

MINUTES OF THE DEVELOPMENT ASSESSMENT PANEL HELD FRIDAY 17 OCTOBER 1997.

1. PROPOSED SAND STOCKPILES AT LOT 5 AND 6 DP 565926 PACIFIC HIGHWAY, CHINDERAH

PF4030/2150 PT1 96/248

Applicant: Action Sands Pty Ltd
Owner: As above
Location: Lot 5 and 6 DP 565926 Pacific Highway, Chinderah
Zoning: 1(b2) Agricultural Protection Zone
Est Cost: \$20,000

On the unanimous decision of the Panel that :-

- A. The requirement for the Deed of Agreement for Development Application 96/248 be deleted and the proposed conditions of consent be amended to include the following condition as the last condition.
1. Pursuant to Section 94 Plan No. 4 (TRCP) payment of a road maintenance contribution of 2.9 cents per tonne of material removed from the site by road vehicle as a contribution towards the cost of maintaining the road network in the locality. This contribution to be increased annually at a rate equivalent to the New South Wales CPI rate of increase.

Such payment to be made on a monthly basis, or such other period acceptable to the Director, Corporate Services and to include documentary evidence relating to the quantity of material removed.
- B. The consent be issued with the condition referred to in "A" above and the conditions resolved by the Development Assessment Panel at its meeting of 24 January 1997 with the following amendments.
1. Condition 2 be amended to include the following sentence:-

"This does not involve material that is required to treat the material stockpiled on site to comply with condition 10(iv)".
 2. Condition 10(ii) be amended by deleting the word "impermeable".
 3. Condition 10(iii) is to be amended by adding *"This does not include the material sold as "brickies loam" for the sole purpose of mixing with cement to create mortar"*.
 4. Condition 10(v) be deleted and replaced with *"Further testing of the existing 'brickies' loam stockpiled on site is to be carried out if it is used for a purpose other than to mix with cement to create mortar"*.
 5. Condition 10(viii) be amended to read:-

"The site is to be engineered and maintained to avoid water standing for extended periods of time. This does not apply to the pond required for irrigation purposes."
 6. Condition (xiv) be amended by inserting the words, *"resulting in complaints from residents which Council deem to be reasonable"* after the word, "wind".

**MINUTES OF THE DEVELOPMENT ASSESSMENT
PANEL HELD
FRIDAY 17 OCTOBER 1997.**

7. Condition 11 not be deleted.
-

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD FRIDAY 17 OCTOBER 1997

1. PROPOSED SAND STOCKPILES AT LOT 5 AND 6 DP 565926 PACIFIC HIGHWAY, CHINDERAH

PF4030/2150 PT1 96/248

Applicant: Action Sands Pty Ltd
Owner: As above
Location: Lot 5 and 6 DP 565926 Pacific Highway, Chinderah
Zoning: 1(b2) Agricultural Protection Zone
Est Cost: \$20,000

BACKGROUND

On 24 January 1997 the Development Assessment Panel considered a report on a development application (96/248) for the stockpiling of sand and landscape supply materials at Lots 5 and 6 DP 565926 Pacific Highway, Chinderah. At this meeting the Development Assessment Panel resolved:-

- "A. *The applicant be advised that it is Councils intention to determine development application 96/248 by way of consent subject to the conditions outlined in "B" below" and subject to the applicant entering into a "Deed of Agreement" with Council based on Section 94(5) of the Environmental Planning and Assessment Act, 1979 requiring the payment of the following contributions prior to formal determination of the application:*

"Payment of a road maintenance contribution levy of 2.5 cents per tonne of material removed from the site by road transport per kilometre travelled from the subject site to the site of delivery (2.5 cents/tonne/km) as a contribution towards the cost of maintaining the local road network.

This levy will be increased annually at a rate equivalent to the New South Wales CPI rate of increase.

The levy payment is to be made on a quarterly basis (3 months) and must include suitable documentary evidence relating to the quantity of material removed and the distance hauled."

