

**DETERMINATION OF A DEVELOPMENT APPLICATION
FOR STATE SIGNIFICANT, NON-DESIGNATED AND NON-INTEGRATED
DEVELOPMENT UNDER SECTION 80 OF THE
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

I, Sam Haddad, Deputy Director-General, Office of Sustainable Development Assessments and Approvals, as delegate of the Minister for Planning as described by the Instrument of Delegation dated 12 September 2005, pursuant to section 80 of the *Environmental Planning and Assessment Act 1979* ("the Act"), determine the development application ("the Application") referred to in Schedule 1 by granting consent subject to the conditions set out in Schedule 2.

The reason for the imposition of conditions is to minimise any adverse environmental impacts associated with the development.

Sam Haddad
Deputy Director-General

Sydney,

2005

File No. 9039487

SCHEDULE 1

Application made by:	State Rail Authority of New South Wales ("the Applicant");
To:	The Minister for Planning ("the Minister");
In respect of:	Lot 4 DP1098, 95 Bay Road, Waverton - North Sydney local government area.
For the following:	the excavation and removal of approximately 150m ³ of contaminated soil from the site and replacement with virgin excavated natural material, associated paving and landscaping works.
Development Application:	Development application DA-167-7-2005-i, lodged with the Department Infrastructure, Planning and Natural Resources on 11 July 2005, accompanied by <i>Statement of Environmental Effects to Accompany a Development Application for Remediation – 95 Bay Road, Waverton, NSW</i> , dated 6 July 2005, and prepared by URS Australia Pty Ltd;
State Significant Development	Under Section 76A(7) of the Act, the development is classified as State Significant development by virtue of clause 28(b) of Schedule 1 of <i>State Environmental Planning Policy (State Significant Development) 2005</i> . The development is remediation work, to be undertaken on a remediation site, being land the subject of a declaration under Division 3, Part 3 of the <i>Contaminated Land Management Act 1997</i> .

Appeal Rights

If the Applicant is dissatisfied with this determination, section 97 of the *Environmental Planning and Assessment Act 1979* grants it a right of appeal to the Land and Environment Court, which is exercisable within 12 months of receiving notice of this determination. If an objector is dissatisfied with this determination, section 98 of the Act grants him, her or it a right of appeal to the Land and Environment Court, which is exercisable within 28 days of receiving notice of this determination.

Commencement of Consent

Pursuant to section 83 of the *Environmental Planning and Assessment Act 1979*, this consent does not operate until 28 days after the Applicant has been notified of the determination of the development application, or from the determination of an appeal made to the Land and Environment Court under section 97 or 98 of the *Environmental Planning and Assessment Act 1979*, whichever is the later, unless the determination of such an appeal is to refuse development consent.

Lapse of Consent

Pursuant to section 95 of the *Environmental Planning and Assessment Act 1979*, this development consent is liable to lapse five years after the date from which the consent operates, unless the use of any land, building or work the subject of the consent is physically commenced before the date on which the consent would otherwise lapse.

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SCHEDULE 2

In this consent, except in so far as the context or subject-matter otherwise indicates or requires, the following terms have the meanings indicated:

Act	<i>Environmental Planning and Assessment Act, 1979</i>
Applicant	State Rail Authority of New South Wales
construction	any activity requiring a Construction Certificate under Part 4A of the <i>Environmental Planning Act 1979</i>
Council	North Sydney Council
Department	NSW Department of Infrastructure, Planning and Natural Resources
development	the development to which this consent applies
Director-General	Director-General of the NSW Department of Infrastructure, Planning and Natural Resources, or nominee
dust	any solid material that may become suspended in air
EPA	NSW Environment Protection Authority (part of the Department of Environment and Conservation)
EPL	Environment Protection Licence issued under the <i>Protection of the Environment Operations Act, 1997</i>
Minister	Minister for Planning, or nominee
POEO Act	<i>Protection of the Environment Operations Act, 1997</i>
Regulation	<i>Environmental Planning and Assessment Regulation, 2000</i>
site	the land to which this consent applies (being Lot 4 DP 1098 known as 95 Bay Road, Waverton – North Sydney local government area)
VRA	Voluntary Remediation Agreement No. 26070 dated 30 December 2004 under the <i>Contaminated Lands Management Act 1997</i> .

