

TO: Sydney Central City Planning Panel

SUBJECT: 109A Church Street LIDCOMBE NSW 2141

APPLICATION No: DA2023/0130

Application accepted	16 May 2023
Applicant	J Cosgrove, MRA Consulting Group
Owner	M.A Investments (Aust) Pty Ltd
Application No.	DA2023/0130
Description of Land	109A Church Street LIDCOMBE NSW 2141, Lot 1 DP 778492
Proposed Development	Demolition of existing buildings and construction and operation of an organic waste transfer station. The proposal is Integrated Development pursuant to Section 43(b) of Protection of the Environment Operations Act 1997. The proposal is also Designated Development pursuant to Schedule 3, Section 45(2) of the Environmental Planning and Assessment Regulation 2021.
Site Area	4,458 m ²
Zoning	E4 General Industrial
Disclosure of political donations and gifts	Nil disclosure
Heritage	The site is not a heritage item or located within a heritage conservation area
Principal Development Standards	<u>FSR</u> Permissible: 1:1 Proposed: 0.76:1 <u>Height of Building</u> Permissible: N/A Proposed: 10.1m
Issues	Environmental impacts, Concurrence not granted by NSW Environment Protection Authority, Outstanding Information, Submissions

SUMMARY

1. Development Application No. DA2023/0130 was accepted on 16 May 2023 for the demolition of existing buildings and construction and operation of an organic waste transfer station.
2. The proposal is Integrated Development under Section 43(b) of Protection of the Environment Operations Act 1997 (PoEO Act). In addition, the proposal is Designated Development pursuant to Schedule 3, Section 45(2) of the Environmental Planning and Assessment Regulation 2021.
3. The application was publicly notified to occupants and owners of the adjoining properties for a period of 47 days between 29 May 2023 and 14 July 2023. In response, 2,051 submissions were received. Key issues raised relate to social, economic and environmental impacts.
4. The proposal complies with the relevant principal development standards, whereby a maximum Floor Space Ratio (FSR) of 1:1 applies and the proposal seeks an FSR of 0.76:1. There is no applicable height development standard.

5. *The subject site is not listed as a heritage item or within a heritage conservation area as stated in the Cumberland Local Environmental Plan 2021. Rookwood Cemetery and Necropolis, a State Heritage Item (SHI 00718) is located to the south of the site, beyond the rail corridor and Railway Street.*
6. *Council issued 'Request for Further Information' letters on 11 August 2023 and 1 September 2023. The latter request contained comments and matters raised by Council's Environmental Health Officer which were outstanding at the issuing of the original request. The applicant provided a response to these requests on 31 October 2023.*
7. *The application is referred to the Panel as the proposal is identified as Regionally Significant Development under Clause 7(1)(c) of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021.*
8. *Given the proposal is Integrated Development under the PoEO Act, concurrence was sought from the NSW Environment Protection Authority. To date, concurrence has not been received from the NSW Environment Protection Authority.*
9. *A number of Council's internal referral officers have identified outstanding and insufficient information within the application, relating to key issues including air quality and traffic, and therefore are not in a position to support the application.*
10. *The application is recommended for **Refusal** subject to the Reasons for Refusal in the draft Notice of Determination.*

REPORT

SUBJECT SITE AND SURROUNDING AREA

The subject site is known as 109A Church Street, Lidcombe, and is legally described as Lot 1 in DP 778492. The site is irregularly shaped, and has a frontage of 105m to Church Street, a rear boundary of 110 metres which adjoins a railway corridor, a western boundary of 22 metres and an eastern boundary of 59 metres. The total site area is 4,458sqm.

The site currently contains two warehouses, a large awning and associated hardstand. The site slopes from west to east from 26.40 RL down to 22.44 RL. Access to the site is via Church Street to the south.

The site is located within an area zoned E4 General Industrial under the Cumberland Local Environmental Plan 2021 and is bordered by railway land to the north and west, Church Street to the south and a pallet manufacturing/distribution centre to the east.



Figure 1: The Site (Source: Nearmap, 2023)



Figure 2: Location map of subject site

The surrounding locality is characterised as follows:

- North: Beyond the railway line is low and medium density residential housing, in the form of single storey and double storey dwellings and a two-storey residential flat building at 7-11 Bachell Avenue.
- East: Industrial land uses adjoin the site and beyond the rail line.
- South: Church Street, with railway corridor and Rookwood Cemetery beyond.
- West: Railway Corridor and Church street, with high density residential development located approximately 80 to the west at 2-36 Church Street, ranging from 6 to 13 storeys.

