



Form A (version 2)

AMENDED STATEMENT OF FACTS AND CONTENTIONS

COURT DETAILS

Court Land and Environment Court of New South Wales
Class 1
Case number 16/157848 (formerly 2015/10951)

TITLE OF PROCEEDINGS

PROCEEDINGS 2015/10898

Applicant **Liverpool City Council**
First respondent **Moorebank Recyclers Pty Limited**
Second respondent **Minister for Planning**

PROCEEDINGS 2015/10951

First applicant **Benedict Industries Pty Limited**
Second applicant **Tanlane Pty Limited**
First respondent **Minister for Planning**
Second respondent **Moorebank Recyclers Pty Limited**

FILING DETAILS

Filed for **Benedict Industries Pty Limited, First applicant**
Tanlane Pty Limited, Second applicant
Legal representative Luke Walker, Minter Ellison
Legal representative reference 1118233
Contact name and telephone Luke Walker (9921 4793)

PART A – FACTS

THE APPEAL

- 1 The decision appealed from is the decision of the ~~first respondent~~ Minister for Planning of 11 September 2015 made by his delegate the Planning Assessment Commission (~~PAC~~) approving project application No 05_0157 in respect of Moorebank Material Recycling Facility (**Development**) on Lots 308, 309 and 310 in Deposited Plan 118048 and Lot 6 in Deposited Plan 1065574, Newbridge Road, Moorebank (**the Site**). ~~The land~~ Part of the Site (being Lot 6 in Deposited Plan 1065574) is and was owned by ~~the second respondent~~ Moorebank Recyclers Pty Limited (**Moorebank Recyclers**) which is the proponent of the

~~project.~~ Development. The balance of the Site is owned by Liverpool City Council (Council).

- 2 The applicants' appeal is pursuant to s75L of the ~~EP&A Act and s.17~~ Environmental Planning and Assessment Act 1979 (EP & A Act) and s17(b) of the *Land & Environment Court Act, 1979 (LEC Act)*.
- 3 The applicants were objectors within the meaning of s75L of the ~~Environmental Planning and Assessment Act 1979 (EP & A Act)~~ EP&A Act, having made a submission on 5 April 2013 objecting to the project the subject of the project application.
- 4 The second applicant is and was the owner of the adjoining land to the north of the Site, Lot 7 in Deposited Plan 1065574 (**the Tanlane Land**). The first applicant carries on business on the Tanlane Land.

THE SUBJECT OF THE APPEAL

- 5 On 12 October 2005, Moorebank Recyclers, submitted a proposal (application 05_0157) to the NSW Department of Planning (**Department**) to construct and operate the Development at the Site.
- 6 The proposal is for a waste recycling facility that would process 500,000 tonnes of masonry construction and demolition waste per year. The proposed facility would receive concrete, brick, asphalt, sandstone and sand. No domestic loads would be received at the facility.
- 7 As part of the Development it is proposed that most of the activity will occur on the northern half of the Site:
 - a. A weighbridge and an office would be located at the entrance to the Site.
 - b. The materials received would be stockpiled at the southern end of the Site in categories. ~~These~~ The categories would be based on ~~categories~~ the different types of materials received, such as bricks or concrete.
 - c. The materials would be processed by crushing them into different sizes in sheds which house two crushers, a picking and a screening area.
 - d. A workshop is proposed on the north-western side of the Site.
 - e. Crushed material would be stockpiled according to grain size and type of material prior to transport to the end-user.
- 8 Moorebank Recyclers also proposes to undertake bulk earthworks at the Site prior to the commencement of any works associated with the Development, to excavate

a section of the southern part of the landfill and transfer the excavated material to the northern-~~side~~ part of the site so as to raise it above the 1 in 100 year flood level. These works were the subject of a development consent 1417/2005 granted by ~~Liverpool City Council~~ ~~(Council)~~ in 2006, which has since lapsed.

9 The proposed facility would operate in accordance with an environmental protection licence issued by the NSW Environment Protection Authority (EPA).