- B. *Subject to "A" above, the development application 96/248 submitted by Actions Sands Pty Ltd for stockpiling at Lot 5 & 6 DP 565926 Pacific Highway, Chinderah be approved subject to the following conditions:-*

General

1. *The development shall be completed generally in accordance with the Environmental Impact Statement prepared by Martin Findlater & Associates dated 11 June 1996 and Drawing No 95024-01 REV A prepared by Martin Findlater & Associates dated 10 June 1996, accept where varied by these conditions.*

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD FRIDAY 17 OCTOBER 1997

2. *The storage and supply of any material that is not solely a result of the dredging operations associated with development consent 91/281 or as a result of site preparation works as a result of this consent is prohibited. The storage of landscape materials that are the result of mixing with materials that need to be imported to the site is prohibited.*
3. *The development shall be completed within 20 years of the commencement of works associated with development consent 91/281.*
4. *Following completion of the operations, the site is to be rehabilitated including the replacement of topsoil to the satisfaction of the Director, Development Services.*
5. *The bund wall is to be constructed to a height of RL 5.0m AHD and is to be grassed and landscaped prior to any stockpiling occurring on the site. The maximum height of the stockpiled material shall not exceed RL 5.0m AHD.*
6. *Compliance with all requirements of the Environment Protection Authority.*
7. *Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property. All associated costs to be borne by the applicant.*
8. *Prior to the commencement of any work on site, Lots 5 & 6 DP 565926 are to be amalgamated into one (1) lot under the one (1) title. The plan of subdivision is to be registered with the Lands Title Office prior to the commencement of any work on the site.*
9. *Landscaping is to be carried out in accordance with the submitted landscaping plans maintained to the satisfaction of the Director, Development Services.*
10. *Compliance with all requirements of Council's Environment and Community Services Division, specifically including the following matters:*
 - (i) *All of the mitigating measures and safeguards contained within the Environmental Impact Statement are to be implemented in full by the operators of the facility.*
 - (ii) *All runoff from the proposed operation is to be collected and directed to stockpile irrigation or to the main pond via impermeable drains.*
 - (iii) *Prior to any material leaving the site the material is to be sampled and tested for Net Acid Generating Potential (NGAP) and electrical conductivity in relation to pH at a rate of one (1) sample per 1000m³.*
 - (iv) *Material is not to leave this site unless sampled in accordance with Condition 10(iii) and demonstrated to be within the following limits.*
 - * *NGAP < 0kg H₂ SO₄/m³*
 - * *Electrical Conductivity < 3.0mS/cm in 1:5 soil to water suspension.*
 - * *pH > 5.5 in 1:5 soil to water suspension.*

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL

HELD FRIDAY 17 OCTOBER 1997

- (v) *Further testing of the existing "brickies" sand stockpiled on site is to be carried out in accordance with conditions 10(iii) and 10(iv), prior to leaving the site.*
- (vi) *All records of sampling are to be retained for inspection and investigation by Council's Environment and Health Services Unit upon request.*
- (vii) *The site is to be engineered and maintained to avoid water standing for extended periods of time.*
- (viii) *The drains to the pond are to be constructed in a fashion to drains quickly and avoid isolated ponding.*
- (ix) *If routine inspection by Councils entomological unit finds any mosquito breeding on site, control with larvicide will be carried out with all costs being borne by the owner.*
- (x) *All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.*
- (xi) *The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like.*
- (xii) *Upon commencement of work on the proposed main stockpile, an irrigation/sprinkler system is to be installed on top of the stockpile and along the unsealed haulage roads within the site, to the satisfaction of the Director, Environment and Community Services.*
- (xiii) *The irrigation system is to be capable to provide sufficient dampening of the entire stockpile and haulage roads during periods of traffic and/or high speed winds. The use of the bucket to dampen the roads is only to be used as an additional method.*
- (xiv) *During periods of high speed wind, the stockpiles of other materials are to be covered so as to minimise the movement of dust and other particulates off site.*

11. Compliance with all requirements of Development Consent 91/281."

The applicant has written to Council requesting a review of the need for a deed of agreement and a review of a number of the conditions.

In particular, the applicant has raised the following matters with Council.

- 1. We are unsure of why Council require a Deed of Agreement for payment of a road maintenance levy contribution.*
- 2. Under an existing Development Consent we currently pay a royalty of 2.5 cents/tonne as a road maintenance contribution. We pay these royalties regularly and are up to date with payments. We are unsure why Council wish to alter this arrangement for Development Application 96/248.*

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD FRIDAY 17 OCTOBER 1997

3. *Action Sands supplies sand and soil based products ex quarry to the market. We do not control the distribution of product and do not own any road trucks. We therefore do not know and have no control over the product once it leaves our quarry. It is therefore impossible for us to ascertain the distance travelled and in many cases our customer may not wish to tell us.*

