

SWCPP Ref. No.:	2019WCI035
DA No.:	DA19/0319
PROPOSED DEVELOPMENT:	Waste Management Facility, Bulk Earthworks including Vegetation Clearing, Demolition of Existing Structures, Dam De-Watering and Decommissioning, Importation, Placement and Compaction of Soil, Heritage Salvage Works and Stormwater Works - Lot 5 DP 860456, 1669 - 1723 Elizabeth Drive, BADGERYS CREEK NSW 2555
APPLICANT:	Mirvac Projects Pty Ltd
REPORT BY:	Ian Dencker, , Penrith City Council

Assessment Report

Executive Summary

Council is in receipt of a development application from Mirvac Projects Pty Ltd for bulk earthworks ancillary to the development of the site for future warehousing and distribution facilities known as the Elizabeth Enterprise Precinct at 1669-1723 Elizabeth Drive, Badgerys Creek.

The proposed bulk earthworks and site preparation includes the demolition of an existing rural dwelling and ancillary structures, clearing of all vegetation, dam de-watering and decommissioning, importation, placement and compaction of soil, heritage salvage works and stormwater and utilities works. The application includes the creation of warehousing building pads and internal road networks.

The subject site is largely zoned RU2 Rural Landscape and a portion of the site adjacent to South Creek, which runs north-south along the eastern boundary of the site, is zoned E2 Environmental Conservation under Penrith Local Environmental Plan 2010 (PLEP).

The land use proposed is most closely categorised as bulk earthworks associated with warehousing and distribution facilities. Warehousing and distribution facilities are a prohibited land use in the RU2 Rural Landscape zone under PLEP. Further, the scale of the activities which are ancillary to use of the site for warehousing and distribution facilities, is identified as State Significant Development under Schedule 1(12) of State Environmental Planning Policy (State and Regional Development) 2011.

It is unclear if all activities are clear of the portion of the site that is subject to the E2 Environmental Conservation zone under PLEP.

The application proposes that the acceptance of fill material as part of the bulk earthworks and site preparation activities, can be defined as a 'waste or resource management facility' under Division 23 of State Environmental Planning Policy (Infrastructure) 2007 [ISEPP], and is thus permissible within the RU2 Rural Landscape zone with consent. Division 23 of ISEPP identifies the RU2 zoning as a 'prescribed zone' in which 'waste or resource management facility' is permissible with consent.

Notwithstanding, proposed activities including the creation of warehousing building platforms, internal road networks, on site cut and fill operations, and stormwater and utilities infrastructure works which are unrelated to a waste management facility, are directly related to the future use of the site as warehousing and distribution centres and are not defined as 'waste or resource management facility' under the ISEPP and as such, are

prohibited development in the RU2 zoning under PLEP.

The proposed waste management facilities or works are identified as Designated Development under Schedule 3 (32) of the Environmental Planning and Assessment Regulations 2000, and the application is Integrated Development under the Water Management Act 2000, noting the site's proximity to South Creek.

As the application is seeking approval to operate a 'waste or resource management facility' which is defined as Designated Development under the Regulations, the applicant has sought the Secretary's Environmental Assessment Requirements (SEARs) to guide the preparation of the required Environmental Impact Statement (EIS). The SEARs have been provided and an EIS accompanies the application.

The site is located in an area of land subject to State Environmental Planning Policy (Western Sydney Employment Area) 2009 [SEPP WSEA]. Clause 18 of SEPP WSEA states that the consent authority must not grant consent to development on any land to which this Policy applies unless a development control plan (DCP) has been prepared for that land.

Schedule 4 of the Policy sets out the required provisions to be included in such a DCP and includes: traffic, parking, access points, infrastructure services such as sewer management and connection, public transport, staging, biodiversity, flooding, urban design and landscaping, subdivision, heritage, extraction and rehabilitation, protection of Warragamba Pipelines and electricity transmission facilities, management of public domain and community and retail facilities. Importantly the DCP requires detail to be included with regard to the timing, funding and provision of services. No contributions plan is yet in place for redevelopment of the site proposed.

The site is located in close proximity to land identified for the Western Sydney International (Nancy-Bird Walton) Airport [WSIA] and spans two initial Precincts of the Western Sydney Aerotropolis identified as 'Badgerys Creek' and 'South Creek' precincts under the NSW Government's *Western Sydney Aerotropolis Land Use and Infrastructure Implementation Plan, Stage 1: Initial Precincts* document.

Key issues

- Proposal being contrary to the Objects of the Act,
- Permissibility of the proposed land use and activities under PLEP 2010 and ISEPP,
- Non-compliance with the requirements SEPP WSEA in that a DCP has not been created for the site in relation to the activities proposed,
- Non-compliance with the Western City District Plan and Western City Deal,
- Non-compliance with the Sydney Regional Planning Policy No. 2 - Hawkesbury Nepean River (No. 2-1997) due to negative environmental impacts of land filling and on South Creek,
- The bulk earthworks are associated with the future development of the site for warehousing and distribution centres which are of a scale identified as Stage Significant Development under SEPP (State and Regional Development),
- The application being lodged prior to the release of the Stage 2 LUIIP and SEPP Aerotropolis, and its incompatibility with existing Stage 1 LUIIP precinct control,
- The proposal being contrary to the 'out of sequence' arrangements provided by the Stage 1 LUIIP and the requirement for the development to be assessed by the Department through a planning gateway process,
- Negative and detrimental environmental impacts of the waste management facility of the type and scale proposed in the context of the site (proximity to South Creek, noise, dust, traffic, visual and cumulative impacts),
- Insufficient information provided regarding the operational management of a waste management facility at the site including plans or details related site offices, amenities, fencing, signage, parking, staff areas, weigh bridge, site rehabilitation and landscaping, dust management and the like.
- Negative environmental impacts related to alterations to natural ground levels including on flooding, overland flow, biodiversity and the natural environment, and on South Creek and its catchment.
- Negative and unacceptable environmental impacts related to up to 10m of fill on the character of the area,

views and the impacts of this on the interface with adjacent sites, Elizabeth Drive and on South Creek.

- Support for the proposal will result in an influx of premature and 'out-of-sequence' development applications for bulk earthworks lodged as 'waste and resource management facilities' on lands within the Aerotropolis precincts, ahead of the anticipated and imminent Stage 2 LUIIP and SEPP Aerotropolis.
- Support for the proposal will result in poor environmental outcomes and will set an undesirable precedent for future development within the Aerotropolis and SEPP WSEA areas.

