



16 October 2009

## **Sandon Point Concept Plan Modification and Project Application**

On 17 September 2009, the Hon Kristina Keneally, MP, Minister for Planning, wrote to the Chairman of the Planning Assessment Commission (PAC) requesting the Commission to review the reasonableness of the recommendation of the Director General's Report to grant approval to the proposed modification to the Sandon Point concept plan and project application.

The Commission consisted of Dr Neil Shepherd AM, Mr John Court and Professor Kevin Sproats, all members of the PAC. Dr Shepherd chaired the review. The Commission has reviewed the Director General's report, the recommended conditions of consent and relevant documents. Mr Court visited the site and its surrounds on 6 October 2009 to understand and appreciate the existing environment and issues raised in submissions.

### **Proposed modification to the concept plan**

The proposed modification is relatively minor. It involves:

- reduction in the number of and relocation of the proposed townhouse precincts;
- correction of an inconsistency with earlier modifications to ensure Asset Protection Zones are to be within the residential zone; and
- a number of minor correction of errors and inconsistencies to the concept plan approval/modification conditions.

### **Project Application**

The proposal, a 6-stage development, involves:

- Subdivision of 181 allotments including 167 single dwellings, 14 townhouse/terrace style houses in two precincts;
- Boundary readjustment to correspond with road alignment;
- Construction of a display village for 3 dwellings, temporary sales office and parking;
- Earthworks over 2 stages and infrastructure to support the residential development; and
- Landscaping, creek design and creation of a riparian corridor.

### **Departmental Assessment**

The proposal was exhibited on two separate occasions, 18 Oct to 16 Nov 2007 and 4 Jun to 7 July 2008. During the first exhibition, 17 submissions were received (6 were from public agencies). The second exhibition attracted 67 submissions (6 were from public agencies).

Issues raised in public submissions included Aboriginal heritage, public open space, flora and fauna conservation and biodiversity, EEC mapping, drainage and erosion, traffic impacts, flooding and climate change impacts, ESD principles, provision of regional park and loss of public reserve; vegetation management, preservation of forest and protection zone around it; infrastructure provision; overdevelopment of the site and density; visual impact; acoustic barrier effect on rail noise to the west; and ignoring Commission of Inquiry recommendations.

The Department is satisfied that these issues have been addressed in the Director General's assessment report, the proponent's response to submissions and their revised Statement of Commitments, and the Department's recommended conditions of approval.

Issues raised in submissions from public agencies have been addressed in the Director General's assessment report and, where relevant, conditions of consent have been included in the Instrument of Approval.

The Director General's assessment report focused on the following key issues:

- Flooding and climate change impacts;
- Traffic & road safety;
- Subdivision layout;
- Riparian corridor rehabilitation;
- Flora and fauna;
- Defendable spaces for bushfire protection;
- Aboriginal heritage;
- contributions; and
- public interest.

Given the significance of issues concerning flooding and climate change, the Department engaged an independent expert, Sinclair Knight Merz (SKM), to review the flood studies and climate change impact reports submitted with the application. SKM identified some issues that needed to be addressed, including channel design and stability; effects of development on geomorphological processes; and impact of sedimentation rates on channel form, hydraulics and flooding. The proponent subsequently submitted further information to address SKM's concerns. SKM was satisfied with the additional information and recommended certain conditions to address residual matters. SKM qualified its acceptance on three aspects considered further below.

### **Commission's Comment**

The Commission considers the assessment of the concept plan modification and project application in the Director General's report is comprehensive and thorough. However, the Commission identified several issues requiring clarification. They were:

- long term maintenance responsibility of the riparian corridor and floodway;
- whether the rainfall intensity assessment was adequate to cope with the possible impacts of climate change on flooding potential for the site;
- the availability of information to support the Department's acceptance of detention basins within the riparian zone contrary to the views of DECC and DPI;
- whether proposed water quality monitoring criteria and recommended conditions of consent were appropriate;
- whether possible site contamination arising from previous industrial uses had been dealt with adequately; and
- whether the recommended intersection and road works on Lawrence Hargrave Drive and Wrexham Road were appropriate.

The Commission met with Departmental staff, Mr Michael Woodland, Mr Anthony Witherdin and Ms Louise McAndrew on 2 October 2009 to explore these issues.

The Departmental officers agreed to undertake further investigation and provide the Commission with formal advice. On 12 October 2009, the Department provided that advice.

### Long term maintenance responsibility of the riparian corridor and floodway

The long term maintenance of the riparian corridor and floodway was a major concern to the Commission. It noted that the proponent had agreed to maintain the riparian corridor for 5 years but that formal transfer of responsibility to Council was subject to a number of conditions. It was not clear whether Council was aware of the extent of the maintenance work and cost implication, particularly of any repair/redesign required of the floodway following flood damage.

The Department advised that Council had been consulted during the assessment of the application and raised no objection concerning future maintenance of the riparian corridor. Council had also provided a number of conditions to be included if approval was to be granted including conditions relevant to "Handover of Subdivision Works" and "Asset Management". In the Department's view, the provision of these conditions indicated Council's acceptance of future responsibility of the corridor and associated works.

While the Commission accepts this advice, the residual problem for the Commission is that Condition E22(l) provides an avenue for Council to refuse to accept the responsibility if certain water quality criteria are not met and this does not appear to trigger any obligation on the part of the proponent to extend their maintenance obligations beyond the 5 years to cover the gap while the water quality issues are resolved.

The Commission notes that condition 'AN1 Handover of Subdivision Works' may cover the situation, but AN 1 specifically relates to the Council's management of assets policy and E22(l) relates to water quality monitoring and the consequences of not meeting guidelines. It is only if the provisions of AN1 fully cover the possible refusal to accept responsibility under E22(l) that the gap is satisfactorily bridged.

