

<b>JRPP No</b>	<b>2009STH020</b>
<b>DA Number</b>	<b>DA-2009/1636</b>
<b>Local Government Area</b>	<b>Wollongong</b>
<b>Proposed Development</b>	<b>Resource Recovery Centre</b>
<b>Street Address</b>	<b>133-141 Five Islands Road and Jarvie Road, Cringila</b>
<b>Applicant/Owner</b>	<b>Site Plus Pty Ltd</b>
<b>Number of Submissions</b>	<b>46</b>
<b>Recommendation</b>	<b>Approval</b>
<b>Report by</b>	<b>Planning Ingenuity Pty Ltd</b>

## Addendum Report

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### Purpose of Report

This report has been prepared by Planning Ingenuity Pty Ltd, Independent Planning Consultants, in response to the resolution of the Southern Region Planning Panel made in relation to the above Development Application (DA 2009/1636) for a resource recovery centre at Lot 2 Jarvie Road, Cringila on 28 October, 2010.

The report summarises additional information that has been submitted by the City Works and Property & Recreation Divisions of Council (not the applicant) in accordance with the resolution and provides a town planning assessment of that information in order to assist further consideration of the Development Application by the Panel. This report should be read in conjunction with the original development assessment report considered by the Panel on 28 October, 2010.

### Background

The Southern Region Planning Panel at its meeting of 28 October, 2010 considered Development Application (DA 2009/1636) that seeks to develop and operate a resource recovery centre with capacity to process up to 70,000 tonnes per annum of construction and demolition waste into viable secondary materials for reuse on the subject site.

Following consideration of the matter, including a presentation from Planning Ingenuity Pty Ltd, Independent Planning Consultant, and representations from several objectors to the development, the Panel resolved as follows:

- “
- 1 DA-2009/1636 be deferred.
  - 2 A further report be put to the Panel at the first meeting in 2011 which addresses –
    - a) Previous approvals and current uses for the site and the relationship with the proposed Resource Recovery Centre.
    - b) Council's strategic intent for the whole site, including rehabilitation, given the surrounding E3 Environmental Management Zone.

- 3 Wollongong City Council explore opportunities for alternative sites for a Resource Recovery Centre.”

This report will now address the matters raised in Points 2 and 3.

## Assessment

### ***2 a) Previous approvals and current uses for the site and the relationship with the proposed Resource Recovery Centre.***

As indicated in the original Development Assessment Report, the applicant did not submit a level of information to enable proper assessment of the proposed use of a 4,000m<sup>2</sup> area at the northern part of the site for storage of Council construction materials. Recommended Condition 7 required that such use shall be the subject of a separate development application.

Further concern was raised by the Panel that were development consent DA 1993/774 to remain active, this would potentially allow for the current proposed use and the use under that development consent to operate simultaneously on site. Again, this scenario was not considered by the applicant in their submission.

**City Works and Property & Recreation Division Response:** The response to Part 2(a) of the Panel’s resolution is as follows:

“ On 9 October, 1957 development approval was granted for a quarry on the subject site. It is understood that quarrying operations were undertaken on the site for approximately 20 years.

In June 1995, DA 1993/774 was approved to include two stages of development. Stage 1 allowed for “stockpiling, recycling and minor emplacement of Council construction waste”. Stage 2 allowed for “general builder’s refuse emplacement and rehabilitation” however prior to this stage commencing, several requirements for consultation with state government departments and criteria relating to rehabilitation were to be satisfied. Stage 2 of the development consent also allowed for processing of waste, limiting processing volume to crushing of 200 tonnes per annum and wood-chipping to 4,000m<sup>3</sup> per annum. The consent did not however place any limitation on the overall amount of waste that could be delivered to the site, sorted and then transferred elsewhere for Stage 1 or Stage 2.

The site has been used continuously by Council since 1995 as a goods and material storage site, Council does not currently need the full site. However, the site is essential to Council in being able to manage its current Works operations in the medium term.

The plans submitted with the subject application show the northern part of the site, to the west of the proposed site office will be a 4000m<sup>2</sup> area dedicated to Council for use as a compound for storage of materials used in engineering, building and maintenance functions (labelled as ‘Wollongong Council Area’ on the plans). Whilst the previous report to the JRPP indicated that only Stage 1 of development consent DA 1993/774 had been enacted, further advice indicates that the existing 1993 consent cannot be relied upon to cover the 4000m<sup>2</sup> area, in circumstances where the purpose of the consent, rehabilitation, cannot take place because of the other use taking place on the rest of the site.