Notification and Exhibition

The application has been notified to adjoining properties and was exhibited in accordance with relevant legislation. Three submissions were received raising concerns including that the proposal is premature and out of sequence with planning for the new Aerotropolis currently underway. A fourth submission was received from Liverpool City Council who was notified of the development application due to the close proximity of the site to the Liverpool City Council Local Government Area (located on the southern side of Elizabeth Drive). Liverpool City Council raises the following matters:

- *'the development will fail to meet the objective of the zone, particularly 'to maintain the rural character of the land' as earthworks will result in mounds of soil up to 10 metres above natural ground level'*
- *'uncertainty regarding the timing of any future rezoning of land, it is likely that the presence of the earth mounds will ultimately contradict the objectives of the RU2 zone for an extended period of time'.*
- *'it appears that there may be a slight encroachment into the E2 zone in the southern portion of the site'.*
- *'the...EIS states that the development will embody "site preparation works that will benefit future development on the site". As the site is not located in an Initial Precinct under the LUIIP, a timeframe for the Badgerys Creek precinct planning and rezoning has not yet been established. In addition, Council considers the Western Sydney Planning Partnership maybe interested in reviewing the development application'.*
- *'...the proposed works seem to be pre-emptive of a future land use zone change, is inconsistent with the existing zoning; and may contradict any future zoning of the land(especially considering that the earth mounds will be placed in accordance with an arbitrary indicative road layout).'*
- *The applicant asserts that flood impacts will be mitigated at a later stage,...it is unknown as to when the flood impacts can be mitigated.'*
- Air quality and dust impacts in addition to those associated with the Airport construction.
- Visual impacts on a the 'Gateway' location and no landscape plans have been submitted.
- Insufficiencies of the submitted traffic plan. Plan does not consider the cumulative impacts of planned future construction works in the vicinity. The Transport for NSW/Transport Management Centre should be consulted regarding the cumulative impacts of construction vehicles along Elizabeth Drive.

Referral Advice -

Department of Infrastructure, Transport, Cities and Regional Development

In response to Council's referral, the (Federal) Department of Infrastructure, Transport, Cities and Regional Development notes that *'The application outlines that the intention of the waste management facility and bulk earthworks is to receive fill to prepare the site for future employment uses as part of a proposed Elizabeth Enterprise Precinct. The Stage 2 LUIIP and Precinct Planning work will provide the detailed planning controls and guidance to ensure the protection of the operation of the WSIA; safeguard the community from aircraft noise related impacts; as well as identifying the staging and development of the Aerotropolis. In our view, the application for development would not be consistent with the LUIIP's intent particularly being in advance of the Stage 2 LUIIP and Precinct Planning work'.* [Emphasis added]

NSW Environment Protection Authority (EPA)

In response to Council's referral the EPA has advised that the bulk earthworks do not require licensing.

Roads and Maritime Services (RMS)

The RMS do not support the application and have requested additional information related to truck access, swept paths, cumulative impacts on local intersections and road infrastructure. RMS also not that the site is part of an

investigation area and it is likely that the frontage of the site will be impacted by future road works.

Natural Resources Access Regulator (NRAR)

General Terms of Approval have been provided.

The applicant has supplied a draft response to Council's initial request to withdraw the application, and has included draft legal advice. Both documents are appended to this report.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for refusal.

Site & Surrounds

The subject site is described as Lot 5 in DP 860456 and is also known as 1669 – 1723 Elizabeth Drive, Badgerys Creek. The site is currently occupied by a rural dwelling and ancillary structures and is approximately 15km south-east of the Penrith CBD, 5km south of Erskine Park and is approximately 15km south-east of Penrith Railway Station.

The Site has an area of 54.41ha and is irregular in shape, sharing its western boundary with a private road which provides access to SITA, a licenced and approved waste management and resource recovery facility, and shares its eastern boundary with South Creek. Rural residential lands are located to the north and south of the site.

The surrounding locality is largely rural land uses with the exception of SITA, a waste management/resource recovery facility, and a crushing and grinding operation to the site's west.

Proposal

This development application seeks consent for the following:

- Demolition of an existing rural dwelling and ancillary structures,
- Bulk earthworks relating to the receipt, placement and compaction of fill material and on-site cut and fill activities,
- Creation of 9 warehousing building pads and benching of land to create internal roads,
- Connection and augmentation of services and utilities,
- Construction of stormwater control systems
- Construction of erosion and sediment control systems,
- Dam de-watering and decommissioning,
- Heritage salvage works (if required),
- Removal of all trees and vegetation.

As detailed within the executive summary the applicant states that the proposal bulk earthworks can be defined as 'waste or resource management facility' under ISEPP owing to the importation of fill materials and as such, seeks approval for use of the site as a 'waste or resource management facility'.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007
- State Environmental Planning Policy (Western Sydney Employment Area) 2009
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• **Section 1.7 - Application of Part 7 of Biodiversity Conservation Act 2016**

The development has been assessed in accordance with the matters for consideration under Section 1.7 of the Environmental Planning and Assessment Act 1979 having specific regard to the Biodiversity Conservation Act 2016 and the following points are made:

- In general most of the impacts have been avoided through restricting works to the RU2 zones where the site has been highly degraded from a biodiversity perspective.
- Notwithstanding, concern is raised that unnecessary tree clearing and the removal of dams will occur prior to the long term vision for the site being determined and that there could be potential to retain dams and/or mature trees.
- Aerial imagery shows that there are 6 dams present at the proposed development site while the EIS has only considered and assessed 4. The two additional dams are located south of the rural building and in the eastern portion of the site. Additional assessment is required to encompass these dams.
- In addition no dam de-watering plan has been provided which manages the wildlife impacted by the proposed de-watering process.
- The proposed mulching of mature eucalyptus trees - whilst good for stabilisation of soil or to be used for landscaping - would be better stockpiled and used to create habitat in the adjoining riparian corridor for South Creek.

These are matters which would need to be considered further and the development cannot be supported in its current form.

• **Section 2.12 – Sydney Western City Planning Panel (SWCPP)**

The application has been assessed in accordance with Section 2.12 of the Environmental Planning and Assessment Act and the application will be determined by the Sydney Western City Planning Panel for the following reason:

(a) The development proposal has a Capital Investment Value over \$30 million.

Further, the applicant identifies that the proposed development is designated development owing to the proposal to use the site as a 'waste or resource recovery facility' under the provisions of the Environmental Planning and Assessment Regulations 2000 and as such, the application must be determined by the Sydney Western City Planning Panel.

• **Section 4.14 - Bushfire prone land assessment**

The development has been assessed in accordance with the matters for consideration under Section 4.14 (Consultation and development consent—certain bush fire prone land) of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following point is made:

- Whilst the site is identified on the Penrith Bushfire Prone Land Map as containing bushfire prone vegetation, the development does not include the construction of buildings, infrastructure or associated assets.

Therefore, the protection measures required by Planning for Bushfire Protection 2006 do not apply.

- **Section 4.15 - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

- **Section 4.46 - Integrated development**

The development has been assessed in accordance with the matters for consideration under Section 4.15 and Section 4.46 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

The site adjoins South Creek. Any works taking place within 40m of this waterway render the application Integrated Development under the Water Management Act 2000. A controlled activity approval for any works within waterfront land is required from the NRAR prior to the commencement of any works. General Terms of Approval have been issued by the NRAR 18 June 2019.

Section 79C(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Infrastructure) 2007

An assessment has been undertaken of the application against relevant criteria with State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) and the application is unsatisfactory.