1. GENERAL

Scope of Development

- 1.1 The Applicant shall carry out the development generally in accordance with:
 - a) Development Application DA-167-7-2005-i, lodged with the Department of Infrastructure, Planning and Natural Resources on 11 July 2005;
 - b) *Statement of Environmental Effects to Accompany a Development Application for Remediation – 95 Bay Road, Waverton, NSW*, dated 6 July 2005, and prepared by URS Australia Pty Ltd; and
 - c) the conditions of this consent.
- 1.2 In the event of an inconsistency between any of the documents listed under condition 1.1, the conditions of this consent shall prevail to the extent of any inconsistency.
- 1.3 This consent only permits the remediation of approximately 150m³ of contaminated material from the site. To avoid any doubt, this consent does not permit the remediation of any other material or any construction on the site, which shall be the subject of separate development application under the *Environmental Planning and Assessment Act 1979*.

Statutory Requirements

- 1.4 The Applicant shall ensure that all licences, permits and approvals are obtained and maintained as required throughout the life of the development. No condition of this consent removes the obligation for the Applicant to obtain, renew or comply with such licences, permits or approvals. The Applicant shall ensure that a copy of this consent and all relevant environmental approvals are available on the site at all times during the development.
- 1.5 Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development are to occur entirely on the property.

2. COMPLIANCE

- 2.1 The Applicant shall put in place a management system, and take reasonable steps, to ensure that employees, contractors and sub-contractors are aware of, and comply with, the conditions of this consent relevant to their respective activities.
- 2.2 The Applicant shall be responsible for the works the subject of this consent and the environmental impacts that may result from those works, and shall put in place an environmental management system governing the conduct of all persons on the site, including contractors, subcontractors and visitors.
- 2.3 Prior to each of the events listed from a) to b) below, or within such period otherwise agreed by the Director-General, the Applicant shall certify in writing to the satisfaction of the Director-General, that it has complied with all conditions of this consent applicable prior to that event. Where an event is to be undertaken in stages, the Applicant may, subject to the agreement of the Director-General, stage the submission of compliance certification consistent with the staging of activities relating to that event.
 - a) commencement of any physical works associated with the development; and
 - b) completion of remediation works the subject of this consent.
- 2.4 Notwithstanding condition 2.3 of this consent, the Director-General may require an update report on compliance with all, or any part, of the conditions of this consent. Any such update shall meet the requirements of the Director-General and be submitted within such period as the Director-General may agree.

- 2.5 The Applicant shall meet the requirements of the Director-General in respect of the implementation of any measure necessary to ensure compliance with the conditions of this consent, and general consistency with the documents listed under condition 1.1 of this consent. The Director-General may direct that such a measure be implemented in response to the information contained within any report, plan, correspondence or other document submitted in accordance with the conditions of this consent, within such time as the Director-General may agree.

3. ENVIRONMENTAL PERFORMANCE

Soil Remediation Requirements

- 3.1 The Applicant shall undertake all works the subject of the consent generally in accordance with the provisions of the Voluntary Remediation Agreement (VRA) No. 26070 between the NSW Environment Protection Authority and the Applicant, dated 30 December 2004.
- 3.2 The Applicant shall remove all materials stockpiled on the site (to a depth of approximately 300mm below surface level) that have a contaminant load equal to or exceeding any of the concentrations listed in Table 1.

Table 1 - Remediation/ Validation Criteria

Contaminant	Remediation/ Validation Criteria (mg/kg)
Benzo(a)pyrene	1
Total polycyclic aromatic hydrocarbons (PAH)	20
Lead	300

- 3.3 Contaminated material removed from the site shall be appropriately disposed of at a DEC licensed landfill site. Prior to the commencement of any works involving the disturbance or handling of contaminated materials, the Applicant shall submit to the Director-General, details of how and where the remediated materials will be disposed of.
- 3.4 The Applicant shall collect and analyse representative soil validation samples from residual excavation surfaces to assess the level of contamination remaining at the site following excavation of contaminated soils, consistent with the remediation/ validation criteria specified under condition 3.1 of this consent. Details of sampling and analytical results shall be retained by the Applicant and provided to the Director-General and the EPA on request.

Air Quality Impacts

Odour

- 3.5 The Applicant shall not permit any offensive odour, as defined under section 129 of the *Protection of the Environment Operations Act 1997*, to be emitted beyond the boundary of the site.

Dust Emissions

- 3.6 The Applicant shall undertake the development in a manner that minimises or prevents dust emissions from the site, including wind-blown and traffic-generated dust. All vehicles carrying contaminated or remediation soil between the site and its disposal location shall be covered at all times, except during loading and unloading.
- 3.7 The Applicant shall maintain all contaminated and treated materials in a sufficiently damp state to minimise the generation of dust.
- 3.8 The Applicant shall undertake the works the subject of this consent to ensure compliance with the relevant requirements of the *Clean Air (Plant and Equipment) Regulation 1997*.