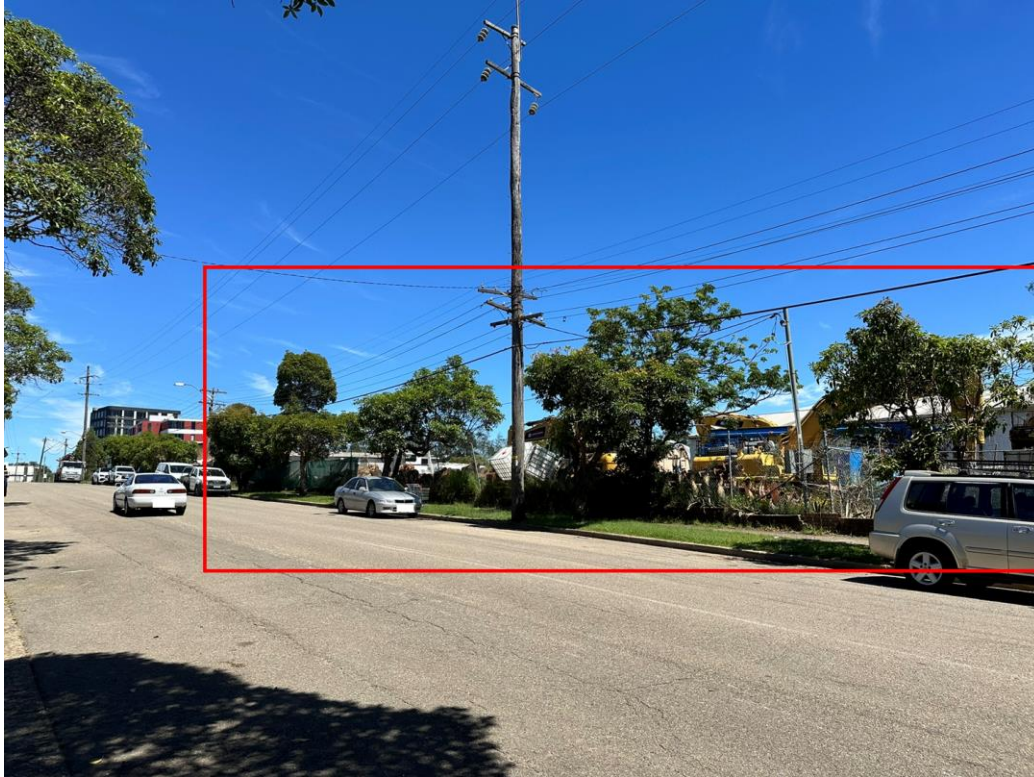


Figure 3: Site outlined red as viewed on Church Street looking north-west (Source: Keylan Consulting)



Figure 4: The Locality (Source: Neormap, 2023)

DESCRIPTION OF THE DEVELOPMENT

Council has received a development application for the construction and operation of an Organic Waste Transfer Facility with a processing capacity of 80,000 tonnes per annum of mixed domestic and commercial derived food organic and garden organic (FOGO) waste. This waste will be bulked at the site and then transferred offsite for secondary processing.

Specifically, the proposal seeks approval for:

- Demolition of existing structures and removal of fencing, hardstand and gravel areas, clearing of vegetation, excavation of driveway to facilitate an expansion of the entry and new exit driveway;
- Construction and operation of an Organic Waste Transfer Facility including
 - earthworks
 - main industrial shed,
 - administration and office attachment
 - internal access, parking and hardstand
 - two weighbridges
 - odour management system
 - stormwater infrastructure
 - fencing
 - landscaping.

Built Form

The proposed waste transfer facility provides for a warehouse type building with a maximum height of 10.1m. The building provides an area for operations at ground level including space for the stockpile, weighbridges, odour management systems and car parking. The first floor level is cantilevered above the proposed parking area and odour management system and provides amenity for future staff through the provision of a rooftop terrace with associated green roof.



Figure 5: Photomontage of proposed facility as viewed from Church Street (Source: Fuse Architects)

Access and Parking

Vehicular access and egress to the site will be from Church Street. The proposal seeks to increase the width of the existing crossover at the western extent of the site and also provide for an additional crossover at the eastern extent of the site. This access arrangement will allow trucks to enter the site from the western extent and travel through the facility and exit via the eastern extent at the new crossover. Car parking for staff and

visitors will also utilise the western crossover which will be increased in width so cars can also utilise this crossover for egress.

Landscaping

The site is currently largely cleared of vegetation. Landscaping enhancements are proposed as part of the development of the waste transfer facility. These enhancements include an increased landscape setback of 4.5m to 5.5m to the street frontage at Church Street. In addition, a narrow landscaped setback also provided to the western boundary to accommodate lilly pillys. Additionally, the rooftop terrace for staff amenity will be provided with an adjacent green roof.

Operation

The proposed development includes the use of a single industrial building with an attached ancillary office space. The hours of operation for the proposed facility are from:

- 6am to 10pm - Monday to Friday, inclusive,
- 8am to 6pm - Saturday; and
- No operations on Sunday and public holidays

The operational processes proposed to occur at the transfer station includes:

- Incoming trucks cross internal weighbridge with initial inspection of loads;
- Receiving of domestic or commercial loads of organics waste from trucks at the receiving bay within the shed;
- Inspection of incoming waste by facility manager/operator staff to assess for potential contamination;
- If excessive or potentially hazardous contamination is detected, the truck driver would be instructed to reload the waste and remove it from the site;
- Accepted loads would be temporarily stockpiled within the facility prior to being consolidated into offtake articulated vehicle (AV) trucks which would frequent the site daily;
- Offtake of material would be conducted by AV trucks and taken to composting or other organics processing facilities for recycling.

HISTORY

Development Application No. DA2023/0130 was lodged on 16 May 2023 for the demolition of existing buildings and construction and operation of an organic waste transfer station.

A Request for Further Information for the application was issued to the applicant on 11 August 2023. A subsequent request was issued on the 1 September 2023 containing Council's Environmental Health Officer's comments which were not completed at the issuing of the original request. A response to these requests were provided to Council on 31 October 2023.

APPLICANTS SUPPORTING STATEMENT

The applicant provided an Environmental Impact Statement (EIS) prepared by MRA Consulting Group dated 9 March 2023 in support of the application. This EIS was updated in response to Council's Request for Further Information and is dated 31 October 2023.

