

DETERMINATION AND STATEMENT OF REASONS

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	Monday, 16 March 2020
PANEL MEMBERS	Justin Doyle (Chair), Nicole Gurran, Karen McKeown and Glenn McCarthy
APOLOGIES	Ross Fowler & Jeni Pollard
DECLARATIONS OF INTEREST	Louise Camenzuli: One of my Partners at Corrs Chambers Westgarth has advised the site owner or an affiliated entity of the site owner. As a Partner of the firm, I consider that this fact, while the relevant file is unrelated to the proposal being assessed, may result in a reasonably perceived conflict of interest.

Teleconference call at held at Penrith City Council, Passadena Room, 601 High Street, Penrith on 16 March 2020, opened at 4:10pm and closed at 4:26pm.

MATTER DETERMINED

2018WCI012 – Penrith City Council – DA18/1162 at 565-609 Luddenham Road, Luddenham – Waste Management Facility (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.

Development application

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 panel was satisfied that the reduced proposal was in accordance with the intended future for this site recorded in the applicable instruments and policies, and particularly the endorsed Precinct Plan, given that it allows for management of excavated material while at the same time facilitating a substantial step in establishing the Science Park Site with major potential for employment opportunities and infrastructure for the development of Greater Sydney's science capabilities.
2. The amended proposal defers for later consideration a number of substantial issues with the original proposal by reducing the volume of fill material to be imported to the site from 1,650,000 cubic metres (initially proposed) to a total of 440,000 cubic metres of fill involved in the project with up to 370,000 cubic metres of that fill being imported. That reduced scale of earthworks will be limited to a reduced portion of land within the Sydney Science Park site, and avoids for the present issues associated with dam dewatering and construction of a new temporary haul road. The number of truck movements is also significantly reduced.
3. With that reduction in the scale of the development, and with the protections proposed and required by the conditions of consent, the panel was satisfied that the proposal adequately mitigated against likely environmental and flooding effects. In particular, the assessment report records that an acceptable interface treatment for all edge boundaries, including Luddenham Road is proposed. Specifically, Council staff have assessed that the interface treatment with the adjoining property to the south will match the natural ground levels of that adjoining property, with

appropriate batters directing surface water towards the centre of the site, with the new topography graded to manage stormwater in that location to Council's satisfaction.

4. The reduced volume of truck movements resulting from the reduction in scale of the project (subject to the conditions proposed) will be acceptable, and Council as the relevant roads authority is satisfied that intersection upgrades are not necessary for this stage of the development.
5. The 0.19 hectares of Cumberland Plain Woodland has been assessed by Council's Biodiversity Officer to be in poor condition, with no objections raised to the reduced scope of works.
6. NSW Rural Fire Service has determined that a formal Bushfire Protection Assessment would not be required on the basis that the available access for fire fighting is adequate, and an appropriate asset protection zone is proposed.
7. The level of assessment of the proposal recorded in the Council assessment report is appropriate for the scale of development proposed (noting that the volume of 'waste management works' proposed is categorised as designated development under clause 32 of Schedule 3 of the Environmental Planning and Assessment Regulation 2000).
8. While the proposal is limited to earthworks and does not include finished levels following the proposed extent of filling, Council's staff report indicates satisfaction that the level of detail provided is sufficient to be confident that the site will be available for final contours to be set with future DA's to cater for permissible uses associated with the Science Park proposed for the B7 Business Park and RE1 Public Recreation zones under Penrith LEP. Accordingly, the earthworks have been found to be permissible as being site preparation works for future permissible land uses.
9. In the same way, the panel is satisfied that the development is consistent with the objectives of Clause 7.24 of Penrith LEP as providing for the future construction of a specialised centre on the land. The work is consistent with facilitating the future use of the site when developed to accommodate *"leading science-based businesses, tertiary institutions, research and development providers in one location to advance innovation around the important principles of food security, energy and health"*. In that way the development is consistent with the aim of the controls in section "E16 Sydney Science Park" of the Penrith DCP 2014, noting that Section E16 B of the DCP expressly anticipates the *"staging"* of the development of the Science Park.
10. The preparation of the site for use as park of the Science Park is also compatible with the vision for the land emerging from the 'Discussion Paper for the Western Sydney Aerotropolis', with accompanying Proposed SEPP, Draft Western Sydney Aerotropolis Plan (WSAP), and Draft DCP (Phase 1).
11. The panel accepts the advice of Council staff to the effect that with the conditions proposed, the proposal will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. As such the objectives of clause 7.1 – Earthworks in the LEP are sufficiently addressed.
12. The requirements of SEPP 55 have been met given the assessment under the previous application DA17/0100. Council staff have assessed the adopted Remediation Action Plan (RAP) dated 9 December 2016 to remain adequate to cover the Sydney Science Park area of the proposed works. The RAP included validation requirements to the most stringent level, being residential uses.
13. The proposal has been found to be consistent with the Council endorsed precinct plan known as the 'First Community Precinct Plan' for Precinct 1.
14. Further, the proposed works do not conflict with the land uses indicated in that chapter for the Sydney Science Park site. The Council assessment reports that the proposed earth works will be

compatible with the Council endorsed precinct plan, known as the 'First Community Precinct Plan' for Precinct 1 that outlines the approximate location of developable land, roads and open space.