10 Access to the site is proposed via a road which links Brickmakers Drive to the Site. This access route was adopted as Roads and Maritime Services (RMS) objected to vehicular access directly to and from Newbridge Road.

11 The Site is currently only accessible via a dirt road (known as the 'panhandle' ~~dirt road~~ that runs north from the Site to Newbridge Road.

THE STATUTORY CONTEXT

Part 3A EP&A Act

12 The Development application was lodged in December 2005 under Part 3A of the EP&A Act. The Development was a ~~major~~ Major Development under Part 3A of the EP&A Act as it was a recycling facility that handled more than 75,000 tonnes of waste per year (see section 75B(1)(a) EP&A Act, clause 6(a) of the *State Environmental Planning Policy (Major Developments) 2005 (SEPP Major Developments)* and clause 27(2) of Schedule 1 to the SEPP Major Developments).

13 On 1 October 2011:

- a. Part 3A of the EP&A Act was repealed;
- b. Schedule 6A of the EP&A Act, which provides a regime applicable to transitional Part 3A EP&A Act Developments, came into force.

14 The Development continued to be assessed by the Department under the transitional Part 3A provisions contained in Schedule 6A of the EP&A Act.

15 The Minister is the consent authority for transitional Part 3A Developments (section 121A of the EP&A Act).

16 The Minister delegated that authority to the Planning Assessment Commission (PAC) (effective 1 October 2011) and to the Department (NSW Government Gazette No 13 of 20 February 2015).

17 For transitional Part 3A Developments where more than 25 objections are received from the public and/or where one of the objectors was the local council, the determination is delegated to the PAC.

18 Had the Development proposal not been lodged under Part 3A of the EP&A Act, it would have been designated development within the meaning of section 77A of the EP&A Act, namely '*crushing, grinding or separating works*' (see clause 16 Part 1 Schedule 3 of the *Environmental Planning and Assessment Regulation 2000*).

Liverpool Local Environmental Plan 1997 (1997 LEP)

19 Under the 1997 LEP, the Site was zoned as 1(a) Rural land.

20 In 2002, Council prepared the Moorebank Structure Plan where Council identified:

- a. the Site (and part of the Tanlane Land to the north) for use as a combination of Waste Recycling and Open Space, with other uses subject to detailed investigations, and
- b. the former Boral quarry to the west as a residential zone.

21 These uses became permissible with consent following amendments made to the 1997 LEP in 2004 and 2005.

22 The former Boral quarry has since been redeveloped into a new residential ~~development~~estate named Georges Fair. ~~Dwellings~~ The nearest dwellings in Georges Fair are located approximately 250 metres from the Site.

23 In September 2005, LEP 1997 was further amended (**Amendment 76**). Amendment 76 rezoned the Moorebank land to part 1(a) Rural and part 7(a) Environmental Protection - Waterway and part 7(c) Environmental Protection - Conservation. It also permitted, with consent, a materials recycling yard, within the part of the Moorebank land that was zoned 1(a), providing that arrangements had been made for the upgrading of arterial road infrastructure to service the land.

Liverpool Local Environmental Plan 2008 (2008 LEP)

24 The 2008 LEP came into effect on 29 August 2008.

25 Under the 2008 LEP, the land on which the Development is proposed is zoned E2 Environmental Conservation. This E2 zone extends over land to the west of the site, and to the east, including land within the riparian zone.

26 The E2 zone does not permit resource recovery facilities. The 2008 LEP permits Environmental protection works to be carried out within the E2 zone without development consent. It also allows the following development with consent:

- a. Building identification signs;
- b. Environmental facilities;
- c. Flood mitigation works;
- d. Information and education facilities; and e. Roads.

~~27 Schedule 1 of the Liverpool Local Environmental Plan 2008 permits certain development which would otherwise be prohibited.~~

27 [Not used]

28 The objectives of the E2 zone are:

- a. To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- b. To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- c. To enable the recreational enjoyment, cultural interpretation or scientific study of the natural environment.

