

18th March 2003

The Secretary
Parliamentary Standing Committee on Public Works
Parliament House
CANBERRA ACT 2600

**SUBMISSION RE: SITE REMEDIATION AND CONSTRUCTION OF INFRASTRUCTURE
FOR THE DEFENCE SITE AT RANDWICK BARRACKS, SYDNEY NSW**

Dear Ms Courto,

I refer to the Statement of Evidence and Supporting Plans for Presentation to the Parliamentary Standing Committee on Public Works for the abovementioned proposal.

Principal Concerns

My principal concerns about the proposed works are;

- a) The proposed new intersection, slated 'Oval Avenue' is directly opposite my front bedroom. As found by the Land and Environment Court (L&EC), it is severely adverse to my partner and I, in many respects, and it is avoidable. It is a mere forty-four (44) metres from an existing alternative 'intersection location', which has already received written and unanimous, community acceptance¹. That the most recent Defence DA 'modifications' to the exit, do not in any way satisfy the adverse findings of the Land and Environment Court and that Defence have seen fit to totally ignore my rights, and the Courts finding. Please see Appendix 'A', which further details my objections.
- b) The serious health impacts of contamination, both onsite, and off site contamination, which is extensive, and includes 'Schedule 1' and 'Schedule 2' carcinogens.
- c) Defence 'Newsletter 19, December, 2002, stated 'Stage 1A Civil Works' were proceeding as an EPA accredited Auditor had stated 'Stage 1A is *suitable for residential* and open space use'. These works have proceeded, but photos of works in the area², **taken three (3) months later**, indicate the area is almost certainly, still highly contaminated.
- d) The further, and ongoing lack of care³, and destruction of rare and protected species on the site, which are supposedly currently protected by NSW, and Federal laws.
- e) The ongoing, and proposed destruction of ALL mature trees, both on the site, and along the Southern footpath of Bundock Street, many of which were planted by the community, and by myself, in particular.
- f) The highly *questionable*⁴ proposed use of the site for 'residential housing'.

¹ See Appendix 'D'

² See Precinct photos, Appendix 'P' DHS-1025 → DHS-1029. Photo DHS-1017, shows Defence removing some other contaminated material on 13/02/03. All this is 'undue' haste, or worse!

³ See Appendix 'F', 'Health - A Council Alert', 02/09/2002

⁴ See Appendix 'E', 'Statement of Evidence', Adrian Heggie, pp 7, 'Issue 28 Statement of Issues - 8 March 2000

- g) The questionable 'economics' of the Development, having consideration to the long health impacts and those associated costs, not the least of which would include costs of possible further contamination related court cases, and award outcomes brought by both Developers and new Residents. A two (2) Million dollar plus, Defence initiated court case, that Australian community, and the Randwick community, in particular, has already had to pay for, and an *apprehension in the community that Defence have a proclivity to 'sell' 'surplus' properties far too cheaply because it is not expert in such things*. It has not been shown that the site is as yet 'insurable'.
- h) That a Government Agency such the Defence Department is doing this 'development' in the first place. It is not it's principal field of expertise, and in doing so, it is in a circumstance where it would appear to a lay person, to be acting ultra vires, or beyond the remit, of it's own acts. The development, is not 'Defence Housing', as is embraced by Defence's *'other act'*, and if, as Defence has suggested, it is just acting for the Commonwealth, other Departments more expert in the field, would be better suited to the task.
- i) That should the land be surplus to Defence requirements, then it should revert, and be offered to the wider public ownership, and utility, which may, or may not include housing.
- j) Ongoing *lack of transparency* in many respects, which must include full disclosure of the on-site 'manifest storage' history of the site. Incomplete, and severely deficient tabular documented contamination research details, and findings, and the inaccessible nature of many details, due to the *tactic of Defence relying on the site still being Defence land*.