The development application seeks approval under the ISEPP for a waste management facility, bulk earthworks, importation of fill and ancillary works. Although it is acknowledged that the receipt of fill may be defined as waste management facility, it is clear from the package of information provided, that the intention is not to operate an ongoing waste management facility at the site but is to receive a set quantity of fill for bulk earthworks activities. This is confirmed by the applicant in the accompanying EIS (Section 5.3.9) which states that:

"The proposed development represents enabling works that will facilitate future development..."

It is considered that the proposed use of the site as waste management facility is to address only the issue of permissibility, which is related to the carrying out of bulk earthworks associated with the preparation of the site for future warehousing and roads. These works are ahead of expected future land rezoning and are not currently permissible within the RU2 Rural Residential zone under Penrith Local Environmental Plan 2010.

As outlined earlier in this report, the proposal to receive and utilise fill to create warehousing and road platforms are identified as being directly associated with Stage 1 of Mirvac's Elizabeth Enterprise Precinct and are thus not defined as a *waste management facility* under Schedule 3 of the Regulations.

No plans or details have been provided in support of the ongoing use of the site as a waste management facility including, but not limited to, the location of site offices, amenities, on site sewer management, location of weighing station, truck turning areas and parking, signage or operational plans of management for the waste management facility. No plans or details have been provided for the regeneration of the site at the cessation of the waste management facility.

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

An assessment has been undertaken of the application against relevant criteria with State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP).

The EIS argues that approval to the development may also be granted via the Mining SEPP. However, this premise is also based on the wrong development descriptor i.e. Waste Management Facility. Refer to the planning commentary provided under the preceding ISEPP heading of this report.

State Environmental Planning Policy (Western Sydney Employment Area) 2009

An assessment has been undertaken of the application against the relevant criteria within State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP).

The site is located within the boundaries of the Land Application Map of WSEA SEPP.

Clause 18 (1) of the SEPP outlines that the consent authority must not grant consent to development on any land to which the SEPP applies, unless a DCP has been prepared for the land. Clause 18(2) and subsequent Schedule 4 outlines specific requirements that are to apply to any such DCP.

A review of Schedule 4 has determined that, with the exception of the Sydney Science Park, Erskine Business Park and Mamre West Precinct, the Penrith DCP 2014 does not meet these requirements.

In order for Council to consider granting consent, a DCP is required that addresses all of the requirements of clause 18 and Schedule 4 of WSEA SEPP.

State Environmental Planning Policy No 55—Remediation of Land

An assessment has been undertaken of the application against relevant criteria with State Environmental Planning Policy No 55—Remediation of Land.

It can be seen in aerial photographs that the property has been historically used for agricultural and waste sorting activities. These types of activities are considered as potentially contaminating activities in the 'Managing Land Contamination Planning Guidelines' under SEPP 55, and the Guidelines state that where these activities are known to have occurred, further investigations will be required to be carried out.

Council has requested that a Stage 2 Detailed Site Investigation prepared by a suitably qualified environmental consultant is required to be submitted with the application, with consideration given to the National Environment Protection (Assessment of Site Contamination) Measure 1999 and the relevant EPA guidelines. Should the report recommend further investigations, these should also be undertaken prior to the application being made. Should remediation be required this will require development consent. A Preliminary Site Investigation (PSI) (55990-121773 Rev A) - JBS&G dated 26/4/2019 has been prepared for the proposed development. Both Council and the Department of Planning and Environment have required a Detailed Site Investigation to address contamination issues at the site.

In the Conclusion and Recommendations section of the submitted PSI it states that it is recommended that Detailed Site Investigation be undertaken to assess the suitability of the land for the intended land uses and inform any remediation and/or management that may be required. It is also recommended that Hazardous Building Materials Survey be undertaken prior to any demolition and redevelopment works. Both a Detailed Site Investigation and a Hazardous Building Materials Survey have not been provided and are required.

Based on the above comments and review of the proposal, the proposed application is unsatisfactory.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the application is unsatisfactory.

This Policy aims *“to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context”*. The Policy requires Council to assess development applications with regard to general and specific considerations, policies and strategies.

The proposal is found to be contrary to these general and specific aims, planning considerations, planning policies and recommended strategies of the plan. The site is located within a scenic corridor of regional significance (South Creek Precinct - LUIIP) and it is considered that the proposed development will significantly impact on the environment of the Hawkesbury-Nepean River either in a local or regional context.

The strategic direction for the South Creek precinct is described in the LUIIP as follows:

"South Creek, encompassing the full extent of South Creek and its tributaries through the Aerotropolis to act as the central structural element to a connected open space network that connects pedestrian and cycle paths with community facilities, restaurants and cafes, as well as water management."

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Does not comply - See discussion
Clause 2.3 Permissibility	Does not comply - See discussion
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.7 Demolition requires development consent	Complies - See discussion
Clause 5.10 Heritage conservation	Does not comply - See discussion
Clause 7.1 Earthworks	Does not comply - See discussion
Clause 7.2 Flood planning	Does not comply - See discussion
Clause 7.5 Protection of scenic character and landscape values	Does not comply - See discussion
Clause 7.6 Salinity	Does not comply - See discussion
Clause 7.7 Servicing	Does not comply - See discussion
Clause 7.9 Development of land in the flight paths of the site reserved for the proposed	Does not comply - See discussion

Clause 1.2 Aims of the plan

The relevant aims of this Plan are as follows:

- (a) to provide the mechanism and planning framework for the management, orderly and economic development, and conservation of land in Penrith,
- (b) to promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement,
- (c) to accommodate and support Penrith's future population growth by providing a diversity of housing types, in areas well located with regard to services, facilities and transport, that meet the current and emerging needs of Penrith's communities and safeguard residential amenity,
- (d) to foster viable employment, transport, education, agricultural production and future investment opportunities and recreational activities that are suitable for the needs and skills of residents, the workforce and visitors, allowing Penrith to fulfil its role as a regional city in the Sydney Metropolitan Region,
- (e) to reinforce Penrith's urban growth limits by allowing rural living opportunities where they will promote the intrinsic rural values and functions of Penrith's rural lands and the social well-being of its rural communities,
- (f) to protect and enhance the environmental values and heritage of Penrith, including places of historical, aesthetic, architectural, natural, cultural, visual and Aboriginal significance,
- (g) to minimise the risk to the community in areas subject to environmental hazards, particularly flooding and bushfire, by managing development in sensitive areas,
- (h) to ensure that development incorporates the principles of sustainable development through the delivery of balanced social, economic and environmental outcomes, and that development is designed in a way that assists in reducing and adapting to the likely impacts of climate change.

