

DETERMINATION AND STATEMENT OF REASONS

SOUTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	Friday, 13 May 2022
DATE OF PANEL DECISION	Thursday, 12 May 2022
DATE OF PANEL MEETING	Tuesday, 26 April 2022
PANEL MEMBERS	Tim Fletcher (Acting Chair), Renata Brooks, Clare Brown, Neil Smith and Greg Conkey
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 16 March 2022.

MATTER DETERMINED

2019STH007 – WAGGA WAGGA – DA19/0036 at 225-265 Trahairs Rd, Bomen 2650 (Lot 2 DP 1249028, Lot 4 DP 1249028) – Waste Disposal Facility (Non-Putrescible Landfill) (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 also considered clause 61 (7) of the Environmental Planning and Assessment Regulation which requires

61 (7) In determining a development application for development on land to which [Wagga Wagga Local Environmental Plan 2010](#) applies, the consent authority must consider whether the development is consistent with the Wagga Wagga Special Activation Precinct Master Plan published by the Department in May 2021

The Panel also considered the request for a deferral of the decision by the applicant.

Development application

The Panel determined to refuse 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) Request for Deferral

The Panel refused the applicants request to defer the determination of the application for the following reasons:

- The development application was lodged on 30 January 2019.
- The applicants have been provided with previous opportunities to respond to matters raise by Council, the Panel and within the independent Peer Reviews.
- The applicants were given a specific opportunity to respond to the findings of the Peer Reviews as well as sufficient time to provide additional information in their responses.
- Any further deferral of the determination decision creates the potential for significant further delays.

- The applicant has not provided any certainty that matters set out in Peer Reviews can be satisfactorily addressed through additional site investigations and the length of time such investigations would take.
- Given the extensive community submissions and the expectation that a timely determination will be made, it is inappropriate to extend the assessment process further at this late stage of consideration.

2) DA Determination

The Panel determined to refuse the application for the following reasons;

1. The potential impacts on groundwater are unclear and have been insufficiently established. As such it cannot be concluded that the development:
 - (a) is consistent with performance objective (E) and (G) of section 3.3.4 of the Wagga Wagga Special Activation Precinct Master Plan, as required to be considered under State Environmental Planning Policy (Precincts – Regional) 2021 and Clause 61(7) of the Environmental Planning and Assessment Regulation 2021;
 - (b) is consistent with the following objectives of the Regional Enterprise Zone of the Wagga Wagga Special Activation Precinct:
 - To encourage regional enterprise and innovation in industry,
 - environmental management and performance and in urban and industrial design.
 - To protect and enhance the local character of the precinct and contribute to the surrounding environment and its amenity;
 - (c) meets acceptable solution A50.1 for performance criteria PC50 of the Wagga Wagga Special Activation Precinct Draft Delivery Plan as called up by Section 3.8(c) of State Environmental Planning Policy (Precincts – Regional) 2021;
 - (d) is consistent with the EIS Guideline: Landfilling (Department of Planning, 1996), as called up under Clause 2.156 (1)(c)(ii) of State Environmental Planning Policy (Transport and Infrastructure) 2021, which lists environmentally sensitive areas to be avoided as including land that overlays an “aquifer which contains drinking water quality groundwater which is vulnerable to pollution”;
 - (e) will not result in unacceptable impacts on groundwater;
 - (f) is located on a site suitable for the proposed development.
2. Potential impacts from dust and airborne waste particles are unclear and have been insufficiently established. Potential exists for airborne waste particles to contaminate adjoining properties, including businesses sensitive to such contamination. As such it cannot be concluded that the development:
 - (a) is consistent with the following objectives of the Regional Enterprise Zone of the Wagga Wagga Special Activation Precinct:
 - To encourage regional enterprise and innovation in industry,
 - environmental management and performance and in urban and industrial design.
 - To effectively manage land uses of varying intensities or environmental sensitivities, and to minimise the risk of conflict associated with incompatible land uses.
 - To protect and enhance the local character of the precinct and contribute to the surrounding environment and its amenity;
 - (b) meets acceptable solution A60.1 for performance criteria PC60 of the Wagga Wagga Special Activation Precinct Draft Delivery Plan as called up by Section 3.8(c) of State Environmental Planning Policy (Precincts – Regional) 2021;
 - (c) is consistent with the EIS Guideline: Landfilling (Department of Planning, 1996), as called up under Clause 2.156 (1)(c)(ii) of State Environmental Planning Policy (Transport and

- Infrastructure) 2021, which sets locational principles, and where a landfill is “likely to be incompatible with surrounding zoning/land use considering separation distances”, directs applicants to “seek alternate sites”;
- (d) is consistent with the following objectives of the IN1 General Industrial Zone of the Wagga Wagga Local Environmental Plan 2010:
- To minimise any adverse effect of industry on other land uses.
 - To support and protect industrial land for industrial uses;
- (e) is consistent with C2 of Section 13.5 of the Wagga Wagga Development Control Plan 2010 as follows:
- It is preferred that the eastern side of Byrnes Road will contain larger lots (> 5Ha) (see Subdivision Design Principles Diagram. Figure 12) and that “cleaner” developments locate in that area;
- (f) will not result in unacceptable impacts on adjoining properties from dust and airborne waste particles;
- (g) Will not result in unacceptable impacts on food producing business within the vicinity of the site.
3. There is insufficient information provided for the nature and extent of the proposed blasting and its environmental impact, especially in terms of the potential impact of noise and vibration; these impacts have not been adequately addressed within in the EIS.
 4. Given the findings of the Peer Reviews, there is inadequate certainty associated with the potential environmental impacts of the proposed development, such that it can be confidently concluded that the proposal is consistent with ESD considerations and the precautionary principle.
 5. Given the significant level of uncertainty related to the cumulative impacts associated with potential adverse environmental impacts on local groundwater, from dust and waste particulates, through noise and vibration associated with unspecified blasting, the subject site cannot be accepted as suitable for use as a land fill.
 6. It is contrary to the public interest to allow development to proceed where the potential adverse environmental impacts of the proposed development are substantive and have not been fully investigated and established.

