

<b>DATE OF DETERMINATION</b>	25 August 2020
<b>PANEL MEMBERS</b>	Alison McCabe (Chair), Juliet Grant, Stephen Gow, Bob Pynsent and Anne Sander
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Sandra Hutton declared a conflict of interest as her employer has a civil engineering commission to satisfy a condition of consent for stormwater for separate DA (8/2019/568/1) relating to this Site and from the applicant.

Papers circulated electronically between 18 August 2020 and 25 August 2020.

#### **MATTER DETERMINED**

PPSHCC-7 – Cessnock – 8/2019/568/1 at 8 Styles St, Kurri Kurri – expansion of an existing waste management facility (as described in Schedule 1)

#### **PANEL CONSIDERATION AND DECISION**

The Panel considered the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel noted the site is located within a broader IN3 Industrial area and the proximity of sensitive landuses. The Panel were provided additional detail in respect to the existing consents and how they are interrelated.

The Panel considered the conclusions in the contamination report and the noise reports submitted within the application. The Panel were satisfied that the site was suitable for the use as required under SEPP 55.

The Panel had the opportunity to question the applicant and was able to clarify issues around noise impacts from concrete crushing and functions of the site after daylight hours. It was noted that the site will operate under two (2) shifts - a day shift and afternoon/evening shift. Activity after 10:00pm would tend to be as a result of delays or breakdowns.

#### **Development application**

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* subject to the conditions at Schedule 2.

The decision was unanimous.

#### **REASONS FOR THE DECISION**

- The site is suitable for the proposed use.
- The impacts arising from the operation can be appropriately mitigated and managed.

#### **CONDITIONS**

The development application was approved subject to the conditions in Schedule 2. The conditions were amended from those in the Council report to address the following:

- Clarification and restriction on hours for concrete crushing (Conditions 5 and 27).
- Pedestrian access for firefighting activities (Condition 6e).
- Compliance with the provisions of the noise report (Condition 9).
- Stormwater Drainage Plan for the carpark (Condition 10).

- All conditions of DA– 8/2019/568/1 to be completed before issue of an occupation certificate (Condition 18).
- Additional requirements for the Truck Management Plan to address (Condition 21).
- No queuing of vehicles onto the public road (Condition 28).



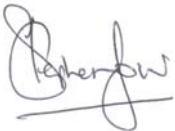


#### CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during the public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Impact on local amenity
- Impact on local road network
- Compliance with the proposed haulage route
- Noise impact particularly at night

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised. The Panel heard from the main submitter.

