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| **COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION**  HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL | |

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| PANEL REFERENCE & DA NUMBER | PPSHCC-121 – [MOD 1] |
| PROPOSAL | Modify the consent to permit classified special waste (tyres) at a waste transfer station |
| ADDRESS | Lot 2401 DP 715257- 3A Pennant Street, Cardiff |
| APPLICANT | Central Waste Plant Pty Ltd |
| OWNER | Mr Michael Constantine |
| MOD LODGEMENT DATE | 15 May 2023 |
| ORIGINAL DA DETERMINATION DATE | 5 August 2021 |
| APPLICATION TYPE | Modification Application under Section 4.55(2) |
| REGIONALLY SIGNIFICANT CRITERIA | Clause 7(1)(c), Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* : waste management facility.  The application seeks to modify a condition which was amended by the Panel during the original consent. |
| CIV | The proposed modification does not include any capital works |
| CLAUSE 4.6 REQUESTS | N/A |
| KEY SEPP/LEP | SEPP (planning Systems) 2021, SEPP (Resilience and Hazards) 2021, SEPP (Transport and Infrastructure) 2021, Lake Macquarie LEP 2014 |
| TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS | None |
| DOCUMENTS SUBMITTED FOR CONSIDERATION | Site plans  Plan of management |
| SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24) | N/A |
| RECOMMENDATION | Approval |
| DRAFT CONDITIONS TO APPLICANT | YES |
| SCHEDULED MEETING DATE | 20 September 2023 |
| PLAN VERSION | 27 June 2023 Version No B |
| PREPARED BY | Geoffrey Keech – Senior Development Planner |
| DATE OF REPORT | 13 September 2023 |

**EXECUTIVE SUMMARY**

The modification application has been lodged pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (‘EP&A Act’) and seeks consent for amendments to a consent granted under DA/430/2021 approved by Hunter and Central Coast Regional Planning Panel (‘the Panel’) on 5 August 2021. This consent approved the Waste or Resource Transfer Station at 3A Pennant Street, Cardiff (‘the site’). The modification application includes the relevant information required by Clause 100 of the *Environmental Planning and Assessment Regulation 2021* (‘2021 EP&A Regulation’).

The application is referred to the Panel as the development is ‘*regionally significant development’*, pursuant to Section 2.19(1) and Clause 7 of Schedule 6 State Environmental Planning Policy (Planning Systems) 2021 as it comprises a waste management facility which meets the requirements of designated development under the EP&A Regulation 2021. The proposed modification satisfies the criteria to be considered by the Panel in the Instruction issued pursuant to Clause 275(2) of the EP&A Regulation 2021 (formerly Cl 123BA of the Regulation 2000).

The proposed modification relates to the types of waste permitted at the site. Specifically, the application seeks to store and consolidate up to 500T/a of tyres (classified as Special Waste), with up to 50T present onsite at any time. The tyres would be consolidated immediately prior to transfer offsite. The application also seeks clarification of permissibility to accept soils classified as General Solid Waste (non-putrescible).

The proposed modification is considered to satisfy the substantially the same development test required by Section 4.55 of the EP&A Act.

The original application was integrated development under the Protection of the Environment Operations Act 1997 and General Terms of Approval were received from the Environmental Protection Authority (EPA). The terms included restrictions on the type of waste handled through the site, dust management, and sediment control. An Environmental Protection Licence is held in relation to the activity. The modification application was referred to the EPA, who were satisfied with the proposal, noting an amended EPL will be required.

The application was placed on public exhibition from 12 May 2023 to 2 June 2023, with no submissions received.

A briefing was held with the Panel on 27 June 2023 where key issues were discussed, including how the tyres will be stored and handled, Environmental Protection Authority comments, fire safety, plant used in the operation, and accurate areas shown for storage.