29 Additional use of the Development land is permitted under clause 2.5 of the 2008 LEP and clause 11 of Schedule 1 of the 2008 LEP. These clauses allow development for the purposes of a resource recovery facility with consent on Lot 6 DP 1065574 in Zone E2 Environmental Conservation at Newbridge Road, Moorebank.

30 Clause 11 of Schedule 1 of the 2008 LEP is to be repealed on 1 September 2018.

31 The Development land is not located in a Conservation Area. No item of Environmental Heritage is situated on the land.

32 A large portion of land within the Site is mapped as Environmentally Significant Land pursuant to clause 7.6 of the 2008 LEP.

Voluntary Planning Agreement

33 On the 11 June 2008 the second applicant entered into a Voluntary Planning Agreement with the Council with respect to the Tanlane Land in anticipation of the rezoning of the Tanlane Land and the grant of development consent for the subdivision of the Tanlane Land into up to 25 residential lots.

Development Control Plan

- 34 On 29 August 2008 the Council adopted Liverpool Development Control Plan 2008 (the **DCP**) in which Part 2.10 specifically applied to the Moorebank East Precinct which included the Tanlane Land

State Environmental Planning Policies (SEPPs)

- 35 The following SEPPs apply to the Site:
- a. *State Environmental Planning Policy No. 19 - Bushland in Urban Areas*
 - b. *State Environmental Planning Policy No. 33 - Hazardous and Offensive Development*
 - c. *State Environmental Planning Policy No. 44 - Koala Habitat*
 - d. *State Environmental Planning Policy No. 50- Canal Estate Development*
 - e. *State Environmental Planning Policy No. 55- Remediation of Land*
 - f. *State Environmental Planning Policy No. 64 - Advertising and Signage ~~g~~*
 - g. *State Environmental Planning Policy- (Infrastructure) 2007*
 - h. *State Environmental Planning Policy- (Miscellaneous Consent Provisions) 2007*
 - i. *State Environmental Planning Policy- (Exempt and Complying Development Codes) 2008*
 - j. *State Environmental Planning Policy- (State and Regional Development) 2011*
- 36 Also applicable to this Development is the ~~D~~deemed SEPP, *Greater Metropolitan Regional Environmental Plan No. 2 - Georges River Catchment*.
- 37 This plan aims to preserve and protect and to encourage the restoration or rehabilitation of regionally significant sensitive natural environments, to preserve, enhance and protect the freshwater and estuarine ecosystems within the Catchment and to ensure that development achieves the environmental objectives for the Catchment.

THE LAND

- 38 The Development is proposed on the Site, which is located within the Liverpool local government area.
- 39 The Site occupies approximately 20.5 hectares and is roughly rectangular in shape, and also includes the 'panhandle' access road that is 810 metres long and 10 metres wide. The east boundary follows the ~~contour~~western bank of the Georges River.

- 40 The Site is currently vacant. It was previously occupied by a landfill that ceased operating in 1979.
- 41 Moorebank Recyclers acquired the Site in 1996. Moorebank Recyclers carried out a remediation plan at the Site in 1998 to maintain the landfill capping. Following remediation, an independent site audit was undertaken in 2001 under the *Contaminated Land Management Act 1997*. The audit concluded that the Site was suitable for 'commercial/industrial use, including a concrete recycling facility'.
- 42 The Site is surrounded by land zoned residential, environmental conservation and public or private recreation:
- a. to the west by:
 - i. vegetated land that is zoned E2 Environmental Conservation;
 - ii. Brickmakers Drive; and
 - iii. the Georges Fair estate a former Boral quarry, which is zoned R3 Residential and which has been redeveloped as the Georges Fair residential development;
 - b. to the south by the New Brighton Golf Course, part of which has been zoned R1 Residential, with the golf course that is remaining zoned as RE2 Private Recreation, and the land along the ~~contour~~bank of the Georges River zoned as RE1 Public Recreation;
 - c. to the east by the Georges River and its riparian areas, included within land zoned E2 Environmental Conservation; and
 - d. to the north by land owned by the second applicant (Lot 7 DP 1065574), being a former sand and gravel facility operated by the first applicant, which is zoned in part as RE2 Private Recreation and in part as R3 Medium Density Residential, and is proposed to be redeveloped partly as marina and associated facilities and partly as residential development (that is, the Tanlane Land). A development application for residential subdivision on the R3 land is in preparation. The portion of land along the frontage to the Georges River is zoned RE1 Public Recreation. On 22 August 2014, development consent was granted to development application number DA-846/2012 made by the first applicant for the construction of a marina and related facilities on the Tanlane Land. On 18 March 2015, the court declared the development consent invalid in *Moorebank Recyclers Pty Ltd v Benedict Industries Pty Ltd* [2015] NSWLEC 40. A new application for a marina development was lodged on 18 August 2015 and is currently being assessed by the Council. A Planning Proposal to