Soil and Water Quality Impacts

- 3.9 All contaminated materials stockpiled on the site prior to removal shall be located on an impervious surface surrounded by a temporary bund wall. Stockpiles of contaminated materials shall be covered with a waterproof fabric (such as a tarpaulin or high density polyethylene sheet) at all times, and only uncovered for testing and handling immediately prior to removal from the site.
- 3.10 The Applicant shall maintain all existing drains with the potential to receive runoff from the site, for the duration of the development, to prevent the ingress of soil and contaminants from the site. All contaminated and potentially contaminated water collected during this maintenance process shall be removed from the site for disposal at a facility licensed to accept such wastes.

Noise Impacts

Restriction to Hours

- 3.11 General activity at the site shall be restricted to within the hours of 7:00 a.m. and 5:00 p.m. Monday to Friday and on Saturday to within the hours of 8:00 a.m. to 1:00 p.m., with no work on Sundays and Public Holidays.

Demolition and excavation work (including the use of any excavation machinery, jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb the natural state of the ground stratum or are breaking up/removing materials from the site) shall be restricted to within the hours of 8:00 a.m. and 5:00 p.m. Monday to Friday only.

Operation Noise Limits

- 3.12 The Applicant shall undertake the works the subject of this consent so as not to exceed the maximum allowable noise contributions specified in Table 2, at those locations and during those periods indicated. The maximum allowable noise contributions apply under:
- a) wind speeds up to 3 ms^{-1} (measured at 10 metres above ground level); or
 - b) temperature inversion conditions up to 3°C per 100 metres and wind speeds up to 2 ms^{-1} (measured at 10 metres above ground level).

Table 2 - Maximum Allowable Noise Contribution

Location	Day 7:00am to 6:00pm Monday to Saturday 8:00am to 6:00pm Sundays and Public Holidays	Evening 6:00pm to 10:00pm on any day	Night 10:00pm to 7:00am Monday to Saturday 10:00pm to 8:00am Sundays and Public Holidays
	$L_{Aeq}(15 \text{ minute})$	$L_{Aeq}(15 \text{ minute})$	$L_{Aeq}(15 \text{ minute})$
93 Bay Road, Waverton	60	50	45
97 Bay Road, Waverton	60	50	45

1 Ross Street, Waverton	60	55	45
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Vegetation Impacts

- 3.13 All tree removal/replacement work undertaken as part of this development consent shall be undertaken under the supervision of a suitably qualified arborist and in accordance with AS 4373-1996 and AS 2727-1997.
- 3.14 The street tree to be removed as part of this development consent shall be replaced with another bottlebrush variety, namely *Callistemon Kings Park Special*. This replacement tree shall have a root bulb of at least 45 litres.

4. COMMUNITY INFORMATION, CONSULTATION AND INVOLVEMENT

- 4.1 Subject to confidentiality, the Applicant shall make all documents required under this consent available for public inspection on request.

Complaints Procedure

- 4.2 Prior to the commencement of works the subject of this consent, the Applicant shall ensure that the following are available for community complaints:
- a 24-hour, toll-free telephone number on which complaints about the development may be registered;
 - a postal address to which written complaints may be sent; and
 - an email address to which electronic complaints may be transmitted.

The telephone number, the postal address and the email address shall be provided on a notice at the entrance to the site for the duration of the works the subject of this consent. These details shall also be provided on the Applicant's internet site, should one exist.

- 4.3 The Applicant shall record details of all complaints received through the means listed under condition 4.2 of this consent in an up-to-date Complaints Register. The Register shall record, but not necessarily be limited to:
- the date and time, where relevant, of the complaint;
 - the means by which the complaint was made (telephone, mail or email);
 - any personal details of the complainant that were provided, or if no details were provided, a note to that effect;
 - the nature of the complaint;
 - any action(s) taken by the Applicant in relation to the complaint, including any follow-up contact with the complainant; and
 - if no action was taken by the Applicant in relation to the complaint, the reason(s) why no action was taken.

The Complaints Register shall be made available for inspection by the Director-General upon request. The Applicant shall also make summaries of the Register, without details of the complainants, available to the public for inspection upon request.