CONTACT WITH RELEVANT PARTIES

The assessing officer has undertaken a site inspection of the subject site and surrounding properties and has been in regular contact with the applicant throughout the assessment process.

INTERNAL REFERRALS

The application was referred to internal bodies at submission of the application and following the receipt of additional information provided by the applicant on 31 October 2023 in response to Council's Request for Further Information letters.

Development Engineer

The development application was referred to Council's Development Engineer for comment who has advised that the development proposal is satisfactory with regards to stormwater management. Notwithstanding, the proposal remains unsatisfactory in relation to traffic and parking and therefore cannot be supported. The proposal is unsatisfactory as:

- The proposed development does not establish a designated truck route for entry and exit, accompanied by turning path diagrams to illustrate the safe manoeuvrability of the largest vehicle at all intersections within the local road network.
- For entry / exit from the east, trucks have to travel through the low clearance underpass in Church Street which is also narrow and restricted sight distance. The applicant has not shown truck turning paths through the underpass without crossing the centre line. Similarly, the bend at Arthur Street and Railway Street has not been checked for truck turning paths.
- The turning path diagrams have not shown the width of the existing traffic and parking lanes. This is essential to demonstrate that the largest vehicle can enter and exit the site without crossing the 'BB' centre lines.
- To assess the traffic dynamics of the proposed development during operational hours, a study of a comparable facility should be presented, showcasing the distribution of incoming and outgoing traffic. Subsequently, a network Sidra model should be provided based on the study.
- The proposed driveway location has not been clearly marked on the drawing to demonstrate that the largest vehicle can navigate the site without causing interference with parked vehicles

Accordingly, the application cannot be supported on a traffic and parking grounds.

Building Surveyor

The development application was referred to Council's Building Surveyor for comment who has advised that the development proposal is satisfactory and therefore can be supported subject to recommended conditions of consent. Notwithstanding, the proposal is not supported, and it is recommended for refusal.

Environment and Health

The development application was referred to Council's Environmental Health Officer for comment who has advised that the development proposal is satisfactory and therefore can be supported subject to recommended conditions of consent. Notwithstanding, the proposal is not supported, and it is recommended for refusal.

Tree Management Officer

The development application was referred to Council's Tree Management Officer for comment who has advised that the development proposal is satisfactory and therefore can be supported subject to recommended conditions of consent. Notwithstanding, the proposal is not supported, and it is recommended for refusal.

Waste Management

The development application was referred to Council's Resource Recovery Officer for comment who has advised that the proposal, based on the information provided to date, is not supportable.

The primary concerns raised relate to data gaps regarding operational requirements, specifically odour and traffic management, which remain unknown due to the lack of information submitted. Council's Waste Management Officer noted that the data gaps could have potential adverse impacts on the community. Therefore, the proposal cannot be supported based on the information provided to date.

The issues raised Council's Waste Management Officer's are reproduced below:

1. *In the event of an operational stoppage for any reason, how will the management of the site ensure that the facility will comply with their traffic management commitments to ensure that there will not be any queuing of waste management vehicles on Church Street or any other nearby location.*

2. *The methodology outlined in the MRA Odour Modelling and Management Assessment (Authored by The Odour Unit TOU) does not satisfy a “zero odour impact criteria”. What limits on odour would an EPA issued Environmental Protection Licence place on the site? How will that be managed and audited to protect the community?*

Whilst TOU have attempted to cast a large net over a broad range of possible odour generating risk conditions at the site, the methodology is not absolute. Therefore a risk still remains that odour will impact on local residents from time to time in conditions other than what has been outlined in the assessment modelling. Changes in the composition of incoming organic (FOGO) waste and other operational and meteorological conditions on any given day may change the odour outcomes in the area at any time.

EXTERNAL REFERRALS

NSW Environment Protection Authority (EPA)

The development application is identified as integrated development in accordance with Section 43(b) of the *Protection of Environment Operations Act 1997* and as such the application was referred externally to the NSW EPA for concurrence.

Following review of the initial documentation submitted with the lodgement of the development application, the NSW EPA advised Council on 10 July 2023 that amended and additional information was required to be submitted for consideration prior to General Terms of Approval (GTAs) being issued for the development. The concerns raised by the NSW EPA included, but were not limited to:

- Results in the Air Quality Impact Assessment not being able to be verified
- Lack of evaluation in relation to meteorological modelled generated data
- Waste management and storage
- Noise impact assessment
- Detail on sources of waste received and the eventual destination of waste once it has been processed through the facility
- Detailed description of waste management

Council forwarded a copy of the issues raised by the NSW EPA to the applicant in a Council issued Request for Information letter dated 11 August 2023. The applicant provided a response to Council's Request for Information letter on 31 October 2023 of which the amended/additional information was forwarded to the NSW EPA for review.

Following review of the additional information, the NSW EPA has determined that further information is needed to assess the application. Notwithstanding, in accordance with Section 4.47(2) of the *Environment Planning and Assessment Act 1979*, the consent authority does not need to obtain the general terms of approval from the NSW EPA if the consent authority determines to refuse to grant development consent.

Ausgrid

The development application was referred externally to Ausgrid for comment in accordance with Clause 2.48(2) of *State Environmental Planning Policy (Transport and Infrastructure) 2021*. Ausgrid raised no objection to the proposal subject to compliance with the Ausgrid Network Standard.

