



Planning

***Residential Subdivision
Sandon Point
Proposed by: Stockland Pty Ltd***

Modification MP 07_0032 MOD 2

Modification of Minister's Approval under Section
75W of the *Environmental Planning and
Assessment Act 1979*

April 2010

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1. EXECUTIVE SUMMARY

On 26 March 2010, Stockland Pty Ltd (the Proponent) lodged an application to modify the Part 3A Project Approval MP 07_0032, pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (the Act).

The proposed modification seeks approval to modify a number of conditions to allow the Wrexham Road railway bridge works to be carried out prior to pre-commencement conditions relating to the residential component of the proposal being satisfied. Stockland propose to construct the Wrexham Road railway bridge ahead of the residential subdivision to coincide with proposed track closures planned by RailCorp.

The proposed modification is considered to be acceptable. The subject conditions are not directly relevant to the railway bridge reconstruction. The modified conditions will allow the reconstruction of the approved Wrexham Road railway bridge to occur ahead of the residential subdivision. The reinstatement of the bridge is in accordance with the original approval.

The modification was placed on the Department's website and Wollongong Council and RailCorp were notified of the proposed changes. One objection was received.

2. THE SITE

The site is located within the Wollongong LGA and is approximately 14 kilometres north of the Wollongong CBD. Sandon Point is bound by Thomas Gibson Park and private landholdings to the north; McCauley's Beach to the East; the Point Estate (a subdivision development by Stockland) to the South; and the Illawarra railway line to the West. Sandon Point is south of the Thirroul village centre and Thirroul railway station.

The site locality is illustrated in **Figure 1**.

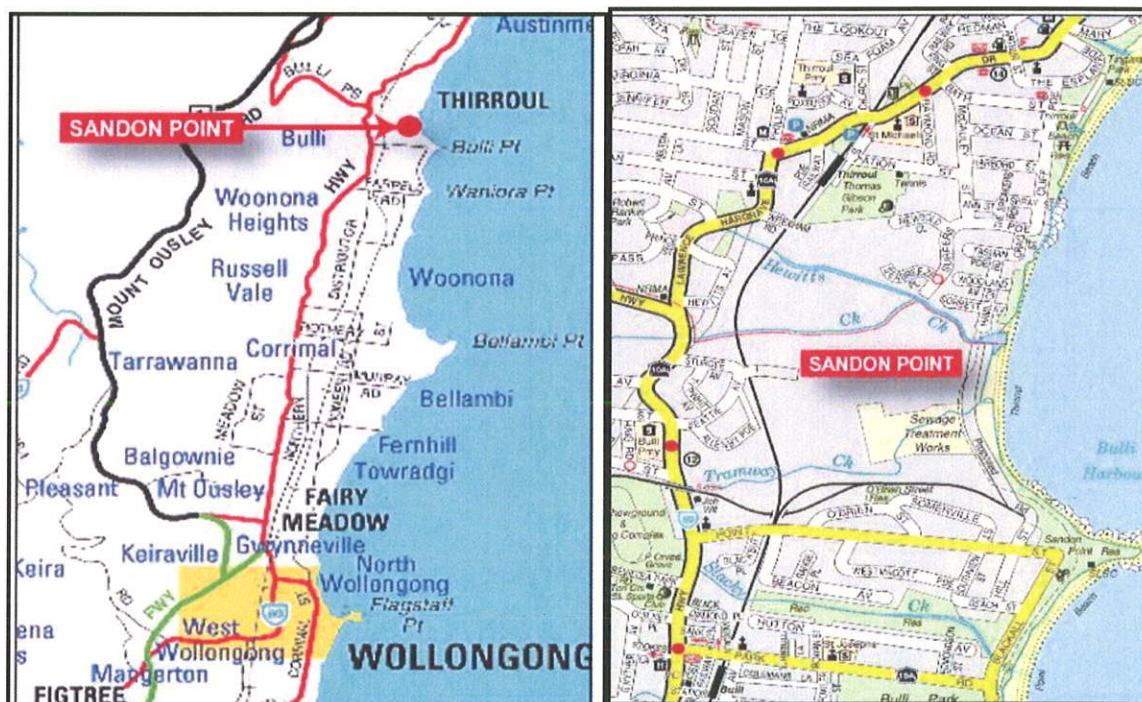


Figure 1. Location maps

The site subject of this modification application is the approved railway bridge spanning the Illawarra Railway line. The railway bridge location is illustrated in Figure 2 below. The railway bridge formed part of the Sandon Point Project Application approval. The approved railway bridge forms part of the extension to Wrexham Road, which is one of the main entry points into the Sandon Point redevelopment. RailCorp and Wollongong City Council are the landowners of the site. Consent from all landowners has been submitted for the application.