enable residential development within the marina buildings was lodged on 12 January 2016. A modification to the Planning Proposal seeking minor boundary adjustments to the R3 boundary will be lodged imminently.

THE CIRCUMSTANCES

Rezoning of the land

- 43 In 1995, Moorebank Recyclers submitted a rezoning request to Council.
- 44 Council released a report indicating that:
- a. a sunset clause would be incorporated into the proposed LEP; and
 - b. a condition would be imposed that development consent would require the use to cease in around 20 years, at which time further planning for the locality would be reviewed.
- 45 Council notified Moorebank Recyclers in late 1995 in relation to the above intention.
- 46 In 1996, Moorebank Recyclers wrote to a Council Committee requesting to rezone the land for a definite period of time to allow a concrete recycling facility and indicating its acceptance of the insertion of a sunset clause in the LEP.
- 47 From about 2000 there were discussions between the Council, the first and second applicant, the ~~second respondent~~ Moorebank Recyclers and Boral Bricks Pty Ltd (**Boral**) about the rezoning of the Moorebank Precinct, which included land to the east of the Tanlane Land, the Site and land owned by Flower Power, being Lot 2 in Deposited Plan 602988. This Land became known as Moorebank East Precinct and became the subject of Part 2.10 of the DCP. The Moorebank Precinct also included land to the west owned by Boral, which became known as the Moorebank West Precinct.
- 48 In February 2002, the Council prepared the Boral Moorebank Structure Plan in respect of the Boral land, identifying the Moorebank East land to be the subject of further investigation. That investigation led to the rezoning of the Moorebank East Precinct in the 2008 LEP.

Relevant actions of the applicants

- 49 On 29 May 2002, the second applicant and ~~the second respondent~~ Moorebank Recyclers entered into a deed by which the ~~second respondent~~ Moorebank Recyclers agreed to grant the second applicant an easement over ~~the second respondent's~~ Moorebank Recyclers' land to permit the construction and maintenance of a road bridge between the Tanlane Land and the land owned by Boral to the west. That deed was subsequently terminated.

50 On 30 May 2006, the second applicant lodged a development application with the Council for development consent to construct a bridge between the Tanlane Land and the Boral land. On 24 April 2007, the Council granted consent to the development application. Moorebank Recyclers commenced class 4 judicial review proceedings in the Land and Environment Court seeking a declaration that the development consent for the bridge was invalid. That application was dismissed by Justice Lloyd on 23 July 2009: *Moorebank Recyclers Pty Ltd v Liverpool City Council* (2009) NSWLEC 100.

~~50~~51 As a result of the decision of the Court of Appeal in *Moorebank Recyclers Pty Ltd v Tanlane Pty Ltd* [2012] NSWCA 445 the Supreme Court subsequently made orders imposing an easement benefitting the Tanlane Land and burdening the Site for the construction and maintenance of an easement so as to permit the construction of the road bridge the subject of the development consent granted by the Council on 24 April 2007.

~~51~~52 On 11 June 2008, the second applicant entered into the Voluntary Planning Agreement referred to above in anticipation of 2008 LEP, the DCP and development consent for the subdivision of the Tanlane Land into up to 225 residential lots.