Transport for NSW

The development application was referred externally to Transport for NSW (TfNSW) for comment in accordance with Section 138 of the *Roads Act 1993*. TfNSW advised that the development proposal is satisfactory and provides concurrence subject to Council's approval.

Sydney Trains

Following review of the additional information, Sydney Trains determined that it is unable to grant concurrence with GTA for the Proposal as currently presented because there is insufficient information to provide concurrence. Further detail on this is provided at Attachment 6.

Sydney Water Corporation

The development application was referred externally to Sydney Water for comment who advised that the development proposal is satisfactory.

PLANNING COMMENTS

Environmental Planning and Assessment Act 1979

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the Environmental Planning and Assessment Act 1979 ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- (i) *any environmental planning instrument, and*
 - (ii) *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*
 - (iii) *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*
 - (iv) *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,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest*

These matters are further considered below.

It is noted that the proposal is considered to be (which are considered further in this report):

- Designated Development (s4.10 of the EP&A Act)
- Integrated Development (s4.46 of the EP&A Act)
- Require referral and concurrence (s4.13 of the EP&A Act)

Protection of the Environment Operations Act 1997

The development is Integrated Development with the NSW Environment Protection Authority (EPA) as the proposal requires an environment protection licence (EPL) under s43(b) of the *Protection of the Environment Operations Act 1997* (POEO Act). An EPL is required as the development involves waste storage activities and would receive more than 6,000 tonnes of waste per year.

The NSW EPA provided a request for additional information on 10 July 2023. The Applicant provided a response and additional information addressing the NSW EPA's comments in October 2023. As detailed within the referrals section of this report, the NSW EPA have not provided their concurrence to the application due to insufficient information.

The provisions of any Environmental Planning Instruments (EP&A Act s4.15 (1)(a)(i))

State Environmental Planning Policies

The proposed development is affected by the following State Environmental Planning Policies:

- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021

(a) State Environmental Planning Policy (Planning System) 2021

Development of a type that is listed in Schedule 6 of Planning System SEPP is defined as ‘regional significant development’. Such applications require a referral to a Sydney District Panel for determination as constituted by Part 3 of Schedule 2 under the Environmental Planning and Assessment Act 1979. The proposed development constitutes ‘Regional Development’ as it is a particular designated development as specified by Section 7 of Schedule 6. While Council is responsible for the assessment of the DA, determination of the Application will be made by the Sydney Central City Planning Panel.

(b) State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

Not applicable. The subject site is not identified as a coastal wetland or ‘land identified as “proximity area for coastal wetlands” or coastal management area.

Chapter 3 – Hazardous and Offensive Development

Part 3 Potentially hazardous or potentially offensive development applies to the development.

In accordance with Part 3, Section 3.11, a preliminary hazard analysis was prepared as part of the Environmental Impact Statement and submitted to Council with the lodgement of the development application. This assessment takes into consideration the provisions of Department of Planning, “Hazardous Industry Planning Advisory Paper No. 6 - Guidelines for Hazard Analysis,”.

The development application including the prepared preliminary hazard analysis were referred externally to the NSW EPA. Upon review of amended and additional documentation submitted to Council, the NSW EPA raised no concern in relation to hazards associated with the proposed development, however, as discussed under the NSW EPA referral summary, a number of other issues are outstanding whereby the NSW EPA cannot support the proposal.

Chapter 4 – Remediation of Land

Clause 4.6 of Resilience and Hazards SEPP requires Council to be satisfied that the site is suitable or can be made suitable to accommodate the proposed development. The matters listed within Clause 4.6 have been considered in the assessment of the development application.

Matter for Consideration	Yes/No
Does the application involve re-development of the site or a change of land use?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Is the development going to be used for a sensitive land use (e.g.: residential, educational, recreational, childcare or hospital)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Matter for Consideration	Yes/No
Does information available to you indicate that an activity listed below has ever been approved, or occurred at the site? acid/alkali plant and formulation, agricultural/horticultural activities, airports, asbestos production and disposal, chemicals manufacture and formulation, defence works, drum re-conditioning works, dry cleaning establishments, electrical manufacturing (transformers), electroplating and heat treatment premises, engine works, explosive industry, gas works, iron and steel works, landfill sites, metal treatment, mining and extractive industries, oil production and storage, paint formulation and manufacture, pesticide manufacture and formulation, power stations, railway yards, scrap yards, service stations, sheep and cattle dips, smelting and refining, tanning and associated trades, waste storage and treatment, wood preservation	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the site listed on Council's Contaminated Land database?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the site subject to EPA clean-up order or other EPA restrictions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has the site been the subject of known pollution incidents or illegal dumping?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the site adjoin any contaminated land/previously contaminated land?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has the appropriate level of investigation been carried out in respect of contamination matters for Council to be satisfied that the site is suitable to accommodate the proposed development or can be made suitable to accommodate the proposed development?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>Details of contamination investigations carried out at the site:</p> <p>A Detailed Site Investigation report prepared by <i>Foundation Earth Sciences</i> was submitted with the application. The report did not reveal any potential matters of concern with regard to contamination and concludes that the site is suitable for its intended use.</p> <p>Council's Environmental Health Officer has reviewed the reports and determined that the site is suitable to support such a development given that the report provides that the site is suitable for the proposed use. Notwithstanding, given other issues as discussed throughout this assessment report, the proposal is not supported and is recommended for refusal.</p>	

(c) Statement Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 Advertising and Signage

The provisions of the SEPP apply to the proposed signage.