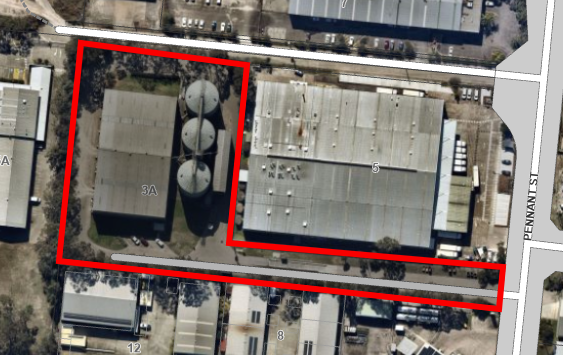
The key issues associated with the proposal identified in the assessment of the application included:

1. *Air quality* – handling of soils is a potential source of dust. Existing mister systems at the site and conditions of the Environmental Protection Licence address air quality arising from soil handling.
2. *Erosion and sediment control* – the application seeks to clarify permissibility to handle soils classified as General Solid Waste (non-putrescible). The handling of soils indicates a risk of sediment migrating offsite. The soils will be handled inside a shed which has both bunding and misters. A soils handling procedure has been provided. The EPA was satisfied with the proposed methods for soil handling, however the site requires an Environmental Protection Licence, the conditions of which can address pollution / sediment arising from soil handling The risk of soil migration is minimised.
3. *Fire safety –* rubber tyreshave a low likelihood of combustion but a high hazard if ignited. Fire + Rescue NSW have guidelines for the bulk storage of rubber tyres, which allows for appropriate access for firefighting services in the event of a fire. The development meets the layout and access requirements, and Council are recommending a sprinkler system (by way of condition of consent) to meet the guideline recommendations.

Following assessment of the matters for consideration under Section 4.15(1) and 4.55 of the EP&A Act, it is considered that the proposed modification is in the public interest and can be supported. In forming this conclusion, the reasons for the granting of the original consent have been considered.

1. **THE SITE AND LOCALITY**
   1. **The Site**

The site is a battle-axe lot within an existing industrial area in Cardiff. The lot is 1.2ha in area and contains existing infrastructure from its historical use as a grain storage facility. The weighbridge and main shed are utilised for the current waste transfer station activity on the site.

**Image 1: the site is a battle-axe lot with existing shed, silos and weighbridge.**

* 1. **The Locality**

The site is located on the south side of the Great Northern Railway, approximately 300m south of the Glendale town centre, and 1.5km west of the Cardiff town centre.

The locality is mostly zoned E4 General Industrial, with a small amount of E3 productivity Support zoned land near the railway line. The nearest residential land is 300m north and 500m south of the site.

A watercourse is located 95m west of the site.

**A map of a neighborhood

Description automatically generated**

**Image 2: the site is located within the E4 zone a short way south of the rail line**

1. **THE PROPOSAL AND BACKGROUND** 
   1. **The Proposed Modification**

* The site is approved to accept general solid waste (non-putrescible) only. The modification seeks to permit receipt of special waste (tyres).
* The limits of the proposal are up to 500 tonnes of tyres per annum with up to a maximum of 50 tonnes onsite at any time.
* The development will cut up the tyres onsite prior to transfer to a processing facility.
* The development also seeks to clarify permission to receive soils classified as general solid waste (non-putrescible)
* No physical works are proposed to the existing site infrastructure.

A blueprint of a factory

Description automatically generated

**Image 3:** the approved site plan showing the existing infrastructure. The shed bay closest to the angle parking is proposed for the storage of tyres.

A green machine with black objects in a room

Description automatically generated with medium confidence

**Image 4:** 3D model showing area of the bay to be used for tyre storage and consolidation.

*Proposed Changes to Conditions*

* Modify condition 2 Approved Documentation.
* Modify condition 3 Restrictions on development.
* Modify condition 29 Screening of waste.