~~52~~53 On 22 August 2014, the first applicant was granted development consent to the development application for the construction of a marina and related facilities on the Tanlane Land referred to above, which consent was subsequently declared to be invalid. on the grounds that an inadequate contamination assessment had been undertaken. A new application for a marina development has been lodged with Council and is currently being assessed.

Application Process

~~53~~54 On 19 December 2005, the Director-General of the Department of Planning declared the proposed Development a ~~an~~Major Development under section 75B of the EP&A Act.

~~54~~55 On 26 January 2006, Moorebank Recyclers submitted a Preliminary Environmental Assessment to the Department.

~~55~~56 On 2 May 2006, Moorebank Recyclers submitted a Major Developments Application to the Department for the proposed Development. The application indicated that the annual capacity of the Development would be 500,000 tonnes.

Director-General's Requirements and Access Issues

- ~~56~~57 On 8 July 2006, the Director-General's requirements (**DGRs**) for the proposed Development were issued. The DGRs were to expire on 8 July 2008.
- ~~57~~58 One of the key issues identified in the DGRs was the need to have secure access to the Site, including written evidence of the relevant landowner's consent to the proposed Site access works. Several court proceedings followed which resulted in easements being granted over adjoining land.
- ~~58~~59 On 7 July 2008, amended DGRs were issued.
- ~~59~~60 On 27 January 2009, Council consented to the lodgement of the Part 3A Development Application with the Minister ~~effor~~ Planning for access to the proposed Development over Council land (being lots 308 and 309 in DP 1118048). This consent did not include consent to undertake the proposed site access work which would also requires access over lot 310 in DP 1118048 for the construction of ramps.
- ~~60~~61 In June 2011, Council wrote to the Department requesting that the Part 3A development application be refused because the proposed use of this Site became incompatible with the current and planned residential and recreational uses of the area. Council resolved not to support the access issue required by the DGRs.

Environmental Assessment

- ~~61~~62 On 19 February 2013, Moorebank Recyclers submitted the Environmental Assessment (**EA**) for the Development to the Department.
- ~~62~~63 Between 28 February 2013 and 5 April 2013, the EA was placed on public exhibition in accordance with section 75H(3) of the EP&A Act.
- ~~63~~64 Council made a submission against the proposal on 5 April 2013.

Opposition from Council

- ~~64~~65 On 29 May 2013, Council resolved to initiate an amendment to the 2008 LEP to rezone the land and remove clause 11 (~~of~~ Schedule 1), i.e. the clause which permits a 'resource recovery facility' with consent. This amendment has not yet been made.
- ~~65~~66 On 11 June 2013, the 2005 Minister's Major Development declaration under section 75B(b) of the EP&A Act was amended to include Moorebank Recyclers' rights of way over Council land as part of the Part 3A development application.

Preferred ~~Development~~Project Report

~~66~~67 On 15 August 2013, Moorebank Recyclers submitted a Preferred ~~Development~~Project Report (section 75H(6) of the EP&A Act) (**PPR**) in response to the issues raised in the public submissions.

~~67~~68 From 9 October 2013 until 8 November 2013, the PPR was placed on public exhibition.

~~68~~69 On 9 April 2014, ~~the~~ Moorebank Recyclers submitted a noise addendum report that acknowledged the adverse impacts on surrounding residential development and proposed as mitigation noise barriers on the private ~~route~~ads.

Secretary's Environmental Assessment Report

~~69~~70 In April 2015, the Department finalised the Secretary's Environmental Assessment Report.

Planning Assessment Commission (PAC) assessment

~~70~~71 On 1 May 2015, the Development application was referred to the PAC for determination.

~~74~~72 On 29 May 2015, EMGA Mitchell McLennan made a submission to the PAC on behalf of the first applicant, Boral ~~Bricks Pty Limited~~ and Investa Land Pty Ltd- (the developer of Georges Fair).

~~72~~73 A series of meetings with the public generally (including representatives of the first and second applicants) and Council and site visits were held as part of the PAC assessment process between 1 June 2015 and 21 August 2015.

~~73~~74 On 11 September 2015, the PAC approved the Development (Development 05-0157) subject to conditions.

