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20 March 2020

Mr Rodger Roppolo
Senior Planning Officer
Key Sites and Industry
Department of Planning, Industry and Environment
GPO Box 39
Sydney NSW 2001

Dear Mr Roppolo

**The New Sydney Fish Market – Concept and Stage 1 (SSD 8924) and Stage 2 (SSD 8925)
EPA comment on Response to Submissions**

I am writing to you in reply to the invitation to the Environment Protection Authority (EPA) to provide comment on the Response to Submissions (RtS) reports for both the *Sydney Fish Market Concept and Stage 1* (SSD 8924) and the *Stage 2* (SSD 8925) projects. This letter addresses both SSD applications.

The EPA has reviewed relevant RtS documents provided by the Department of Planning, Industry and Environment (DPIE) and provides the following advice regarding water quality, noise and vibration, and contaminated lands:

1. Water Quality

The EPA's submission on the Environmental Impact Statement (EIS) regarding water quality impacts, noted the presence of sediments with metal and nutrient contamination in Blackwattle Bay, and acid sulfate soils at the site. The EPA notes that no details were included on how dewatering would be managed to minimise water quality impacts, and that the coffer dam could contain mobilised contaminants from sediments. The EPA considers that careful management of water quality risks is required.

In addition to the EPA's previous recommended condition regarding removal of the cofferdam sheet-piles, it is requested that the following condition also be included in any consent for *Stage 2* (SSD 8925):

1. Prior to dewatering the cofferdam, the applicant must prepare a Dewatering Plan, demonstrating that dewatering will not result in the discharge of pollutants at non-trivial levels. This plan must include, at a minimum:
 - a description of the dewatering process, monitoring methods, management triggers and actions, and discharge location;
 - a characterisation of the expected quality of the proposed discharge in terms of the concentrations and loads of all pollutants present at non-trivial levels;

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- an assessment of the potential impact of the discharge on the environmental values of the receiving waterway with reference to the relevant Australian and New Zealand Guidelines for Fresh and Marine Water Quality guideline values; and
- where relevant, details of measures proposed to mitigate any identified impacts.

2. Noise and vibration

The EPA is generally satisfied with responses provided to noise and vibration matters raised in its submission on the EIS and is confident that all reasonable and feasible measures are being taken with residential receivers that would experience residual noise impacts from the operation of the development.

However, the EPA's submission noted that several logging locations were not considered ideal due to the reverberant noise environments (ie. near a façade or under a cover) as this was likely to raise ambient noise levels near the microphone and thus raise the project trigger noise levels. The applicant replied that "Logger locations are believed to be representative of the RBL at the locations given as the building stock is the same throughout the assessment area." However, this statement was not supported by any evidence provided by the applicant's consultant. While the EPA is generally satisfied that this does not significantly affect the outcomes of the project, the response is not considered best practice and would generally require numerical validation.

3. Contaminated Lands

Contaminated land issues have not been fully addressed in the RtS regarding data gap assessment, the characterisation of fill materials in relation to the presence of asbestos, and the asbestos management plan.

Data gap assessment

In the RtS, the applicant stated that: "After preparing the ESA [*Environmental Site Assessment*] (Appendix 4 of the EIS) and RAP [*Remedial Action Plan*] (Appendix 5 of the EIS), a data gap assessment was completed (which included meeting the sampling density specified in EPA (1995)), in which the results and conclusions were consistent with ESA, such that it was considered that the remedial framework outlined in the RAP is valid, and when implemented will ensure the site is suitable for the proposed development". (EPA 1995 is taken to refer to the Contaminated Sites: Sampling Design Guidelines.)

The EPA requested and received the additional information regarding the "data gap assessment" as it had not been included as part of the RtS. The supplementary document – *Data Gap Assessment* (DGA), prepared by JBS&G (dated 12 March 2019) – was reviewed, and the EPA does not consider that there is sufficient information to support the above statement and believes that the site has not been sufficiently characterised.

For example, the parcel of land fronting the water along the existing Sydney Fish Market is marked out to form part of the "Civic Plaza" which connects the new fish market to the wider precinct. This land covers an area of approximately 1175 m² and, as per EPA 1995, would require seven sampling points. The DGA does not address the required sampling density for this land. The ESA indicates that a small number of samples were collected in or near this area in a previous investigation. However, the data for these sampling points is not presented in the DGA.

Therefore, the EPA recommends that an EPA-accredited site auditor be engaged to review the DGA and provide interim audit advice which comments on the appropriateness of the DGA report and the report's conclusions. If the site auditor finds any deficiencies in the report these must be addressed.

The characterisation of fill materials in relation to the presence of asbestos

In the RtS, the applicant has stated: “Asbestos characterisation within fill materials at the site was completed within the data gap assessment in a manner consistent [with] the procedures included in the *National Environment Protection (Assessment of Site Contamination) Measure 1999, Amendment No. 1* (NEPC, 2013) as derived from *Guidelines for the Assessment Remediation and Management of Asbestos Contaminated Sites in Western Australia* (WA DOH, 2009).”