**Table 1: Proposed Changes to Conditions**

|  |  |  |  |
| --- | --- | --- | --- |
| **Condition No** | **Condition requirements** | **Change Proposed** | **Reason for Change** |
| 2 | Approved documentation | Add plan showing tyre storage  Add document describing soils handling. | Modify to update plans to reflect proposed modification |
| 3 | Restrictions on development | Amend restrictions to permit special waste (tyres), with associated volumetric restrictions and storage timeframe. | Current condition prevents the proposed activity from occurring. |
| 8 | Clause 94 Consideration | Add sprinkler system into this condition | Meets fire safety recommendations from NSW Fire + Rescue publication “Guidelines for bulk storage of rubber tyres” |
| 29 | Screening of waste | Amend wording to permit special waste (tyres) | Current condition prevents the proposed activity from occurring. |

*Development Data*

**Table 2: Development Data**

|  |  |
| --- | --- |
| **Control** | **Proposal** |
| Site area | 11897 m2 |
| GFA | 2146m2 (warehouse only – other structures not measured) |

* 1. **Background**

A pre-lodgement meeting was not held prior to the lodgement of the application; however email correspondence discussed the approval pathway and matters to be addressed in the application. A summary of the key issues and how they have been addressed by the proposal is outlined below:

* Location of tyre stockpiles, particularly in relation to any other combustible material stockpiles

The plans demonstrate where the stockpiles will be located and meet the separation requirements outlined in the NSW Fire + Rescue Publication “Guidelines for bulk storage of rubber tyres.”

* Management of tyre waste, including frequency of transfer offsite

The application statement describes management of tyres.

* Fire mitigation measures

The existing bund is appropriately sized to accommodate fire suppressant water up to the required volume. Tyres are stockpiled in accordance with the NSW Fire + Rescue Publication “Guidelines for bulk storage of rubber tyres.” Council recommends inclusion of a condition of consent requiring the installation of a sprinkler system (refer draft conditions of consent).

* Any consequential building or site amendments required to achieve appropriate storage of tyres, fire risk management, bunding for contaminated fire extinguishment water, etc.

The application asserts there are no consequential amendments, however Council recommends installation of a sprinkler system.

The original development consent was issued on **5 August 2021**, with the key issues considered in the assessment of the original development comprising the following:

* Traffic management
* Parking
* Environmental concerns (air quality, noise management, water management)
* SEARs

Of these, only environmental concerns are impacted. A detailed assessment is included later in this report.

The proposed modification application was lodged on **15 May 2023** A chronology of the modification application since lodgement is outlined below in **Table 3** including the Panel’s involvement (briefings) with the application:

**Table 3: Chronology of the Modification Application**

|  |  |
| --- | --- |
| **Date** | **Event** |
| 15 May 2023 | Modification application lodged |
| 12 May 2023 | Exhibition of the application |
| 16 May 2023 | Modification referred to external agencies |
| 2 August 2023 | Request for Information from Council to applicant (Cl 104 of the 2021 Regulation) |
| 27 June 2023 | Panel briefing |
| 23 August 2023 | Amended plans lodged showing clarifications are requested by the Panel dated 23 August 2023 accepted by Council under Cl 113(1) of the 2021 Regulation on 23 August 2023. |
| 28 August 2023 | Modification re-referred to external agencies |
| 11 September 2023 | Advice received from EPA |

* 1. **Site History**

The site was previously used for bulk grain storage and contains infrastructure from the previous use, including silos, weighbridge, storage building, amenities building.

The site was approved for a waste transfer station, which has commenced. No physical works were required for the development. This is the first modification application.

1. **STATUTORY CONSIDERATIONS**

When determining a modification application, the consent authority must take into consideration the matters outlined in 4.55(2) of the EP&A Act in relation to modification of consents provisions, Section 4.15(1) of the EP&A Act in relation to matters for consideration for applications and Part 5 of the 2021 EP&A Regulationin relation to information requirements and notification. These matters are considered below.

