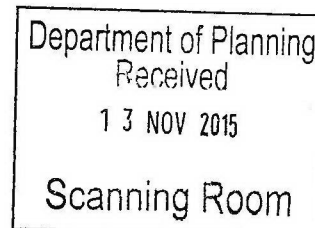




11 November 2015

Rachel Cumming
Director Metropolitan Region (Parramatta)
NSW Planning & Environment
GPO Box 39
SYDNEY NSW 2001



Dear Ms Cumming

Site Compatibility Certificate Application: Lot 1 Pembroke Road, Minto

I refer to your letter dated 18 August 2015 in which you advise that the Department had received a Site Compatibility Certificate (SCC) application from Endeavour Energy for a multi-dwelling housing proposal at Lot 1 Pembroke Road, Minto.

In reference to the application information submitted in support of the application Council has required additional time in order to review the documentation, given the issues associated with the site (which was referred to various internal sections of Council for comment).

In reference to the Endeavour Energy request for a SCC, Council provides the following comments in respect to the site.

Flora and Fauna

1. The Ecological Constraints Assessment document states (page 19) that '*No detailed fauna surveys have been conducted as part of this constraints assessment*'. The Cumberland Plain Land Snail (*Meridolum corneovirens*) is listed as Endangered under the *Threatened Species Conservation Act 1995*. Given that this species is found in Pembroke Park, directly across the road, detailed surveys of the Cumberland Plain Land Snail should be undertaken to understand whether this species is likely to put further constraint on the amount of vegetation to be protected and the amount to be removed. The document states that it is unlikely to occur due to the disturbed nature of the vegetation, however it should be noted that the vegetation within Pembroke Park is also highly disturbed.
2. Further justification on whether the Spiked Rice-flower (*Pimelea spicata*) is absent from the site is required. It should be noted that *P. spicata* is known to occur in highly disturbed grasslands and weed dominated areas within the Campbelltown LGA and has been identified within 2km of the site.

3. In reference to the request for SCC prepared by Parsons Brinckerhoff dated 28 July 2015 the section on natural environment identifies that the site and the adjacent Pembroke Park and Jersey Park contain scattered occurrences of Cumberland Plain Woodland vegetation, which is Critically Endangered under the *Threatened Species Conservation Act 1995*. This report fails to identify the significant regrowth of what is assumed to be Cumberland Plain Woodland vegetation across the site as it has been left undisturbed since the original reports prepared in 2012.

Although the Parsons Brinckerhoff report identifies that majority of the site is cleared as a result of a previous use of the site, and subsequent decommissioning and remediation it fails to address the regrowth that has occurred of the vegetation over the last four years across the site. Given the provisions of the *Threatened Species Conservation Act 1995* a detailed Flora and Fauna Assessment would be required (please see attached photos obtained from the external boundaries).

4. The detailed Flora and Fauna Assessment is required for this site would need to include targeted surveys for threatened species such as the Cumberland Plain Land Snail, Spiked Rice-flower and Koala. The report should also include the quantitative amounts of how much Cumberland Plain Woodland and River-flat Eucalypt Forest will be retained and how much will be removed as part of the proposed development including any sections of regrowth of eucalypt.

Bush Fire Risk

5. Given the fact that the western portion of the site is bushfire prone land as identified on Council's Bushfire Prone Lands Map 2014 and the regrowth across the site of Cumberland Plain Woodland vegetation, any potential impacts required for the Asset Protection Zones on the proposed adjacent lots should also be taken into consideration.

As a clear buffer from fire threat will be required for the Asset Protection Zone a bushfire risk assessment should be undertaken by the proponent to address this constraint, including consideration of revegetated areas not identified in the vegetation mapping.

Contamination

6. An Environmental Management Plan (EMP) has been developed to manage the 'impacted zone'. However there is no detail on who will be responsible for its management in perpetuity. It does suggest that a copy of the EMP be provided to, and maintained by, any future strata corporation or property owners that are established following the construction of residential buildings. The EMP is also not specific to any end use, so we cannot be certain that it will be suitable for the proposed use, providing absolute detail on how to manage the end use. Further direction should be provided to Council.
7. The Non-statutory Site Audit Statement states that as no specified development of the site has been proposed, the current EMP is necessarily generic and will require to be revised in due course i.e when an actual redevelopment has been proposed for consent. That an additional Site Audit Statement (Statutory) will need to be undertaken to determine if any future proposed end use is suitable.