In respect of item '(b)' and the contamination on the site, His Honour Talbot J. accepted the evidence of expert witness, Mr Heggie, for Randwick City Council, *not* that put to the Court by Defence. Defence did not appeal the Courts decision.

I have enclosed a copy of Mr Heggie's written evidence, (Appendix 'E') as very few people have had the benefit of perusing the actual evidence offered the Court, in any detail. Accepting the Courts findings, and Mr Heggie's evidence, **as the Court did**, it is hard to comprehend Defence's ongoing contention that this site is, or ever will be will ever be suitable for residential use, without a massive replacement of the contaminated material, right across on the site.

Defence is in denial about the asbestos fibres on the site, and in particular the amounts of asbestos lagging and asbestos insulation products, used by the Navy, that was stored there, over many years. The community was told recently ¹ that there was '*very little*' lagging stored on the site. This is not the recollection of local residents.

Recent official figures of reported mesothelioma deaths ranked by industry, report the largest group was from 'construction and building', the second group was 'asbestos manufacture' related, and third most common grouping, gave 'occupation' as '**Navy**' ²

¹ Mr. Ross McFarland, Auditor, CH2M Hill, 25th September 2002, 'Lodge Room', Randwick Council

² (*National Occupational Health and Safety Commission, Australian Mesothelioma Register Report,2000*).

The Applicant

May I respectfully submit that any consideration of this Defence application in respect of the Randwick site should include;

- a) A detailed review and further consideration of the unanimous conclusions of the Senate Report, '*Reference: Disposal of Defence Properties*'.
- b) The findings of The NSW Land and Environment Court case, Commonwealth of Australia v Randwick City Council [2001] NSWLEC 79 (27 April 2001) (See URL ref. below ¹)

Consistent with the Senate report comments about the applicant's attitude and behaviour, the NSW Land and Environment Court, was *only appraised of detail* of some aspects of the 'development' by way of *Subpoena*.

Defence has been consistently opaque, and respect of serious health implications of site works, and future 'residents' health. This is not acceptable.

Submissions, assurances, and promises made by this applicant to the Public, Randwick Council, Environment Australia, and other agencies, have over the last seven years, have been found wanting, and in many respects lack credibility, and are in my view, frequently unreliable.

In respect of the *Senate*, and *NSW Land and Environment Court* may I note:-

- *The Senate Report*

With the exception of some recent personnel retirements, over the last seven (7) years the Defence staff, and the 'consultants' retained by Defence for this Randwick project, remains substantially to the same. The parties and personnel involved now have an impoverished seven-year track record, which brings them no credit.

The Senators noted they did not have confidence that Defence had sufficient expertise or necessary experience, to supervise their 'consultants', and further noted with '*deep concern*' that the NSW Land and Environment Court had '*withheld consent*' on two development applications in relation to this site.

I respectfully submit, that to date, Defence have manifestly ignored the Senator's report and conclusions.

- *The Land and Environment t Court*

NSW Land and Environment Court withheld consent for two previous development applications from Defence.

His Honour, Talbot J. found.. (Quoted in part)

...
(Asbestos)

'86. The threat to human health from asbestos fibres is not in dispute. The Court is left in a state of uncertainty about the acceptable level of asbestos fibres in soil on land to be used for residential purposes. Until there is more information which removes the doubts left following evidence in this case, common sense dictates that it

¹ (<http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/nsw/NSWLEC/2001/79.html?query=%7e+talbot+randwick>)

should take the precaution of requiring that the soil be asbestos free (Alumino (Aust) Pty Ltd v Minister Administering the EP&A Act 1979 & Ors (NSWLEC, Talbot J, 29 March 1996, unreported)).

87. If the applications are otherwise acceptable, in the absence of further evidence, a condition to this effect should be imposed in order to meet the stringent requirements of cl 7 of SEPP 55.'