Court Proceedings

~~74~~75 On 8 October 2015, Council lodged a class 1 application (2015/10898, now proceedings 16/159652) with the Land and Environment Court. Council brought this objector appeal against the PAC decision with respect to the Development under section 75L of the EP&A Act.

~~75~~76 On 23 October 2015, the first and second applicants also commenced proceedings (2015/10951, now proceedings 16/157848) against Moorebank Recyclers and the Minister for Planning against the PAC's decision to approve the Development.

~~76~~77 On 5 November 2015, the first directions hearing of the Land and Environment Court ordered that proceedings 2015/10898 and 2015/10951 be heard together, and that the first directions hearing in matter 2015/10951 be vacated.

ACTIONS OF THE PARTY

Objections from the party

~~77~~78 The applicants made a submission against the proposal to the Department on 5 April 2013.

~~78~~79 On 29 May 2015, EMGA Mitchell McLennan made a submission against the proposal to the PAC on behalf of the ~~applicants~~first applicant, Boral and Investa Land Pty Ltd.

~~79~~80 A series of meetings with the public generally (including representatives of the first and second applicants) and Council and site visits were held as part of the PAC assessment process between 1 June 2015 and 21 August 2015.

Court Proceedings

~~80~~81 On 23 October 2015, the applicants commenced proceedings (2015/10951) against Moorebank Recyclers and the Minister for Planning against the PAC's decision to approve the Development.

PART B – CONTENTIONS

CONTENTIONS ON WHICH THE APPLICATION MUST BE REFUSED

- 1 The applicants contend that the project application to carry out the Development should be disapproved on the following grounds:

Planning and land use issues

- 2 The proposed Development is incompatible with:
 - a. the existing and future land use of the locality; and
 - b. the objectives of the E2 Environmental Conservation Zone under the 2008 IEP in which the Development is proposed to be located.

Particulars

- a. The applicants repeat the particulars (a)-(g) under the heading of "Planning & Land Use" in Part B of the first Statement of Facts and Contentions filed by the Council in proceedings 2015/10898 (now proceedings 16/159652) on 25 November 2015 (Council's Statement of Facts and Contentions).

- b. The proposal the subject of the project application was first submitted to the Department in October 2005. At that time the subject Site was relatively isolated from surrounding sensitive users.
- c. The proposed use is no longer suited to the present and planned uses in the surrounding area. The land owned by the second applicant has now largely been rezoned for residential and commercial use as has land adjoining it. It is the subject of the DCP. A marina ~~has~~and residential development have been proposed for part of the second applicant's land. Development consent for a marina was granted on 22 August 2014, although it was declared invalid by the ~~e~~Ccourt on 18 March 2015. A revised development application for a marina has been submitted to the Council and is currently being assessed. An application has been made seeking an amendment to ~~Liverpool~~the 2008 LEP to permit residential development within the area of the proposed marina. The proposed use is incompatible with the residential use and the marina use in terms of the visual impact, acoustical impact and the presence of large trucks associated with the development in what will be residential streets.
- d. The DGRs issued in July 2008 against which the ~~d~~Development was assessed are outdated. They do not reflect current Government policy and land use and do not reflect the changed circumstances since their issue.
- e. The proposed use was only ever envisaged as a temporary and interim use. It is entirely at odds with the E2 Environmental Conservation zoning under the 2008 LEP.
- f. The EA and the PPR prepared for the application are inadequate and are not a suitable basis for determination.

Noise

- 3 The Development will have unacceptable acoustical impacts.

Particulars

- a. As approved the noise impacts from the proposed Development to existing and future residences, particularly from trucks on the access road, will be excessive and will not satisfy establish noise criteria
- b. As approved the noise impacts from the proposed Development to the planned marina precinct will be excessive and will not satisfy established noise criteria

- c. To protect future residences and the planned marina precinct from excessive noise the Development will need to be substantially redesigned and would require:
- i. The enclosure of the ramps on the access road and Brickmakers Drive intersection and noise barriers to protect future residences from noise impacts; and
 - ii. The site access road to be fully enclosed in the vicinity of the marina land to protect it from excessive noise and would also require that all noise generating activities within the Material Recycling Facility be fully enclosed.

