

JOINT REGIONAL PLANNING PANEL (Hunter Central Coast)

JRPP No	2018HCC024
DA Number	DA/542/2013/A
Local Government Area	Central Coast Council
Proposed Development	Section 4.55(1A) to modify Condition 25 related to the importation and stockpiling of fill material associated with the remediation of the former Mardi Landfill.
Street Address	70 -100 McPherson Road, Mardi
Applicant/Owner	Central Coast Council
Number of Submissions	Not notified
Regional Development Criteria (Schedule 4A of the Act)	Original DA/542/2013 determined by JRPP on 13 February 2014 due to the estimated value of the development exceeding \$5 million and the land owner and applicant being Council.
List all documents submitted with this report for the panel's consideration	Attachment 1 – NSW EPA correspondence dated 23.5.18 Attachment 2 – NSW EPA correspondence dated 14.10.14 Attachment 3 – Recommended modified condition 25
Recommendation	Approval
Report by	Salli Pendergast – Principal Development Planner

CENTRAL COAST COUNCIL

Development Assessment

Section 4.55(1A) to modify Condition 25 related to the importation and stockpiling of fill material associated with the remediation of the former Mardi Landfill.

DA No: 542/2013/A

Author: Salli Pendergast

SUMMARY

A Section 4.55(1A) application has been received for modification to the wording of condition 25 of the consent granted for the remediation of the former Mardi Landfill Site at 70 -100 McPherson Road Mardi. The application has been assessed having regard to the matters for consideration detailed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements.

Applicant	Central Coast Council
Owner	Central Coast Council
Application No	DA/542/2013/A
Description of Land	70 -100 McPherson Road, Mardi, Lot 1 DP.817815, Lots 1 & 2 DP.449738, Lot 361 DP.620853 and unformed road.
Proposed Modification	Section 4.55(1A) to modify Condition 25 related to the importation and stockpiling of fill material.
Approved Development	Remediation of former Mardi Landfill site
Site Area	Approx. 20 hectares
Zoning	RE1 - Public Recreation, E2 - Environmental Conservation, E3 - Environmental Management
Existing Use	Former landfill

DRAFT

RECOMMENDATION

- 1 That the Regional Planning Panel approve the proposed modification of condition 25 of Development Consent DA/542/2013 at 70-100 McPherson Road, Mardi as per the revised wording of the condition provided in the Attachment 1.***

INTRODUCTION

The Site

The suburb of Mardi is situated south west of the Wyong town centre and comprises a mix of rural, rural residential and urban residential areas. The site is located adjacent to urban development, west of the F3 and on the southern side of McPherson Road. The eastern boundary of the landfill is adjacent to Fairlight Circuit and the rear boundaries of residences along Riveroak Drive. To the south of the site is a bushland reserve. The remediation works are currently being undertaken at the site. Despite being highly modified, the site does contain small areas of the Swamp Sclerophyll Forest Endangered Ecological Community

(EEC) and other vegetation communities. The site is also identified as being partly flood affected, is bushfire prone land and contains two transmission easements. Following remediation, it is intended the site will be suitable for public use for the purpose of passive recreation (e.g. walking/cycling trails).



Above: Aerial view of site

The Proposed Development

The Section 4.55(1A) application seeks to modify the wording of condition 25 of the Development Consent issued for the remediation of the former Mardi Landfill on the site. The consent also included the final improvements to the site to accommodate an end use as a recreation area including walking and cycling trails.

Under the consent for remediation that was granted, general earthworks were approved to provide landform to accommodate the final cap and end use as open space. As part of these works, suitable fill has needed to be sourced offsite for importation to the site.

Condition 25 relates to the nature of any material imported and stockpiled on the site for the purpose of future reshaping and subsequent capping of the former landfill and requires that such material be limited to Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM), certified by a practicing geotechnical engineer.