The Commission recommends that the relevant conditions be modified if necessary to ensure that, if the Council refuses to accept responsibility for the assets, then the proponent retains residual responsibility for their maintenance and repair until such time as the transfer is effected.

The Commission also notes that Department's independent expert, engaged to review the proponent's flood studies (SKM), accepted the proponent's modifications contingent upon there being an understanding between the proponent and the Council as to Council's responsibility for three aspects related to the Woodlands Creek changes: transitioning works in the area downstream of the Creek floodway; monitoring to identify the impacts of the Creek redirection on the downstream area; and monitoring of sediment deposition in the Creek once the railway crossing is upgraded (SKM letter 19 May 2009, pp 4 & 5). These responsibilities lie with Council through its direction of works under the *Hewitts Creek Floodplain Management Study and Plan*.

The Commission recommends that the Department communicate with the Council and proponent when consent is granted drawing attention to these three aspects specifically.

### Implication of climate change as related to rainfall intensity assessment and flooding risk

The Commission noted that one of the climate change impacts is the potential change in rainfall intensity. It noted the environmental assessment allowed a 30% increase in rainfall intensity in the climate change scenario in accordance with the 2007 DECC *Floodplain Risk Management Guideline – Practical Consideration of Climate Change*.

The Commission questioned whether the 30% increase scenario is the latest information available for modelling and whether the 2007 DECC guideline is the most recent guideline.

The Department consulted SKM who confirmed that the assessment was based on the most recent and relevant NSW guidelines for assessment of potential climate change impacts on rainfall intensity.

The Commission accepts that this issue has been dealt with adequately.

#### Location of detention basins

The Commission noted both the then DECC (now DECCW) and DPI raised the proposed location of the bio-retention basins within the riparian zone as an issue of concern. The Director General's report indicated the proposed location is consistent with the approved concept plan and a condition of consent has been included to ensure the ponds do not adversely affect endangered ecological communities present at the site. The Commission considered that expansion of the reasoning behind the Department's position would assist its understanding of this issue.

The Department advised that the approval of the concept plan included the location of water sensitive urban design measures (WSUD) within the riparian corridor provided that they do not compromise the ecological function of the riparian corridor, and water quality and stream bank stability in the 1% AEP flood event. The proponent has also made a commitment to ensure all WSUD measures are located generally above the 1% AEP flood event and where possible above the PMF. Further that the Department's consultant raised no concern on the location of the WSUD measures within the riparian corridor.

The more detailed information concerning location outside the flood zone resolved the Commission's concerns.

#### Water quality monitoring performance criteria and recommended conditions of consent

The Commission noted recommended condition E22(b) on water quality monitoring requires performance assessment against ANZECC guidelines which, experience indicates, are unlikely to be met in an urban environment. Condition E22(l) allows Council not to accept the dedication and ownership of the WSUD measures if ANZECC targets are not met. The Commission queried whether use of the ANZECC guidelines was appropriate in these circumstances.

The Department advised that Condition E22(b) provides some flexibility for "site-specific investigation" if the criteria are not met subject to the satisfaction of Council. The proponent considered the use of ANZECC criteria appropriate and accepted the draft condition. Hence, the Department considered the recommended conditions reasonable.

The Commission accepts that the purpose of this condition is to allow for investigation of the on-site infrastructure to determine whether it is contributing to the in-stream water quality exceedances and, if so, what might be done to improve performance of that infrastructure. Given that Council, the Department, and the Proponent are prepared to accept the condition, the Commission will not pursue the matter further except insofar as it creates a risk for ongoing maintenance and repair of assets intended to be transferred to Council (see above).

#### Site contamination

The Commission noted past industrial uses of the site and questioned the level of contamination investigation and remediation that have been carried out to ensure the site is appropriately zoned for residential use.



The Department advised that the site had been remediated following demolition of the industrial buildings and the remediation was certified by an EPA accredited site auditor. Previous contamination investigation was up to 2m in depth. The proponent has agreed to carry out testing where excavation is greater than 1.5m as outlined in its Environmental Assessment. The Department has also recommended standard remediation conditions to ensure the site is appropriately remediated for residential development.

The Commission is satisfied with the information provided.

#### Lawrence Hargrave Drive and Wrehax Road intersection and road works

The Commission noted the difference in opinion between the RTA and the proponent in regard to the need to widen Lawrence Hargrave Drive to four lanes (between Lachlan Street and High Street). The Department advised that although not all projected queuing on Lawrence Hargrave Drive could be attributed to the proposed development, they are a direct result of the upgrading of the intersection. Given the proposed development will also increase traffic demands along this section of the road, the Department considers the widening requirement is reasonable.

The Commission was satisfied that the Department's position is appropriate in the circumstances.

#### **Conclusion**

The Commission considers the Department has carried out a thorough assessment of key issues and the recommendation in the Director General's report is reasonable. The Commission is satisfied that the issues it raised have been adequately addressed except for the long term maintenance or repair of the riparian corridor in the event that Council defers acceptance of responsibility for these functions. The Commission considers that the conditions should be re-examined by the Department and be modified as necessary to ensure that there is continuous responsibility for maintenance and repair of the riparian zone. The Commission also recommends the Department ensures that Council and the proponent clearly understand the interface of responsibilities related to upstream and downstream aspects of the changes to Woodland Creek on the proponent's site.



Dr Neil Shepherd  
A/Chairman, PAC



John Court  
PAC member



Professor Kevin Sproats  
PAC member