4. *Council have imposed a condition prohibiting the introduction of any imported material for mixing with our sand or soil materials. This is contrary to the whole intent of our EIS submission where we sought to have the option of importing and blending materials with our soil and sand if required. Examples of this include importing of a sand of a different grading and blending with our sand to produce a better quality sand for use in concrete, and mixing natural fibrous materials to create better quality topsoil products. By introducing materials we can minimise the generation of waste materials on site, add value to products and fulfil the quality requirements for our customers - these are essential factors in running a viable business and are commensurate with sound environmental policy.*

5. *In Condition (10), Council refer to a range of environmental control measures to be applied to the site. There are some aspects that require clarification including the use of impermeable drains, the methodology and rationale of identifying and testing for acid generating potential and conditions related to stockpiled brickies loam."*

The matter raised in point 4 above has been discussed with the applicant. The mixing of material for use as landscape supply materials is prohibited in the zone. It is a separate activity to the stockpiling of material associated with dredging operations. Proposed Condition 2 relates to this requirement.

The applicant has asked for this condition to be reviewed and has submitted the following in support of their view.

"Council are not in a position to permit the introduction of materials such as organic material for blending with our sand and topsoil because it is a prohibited use under the current land zoning. As discussed in the meeting we express our regret at such a decision.

Our industry is being constantly lobbied by government or pressured by government legislation to devise and implement waste minimisation, energy efficiency and recycling strategies. In addition, we must fulfil customer needs and quality expectations to stay in business. The introduction of organic material to blend with sand and topsoil is an ideal example of how a company can fulfil these obligations. For this reason we would suggest that Council's planning law is in direct conflict with our company trying to fulfil its environmental management obligations. Our proposal could be modified to introduce materials and blend them immediately with our sand and soil products - not to stockpile organic material. We ask that Council reconsider their decision on this matter - would it not be possible to permit such an activity on the grounds of its contribution to sound environmental management principles? It is already a condition that we comply with all requirements of the EPA. A second option could be to ensure that organic waste is not odour offensive - ie. that the organic material is 'aged' prior to delivery to site".

Comment

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD FRIDAY 17 OCTOBER 1997

Condition 2

The development application is for the stockpiling of sand associated with the dredging operations in the Tweed River and the adjoining Lot 7. It also proposes mixing of material obtained from dredging and site preparation works with other materials imported to the site to provide landscape supplies. Whether the material is mixed and stored on site or mixed immediately prior to it being taken off the site it is still considered to be a separate use to the stockpiling associated with the dredging and is defined as a "bulk store". Bulk stores are prohibited in the 1(b2) zone and along designated roads. Therefore, the condition prohibiting this aspect of the development should remain. However, it should be worded so that if material needs to be treated to reduce the acid generating potential, then this should be able to occur.

Condition 10

Following the meeting with Council officers, the applicant has also asked for a review of proposed conditions 10(ii), (v), (vii) and (xiv).

Condition 10(ii) requires that all runoff is to be collected and directed to stockpile irrigation or to the main pond via impermeable drains. Council's Environment and Health Services Unit have reviewed this condition and are of the opinion that the sandy nature of the drains will assist in maintaining continuously with net inflows and outflows, and will act as a temporary site during periods of surface stormwater flows. They consider that this process will assist in improving ground water conditions. Therefore, this condition can be amended to delete the reference to "impermeable" drains.

Condition 10(v) requires further testing of the existing "brickies" sand stockpiled on site prior to it leaving the site. The applicant has requested a review of this condition as the brickies loam is not used for fill but exclusively for mixing with cement to create mortar. The applicant has stated that loam represents between 5% to 10% of material produced and sold from the site. The majority of production and sales is in fill sand. They further explain that as reserve of loam are finite, production costs are higher and the loam has a specific market in the building industry it commands and market price of approximately twice that of fill sand and almost three times higher than that of rock fill. The applicant has advised that approximately 90% of all brickies loam is sold to building and construction sites. The loam is then used on site to make mortar. The remaining 10% is sold principally to landscape yards who supply small cement mortar uses such as plumbers and home handyman.

Council's Environment and Health Services Unit have recommended that this condition be amended to not require further testing if the loam is to be used to create mortar. Mixing the loam to create mortar results in the potential for acidic leachate creating environmental problems being neutralised. Condition 10(iii) would also need to be amended to reflect this.

Condition 10(vii) requires the site to be engineered and maintained to avoid water standing for extended periods of time. The applicant has requested a review of this condition for the following reasons:-

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD FRIDAY 17 OCTOBER 1997

“The reason for Council wishing to minimise ponding of water on site is understood. There is a need however to Action Sands to source water from a small pond (located to the east of the proposed stockpiling area) so a fresh water supply is available for irrigation of grasses, trees and plants and dust suppression. It may be necessary to construct an additional pond in the future if further landscaping is needed and the water reticulation network becomes overloaded. Once we commence extraction from the Tweed River we expect the salinity of our lake to increase which will produce the use of the water for watering purposes”.

