



***MODIFICATION REQUEST:
Wet 'n' Wild Sydney
Reservoir Road, Prospect
(MP 10_0190 MOD 1)***

Description of Modification Request

- The inclusion of site remediation works in the approval.

Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

May 2013

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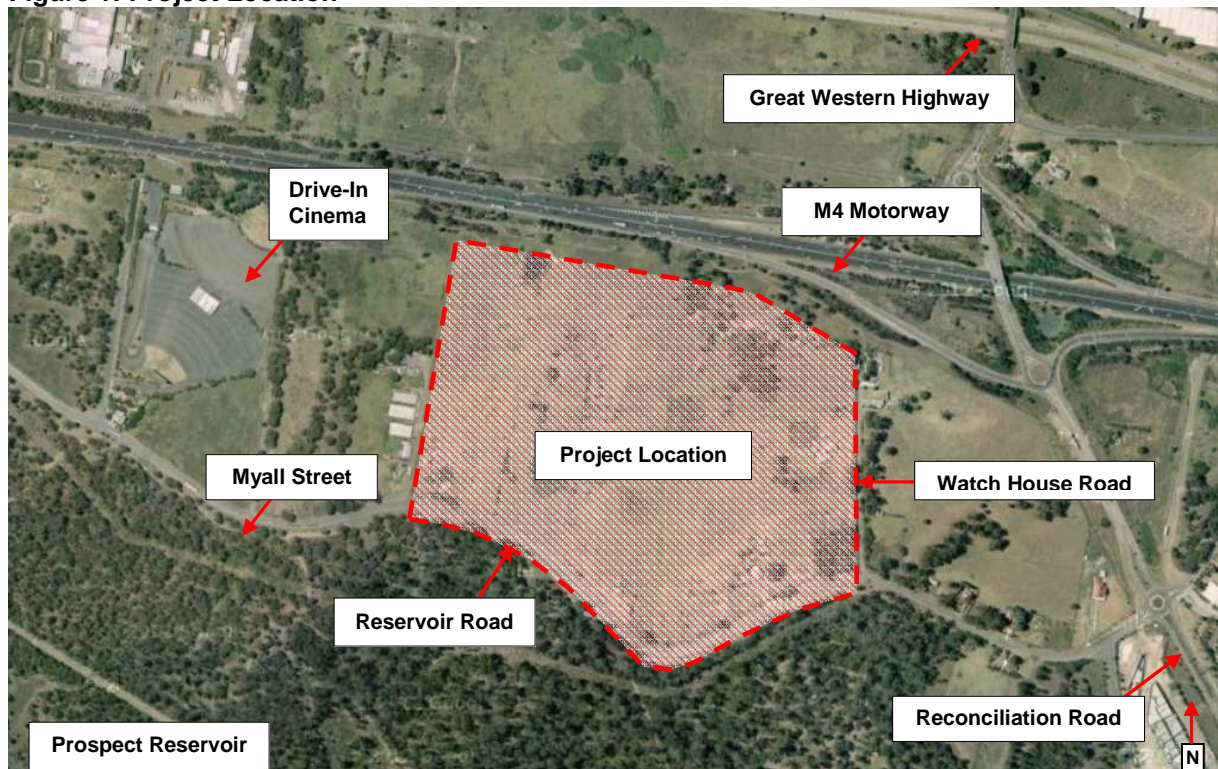
1. BACKGROUND

This report is an assessment of a modification application (MP10_0190 MOD 1) lodged under section 75W of the *Environmental Planning and Assessment Act 1979* (the EP&A Act), by Prospect Aquatic Investments Pty Ltd (the proponent) seeking approval to modify the concept plan approval issued for Wet 'n' Wild Sydney to include site remediation works.

1.1 The Site

The 25.5 ha Wet 'n' Wild Sydney site is located between the M4 Motorway, Reservoir Road and Watch House Road in Prospect. The site is legally described as Lot 1 in DP 1045771 and is within Blacktown Local Government Area (LGA) and also forms part of the Western Sydney Parklands. The approved project location is shown in **Figure 1**.