Conditions have been amended as outlined above to ensure the proposal meets EPA noise criteria especially at night.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Juliet Grant
 Stephen Gow	 Bob Pynsent
 Anne Sander	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-7 – Cessnock – 8/2019/568/1
2	PROPOSED DEVELOPMENT	<p>Increase production of an existing resource recovery facility incorporating:</p> <ul style="list-style-type: none"> <li>• Increase in recycled material throughput from 29,500 tonnes to 90,000 tonnes per annum;</li> <li>• Extension of operating hours to 24 hours per day 6 days per week (Monday to Saturday);</li> <li>• Increase in stockpile height from 3m to 6m;</li> <li>• Increase on site storing capacity from 18,500 to 30,000 tonnes;</li> <li>• Reconfiguration of existing on-site car parking to provide 24 on site spaces</li> <li>• Widening of driveway access crossing;</li> <li>• Construction of two (2) water tanks for dust suppression.</li> </ul>
3	STREET ADDRESS	8 Styles St, Kurri Kurri
4	APPLICANT/OWNER	Central Waste Plant Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Designated development - waste management facility or works
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (State and Regional Development) 2011</li> <li>○ State Environmental Planning Policy (Infrastructure) 2007</li> <li>○ State Environmental Planning Policy No 33 – Hazardous and Offensive Development</li> <li>○ State Environmental Planning Policy No 44 – Koala Habitat Protection</li> <li>○ State Environmental Planning Policy No 55 – Remediation of Land</li> <li>○ Cessnock Local Environmental Plan 2011</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Cessnock Development Control Plan 2010</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Clause 92</li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council assessment report: 18 August 2020</li> <li>• Written submissions during public exhibition: three (3)</li> </ul>
8	BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: 22 July 2020 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Bob Pynsent and Anne Sander</li> <li>○ <u>Council assessment staff</u>: Janine Maher, Kerry Porter, Peter Giannopoulos and Angela Peterson</li> </ul> </li> <li>• Site inspections: <ul style="list-style-type: none"> <li>○ Alison McCabe (Chair): 27 June 2020</li> <li>○ Juliet Grant: 28 June 2020</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ Bob Pynsent: 28 July 2020</li> <li>• Final Council briefing to discuss council's recommendation, 25 August 2020, 9:30am. Attendees: <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Stephen Gow, Bob Pynsent and Anne Sander</li> <li>○ <u>Council assessment staff</u>: Janine Maher, Kerry Porter, Peter Giannopoulos and Angela Peterson</li> </ul> </li> <li>• Submitter briefing to discuss council's recommendation, 25 August 2020, 10:35am . Attendees: <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Stephen Gow, Bob Pynsent and Anne Sander</li> <li>○ <u>Council assessment staff</u>: Janine Maher, Kerry Porter, Peter Giannopoulos and Angela Peterson</li> <li>○ <u>Submitters</u>: Ed Wright</li> </ul> </li> <li>• Applicant briefing to discuss council's recommendation, 25 August 2020, 11am. Attendees: <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Juliet Grant, Kyle MacGregor and Chris Burke</li> <li>○ <u>Council assessment staff</u>: Janine Maher, Kerry Porter, Peter Giannopoulos and Angela Peterson</li> <li>○ <u>Applicant representatives</u>: Kevin Daly, Ray Nielson and Geraldine Haigh</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report

## **TERMS OF CONSENT**

### **1. General Terms of Approval**

All General Terms of Approval issued by NSW EPA shall be complied with prior, during and at the completion of the development, as required.

The General Terms of Approval include the following:

- a) NSW EPA (Notice Number 1594368), dated 30 April 2020.

A copy of the General Terms of Approval is attached to this determination notice.

### **2. Approved Plans and Documents**

Development must be carried out strictly in accordance with DA No. 8/2019/568/1 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

<b>Plan Reference</b>	<b>Drawn By</b>	<b>Dated</b>
Proposed Works Project No. 170503 Revision 7 Sheet No. EIS - 01	Thomas Building Design	1 July 2020

<b>Document Title</b>	<b>Prepared By</b>	<b>Dated</b>
Environmental Impact Statement Revision 7	GEM Planning Pty Ltd	15 July 2019 Addendum – 4.9.19 Addendum – 5.3.20
Noise Impact Assessment	EMM	March 2020

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

### **3. Operational Requirements**

This consent permits the following:

- The maximum amount of waste permitted to be received at the premises is 90,000 tonnes per year.
- The maximum amount of waste permitted to be stored on the premises at any one time is 30,000 tonnes.
- Only permitted waste material collected, stored and processed shall be general solid waste (non-putrescible) as prescribed in the General Terms of Approval and Environment Protection Licence (EPL) issued by the Environment Protection Authority (EPA).

### **4. Stockpile Heights**

Stockpile heights shall not exceed 6 metres from ground level.

## **5. Hours of Operation**

Subject to the requirements of Condition 27, hours of operation permitted are Monday to Saturday (24 hours). The facility is not permitted to operate on Sundays or Public Holidays.

## **6. Bushfire Protection**

The following bushfire protection measures are to be implemented at the commencement of building works, and maintained for the life of the development:

### **a) Asset Protection Zones**

The existing 10 metre wide defensible space located along the northern boundary of the site (behind the buildings) shall be managed in perpetuity as an inner protection area (IPA) as outlined within Section 4.1.3 and Appendix 5 of *Planning for Bushfire Protection 2006* and the NSW Rural Fire Services document 'Standards for Asset Protection Zones'.

