

DATE OF DETERMINATION	17 April 2019
PANEL MEMBERS	Justin Doyle (Chair), Bruce McDonald, Peter Brennan and Peter Harle
APOLOGIES	Wendy Waller and Nicole Gurran
DECLARATIONS OF INTEREST	Nil

Public meeting held at Liverpool City Council on 17 April 2019, opened at 2.17pm and closed at 5:05pm.

MATTER DETERMINED

Panel Ref – 2018SSW013 – LGA – Liverpool – DA263/2018 at 55 Martin Road, Badgerys Creek (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

1. The proposed development will contribute a facility providing a recourse recovery and recycling sustainability service and associated employment capacity within the Sydney Western City District on land which has been identified for future industrial/employment uses.
2. Subject to the conditions imposed the proposed development adequately satisfies the relevant legislation including the Commonwealth Environmental Protection and Biodiversity Act, the Protection of the Environment Operations Act 1997, the Contaminated Land Management Act 1997 and the Biodiversity Conservation Act 2016. The proposal constitutes Integrated Development requiring approval of the NSW E.P.A. which has provided General Terms of Approval that are included in the conditions of consent.
3. The proposal adequately satisfies the relevant State Environmental Planning Policies including SEPP 33 Hazardous and Offensive Development, SEPP 55 - Remediation of Land, SEPP (Infrastructure) 2007, SEPP (Sydney Region Growth Centres) and Greater

Metropolitan Regional Environmental Plan No2- Georges River Catchment for the reasons addressed in the staff assessment report.

4. Given its proximity to the future Badgerys Creek Airport the application was referred to the Department of Infrastructure and Regional Development which has raised no concerns with the proposal.
5. The proposal adequately satisfies the applicable objectives and provisions of Liverpool Local Environmental Plan 2008 and Liverpool DCP 2008. It is noted that while the proposed use is not a permitted use within the RU1 Zone applying to the site under the LEP, it is permitted by the prevailing provisions of SEPP (Infrastructure) 2007.
6. The proposed development subject to the conditions imposed will have no unacceptable adverse impacts on the natural or built environments including on site flora, the quality of the local riparian system, local air quality, the utility of the local road system or the amenity of residential premises in the locality. In this regard it is noted that the operator will need to obtain an environmental protection licence from the EPA to lawfully operate the site and acoustic conditions to protect the amenity of neighbouring residences are included in the terms of the consent granted.
7. The proposed development is considered a suitable form of development in this context as the subject site is within a precinct nominated for future industrial development and is adjacent to the Badgerys Creek Airport site.
8. The concerns of local residents have been addressed by either amendments made during the processing of the DA or the conditions imposed as set out below.
9. In consideration of conclusions 1-8 above the Panel considers the proposed development is a suitable use of the site and approval of the proposal is in the public interest.

CONDITIONS

The development application was approved subject to the conditions in the Council Assessment Report with the following amendments:

1. New condition:

“All areas proposed to be trafficable by vehicles (being the area shaded in grey and the carspaces depicted in the plans prepared by “Project Tourism International Architecture” Sheets PDA 04 and 05 revision D revised 5 November 2018) are to be concreted to an appropriate engineering specification prior to the issuing of an occupation certificate.

2. Condition 89 – amend “Construction Certificate” to read “Occupation Certificate”.
3. Condition 102 – add after the words “completed and submitted for approval” the words “by Council”, and add at the end of the Condition the words:

“The use is to be suspended if Council advises in writing that it considers that the Assessments do not adequately demonstrate compliance with those laws and Standards, until Council confirms in writing that it is satisfied that the operation will so comply.”

4. Add a new condition 109A:

“Within 60 days of commencement of the approved operation, an acoustic report is to be prepared by an appropriately qualified acoustic engineer independent of Benbow Environmental including a test of the acoustic performance of the facility, with an assessment of all equipment used in the yard and the processing equipment with the door of the building open. The approved use is to be suspended after that 60day period until written confirmation by that acoustic engineer is provided to the Council that the development complies with all relevant acoustic conditions.”

5. Condition 115 is to be amended by replacing the 2nd and 3rd lines with the words “Processing and delivery activities, as well as the movement, loading and unloading of trucks, and cleaning activities using mechanical equipment is audible from any residential boundary”, and replace “Operational activities” with “Administrative activities”.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The Panel considered oral submissions made at the meeting by local residents whose concerns included:

Roger Moss

- Mr Moss lives 100 metres from the proposed development.
- The proposal is close to the existing nearby facility at 25 Martin Road
- There will be exposed stockpiles
- Such facilities should only be approved in areas specifically zoned for industrial uses.
- There are still residents in the area whose amenity should be considered.
- The report does not adequately acknowledge the continuing residential use of the area.
- Processing should be entirely enclosed
- The proposal does not address EPA conditions including the 65,000tonne limit applying to a nearby facility.

Diana Vukovic

- Ms Vukovic lives 150 metres from the proposed development.
- The proposal is too close to an existing facility.
- The proposal does not adopt conditions of the adjacent facility
- The proposed facility is near the ANL site and Boral Bricks.
- Because of recent approvals, the locality is not rural anymore and is becoming a transport hub.
- Teresa Albanese who lives next door to Diana Vukovic echoes her concerns but was unable to attend.