8. Although the EMP identifies that it provides an outline of the environmental management structure and responsibility including requirements for a worker health and safety (WHS) outlining key project personnel, scope of works, emergency contacts, emergency response procedures and job hazard analyst documents it is not identified who would be responsible for implementing the EMP. Although it is identified that if a community title development was undertaken that the Body Corporate would be responsible, there is no certainty that the development will be a community development in which case would each individual owner be responsible for the implementation of the EMP including monitoring of vapours.

9. In reference to the previous version of the EMP and discussions between Council and Endeavour Energy it was identified that the restricted use and associated requirements would need to be appropriately notified to the public via appropriate notations. It was raised but not agreed on how this could occur. A notation on a planning certificate (Section 149(2)) and a covenant registered on the title to land under Section 88B of the Conveyancing Act would be minimum requirements regarding the identification of the EMP and the impacted zone. In this respect it should be noted that a Section 149(2) is not compulsory and that if the properties are tenanted the tenants may not have access to the information in a Section 149 Certificate or a covenant on title. i.e. limiting the use of residential development to 10% fruit/veg intake and no poultry. Who will monitor the movement of vapours from the sub-surface to indoor and outdoor air where exposure may occur.

It should be noted that Council has not agreed to implement the EMP and that Council will rely upon the advice of Endeavour Energy that it will retain ownership of the impacted zone and manage future uses and the EMP.

10. It is identified that the mechanism by which the contamination would be notified would be through planning tools available to the Council (eg. Section 149) and that if the land is subdivided into separate lots into the future Council would be responsible for refining the annotation on the Section 149 to accurately reflect any capture which lots are above the impacted groundwater. As identified notation on a Section 149 would only notify an owner if they apply for a Section 149 at the time of purchase. Also if there is any migration in the impacted zone this could only be identified through up to date assessment/testing to ensure that any owners are appropriately notified at which time they would only become aware of the issue if a Section 149 certificate was applied for.
11. In reference to the comment as to whether the EMP can be made to be legally enforceable the Department should obtain its own legal advice in the matter as it was previously identified to Council that in order to ensure that the EMP is legally enforceable that the "impacted zone" must be owned by government agency or state owned corporation (given the proposed lot layout, would Endeavour Energy retain ownership of the subject properties?). On this basis Council considers that the mechanisms to ensure that the EMP is reasonably legally enforceable still need to be addressed.
12. It is identified in Douglas Partners report under the sub heading "Auditors Opinion" that "no additional site investigations were performed for the purposes of the updated QRA". The information although now five years old is considered satisfactory in as much as it supported previous conclusions in the earlier Site Audit Report (SAR). Moreover, it is almost inevitable that both groundwater and soil vapour concentrations have declined due to natural attenuation in the intervening period". These are

assumptions that should be confirmed by additional site investigations given the intervening period that has lapsed since the last investigations were undertaken. This would confirm whether the concentrations have declined and confirm that there has been no further migration. It is identified that the Auditor also considers that a further round of soil vapour/ground gas testing should be undertaken prior to completing any revised EMP which takes into account the nature of any proposed development in the impacted zone.

13. It is identified in the Quantitative Risk Assessment (QRA) Methodology and Results that EnRiskS noted that the assessment of the potential risk to ecological receptors was outside the scope of the QRA and concluded that potential for impacted groundwater to migrate to McBarron Creek was considered to be low. It is considered that an assessment/testing should be undertaken to confirm that there is no potential risk to ecological receptors.
14. Given that in the conclusion of the Douglas Partners report it is identified that the auditor notes that under Section 59(2)(e) of the CLMA local authorities are required to note on the planning certificate that the land is the subject of a site audit statement if a copy of the Site Audit Statement has been provided to a local authority given that the CLMA does not distinguish between statutory and non-statutory audits. On this basis Council considers that an updated assessment/testing of the site should be undertaken as part of this request for site compatibility certificate and also a survey undertaken of the impacted zone in order that the appropriate notations can be placed on the planning certificate.
15. In reference to the vapour mitigation measures that would be incorporated into the design of houses over any impacted zone it is requested that the applicant identify examples of any vapour mitigation systems as part of its application which identify how they would be monitored and how slab sizes would be assessed?
16. I note that the site audit statement is currently limited to uncertain restrictions involving:
 - a) Residential development restricted with 10% on site fruit / veg intake and no poultry
 - b) A new EMP "when a specified development is proposed for the site"
 - c) Additional monitoring of soil vapour/ground gases
 - d) Responsibility for implementation of the EMP
 - e) The restrictions relating to slab size, vapour systems etc. appear unclear and unworkable. ie. does there need to be certain separation between slabs, restrictions on ancillary development, driveway slab, road construction etc..?
 - f) What restrictions will be created on title and who regulates?
 - g) Who is responsible for notifying tenants/contractors of obligations?