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 notes that issues of concern included:

- Groundwater and surface water impacts
- Visual impacts
- Dust/air quality impacts (including on surrounding businesses)
- Odour impacts (including on surrounding businesses)
- Consistency with Special Activation Precincts
- Fire risk
- Suitability of site
- Carbon impacts
- Source of waste.

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report peer reviews and supplementary assessment reports.

PANEL MEMBERS



Tim Fletcher (Acting Chair)



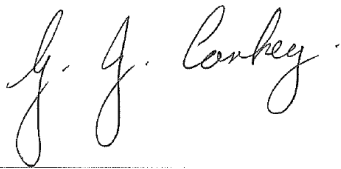
Renata Brooks



Clare Brown



Neil Smith



Greg Conkey

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2019STH007 – WAGGA WAGGA – DA19/0036 at 225-265 Trahairs Rd, Bomen 2650 (Lot 2 DP 1249028, Lot 4 DP 1249028)
2	PROPOSED DEVELOPMENT	Waste Disposal Facility (Non-Putrescible Landfill)
3	STREET ADDRESS	225 Trahairs Rd, Bomen, NSW 2650
4	APPLICANT/OWNER	Applicant: Christopher Egan, Riverina Warehousing Solutions Pty Ltd Owner: Riverina Warehousing Solutions Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Designated Development - Waste Facility
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> Wagga Wagga Local Environmental Plan 2010 State Environmental Planning Policy (Activation Precincts) 2020 State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy No 55 – Remediation of Land State Environmental Planning Policy No 33 – Hazardous and Offensive Development State Environmental Planning Policy (Koala Habitat Protection) 2021 State Environmental Planning Policy (State and Regional Development) 2011 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Wagga Wagga Development Control Plan 2010 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: <ul style="list-style-type: none"> Clause 92A of the Environmental Planning and Assessment Regulation 2000 - Additional matters that consent authority must consider for Wagga Wagga 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"> Additional supplementary report received: 14 April 2022 Supplementary report received: 8 March 2022 Council Addendum Assessment Report: 7 December 20221 Council assessment report: 30 September 2021 Written submissions during public exhibition: 42 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Graeme Obst on behalf of Madeline Obst, Isobella Obst and Claudia Obst, Marie Suthern on behalf of herself and James Schultz, Ben Large on behalf of himself and Bill Shultz, Craig Thamm, Michael Coville on behalf of himself, Anthony Marriner and Will Stone, John Gary, Ron Kerr, Michael Fromholtz on behalf of herself Howard Pollard, Jan Pollard and Anthony Dunn, Graham White on behalf of himself and Peter Simpson, Bill Shultz as President of the Eunony Valley Association, Anthony O’Kane,

		<p>Catherine O’Kane, Lynette Lablack, Wendy Anderson, Peter Fawcett</p> <ul style="list-style-type: none"> ○ Council assessment officer – Steven Cook ○ On behalf of the applicant – Chris Egan, Michial Sutherland
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Final briefing to discuss council’s recommendation: Tuesday, 19 October 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Gordon Kirkby (Chair), Renata Brooks, Tim Fletcher, Neil Smith, Greg Conkey ○ <u>Council assessment staff</u>: Steven Cook, Paul O’Brien, Peter Thompson, Jessica Creed, Briohny Seaman • Site inspection: Wednesday, 15 December 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Tim Fletcher (Acting Chair), Neil Smith and Greg Conkey • Council briefing: Wednesday, 15 December 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Tim Fletcher (Acting Chair), Renata Brooks, Neil Smith and Greg Conkey • Council and applicant briefing: Tuesday, 22 March 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Tim Fletcher (Acting Chair), Renata Brooks, Clare Brown, Neil Smith and Greg Conkey ○ <u>Council staff</u>: Steve Cook, Paul O’Brien, Peter Thompson ○ <u>Applicant</u>: Michial Sutherland, Nicola Smith, Chris Egan ○ <u>Department staff</u>: Sung Pak • Site Inspection: Tuesday, 29 March 2022 <ul style="list-style-type: none"> ○ <u>Panel member</u>: Renata Brooks • Final briefing to discuss council’s recommendation: Tuesday, 26 April 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Tim Fletcher (Acting Chair), Renata Brooks, Clare Brown, Neil Smith, Greg Conkey ○ <u>Council assessment staff</u>: Steven Cook, Paul O’Brien, Peter Thompson, Jessica Creed, Briohny Seaman ○ <u>Department staff</u>: Amanda Moylan
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not Provided