A detailed assessment against Schedule 5 of the Industry and Employment SEPP is provided in the table below.

SCHEDULE 5 – ASSESSMENT CRITERIA	
Assessment Criteria	Comments
1 Character of the area	
<i>Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</i>	The proposed signage is sympathetic to the building architecture, general built environment and character of the area. The signage design and form complement the buildings architecture and are similar to other business signage in the street.
<i>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</i>	There is no particular theme for outdoor advertising in the locality.
2 Special areas	
<i>Does the proposal detract from the amenity or visual quality of any environmentally sensitive area, heritage area, natural or other conservation areas, open space areas, waterways, rural</i>	The proposed signage does not detract from the amenity or visual quality of any environmentally sensitive, heritage, conservation, open space, or residential area.

<i>landscapes or residential areas?</i>	
3 Views and vistas	
<i>Does the proposal obscure or compromise important views?</i>	The proposal does not obscure or compromise important views.
<i>Does the proposal dominate the skyline and reduce the quality of vistas?</i>	The proposed signage is integrated into the street frontage fencing and therefore does not dominate the skyline or reduce the quality of existing vistas.
<i>Does the proposal respect the viewing rights of other advertisers?</i>	The proposal does not affect the viewing rights of other advertisers.
4 Streetscape, setting or landscape	
<i>Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</i>	The business identification/way finding signage are of a typical size and form for an industrial area and are considered to be compatible with the streetscape setting.
<i>Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</i>	Satisfactory – The proposed signage will contribute to the visual interest, whilst maintaining an appropriate relationship with the buildings and landscaped areas.
<i>Does the proposal reduce clutter by rationalising and simplifying existing advertising?</i>	The proposal is for business identification signage on the subject site which will reduce clutter as the signage is of similar materials/colours/patterns for ease of use.
<i>Does the proposal screen unsightliness?</i>	No unsightliness to screen.
<i>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</i>	The proposed signage is integrated into proposed fencing and therefore does not protrude above any structure.
<i>Does the proposal require ongoing vegetation management?</i>	The proposal does not require ongoing vegetation management.
5 Site and building	
<i>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</i>	The proposed signage is of a typical size and form for business identification signage and relate well to the site.
<i>Does the proposal respect important features of the site or building, or both?</i>	The proposed signage is suitably located, and considered to be well designed, and of an appropriate scale.
<i>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</i>	The proposal does not show innovation or imagination in its relationship to the site or building.
6 Associated devices and logos with advertisements and advertising structures	
<i>Have any safety devices, platforms, lighting or logos been designed as integral part of the signage or structure on which it is to be displayed?</i>	There is no requirement for safety devices or platforms noting the signage can be easily accessed from the pedestrian pathway for maintenance.
7 Illumination	

<i>Would illumination result in unacceptable glare?</i>	No illumination proposed.
<i>Would illumination affect safety for pedestrians, vehicles or aircraft?</i>	No illumination proposed.
<i>Would illumination detract from the amenity of any residence or other form of accommodation?</i>	No illumination proposed.
<i>Can the intensity of the illumination be adjusted, if necessary?</i>	No illumination proposed.
<i>Is the illumination subject to a curfew?</i>	No illumination proposed.
8 Safety	
<i>Would the proposal reduce the safety of any public road?</i>	The proposed signage is sited well within the site boundaries and appropriately setback from the street, and as such not considered to reduce road safety.
<i>Would the proposal reduce the safety for pedestrians or bicyclists?</i>	The proposed signage will not reduce safety for pedestrians or cyclists.
<i>Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?</i>	The proposed signage will not obscure sightlines from public areas and roads.

Accordingly, it is considered that the proposed signage is satisfactory and can be supported by Council. Notwithstanding, given issues raised elsewhere in this report, the proposed development is recommended for refusal.

(d) State Environmental Planning Policy (Transport and Infrastructure) 2021

The provisions of the Transport and Infrastructure SEPP have been considered in the assessment of the development application.

Clauses 2.98 and 2.119 apply to the site with consideration to the adjacent rail corridor and the site's frontage to Church Street. This is further discussed below.

Chapter 2 – Infrastructure

Clause 2.48 – Determination of development applications – other development

The application was referred to Ausgrid in accordance with this clause noting the proposal's proximity to overhead and underground power lines. Notwithstanding, as detailed in the referrals section of this report, Ausgrid raised no objection to the application subject to compliance with Ausgrid's Network Standards.

Clause 2.98 – Development adjacent to railway corridors and 2.99 – Excavations in, above, below or adjacent to rail corridors

The application is subject to clauses 2.98 and 2.99 of the SEPP, because the subject site is located within or adjacent to a railway corridor and include excavation works in, above, below or adjacent to rail corridors. Therefore, the application was referred to Sydney Trains for concurrence and further

comment. Sydney Trains advised Council on 5 February 2024 that concurrence was unable to be granted with GTA for the Proposal in its current form due to insufficient information being provided.

Clause 2.119 – Frontage to classified road

The application is subject to clause 2.119 of the SEPP as the site has frontage to a classified road. The application was referred to TfNSW for concurrence and further comment. TfNSW advised that Church Street is a classified regional road under Council's management, therefore, the design and construction of the proposed access on Church Street should be to Council's satisfaction.

