 |
| **Total number of Submissions** **Number of Unique Objections** | * 84 submissions (first round of public exhibition)
* Additional 40 submissions (second round of public exhibition).
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| **Recommendation** | **Refusal** |
| **Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011** | **7 Particular designated development****Development for the purposes of—****(a) extractive industries, which meet the requirements for designated development under Clause 19 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000** |
| **List of all relevant s4.15(1)(a) matters** | **Relevant** [**environmental planning instrument**](http://www.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/s4.html#environmental_planning_instrument)**s: s4.15(1)(a)(i)*** 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).

**Proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the** [**consent authority**](http://www.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/s4.html#consent_authority)**: s4.15(1)(a)(ii)*** Draft State Environmental Planning Policy (Remediation of Land);
* Draft State Environmental Planning Policy (Environment).

**Relevant** [**development control plan**](http://www.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/s4.html#development_control_plan)**: s4.15(1)(a)(iii)*** Hawkesbury Development Control Plan 2002 (DCP).

**Relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4: s4.15(1)(a)(iiia)*** Not applicable.

**Relevant regulations: s4.15(1)(a)(iv)*** Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).
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| **List all documents submitted with this report for the Panel’s consideration** | * Response to the Sydney Western City Planning Panel record of deferral, prepared by Martens & Associates Pty Ltd, dated 27 July 2021
* Flood Assessment, prepared by Martens & Associates Pty Ltd, dated 26 July 2021.
* Vegetation Management Plan version 2, prepared by Narla Environmental Pty Ltd, dated July 2021
* Detailed Site Investigation, prepared by Martens & Associates Pty Ltd, dated July 2021
* Remedial Action Plan, prepared by Martens & Associates Pty Ltd, dated July 2021
 |
| **Clause 4.6 requests** | * Clause 4.6 Exceptions to Development Standards is not applicable.
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| **Summary of key submissions** | * Permissibility within the RU2 zoning.
* Inappropriate use of rural lands and loss of agricultural land.
* Concerns the proposal will set a precedent for further sand mining in the Richmond Lowlands.
* Suitability of rehabilitation including fill material for existing and future agricultural land uses.
* Potential impacts on flora and fauna at the site and along the Hawkesbury River including riparian vegetation and habitat as well as key fish habitat.
* Concerns related to the management of acid sulfate soils.
* Concerns related to the generation of dust and fine sand particulates.
* Potential impacts on Aboriginal and non-Aboriginal heritage.
* Potential contamination of receiving groundwater, wetlands, watercourses and drinking water.
* Potential for environmental damage during a flood event.
* Potential increase in traffic to the local area and deterioration of local roads.
* Potential visual impacts to neighbouring properties and Hawkesbury River users.
* Potential operational noise impacts to surrounding receivers including neighbouring properties.
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| **Report prepared by** | William Pillon Senior Town PlannerHawkesbury City Council  |
| **Report date** | 19 August 2021 |
| **Summary of s4.15 matters**Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?(Refer to Council Assessment dated 23/04/2021) | **Yes** |
| **Legislative clauses requiring consent authority satisfaction**Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*(Refer to Council Assessment dated 23/04/2021) | **Yes** |
| **Clause 4.6 Exceptions to development standards**If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? | **Not applicable** |
| **Special Infrastructure Contributions**Does the DA require Special Infrastructure Contributions conditions (S7.24)?*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions* | **Not applicable** |
| **Conditions**Have draft conditions been provided to the applicant for comment?*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council’s recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report* | **No** |

(Council Assessment dated 23/04/2021 recommends refusal. Recommended conditions provided to the Panel as per deferral meeting of 24 May 2021)

**Deferral Report**

This report has been prepared following the deferral of the determination of the above application on 24 May 2021.

The majority of the Panel voted to defer the determination of the matter and provide the applicant with the opportunity to submit additional material in support of the proposal.

Following the deferral the applicant requested additional time to gather the necessary information and reporting requested by the Panel. On 26 July 2021 the applicant supplied the following information.

