

JRPP Ref. No.:	2013SYW026
DA No.:	DA12/1346
PROPOSED DEVELOPMENT:	Waste Management Facility
PROPERTY ADDRESS	No. 10-12 Smith Street, Emu Plains
DEVELOPMENT CATEGORY	Integrated & Designated Development
APPLICANT:	Turnbull Planning International Pty Ltd
REPORT BY:	Kate Smith – Senior Environmental Planner
JRPP MEETING DATE:	30 January 2014
RECOMMENDATION	Approval

Development Assessment Report

Executive Summary

This report is an addendum to the previous development assessment report prepared by Council Officers and reported to the Sydney West Joint Regional Planning Panel (JRPP) on 21 November 2013. A copy of that report is attached at Appendix A.

At its' 21 November 2013 meeting the JRPP deferred determining this application because they were not satisfied that the application was ready to be approved without the submission of the Odour upgrade control report required by the EPA and while the operations continued.

The panel minutes stated:

There has been a history of odour nuisance from the previous operation confirmed by the council and explained by occupants of surrounding properties in detailed letters of objection. An order of for (sic) closure has been issued and not complied with and the panel has been informed that the operation continues in breach of conditions and generally with unsatisfactory environmental outcomes.

The Panel will defer the decision on this application for a period of 1 month for the applicant to provide the odour control upgrade report and for Council to confirm that the use has ceased where upon the panel will meet again to decide the matter. At the expression of one month of either the panel requests had not been met the panel will refuse the application and recommend strongly to the Council that legal action be taken to enforce orders given and to remedy breach of any conditions.

An Odour Management Plan (Ref: 131072_OMPU1_Rev3) was provided to Council on 17 December 2013 to enable the application to be determined by the JRPP. An assessment of

the Odour Management Plan has been carried out and the application is recommended for approval subject to recommended conditions of consent.

In addition, while Council has not received confirmation that the use of the premises has ceased, Council has continued compliance action issuing a Notice of Intension to Serve Order 1 dated 29 November 2013 and Order 1 dated 19 December 2013.

Proposed Development

The proposed development involves the continued use of the Unit 1 as a 'waste or resource management facility' involving the collection of sludge and effluent sourced from septic and sewerage systems in the locality, screening and disposal of up to 200,000 litres per day of waste into the Sydney Water Sewerage System via a trade waste agreement.

The amended application includes the installation and maintenance of a two-stage biofiltration system to capture and treat odours emitted from the development.

Planning Assessment

The development has been assessed against Section 23G, Section 91, Section 77A and the relevant heads of consideration contained in Section 79C of the *Environmental Planning and Assessment Act 1979*. Details of that assessment are available in Council's previous development assessment report attached at Appendix A.

The following issues have been identified for further consideration based on the amended details submitted by the applicant on 17 December 2013 and should be read in conjunction with those in the report attached at Appendix A.

Section 79C(1)(b) – The Likely Impacts of the Development

Current Odour Controls

The Environment Protection Authority (EPA) has acknowledged in the general terms of approval (GTA) that the odour attenuation measures currently employed at the premises do not meet current EPA requirements nor industry accepted practice for the control of odours from waste treatment facilities which receive, store and treat septic waste.

Throughout the assessment of the application the applicant provided reports supporting the ongoing use of masking agents for the development and the implementation of improved cleanliness and operational aspects. Council referred these reports to the EPA for comment and advice was received that these measures were not satisfactory and did not address the GTAs.

In Council's previous assessment report it was recommended that the proposal be approved by way of a deferred commencement consent requiring odour attenuation measures be upgraded to the satisfaction of the EPA and in accordance with the requirements as outlined in the general terms of approval prior to the consent becoming operational. However, the JRPP was not satisfied that the application could be approved without the odour control upgrade report. The applicant was given one month to provide a supplementary report for consideration by Council. An Odour Management Plan was received by Council on 17 December 2013 (see Appendix B). The Odour Management Plan indicates that the proposed biofiltration system is able to reduce odours by up to >95%.