Figure 1: Project Location



1.2 Approval History

On 8 December 2011, the Deputy Director-General, Development Assessment and Systems Performance, as delegate of the Minister for Planning and Infrastructure, approved a concept plan (MP10_0190) for the construction and operation of a water theme park, known as Wet 'n' Wild Sydney. The concept plan included:

- Stage 1:
 - Approval was granted for Stage 1 of the concept plan to proceed to construction with no further environmental assessment required, including:
 - site preparation and earthworks, demolition and tree removal
 - construction of 10 water theme park rides and attractions
 - construction of ancillary park support facilities

- 1810 at grade visitor car parks, including, 42 disabled bays, 12 coach parks, six minibus parks, 20 motorcycle parks, and 47 staff and service vehicle car parks
 - signage
 - landscaping
 - construction of associated stormwater and water cycle management facilities (including stormwater detention pond and water treatment wetland)
 - infrastructure and utilities connections
 - construction of new site access road and intersection with Reservoir Road, and Reservoir Road upgrade.
- **Stage 2:**
The identification of an area for future expansion as a theme park (outside the Stage 1 area), with no additional patrons. Approval was also granted for a Complying Development Code (CD Code) allowing the future expansion of rides and ancillary uses within the future expansion area, and also the replacement of rides and facilities inside the Stage 1 area, as required.

The layout of the approved concept plan is shown below in **Figure 2**.

Figure 2: Concept Plan



1.3 Modification Background

Original Contamination Assessment

The Environmental Assessment (EA) for the original concept plan application was accompanied by Phase 2 Contamination Assessment (Phase 2 report) which included sub soil testing across the site to ascertain the presence of any contamination on the site, and to establish if any remediation was required make the site suitable for its proposed use.

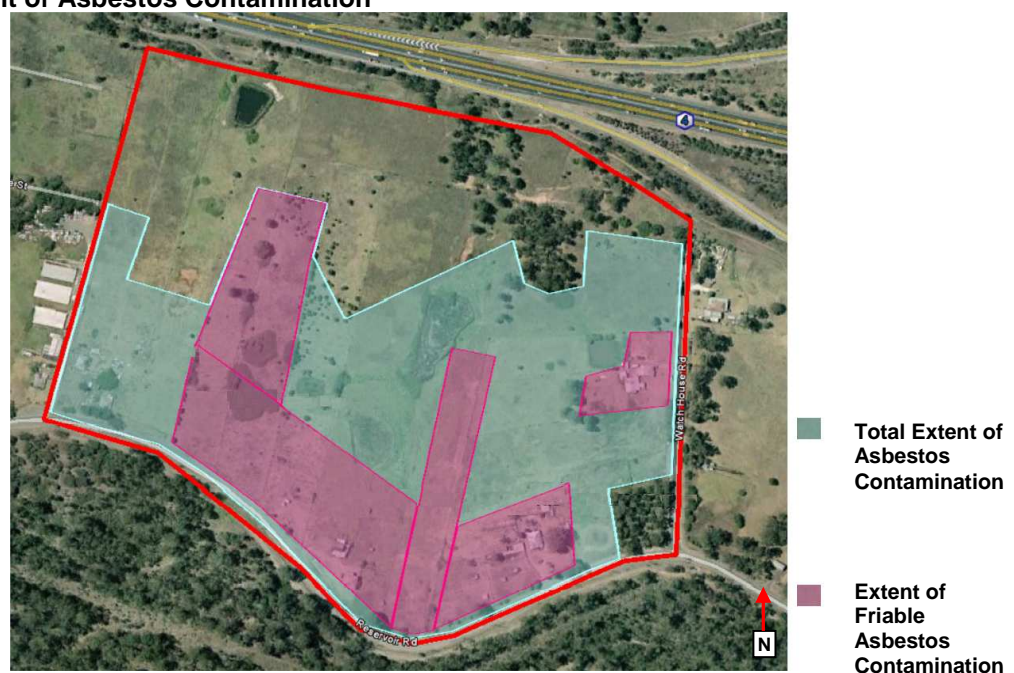
The Phase 2 report identified the presence of some fill material on site, however it did not identify the presence of any asbestos contamination, and the report concluded that no specific soils or groundwater remediation was required, and that the site is suitable for the proposed use as a water theme park. Accordingly, the original concept plan application did not seek approval for any site remediation works.