Under the heading 'Earthworks and Haulage – Construction Requirements', condition 25 of the consent reads:

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| <p>25 All stockpile material shall be classified as Virgin Excavated Natural Material (VENM) or Excavated Natural Earth (ENM) in accordance with the Waste Classification Guidelines – Part 1: Classifying Waste published by the Department of Environment, Climate Change and Water NSW (now Office of Environment and Heritage). Site fill material shall be certified as VENM or ENM by a practising Geotechnical Engineer prior to haulage to site. Certification documentation shall be provided to the Principal Certifying Authority throughout the construction phase of the works. All stockpile material brought onto the site must comply with the General Terms of Approval and Licence issued by the NSW Environment Protection Authority.</p> |
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The reason for the modification is that treated and validated acid sulphate soils (ASS) excavated from a site in Lake Road (as part of a Council road project) have been identified by the NSW Environment Protection Authority (EPA) as acceptable to be imported and

stockpiled on the site for the purpose of reshaping the former landfill. However, the wording of condition 25 restricts the nature of the material to be imported and stockpiled on the site for the reshaping and subsequent capping of the former landfill to be VENM or ENM certified by a practicing geotechnical engineer. Treated and validated ASS is not ENM, and as such would need to be disposed of at an appropriately licensed landfill and will be subject to the waste levy under the *Protection of the Environment Operations (Waste) Regulation 2014*.

The EPA has issued a letter dated 23 May 2018 (Attachment 2) notifying its intent to issue a Resource Recovery Order and Exemption for the treated and validated ASS excavated from the Lake Road site allowing it to be accepted on the Mardi Landfill site subject to Council modifying condition 25 of Development Consent DA/542/2013.

The present condition 25 also states that all stockpile material brought onto the Mardi Landfill site must comply with the General Terms of Approval and Licence issued by the EPA. The EPA issued a letter dated 14 October 2014 (Attachment 3), confirming that Council does not need an environment protection licence for the Mardi site and the proposed modification to the wording of Condition 25 removes this requirement.

The application seeks consent to modify the wording of Condition 25 to read:

All imported and stockpiled material shall be classified as:

- Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM) in accordance with the Waste Classification Guidelines – Part 1: Classifying Waste published by NSW EPA, or
- Treated and validated acid sulphate soils excavated from Lake Road, Tuggerah that are the subject of a Specific Resource Recovery Order and Exemption which NSW EPA has confirmed by letter dated 23 May 2018 that it intends to issue to Council,

and shall be certified by a practising Geotechnical Engineer prior to haulage to site. Certification documentation shall be provided to the Principal Certifying Authority throughout the construction phase of the works. All imported and stockpiled material brought onto the site must comply with any other relevant EPA requirements.

The modified wording would allow for the ASS to be reused in the remediation works for the Mardi landfill site, rather than its disposal at Buttonderry Landfill at a cost of \$900,000 to the Council and community.

VARIATIONS TO POLICIES

There are no variations to Council's LEP or DCP planning controls.

HISTORY

- Development Consent No. DA/542/2013 was granted by the Hunter and Central Coast Joint Regional Planning Panel on 13 February 2014 for the remediation of the former Mardi Landfill site located at 70-100 McPherson Road, Mardi. The development was to take place in three stages.

The former landfill covers an area of approximately 7.5 ha. It was originally a sandstone quarry which was used as a landfill from the 1950s and received putrescible and non-putrescible waste from residential, commercial and industrial sources. The landfill was closed to the public in 1989, although Council continued to use the site for disposal of non-putrescible waste until 1999.

The land to the west of the former landfill (the proposed stockpile site) was acquired by Council in 1992 from the then Electricity Commission of NSW for the purpose of management of leachate from the landfill. Up until around 2008, the property was used intermittently by Council's Impounding Contractor for grazing and storage of impounded livestock (horses and cattle).

The proposal was originally referred to the Hunter Central Coast Joint Regional Planning Panel (JRPP) for determination as the proposal involved works by Council exceeding \$5 million in value pursuant to the former Part 4 of State Environmental Planning Policy (State and Regional Development) (SEPP) 2011 and former Schedule 4A, Section 4 of the EP&A Act, 1979.

INTERNAL CONSULTATION

The application has been referred within Council to:

- Senior Environmental Health Officer (Environmental Protection)

The issues raised in the referral process are discussed in the report and where relevant reflected in the conditions of consent.

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles.