Visual impact

- 4 The Development will have unacceptable visual impact.

Particulars

- a. The impact of the proposed Development on residential areas and on the planned marina precinct will be unacceptable
- b. There is insufficient information provided to conclude otherwise

Traffic

- 5 There has been an inadequate resolution of the conflict between heavy industrial traffic and future residential/marina traffic. ~~The conflict between the industrial traffic and the residential traffic is undesirable and unacceptable impacts on the quality of the residual use of the residential areas.~~

Particulars

- a. Brickmakers Drive is an inappropriate access route for an industrial development such as the Development.
- b. The conflict between the industrial traffic and the residential and marina traffic is undesirable and causes unacceptable impacts on the quality of the residual use of the residential and marina areas.

- 6 There is insufficient road width on Brickmakers Drive to provide a satisfactory intersection design for the future link road which would accommodate all of the required turning movements by both light and heavy vehicle traffic at the proposed intersection.

Air Quality and Dust

- ~~67~~_____ The Development will or has the potential to have an unacceptable dust impact and impact on air quality. The development should be enclosed to prevent such impacts.

CONTENTIONS THAT THERE IS INSUFFICIENT INFORMATION TO ASSESS ANY RELEVANT MATTER

Urban design and planning

- ~~78~~_____ There is insufficient information on urban design and views for proper assessment of the development

Particulars

- a. The applicants repeat particulars (a)-(g) under this heading in the Council's Statement of Facts and Contentions.

Air quality and dust

- ~~89~~_____ There is insufficient information on air quality and dust for a proper assessment of the impacts of the development.

Particulars

- a. The applicants repeat particulars (a)-(d) under this heading in the Council's Statement of Facts and Contentions.

Flooding

- ~~910~~_____ There is insufficient information to properly assess the impact of flooding on the development.

Particulars

- a. The applicants repeat particulars (a)-(d) under this heading in the Council's Statement of Facts and Contentions.

Storm water collection

- ~~4011~~_____ There is insufficient information with respect to storm water collection and its management for a proper assessment of the impacts of the Development to be undertaken.

Particulars

- a. The applicants repeat particulars (a)-(d) under this heading in the Council's Statement of Facts and Contentions.

- 12_____ There is insufficient information to determine whether the preparatory earthworks associated with the Development (see paragraphs [8] and [41] of Part A - Facts) will

damage the capping provided to manage contamination and to determine whether SEPP 55 will be complied with.

Traffic

13 There is insufficient information with respect to the intersection treatment design for Brickmakers Drive for a proper assessment of the traffic impacts of the Development to be undertaken.

Particulars

a. The impact of the proposed intersection design has not been assessed and cannot be properly assessed without further information in relation to the land required to facilitate turning movements of trucks and the impacts of future traffic growth on any intersection design.

CONTENTIONS THAT MAY BE RESOLVED BY CONDITIONS OF CONSENT

~~11 Nil.~~

14 In the alternative to the contention at paragraph [5] of Part B – Contentions, a condition ought to be imposed to the effect that:

a. truck movements to and from the Development must only be by means of Newbridge Road rather than Brickmakers Drive; or alternatively

b. truck movements from the Development must only be by means of Newbridge Road rather than Brickmakers Drive.

Particulars

c. Newbridge Road, being a major road presently used for heavy truck traffic, is a more appropriate access point for the Development than Brickmakers Drive, which is situated through a predominantly residential area.

d. Access to and egress from the Tanlane Land is currently via Newbridge Road. Upon the development of the Tanlane Land for the development referred to in paragraph [42(d)] of Part A – Facts, access and egress to the Tanlane Land will cease to be via Newbridge Road and will be via Brickmakers Drive.

SIGNATURE

Signature of authorised officer

Capacity **DIRECTOR**

Date of signature **28.7.16**



Director of the First and Second applicants