Prior to the lodgement of the report, the applicant sought comments from the EPA as to whether the proposed biofiltration system would be adequate. The EPA provided correspondence on 16 December 2013 that the proposed odour abatement system

consisting of a filter vessel or vessels containing a filtration media are generally considered adequate provided:

1. The system is appropriately designed and engineered to allow for the efficient capture of all odour sources. This may include, but not necessarily limited to:
 - a) The provision of local exhaust ventilation (LEV) to capture odours at the source;
 - b) Appropriate sizing of filter vessels to meet optimal contact times between foul air and filtration media whilst still being able to supply adequate capture velocities at the various odour point sources; and
 - c) The provision of suitable filtration media to adequately capture the odorous compounds associated with the sources being treated.
2. An allowance has been included in the design of the system to prevent odorous releases upon breakthrough (saturation) of filtration media. A two-stage filtration system may allow for the monitoring of filter saturation whilst preventing the release of foul air to the environment in the event of breakthrough. (A single stage system is unlikely to adequately allow for this management measure).
3. Consideration is given to performance and verification testing for any proposed system. Including the assessment of potential air quality impacts.
4. The system is supported by suitable management and monitoring plans and/or procedures that adequately address:
 - a) Monitoring of filter bed saturation and bed change out;
 - b) The prevention of unwanted odour releases during system upset conditions or during system maintenance or shutdown; and
 - c) The prevention of unwanted odour releases during non-operational periods where residual odour sources may remain.
5. The system is operated and maintained appropriately.

Although the EPA have not provided an assessment of the proposed system the EPA have advised that this type of system is adequate and will have the opportunity to assess the final system design details and ensure that the above requirements have been met through the GTAs and pollution reduction program. Given the applicant has now amended the application to include an odour abatement system it is considered that the application is now in a position to be approved subject to recommended conditions of consent requiring compliance with the GTAs and installation of the new system prior to commencement of the use or the issue of an Occupation Certificate. A deferred commencement consent is not appropriate as an operational consent is required to authorise the works proposed.

In addition, concerns were raised regarding the operators compliance with previous approvals and ongoing use of the site unauthorised. In this regard, Council will continue to undertake compliance action to ensure that the development ceases operation prior to the installation of the system to avoid any further impacts to surrounding properties and prior to the commencement of the use or Occupation Certificate being issued for the development, whichever occurs first. Notwithstanding this concern is still raised that the use is inappropriate for the site unless the biofiltration odour system is installed and in this regard it is considered appropriate that the consent be time limited to ensure that this occurs.

Section 79C(1)(e) – The Public Interest

Given the operators compliance history, the JRPP recommended that the development 'cease the use' of Unit 1 prior to the determination of the application. To date, Council has not received confirmation that the operators have ceased using the site for the purpose of a waste management facility. However, Council has re-commenced compliance action issuing a Notice of Intension to Serve Order 1 on 29 November 2013 and Order 1 on 19 December 2013 (see Appendix C & D). The Terms of the Order specify that the operations on the site cease by 9am on 7 February 2014. Council will continue compliance action to ensure that the use of the site ceases and all necessary approvals and certifications are obtained prior to the issue of an Occupation Certificate and the operators continuing the use of the site.

Conclusion

The proposed development has been assessed against Section 23G, Section 91, Section 77A and the relevant heads of consideration contained in Section 79C of the *Environmental Planning and Assessment Act 1979*. The applicant has demonstrated that the proposed development is able to contain offensive odours emitted from the site through the installation and maintenance of a two-stage biofiltration system as detailed in the Odour Management Plan.

The development is considered to have substantial merit and is unlikely to result in a significant adverse impact upon adjoining lands. With the implementation of the recommended conditions of consent, the impacts of the proposal can be mitigated and managed to ensure the development operates at an acceptable level of environmental performance. Failing this if the odour mitigation upgrade is not undertaken within six months the consent will lapse.

The application is therefore satisfactory and the proposal is recommended for approval, subject to the imposition of the recommended conditions contained in Appendix E.