The purpose of this condition is for mosquito control particularly as a house is located to the west to the site. This matter has been discussed with Council’s Entomologist who has advised that the main concern is when water is stored for temporary periods, ie. on the road and in the drains. When it is stored for longer periods such as in irrigation ponds the mosquito problem is reduced. Any further pond construction would require development consent. This condition should be amended to clarify Council's requirements.

Condition 10(xiv) requires that during periods of high wind speed the stockpiles of other materials are to be covered so as to minimise the movement of dust and other particulates off site. Council’s Environment and Health Services Unit have recommended that this condition be amended by inserting the words “resulting in complains from which Council deem to be reasonable”.

Condition 11

This condition requires compliance with all requirements of Development Consent 91/281. The applicant has submitted the following in relation to this condition.

“We query the need for Condition 11 which demands compliance with all requirements of Development Consent 91/281 when such compliance is already required under Development Consent 91/281. This is a redundant condition and because it is redundant we must ask why is it in there”.

Development Consent 91/281 relates to the dredging and the land based activities on the adjoining Lot 7. The proposed development relies on the activities on Lot 7. The activities on Lot 7 are under a separate consent which the applicant has the responsibility of complying with. The current development requires the operation of the development on Lot 7 and therefore the condition should not be deleted.

Road Contribution

It was originally recommended that a Deed of Agreement be entered into regarding the road maintenance contribution. Condition 26 of Development Consent 91/281 requires:-

26. a. Payment of a road maintenance contribution of 2.5 cents per tonne of material removed from the site by road vehicle as a contribution towards the cost of maintaining the road network in the locality, particularly Chinderah Road. This contribution to be increased annually at a rate equivalent to the New South Wales CPI rate of increase.

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL

HELD FRIDAY 17 OCTOBER 1997

Such payment to be made on a monthly basis, or such other period acceptable to the Director, Corporate Services and to include documentary evidence relating to the quantity of material removed.

- b. A contribution towards the upgrading of Chinderah Road in an amount of \$13,800. This amount to be paid to Council prior to the commencement of any haulage of material from the site using motor vehicles.

Council's Engineering Services Division have reviewed this requirement and the applicants submission and have recommended that the maintenance contributions be a condition of consent with the 2.5 cents being increased by the CPI to 1997 figures. This results in a figure of 2.9 cents per tonne. Since the previous report to the Development Assessment Panel the Tweed Road Development Contribution Section 94 plan has been adopted. A Deed of Agreement is no longer required.

RECOMMENDATION

That:-

- A. The requirement for the Deed of Agreement for Development Application 96/248 be deleted and the proposed conditions of consent be amended to include the following condition as the last condition.
 1. Payment of a road maintenance contribution of 2.9 cents per tonne of material removed from the site by road vehicle as a contribution towards the cost of maintaining the road network in the locality. This contribution to be increased annually at a rate equivalent to the New South Wales CPI rate of increase.

Such payment to be made on a monthly basis, or such other period acceptable to the Director, Corporate Services and to include documentary evidence relating to the quantity of material removed.
- B. The consent be issued with the condition referred to in "A" above and the conditions resolved by the Development Assessment Panel at its meeting of 24 January 1997 with the following amendments.
 1. Condition 2 be amended to include the following sentence:-

"This does not involve material that is required to treat the material stockpiled on site to comply with condition 10(iv)".
 2. Condition 10(ii) be amended by deleting the word "impermeable".
 3. Condition 10(iii) is to be amended by adding *"This does not include the material sold as "brickies loam" for the sole purpose of mixing with cement to create mortar"*.
 4. Condition 10(v) be deleted and replaced with *"Further testing of the existing 'brickies' loam stockpiled on site is to be carried out if it is used for a purpose other than to mix with cement to create mortar"*.
 5. Condition 10(viii) be amended to read:-

AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD FRIDAY 17 OCTOBER 1997

“The site is to be engineered and maintained to avoid water standing for extended periods of time. This does not apply to the pond required for irrigation purposes.”

6. Condition (xiv) be amended by inserting the words, *“resulting in complaints from residents which Council deem to be reasonable”* after the word, “wind”.
 7. Condition 11 not be deleted.
-