These aims are consistent with those of the proposed new State Environmental Planning Policy – Western Sydney Aerotropolis (Aerotropolis SEPP) which will:

- Endorse the Structure Plan outlined in a Final (second stage) Land Use and Infrastructure Implementation Plan, to guide land use and investment decisions
- Support the implementation of the South Creek Corridor Project and the vision of the Aerotropolis parkland setting
- Recognise existing agricultural and agribusiness land use zones that will be retained until precincts are rezoned
- Implement new flexible land use zones unique to the Aerotropolis to fast-track precinct planning and attract business investment and jobs growth
- Introduce incentives to encourage future desired land uses
- Identify necessary infrastructure and associated corridor protection
- Identify appropriate sequencing of land release precincts and establish strict criteria to guide alternative release scenarios
- Introduce an assessment framework to consider aircraft noise and operation for development around the Airport
- Integrate with the broader infrastructure contributions and biocertification regimes

The SEARS lists "strategic context" first under its key issues heading for the applicant to address in the EIS. It is the view of Council that the out-of-sequence enabling works DA to receive and utilise fill (including the proposed site clearing, dewatering and bulk earthworks) to create warehousing and road platforms directly associated with Stage 1 of Mirvac's Elizabeth Enterprise Precinct has not adequately demonstrated compliance with the aims of either the Penrith LEP, the Stage 1 LUIIP or the proposed new Aerotropolis SEPP.

Clause 2.3 Permissibility

The application is reliant on the proposal being defined as a *waste or resource management facility* under State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) for permissibility within the Site's RU2 Rural Landscape zone under Penrith Local Environmental Plan 2010 (PLEP), as bulk earthworks ancillary to warehouse and/or distribution centres is prohibited development within the RU2 zone.

Part of the subject site is also zoned E2 Environmental Conservation. Works are proposed on land subject to this E2 zoning. Waste or resource management facilities are prohibited development within the E2 zone under PLEP.

Further, the E2 Environmental Conservation zone is not a *prescribed zone* under ISEPP and therefore these works are not permissible under the ISEPP. It is unclear from the information provided if works will be clear of any revised future E2 zoning.

Clause 2.3 Zone objectives

The objectives of Zone RU2 - Rural Landscape are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*
- *To preserve and improve natural resources through appropriate land management practices.*
- *To ensure development is compatible with the environmental capabilities of the land and does not unreasonably increase the demand for public services or public facilities.*

The objectives of Zone E2 - Environmental Conservation are:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*
- *To protect, manage, restore and enhance the ecology, hydrology and scenic values of riparian corridors and waterways, wetlands, groundwater resources, biodiversity corridors, areas of remnant indigenous vegetation and dependent ecosystems.*
- *To allow for low impact passive recreational and ancillary land uses that are consistent with the retention of the natural ecological significance.*

The proposal for a waste management facility of the scale proposed is not supported and not considered to be in line with the above objectives. The site is located adjacent to an existing waste management facility, an approved crushing and grinding works operation and shares its eastern boundary with South Creek and an E2 Environmental Conservation zone. The proposal is inconsistent with both the RU2 and E2 zone objectives and cannot be supported.

Clause 2.7 Demolition requires development consent

The proposed demolition and removal of existing rural structures may be carried out only with development consent.

It is noted that if the demolition of a building or work is identified in an applicable environmental planning instrument, such as this Plan or State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, as exempt development, the Act enables it to be carried out without development consent.

Clause 5.10 Heritage conservation

Council has forwarded a referral to the NSW Office of Environment and Heritage (OEH). The application will need to be reviewed further after receiving the OEH response.

Due to the high historic and indigenous values along South Creek lands however, the current application is considered inappropriate from a heritage perspective. It is anticipated that the pending Stage 2 LUIIP will provide further guidance in terms of landscape-led forms of urban development that are accessible, connected to the natural environment, as well as being sustainable.

The Stage 1 LUIIP states that:

"As the Western Sydney Aerotropolis LUIIP is implemented, engagement with Aboriginal communities will be founded on self-determination and mutual respect, and aims to foster opportunities for economic participation, culturally appropriate social infrastructure and contemporary cultural expression."

This important principle of engagement is considered to be especially relevant on key sites within and adjacent to the South Creek Precinct as development proceeds in accordance with the Stage 2 LUIIP. The EIS presents no evidence of any such engagement.

Clause 7.1 Earthworks

The proposal is contrary to Objective (1)(a) which is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The filling works are excessive with no justification provided and will result in a detrimental impacts on the matters listed above. Further, the proposed fill and cut batters are 1 vertical and 2.5 horizontal and do not comply with Council's specifications.

Clause 7.1(3) states that *before granting development consent for earthworks, the consent authority must consider the following matters:*

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
- (b) the effect of the proposed development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to and potential for adverse impacts on any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*
- (i) the proximity to and potential for adverse impacts on any heritage item, archaeological site, or heritage conservation area.*

Having regard to the above matters and as has been considered elsewhere in this report, the proposal is inconsistent with these matters.

Clause 7.2 Flood planning

The applicant has submitted two flood reports (Flood Impact Assessment and Flood Risk Assessment) as part of this Development Application. The flood extent of South Creek shown in one of the flood reports does not correspond with Council's adopted flood model. The flood report submitted show the flooding to be less than what Council's information show and the proposed works are designed in accordance with the submitted flood reports. As such, and until Council's flood engineers review the submitted reports and provide comments, Council will not support the filling of land located within the 1% AEP (1 in 100 year) flood area.

Clause 7.5 Protection of scenic character and landscape values

Under this clause, development consent must not be granted for any development on land to which this clause applies unless the consent authority is satisfied that measures will be taken, including in relation to the location and design of the development, to minimise the visual impact of the development from major roads and other public places.

The Planning Secretary's Environmental Assessment Requirements nominate visual impact as a key issue - requiring an impact assessment at private receptors and public vantage points with consideration given to Elizabeth Drive and its role as a key boulevard traversing the Aerotropolis and as a potential road link into Western Sydney Airport.

The applicant's Landscape Character and Visual Impact Assessment concludes that "The visual impact of the bulk earthworks if unmitigated by future plantings will be significant." Visual impact ratings of moderate to moderate/high and high at various viewpoints along Elizabeth Drive have been identified.

No mitigation works are proposed, and given that Elizabeth Drive will be a key gateway to the new Aerotropolis it is not considered appropriate to grant consent in this instance.

Clause 7.6 Salinity

No plans or details have been provided in support of the ongoing use of the site as a waste management facility including, but not limited to, the location of site offices, amenities, on site sewer management, location of weighing station, truck turning areas, site rehabilitation plan and parking, signage or operational plans of management for the waste management facility. As such no meaningful assessment against Clause 7.6 is possible.

Clause 7.7 Servicing

Clause 7.7 of PLEP states that *'Before granting development consent for development on any land to which this Plan applies, the consent authority must be satisfied that:*

- (a) the development will be connected to a reticulated water supply, if required by the consent authority, and*
- (b) the development will have adequate facilities for the removal and disposal of sewage, and*
- (c) if the development is for seniors housing, the development can be connected to a reticulated sewerage system, and*
- (d) the need for public amenities or public services has been or will be met.*

No plans or details have been provided in support of the use of the site as a waste or resource management facility including, but not limited to, the location of site offices, site amenities and On Site Sewer Management or operational plans of management.

The objective of the clause is to ensure that development of land reflects the availability of services. Inadequate information has been provided to satisfy Council that adequate connection can be made to service the development. The proposal is unsatisfactory having regard to the objectives and specific matters required under 7.7(1) and (2).