On the basis of the findings from the Phase 2 report and the proponent's EA, the department considered the site to be suitable for the proposed development without requiring any specific soil or groundwater remediation. Accordingly, the department did not include any specific provisions relating to the remediation of contaminated land in the approval.

Discovery of Contamination

Following approval of the concept plan (MP10_0190) and upon commencement of bulk earthworks on the site in late 2012, asbestos contamination was identified at a number of locations on the site. The identified asbestos contamination included non-friable asbestos (including bonded fragments of asbestos containing cement sheets and plaster board), as well as friable asbestos (clumps of powdery, fibrous, crumbly asbestos containing materials). The total amount of asbestos contaminated soil identified on the site is in excess of 30,000 sqm. The extent of asbestos contamination, including the extent of friable asbestos contamination, is identified in **Figure 3**.

Figure 3: Extent of Asbestos Contamination



Given the significant amount of asbestos contamination that has been identified at the site during the bulk earthworks stage of the project, the site is now considered to be unsuitable for the proposed use without remediation.

The proponent has therefore lodged a modification application seeking approval to include works associated with the remediation of the asbestos contamination as part of the approval (a further detailed description of the modification application is provided in Section 2 of this report).

2. PROPOSED MODIFICATION

2.1 Modification Description

The modification application seeks approval to include site remediation works in the approval to remediate asbestos contamination which has been identified at the subject site during the course of approved bulk excavation works.

The modification application was accompanied by a detailed Remediation Action Plan (RAP) outlining the remediation strategy for the site. A description of the remediation strategy is provided below:

- The identified asbestos contaminated areas of the site are to be excavated to remove all visible asbestos.
- Excavated soils containing visible asbestos contamination is to be placed into containment cells located beneath the area of the site to be developed into car parking.
- Areas where visible asbestos has been excavated will then be subject to a detailed visual inspection and sampling. If asbestos is not detected through the detailed inspection and sampling, an asbestos clearance certificate will be issued for the remediated area, allowing stripping of topsoil/fill material in the cleared areas and works associated with the approved project to proceed in that area.
- The on-going work is to be undertaken under the supervision of a suitably qualified contaminated land specialist to assess if any additional asbestos is identified in those areas.
- Should any additional asbestos contamination be identified during the stripping of topsoil/fill material in the cleared areas, the above remediation and validation process (excavation, placement into containment cell, visual inspection and sampling, and clearance certification) will be repeated in those areas.
- Any topsoil that is assumed to be or demonstrated to be contaminated with asbestos will also be placed in the proposed containment cells.
- The footprints and immediate vicinity of the potentially contaminated stockpiles of topsoil will also be remediated and validated through visual inspection and sampling, and clearance certification.
- The contaminated material in the containment cells will be physically separated from the end users by the following:
 - a geo-fabric cover will be placed across the top of the emplaced contaminated material to act as a marker layer

- clean fill with a minimum thickness of 1 m will be placed on top of the geofabric to act as a capping layer. The top of this layer will be surveyed as the top of the containment cell
- additional clean fill material will be placed on top of the containment cell to achieve design elevations.

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

In accordance with clause 3 of Schedule 6A of the EP&A Act, section 75W of the EP&A Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Section 75W(2) of the EP&A Act provides that a proponent may request the Minister to modify the Minister's approval of a project. The Minister's approval of a modification is not required if the approval of the project as modified would be consistent with the original approval. As the proposal involves the inclusion of site remediation works in the approval, the modification will require the Minister's approval.

3.2 Environmental Assessment Requirements

Section 75W(3) of the EP&A Act provides the Director General with scope to issue Environmental Assessment Requirements (DGRs) that must be complied with before the matter will be considered by the Minister. Environmental Assessment Requirements were not issued for this modification as the proponent had addressed the key issues in the modification request.