* 1. **Section 4.55** **of the EP&A Act**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority (for s4.55 applications) and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act. The matters include the following:

**Section 4.55(2)**

1. *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) (s4.55(2)(a)), and*

The development is substantially the same as originally granted consent. In arriving at this conclusion, the following was considered:

* There are no changes to the land use definition.
* There are no changes to the infrastructure onsite.
* The development as modified will remain within the maximum volumes approved by the original consent.
* Traffic management will remain as described in the original consent.
* The change in fire hazard is minor and appropriately controlled.
* There are no other changes to environmental risk, such as noise or air quality.

1. *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent (s4.55(2)(b)), and*

General Terms of Approval were issued by the EPA, and Council consulted with the EPA with respect to the proposed modification. The EPA noted no objections to the proposed storage and handling of tyres on the site, and requested additional information in respect of the handling of soils. Additional information was provided and the EPA responded they were satisfied with the proposal. The EPA noted an amendment to the Environmental Protection Licence will be required.

1. *it has notified the application in accordance with—*
2. *the regulations, if the regulations so require, or*
3. *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.55(2)(c)), and*

The application was notified in accordance with Division 2 of Part 5 of the 2021 EP&A Regulation. A notice was placed on Council’s website and given to each person who was originally notified of the application. There were no submitters to notify from the original application.

1. *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be (Section 4.55(2)(d)).*

The modification application was notified between 12 May 2023 and 2 June 2023. No submissions were received.

1. *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (Section 4.55(3)).*

The matters required to be considered include:

* Matters for consideration pursuant to Section 4.15(1) of the EP&A Act – these matters are considered below in Section 3.2 of this report; and
* Reasons given by the consent authority for the grant of the consent that is sought to be modified – outlined below.

*Reasons for Grant of Consent*

The HUNTER AND CENTRAL COAST REGIONAL Planning Panel granted consent to the original development in a notice of determination dated 5 August 2021 The reasons outlined in the Statement of reasons for this decision included the following:

* the development meets the requirements of the *LMLEP 2014* and other relevant environmental planning instruments.
* the development generally complies with *LMDCP 2014* with any variations to the controls outlined and justified within this assessment report.
* considering the likely impacts of the development on the natural and built environments, the development is considered to provide balanced and appropriate outcomes.
* the suitability of the site for the development, including characteristics and constraints of the land have been considered and it was found the land as being suitable for the development.
* matters of public interest have been considered in relation to social, economic and environmental outcomes.

The proposed modification is consistent with these reasons for the decision on this consent in that the proposed development is entirely consistent with the planning controls and expectations for the locality given the zoning and other planning controls for the site.

* 1. **Section 4.15(1) of the EP&A Act**

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to Section 4.55(3), which are of relevance to the application.

These matters include the following, which are considered in detail below:

1. *the provisions of—*
2. *any environmental planning instrument, and*
3. *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
4. *any development control plan, and*

*(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*

1. *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

*that apply to the land to which the development application relates,*

1. *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
2. *the suitability of the site for the development,*
3. *any submissions made in accordance with this Act or the regulations,*
4. *the public interest.*
   * 1. **Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations**

The relevant provisions under s4.15(1)(a) are considered below.

1. ***Environmental planning instruments (s4.15(1)(a)(i))***

The following Environmental Planning Instruments are relevant to this application:

* [*State Environmental Planning Policy (Planning Systems) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0724)
* [*State Environmental Planning Policy (Resilience and Hazards) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0730)
* [*State Environmental Planning Policy (Transport and Infrastructure) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0732)
* *Lake Macquarie Local Environmental Plan 2014*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

**Table 4: Summary of Applicable State Environmental Planning Policies (Preconditions in bold)**

|  |  |  |
| --- | --- | --- |
| **EPI** | **Matters for Consideration** | **Comply (Y/N)** |
| State Environmental Planning Policy (Planning Systems) 2021 | Chapter 2: State and Regional Development  Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 7 of Schedule 6 as it comprises designated development which is a waste management facility. | Y |
| SEPP (Resilience & Hazards) | Chapter 4: Remediation of Land  Section 4.6 – the site is considered suitable for the proposed use in its present state. | Y |
| State Environmental Planning Policy (Transport and Infrastructure) 2021 | Chapter 2: Infrastructure  Section 2.121(4) - Traffic-generating development  The proposed modification will not impact vehicle movements to or from the site. | Y |
| Proposed Instruments | No relevant draft instruments identified. | Y |
| LEP | No relevant LEP clauses | Y |
| DCP | Part 5 Development in industrial, business park and infrastructure zones  3.11 Traffic and transport  4.5 Erosion and sediment control  4.6 Air quality | Y |