Recommendations

That:

- A. The information contained in this addendum report on Development Application No.DA12/1346 for the Waste Management Facility be received.
- B. Development Application No. DA12/1346 for the Waste Management Facility be approved by way of a time limited consent and subject to the conditions contained in Appendix E.
- C. Those who made submissions on the development application are notified of the determination.
- D. A copy of the determination is forwarded to external authorities for their record.
- E. That Council continues compliance action as per Order No. 1 issued by Council on 19 December 2013 and the development 'ceases use' until all relevant conditions of this consent are satisfied and an Occupation Certificate is issued for the development.

Appendix E – Recommended Consent Conditions

- 1 The development must be implemented substantially in accordance with the stamped-approved plans issued by Penrith City Council and any other supporting documents submitted with the application, except as may be amended in red on the attached plans and by the following conditions.
- 2 A copy of the General Terms of Approval issued by the Environment Protection Authority under the Protection of the Environment Operations Act 1977 shall be submitted to the Principal Certifying Authority, **before the Construction Certificate can be issued** for the same development. A copy of the approval shall be submitted to Penrith City Council with the copy of the Construction Certificate, if Council is not the Principal Certifying Authority.
- 3 The 'Odour Management Plan' prepared by Benbow Environmental dated December 2013 (Ref No. 131072_OMPU1_Rev3) is to be implemented and complied with.
- 4 The installation of the biofiltration odour system detailed in the Odour Management Plan and as required by the general terms of approval issued by the Environment Protection Authority shall be implemented and installed for the development to the satisfaction of the Environment Protection Authority **within three (3) months** from the date the consent operates and **prior to the commencement of the use or issue of an Occupation Certificate**, whichever occurs first.
- 5 This consent is **limited to a period of six (6) months** from the date the consent operates. Prior to the expiry date of this consent, the applicant will be required to submit a new application for any continuance of the use. Council will have regard to compliance with condition no.4 above in determining whether or not to grant consent to any application for a continuance of the use.
- 6 **The development shall not be used or occupied until an Occupation Certificate has been issued.**
- 7 A separate development application for the erection of a sign or advertising structure, other than an advertisement listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Penrith Development Control Plan-Advertising Signs.
- 8 The approved operating hours are from 6.00 am to 6.00 pm Monday to Friday and 6.00 am to 12.00 pm Saturday. Delivery and service vehicles generated by the development are limited to these hours.
- 9 All materials and goods associated with the use shall be contained within the building at all times. The front setback area shall not be used under any circumstances for the purpose of storage including vehicle or machinery storage other than staff car parking.
- 10 **Prior to the issue of the Occupation Certificate**, a lighting system shall be installed for the development to provide uniform lighting across common areas and driveways. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding land uses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).
- 11 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.

- 12 A **Construction Certificate** shall be obtained prior to commencement of any building works required by this consent.

ENVIRONMENTAL MATTERS

- 13 All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties.

The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, the waste storage bins are to be located within the building at all times except during times of collection by a waste contractor.

- 14 All material and other wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

- 15 Activities on the premises must be carried out in accordance with Environment Protection Licence No. 13253, issued by the Environment Protection Authority. Should this license be rescinded or surrendered, an application is to be submitted to Council for consideration of matters contained in the licence.

- 16 All unloading, loading and discharge of waste from vehicles is to occur within the building.

- 17 Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system.

Liquid wastes suitable for discharge to the mains sewer are to be discharged in accordance with Sydney Water requirements.

If Sydney Water will not allow disposal to the sewer then a licensed waste contractor is to remove the liquid waste from the premises to an appropriate waste facility. The waste contractor and waste facility are to hold the relevant licenses issued by the NSW Environment Protection Authority.

In this regard, an approved Trade Waste Agreement is to remain in force for the proposed use.

- 18 When discharging from the waste collection vehicles, the discharge point of the vehicle is to be located within the bunded area of the facility.

- 19 The waste collection vehicles are not to be decontaminated in or at this facility.

- 20 The servicing and washing of vehicles within the facility is not permitted.

