

DATE OF DETERMINATION	Wednesday, 2 December 2020
PANEL MEMBERS	Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli, Judy Clark and Jeff Organ
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 19 November 2020.

MATTER DETERMINED

2019WCI034 – Hawkesbury – DA0036/19 at 100 Fairey Road South Windsor– 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 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

The panel determined to refuse the application for the following reasons.

1. While the development is described in the Environmental Impact Statement as “Establishment of a construction materials processing and recycling facility within the IN1 zoned area of the site DA form”, it also involves major earthworks which are not required for that facility. Specifically, while Council has assessed that the proposed recycling facility would occupy no more than 15,000 m², the plans show the formation of a level platform within the IN1 General Industrial zone of around 62,000m² in area, requiring an excavation of around 128,000m³ of soil from the lower portion of the site which is zoned RU1 Primary Production and is close to a watercourse. The result is an additional 37,000m² of benched industrially zoned land the intended use of which is unknown, with steep embankments rising from the creek resulting from the necessary cut and fill. The associated impacts have not been sufficiently justified.
2. Justification of the major excavation and resulting landform is particularly required given the identification of the site on the Coastal Wetlands and Littoral Rainforests Area Map as falling within a “proximity area for coastal wetlands”. Reduction in the area of the platform would likely reduce the impacts on that area and would allow for more gradual battering. With no justification for the extent of the proposed benching it is difficult to see why those measures should not be incorporated,
3. Similarly, it is not explained why the proposed facility is planned so far to the east of the site closer to the riparian corridor such so as to maximise the need for filling of that part of the site to the point where the excavation plan proposes excavation within the proximity area.

4. With the creation of around 37,000 square metres of land suitable for industrial use, some degree of assessment of the impacts of those uses (such as the potential for additional traffic generation) is warranted. The Panel understands that in this case the traffic modelling was limited to the proposed recycling facility only, and not uses which might be accommodated on the remainder of the new platform.
5. A review of the proposal by Transport NSW would be essential before the DA could be approved, having regard to the referral requirement under the relevant provisions of State Environmental Planning Policy (Infrastructure) 2007. However, the most recent correspondence from Transport for NSW (TfNSW) dated 27 November 2020 indicates that the application is yet to be submitted for TfNSW review apparently because of delays by the Applicant in resolving the associated traffic modelling. The letter states relevantly:

“TfNSW has reviewed the submitted information and raises no further comment with respect to the traffic modelling and crash analysis. You may now submit the response to Council for formal referral to TfNSW for review.”
6. During the assessment period, the applicant has made significant advances in addressing operational impacts of the proposed facility and its environmental management, noting the EPA has provided its ‘general terms of approval’ (GTAs) for the application, and NRAR has provided its GTAs for the part of the development in the riparian area requiring a controlled activity approval. That use may well be appropriate for the site. However, if a development application for that use is to be wrapped up with substantial excavation and filling, a justification for that earthwork is required. Demonstrating that the flooding impacts can be sufficiently managed is only part of what is required. Attention to Council’s Flood Policy and adequate justification for the substantial change in landform and the potential for adverse visual impacts will be essential.

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:

- Environmental concerns from proposed earthworks;
- Incompatibility with Flood Policy 2020;
- Impact on usability of RU1 zoned land;
- Overdevelopment of site; and
- Unresolved traffic issues.

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and determined that a public meeting was not required, albeit that the Applicant was afforded the opportunity through its consultant planner to brief the Panel prior to its determination, and respond to the Panel’s concerns.

PANEL MEMBERS



Justin Doyle (Chair)



Nicole Gurran



Louise Camenzuli



Judy Clark



Jeff Organ

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2019WCI034 – Hawkesbury – DA0036/19
2	PROPOSED DEVELOPMENT	Waste management facility - Construction and material crushing and recycling plant processing facility.
3	STREET ADDRESS	100 Fairey Road South Windsor
4	APPLICANT/OWNER	Applicant: Andy's Earthworks Pty Ltd Owner: Andrew Irwin
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"> Environmental Planning and Assessment Regulation 2000 Clause 32 State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy No. 55 (Remediation of Land) SEPP (Infrastructure) 2007 Deemed State Environmental Planning Policy Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 Hawkesbury Local Environmental Plan 2012 Flood Policy 2020 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Hawkesbury Development Control Plan 2002 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: 19 November 2020 Late information received TfNSW Response: Monday, 30 November 2020 Written submissions during public exhibition: 6
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: Monday, 24 June 2019 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald, Nicole Gurran and Jeff Organ <u>Council assessment staff</u>: Natalie Piggott, Andrew Johnston and Cristie Evenhuis Site Visit Monday, 24 June 2019 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald, Nicole Gurran and Jeff Organ

		<ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Natalie Piggott, Andrew Johnston and Cristie Evenhuis • Applicant Briefing: Monday, 30 November 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli, Judy Clark and Jeff Organ ○ <u>Council staff</u>: Natalie Piggot and Cristie Evenhuis ○ <u>Applicant representatives</u>: Andrew Irwin (Owner and Operator), Stephen Gouge (Knight Frank Town Planning), Martin Abell (Macro Plan), Emma Hansma (Benbow Environmental), Roy Golaszewski (Advisian – Flooding) and Mick Bridgman (Transport and Urban Planning Pty Ltd) <p><u>Note</u>: Applicant briefing was requested to respond to the adverse recommendation in the council assessment report</p>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Nil