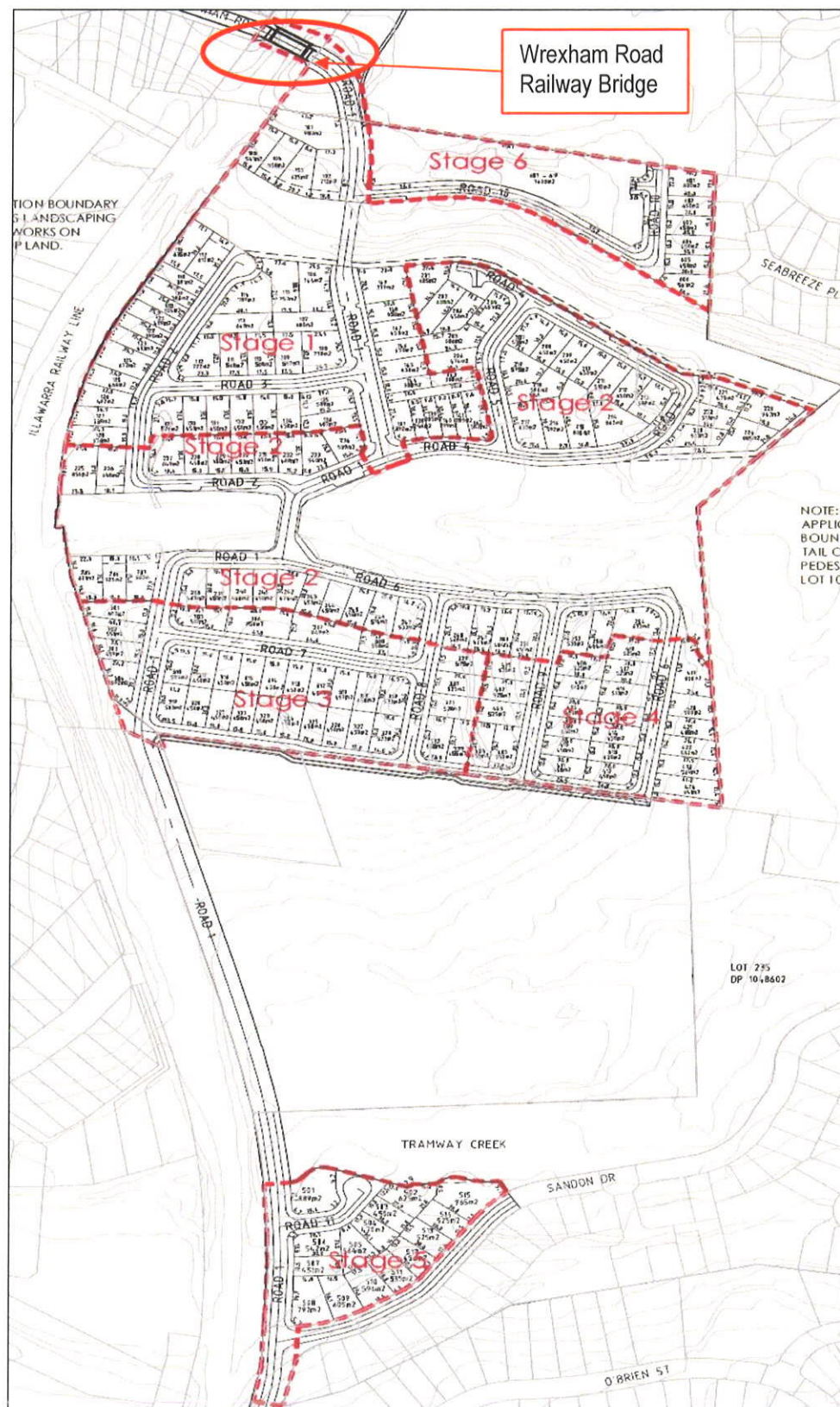


Figure 2: Subdivision Plan – Wrexham Road Rail Bridge.

