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| **MEMO TO PANEL**HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL  |

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| PANEL REFERENCE & DA NUMBER | PPSHCC-247 – Central Coast – DA/1474/2023 – 203 Tooheys Road, Bushells Ridge,2259 |
| PROPOSAL  | General Industry and Resource Recovery Facility – Alterations and Additions to Existing Asphalt Plant |
| ADDRESS | Lot 10 DP834953, 203 Tooheys Road, Bushells Ridge |
| APPLICANT | Luke Farrell, Element Environment on behalf of Fulton Hogan Industries Pty Ltd |
| OWNER | Fulton Hogan Industries Pty Ltd |
| DA LODGEMENT DATE | 20 September 2023 |
| APPLICATION TYPE  | * Nominated Integrated Development Application (sections 47 & 48 of *Protection of the Environment Operations Act 1997*)
* Designated Development Application (clauses 8(1) and 45(2), Schedule 3 of *Environmental Planning and Assessment Regulation 2021*)
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| REGIONALLY SIGNIFICANT CRITERIA | Clause 7(1)(c), Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*: waste management facilities or works that meet the requirements for designated development under the *Environmental Planning and Assessment Regulation 2021*, Schedule 3, section 45 |
| CIV | $6,080,956 (excluding GST) |
| RECOMMENDATION | Approval subject to conditions |
| PANEL MEETING DATE | 29 October 2024 |
| PREPARED BY | J Tattam - Senior Development Planner |
| DATE OF MEMO | 24 October 2024 |

**SUPPLEMENTARY INFORMATION**

This memo is to supplement the Officer’s report to the Panel to clarify the zoning of the site, to confirm recommended conditions of consent and to respond to the letter from the Department of Planning, Housing and Infrastructure acknowledging receipt of the submissions received in relation to the proposal.

**Central Coast Local Environmental Plan 2022**

As per the zoning map below the subject site is zoned a combination of E4 General Industrial and C2 Environmental Conservation pursuant to Clause 2.2 of the LEP.



Figure : Zoning Map Extract (Source: LEP)

While the Officer’s report addressed the E4 General Industrial zone, it failed to address the C2 Environmental Conservation zone.

The proposed development is wholly located within that portion of the site zoned E4 General Industrial. There are no works proposed within the C2 Environmental Conservation zoned portion of the site.

The objectives of the C2 Environmental Conservation zone are as follows:

* *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.*

The C2 zoning surrounds the Wallarah Creek that is located in the south-western portion of the site. The C2 zoned land and creek are within the Conservation Management Plan (CMP) area and are therefore subject to the restrictions and management requirements under the CMP. This includes actions to manage riparian vegetation and undertake weeding etc. The broader CMP area provides for management of a buffer between the development on the site and the C2 zoned portion of land. Further it is proposed within the recommended conditions of consent that the area will be protected under an s88b instrument.

Further protections to the Wallarah Creek are provided within the General Terms of Approval issued by the EPA which include a requirement for a water pollution discharge assessment. Subject to the EPAs consideration of the water pollution discharge assessment, the applicant may be required to prepare a water management options assessment to identify practical mitigation measures to ensure that any discharges contribute to maintaining or restoring the environmental values of the receiving waterway consistent with the NSW Water Quality Objectives.

It is considered that the proposal is consistent with the objectives of the C2 Environmental Protection zone.

**Recommended Conditions of Consent**

At the Panel’s meeting on 29 October 2024 additional conditions were requested in relation to landscaping and amended plans detailing proposed RLs.

The following conditions are therefore recommended to be added to the consent:

Prior to issue of Construction Certificate

* Provide a detailed Landscape Plan and specification by a suitably qualified landscape architect to the Private Certifier for approval. The plan shall detail enhancement of existing landscape areas and proposed new landscaping utilising native species endemic to the area. Proposed landscaping should result in increased amount of landscape screening to soften the appearance of the development from the public domain.
* Provide amended plans that include RLs to AHD on the elevations, sections and floor plans of the proposed development for all existing and proposed structures.

Prior to Issue of an Occupation Certificate

* Implement the landscaping in accordance with the approved Landscape Plan.
* Provide the Principal Certifier with written certification from a qualified landscape designer certifying that landscaping has been implemented in accordance with the approved landscape plan as amended by any conditions of this consent.

Ongoing

* Maintain the landscaping for the life of the development.

Further to the above conditions, it was identified that Condition 5.6 referenced the wrong document. Condition 5.6 currently reads (the incorrectly referenced document is highlighted in yellow):

*5.6. Protect the land in identified in Figure 1 of the Conservation Management Plan”, Ver Final 1.0, by Land Eco, dated 1 May 2024 as Conservation Management Area through a 'Restriction on Use' pursuant to section 88B and 'Public Positive Covenant' 88E of the Conveyancing Act 1919.**The area covered by the Covenant must be designated as a ‘Conservation Area to be protected and managed in perpetuity’ with Central Coast Council having the sole authority to remove or modify the Covenants. The Covenants are in general terms to require that:*