...
(*Groundwater*)

'89. The Court agrees with Mr Heggie that the cause of groundwater contamination should be explored. *If that investigation proves that groundwater quality will not decline further*, then remediation is not necessary. On the evidence before the Court, however, **such a conclusion cannot be drawn.**' (Emphasis added)

...
(*'Oval Avenue'*)

'63. The concern with the glare of headlights arises from the location of the intersection of proposed Oval Avenue with Bundock Street, one of the two entries/exits to the site from Bundock Street. The evidence shows that, on 10 August 1999, the applicant received advice from a lighting consultant, Peter McLean, that indicated three locations for exits from the site that would not disturb the residents of Bundock Street. The applicant adopted one of those locations for the eastern exit. The exit from proposed Oval Avenue is, however, not in any of the locations suggested by Mr McLean. According to Ms Brown, the glare of headlights exiting the site from proposed Oval Avenue to Bundock Street will disturb the occupants of 86A Bundock Street. There was no evidence to the contrary from the applicant. In the circumstances this will be an adverse impact on No 86A. The impact would not occur if the applicant adopted the exits recommended by Mr McLean.'

Just as the applicant has seemed to ignore the Senate report, its approach, *after* The Court's findings is a source of dismay, and amazement.

- The Courts finding that the site be '**asbestos free**', has been largely ignored, and now, in Defence parlance (spin), a new definition has appeared in the dialogue, and 'asbestos free' has become, '*No Detectable Asbestos*'. As detailed in Appendix 'P'¹, even this new 'definition' is unambiguously pure spin. '*No Detectable Asbestos*' where? On the site surface, one (1) metre under the surface, two (2) metres under the surface, where?
- The Courts finding '**that investigation proves that groundwater quality will not decline further**' seems to have been put to one side. Defence suggested at a recent community meeting, the source of groundwater contamination might have been caused by unauthorised local dry cleaner solvent release. As detailed in contamination evidence accepted by the Court, Defence now seem to be ignoring their own reports. The site is a headwater of the Botany Basin water catchments.
- In the case of the 'Oval Avenue' exit, Defence have now included a slight 'dip' in intersection approach profile, and they now suggest the dip will stop head light glare. The actual impact of the 'dip' **will be to double, or even triple headlight flashes onto and into four (4) homes, for every vehicle exit.** Defence simply ignore the clear documented risk of head-on vehicle impact to pedestrians and the homes opposite.

At best, Defence's 'approach' and actions, can only be construed as very rude and disrespectful to the Court.

The appendixes attached, demonstrate severe and adverse deficiencies in the all of these three Defence assertions, and along with many others.

¹ See Appendix 'P', Moverly Precinct photos numbered DHS-1026, '27, '28 and DHS-1029

To this day, the applicant continues to demonstrate an ongoing attitude, and culture, which is roundly contemptuous of the rights of the ordinary local community, and others, including Government agencies. **This Defence Housing 'development' illustrates starkly, and graphically, the now-familiar adverse and dangerous theme of contractor personnel working in 'policy-making settings'.**

It is beyond my comprehension, how the 'Defence Act (1903) Cth', allows this little performance. Defence should have stuck to their main area of expertises, such as submarines. This is not a cheap shot. Defence's record and performance with this development, over the last seven (7) years is a dazzling synthesis of arrogance, and purblind stupidity.

THE NEED

The need is for the land to be decontaminated. There is no need for that work to be conducted by Defence. The same argument applies to the construction of the infrastructure. Along with other residents, I would argue that it is undesirable for that work to be done by Defence.

The need is for transparency and openness. It is clear that the spin can only go on, for just so long.

As the Committee is probably aware, the North Eastern area of the site now has a 'certificate of suitability'. The certificate was provided by CH2M Hill. CH2m Hill has worked for Defence since the first DA was submitted to Council.

As of the 27th February 2003, it is clear to me, from Moverly Precinct photographs taken of the site¹ that the 'certified' portion of the site is still contaminated with a flocculant, which is almost certainly asbestos fibres, and the area in question, photographed, is within the 'Site 1A Site' service trenching profile. The whole Shed 19 slab area should be comprehensively re-assessed. It clearly has fill from elsewhere on the site, and all the indications are that it is adversely contaminated.