The application was referred to Council's Traffic Engineer who requested that a revised Traffic Impact Assessment be provided in Council's Request for Information letter dated 11 August 2023. Following additional information being provided by the applicant on 31 October 2023, Council's Traffic Engineer provided additional comment as detailed under the Internal Referral section of this report noting that information remained outstanding and therefore the proposal could not be supported.

(e) Statement Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 –Vegetation in non-rural Areas

The site does not contain any significant vegetation. The proposal does not exceed the biodiversity offsets scheme threshold. Therefore, the proposed vegetation removal is considered acceptable.

Chapter 10 – Sydney Harbour Catchment

The subject site is identified as being located within the area affected by the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposed development raises no issues as no impact on the catchment is envisaged.

(Note: - the subject site is not identified in the relevant map as 'land within the 'Foreshores and Waterways Area' or 'Wetland Protection zone', is not a 'Strategic Foreshore Site' and does not contain any heritage items. Hence the majority of the SREP is not directly relevant to the proposed development).

Local Environmental Plans

Cumberland Local Environmental Plan 2021

The provision of the Cumberland Local Environmental Plan 2021 (CLEP 2021) is applicable to the development proposal. As discussed below, the proposed development is permissible with consent within the zone but is inconsistent with the relevant zone objectives.

(a) Permissibility:

The proposed development is defined as a 'waste or resource transfer station' and is permissible with consent in the E4 General Industrial zone. For clarity the definition of a 'waste or resource transfer station' is provided below:

waste or resource transfer station means a building or place used for the collection and transfer of waste material or resources, including the receipt, sorting, compacting, temporary storage and distribution of waste or resources and the loading or unloading of waste or resources onto or from road or rail transport.

It is noted that the proposed office within the development is ancillary to its primary use as a waste or resource transfer station.

The objectives of the E4 General Industrial zone are as follows:

- To provide a range of industrial, warehouse, logistics and related land uses.
- To ensure the efficient and viable use of land for industrial uses.
- To minimise any adverse effect of industry on other land uses.

- To encourage employment opportunities.
- To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.

The proposal is considered to be inconsistent with these zone objectives as it fails to demonstrate that the proposal minimises any adverse effects to surrounding land uses given the insufficient information provided. It is evident from both internal and external referrals that the additional information submitted by the applicant on 31 October 2023 has not satisfied relevant concerns of each referral body and therefore, the potential impacts of the proposal remain unknown.

In particular, the NSW EPA and Council's Traffic Engineer and Resource Recovery Officer identified outstanding and insufficient information as a basis for not being able to support the proposal. Specifically, requested information relating to noise impacts, air quality and relevant modelling, and traffic arrangements has not been provided and therefore, the adverse effect of the proposal on surrounding land uses cannot be determined.

Based on the information provided to date, it is therefore considered that the proposed development is inconsistent with the objectives of the E4 General Industrial zone.

The relevant matters to be considered under CLEP 2021 and the applicable clauses for the proposed development are summarised below. A comprehensive LEP assessment is contained in Attachment 7.

Figure 6 – Cumberland LEP 2021

DEVELOPMENT STANDARD	COMPLIANCE	DISCUSSION
4.1 Minimum Subdivision lot/ Lot Size 1500 m ²	N/A	The application does not seek any approval for subdivision.
4.3 Height of Buildings N/A	N/A	There is no maximum height of buildings provision prescribed at the site.
4.4 Floor Space Ratio 1:1	Yes	The application proposes an FSR of 0.76:1.
4.6 Exceptions to Development Standards	N/A	There is no proposed departure to any principal development standard.
5.10 Heritage	Yes	The site does not contain any heritage items nor is it located within a heritage conservation area. It is noted that Rookwood Cemetery and Necropolis, a State Heritage Item (SHI 00718) and local heritage item (I00718 and A00718), is located to the south of the site beyond the rail corridor and Railway Street.

The provisions of any proposed instrument that is or has been the subject (EP&A Act s4.15 (1)(a)(ii))

The proposed development is not affected by any relevant Draft Environmental Planning Instruments.

The provisions of any Development Control Plans (EP&A Act s4.15 (1)(a)(iii))

The Cumberland DCP 2021 provides guidance for the design and operation of development to achieve the aims and objectives of the Cumberland LEP 2021. A comprehensive assessment and compliance table is contained in Attachment 8.

As demonstrated in the assessment at Attachment 8, the proposed development fails to comply with a number of the provisions of the Cumberland DCP 2021 and is considered unacceptable from an environmental planning point of view.

The provisions of 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 (EP&A Act s4.15(1)(a)(iia))

There is no draft planning agreement associated with the subject Development Application.

The provisions of the Regulations (EP&A Act s4.15 (1)(a)(iv))

The proposed development raises no concerns as to the relevant matters arising from the *Environmental Planning and Assessment Regulations 2021* (EP&A Reg).

The Likely Environmental, Social or Economic Impacts (EP&A Act s4.15 (1)(b))

It is considered that the proposed development will have adverse environmental and social impacts in the locality. Due to the adverse traffic, safety, amenity and environmental impacts associated with the proposed development as detailed throughout this report, the proposal would have an adverse impact upon the existing and future built environment. A summary of these impacts is provided below.

Noise

As identified by the NSW EPA, the assessment of noise impacts is insufficient. In particular, the potential impacts to high density residential receivers located 70 metres to the west of the site have not been investigated or modelled.