### **b) Water and Utilities**

Water, electricity and gas to comply with Section 4.1.3 of *Planning for Bushfire Protection 2006*

### **c) Design and Construction**

Any new construction works shall comply with the National Construction Code 2019 Structural Fire Safety requirements.

### **d) Fencing**

Any new fencing shall comply with NSW Rural Fire Service "Fast Fact 2/06" for Fences and Gates in Bush Fire Prone Areas.

### **e) Pedestrian Access**

To aid in firefighting activities unobstructed pedestrian access to the rear of the property is to be provided and is to be maintained at all times.

## **PRIOR TO COMMENCEMENT OF WORKS**

**The following conditions are to be complied with prior to the commencement of works on the subject site.**

## **7. S138 Roads Act Approvals**

An approval under Section 138 of the *Roads Act 1993* is required for the proposed new concrete access crossing from Styles Street. Approval will need to be obtained from Council. In this regard, the applicant is to make a formal application to Council. The S138 application is to be submitted to, and approved by, Council prior to works commencing.

## **8. Public Liability Insurance**

Any person or contractor undertaking works on public property must take out Public Risk insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within, public property. The Policy is to note, and provide protection for Cessnock City Council as an interested party, and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property. The insurance shall also note the location and the risk.

## **9. Compliance with Noise Report**

At all times the development shall comply with the recommendation of the noise report prepared by EMM dated March 2020.

All works required to be undertaken in accordance with the recommendations of the noise report shall be completed and tested by a suitably qualified noise consultant as being compliant with the requirements of the noise report.

## **10. Storm water Drainage Plan**

Prior to the commencement of operations, a storm water drainage plan for the reconfigured car park area shall be prepared in accordance with Council's Engineering Requirements for Development, and approved by Council.

## **DURING WORK**

**The following conditions are to be complied with during works being undertaken on the subject site.**

### **11. Relocation of Services**

The registered proprietor of the land shall be responsible for all costs incurred in the necessary relocation of any services affected by the required construction works. Council and other service authorities should be contacted for specific requirements prior to commencement of any works.

### **12. Road – Obstruction of Footpath Restriction**

No obstruction is to be caused to Council's footpaths, roads and/or other public areas during construction of the development.

No spoil, building materials, excavated or demolition material from the site shall be stored or deposited on the public road, footpath, public place or Council owned property, without prior approval of Council.

### **13. Location of Council Pipes**

During all phases of demolition, excavation and construction, it is the full responsibility of the applicant and their contractors to:

- a) Ascertain the exact location of the Council stormwater drainage pipeline and associated pits traversing the site in the vicinity of the works

- b) Take measures to protect the in-ground Council stormwater drainage pipeline and associated pits
- c) Ensure dedicated overland flow paths are satisfactorily maintained through the site

Stormwater drainage pipes can be damaged through applying excessive loading (such as construction machinery, material storage, and the like). All proposed structures and construction activities must be sited fully clear of Council's stormwater drainage pipes, pits, easements, watercourses and overland flow paths on the site.

If the Council pipeline is uncovered during construction, all work must cease, and the PCA and Council must be contacted immediately for advice. Any damage caused to the Council stormwater drainage system must be immediately repaired in full as directed, and at no cost to Council.

#### **14. Construction Vehicles**

Construction material and vehicles shall not be placed on public footpaths. The use of footpaths or roadways shall be undertaken in accordance with the prevailing kerbside restrictions, the Australian Road Rules and Council's Parking Code.

#### **15. Erosion and Sediment Controls**

The control of erosion, and the prevention of silt discharge into drainage systems and waterways, will be necessary in accordance with Council's "Engineering Requirements for Development", and Landcom's Soils and Construction Manual - April 2004. Erosion control measures are to be implemented prior to the commencement of any earthworks, and shall be maintained until satisfactory completion and restoration of site earthworks, including revegetation of all exposed areas.