* Response to the Sydney Western City Planning Panel record of deferral, prepared by Martens & Associates Pty Ltd, dated 27 July 2021
* Flood Assessment, prepared by Martens & Associates Pty Ltd, dated 26 July 2021
* Vegetation Management Plan version 2, prepared by Narla Environmental Pty Ltd, dated July 2021
* Detailed Site Investigation, prepared by Martens & Associates Pty Ltd, dated July 2021
* Remedial Action Plan, prepared by Martens & Associates Pty Ltd, dated July 2021
* The following list of amended plans

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| --- | --- | --- | --- | --- |
| Plan No. | Revision No. | Plan Title. | Drawn By. | Dated |
| PS06-A000 | E | Cover Sheet  | Martens & Associates Pty Ltd | 16/07/2021 |
| PS06-A050 | D | Development Overview Plan (Sheet 1) | Martens & Associates Pty Ltd | 16/07/2021 |
| PS06 | D | Development Overview Plan (Sheet 2) | Martens & Associates Pty Ltd | 16/07/2021 |
| PS06-C130 | D | Earthworks Grading Plan – Area 3 | Martens & Associates Pty Ltd | 16/07/2021 |
| PS06-C600 | D | Earthworks Sections (Sheet 1) | Martens & Associates Pty Ltd | 16/07/2021 |
| PS06-C601 | C | Earthworks Sections (Sheet 2) | Martens & Associates Pty Ltd | 16/07/2021 |
| PS06-C602 | C | Earthworks Sections (Sheet 3) | Martens & Associates Pty Ltd | 16/07/2021 |
| PS06-E130 | D | Drainage Plan – Area 3 | Martens & Associates Pty Ltd | 16/07/2021 |

The amended information listed above seeks to address the following matters raised by the Panel;

* 2D modelling of the river flooding,
* Details of the wetland area and consistency with plans,
* SEPP 55, and
* Anchoring of the sand dredge.

As part of the deferral Council was instructed to advise of Conditions to be imposed if the majority of the Panel considers granting consent. The conditions should address:

1. *anchoring of the dredge*
2. *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.*
3. *A Condition Survey of the river (both banks) prior to any activity so as to establish the baseline conditions.*
4. *A suitable bond or other form of security to provide the remediation of affected parts of the site should the extraction site (or any stage) be left in an incomplete state for a nominated period.*

Notwithstanding Councils original assessment recommending the refusal of the proposal, the following response is provided in relation to the additional deferral matters highlighted above.

2D modelling of the river flooding

The information seeks to address the impact of the flood matters requested by the Panel, has been noted and is referred to the panel for assessment.

Details of the wetland area and consistency with plans

Amended plans generally clarify the concerns raised in relation to consistency of plans and the location of the proposed bund wall. Conditions are recommended in attachment 1 to this report requiring that these areas be surveyed prior to any works.

SEPP 55

The applicant has submitted new contamination reporting in the form of a detailed site investigation report and remedial action plan.

The detailed site investigation report identifies the following areas of environmental concern in relation to the proposed sand extraction areas.

* contaminated fill material estimated to be approximately 560 cubic metres; and
* intact fibre cement piping along the eastern boundary of the sand extraction area.

The remediation action plan considers various methods of remediation and recommends extraction and offsite disposal of contaminated material.

Council raises no objection to the proposed method of remediation. Conditions in relation to compliance with the new documents and validation of remediation works are recommended under attachment 1 to this report.

Anchoring of the Sand Dredge

The applicant has provided a recommended condition for the panel’s consideration. This has been incorporated into condition No. 23 contained in attachment 1 to this report

Recommended Conditions from Council

Attachment 1 to this report includes a list of conditions recommended to be imposed should the Panel determine that the development should be approved.

The conditions aim to address the matters specified by the panel, incorporate the amended plans and information submitted by the applicant and address information required to be supplied before the issue of any construction certificate, before the commencement of any extraction activities and as part of the operational requirements. The conditions also specify compliance with the General Terms of Approval issued by external agencies.

Reasons for the conditions are specified in this document.

**Attachment 1**

**Recommended Conditions of Consent for the Sydney Western City Planning Panel (SWCPP)**