5. ENVIRONMENTAL MANAGEMENT AND MONITORING

Noise Performance Verification

- 5.1 During a period in which the development is operating under normal operating conditions, the Applicant shall undertake a program to confirm the noise emission performance of the development. The program shall include, but not necessarily be limited to:
- noise monitoring, consistent with the guidelines provided in the *New South Wales Industrial Noise Policy* (EPA, 2000), to assess compliance with condition 3.12 of this consent;
 - methodologies for noise monitoring;
 - location of noise monitoring;

- d) frequency of noise monitoring; and
- e) details of any entries in the Complaints Register (condition 4.3 of this consent) relating to noise impacts.

A report providing the results of the program shall be submitted to the Director-General and Council within 28 days of completion of the testing required under a).

- 5.2 In the event that the program undertaken to satisfy condition 5.1 of the consent indicates that the operation of the development, under normal operating conditions, will lead to greater noise impacts than permitted under condition 3.12 of this consent, then the Applicant shall provide details of remedial measures to be implemented to reduce noise impacts to levels required by that condition. Details of the remedial measures and a timetable for implementation shall be submitted to the Director-General, and be accompanied by evidence that Council is satisfied that the remedial measures are acceptable.

Environmental Management Plan

- 5.3 Prior to the commencement of any works permitted under this consent, the Applicant shall prepare and submit for the approval of the Director-General an **Environmental Management Plan** to outline environmental management practices and procedures to be followed in relation to the development. The Plan shall include, but not necessarily be limited to:

- a) a description of all activities to be undertaken in relation to the development;
- b) statutory and other obligations that the Applicant is required to fulfil in relation to the development, including all approvals, consultations and agreements required from authorities and other stakeholders, and key legislation and policies;
- c) a description of the roles and responsibilities for all relevant employees involved in the development and a program for how these employees will be trained in responsibilities identified in the plan;
- d) details of how the environmental performance of the development will be monitored, and what actions will be taken to address identified adverse environmental impacts. In particular, the following environmental performance issues shall be addressed in the Plan:
 - i) measures to monitor and manage dust emissions;
 - ii) measures to monitor and minimise soil erosion and the discharge of sediment and other pollutants to lands and/ or waters;
 - iii) measures to monitor and manage contaminated soils/ materials;
 - iv) measures to monitor and control noise emissions during operation;
- e) arrangements for community consultation and complaints handling procedures for the life of the development; and
- f) the Management Plans listed under condition 5.6 of this consent.

- 5.4 As part of the Environmental Management Plan for the development required under condition 5.5 of this consent, the Applicant shall prepare and implement the following Management Plans:

- (a) a **Transport and Parking Management Plan** to meet the requirements of Council (if any) and include, but not necessarily be limited to:
 - i) an outline of the specific routes to be taken to and from the site by transport vehicles, site equipment and employee vehicles;
 - ii) a system for the management of the limited parking spaces available in the vicinity of the site;
 - iii) details of the management process for the dedicated Working Zone to be established at the front of the site, including specific consultation with Council on kerbside restrictions and on-street mobile plant; and
 - iv) details of the consultation process to be undertaken with local residents, Council and the Sydney Transit Authority regarding transport and parking provisions in the vicinity of the site during work periods.

- (b) a **Soil Management Plan** to meet the requirements of Council (if any) and include, but not necessarily be limited to:
 - i) details of all erosion and sediment controls to be installed at the site, including those required under conditions 3.6 - 3.10 of this consent;
 - ii) a system for the management of airborne and waterborne dust and erosion during and outside of operational hours at the site; and
 - iii) details of the control measures to be taken to prevent dust emissions from vehicles and equipment entering and leaving the site.

6. ENVIRONMENTAL REPORTING

Incident Reporting

- 6.1 The Applicant shall notify the Director-General of any incident with actual or potential significant off-site impacts on people or the biophysical environment within 12 hours of becoming aware of the incident. The Applicant shall provide full written details of the incident to the Director-General within seven days of the date on which the incident occurred.
 - 6.2 The Applicant shall meet the requirements of the Director-General to address the cause or impact of any incident, as it relates to this consent, reported in accordance with condition 6.1 of this consent, within such period as the Director-General may require.
 - 6.3 The Applicant shall submit to the Director-General no later than two months after the completion of the remediation works a Site Audit Statement by an accredited site auditor, certifying whether or not:
 - (a) all works at the site have been carried out in accordance with the documents listed under condition 1.1 of this consent; and
 - (b) the residential property is suitable for residential use with gardens and accessible soil as set out in Column 1 at page 30 of the *Guidelines for the NSW Auditor Scheme* (EPA, 1991).
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