#### **16. Stormwater Runoff**

Alterations to the natural surface contours must not impede or divert natural surface water runoff, so as to cause a nuisance to adjoining property owners.

### **PRIOR TO COMMENCEMENT OF OPERATIONS**

**The following conditions are to be complied with prior to the commencement of works on the subject site/s.**

#### **17. Surrender of Consent**

Prior to the commencement of operations, Development Consent No. 8/2005/1088/1 determined by Council on 5 March 2008, must be surrendered in accordance with the provisions of Section 4.63 of the *Environmental Planning and Assessment Act 1997*.

#### **18. Completion of Works Associated with Development Consent No. 8/2018/892/1**

All works associated with Development Consent No. 8/2018/892/1 shall be completed, and an Occupation Certificate issued.



## **19. Parking and Access**

Prior to the commencement of operations, on site car parking must be provided for a minimum of twenty-four (24) vehicles and such being set out in accordance with the approved development plan and Council's Car Parking Code.

A total of one (1) car parking space for use by persons with a disability must be provided as part of the total car parking requirements.

All driveways, access corridors and car parking areas are to be designed in accordance with *AS2890.1 & AS2890.2 - Parking Facilities*

## **20. Environmental Management Plan**

Prior to the commencement of operations, the development and implementation of an Environmental Management Plan (EMP) for ongoing operational actions will be required to be submitted with Council. The plan shall be in accordance with the EPA's General Terms of Approval and is to include, but not limited to:

- Dust management process and procedures for the facility to address the conditions of the General Terms of Approval;
- Monitoring and inspection program for surface water;
- Noise reduction procedures and processes for the facility to achieve the conditions of the General Terms of Approval;
- Procedures/processes to manage the number and time of truck deliveries in consideration of night time noise/peak activity levels;
- The development of procedures/processes to ensure minimal mobile plant units are operated during the evening night-time period;
- Pest management procedures; and
- A complaint process for the operation, including a register, investigations undertaken and corrective actions implemented.
- An unexpected finds protocol to ensure that if contamination is encountered during any construction it can be appropriately managed. This protocol is to inform construction contractors of the potential for subsurface soil contamination and for contractors to be aware of staining and odours when excavating.

## **21. Truck Management Plan**

A truck management plan must be approved by Council prior to the commencement of operations ensuring the major truck route to and from the site is via the Hunter Expressway from Hart Road. The management plan must not permit heavy vehicles to use Government Road south of Mitchell Avenue and provide an alternative route. Residential streets are to be avoided.

The management plan is to outline responsibilities and adherence for all customers to comply with the Truck Management Plan.

Detailed agreements are to be entered into with customers to reflect the requirements of this condition.

## **22. Roads – Concrete Crossing**

Prior to the commencement of operations, the registered proprietors shall construct and maintain a concrete access crossing from the kerb and gutter in Styles Street to

the property boundary in accordance with the approved development plans and Council's "Engineering Requirements for Development" and AS 2890.1.

A S138 Roads Act Approval is required from Council prior to any construction commencing within the road reserve.

Construction of the crossing will require inspections to be undertaken by Council. The applicant shall pay Council engineering site supervision fees in accordance with Council's current Fees & Charges, prior to the inspections being undertaken.

The initial fee will facilitate approval of the application and one (1) construction inspection (steel and formwork inspection).

A final inspection will be required upon completion of the driveway and restoration of all disturbed footway areas. A separate fee will be required to be paid when the final inspection is booked. Should further inspections become necessary as a result of unsatisfactory or defective works, additional inspection fees will be charged in accordance with Council's current Fees & Charges.

The applicant is to advise Council at least 48 hours prior to inspection of works within the footpath and/or road reserve.

### **23. Road – Removal of Redundant Infrastructure**

Prior to commencement of operations, all redundant vehicular accesses shall be removed, and the footpath, road shoulders and kerb and gutter, where applicable, restored to match existing conditions at no cost to Council.