Melanie Aliberti

- She accepts that because of the SEPP the RU1 zone allows for use.
- The airport will lead to rehabilitation of site, and this use is not needed to make use of the land.
- The development is not in the Greater Sydney Commission’s vision.
- Some residents live within 60 metres of stockpile.
- The proposal should have the same conditions as 25 Martin Road.
- As the proposal will have a capacity of 95,000 tonnes and therefore will not comply with Martin Road approval.

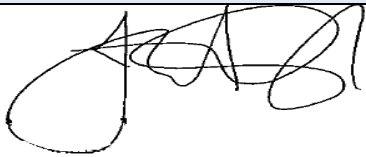



- Precinct of Badgerys Creek directly adjoins the new airport.
- The conditions should require concrete hardstand and one way in one and out via Martin Road, not Lawson Road.
- Stockpiling should occur inside the building
- 65,000 cubic metres should be the capacity
- Assessment should consider the cumulative effects of nearby facilities.
- Lawson Road is not suitable.
- If Pitt Street reopened plus these development it will lead to industrial character of this rural area.
- Concrete hardstand is needed to reduce dust.
- Queried the height of the shed.

Brent Winning (for the Applicant) addressed the meeting and said –

- The entire yard is proposed to be concrete
- All activities including loading and unloading are to take place inside the shed
- The DA originally proposed access via Lawson Road, but RMS required access to be via Martin Road in a forward direction. That change has been adopted in the current plans
- He acknowledges that such sites have been poorly run in the past
- For this proposal all processing activities take place inside the building
- 65,000 does not suit client's needs and 95,000 m3 is required
- This client needs greater facility for waste processing. Will agree to a condition restricting the use from being offered for commercial waste.
- He is prepared to concrete all areas accessible by a vehicle

Many of the complaints raised by neighbours have been addressed by significant changes and improvements to the development including the concreting of the trafficable areas, changes to the vehicular access, and acoustic measures.

The Panel considers that concerns raised by the public have been adequately addressed through those measures and are sufficiently considered in the assessment report. The Panel is satisfied that the issues raised are suitably addressed via conditions which are imposed on the consent.

PANEL MEMBERS	
 <p>Justin Doyle (Chair)</p>	 <p>Bruce McDonald</p>
 <p>Peter Harle</p>	 <p>Peter Brennan</p>

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	Panel Ref – 2018SSW013 – LGA – Liverpool – DA263/2018
2	PROPOSED DEVELOPMENT	<p>Establish a Resource Recovery Facility for 95,000 tonnes per annum of construction and demolition waste including the installation of a weighbridge, hardstand, retaining walls and erection of a rural shed.</p> <p>The proposal is identified a designated development as specified in Schedule 3 of the Environmental Planning and Assessment Regulations 2000.</p> <p>The proposal is identified as Nominated Integrated Development, requiring a license from NSW Environmental Protection Authority pursuant to Protection of the Environment Operations Act 1997.</p>
3	STREET ADDRESS	<p>55 Martin Road, Badgerys Creek</p> <p>Lot 4 DP 611519</p>
4	APPLICANT/OWNER	<p>Applicant – Claron Consulting</p> <p>Owner – Antoun's Construction</p>
5	TYPE OF REGIONAL DEVELOPMENT	Clause 7 – Particular designated development. The proposal is for a waste management facility identified as designated development as specified under Clause 32 in Schedule 3 of the Environmental Planning and Assessment Regulation 2000
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy No. 33 – Hazardous and Offensive Development ○ State Environmental Planning Policy No. 55 – Remediation of Land ○ Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 – 1997) (Deemed SEPP) ○ State Environmental Planning Policy (Sydney Region Growth Centres) 2006 ○ State Environmental Planning Policy (Infrastructure) 2007 ○ State Environmental Planning Policy (State and Regional Development) 2011 ○ (Commonwealth) Environment Protection and Biodiversity Act 1999 ○ Threatened Species Conservation Act 1995 ○ Contaminated Land Management Act 1997 ○ Protection of the Environment Operations Act 1997 ○ Native Vegetation Act 2003 ○ Biodiversity Conservation Act 2016

		<ul style="list-style-type: none"> ○ Liverpool Local Environmental Plan 2008 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Liverpool Development Control Plan 2008 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Consideration of the provisions of the Building Code of Australia • Coastal zone management plan: [Nil] • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 2 April 2019 • Written submissions during public exhibition: 7 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In support – Nil ○ In objection – Roger Moss, Diana Vukovic and Melanie Aliberti ○ Council assessment officers present – Adam Flynn, Boris Santana and George Nehmas ○ On behalf of the applicant – Brent M Winning, Terry Lawrence and Nicolas Israel
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection and Briefing: 5 November 2018 • Final briefing to discuss council's recommendation, 17 April 2019, 1.30pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald, Peter Brennan and Peter Harle ○ <u>Council assessment staff</u>: Adam Flynn
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report