Clause 7.9 Development of land in the flight paths of the site reserved for the proposed

The objective of this clause is to ensure that development in the vicinity of the proposed Badgery's Creek airport site:

- (a) has regard to the use or potential future use of the site as an airport, and*
- (b) does not hinder or have any other adverse impact on the development or operation of an airport on that site.*

As mentioned earlier in this report, a submission has been received from the Federal Department of Infrastructure, Transport, Cities and Regional Development advising as follows:

*The Stage 2 LUIIP and Precinct Planning work will provide the detailed planning controls and guidance to ensure the protection of the operation of the Western Sydney International (Nancy-Bird Walton) Airport (WSIA); safeguard the community from aircraft noise related impacts; as well as identifying the staging and development of the Aerotropolis. **In our view, the application for development would not be consistent with the LUIIP's intent particularly being in advance of the Stage 2 LUIIP and Precinct Planning work.*** [Emphasis by Council].

Accordingly Council cannot be satisfied that either objectives (a) or (b) contained in this clause can be achieved.

Section 79C(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
DCP Principles	Does not comply - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Does not comply - see Appendix - Development Control Plan Compliance
C3 Water Management	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Does not comply - see Appendix - Development Control Plan Compliance
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	Complies - see Appendix - Development Control Plan Compliance
C8 Public Domain	Does not comply - see Appendix - Development Control Plan Compliance
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Does not comply - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Does not comply - see Appendix - Development Control Plan Compliance
D5.1. Application of Certification System	
D5.2. Child Care Centres	
D5.3. Health Consulting Rooms	
D5.4. Educational Establishments	
D5.5 Parent Friendly Amenities	
D5.6. Places of Public Worship	
D5.7. Vehicle Repair Stations	
D5.8. Cemeteries, Crematoria and Funeral Homes	
D5.9. Extractive Industries	Does not comply - see Appendix - Development Control Plan Compliance
D5.10 Telecommunication Facilities	
D5.11 Boarding Houses	

Section 79C(1)(b)The likely impacts of the development

Insufficient information

No plans or details have been provided in support of the use of the site as a waste management facility including but not limited to, the location of site offices, amenities, on site sewer management, location of weighing station, truck and staff parking and turning areas, site rehabilitation plan, landscaping, signage or operational plans of management for the waste management facility.

Insufficient information is provided as to the suitability of the site setbacks to roads and to south creek, the location and scale of future warehousing, the land levels, and road and intersection locations, having regard to future LUIIP Precinct controls and SEPP Aerotropolis controls or development standards.

Insufficient information is provided as to the suitability of the proposal, having regard to future planned RMS widening and intersections related to the Western Sydney Airport.

Negative and detrimental impacts on South Creek, Floodwaters, Water Catchments

The Western City Deal - Implementation plan identifies a **Commitment** under L3(p21) - **Restore and protect South Creek and states that:**

"The South Creek corridor from Narellan to Hawkesbury has been identified as an important environmental spine and organising landscape element for the Western Parkland City. The NSW Government will develop a strategy for South Creek that will investigate its restoration and protection as part of the broader strategy of integrating land use and water management within the 63,000 hectare catchment".

The Plan also states that funding will be provided toward this commitment (being the responsibility of the NSW Government in cooperation with the Australian Government) and toward the completion of the South Creek Strategy and supporting the Strategic Business Case. The South Creek Strategy is yet to be completed and owing to its poor environmental impacts, it is highly likely that the proposal would not align with this strategic plan.

The proposal to fill the site up to 10m above natural ground level is not supported and is in conflict with the objectives of the RU2 Rural Landscape zone and the E2 Environmental Conservation zone. The proposed is also in conflict with the following strategic plans:

- NSW Government Western Sydney Aerotropolis Land Use and Infrastructure Implementation Plan - Stage 1: Initial Precincts,
- Smart Cities Plan Implementation, Western Sydney City Deal, December 2018,
- Penrith Local Environmental Plan 2010,
- Penrith Development Control Plan 2014, and
- Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River
- Draft Environmental SEPP

as they relate to the protection of the environment, the enhancement of South Creek and related water catchments.

Negative and Detrimental Cumulative Impacts - Waterways, Air Quality, Visual and Flooding Impacts

The scale of the proposed bulk earthworks and waste or resource management facility is not supported. The site is located adjacent to an existing waste management facility, an approved crushing and grinding works operation, and shares its eastern boundary with South Creek and an E2 Environmental Conservation zone. An additional waste management facility of the scale and nature proposed would undermine the objectives of both the E2 and RU2 zones prior to the completion of the Stage 2 LUIIP as set out below:

- (a) Environmental impacts of an ongoing waste management facility of the scale proposed in the context of the site (proximity to South Creek, noise, dust, traffic, visual and cumulative impacts).
- (b) Environmental impacts related to alterations to natural ground levels including on flooding, overland flow, biodiversity and the natural environment and on South Creek.
- (c) Impacts related to proposed land levels and the treatment of, and interface with South Creek.

It is noted that the submitted Civil Engineering Drawings by AT&L indicate a number of industrial lots, internal road network and new intersection with Elizabeth Drive, which appears to be contrary to the rest of the application, which is seeking Stage 1 earthworks only. It is not clear as to whether this is conceptual for future only, or whether this forms part of the current DA requiring a detailed assessment.

It is considered, as is raised in the submission from Liverpool City Council, that mounding up to 10m of soil along the interface with South Creek and Elizabeth Drive will result in negative flooding impacts on downstream properties diverting floodwaters over neighbouring properties. It is further considered that floodwaters being diverted or being dammed by the fill proposed will impact the safety and efficiency of Elizabeth Drive and it is not determined if existing stormwater infrastructure draining the roadway can accommodate any resultant additional loading.

Cumulative impacts of dust emanating from the site, truck movements and construction activities sites adjacent, including the Airport site, are not suitably addressed.

Negative and Detrimental Cumulative Impacts - Traffic and Road Safety Impacts

The submitted Construction Traffic Management Plan (CTMP) does not adequately address the cumulative impacts of future and existing large scale and Heavy Rigid Vehicle generating/dependent developments in close proximity to the subject site including the construction of the Western Sydney International Airport, and the resultant impacts on road user safety.

Creating a HRV truck access point opposite the intersection of Martin Road and Elizabeth Drive, creating a four way intersection is not supported without proper construction of slip lane or seagull style intersection solutions being provided. Further, the proposed access point to the site is within 100m of an existing intersection provided HRV access to SUEZ/SITA (an existing waste management facility) and an approved crushing and grinding works operation.

No advice has been provided with regard to how the proposal may impact of the future main entry point to the Western Sydney Airport site.

The RMS does not support the proposal. The RMS notes that the CTMP does not consider cumulative impacts and requests further information related to the intersections of Elizabeth Drive and the SUEZ access road, Martin Road and with Lawson road.