Given the shortcomings with the 1993 consent for “land rehabilitation for passive recreation”, there would seem to be considerable merit in having that consent surrendered. However, as indicated above Council still wishes to utilise an area of approximately 4000m<sup>2</sup> for storage of material for reuse, therefore the current application should either be amended to allow for that use on that portion of the site, or a new DA lodged for that use. In order that Council can continue to use that portion of land, the current DA before the JRPP should be amended, or a new DA lodged and determined before the existing 1993 consent is surrendered.

Council is prepared to lodge a new DA for the use of the 4000m<sup>2</sup> area. After determination Council is willing to surrender the 1993 consent and is willing to accept any reasonable conditions of consent imposed on the current DA in relation to this matter.

Council is also willing to lodge a new application for emplacement, fill and site rehabilitation in due course that will adopt contemporary requirements, environmental safeguards and best practice.”

**Planning Comment:** It is acknowledged that Council seeks to continue to utilise the site to fulfil its Works operations. We also note legal advice obtained by Council that previous consents do not enable

the use proposed for 4,000m<sup>2</sup> at the northern part of the site by Council under the subject application. That is, a new development consent is required for the Council use. This may be in the form of a new Development Application, or the subject Development Application may be amended to cover this component of the overall use of the site.

Despite noting the need for amendment of the subject Development Application or lodgement of a new application to allow for the Council operation on the northern part of the site, Council (or the applicant) has not undertaken to do either at this stage. Council does however request that the 1993 development consent not be surrendered until a new application is determined. It is our opinion that such an approach does not resolve with certainty the possibility that two uses may operate on the site at one time. The only potential mitigating factor being that Council has obtained legal advice that questions the general validity of the existing 1993 consent.

Therefore, it is considered appropriate that if the subject development application were to be approved, that an additional condition of development consent be imposed that requires surrender of the 1993 consent (DA 1993/774) prior to issue of a Construction Certificate, or prior to issue of an Occupation Certificate.

Section 80A of the Environmental Planning & Assessment Act, 1979 relates to imposition of conditions, provides a mechanism for surrender of or modification to existing development consents, and states inter alia:

**“ 80A Imposition of conditions**

**(1) Conditions—generally**

A condition of development consent may be imposed if:

- (a) it relates to any matter referred to in section 79C (1) of relevance to the development the subject of the consent, or
- (b) it requires the modification or surrender of a consent granted under this Act or a right conferred by Division 10 in relation to the land to which the development application relates, or
- (c) it requires the modification or cessation of development (including the removal of buildings and works used in connection with that development) carried out on land (whether or not being land to which the development application relates)”

...

**(5) Modification or surrender of consents or existing use rights**

If a consent authority imposes (as referred to in subsection (1) (b)) a condition requiring the modification or surrender of a consent granted under this Act or a right conferred by Division 10, the consent or right may be modified or surrendered subject to and in accordance with the regulations.”

Clause 97 of the Environmental Planning & Assessment Regulation sets out the procedure for surrender of development consents. This procedure requires that an applicant serve notice on the consent authority to effect surrender of the consent. Where the applicant is not the owner of land, the applicant must obtain the owner’s authority to surrender the development consent.

Accordingly, it is recommended that if the Panel is to support the subject Development Application, an additional condition of development consent be imposed which states the following:

“ Prior to the issue of a Construction Certificate, the applicant shall surrender development consent DA 1993/774 in accordance with the procedures stipulated in Clause 97 of the Environmental Planning & Assessment Regulation 2000.”

The final comment of the City Works and Property & Recreation Division submission states that “Council is also willing to lodge a new application for emplacement, fill and site rehabilitation in due course that will adopt contemporary requirements, environmental safeguards and best practice”. This offer appears to be irrelevant in responding to Part 2(a) of the Panel’s resolution and appears to be

inconsistent with the response to Part 2(b) of the resolution which suggests that the proposed use would operate on the site for 20 years, precluding the opportunity for rehabilitation during this period.

***b) Council's strategic intent for the whole site, including rehabilitation, given the surrounding E3 Environmental Management Zone.***

The Panel has sought further clarification relating to Council's long term intent for use of the site, essentially whether there is a long term plan for the site to be rehabilitated.

**City Works and Property & Recreation Division Response:** The response to Part 2(b) of the Panel's resolution is as follows:

“ Prior to Council's ownership the subject site was used as a quarry and the original purchase of the subject site was to support Wollongong City Council's waste strategy. However, following the purchase of the land a number of private organisations opened builder's waste facilities in the local government area. Therefore, Council did not believe it constructive to remain in the market whilst these privately owned sites were available. Notwithstanding, Council has a long term commitment to the city regarding waste disposal.