- 21 All works and storage areas where spillages are likely to occur shall be bunded. The size of the area to be bunded shall be calculated as being equal to 10% of the total volume of containers stored, or 110% of the largest container stored, whichever is the greater. All bunded areas shall be graded to a blind sump so as to facilitate emptying and cleaning.
- 22 The 'Environmental Management Plan' prepared by Sustainable Consulting Solution Pty Ltd dated May 2012 (Project No. 3439.001 Revision 0) is to be implemented and complied with.
- 23 The facility is not to collect, store, treat and dispose of wastewater that is in conflict with the Sydney Water Trade Waste Agreement. This includes the type, source and volume of waste disposed of.
- 24 Upon request, official documentation is to be provided to Council including, but not limited to, the volume and sources of waste disposed of within the facility. This information is to be provided within 48 hours of request.
- 25 No other waste, other than septic and sullage waste, is permitted to be received by Unit 1 as a part of this development consent.
- 26 All wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.
- Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility.
- All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

BCA ISSUES

- 27 Access and sanitary facilities for persons with disabilities are to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility".
- Details of compliance are to be provided in the relevant plans and specifications accompanying the Construction Certificate application.
- 28 All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:
- a) complying with the deemed to satisfy provisions, or
 - b) formulating an alternative solution which:
 - complies with the performance requirements, or
 - is shown to be at least equivalent to the deemed to satisfy provision, or
 - c) a combination of a) and b).
- It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/ statement for the building.

- 29 In accordance with the requirements of Clause 94 of the Environmental Planning and

Assessment Regulation 2000, the following works are to be completed to upgrade the fire safety of the existing building:

- a) Rehang exit door to swing in the direction of egress in accordance with D2.20 of the BCA.
- b) An additional exit sign is required above the door leading from the factory into the office.
- c) Provide bollards outside all doors within a path of travel to a required exit in accordance with Part D1.10 of the Building Code of Australia.

UTILITY SERVICES

- 30 A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at www.sydneywater.com.au then the "e-developer" icon, or telephone 13 20 92.

The Section 73 Compliance Certificate must be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

CONSTRUCTION

- 31 Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details is to be erected:

- at the commencement of, and for the full length of the, construction works onsite, and
- in a prominent position on the work site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed **when the Occupation Certificate has been issued for the development.**

ENGINEERING

- 32 A total of 6 off-street parking spaces are to be provided, line marked and maintained for the development, in accordance with the stamped plans. The parking space dimensions and manoeuvring areas are to comply with AS2890.1 and AS 2890.2 the Building Code of Australia and the Commonwealth Disability Discrimination Act.
- 33 **Prior to the issue of a Construction Certificate** the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas

associated with the subject development are in accordance with AS 2890.1, AS 2890.2 and AS 2890.6.

- 34 **Prior to the issue of an Occupation Certificate** directional signage and line marking shall be installed indicating directional movements and the location of customer parking to the satisfaction of the Principal Certifying Authority.
- 35 All potential pollutants that are stored or detained on-site shall be stored above RL 25.2m AHD.
- 36 Any vehicles exceeding a 9m rigid vehicle shall not be permitted to enter the site.
- 37 All vehicles accessing the site shall enter and exit in a forward direction.
- 38 No storage of goods or materials is to occur within any car parking or manoeuvring areas.
- 39 Trucks associated with the operations of the business shall not be parked on the street or across designated car parking spaces. The operations of the business are not to interfere with access to the adjoining unit on the subject site, including any parking and driveway areas.
- 40 There is to be a maximum of one vehicle at any time collecting or discharging waste. No queuing of vehicles, either on the street or on the subject site, is to occur as a result of business operations.

LANDSCAPING

- 41 Existing landscaping is to be retained and maintained at all times.
- 42 **Prior to the issue of an Occupation Certificate**, landscaping containing a mixture of native trees and shrubs shall be provided across the front of the site to reduce the impact of hardstand areas. The landscaping shall achieving a minimum height of 1.2m and be maintained at all times.

Should any landscaping die or be removed; it is to be replaced with the same species and, to the extent practicable, the same maturity.

PAYMENT OF FEES

- 43 All road works, dedications and drainage works are to be carried out at the applicant's cost.

CERTIFICATION

- 44 An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and **prior to the commencement of the approved use**. The Occupation Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding, and the development does not comply with the provisions of the Environmental Planning and Assessment Act and Regulation.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of that Certificate including the abovementioned documents shall be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

- 45 **Prior to the commencement of any earthworks or construction works on site**, the proponent is to:
- a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
 - b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.