* *No structures are to be erected/placed on this land, and no development carried out or permitted except for works detailed in the approved CMP*
* *The approved Site Management Plan (Cool Burn, Ver 1.2, 31 July 2024) must be implemented.*
* *The Conservation Area must be permanently fenced and protected in perpetuity*
* *Weeds must be continually supressed and destroyed and the land must be maintained as an ecologically sensitive area.*
* *All rubbish and other waste is to be removed on a continual basis, with minimum 3 monthly inspections.*
* *The stockpiling of materials or equipment is prohibited.*
* *Provides Council with the authority to inspect the land with 7 days written notice to the registered land owner.*
* *Where the landholder fails to comply with its obligations under the covenant, authority is given to Council to do anything necessary to comply and to recover compensation for any works.*

*Note: Standard wording, acceptable to Council, for covenants can be obtained by contacting Council Subdivision Certificate Officer.*

It is recommended that Condition 5.6 be amended to read as follows (with the correct document highlighted in blue):

*5.6. Protect the land in identified in Figure 1 of the Conservation Management Plan”, Ver Final 1.0, by Land Eco, dated 1 May 2024 as Conservation Management Area through a 'Restriction on Use' pursuant to section 88B and 'Public Positive Covenant' 88E of the Conveyancing Act 1919.**The area covered by the Covenant must be designated as a ‘Conservation Area to be protected and managed in perpetuity’ with Central Coast Council having the sole authority to remove or modify the Covenants. The Covenants are in general terms to require that:*

* *No structures are to be erected/placed on this land, and no development carried out or permitted except for works detailed in the approved CMP*
* *The approved Conservation Management Plan (Ver Final 1.0, by Land Eco, dated 1 May 2024) must be implemented.*
* *The Conservation Area must be permanently fenced and protected in perpetuity*
* *Weeds must be continually supressed and destroyed and the land must be maintained as an ecologically sensitive area.*
* *All rubbish and other waste is to be removed on a continual basis, with minimum 3 monthly inspections.*
* *The stockpiling of materials or equipment is prohibited.*
* *Provides Council with the authority to inspect the land with 7 days written notice to the registered land owner.*
* *Where the landholder fails to comply with its obligations under the covenant, authority is given to Council to do anything necessary to comply and to recover compensation for any works.*

*Note: Standard wording, acceptable to Council, for covenants can be obtained by contacting Council Subdivision Certificate Officer.*

**Office Building Floor Level**

The Panel has asked to confirm the RLs of the new proposed office building.

The applicant has confirmed that amended plans with RLs for all existing and proposed buildings and structures will be provided as soon as possible. This is followed up by a recommended condition of consent.

**Letter from the Department of Planning, Housing and Infrastructure (the Department)**

In accordance with Section 60 of the EP&A Regulation 2021 a copy of the submissions received in relation to the subject application were given to the Department.

The Department reviewed the submissions and advised there were no issues of State or regional significance that applied to the proposal.

The Department did note however the advice provided by the Biodiversity Conservation and Science agency (former Biodiversity and Conservation Division) of the NSW Department of Climate Change, Energy, the Environment and Water, the EPA, NSW RFS, TfNSW and public submissions.

Submission from Biodiversity and Conservation Division

In relation to the matter raised by the former Biodiversity and Conservation Division (BCD) concerning flood emergency during a PMF event on access roads and recommendation for a flood emergency response plan (FERP), this issue was discussed with Council’s Flood Engineer. They advised that any inundation of the Pacific Highway was for a short period (<2 hours) and that occupants of the site would have safe refuge for the entire period. Preparation of a FERP was not required. In order to confirm that the BCD were satisfied with this decision Council liaised with the BCD. By the email dated 15 October 2024, BCD advised that:

*given the short duration of flooding in this location and that the proposal is for expansion of an existing premises, I agree with Council’s development engineer that a FERP is* ***not*** *required in this case.*

Public Submission

In regard to the concern raised in the public submission about the categorisation of receivers the NSW EPA Noise Policy for Industry (2017) states for isolated residences within an industrial zone the industrial amenity level would apply. Therefore, the categorisation of receivers within the reports submitted with the application is correct.

Noise

In their letter the Department further noted that noise monitoring data was not provided in a letter dated 6 March 2024. However, this data was provided in the Noise and Vibration Impact Assessment (NVIA) report prepared by SLR, April 2023. This NVIA has used rating background noise levels based on noise monitoring completed for a previous NVIA in October and November 2016. These background noise levels are likely less than what would be measured today due to increases in existing industry and traffic volume, therefore the rating background noise levels used in the current assessment (April 2023) are considered conservative and appropriate. The Project Noise Trigger Levels adopted in the NVIA (April 2023) are the lower of the intrusiveness and amenity noise levels, and this is in accordance with the Noise Policy for Industry (NSW EPA, 2017).

The issues raised by submissions received during exhibition of the application have been addressed.

**Solar Panels**

The applicant has provided the following further information in relation to the installation of solar panels on the proposed administration building:

*Fulton Hogan are currently investigating options to maximise the reduction of carbon emissions for the Bushells Ridge Development which includes either solar panels, Power Purchasing Agreement or other options.  For this reason, at this stage a commitment to install solar panels has not been made.*

**The draft revised conditions in accordance with the above recommendation are attached to this memo.**