3.3 Delegated Authority

On 14 September 2011, the Minister delegated his powers and functions under section 75W of the EP&A Act to Directors in the Major Projects Assessment Division where:

- a) the relevant local council has not made an objection, and
- b) a political disclosure statement has not been made, and
- c) there are less than 10 public submissions in the nature of objections.

The modification proposal complies with the terms of that delegation, therefore the Director, Metropolitan and Regional Projects North can determine the application.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

In accordance with section 75X(2)(f) of the EP&A Act and clause 8G of the EP&A Regulations, the Director-General is required to make the modification request publically available.

Additionally, clause 13 of State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) specifies a minimum exhibition period of 30 days for certain remediation works, unless the remediation work is designated development or State significant development (in which case it is exhibited for a period of 30 days anyway). The original concept plan application was exhibited for 30 days, however it did not

include any site remediation works, therefore the department has elected to exhibit the modification application for a minimum of 30 days, consistent with the intent of clause 13 of SEPP 55.

The department publically exhibited the modification application from 7 February 2013 to 11 March 2013 (32 days). The modification application was also exhibited at the department's Information Centre and Blacktown City Council. In addition, the department advertised the public exhibition in the Sydney Morning Herald, the Daily Telegraph and the Blacktown Advocate on 6 February 2013, and notified relevant landholders and State and local government authorities in writing.

The department received five submissions from public authorities and no submissions from the general public. A summary of the issues raised in public authority submissions is provided in Section 4.2 below.

4.2 Public Authority Submissions

A summary of submissions received from public authorities is provided below.

Environmental Protection Agency

The EPA's submission identified that it is able to issue general terms of approval for the proposed modification, subject to the imposition of a number of conditions. The recommended conditions related to pollution of water, waste management, offensive odours, monitoring, and complaint handling.

The EPA's submission also advised it is able to issue an environmental protection licence for the works subject to the proponent complying with the existing conditions of the approved concept plan, and the EPA's recommended conditions detailed in the general terms of approval.

Comment

As the project is a transitional Part 3A project, and not an integrated Part 4 development, the EPA is not required to issue general terms of approval, however, the department has given consideration to the comments provided by the EPA, and has recommended a condition requiring the proponent to comply with all conditions recommended by the EPA. Further consideration of the EPA's comments and recommended conditions is provided in Section 5 of this report.

Blacktown City Council

The council submission raised no objection to the inclusion of site remediation works in the approval, subject to the imposition of a number of conditions relating to archaeological monitoring during asbestos removal, obtaining a waste disposal licence from the EPA, undertaking work within the prescribed construction hours, obtaining a site audit statement upon completion of remediation work, compliance with SEPP 55 and council's DCP Part Q – Contaminated Land Guidelines, and compliance with WorkCover and EPA requirements.

Comment

The department has given consideration to the comments provided by the council and included recommended conditions, where appropriate. Further consideration of the council's comments and recommended conditions is provided in Section 5 of this report.

Office of Environment and Heritage

The OEH advised it has no comment on the proposed modification.

Sydney Water

Sydney Water advised that the proponent should ensure it complies with all safety and environmental requirements relating to the management and remediation of asbestos, and that it advise Sydney Water of any contamination issues that may impact Sydney Water assets, employees or contractors.

The department has given consideration to the comments provided by Sydney Water and recommended conditions, where appropriate.

NSW Office of Water

The NOW advised it has no comment on the proposed modification.

4.3 Response to Submissions

The proponent provided a response to the issues raised in submissions and responded to issues raised by the department during the assessment. The response was accompanied by a letter from an EPA accredited site auditor confirming general agreement to the remediation approach, a revised containment cell location plan and a schedule of mitigation and management measures for the remediation works. The department is satisfied that the proponent's response has addressed all issues raised.

The department has considered all issues raised in submissions in its assessment of the proposed modification.

5. ASSESSMENT

The department considers the key issues for the modification request to be:

- State Environmental Planning Policy No.55 – Remediation of Land
- remediation strategy
- construction management.