In the interim, Council has investigated the minimisation its own civil and building construction waste by recycling these waste materials. The investigation found it was not viable for Council to undertake this alone because it had limited opportunities to re use the recycled products. It was considered that a commercial operation on the subject site would provide a viable alternative for Council by allowing Council to store product from roadworks that could be reused without rework and another part of the site made available to a private contractor to recycle both private and other council construction waste.

The strategy being that a resource recovery could recycle a significant volume of material brought to the site thereby reducing the amount going to landfill.

As stated above, the site is essential to Council being able to manage its Works operations and the medium term intention is to continue with the current use. Council still has a commitment to fill and rehabilitate the site but would prefer to explore the opportunities of waste minimisation. However, Council is presently reviewing its long term waste strategy to ensure waste going to landfill is minimised at all waste facilities and NSW State Government targets for resource recovery are met.

As stated above, Council is willing to lodge a new application for emplacement, fill and site rehabilitation in due course that will adopt contemporary requirements, environmental safeguards and best practice.

In addition, Council initially intends to limit the proposed waste recovery facility to 20 years operation (i.e. 2031) and this will be reflected in its commercial arrangements. Council is willing to accept any conditions of consent imposed on the current DA in relation to this matter. This 20 year period is the minimum considered necessary to enable the developer/operator to amortize the investment necessary to establish the operations at this site.”

**Planning Comment:** As indicated, the additional information submitted was prepared by Council's City Works and Property & Recreation Divisions. The response therefore largely pertains to Council's overriding waste management strategy and property strategy as opposed to its specific strategic town planning strategy.

In this respect, the response indicates that it is intended to enter a commercial arrangement that limits use of the facility for a period of 20 years. The applicant is willing to accept a condition of development consent formalising this limitation. Council notes their need for a construction waste facility related to road work operations and that the proposed private waste operation on the site is necessary to ensure financial viability.

In terms of waste strategy, Council's response notes that whilst there is a commitment to filling and rehabilitation of the site in the long term, Council would also prefer to continue investigation of opportunities for waste minimisation and is currently reviewing its long term waste strategy as it relates to resource recovery.

The response notes that “Council is willing to lodge a new application for emplacement, fill and site rehabilitation in due course that will adopt contemporary requirements, environmental safeguards and best practice”. This response appears to be inconsistent with the stated intent to operate a resource

recovery facility on the site for 20 years. That is, if development consent were to be granted for rehabilitation of the site, this consent would be valid for a period of 5 years, expiring well before cessation of the resource recovery facility that would allow the consent to be implemented. Therefore, from the perspective of Council's City Works and Property & Recreation Division, the strategic intent for the site is best interpreted as involving use as a resource recovery facility for 20 years, with the potential for rehabilitation beyond that period.

Council's Strategic Planning Division has not provided further comment on the strategic intent for the subject site. However, it is considered that the strategic planning intent for the site is expressed by the existing planning policies that apply. The subject site was specifically rezoned to allow a waste facility in 2005 and this specific zoning was reiterated by the recently gazetted WLEP 2009. The permissibility of the use, and in fact encouragement of a specific use on the site, has clearly been considered in detail by Council as a strategic planning exercise on two occasions since 2005 and has been endorsed by Council and the NSW Department of Planning (as recently as February 2010). There is no stated intent to further review the zoning of the site. The current zoning must be seen therefore as a clear expression of Council's planning intent for use of the site.

Further, we note that the objectives of the 7(b) Environmental Protection Conservation zone under WLEP 1990 (which applies to the application by virtue of it being submitted prior to gazettal of WLEP 2009) specifically aim to allow for economic use of degraded land within the zone provided that objectives to protect and enhance the land are not jeopardised:

#### **"1 Objectives of zone**

The objectives of the zone are:

- (a) to identify, protect and enhance areas that have special conservational, aesthetic or scenic qualities that enhance the environment, and
- (b) to identify and protect escarpment areas that enhance the visual amenity and possess special aesthetic or conservational value, and
- (c) to allow some diversity of activities on degraded land that will not prejudice achievement of the objectives referred to in paragraphs (a) and (b) or significantly detract from the environmental or visual quality or character of the locality or the amenity or operation of any existing or proposed development in the locality."

Similarly the objectives of the E3 zone under WLEP 2009, which the site is now zoned following gazettal of WLEP 2009, allow for a "limited range" of development that does not jeopardise the long term protection and restoration of land:

#### **"Zone E3 Environmental Management**

##### **1 Objectives of zone**

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values."

The objectives under the WLEP 1990 and WLEP 2009, as typical of environmental planning instruments, do not provide guidance as to the timing in which they should be achieved. However, in the current case, the fact that the applicant agrees to a time limited consent of 20 years ensures that the proposal will not prejudice the long-term potential for the site to be rehabilitated in its entirety.