[*State Environmental Planning Policy (Planning Systems) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0724) *(‘*Planning Systems SEPP’)

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 7 of Schedule 6 of the Planning Systems SEPP as the proposal is development for a waste management facility which meets the requirements for designated development under the *Environmental Planning and Assessment Regulation 2021*.

The instructions on functions exercisable by Council on behalf of Sydney district or Regional Planning Panels – applications to modify development consents state a Council is not to determine an application under s4.55(2) which was granted consent by a regional panel where it proposes to amend a condition of development consent recommended in the Council assessment report, but which was amended by the Panel. Condition 3 – restrictions on development was modified by the Panel to specify the type of waste permitted to be received. This condition is proposed to be amended by the application.

Accordingly, the Panel is the consent authority for the application. The proposal is consistent with this Policy.

[*State Environmental Planning Policy (Resilience and Hazards) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0730)

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021 (‘the* Resilience and Hazards SEPP’) have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The proposed modification does not include any ground disturbance. The site is considered to remain suitable for the proposed use.

[*State Environmental Planning Policy (Transport and Infrastructure) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0732)

The development was traffic generating development under Schedule 3 of SEPP (Transport and Infrastructure) 2021. The modification will remain within the scope of the traffic generation considered in the original consent.

*Lake Macquarie Local Environmental Plan 2014*

The relevant local environmental plan applying to the site is the *Lake Macquarie Local Environmental Plan 2014* (‘the LEP’). The aims of the LEP include:

(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,

(a) to recognise the importance of Lake Macquarie and its waterways, including the coast, as an environmental, social, recreational and economic asset to Lake Macquarie City and the Hunter and Central Coast regions,

(b) to implement a planning framework that protects areas of significant conservation importance, while facilitating development and public facilities in appropriate areas, that are accessible to a range of population groups, to accommodate Lake Macquarie City’s social and economic needs,

(c) to promote the efficient and equitable provision of public services, infrastructure and amenities,

(d) to facilitate a range of accommodation types throughout Lake Macquarie City so that housing stock meets the diversity of community needs and is affordable to as large a proportion of the population as possible,

(e) to apply the principles of ecologically sustainable development,

1. to encourage development that enhances the sustainability of Lake Macquarie City, including the ability to adapt to and mitigate against climate change.

The proposal is consistent with these aims as the proposal allows for the greater recovery of reusable resources and diversion from landfill.

The proposal is considered to be generally consistent with the LEP.

1. ***Provisions of any Proposed Instruments (s4.15 (1)(a)(ii))***

There are no proposed instruments which are relevant to the proposal.

1. ***Provisions of any Development Control Plan (s4.15(1)(a)(iii))***

The following Development Control Plan is relevant to this application:

* *Lake Macquarie Development Control Plan 2014* (‘the DCP’)

Part 5 Development in industrial, business park and infrastructure zones

3.11 Traffic and transport

The type of trucks used in the development will change slightly as a result of the proposed amendments. Due to the greater recovery of resources resulting from this proposal, more of the waste exiting the site will be consolidated into a smaller number of larger trucks. The ratio of truck types is expected to more closely resemble the numbers considered under the original approval. Actual truck usage is captured in weighbridge records and used to calculate haulage levies under the development contributions plan.

4.5 Erosion and sediment control

The handling of soils at the site requires consideration of the risk of sedimentation. The soils will be handled internally to the building, which is bunded, restricting the opportunity for soils to migrate offsite. Misters installed for air quality management will also minimise the risk of airborne erosion.