A revised Noise Impact Assessment was requested in both Council's Request for Further Information letters dated 11 August 2023 and 1 September 2023 to determine such noise impacts to residential developments facing the site, including sleep disturbance assessment, operational noise impacts associated with the scrubber and a lack of construction noise impact assessment. A revised Noise Impact Assessment was provided by the applicant, however, the assessment provided fails to appropriately determine the extent of impacts anticipated relating to noise.

Air Quality

An assessment of air quality, including issues relating to odour, have not been sufficiently addressed by the applicant. Both the NSW EPA and Council's Resource Recovery Officer identified issues with the submitted Air Quality Impact Assessment.

These issues were not adequately addressed in the applicant's response package dated 31 October 2023.

Additionally, Council's Resource Recovery Officer noted that no contingency plan was made for mechanical failures relating to the odour control system. Similarly, this was also not addressed in the applicant's response package.

Traffic

Council's Request for Further Information dated 11 August 2023 noted that the originally submitted Traffic Impact Assessment (TIA) was insufficient noting that detail on existing traffic modelling was not provided and that access arrangements were inappropriate. The further information provided by the applicant on 31 October 2023 did not adequately address these issues, with Council's Traffic Engineer continuing to raise concern with the proposed access and egress arrangements including turning paths, truck routes, and the proposed driveway location.

Summary

As outlined above, throughout this report and within the supporting attachments, the proposed development has not satisfactorily addressed issues raised by Council throughout the assessment process including those contained within the Request for Further Information dated 11 August and 1 September 2023. Council can therefore not support the application in its current form given the outstanding information in relation to potential environmental impacts.

The suitability of the site for the development (EP&A Act s4.15 (1)(c))

The subject site and locality is not known to be affected by any natural hazards or other site constraints likely to have a significant adverse impact on the proposed development. However, for the reasons articulated in this report, the development is not suitable in the context of the site and surrounding locality.

Submissions made in accordance with the Act or Regulation (EP&A Act s4.15 (1)(d))

Advertised (Website)

Mail

Sign

Not Required

In accordance with Council’s Notification requirements contained within the Cumberland DCP 2021, the proposal was publicly notified for a total period of 46 days between 29 May 2023 and 14 July 2023 which consisted of the 28 days in accordance with Schedule 1 of the EP&A Act 1979. However, due to the sensitive and contentious nature of the development, the notification period was further extended for an additional 18 days. The notification generated 2,051 submissions in respect of the proposal with none disclosing a political donation or gift. The issues raised in the public submissions are summarised and commented on as follows:

Figure 7 – Submissions summary table

Issue	Planner’s Comment
<i>Traffic generation</i>	The application was both referred to Council’s Traffic Engineer and Transport for NSW (TfNSW). TfNSW provided their concurrence, however, matters relating to traffic engineering raised by Council’s Traffic Engineer relating to truck routes, access and egress, and swept paths, remain outstanding. The proposal is therefore not supported, and it is recommended for refusal.
<i>Inadequate submitted material and assessment</i>	Council has identified a number of areas where outstanding information is required, as outlined in the Request for Information letter dated 11 August 2023. The requested information has not been adequately responded to by the applicant and therefore an adequate assessment of the application is unable to be undertaken. Therefore the proposal is unable to be supported.
<i>Local Character</i>	The local character of the area is characterised by a variety of uses, noting the site abuts the boundary between the industrial and residential area. Given the extent of additional information outstanding at this stage, it is unable to be determined whether the proposal would have an acceptable impact on the character of the local area.
<i>Air Quality/Odour</i>	The application was referred to the NSW EPA and Council’s Resource Recovery Officer. Both the NSW EPA and Council’s Resource Recovery Officer continue to raise concern in relation to the Air Quality Impact Assessment (AQIA) and associated modelling. The proposal is therefore not supported, and it is recommended for refusal.
<i>Proximity to residential areas</i>	The proposed development is permissible at the site with respect to the E4 General Industrial zoning of the site. Notwithstanding, there are a number of outstanding matters in relation to environmental impacts, including those to surrounding receivers. Given the extent of additional information outstanding at this stage, it is unable to be determined whether the proposal would have an acceptable impact on surrounding residential areas. The proposal is therefore recommended for refusal.
<i>Health concerns relating to air quality</i>	Relevant air quality impacts, including those pertaining to health, have been identified as an outstanding issue. Accordingly, the proposal has been recommended for refusal.