3. MAJOR PROJECT APPROVAL

Original Major Project Approval MP 07_0032

On 29 November 2009, the then Minister for Planning approved a Project Application comprising:

- Staged subdivision of 181 allotments comprising lots for 167 single dwellings, 14 townhouse/terrace style houses in two distinct 'Precincts' and one super lot for apartments (up to 80 approved in Concept Plan);
- Boundary re-adjustment to correspond with road alignment;
- Display Village – land use approval for 3 dwellings, development approval for a temporary sales office and parking for 14 cars;
- Earthworks over 2 stages, roads, bridges, footpaths, cycleways, acoustic wall, utility services and infrastructure as necessary to support the residential development; and
- Landscaping, creek design and riparian corridor creation.

The Proposed Modification (MOD2)

This application seeks approval to modify a number of conditions to allow the Wrexham Road railway bridge works to be carried out prior to the pre commencement conditions relating to the residential component of the proposal being satisfied. Stockland propose to construct the Wrexham Road railway bridge ahead of the residential subdivision to coincide with proposed track closures planned by RailCorp.

The five conditions to be modified are:

- Condition B11 – Remediation
- Condition B12 – Acid Sulphate Soil Management Plan
- Condition B42 – Landscaping
- Condition B43 – Maintenance Program and Streetscape Landscape Works
- Condition B50 – Conservation Agreement

A detailed assessment of this proposed modification is provided in Section 6 of this report.

4. STATUTORY CONTEXT

Modification of Minister's Approval

The modification application has been lodged with the Director-General pursuant to section 75W of the Act. Section 75W provides for the modification of a Minister's approval including *"revoking or varying a condition of the approval or imposing an additional condition of the approval"*.

The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval. In this instance, the proposed modification seeks to modify conditions imposed on the Project Application approval and, therefore, approval to modify the application is required.

Environmental Assessment Requirements (DGR's)

It is not required to notify the Proponent of any environmental assessment requirements pursuant to s75W(3) of the EP&A Act with respect to the proposed modification, as sufficient information has been provided to the Department in order to consider the application and the issues presented remain consistent with the key assessment requirements addressed in the original DGR's.

5. CONSULTATION AND EXHIBITION

Under Section 75W of the Act, a request for a modification of an approval does not require public exhibition. However, under Section 75X (2) (f) of the Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with Clause

8G of the *Environmental Planning and Assessment Regulation 2000* the application to modify the approval was placed on the Department's website.

Council and RailCorp were notified of the proposed modification. In earlier correspondence dated 8 March 2010, RailCorp has advised the Proponent that it has no objection to the construction of the Wrexham Road bridge as proposed.

One objection was received raising issues including Aboriginal heritage, the demolition of the existing railway bridge and the consent authority for the works.

The Department considers that:

- Aboriginal heritage was considered during the original Project Application which approved the subdivision layout including the Wrexham Road extension and the replacement railway bridge, subject to conditions addressing Aboriginal heritage.
- An assessment of archaeological potential was submitted with the EA covering the Sandon Point Subdivision area which included the replacement Wrexham Road Bridge. Several areas were identified as having some potential for the land to contain Aboriginal objects, however the Wrexham Road Bridge was not identified as one of these areas.
- The proponent also advises that the land surrounding the railway bridge has been highly disturbed by the construction of the railway line and the original bridge. The Proponent advises that such works will have greatly reduced the likelihood of any Aboriginal Archaeology in this location.
- The demolition of the original railway bridge does not form part of this modification or the original Project Application. The demolition of the original railway bridge was assessed and approved to be demolished by Wollongong City Council on 17 December 2007 (DA 2007-1195). The bridge was not listed as a heritage item.
- The railway bridge was approved to be reconstructed under MP07_0032 on 29 November 2009 by the Minister for Planning under Part 3A of the Act. The Minister is the consent authority for any modification applications relating to the original approval. Owners consent from RailCorp and Council have been issued for the modification application.