Accordingly, in strategic terms from a whole of Council perspective, the proposal can be seen as being consistent with the objectives of supporting road building and maintenance functions, promoting resource recovery, recycling and waste management, whilst not hindering long term attainment of objectives of the 7(b) zone under WLEP 1990, or the corresponding objectives of the E3 zone under WLEP 2009.

### ***3 Wollongong City Council explore opportunities for alternative sites for a Resource Recovery Centre.***

Several submissions received in relation to the subject development application questioned the availability of alternative sites to accommodate the proposed development. It is noted that the Environmental Impact Statement submitted with the original development application included an analysis of alternative locations for the proposed facility, in Section 8 at pages 49 to 50. A further response has been provided by Council.

**City Works and Property & Recreation Division Response:** The response to Part 3 of the Panel's resolution is as follows:

“ Council's Whytes Gully Waste Facility at West Dapto is predicted to reach capacity by 2035 (another 25 years) at the current emplacement rate. It only accepts non recyclables, putrescibles and green wastes and has an on-site metal recovery facility.

The existing builders waste emplacement facilities in the local government area are reaching capacity. At present Council does not have (manage or own) any other land in the local government area to deal with the waste materials from the construction and demolition industry. It is envisaged that the proposed Resource Recovery Centre will result in a facility capable of servicing the needs of the development industry in the Wollongong area for the medium term.

As stated above Council is prepared to accept conditions initially limiting the proposed waste recovery facility to 20 years operation (i.e. 2031) which will be reflected in its commercial arrangements. The consolidation of such a facility on the subject site has medium term environmental benefits and accords with Council medium term waste strategy.

The question of suitability of alternative sites for the development is not a matter for assessment under Section 79C of the EP&A Act, 1979. The zoning of the site is taken as an expression of Council policy that has taken such factors into account and was subject to extensive community consultation as required by the EP&A Act, 1979. However the obligation for exploring alternatives rests with the proponent who, in preparing the EIS considered any feasible alternatives to the carrying out of the development in accordance with schedule 3 of the EP&A Regulation 2000.”

**Planning Comment:** The additional response notes that the existing builders waste emplacement facilities in the local government area are reaching capacity and at present Council does not have (manage or own) any other land in the local government area to deal with the waste materials from the construction and demolition industry. In accordance with Schedule 3 of the EP&A Regulation 2000 Section 8.0 of the applicant's Environmental Impact Statement provided further detail in this regard as follows:

“ A review of the Yellow Pages Directory reveals there are a number of recycling facilities in the Illawarra and Southern Sydney area dealing with a variety of waste materials. On the whole they only deal with one or two materials. For example there are three metal recyclers, two paper/cardboard recyclers and one concrete/brick recycler. Such facilities are worthwhile but do not deliver the broad environmental outcomes of the proposed Resource Recovery Centre.

...

At present no alternative facility exists in the Wollongong area to deal with all the waste streams from the demolition and construction industry. The development of the proposed Resource Recovery Centre will result in a facility capable of servicing the needs of the development industry in the area for the next few decades.”

These comments relate to existing waste facilities. In terms of “alternative sites”, under Wollongong LEP 2009, “waste or resource management facilities” are permitted only in the IN2 Light Industrial Zone (and the subject site by virtue of an additional use clause). Whilst an audit of all IN2 lands with potential to accommodate the facility has not been provided by the applicant or Council, this is not considered necessary to meet the requirements of Schedule 3 of the EP&A Regulation 2000. Rather, on the basis that the proposed use is expressly permissible on the subject site, assessment under Section 79C of the EP&A Act, 1979 must primarily respond to the question of whether the proposal is acceptable as submitted rather than whether the same proposal would be suitable or more appropriate on other lands on which it is also permitted. The original development assessment report addresses this question in detail.

## Conclusion

This report addresses the resolution of the Southern Region Planning Panel made in relation to DA-2009/1636 for a resource recovery centre at Lot 2 Jarvie Road, Cringila on 28 October, 2010.

It is our opinion that from a development assessment point of view, the additional information submitted adequately responds to the resolution of the Panel. We reiterate our recommendation that Development Application 2009/1636 be approved pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, subject to recommended conditions, as detailed in Attachment A of the original development assessment report and including the following additional conditions:

### Additional Condition 1:

Prior to the issue of a Construction Certificate, the applicant shall surrender development consent DA 1993/774 and cease all operations in accordance with that consent in accordance with the procedures stipulated in Clause 97 of the Environmental Planning & Assessment Regulation 2000.

### Additional Condition 2:

The use of the site approved under this Development Consent shall cease in its entirety 20 years from the date of issue of this consent.