15. For the reasons set out in the assessment report, the catchment management measures of the proposal meets the general planning considerations, specific planning policies and recommended strategies of SREP 20 Hawkesbury Nepean River.
16. Having regard to the matters aforementioned in items 1 – 15, and the discussion in the Council report, the panel is satisfied that the proposal is in the public interest.

CONDITIONS

The development application was approved subject to the conditions in the council assessment report with amendment prior to the issuing of the notice of determination only to replace references to the requirements for the issuing of a construction certificate, to being requirements for written confirmation by the principle certifying authority as to the relevant matters before the commencement of work (given that no building requiring a construction certificate is proposed). Specifically:

- **Condition 2** is amended to read:

Written confirmation is to be obtained from the appointed principle certifying authority prior to commencement of any civil works, that the requirements of these conditions necessary for that commencement have been met.

- **Condition 12** is to be amended to replace the words “accompanying the Construction Certificate application” with:

“... to be supplied to the principle certifying authority to its satisfaction prior to the commencement of works.”

- Replacement of “the Construction Certificate” with “written confirmation from the principle certifying authority that the requirements of these conditions for the commencement of work have been met” in Condition 20.
- Deletion of “or prior to the issue of any Construction Certificate, whichever occurs first” from Condition 24.
- In **Condition 25**, the words:

“A Construction Certificate is to be approved by the Certifying Authority for the provision of Bulk Earthworks.

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure ...”

Are to be replaced with:

“Prior to the commencement of works under this development consent, the principle certifying authority is to record its satisfaction in writing ...”

And:

“The Construction Certificate must be supported by engineering plans, calculations, specifications and any certification relied upon.”

Is to be replaced by:

“The principle certifying authority is to be provided with all engineering plans, calculations, specifications and any certification relied upon as establishing that the conditions have been complied with for the purpose of this condition.”

- In **Condition 26**:

“Prior to the issue of any Construction Certificate,”

is to be replaced with:

“Prior to the commencement of works under this development consent,”

- In **Condition 27**

“a Construction Certificate has been issued,”

is to be deleted with (noting this is addressed by Condition 2).

- In **Condition 28:**

“stamped Construction Certificate drawings”

is to be replaced by:

“final civil engineering drawings”

- In **Condition 33:**





“... prior to Construction Certificate issue ...”

is to be replaced by:

“... prior to commencement of works ...”

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel notes that no written submissions were made during public exhibition and therefore no issues of concern were raised.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Nicole Gurran
 Glenn McCarthy	 Karen McKeown

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018WCI012 – Penrith City Council – DA18/1162
2	PROPOSED DEVELOPMENT	Bulk earthworks including 440,000 cubic meters of fill materials and 385,300 cubic metres of cut at Sydney Science Park
3	STREET ADDRESS	581-599 Luddenham Road, Luddenham
4	APPLICANT/OWNER	Applicant: Celestino Developments SSP Pty Ltd Owner: Sydney Science Park Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Designated development - waste management facility or works
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> SEPP (Infrastructure) 2007 SEPP (Western Sydney Employment Area) 2009 SEPP (State and Regional Development) 2011 SEPP 55 (Remediation of Land) SREP 20 Hawkesbury Nepean River Penrith LEP Draft environmental planning instruments: <ul style="list-style-type: none"> Draft Aerotropolis Planning Instruments Development control plans: <ul style="list-style-type: none"> Penrith DCP Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil 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: 21 February 2020 Written submissions during public exhibition: 0 Verbal submissions at the public meeting: <ul style="list-style-type: none"> In support – Nil In objection – Nil Council assessment officer - Nil On behalf of the applicant – Lloyd Gomez and David Island
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: Tuesday, 29th January 2019 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald, Nicole Gurran, Glenn McCarthy and Jeni Pollard <u>Council assessment staff</u>: Lauren Van Etten, Gavin Cherry and Paul Anzellotti Site inspection: Tuesday, 29th January 2019 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald, Nicole Gurran, Glenn McCarthy and Jeni Pollard <u>Council assessment staff</u>: Lauren Van Etten, Gavin Cherry and Paul Anzellotti

		<ul style="list-style-type: none"> • Final briefing to discuss council's recommendation, Monday, 16th March 2020, 3:00pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Karen McKeown and Glenn McCarthy ○ <u>Council assessment staff</u>: Lauren Van Etten, Gavin Chery and Sandra Fagan
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report