5.1 SEPP 55

State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55) is the primary environmental planning instrument guiding the remediation of contaminated land in NSW. SEPP 55 aims to:

- provide a state-wide planning approach to the remediation of contaminated land
- identify when consent is required or not required for a remediation work
- specify certain considerations that are relevant to applications for consent to carry out a remediation work
- require that remediation work meet certain standards and notification requirement.

Clause 7 of SEPP 55 identifies that a consent authority must not consent to the carrying out of any development on land unless:

- it has considered whether the land is contaminated

- if the land is contaminated, it is 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
- if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

As outlined in Section 1.3 of this report, the department considered the findings of a Phase 2 Contamination Assessment report during the assessment of the original application. On the basis of the findings from the Phase 2 report, the department considered the site to be suitable for the proposed development without requiring any specific soil or groundwater remediation. Accordingly, the department did not include any specific provisions relating to the remediation of contaminated land in the approval.

Upon commencement of bulk earthworks on the site under the approval, asbestos contamination was identified at a number of locations on the site (the total amount of identified asbestos contaminated soil is in excess of 30,000 sqm). Pursuant to clause 7 of SEPP 55, the site now requires remediation to be made suitable for its proposed use as a water theme park.

The proposed remediation works are category 1 remediation work (requiring consent) under clause 9 of SEPP 55 by virtue of clause 11(2) of State Environmental Planning Policy (Western Sydney Parklands) 2009 (Parklands SEPP), which requires development consent for remediation works.

Clause 17 of SEPP 55 identifies that category 1 remediation work must be carried out in accordance with a Remediation Action Plan (RAP), approved by the consent authority and prepared in accordance with Managing Land Contamination: Planning Guidelines - SEPP 55 Remediation of Land (Department of Urban Affairs and Planning, 2008) (contamination guideline).

Under the contamination guideline, whilst not mandatory, prior to determination of an application involving category 1 remediation works, a consent authority can request that a Section B Site Audit Statement (prepared by and an EPA accredited site auditor (site auditor)) be prepared of a RAP to ascertain if it adheres to appropriate standards, procedures and guidelines.

A RAP was submitted with the modification application in accordance with the requirements of Clause 17 of SEPP 55 and the contamination guideline (a summary of the remediation strategy detailed in the RAP is provided in section 2.1 of this report). The RAP identifies that the remediation works will be undertaken in accordance with the requirements of SEPP 55 and the contamination guideline, and that upon completion of the remediation works, and upon a site auditor's approval of a validation report, a Section A Site Audit Statement will be issued by a site auditor stating that the site has been appropriately remediated and is suitable for use as a water theme park.

Given the significant amount of remediation works proposed to occur on the site, in accordance with the provisions of the contamination guideline, the department requested that the proponent provide a Section B Site Audit Statement prepared by

an EPA accredited site auditor to verify that the RAP and remediation strategy is appropriate and that the information in the RAP adheres to appropriate standards, procedures and guidelines.

The proponent responded by providing a letter from an EPA accredited site auditor confirming general agreement to the remediation approach, and advising that a Section B Site Audit Statement and Site Audit Report of the RAP is being prepared. The proponent suggested the imposition of a condition requiring the submission of the site auditor's Section B Site Audit Statement, prior to commencement of remediation works, and the department has recommended a condition to ensure this occurs.

The department is satisfied that, subject to implementation of the remediation strategy, validation procedures detailed in the RAP, and the recommended conditions, the site will be made suitable for use as a water theme park prior to commencement of use.

In addition to the above, as the remediation works involve disturbing more than 3 ha of contaminated soils and the storage of more than 30,000 cubic metres of contaminated soil on site, the remediation works are deemed a scheduled activity under clause 15 of schedule 1 of the Protection of the Environment Operations Act 1997 (POEO Act), and therefore the proponent will be required to obtain a separate Environmental Protection Licence from the EPA to undertake the remediation work following any approval of the modification application. The EPA's submission included general terms of approval, including conditions, which would form the basis of the Environmental Protection Licence. The department has included the EPA's recommended conditions and the proponent will be required to adhere to any additional requirements imposed by the EPA as part of the licence. Additionally, the proponent will be required to comply with any licensing and notification requirements of WorkCover NSW and the Work Health and Safety Regulation 2011.