The RMS requests that additional information is required related to *'the cumulative traffic impact of the development on surrounding roads and intersections in the context of any other known planning proposals and developments in the precinct and surrounds, and the need for upgrades or improvement works including consideration to timing and funding (if required). The traffic study is to consider the impact on Elizabeth Drive for the duration of the works.'*

In addition to the above, the RMS has advised that *'the subject Property is within a broad investigation area for the long term widening of Elizabeth Drive...there is potential that the frontage of the site may be impacted'*.

Section 79C(1)(c)The suitability of the site for the development

As detailed earlier in this report the Federal Department of Infrastructure, Transport, Cities and Regional Development notes that the subject site is located within the Badgerys Creek and South Creek Precincts covered by the Stage 1 Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan (LUIIP). The Department also notes that the Badgerys Creek Precinct is not presently included as an initial precinct as follows.

"The application outlines that the intention of the waste management facility and bulk earthworks is to receive fill to prepare the site for future employment uses as part of a proposed Elizabeth Enterprise Precinct.

The Stage 2 LUIIP and Precinct Planning work will provide the detailed planning controls and guidance to ensure the protection of the operation of the Western Sydney International (Nancy-Bird Walton) Airport (WSIA); safeguard the community from aircraft noise related impacts; as well as identifying the staging and development of the Aerotropolis. In our view, the application for development would not be consistent with the LUIIP's intent particularly being in advance of the Stage 2 LUIIP and Precinct Planning work."

Council concurs with the Federal Department of Infrastructure, Transport, Cities and Regional Development. The site is zoned RU2 Rural landscape and E2 Environmental conservation under PLEP and in this respect, Council does not support the proposed bulk earthworks and site preparation associated with the future roadways and use of the site for warehousing, which is prohibited in the zone. The proposal to modify the levels of the existing land is not supported in the context of the above mentioned strategic vision for the area and having regard to the related negative impacts on South Creek and its catchment areas. The proposal is likely to set an undesirable precedent for future development in the locality especially in the short to medium term.

Council contends that support for the proposal could result in an influx of premature and out-of-sequence Aerotropolis development applications lodged in the guise of "waste or resource recovery facilities" in all the adjacent rural zones in an effort to circumvent the process outlined in the Stage 1 LUIIP for land owners who want to develop land early.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with the Act and Regulations, consideration has been given to any necessary referrals and any submissions made.

In accordance with Appendix F4 of the Penrith Development Control Plan 2014, the proposed development was notified to nearby and adjoining residents.

Council notified 137 residences in the area and the exhibition period was between 24 May and 21 June 2019 (extended until 1 July 2019). The application was advertised between 24 May and 21 June 2019.

Council has received 4 submissions in response. The submission received from Liverpool City Council is addressed separately in Table 2 below.

Submissions

Table 1 - Community Submissions

Issue Raised	Comments
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"Mirvac is jumping the gun to start bulk earthworks, clearing existing vegetation, clearing existing structures and dam dewatering."	Agreed – the Stage I LUIIP sets out the process to be followed for "out-of-sequence" proposals. This report recommends accordingly.
"This DA will increase truck movements, noise, vibration and dust."	Agreed – it is anticipated that the Stage II LUIIP will provide for more co-ordinated precinct implementation strategies ensuring environmental impacts are minimised.
"Any DA or out of sequence zoning in the Badgerys Creek Precinct will have an impact on the residents who live there."	Agreed – Section 3.3 of the Stage I LUIIP emphasises the need for collaboration with all three levels of government, along with landowners, industry and the community, working together to kick-start the creation of the Aerotropolis.
"All Agencies, Councils, Governments, Planning Departments etc. should work together sooner rather than later to facilitate the proper zoning in the Badgerys Creek Precinct."	Agreed – Section 5.1 of the Stage I LUIIP discusses a proposed new Aerotropolis State Environmental Planning Policy (SEPP) which will encourage innovation and manage growth in a sustainable way, sequenced to reflect demand and infrastructure delivery

Table 2

Submission from Liverpool City Council

Matter raised	Officer Comment
Impacts in the existing RU2 and E2 zones	
- concerns that the development will fail to meet the objectives of the zone, particularly "<i>to maintain the rural landscape character of the land</i>" ... earthworks will result in mounds of soil of up to 10 metres above natural ground level. - The applicant asserts that the soil will remain in place until works commence for any future land uses....given[the].. uncertainty regarding the timing of any future rezoning of land, it is likely that the presence of the earth mounds will ultimately contradict the objectives of the RU2 zone for an extended period of time. - It appears that there may be a slight encroachment into the E2 zone in the southern portion of the site.	Agreed. The application is recommended for refusal for reasons which include non-compliance with objectives of the zone. It is also agreed that works appear to encroach into the E2 zone. As the application is recommended for refusal an overlay may indicating zone boundaries has not been requested. Further, it is anticipated that the E2 zoning and/or the South Creek Precinct boundaries may be altered upon the formulation of the Stage 2 LUIIP and SEPP Aerotropolis.
Western Sydney Aerotropolis Land-Use and Infrastructure Implementation Plan (LUIIP)	

- Precinct planning has not yet been completed for this precinct. The development application should EIS states that the development will embody <i>"site preparation works that will benefit future development on the site"</i>. As the site is not located in an Initial Precinct under the LUIIP, a timeframe for the Badgerys Creek precinct planning and rezoning has not yet been established. - [Liverpool City] Council considers the Western Sydney Planning Partnership maybe interested in reviewing the development application. - ...the proposed works seem to be pre-emptive of a future land use zone change, is inconsistent with the existing zoning; and may contradict any future zoning of the land (especially considering that the earth mounds will be placed in accordance with an arbitrary indicative road layout).	Agreed. As the application is recommended for refusal a referral has not been issued to the Western Sydney Planning Partnership for their comment. This position may be reviewed should the recommendation not be supported.
Justification of land-use	
- It is claimed that the earthworks should be enacted now, as waiting for the site to be rezoned will result in delayed site preparation works and increase the likelihood of obtaining fill from less sustainable sources such as extractive industries. However, the rationale for the earthworks appear to be unsubstantiated as it has not been specified as to which site(s) the soil would come from. - Notwithstanding the above, it is presumed that there will be multiple opportunities to obtain landfill from various construction sites in future, as the NSW government has indicated that there will be more land release areas and infrastructure projects in the pipeline. - As discussed earlier, premature development would not be in the public interest as a timeframe for the Badgerys Creek precinct planning and rezoning has not yet been established. Accordingly, there is no certainty that this is the optimal time for obtaining landfill for site preparation works	Agreed. It is further noted that the NSW Government in its assessment and approval of large infrastructure projects resulting in creation of large and on-going volumes of fill, should consider the impacts of its disposal and nominate sites and fill disposal requirements in advance.
Flooding	