The applicant has identified friable asbestos in one soil sample in the south west of the site (SB06). The applicant states in the DGA report: “It is noted that SB06 is located on the western boundary of the site, and therefore, the trace levels of friable asbestos reported in this sample is likely not indicative of site wide friable asbestos in soil impacts”.

The EPA considers there is insufficient information to support this conclusion. Given the widespread distribution of fill at the site, further characterisation of soil materials should be undertaken via test pitting, as demolition of site structures allows. Please note that push tubing is not industry best practice for the collection of friable asbestos samples.

The EPA recommends that an accredited site auditor is engaged to review the characterisation of fill materials in relation the presence of asbestos. The auditor must provide interim audit advice which comments on whether the characterisation is sufficient to ensure any asbestos containing materials in soils and at ground surface are managed appropriately. Any deficiencies in the characterisation of asbestos at the site that is identified by the site auditor must be addressed.

Asbestos management plan

The EPA notes that the applicant has included details of asbestos management in the *Hazardous Materials Management Plan*, prepared by JBS&G (dated 2019) (HMMP).

In the RtS, the applicant states that the HMMP “which identifies management procedures required to mitigate the potential environmental impacts associated with hazardous materials during decommissioning / demolition activities will be required to be updated to consider the additional information in relation to ground surface ACM [Asbestos Containing Materials] and the one identified asbestos in soil location”.

The EPA considers that an updated HMMP incorporating any new information relating to the detection and locations of asbestos at the site should have been provided as part of the RtS.

The EPA recommends that an accredited site auditor is engaged to review the HMMP requirements for managing asbestos at ground surface and in soils. The auditor must provide interim audit advice which comments on whether the management requirements are appropriate. Any deficiencies in the asbestos management requirements by the site auditor must be addressed.

Recommended conditions of consent

The updated recommended conditions of SSD consent for contamination are as follows:

1. The applicant must prepare an **unexpected finds protocol**. The protocol should include detailed procedure for identifying and dealing with unexpected contamination, asbestos and other unexpected finds. The applicant should ensure that the procedure includes details of who will be responsible for implementing the unexpected finds procedure and the roles and responsibilities of all parties involved.
2. The applicant must engage an EPA-accredited Site Auditor to prepare interim audit advice which comments on:
 - The *Data Gap Assessment – The New Sydney Fish Market 1A to 1C Bridge Road, Glebe NSW The New Sydney Fish Market 1A to 1C Bridge Road, Glebe NSW, Revision A*,

(dated 12 March 2019) prepared by JBS&G Australia Pty Ltd for UrbanGrowth NSW Development Corporation which comments on the appropriateness of the assessment and the assessment's conclusions

- whether the characterisation of the site is sufficient to ensure any asbestos containing materials in soils and at ground surface are managed appropriately
- whether the *Hazardous Materials Management Plan*, prepared by JBS&G (dated 8 April 2019) requirements for managing asbestos at ground surface and in soils are appropriate.

Any deficiencies identified by the auditor in the interim audit advice must be addressed.

3. The applicant must engage an EPA-accredited site auditor to prepare a section B Site Audit Statement that confirms that the remediation action plan is appropriate for the site and that the site can be made suitable for the proposed use.
4. The applicant must adhere to the management measures accepted by the Site Auditor.
5. The applicant must engage an EPA accredited site auditor to prepare a section A Site Audit Statement that certifies the site is suitable for the proposed use.
6. The processes outlined in *State Environmental Planning Policy 55 - Remediation of Land* (SEPP55) be followed in order to assess the suitability of the land and any remediation required in relation to the proposed use.
7. The applicant must ensure the proposed development does not result in a change of risk in relation to any pre-existing contamination on the site so as to result in significant contamination [note that this would render the applicant the 'person responsible' for the contamination under section 6(2) of the *Contaminated Land Management Act 1997*].
8. The EPA is to be notified under section 60 of the *Contaminated Land Management Act 1997* for any contamination identified which meets the triggers in the *Guidelines for the Duty to Report Contamination under the Contaminated Land Management Act 1997* (EPA, 2015) (www.epa.nsw.gov.au/resources/clm/150164-report-land-contamination-guidelines.pdf)

Please note: the EPA recommends the use of "certified consultants". Please note that the EPA's *Contaminated Land Consultant Certification Policy*, Version 2, November 2017, (<http://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/clm/18520-contaminated-landconsultant-certification-policy.pdf?la=en>) supports the development and implementation of nationally consistent certification schemes in Australia, and encourages the use of certified consultants by the community and industry. Note that the EPA requires all reports submitted to the EPA to comply with the requirements of the *Contaminated Land Management Act 1997* to be prepared, or reviewed and approved, by a certified consultant.

Should you require clarification of any of the issues please contact Anna Timbrell on 9274 6345 or email anna.timbrell@epa.nsw.gov.au.

Yours sincerely



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