Climate Change

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the application.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 4.15 and 4.55 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements, Council's plans, policies and Section 10.7 Certificate details, the assessment has identified the following key issues, which are discussed for Council's information.

Environmental Planning and Assessment Act 1979 - Section 4.55

The applicant is seeking amendments to the original development under Section 4.55(1A) of *Environmental Planning and Assessment Act 1979* (EP&A Act). Having regard to the provisions of Section 4.55(1A), it is considered that the amended proposal is substantially the same development approved by Council.

Section 4.55(1A) states:

(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

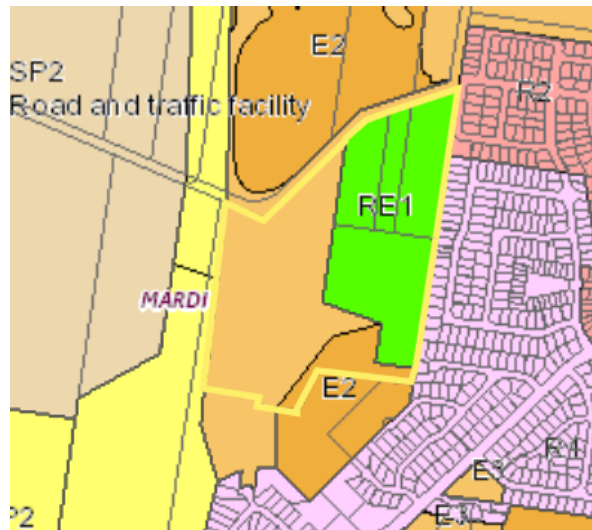
The proposed modification is considered to be of minimal environmental impact in accordance with Section 4.55(1A) of the EP&A Act. The application was not required to be notified. The modified development is considered substantially the same development for which consent was originally granted.

THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES

a) Wyong Local Environmental Plan 2013

Permissibility

The subject site is zoned RE1 – Public Recreation, E2 – Environmental Conservation, and E3 Environmental Management under *Wyong Local Environmental Plan* (WLEP) 2013. Within the zoning of the site the modified development for remediation remains permissible development with consent by virtue of SEPP 55 Remediation of Land (Cl 8(1)) and the ongoing use of the site as a ‘recreation area’ is permissible development within the RE1, E2 and E3 zones and remains consistent with the zone objectives.



Above: Zoning of the site under Wyong LEP 2013

The modified proposal remains consistent with relevant LEP clauses that applied to the original development application.

b) Relevant SEPPs

The modified proposal remains consistent with relevant SEPP's that applied to the original development application which included State Environmental Planning Policy (Infrastructure) 2007 and State Environmental Planning Policy 55 – Remediation of Land.

c) Relevant DCPs

Wyong Development Control Plan 2013 (DCP)

The modified development remains consistent with the relevant DCP chapters applicable to the original development application.

d) Any planning agreement

There are no planning agreements applicable to the application.

e) Relevant Regulations

There are no matters prescribed by the regulations that require specific discussion.

f) Coastal Zone Management Plan

The site is not affected by coastal hazards or by an adopted Coastal Zone Management Plan.

THE LIKELY IMPACTS OF THE DEVELOPMENT

a) Built Environment

There are no matters relating to site design and internal design, external impacts or construction activities that require further consideration or discussion under the modified proposal.

b) Natural Environment

There will be no significant impact upon the natural environment as a result of the modified proposal.

All other relevant issues regarding the likely impacts of the development have been discussed throughout this report. In general, it is considered that the property is suitable for the modified development.

THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

There are no changes under the modification that would render the site unsuitable for the development. The site attributes remain conducive to the development as modified. The site is identified as bushfire prone land, flood affected land and contaminated land, however, there are no constraints that would render the site unsuitable for the modified development.

ANY SUBMISSION MADE IN ACCORDANCE WITH THIS ACT OR REGULATIONS

Any submission from the public.

The application was not required to be notified under Wyong DCP 2013 – Chapter 1.2 ‘Notification of Development Proposals’. Clause 2.13.2 only requires notification of applications for modifications where Council is of the opinion that it might impact on an adjoining property and submissions were received to the original application. In this case, no submissions were received in relation to the original application for consent and the modification to the wording of condition 25 is minor and will not adversely impact on any adjoining or surrounding properties.