- that the earthworks will result in adverse flood impacts within the south-eastern corner of the site as flows will be deflected back towards the creek. - Given that the south eastern corner of the site is upstream, this indicates that there will be increased flood velocities within the vicinity of South Creek where it traverses through the Liverpool LGA boundary. - The EIS states that "mitigation in respect of flooding impacts within the Stage 1B area will... be addressed in future applications that incorporate built form and associated uses". The applicant asserts that flood impacts will be mitigated at a later stage, however given that there is no indicative timing for the rezoning of Badgerys Creek precinct or any future development, it is unknown as to when the flood impacts can be mitigated.	Agreed. The development application is not supported having regard to the impacts of flooding. Council's engineering unit does not support the development application in its preliminary review.
Air Quality	
- Council has been made aware of adverse air quality impacts in the vicinity as a result of the construction of the airport at Badgerys Creek. It is understood that a Construction Air Quality Management Plan (CAQMP) has been submitted for the proposed earthworks and that the recommendations are to be implemented as part of a future Construction Environmental Management Plan (CEMP) that is to be prepared prior to commencement of any works. -It is recommended that the 'desirable' measures are included as part of any future CEMP (subject to consent) to ensure that extensive measures are undertaken to minimise the propensity of dust in the vicinity	Agreed. Conditions of consent are not recommended in this regard, at the application is recommended for refusal.
Visual Impacts	

- The EIS states that the site "will form the part of the visual gateway that welcomes visitors to Western Sydney". Given the subject site's prominence, concerns are raised as the submitted Visual Impact Statement indicates that the earthworks could result in moderate to high visual impacts upon the landscape when viewed from Elizabeth Drive. - there will be adverse impacts when proposed Lots 1, 2 and 3 are viewed from the south (Liverpool LGA) as the earth mounds will become the dominant feature of the scene (once trees are removed), and significantly affect the visual character of the existing rural landscape. - it is unknown if the proposed landscaping would be sufficient as a landscape plan has not been submitted. - it is likely that the presence of the earth mounds will undermine the key objectives of the RU2 zone. - Although it is noted that the airport is currently under construction to the west of the site, the airport is zoned SP1 (Commonwealth Activities) and is not susceptible to the same standards as required in an RU2 zone. Given that the subject site has yet to be rezoned from RU2, it is pertinent that the rural landscape character is maintained until the Badgerys Creek precinct is released.	Agreed. The visual impacts are not adequately mitigated and are considered to be unacceptable. It is agreed that a landscape plan has not been submitted and is required. A landscape plan has not been requested as the application is recommended for refusal. It is agreed that the proposal is contrary to the objectives of the RU2 zone.
Traffic	
- The submitted Construction Traffic Management Plan has been prepared without taking into consideration the cumulative traffic impacts of planned future construction works in the vicinity. - Transport for NSW/Transport Management Centre should be consulted regarding the cumulative impacts of construction vehicles along Elizabeth Drive, and for any regulated haulage times. Transport for NSW – Roads and Maritime Services (RMS) should also be consulted for road pavement conditions before and after construction. Additionally, Liverpool City Council and Western Sydney Airport Co should be included in the stakeholder communication list for traffic impacts as shown on page 100 of the EIS.	Agreed. The CTMP is lacking in information with regard to cumulative impacts. It is noted that the RMS does not support the application based on this reason also. No additional information has been requested from the applicant to address this matter as the application is recommended for refusal based on this and other matters. As the application is recommended for refusal a referral has not been issued to the Transport for NSW/Transport Management Centre for their comment. This position may be reviewed should the recommendation not be supported.
a holistic approach should be undertaken for any development on the subject site and surrounding areas in consultation with the Department of Planning, Industry and Environment; Western Sydney Planning Partnership, Transport for NSW; and Liverpool City Council.	Noted.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Development Engineer	Not supported
Heritage	Not supported
Environmental - Environmental management	Not supported
Environmental - Waterways	Not supported
Environmental - Biodiversity	Not supported
Waste Services	Not supported
Traffic Engineer	Not supported

Section 79C(1)(e)The public interest

The application is not satisfactory for the purpose of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, as the proposal is not in the public interest.

The subject site is identified as being located within the unzoned broader Western Sydney employment area under State Environmental Planning Policy (Western Sydney Employment Area) 2009 [WSEA SEPP] and is identified within the Land Use Infrastructure and Implementation Plan (LUIIP) as being subject to future strategic land use categorization and detailed precinct planning.

Approval of a waste management facility and the creation of warehouse and road building pads of the scale nominated, on lands identified as having high strategic land use importance supportive of the Western Sydney International Airport, is in conflict with the purpose, aims and strategic objectives of the LUIIP and other strategic planning documents including the WSEA SEPP, the Western City District Plan and the Western Sydney City Deal, PLEP and PDCP, and is ahead of more detailed precinct, land use and infrastructure plans which are anticipated, although have not yet been published, including State Environmental Planning Policy (Western Sydney Aerotropolis) and Stage 2 LUIIP.

Further, the site is located within an area where a 'plan and manage' approach has been identified under the Western City District Plan. Approval of a waste management facility and bulk earthworks is not supportive of this direction, and conflicts with the Objects of the Act of the Environmental Planning Assessment Act 1979 which include to promote the orderly and economic use and development of land.

It is acknowledged that Liverpool City Council raise significant concerns with negative impacts of the proposal and its inability to align with strategic policies in place. The RMS and (Federal) Department of Infrastructure, Transport, Cities and Regional Development object to the proposal.

Section 94 - Developer Contributions Plans

There is no Section 7.11 Contributions Plan applicable to the subject site.

Funding, coordination and delivery of infrastructure is dealt with by the Western Sydney Aerotropolis Land Use and Infrastructure Implementation Plan Stage 1: Initial Precincts (LUIIP). Section 6.3 "Development Contributions for the Aerotropolis" of the LUUIP states that:

"The Department of Planning and Environment will also work with Penrith and Liverpool councils to prepare section 7.11 (formerly section 94) plans, under the EP&A Act for the Aerotropolis to secure funding for local infrastructure as part of the finalisation of each precinct plan."

Council raises particular concern that support for this proposal would undermine the planning process for the creation and capture of applicable 7.11 contributions in the Aerotropolis Precincts.

Conclusion

It is considered that the proposed use of the site as waste or resource management facility is to address the issue of permissibility, which is related to the carrying out of bulk earthworks associated with the preparation of the site for future warehousing and roads. These works are ahead of expected future land rezoning and are not currently permissible within the RU2 Rural Residential zone under Penrith Local Environmental Plan 2010. Support for the proposal will result in an influx of premature and out-of-sequence development applications on lands within the Aerotropolis precincts.

As detailed within this report, the proposal is not supportable as it is in conflict with existing planning controls and strategic plans and policies in place, in particular those that relate to the Aerotropolis including the Stage 1 LUUIP, Western City Deal and the Western City District Plan.

The environmental impact of the proposal have been considered and are not acceptable. The proposal will result in unacceptable flooding, traffic, road safety, visual, dust and waterways impacts, and insufficient information has been provided related to the management and operational requirements of a waste or resource management facility.

Sewer management at the site is not addressed to the satisfaction of Council and as required by PLEP prior to determination.

Federal and State infrastructure departments including the RMS and (Federal) Department of Infrastructure, Transport, Cities and Regional Development, do not support the development proposal. Further, Aerotropolis Activation and the Office of Environment and Heritage have raised concerns related to the planning pathway sought by the applicant.