For the last three years Defence have told the community there was 'little' or 'no contamination' under the concrete slabs.

It is now clearly established as a matter of law,(see report of , '*Armidale City Council v Alec Finlayson Pty Ltd [1999] FCA 330 (29 march 1999)*, a 'consent authority' cannot rely on a Developers contamination expert's report, to avoid or sidestep it 's duty of care. Its duty is intrinsic and ongoing. Why should the community merely have to accept Defence's experts when they have doubts?

An independent, exhaustive, and expert contamination audit, of this site has now become both urgent and possibly even mandatory.

As the Department of Finance said in its evidence to the Senate Committee on Foreign Affairs, Defence and Trade References Inquiry into the Disposal of Defence properties, Defence is neither qualified nor competent to be acting as a developer.

The execution of the work to date reveals seriously deficient methodology. This has been borne out by our experience over the past seven years. From the residents' point of view it has been completely unsatisfactory in all respects.

¹ Appendix 'P', Moverly Precinct Photograph DHS-1026, DHS-1027, DHS-1028 and DHS-1029, 27/02/2003)

OPTIONS

In the Statement of Evidence, Defence poses three options for meeting the need.

Option 1 – Do nothing; leave the site as is

Option 2 – Dispose of the land without value adding

Option 3 – Dispose of the land after value adding

Option 1

Most residents would have been more than happy with this option, however, this no longer appears possible. As it can easily be seen in Moverly Precinct Photos DHS-1001, and DHS-1039, playing cricket, on the Navy oval, near the wetland, is now impossible.

Option 2

The disposal and remediation of the site without site 'enhancements' is preferable to option 3, but not favoured by residents because of the ongoing dissatisfaction with the process described above, and the community has no confidence Defence has the expertise, or will, to decontaminated it to an acceptable, and safe standard.

Since the very first DA was submitted to Randwick Council, and even as 'decontamination' was proceeding recently on the North Eastern section of the site, Defence was alerted to the 'hot spots' disturbances on the aerial photographs of the site.

A correlation of Moverly Precinct site photographs, and the aerial photos indicates that each 'remediation' site is identifiable on the aerial photos. There are however, *many other disturbed areas on the aerial photos* that seem to have been ignored.

Option 3

The disposal, remediation and site 'enhancements' is the worst option from the residents' point of view. The site 'enhancements' include construction of trunk infrastructure, roads, cycle ways, drains, fencing etc. I regard these site 'enhancements' as misconceived and anti-environmental. On photographic evidence, it appears to me the it will not be possible to construct service trenching in the area of Shed 19, without breaking into contaminated hot spots.

Option 4

Contrary to the Statement of Evidence there is a fourth option, which has not been considered. The fourth option would allow the Commonwealth to sell the land as is, with attached local government planning and development approvals, but with a slightly modified street plan, so as to direct all the site traffic to the 'primary collector' (Avoca Street), which immediately adjacent to the *full length of western boundary of the Randwick Defence site*.

The development approvals have a deferred commencement conditional on satisfactory remediation, which could be completed by the developer under appropriate State and Local Government law and supervision. If, as it has been rumoured for some time, Defence is now planning on bringing forward the final disposal of the western section of the site to 2006, this modified street plan option would allow seamless integration of all stages of the remediation, development, and the proposed sale process.

This would enable immediate realisation of revenue instead of 'Option 3', which proposes to sell in stages to pay for the next stage, taking many years and posing serious problems of accountability and supervision.

I believe that developing this large tract of land ¹ in this piecemeal way will be seriously detrimental to the final outcome. Along with other residents it is my impression that the reason behind splitting the site into small projects is to camouflage what will essentially be a planning disaster.