6. CONSIDERATION OF PROPOSED MODIFICATIONS

Condition B11 – Remediation

Proposed modification in bold:

1. *Prior to the issue of a Construction Certificate, the Proponent shall submit to the CA a Remedial Action Plan and a Hazardous Material Survey. The Remedial Action Plan must be accompanied by a statement from a site auditor accredited by the DECC to issue site audit statements.*
2. *Upon completion of the remediation works on the site, the Proponent shall submit a detailed Site Audit Summary Report and Site Audit Statement and Validation Report to the PAC. The site audit must be prepared in accordance with the Contaminated Land Management Act, 1997 and completed by a site auditor accredited by the DECC to issue site audit statements. The site audit must verify that the land is suitable for the proposed uses.*
3. ***This condition does not relate to that component of the project relating to the replacement Wrexham Road railway bridge.***

The Proponent has submitted a Hazardous Material Identification Survey that was carried out prior to the demolition of the former Wrexham Road railway bridge which was approved by Wollongong Council.

The sample tested for the survey showed no detection of asbestos, Polynuclear Aromatic Hydrocarbons (PAHs), Polychlorinated Biphenyls (PCBs), Organochlorine Pesticides (OC/OP).

The sample revealed some low levels of lead, however the levels were significantly below the DECC/EPA NSW Auditors Guideline Criteria.

On the basis of the proposed land use (being a bridge) and the findings of the survey, it is considered reasonable not to apply the condition to the bridge component of the approval. The above condition is considered more relevant to the residential subdivision and not the reconstruction of the railway bridge. The condition is therefore recommended to be modified accordingly. It is also considered reasonable that the Proponent's statement of commitment in relation to this issue also be amended.

Condition B12 - Acid Sulphate Soil Management Plan

Proposed modification in bold:

*The Proponent commits to further soil testing and a Potential Acid Sulphate Soils assessment, which may find there is a need for an Acid Sulphate Soil Management Plan to be prepared. If Acid Sulphate soils are present, a detailed Acid Sulphate Soil Management plan for the entire site shall be prepared by a suitably qualified person in accordance with the Acid Sulphate Soil Assessment Guidelines (Acid Sulphate Soil Management Advisory Committee, 1998). The Management Plan shall cover the entire site and be submitted to the satisfaction of the CA prior to the issue of a Construction Certificate for below ground works for the first stage of the project. **This condition does not relate to that component of the project relating to the replacement Wrexham Road railway bridge.***

The Proponent submitted a Preliminary Acid Sulphate Soil assessment report with the Project Application which concluded that an Acid Sulphate Management Plan would be unlikely to be required for the site. However, the report recommended that further testing should be undertaken during construction, therefore the above condition was recommended.

Since the approval of the Project Application, Wollongong City Council has prepared and adopted an Acid Sulphate Soil Map as part of the Wollongong Local Environmental Plan 2009. Clause 7.5 of WLEP 2009 requires that a Acid Sulfate Management Plan be prepared for "works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land."

The map indicates the location of the Wrexham Road railway bridge as being class 5 land. Furthermore the bridge is not within 500m of class 1, 2, 3 or 4 land. The Proponent also advises that the construction of the bridge would not lower the watertable.

Given the bridge is located within Class 5 land and does not lie within 500m of Class 1, 2, 3 or 4 land, as identified by the Wollongong LEP 2009 Acid Sulphate Soil Map, it is considered reasonable not to apply the condition to the construction of the bridge. It is also considered reasonable that the Proponent's statement of commitment in relation to this issue also be amended accordingly.

Condition B42 – Final Landscape Plans

Proposed modification in bold:

*1. The Landscape Plans submitted are to be amended and a set of final Landscape Plans submitted to Wollongong City Council for approval, prior to the issue of the Construction Certificate, **excluding a Construction Certificate for that component of the project relating to the replacement Wrexham Road railway bridge.** A separate set of final landscape plans can be submitted for Stage 5 of the subdivision. Both sets of final Landscape Plans shall address the following requirements:*

- a)...*
- b)...*
- c)...*

2. ...

No landscaping was proposed as part of bridge reconstruction in the Project Application. Landscaping was proposed for the residential subdivision and the construction of Wrexham Road leading into the subdivision only.

The condition therefore relates to the residential subdivision and Wrexham Road, not the reconstruction of the Wrexham Road railway bridge. It is therefore considered reasonable that Condition B42 is modified to clarify that the condition does not apply to the Wrexham Road railway bridge.