It is for the above reasoning, and for the matters discussed within this report, that application cannot be supported and is recommended for refusal.

Recommendation

1. That DA19/0319 for Waste Management Facility, Bulk Earthworks including Vegetation Clearing, Demolition of Existing Structures, Dam De-Watering and Decommissioning, Importation, Placement and Compaction of Soil, Heritage Salvage Works and Stormwater Works at 1669-1723 Elizabeth Drive BADGERYS CREEK NSW 2555 be refused for the following reasons;
2. That those making submissions are notified of the determination.

CONDITIONS

Refusal

- 1 The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the provisions of the *Penrith Local Environmental Plan 2010*, *State Environmental Planning Policy (Western Sydney Employment Area) 2009*, *State Environmental Planning Policy No 55—Remediation of Land* as follows:

Penrith Local Environmental Plan 2010

(i) Clause 1.2 Aims of Plan

- The proposal is inconsistent with the aims of the plan to promote development that is consistent with Council's vision for Penrith and to provide for the management, orderly and economic development, and conservation of land in Penrith.

(ii) Clause 2.3 Zone Objectives and Land Use Table -

- The proposal is inconsistent with the objectives within both Zones RU2 Rural Landscape and E2 Environmental Conservation.

(iii) Clause 5.10 Heritage Conservation

- The proposal is inconsistent with the objectives of this Clause due to the high historic and indigenous values along South Creek which do not conserve Aboriginal objects and Aboriginal places of heritage significance.

(iv) Clause 7.1 Earthworks

- The proposed fill and cut batters do not comply with Council's specifications.

(v) Clause 7.2 Flood planning

- The submitted flood report is inconsistent given that it illustrates that the overland flooding flows is less than Council's adopted flood model, and
- Filling of land located within the 1% AEP (1 in 100 year) flood area is not permitted.

(vi) Clause 7.5 Protection of Scenic Character and Landscape Values

- The bulky earthworks situated in various viewpoints along Elizabeth Drive results in adverse impacts on the surrounding landscape.

(vii) Clause 7.6 Salinity

- The proposal does not provide sufficient details in regard to demonstrating that the ongoing use of the development will not result in any adverse impacts on salinity.

(viii) Clause 7.7 Servicing

- The proposal does not provide sufficient details in regard to demonstrating that adequate servicing is provided for the development.

(ix) Clause 7.9 Development of Land in the Flight Paths of the Site Reserved for the Proposed Second Sydney Airport

- The proposal has not demonstrated that the development will not be adversely impacted by air noise related impacts.

State Environmental Planning Policy (Western Sydney Employment Area) 2009

- A review of Schedule 4 has determined that Penrith DCP 2014 does not meet these requirements.

State Environmental Planning Policy No 55—Remediation of Land

- A Detailed Site Investigation and a Hazardous Building Materials Survey have not been provided and are required to be prepared and submitted to Council for assessment.

State Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997)

- The proposal is not considered to be keeping in with the aims of the policy which are “to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context”.

- 2 The application is not satisfactory for the purpose of Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act as the proposal is inconsistent with the provisions of the *Draft Remediation of Land SEPP* and *Draft Environmental SEPP*.
- 3 The application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act as the proposal is inconsistent with all relevant controls contained within Parts B - DCP Principles, Part C - City Wide Controls & Part D - D5 Extractive Industries of the *Penrith Development Control Plan 2014* as follows:
 - Part B - 'DCP Principles',
 - Section C1 'Site planning and Design Principles',
 - Section C2 'Vegetation Management',
 - Section C3 'Water Management',
 - Section C4 'Land Management',
 - Section C5 'Waste Management',
 - Section C6 'Landscape Design',
 - Section C10 'Transport, Access and Parking',
 - Section C12 Noise and Vibration',
 - Section C13 'Infrastructure and Services', and
 - Section D5.9 'Extractive Industries'.
- 4 The development application is not satisfactory for the purpose of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in terms of the likely impacts of the development including those related to:
 - (i) negative streetscape impacts,
 - (ii) inadequate setbacks, site coverage and landscaping,
 - (iii) noise, air quality and amenity impacts,
 - (iv) negative environmental impacts on South Creek, floodwaters and water catchments,
 - (v) negative impacts on biodiversity and heritage conservation,
 - (vi) traffic and road safety impacts,
 - (vii) excessive fill, and
 - (viii) flooding risks.
- 5 The application is not satisfactory for the purpose of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* as the site is deemed not suitable for the scale of proposed development.
- 6 The application is not satisfactory for the purpose of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, as the proposal is not in the public interest.

- 7 Based on the above deficiencies and submissions received, approval of the proposed development would not be in the public interest pursuant to Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

No plans or details have been provided in support of the ongoing use of the site as a waste management facility including, but not limited to, the location of site offices, amenities, on site sewer management, location of weighing station, truck turning areas, site rehabilitation plan and parking, signage or operational plans of management for the waste management facility. As such no meaningful assessment against PDCP is possible.

Part C - City-wide Controls

No plans or details have been provided in support of the use of the site as a waste or resource management facility including, but not limited to, the location of site offices, amenities, on site sewer management, location of weighing station, truck turning areas, site rehabilitation plan and parking, signage or operational plans of management for the waste management facility.

No information has been provided with regard to the landscaping of the site. No detail is provided with regard to regeneration of the site at the cessation of the use a waste or resource management facility. The presentation of the development to areas of the public domain have not been addressed.

The Office of Environment and Heritage note in correspondence dated 5 February 2019 issued to Office of Industry Assessments (related the request for SEARs) that:

- *'the proposed fill is contained within the Badgerys Creek portion of the site. Detailed planning for Badgerys Creek Precinct is not proposed to be undertaken until after 2020. Filing in anticipation of obtaining consent for their 'Elizabeth Enterprise Precinct' could be premature. During the exhibition of the Stage 1 LUIIP, the proponent lodged a submission which outlined a proposal for their proposed 'Elizabeth Enterprise Precinct' which comprises of a larger landholding on and adjacent to this site however the details are not contained in the SEARs request.'* and
- *Elizabeth Drive will be a key entry boulevard traversing the Aerotropolis and is a potential road link into Western Sydney Airport'. Concern is raised in relation to the Visual impact of a large amount of fill being able to be seen from the road.*

It is agreed that the visual impacts will be prominent from Elizabeth Drive. Elizabeth Drive and in this location in particular, is a Gateway site providing entry into the future International Airport.

The alterations to the land are extensive, poorly considered and will result in negative and detrimental environmental impacts in the locality and are not supported having regard to the non-compliance with the DCP controls related to earthworks, traffic, earthworks, flooding, visual impacts, archaeology and waterways.

D5 Other Land Uses

No plans or details have been provided in support of the ongoing use of the site as a waste management facility including, but not limited to, the location of site offices, amenities, on site sewer management, location of weighing station, truck turning areas, site rehabilitation plan and parking, signage or operational plans of management for the waste management facility. As such no meaningful assessment against PDCP is possible.