Summary

In short, it appears to me, with exception of those flocculant contaminants that have already blown away from the site, and despite Defence protest(s), this is considerable, the works completed, and those planned, will substantially leave all the accumulated forty (40) years worth of Navy and Defence contaminants, on the site, but now, newly blended in the Defence 'Mixmaster', right across the entire site.

Nearly every Naval and Defence *provedoring* site in the world is, or has been, adversely contaminated. This one is no different. Slated '*Banksia Grove*', it can only truthfully be described as *home of the brave*.

Attached is a summary of the eight (8) appendices enclosed, with further comment, and fact, related to most aspects of the development.

Yours faithfully

Lex Davidson

(86A Bundock Street, Randwick, NSW 2031, (H) (02) 9314 5008, (M) 0428 233 246)

¹ See photocopy of photo from front page of 'Executive Summary', (Department of Defence), attached.

Summary of Appendices.

Oval Avenue exit

Appendix 'A'

A copy of a detailed submission of objection to the very latest Defence DA (s) 'DA 62/03', and 'DA 63/03', which cover site development stages 2, 3, 4 and 5, made to Randwick City Council on the 28th February 2003. In chief, it details extensively, the adverse and dangerous aspects of the proposed 'Oval Avenue' exit, all of which are avoidable.

Appendix 'B'

A copy of a detailed submission of objection to the Oval Avenue exit, made on 24th December, 1999 to Randwick City Council on my behalf by Project Planning Associated Pty Ltd. It details further adverse aspects of the exit, the advantages of using Avoca Street as a primary collector, and further highlights Defence lack of proper consultation over a long period.

Appendix 'C'

A copy of a letter to Randwick City Council by my lawyers, Langes, written after the Land and Environment Court findings were published. It details the findings, and highlights lack of consultation, and rudeness to the Court.

Appendix 'D'

A signed photocopy of the first published site plans, and the Ellen Street exit, where residents agreed unanimously, to the Northern exit being located at Ellen Street.

Contamination

Appendix 'E'

A photocopy of the 'Statement of Evidence' of Mr Adrian Heggie, an Expert Witness, which was made to the Land and Environment Court. As noted elsewhere The Court accepted this evidence. It raises many concerns, which include asbestos, chemicals, groundwater, and questions the suitability of the site for housing. Very few people have had the opportunity of reading this evidence. It raises some very serious issues and **it is included as a matter of public importance.**

Appendix 'F'

An eleven (11) page alert notice, 'Health – A Council Alert', forwarded to Randwick City Council, on 2nd September 2002. This date was just after Defence started to demolish the final remaining large asbestos sheds on the site.

It extensively details, with citations, breach of work practice undertakings, the failure of Defence to comply with its own Environment Management Plan, Lack of Care, Double handling of dangerous materials, Observance of Standards, Resident's concerns, Compliance and Supervision, Structural damage, and Defence's chronic failure to meet Reasonable Standards.

Among the number of serious health issues cited, it instances for example, Defence's breach of an agreement to install showers for the demolition workers. *It should be noted, that all the asbestos sheds demolished, before Shed 19, were done so without the workers having the benefit of showers.*

Appendix 'G'

A copy of submission of objection to a Defence's application to 'vary' Development Consent (02/00427/GL B). It details such issues Informed Consent, requested modifications to alter insurance policies, reduced time periods for liability guarantees, and environmental issues.

Appendix 'P'

A photographic essay, and timeline, of collated Moverly Precinct photographs of the site. Each is dated and captioned. The photographs raise very serious issues in respect of 'breaches' of promises made to Environment Australia, Randwick City Council, the residents of Randwick, South Coogee, and Maroubra, and the implementation of Defence's Environmental Management Plan (EMP).

As noted elsewhere, some of the photographs of the site were taken after the Defence had been granted a 'certificate of suitability' for the area concerned. They clearly raise question marks as to the thoroughness of Defence 'remediation', mooted, versus actual.