Any submission from public authorities.

There are no referrals to, or submissions from, any public authorities associated with the modified development.

Advice from the EPA in relation to the modified condition has been provided with the application. Correspondence from the EPA dated 23 May 2018 and titled ‘*Notice of Intent to Issue a Resource Recovery Order and Exemption for material excavated during Lake Road upgrade works*’ advises:

The Environmental Protection Authority (‘EPA’) wishes to inform Central Coast Council (‘CCC’) that it intends to issue an order and exemption to make lawful reuse of Lake Road excavated material in rehabilitation works at the former Mardi landfill site (McPherson Road, Mardi; ‘Mardi landfill’). This letter is intended to provide CCC with grounds to modify the development consent for Mardi landfill, such that treated acid sulphate soils would be an allowed for acceptance on site. The EPA will begin preparing an order and exemption for Lake Road excavated material following confirmation that this amendment has been made to the development consent. The order and exemption will be subject to the conditions outlined in the acid sulphate soil management plan.

THE PUBLIC INTEREST (s4.15(1)(e)):

Any Federal, State and Local Government interests and community interests.

There are no matters directly associated with the modified proposal that are contrary to the local or community interest. However, there are indirect financial and environmental efficiency benefits to the Central Coast community associated with providing an alternative to the disposal of the treated ASS (derived from the Lake Road upgrade works) in Buttonderry landfill and placing it at the Mardi land fill site for use in its remediation.

The remediation of the former landfill site is considered to be in the interest of all levels of government and the community and will provide a passive recreation area for the local community.

CONCLUSION

The application seeks approval for the modification to Condition 25 of development consent DA/542/2013 granted by the Regional Planning Panel.

The minor variation to the wording of Condition 25 as proposed will maintain the intent of the original condition whilst also allowing for ASS (sourced from the Lake Road upgrade works), deemed suitable by the EPA, to be used for the reshaping and capping works associated with the remediation of Mardi Landfill, instead of being disposed of at Buttonderry Landfill. This will benefit the Council and the community from reusing the material and not having to pay the waste levy.

The modification is of a minor nature and the site is considered to be in a suitable context for the nature, scale and type of the modified development proposed. There are no unreasonable impacts associated with the modification and there are no variations to Council's LEP or DCP requirements. The development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted. The application is recommended for approval subject to the modified condition as attached.

ATTACHMENTS

Attachment 1 – Draft Modified Condition 25

Attachment 2 – NSW EPA letter (23 May 2018)

Attachment 3 – NSW EPA letter (14 Oct 2014)

**Schedule of modified conditions
DA/542/2013/A – Section 4.55(1A)
70-100 McPherson Road, Mardi**

Development Consent No. DA/542/2013 is modified (by Section 4.55(1A) Application No. DA/542/2013/A) in the following manner with the recommended changes to conditions shown in blue (previous) and in red (new):

- A. Condition 25 under the heading 'Earthworks and Haulage – Construction Requirements' is modified to read:

- 25 All **imported and** stockpiled material shall be classified as:
- Virgin Excavated Natural Material (VENM) or Excavated Natural Earth (ENM) in accordance with the Waste Classification Guidelines – Part 1: Classifying Waste published by ~~the Department of Environment, Climate Change and Water NSW (now Office of Environment and Heritage)~~ NSW EPA, or
 - **Treated and validated acid sulphate soils excavated from Lake Road, Tuggerah that are the subject of a Specific Resource Recovery Order and Exemption which NSW EPA has confirmed by letter dated 23 May 2018 that it intends to issue to Council,**
- and Site fill material** shall be certified ~~as VENM or ENM~~ by a practicing Geotechnical Engineer prior to haulage to site. Certification documentation shall be provided to the Principal Certifying Authority throughout the construction phase of the works. All **imported and** stockpiled material brought onto the site must comply with ~~the General Terms of Approval and Licence issued by the~~ **any other relevant** NSW Environment Protection Authority **requirements**.