Condition B43 – Maintenance Program Streetscape Landscape Works

Proposed modification in bold:

*The implementation of a landscape maintenance program in accordance with the approved Landscape Plan is required. This is to be for a minimum period of 12 months to ensure that all streetscape landscape work becomes well established by regular maintenance. Details of the program must be submitted with the Landscape Plan to the CA for approval prior to issue of the Construction Certificate, **excluding a Construction Certificate for that component of the project relating to the replacement Wrexham Road railway bridge.***

As discussed above, landscaping is not proposed as a part of the Wrexham Road bridge. Therefore Condition B43 relating to the maintenance of streetscape/landscape works does not apply to the replacement bridge. The condition is recommended to be amended accordingly.

Condition B50 – Conservation Agreement

Proposed modification in bold:

*In accordance with the Statement of Commitments, a draft Voluntary Conservation Agreement under the National Parks and Wildlife Act, 1974 should be prepared regarding the cultural heritage of the site and shall be prepared in consultation with the National Parks and Wildlife Service (NPWS-DECC) and submitted to the CA prior to the issue of a Construction Certificate, **excluding a Construction Certificate for that component of the project relating to the replacement Wrexham Road railway bridge.***

Should the National Parks and Wildlife Service (NPWS-DECC) not wish to enter into a conservation agreement for the site, then any relics found on the site are to be collected and dealt with as per the conditions relating to heritage in other parts of this determination.

The Proponent states that; a Voluntary Conservation Agreement (VCA) under the National Parks and Wildlife Act, 1974 is an agreement that is attached to land and should identify that part of the land to which the agreement relates.

The Proponent further states that; in the case of the replacement bridge, RailCorp and Wollongong City Council are the landowners, not Stockland. Therefore Stockland cannot make a third party enter into a VCA. Given Stockland are not the landowners of the site, it is therefore considered reasonable that the bridge be excluded from the VCA.

Furthermore, the land surrounding the bridge has been highly disturbed by the construction of the railway line and the original bridge. The Proponent advises that such works will have greatly reduced the likelihood of any Aboriginal Archaeology in this location. An assessment of archaeological potential was submitted with the EA covering the Sandon Point Subdivision area which included the replacement Wrexham Road Bridge. Several areas were identified within the subdivision area as having some potential for the land to contain Aboriginal objects, however the Wrexham Road Bridge was not identified as one of these areas.

It is considered that the VCA is more relevant to the wider residential subdivision component than the railway bridge reconstruction. Other conditions relating to aboriginal heritage will still apply to the approval.

It is therefore recommended that the condition be amended accordingly. It is also considered reasonable that the Proponent's statement of commitment in relation to this issue also be amended.

Environmental and Site Management

Conditions relating to environmental management and construction including dust control, sediment and erosion control measures and hours of work will continue to apply for the replacement bridge. A Construction Management Plan and Traffic Management Plan will also be required. The above mentioned conditions will mitigate any adverse construction impacts associated with the bridge reconstruction.

8. CONCLUSION

The Department has assessed the application on its merits and the proposed modification is considered to be reasonable and will not result in any significant changes to the development as approved.

The proposed modification does not change the original assessment as to the site's suitability for this development. The proposed modification seeks to amend conditions that do not specifically relate to the construction of the Wrexham Road railway bridge. The modified conditions will allow the reconstruction of the Wrexham Road railway bridge to occur ahead of the residential subdivision and to coincide with RailCorp's scheduled track closures. This will allow the approved development to proceed in a timely manner. The reinstatement of the bridge is in accordance with the original approval.

The proposed development remains consistent with the terms of MP 07_0032 as modified and is considered to be acceptable. It is therefore recommended that the modification be approved subject to the amended conditions.

9. RECOMMENDATION

Under the instrument of delegation dated 25 January 2010, the Minister has delegated his functions under section 75W of the Act relating to modifying Part 3A approvals to the Deputy Director-General Development Assessment and Systems Performance.

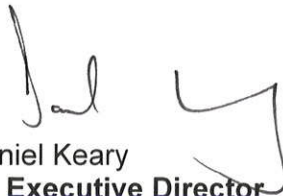
It is recommended that the Deputy Director-General Development Assessment and Systems Performance, in accordance with the Instrument of Delegation issued by the Minister for Planning, on 25 January 2010, pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979*:

- (a) **Consider** the findings and recommendations of this report; and
- (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 (Tag 'A').

Endorsed by:



Michael Woodland
Director
Metropolitan Projects

 16/4/10

Daniel Keary
A / Executive Director
Major Projects Assessment

Approved by:

 19/4/10

Richard Pearson
Deputy Director-General
Development Assessment and System Performance