**4.6 Air quality**

Misters installed to manage the risk of dust emissions will suitably address risks associated with handling of soils. Existing conditions of consent relating to air quality are recommended to remain suitable for the proposed modification.

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

* *Glendale Contributions Catchment S7.11 Development Contributions Plan 2015 (Feb 2021 report)*

This Contributions Plan has been considered and the existing consent condition relating to contributions remains suitable.

1. ***Planning agreements under Section 7.4 of the EP&A Act (s4.15(1)(a)(iiia))***

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

1. ***Provisions of Regulations (s4.15(1)(a)(iv))***

There are no matters under Section 61 of the 2021 EP&A Regulation which are relevant to this proposal.

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are relevant to the proposal. The proposal has not requested any amendments to the building, however Council’s building officer recommended installation of a sprinkler system, and smoke and heat vents in accordance with AS2118.1, BCA specification E2.2c and Part E1D4 will allow the development to satisfy the NSW Fire + Rescue “Guidelines for bulk storage of rubber tyres”. Conditions of consent relating to the recommended building upgrades have been included in the draft conditions in Attachment A.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

* + 1. **Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

* Context and setting – The proposal is considered to be generally consistent with the context of the site, in that the proposed changes to accept other low-risk waste types is appropriate as a result of the local industrial area context and separation from residential uses.

Access and traffic – minor changes in the ratio of small and large trucks utilising the site will occur. The change is expected to result in a small number of larger trucks exiting laden, while the smaller delivery trucks will exit empty. The total numbers remain within the scope of the original consent.

* Water/air/soils impacts – the existing conditions of consent will remain suitable to control impacts to air quality and erosion/sediment risk.
* Noise and vibration – there are no changes to noise impacts as the equipment to be used is the same as already in use on site.
* Safety, security and crime prevention – sprinkler system upgrades will improve the safety risk in the event of a fire in the facility. Refer draft condition 8.
* Social impact – increased recovery of reusable resources will have a minor positive social benefit.
* Economic impact – increased recovery of reusable resources will reduce the volume of waste diverted to landfill which will both reduce the payable waste levy and improve the lifespan of the existing landfill facility.
* Cumulative impacts – the volume of waste tyres stored onsite will sit within the existing approved limits, as well as being subject to their own limits. The cumulative impact is negligible.

Accordingly, it is considered that the proposed modification will not result in any significant adverse impacts in the locality as outlined above.

* + 1. **Section 4.15(1)(c) - Suitability of the site**

The site remains suitable for the proposed use as modified.

* + 1. **Section 4.15(1)(d) - Public Submissions**

No submissions were received from the notification period.

* + 1. **Section 4.15(1)(e) - Public interest**

The proposal is in the public interest because it will allow for greater diversion of waste from landfill and into resource recovery. Potential risks posed by the activity have been satisfactorily managed.

* 1. **Part 5 of the 2021 EP&A Regulation**

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the 2021 EP&A Regulation.These matters are considered in **Table 7** below.