Given the uncertainties and assumptions identified in the reports, it is Councils view that if the land is to be developed for residential purposes that it should be remediated as this would avoid the issues associated with the EMP approach and associated responsibility for notification and monitoring.

It is also identified that Council will not accept ownership of the impacted zone or responsibility for the EMP.

Proposed Use

The proposed use of the site is stated as "multi dwelling housing with building heights up to 3 storeys".

17. Comment:

- a) The proposed lot sizes are inconsistent with the minimum 500m² for residential development permitted by Council for residential development under Campbelltown (Sustainable City) DCP 2014 (SCDCP 2014).
- b) No details of the multi dwelling development are provided to substantiate the reduced lot sizes indicated on the concept subdivision plan.
- c) A 3 storey building height is inconsistent with the height limits permitted for residential development under SCDCP 2014.

Acoustic Fencing

The proposal identifies the provision of a noise barrier along the boundary to Sark Grove Road to mitigate against potential noise emissions from adjacent industrial uses.

18. Comment:

- a) Council's Works Depot, the SES and the Rural Fire Service are located on adjacent land to the north and have a 24 hour operational need that needs to be maintained without encumbrance from residential development on the subject site.
- b) No specific details are provided of proposed acoustic treatment to Sark Grove, which is indicated as "an earth fence / wall" under Figure 3.18b.
- c) Concerns are raised that an acoustic engineered wall (or similar) along the length of Sark Grove Road would be a poor urban design / streetscape outcome.

Masterplan

There appears to be enough significant uncertainties regarding how the site could be 'made suitable' for multi dwelling development to warrant the application being supported by a 'masterplan' type development proposal to explain things better. This additional information would assist in addressing the many uncertainties raised, and if the SCC is approved, would provide greater clarity for Council (and everyone) to guide the assessment of any future DA.

19. Section 3.3.3 of the Request for Site Compatibility Certificate references the Quantitative Risk Assessment -Appendix D of the Non Statutory Site Audit Report. It states that the proposal is considered to be consistent with scenario A – 'The proposed height of the buildings (being a maximum of three storeys, more akin to medium density development rather than high density)'. However it should be noted that this statement is not consistent with the Appendix D which in fact states that 'Scenario A is 1-2 level residential (ie low density residential or medium-density residential), no basement, with residential living areas on the ground floor'. It would appear that this statement could be open to interpretation, further clarity is required. If Scenario A is exceeded potentially the people who live or work on the ground floor of

any building over the impacted zone may be exposed to unacceptable levels of petroleum hydrocarbon vapours unless vapour mitigation is installed (enRisk 2015).

20. An Environmental Management Plan (EMP) has been developed to manage the 'impacted zone'. However there is no detail on who will be responsible for its management in perpetuity. It does suggest that a copy of the EMP be provided to, and maintained by any future strata corporation or property owners that are established following the construction of residential buildings. The EMP is also not specific to any end use, so we cannot be certain that it will be suitable for the proposed use, providing absolute detail on how to manage the end use.
21. The Non-statutory Site Audit Statement states that as no specified development of the site has been proposed, the current EMP is necessarily generic and will require to be revised in due course i.e when an actual redevelopment has been proposed for consent.
22. As the vegetation within the site is highly disturbed and is mostly restricted to the western and southern parts of the property, the site layout could be provided in such a way to not have a major impact on threatened ecological communities and be management to have a positive environmental outcome. However a further Flora and Fauna Assessment would be requested at the time of any future proposal as the one provided as part of this document is limited and may not appropriately address the regrowth that has occurred in the last four years of eucalypt across the site.

Conclusion

If this land is rezoned for residential use I would be concerned that any future lots over the impacted zone or within the migration area would potentially need to manage vapour mitigation in perpetuity. This would not be the responsibility of Council but would fall on the residents/strata bodies or Endeavour Energy. Although the Site Audit Statement and Risk Assessment state that the area is suitable for low to medium density residential, I would be concerned that the Environmental Management Plan would not be managed correctly overtime, given that multiple residents would be involved.

If this proposal is approved it should as a minimum, subject to the conditions stated in the Non Statutory Site Audit Statement, May 2015 with Council accepting no responsibility for the EMP.

I apologise for the delay in Council's reply and I appreciate your patience with this matter. I trust that the above is of assistance and if you require any further information please contact myself on 4645 4221.

Yours sincerely



Jim Baldwin

A/Director Planning & Environment