

COUNCIL SUPPLEMENTARY ASSESSMENT REPORT

Panel Reference	2019NTH007
DA Number	2017/600
LGA	Ballina Shire
Proposed Development	Expansion of an existing resource recovery facility to process up to 30,000 tonnes per annum of construction waste and to carry out associated building, infrastructure and earthworks
Street Address	Lot 1 in DP 1237064, 19 Northcott Crescent, Alstonville
Applicant/Owner	Newton Denny Chapelle
Date of DA lodgement	30 October 2017
Number of Submissions	63 submissions received in total (addressed in previous Council Assessment Report)
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Clause 7 (waste management facilities or works, which meet the requirements for designated development under Clause 32 of Schedule 3 to the <i>Environmental Planning and Assessment Regulation 2000</i>)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Ballina Local Environmental Plan (BLEP) 2012; • Ballina Development Control Plan (BDCP) 2012; • Section 7.11 Plans <ul style="list-style-type: none"> ◦ Ballina Shire Roads Contributions Plan (Section 7.11 Roads plan) • State Environmental Planning Policy No. 33 – Hazardous and Offensive Development; • State Environmental Planning Policy No. 55 – Remediation of Land; • State Environmental Planning Policy (Infrastructure) (ISEPP) 2007;
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 – Submission from Ballina Environment Society
Report prepared by	Ballina Shire Council
Report date	19 November 2019

Reference is made to the additional submission received in relation to DA 2017/600 prepared by Dr Lyn Walker, President of the Ballina Environment Society (BES) dated 18 November 2019 (**Attachment 1**).

The following comments are made by Council in response to the contents of this submission.

I recently attended a public meeting (13th Nov) where the business owner next door to the proposed Site, Mr Jeffrey Gibbs, put forward his evidence that there are significant issues that need to be addressed, not covered up with a DA.

1. *He produced evidence that there are major compliance issues with this business that go to health and safety concerns. Particularly he cited asbestos in some of the dust tests he had had conducted, lack of control of dust, lack of contamination testing by Council, open air crushing and dramatically increasing volume crushed in the seven years since the business commenced.*

A number of concerns have been raised by the public with respect to the activities currently occurring on the site as part of the current operations and compliance with the terms and conditions of the approval via DA 2012/88.

These matters have been the subject of separate, ongoing development compliance investigation. Concerns around compliance with the terms and conditions of development consent DA 2012/88 is not directly relevant to the assessment of the subject application, but have been addressed within this assessment report in responding to the submissions raised. DA 2017/600 should appropriately be assessed on its merits.

Refer to "Development Compliance Background" section of the Assessment Report (pp. 27-29) for a summary of Council's actions to date. Council's response to the issues raised by the public is provided within Section 4.15(1)(d) of the Assessment Report (pp. 103-136).

2. *He produced evidence of complicity of Ballina Council and NSW EPA in the health and safety issues and lack of compliance.*
3. *He claimed significant costs to his own business that pre existed the resource recovery business, from the lack of compliance. He has also been unable to get satisfaction from Ballina Council and EPA about the lack of compliance. He puts this down to the complicity of both these organisations in the problem.*

Refer to "Development Compliance Background" section of the Assessment Report (pp. 27-29) for a summary of Council's actions to date and pp. 103-136 for Council's response to the issues raised in public submissions.

In the time available it is impossible for Ballina Environment Society to thoroughly check all the evidence, even if we were able to. However, in my analysis Mr Gibbs made a clear prima facie case for his claims. The implication is that an investigation independent of the resource recovery company, Ballina Council and the NSW EPA is imperative. I believe that until an independent investigation has been carried out it would be unsafe for this JRRP to make a ruling on this DA at this time.

With respect to the need for an independent investigation of the resource recovery business, the proposal comprises 'Designated Development' and in this regard, was required to be referred to a number of government agencies in the preparation of the Secretary's Environmental Assessment Requirements (SEARs), Environmental Impact Statement (EIS) and the assessment of the Development Application. These agencies include:

- NSW Roads and Maritime Services (RMS)
- NSW Environment Protection Authority (EPA)
- NSW Department of Primary Industries (DPI) – Agriculture
- NSW Department of Primary Industries (DPI) – Fisheries
- Office of Environment and Heritage (OEH)
- Department of Planning and Environment (DP&E)

In addition, Council's Assessment Report has been peer reviewed by DAC Planning Pty Ltd to provide additional rigour and transparency in the development assessment of this application.

With respect to the existing site operations, Council also engaged the services of an independent National Association of Testing Authorities (NATA) accredited consultant (i.e. Environmental Analysis Laboratory – EAL) to assess, sample and analyse the surfaces of the subject premises for asbestos and pesticide contamination. No asbestos or pesticide contamination has been identified through the compliance investigation program. Monthly dust monitoring and analysis was also commenced by EAL in July 2018 and has continued to be undertaken at the subject premises.

Attachment 1 – Submission from Ballina Environment Society



Northern Regional Planning Panel

Submission re: 2019NTH007 – Ballina – DA 2016/600 -19-21 Northcott Crescent
Altstonville

Dear Chairperson,

I wish to make a submission to the above DA.

I recently attended a public meeting (13th Nov) where the business owner next door to the proposed Site, Mr Jeffrey Gibbs, put forward his evidence that there are significant issues that need to be addressed, not covered up with a DA.

1. He produced evidence that there are major compliance issues with this business that go to health and safety concerns. Particularly he cited asbestos in some of the dust tests he had had conducted, lack of control of dust, lack of contamination testing by Council, open air crushing and dramatically increasing volume crushed in the seven years since the business commenced.
2. He produced evidence of complicity of Ballina Council and NSW EPA in the health and safety issues and lack of compliance.
3. He claimed significant costs to his own business that pre existed the resource recovery business, from the lack of compliance. He has also been unable to get satisfaction from Ballina Council and EPA about the lack of compliance. He puts this down to the complicity of both these organisations in the problem.

In the time available it is impossible for Ballina Environment Society to thoroughly check all the evidence, even if we were able to. However, in my analysis Mr Gibbs made a clear **prima facie case for his claims.**

The implication is that an investigation independent of the resource recovery company, Ballina Council and the NSW EPA is imperative.

I believe that until an independent investigation has been carried out it would be unsafe for this JRRP to make a ruling on this DA at this time.

Yours sincerely,

Dr Lyn Walker
President
18-11-2019