<i>Property value</i>	Property value is not a matter for consideration under Section 4.15 of the <i>Environmental Planning & Assessment Act 1979</i> .
<i>Proximity to schools</i>	It is noted that the site is located 500 m to the east of St Joachim's Catholic School, 800 m to the west of Oz Education Homebush and 600 m south-east of Lidcombe Public School. The proximity of the facility to schools does not preclude the facilitation of such a facility at the site, however, there remain a number of outstanding issues which Council has concerns with as outlined throughout this report. Accordingly, the application is recommended for refusal.
<i>Contamination</i>	Site contamination has been assessed as part of this report. It has been found that the site could be made readily suitable for the proposed development. Notwithstanding, the proposal is not supported, and it is recommended for refusal.
<i>Greenhouse gas emissions</i>	Impacts to air quality are an issue that has been raised by both the NSW EPA and Council's Resource Recovery Officer.
<i>Local economy</i>	The proposed development is not considered to directly impact local investment for businesses in the area noting it is a permitted use at the site and is over 400 metres from the nearest E1 Local Centre zone. Notwithstanding, the proposal is not supported, and it is recommended for refusal.
<i>Noise</i>	Matters pertaining to noise impacts remain outstanding as identified by the NSW EPA. In particular, the NSW EPA found the submitted Noise Impact Assessment to be insufficient.
<i>Operational hours</i>	The proposed hours do not align with controls prescribed under the Cumberland DCP 2021 as further detailed in Attachment 8. Accordingly, the proposal is recommended refusal.
<i>Flood</i>	A Flood Impact Assessment was submitted with the original application demonstrating that the proposed development will not result in adverse flooding impacts. Notwithstanding, the proposal is not supported, and it is recommended for refusal.
<i>Fire risk</i>	The proposed development would be required to comply with all relevant Australian Standards. Additionally, a Fire Services Plan was submitted with the original application demonstrating that appropriate measures would be in place in the circumstances of a fire. Notwithstanding, the proposal is not supported, and it is recommended for refusal.
<i>Ecology</i>	The proposal does not currently contain any items of ecological significance and is largely vacant of any vegetation. Notwithstanding, the proposal is not supported, and it is recommended for refusal.
<i>Existing waste facilities</i>	The existence of other waste facilities in the locality does not preclude the development of other waste facilities.
<i>Future use</i>	Council cannot speculate future use or intensification of the site. Future changes to use or further intensification would require formal approval through a separate planning pathway. Notwithstanding, the proposal is not supported, and it is recommended for refusal.

<i>Impact on recreational areas (Pippita Rail Trail and Phillips Park)</i>	The proposal does not have any direct physical impact to recreational areas noting the proximity to Phillips Park and it would not preclude the facilitation of the Pippita Rail Trail.
<i>Site size and constraints</i>	The zoning of the site permits the development of a waste transfer facility and there are no minimum lot size requirements pertaining to such a development. Notwithstanding, given the extent of additional information outstanding at this stage the proposal is not supported, and it is recommended for refusal.
<i>Alternative options</i>	The submitted Environmental Impact Statement (EIS) provides a sufficient options analysis as required by the Secretary's Environmental Assessment Requirements (SEARs). Notwithstanding, the proposal is not supported, and it is recommended for refusal.
<i>Planning process</i>	Council has undertaken consultation in accordance with the <i>Environmental Planning and Assessment Regulation 2021</i> and Council's <i>Community Engagement Strategy 2022</i> .
<i>Public interest</i>	Council has determined that the proposal is not in the public interest with consideration to a number of outstanding information in relation to environmental impacts. Accordingly, the application is recommended refusal.
<i>Landscaping</i>	The application was referred to Council's Tree Management officer who raises no concerns regarding the proposal.
<i>Transportation of material</i>	The transportation of waste material to and from the facility would be required to be managed under an Operational Management Plan for the facility which would be referenced in any consent. Failure to comply with provisions of the management plan would result in compliance enforcement. Notwithstanding, the proposal is not supported, and it is recommended for refusal.
<i>Existing public infrastructure</i>	The existence of other public infrastructure such as Rookwood Cemetery, The Coroners Court, and Mary Wade Correctional Centre does not preclude the development of a waste transfer facility at the site.
<i>Post-approval monitoring</i>	Any waste facility of such a size would be required to comply with the conditions of an Environment Protection Licence which would be monitored by the NSW EPA. Notwithstanding, the EPA have not provided their concurrence and therefore the proposal is not supported, and it is recommended for refusal.

The public interest (EP&A Act s4.15(1)(e))

In view of the foregoing analysis it is considered that the development as proposed would not be consistent with the public interest.

For reasons outlined elsewhere in this assessment report, the proposal has not effectively addressed how it will manage environmental impacts and is therefore contrary to the public interest.

CUMBERLAND LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN 2020

The development would require the payment of contributions in accordance with Cumberland Local Infrastructure Contributions Plan 2020. Notwithstanding, the proposal is recommended for refusal.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

The applicant and notification process did not result in any disclosure of Political Donations and Gifts.

CONCLUSION

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*, *State Environmental Planning Policy (Planning Systems) 2021*, *State Environmental Planning Policy (Resilience and Hazards) 2021*, *State Environmental Planning Policy (Industry and Employment) 2021*, *State Environmental Planning Policy (Transport and Infrastructure) 2021*, *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, *Cumberland Local Environmental Plan 2021* and *Cumberland Development Control Plan 2021* and is considered to be unsatisfactory for approval subject to reasons for refusal.

Having regard to the relevant matters of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposed development is unacceptable for the reasons outlined in this report. It is recommended that the development application be refused.

RECOMMENDATION

- 1. That Development Application No. DA2023/0130 for Demolition of existing buildings and construction and operation of an organic waste transfer station. Integrated Development - Section 43(b) of Protection of the Environment Operations Act 1997. The proposal is Designated Development under the provisions of the Environmental Planning and Assessment Regulation 2021 on land at 109A Church Street LIDCOMBE NSW 2141 be issued a Refusal subject to reasons listed in the attached schedule.**
- 2. Persons whom have lodged a submission in respect to the application be notified of the determination of the application.**

ATTACHMENTS

1. Draft Reasons for Refusal
2. Architectural Plans and associated plans and documents
3. Stormwater/Engineering Plans
4. Submissions Received
5. EPA Response
6. Sydney Trains Response
7. Cumberland LEP Compliance Table
8. Cumberland DCP Assessment