

Our Ref: ECM 3219657
Contact: Jessie Soster
Telephone: (02) 4732 8077

29 November 2013

No Fuss Liquid Waste Pty Ltd
Unit 1, 10-12 Smith Street
EMU PLAINS NSW 2750

To: No Fuss Liquid Waste Pty Ltd (ACN 137 128 879)

**Section 121B Environmental Planning & Assessment Act 1979
NOTICE OF INTENTION TO SERVE ORDER 1
Premises: Lot 33, DP 575290, 10-12 Smith Street, Emu Plains**

As you are aware Council Officers have conducted investigations into the operation of No Fuss Liquid Waste Pty Ltd from the above premises. This business is operating without Council approval.

It is Councils responsibility to ensure that all industrial premises in the Penrith area do not interfere with the amenity of the area by causing impacts on local residents and/or other industrial premises which may include the emission of noise, vibration, smell/odour, soot, waste water, waste products or grit, oil or otherwise.

It is also the business owners' responsibility to ensure these impacts do not occur and that the appropriate approvals are obtained prior to the operation of the business. Investigations conducted by Council have established that consent has not been obtained for the current use of Lot 33, DP 575290, 10-12 Smith Street, Emu Plains.

Council is advising you of its intention to serve an Order under the provisions of the *Environmental Planning and Assessment Act 1979* to cease operations and remove all waste, equipment and materials associated with the business from the premises Lot 33, DP 575290, 10-12 Smith Street, Emu Plains.

It is recommended that you consider the information provided and, within **seven (7)** days from the date of this notice, make representations to Council as to why the Order should not be given or as to the terms of or period for compliance with the Order.

Representations may be made orally or in writing or both by you or on your behalf either:

1. Directly at Council's Civic Centre, 601 High Street, Penrith; or,
2. In writing to: The General Manager, PO Box 60, PENRITH 2751

Any representations that you make will be considered prior to the issuing of the Order. This may result in modification of the terms of the Order, or in the matter not progressing to the service of the Order.

Yours faithfully,

Jessie Soster
Senior Development Compliance Officer

PROPOSED TERMS OF ORDER 1

Section 121B Environmental Planning & Assessment Act 1979

*Order 1(b): To cease using premises for a purpose specified in the order.
Premises are being used for a purpose that for which development consent is required but has not been obtained.*

<u>Proposed terms of Order</u>	<u>Timeframe</u>
1. Cease operating the business “No Fuss Liquid Waste Pty Ltd” from the premises.	<i>Within 14 days of the date of the Order</i>
2. Cease the transportation, storage and sorting of waste on the premises.	<i>Within 14 days of the date of the Order</i>
3. Cease the use of all equipment associated with the business “No Fuss Liquid Waste Pty Ltd” on the premises.	<i>Within 14 days of the date of the Order</i>
4. Cease the parking of all employee vehicles and vehicles associated with the business “No Fuss Liquid Waste Pty Ltd” on the premises.	<i>Within 14 days of the date of the Order</i>
5. Remove all unauthorised signage on the premises advertising “No Fuss Liquid Waste Pty Ltd”.	<i>Within 14 days of the date of the Order</i>

REASON FOR PROPOSED ORDER

- A. Council Officers conducted an audit of the conditions of DA 08/1247 for the storage and disposal of collected effluent on the premises in response to a complaint regarding the emission of offensive odour. Council's audit revealed that on 16 February 2011 DA 08/1247 expired.
- B. A search of Council's records has established that no approvals have been obtained for the continual operation of a Waste Management Facility from the premises.
- C. The premise is situated within Zone IN1 General Industrial under the Penrith Local Environmental Plan (LEP) 2010.
- D. The business, No Fuss Liquid Waste is defined as a “Waste Management Facility” in accordance with LEP 2010. The definition of a “Waste Management Facility” in LEP 2010 is defined as:

“A facility used for the storage, treatment, purifying or disposal of waste, whether or not it is also used for the sorting, processing, recycling, recovering, use or reuse of material from that waste, and whether or not any such operations are carried out on a commercial basis. It may include but is not limited to:

- a) An extractive industry ancillary to, required for or associated with the preparation or remediation of the site for such storage, treatment, purifying or disposal, and*

b) Eco-generating works ancillary to or associated with such storage, treatment, purifying or disposal”.

- E. This current use of the premises falls under this definition as the building is being used to store and dispose of collected effluent.
- F. The current use of the premises may be defined as a “Waste disposal facility” in accordance with State Environmental Planning Policy (SEPP) (Infrastructure) 2007. The definition of a “Waste disposal facility” in SEPP (Infrastructure) 2007 is defined as:

“Means a facility for the disposal of waste by landfill, incineration or other means, including associated works or activities such as recycling, resource recovery and other resource management activities, energy generation from waste gases, leachate management, odour control and the winning of extractive material to generate a void for disposal of waste or to cover waste after its disposal ”
- G. In accordance with Section 76A of the Environmental Planning and Assessment Act 1979 No.203, If an environmental planning instrument provides that specified development may not be carried out except with development consent, a person must not carry the development out on land to which the provision applies unless:
 - (a) Such a consent has been obtained and is in force, and
 - (b) The development is carried out in accordance with the consent and the instrument.
- H. A ‘Waste management facility” is a prohibited within this zone in accordance with LEP 2010.
- I. A “Waste disposal facility” is permitted only with development consent in accordance with SEPP (Infrastructure) 2007.
- J. This type of activity has the potential to impact the natural environment and neighbouring premises by way of possible water and land pollution, odour and noise emissions as well as increased traffic movements.

Please note it is your responsibility to contact Council for a reinspection once the required works are complete.

FAILURE TO COMPLY WITH THE ORDER

It is an offence pursuant to s 125 of the *Environmental Planning & Assessment Act, 1979* (the Act) to fail to comply with this Order.

Should the Order not be complied with, the Council may:

- 1) commence civil enforcement proceedings in the Land and Environment Court of NSW pursuant to s 123 of the Act seeking mandatory orders to compel compliance with the Order and any other order necessary and costs; and/ or
- 2) commence summary criminal proceedings in a Court of competent jurisdiction pursuant to s 127 of the Act seeking a conviction and pecuniary penalty; and/ or
- 3) issue a penalty notice pursuant to s 127A of the Act which carries a maximum penalty of \$1,500 per penalty notice.

Note: That in relation to (2) above the Act carries a maximum pecuniary penalty of \$1,100,000 and a further daily maximum pecuniary penalty of \$110,000.

Council May Carry Out Work (s 121ZJ of the Act)

In addition to the (1), (2) and (3) above the Council may choose to exercise its powers pursuant to s 121ZJ of the Act to do all such things that are necessary to give effect to the Order and recover all associated costs incurred in giving effect to the Order as a debt in a court of competent jurisdiction.

Right of Appeal Against the Order (ss 121N and 121ZK of the Act)

Pursuant to s 121ZK of the Act an individual or corporation affected by the Order may appeal to the Land and Environment Court of NSW against the Order within 28 days after the service of the Order.

Yours faithfully

Jessie Soster
Senior Development Compliance