**Table 7: Consideration of the Requirements under the Regulation**

|  |  |  |
| --- | --- | --- |
| **Matter** | **Comment** | **Comply** |
| Clause 100 Application for modification of development consent | | | |
| May be made by—  (a)  the owner of the land to which it relates, or  (b)  another person, with the consent of the owner of the land (Cl 98(1)) | The application has been made by a company with the written consent of the land owner. | Y |
| NSW Aboriginal Land Council consent required for land owned by a Local Aboriginal Land Council (Cl 98(6)). | The land is not owned by a Local Aboriginal Land Council and consent is not required. | N/A |
| Form approved by Planning Secretary and on portal (Cl 99). | The application has been provided in accordance with the Regulation. | Y |
| Applicant details (Cl 100(1)(a)) | Provided on the NSW Planning Portal (‘the Portal’). | Y |
| Description of the development (Cl 100(1)(b)) | Provided on the Portal and outlined in Section 2 of this Report. | Y |
| Address and title details (Cl 100(1)(c)) | Provided on the Portal and outlined in Section 1 of this Report. | Y |
| Description of the proposed modification (Cl 100(1)(d)) | Provided on the Portal and outlined in Section 2 of this Report. | Y |
| Whether to correct a minor error, mis-description or miscalculation, or  some other effect (Cl 100(1)(e)) | The proposed modification is to modify the original consent under Section 4.55(2) to allow receipt of a waste type not considered in the original application and is not to correct a minor error, misdescription or miscalculation. | Y |
| Description of the expected impacts of the modification (Cl 100(1)(f)) | There are unlikely to be any significant impacts resulting from the proposed modification given there are no changes to the external building form. Only minor changes are proposed to the site use. Any other impacts were considered in the original proposal, which was supported by Council.  The storage of tyres has a low risk of fire, however a high hazard should a fire occur. The installation of the sprinkler system will mitigate the impact in the event of a fire. Refer to key issues section. | Y |
| Undertaking that modified development will remain substantially same as development originally approved (Cl 100(1)(g)) | The modified development will remain substantially the same development as that originally approved. Refer to Section 3.1 of this Report. | Y |
| If accompanied by a Biodiversity development assessment report, the biodiversity credits information (Cl 100(1)(h)) | Not applicable | N/A |
| Owner’s consent (Cl 100(1)(i)) | Written owner’s consent has been provided. | Y |
| Whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56) (Cl 100(1)(j)). | This Application is made to the consent authority pursuant to Section 4.55(2) of the EP&A Act. | Y |
| BASIX Certificate (Cl 100(3)) | The proposed modification does not involve BASIX development and an updated BASIX Certificate is not required. | N/A |
| Penrith Lakes Development Corporation (Cl 101) | The proposed modification does not Penrith Lakes Development Corporation. | N/A |
| Qualified designer statement for residential apartment development (Cl 102) | The proposed modification does not involve residential apartment development and a qualified designer statement is not required. | N/A |
| Mining and petroleum development consents (Cl 102) | The proposed modification is not a mining and petroleum development consent. | N/A |
| Notification and exhibition requirements (Cll 105-112) | Refer to Section 4.3 of this report. | Y |
| Notification of concurrence authorities and approval bodies (Cl 109) (to be undertaken by Council) | The modification application has been referred to the relevant concurrence and approval bodies as outlined in Section 4.1 of this Report. | Y |

1. **REFERRALS AND SUBMISSIONS** 
   1. **Agency Referrals and Concurrence**

The modification application is:

* Integrated Development (s4.46)
* Designated Development (s4.10)

Accordingly, the modification application was referred to various agencies for comment as required by the EP&A Act and Clause 109 of the 2021 EP&A Regulation and outlined in **Table 8**.

The outstanding issues raised by Agencies are considered in the Key Issues section of this report.

**Table 8: Concurrence and Referral Agencies**

|  |  |  |  |
| --- | --- | --- | --- |
| **Agency** | **Concurrence/referral Trigger** | **Comments (Issue, resolution, conditions)** | **Resolved** |
| Concurrence Requirements (s4.13 of EP&A Act) | | | |
|  |  |  | N/A |
| Referral/Consultation Agencies | | | |
| Transport for NSW | S2.122 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* | The modification did not impact traffic generation outside of what was considered in the original consent and was not referred back to TfNSW. | N/A |
| NSW Fire and Rescue | Fire safety in tyre storage and waste facilities | NSW Fire+ Rescue did not provide a response to this application.  The assessment considered the NSW Fire + Rescue publication, “Guidelines for bulk storage of rubber tyres.”  The application was referred to Council’s building team for consideration of BCA compliance, with recommendations received for upgrades. | Y |
| Integrated Development (s4.46 of the EP&A Act) | | | |
| EPA | An Environmental Protection Licence (EPL) is required under S43(b) of the Protection of the Environment Operations Act 1997 for a waste facility. | The application was referred to the EPA. No objections were raised to the inclusion of special waste (tyres) at the site.  Additional information was requested regarding handling of soils. This has been provided and the EPA has reviewed and indicated it is satisfied with the proposal.  The site holds an EPL and will need to modify the licence to accommodate the proposed activity. | Y |