## **ONGOING OPERATIONAL REQUIREMENTS**

**The following conditions are to be complied with as part of the ongoing use of the premises.**

### **24. Section 7.11 Contribution - Traffic Generating Development**

The applicant shall pay or procure payment to the Council of a developer contribution under Section 7.11 of the Environmental Planning and Assessment Act (1979) for each tonne of material transported to and from the subject site, and in respect of the said contribution, the following provisions shall apply:

- a) The contribution will be calculated and paid on a quarterly basis from the date on which development consent became effective.
- b) At the end of the first quarter of operations, ie the last day of March, June, September or December, whichever occurs first, the applicant or operator shall deliver or procure delivery to the Council of certified copy of weighbridge or other returns or records showing the true quantities of material transported to and from the facility during the immediately preceding quarter. The application or operator must also provide the true number of fully laden heavy vehicle movements to/from the site and the Council will then, as soon as it can conveniently do so, determine a rate per tonne per kilometre using the methodology set out in the Cessnock City Wide Infrastructure Contributions Plan.

- c) At the end of the second quarter and each quarter thereafter for the duration of the consent, the applicant or operator shall email a quarterly return to [contributions@cessnock.nsw.gov.au](mailto:contributions@cessnock.nsw.gov.au) showing returns or records showing the true quantities of material transported to and from the facility during the immediately preceding quarter. The Council will then, as soon as it can conveniently do so, issue an invoice to the applicant or its consenting assignee, who will pay to the Council in accordance with the terms of the invoice.
- d) The contribution rate imposed under this condition will be indexed and adjusted quarterly in accordance with the Consumer Price Index for Sydney All Groups for the duration of the development consent. The quantum of the adjustment will be consistent with the change in CPI over the preceding quarter to the last day of March, June, September and December of each year. At the time of payment of contributions, the contributions payable will be adjusted and the amount payable will be calculated on the basis of the contribution rate that is applicable at the time of payment.
- e) The Council has the right to inspect and have the original records relating to any of the extracted/processed material, including numbers and types of laden trucks, trailers and load quantities transported from the property audited, or monitor any nominated haulage routes any time.
- f) The Council will pay all of the said contribution payments into a specially identified account for payments towards the rehabilitation, restoration, repair and/or maintenance of the haul route.

This condition has been imposed in accordance with the Cessnock City Wide Infrastructure Contributions Plan. A copy of this plan may be inspected on Council's website: [www.cessnock.nsw.gov.au](http://www.cessnock.nsw.gov.au)

## **25. Lighting**

Lighting must be provided for the security of staff and visitors that may be leaving the premises after dark. The lighting must be connected to a self-activating system to provide suitable illumination of the common parking area at all hours of operation after dark.

Any proposed floodlighting of the premises including the lights for the car park must be so positioned, directed and shielded so that it does not interfere with traffic safety or detract from the amenity or project glare onto the adjacent premises

## **26. Offensive Noise or Vibration**

The use and occupation of the site including construction plant and equipment installed thereon, shall not give rise to any offensive noise or vibration within the meaning of the *Protection of the Environment Operations Act, 1997*.

## **27. Restriction on use of Concrete Crushing Machine**

The use of concrete crushing machinery equipment and associated operations shall only occur between 7.00am – 6.00pm.

## **28. Site Operations**

All operations relating to the site, including the queuing of vehicles, shall be contained wholly within the site at all times. No queuing of vehicles shall occur onto any public road.

## **29. Ecology Considerations**

The site shall be managed for the life of the development in a manner which protects and preserves the integrity of any Endangered Ecological Communities located within the adjoining Swamp Creek vegetation corridor.

## **30. Landscaping to be Maintained**

All landscaping must be maintained in good condition for the life of the development.

## **31. Driveways to be Maintained**

All access crossings and driveways shall be maintained in good order for the life of the development.

## **ADVISORY NOTES**

### **A. Responsibility for Other Consents/Agreements**

The applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.