5.2 Remediation Strategy

Containment Cells

As identified in section 2.1 of this report, the remediation strategy involves the placement of contaminated material in containment cells located on the western part of the site in an area to be developed into car parking.

During the assessment, the department raised concern with the location of one of the containment cells, as it encroached on an area to be planted as regenerated Cumberland Plain Woodland. Given the design of the containment cells only includes one metre of top soil capping over the cells, this would result in an insufficient deep soil zone for the regenerated vegetation.

The proponent responded by submitting a revised plan showing a relocated containment cell, outside of the area to be planted as regenerated Cumberland Plain Woodland.

The department is satisfied that the relocated containment cell will provide adequate separation between the contained asbestos contaminated soils and the end site users, and will not impact on any remnant or regenerated vegetation on the site.

Site Management Plan

As the contaminated soils are to be retained on site (in the containment cells), the remediation strategy includes the preparation and implementation of a long term site management plan (SMP) to manage the asbestos contamination within the containment cells. The SMP is to detail the location and lateral and vertical extent of the containment cells, the nature of the contained contamination, measures to maintain the integrity of the containment cells, on-going monitoring program, and procedures to ensure appropriate restoration of the capping layer, in the event that any excavation works or installation of underground services encroach into the capping layer.

The department has recommended a condition that the SMP be reviewed and approved by an EPA accredited site auditor prior to the issue of a Section A Site Audit Statement, and that the SMP be registered on the property title.

5.3 Construction Management

The proposed remediation works are to be undertaken in coordination with other construction activities occurring on the site (construction of water theme park rides, buildings and facilities) under the existing Stage 1 approval and under the Wet 'n' Wild Sydney Complying Development Code.

To minimise the risk of contamination to clean areas of the site and recontamination of remediated areas, contaminated areas of the site are to be separated from the rest of the site, and asbestos clearance certificates will be issued to remediated areas to allow development to progressively proceed in areas once they are remediated and successfully validated.

Additionally, the RAP details a number of environmental mitigation measures to be implemented throughout the remediation works, including, risk management, community consultation, dust control, hours of work, noise control, traffic and erosion protection.

To ensure the mitigation measures are implemented in coordination with other construction activities occurring on the site, the department has recommended a condition that the proponent updates the existing construction management plan to reflect all mitigation measures detailed in the RAP. The above requirement will ensure that any cumulative impacts arising from the construction activities and the remediation works are managed in coordination.

Additionally, the EPA's submission provided a number of recommended conditions related to pollution of water, waste management, offensive odours, monitoring, and complaint handling, and the department has recommended a condition requiring the proponent to comply with all conditions recommended by the EPA.

6. CONCLUSION

The proposed modification seeks to include site remediation works in the approval to remediate asbestos contamination which has been identified at the site during the course of approved bulk excavation works.

The proposed remediation works are required to render the site suitable for use as a water theme park and will result in a net improvement in environmental quality, reduce health risks and will promote the economic use and development of the land.

Whilst the proposed remediation works will result in additional activity being undertaken on the site in coordination with other construction activities occurring under the approval, the department considers that the mitigation measures detailed in the RAP and recommended conditions will appropriately mitigate and manage any potential additional environmental impacts.

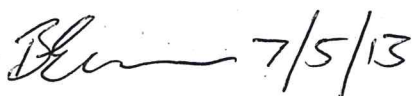
The department therefore recommends that the modification application be approved, and the concept plan instrument of approval be amended accordingly.

6. RECOMMENDATIONS

It is recommended that the Director, Metropolitan and Regional Projects North:

- a) **Consider** the findings and recommendations of this report
- b) **Approve** the modification, subject to conditions, under section 75W of the *Environmental Planning and Assessment Act 1979*, and
- c) **Sign** the attached instrument of modification approval (**TAG A**).

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APPENDIX A MODIFICATION REQUEST

See disk attached and the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5758

APPENDIX B SUBMISSIONS

See disk attached and the Department's website at:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id= 5758](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5758)

APPENDIX C RECOMMENDED MODIFYING INSTRUMENT