* 1. **Council Referrals**

The modification application was referred to various Council officers for technical review as outlined **Table 9.** The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

**Table 9: Consideration of Council Referrals**

|  |  |  |
| --- | --- | --- |
| **Officer** | **Comments** | **Resolved** |
| Environmental management | Council’s Environmental Officer raised no objections. | N/A |
| Building | Council’s Building officer noted current BCA requirements for storage of tyres will require fire safety upgrades to the building. These have been included as draft conditions in Attachment A. | Yes - conditions |

* 1. **Notification and Community Consultation**

The modification application was notified in accordance with the Council’s Community Engagement Strategy from 12 May 2023 until 2 June 2023. The notification included the following:

* Notification on a website.
* Notification letters sent to adjoining and adjacent properties (20 letters sent).
* Notification on the Council’s website.

The Council received no submissions from the notification period.

1. **KEY ISSUES**

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

* 1. **Air quality**

The original proposal was considered to have a risk of air quality impacts. Misters were installed at the entry doors to settle dust emanating from the shed. The handling of soils as part of the development is a potential source of dust.

Resolution: The issue has been resolved through existing conditions of consent and mister system already installed and operational. Air quality is further considered and controlled through the conditions of the EPL, which will need to be updated to reflect the modified activity.

* 1. **Erosion and sediment control**

The inclusion of soil handling at the site presents a risk of migration offsite through water or airborne means.

Resolution: Handling of soils will occur inside the shed, minimising exposure to rain or wind. The shed in bunded, further reducing the risk of migration. Misters will dampen the entry space and settle airborne dust. All loads are covered during transport. The risk of sediment migrating offsite is considered appropriately managed through the proposed handling procedures and existing conditions of consent. Any further matters of concern to the EPA can be addressed in the condition of the modified EPL.

* 1. **Fire risk**

NSW Fire + Rescue notes rubber tyres to have a low risk of combustion, however a high hazard when ignited. NSW Fire + Rescue have published a guideline for the bulk storage of rubber tyres. The guidelines recommend buildings which have a floor area greater than 2000m2 and store more than 10T of tyres should have a sprinkler system installed which complies with AS 2118.1 as well as smoke and heat vents complying with E2.2c of the BCA.

The guidelines also provide recommended layouts for storage stacks and site containment of fire suppressant water. The plans submitted with the application demonstrate compliance with the recommended stack arrangements. The application has confirmed the existing bunding meets the water containment requirements of 30L/s for 90 minutes. Council recommends the inclusion of a condition of consent requiring installation of a sprinkler system. Refer Attachment A.

No tyres will be store outside the building.

The tyres will be stored whole and consolidated only immediately prior to transfer offsite.

Resolution: The issue has been resolved through recommended conditions of consent as outlined in **Attachment A**.

1. **CONCLUSION**

This modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised by external agencies and the key issues identified in this report, it is considered that the application can be supported.

The proposed modifications result in minor changes to risks for air quality, erosion and sedimentation, and fire safety. These have been addressed either through existing controls on the site or proposed conditions of consent. The activity is considered to remain compatible with surrounding locality and the site is suitable, subject to improvements as noted in the draft conditions.

It is considered that the key issues as outlined in Section 5 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

1. **RECOMMENDATION**

It is recommended:

* That the Modification Application DA/430/2021/A for Waste or resource transfer station at 3A Pennant Street, Cardiff, be APPROVED pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A; and
* Pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021,* a notice of determination is to be prepared by Council following the Panel’s determination of this modification application.

The following attachments are provided:

* Attachment A: Draft Conditions of consent
* Attachment B: Architectural Plans
* Attachment C: Soil handling procedure
* Attachment D: EPA correspondence