



CUMBERLAND
CITY COUNCIL

23 February 2024

Our Reference 10635451
Contact Charlie Ayoub
Telephone (02) 8757 9150

Ms Abigail Goldberg
Chair
Sydney Central City Planning Panel

Dear Ms Goldberg

PPSSCC-447 – CUMBERLAND CITY COUNCIL SUBMISSION – DEVELOPMENT APPLICATION DA2023/0130 – 109A CHURCH ST, LIDCOMBE

At the Ordinary Council meeting held on Wednesday, 21 February 2024, Council considered a draft submission on development application DA2023/0130 and resolved (Min. 657):

“That Council:

- 1. Adopt the submission as attached to this report, opposing the proposed development.*
- 2. Ensure a copy is forwarded to the Sydney Central City Planning Panel prior to this matter being determined.*
- 3. Requests the Planning Panel to hold an in person meeting rather than a virtual meeting.*
- 4. Request that the Planning Panel reschedule the in person meeting to a time outside of normal business hours.*
- 5. Request understanding that a very multi-cultural community would be attending and that appropriate interpreting services be provided.*
- 6. Strongly objects to proposed development in its entirety. The proposed development represents an inappropriate development of the land that would negatively impact the local community. The development application has made inadequate provision to address its impact. We respectfully submit that the proposed development fails to meet the merit assessment considerations pertaining to the land, is not in the public interest and therefore should be refused.”*

Accordingly, please find enclosed the submission by the elected body of Council.

I thank you for your consideration and look forward to your response. Should you require any further information in relation to this matter, please contact Council’s Director Governance & Risk, Charlie Ayoub, on (02) 8757 9150 or alternatively via email at charlie.ayoub@cumberland.nsw.gov.au.

Yours faithfully

Peter J Fitzgerald
GENERAL MANAGER

ENCL

16 Memorial Avenue, PO Box 42, Merrylands NSW 2160
T 02 8757 9000 E council@cumberland.nsw.gov.au W cumberland.nsw.gov.au
ABN 22 798 563 329

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24 January 2024

Sydney Central City Planning Panel

**DA2023/0130 – 109A Church Street, Lidcombe
Demolition of existing buildings and construction and operation of an organic
waste transfer station**

Introduction

BBF Town Planners are instructed by Cumberland Council to make this submission to the subject Development Application.

We have examined the relevant documents, plans, and reports including the Environmental Impact Statement (EIS) prepared in support of the DA.

Our review finds that the Development Application:

- due to its type, intensity, and scale, would negatively impact upon the amenity of sensitive land and is inappropriate for the site.
- inadequately addresses the assessment matters relevant to the site.
- provides insufficient operational management provisions to mitigate its impacts and provide appropriate assurances to the community.

In our opinion, the DA should be refused.

REASONS FOR OBJECTION

Cumberland Council object to the proposed development of a waste transfer station (involving organic / putrescible waste) on the subject site for the following reasons:

1 Site unsuitable

The proposal involves a waste transfer station involving the movement, storage, and handling of putrescible waste, known to be odorous, close to residential dwellings (70m) and within a 200m radius of established communities, including the Lidcombe Local Centre and other sensitive land uses in the local context, to the north and west of the site.

The handling and storage of putrescible waste is known to generate offensive odours. It will also generate pests and vermin.

The operation of the facility is proposed over extended hours, 6 days per week, 6:00 am to 10:00 pm Monday to Friday, and 8:00 am to 6:00 pm on Saturdays.

The intensity of the land use involves 80,000 tonnes of waste per annum translating to 118 truck movements per day with the likelihood for noise, odour, and road safety impacts.

The operation of the facility will include a range of noise and odour sources with the potential to generate amenity impacts on nearby communities.

Storage of putrescible waste has the potential to generate hazardous and offensive gases that present a high fire risk close to residential land.

The site's location in proximity to residential development combined with the type, scale, and intensity of the proposed land use make it inappropriate for the location.

2 Hours of operation

The DA proposes hours of operation from 6:00 am to 10:00 pm (16 hours / day) Monday to Friday and 8:00 am to 6:00 pm on Saturday, 6 days per week (no operations on Sunday and public holidays). These hours are excessive for the location (70m from residential land) in terms of DCP control Part D - Development in Industrial Zones, 2.12 Operational management, Control C1 and C2 which relevantly, state:

“C1. Where an industrial site is located adjoining or adjacent to, or within 200m of residential development, or where in the opinion of Council, truck movements associated with the industry will intrude on residential streets, hours of operation shall generally be restricted to 7am to 6pm Monday to Saturday with no work on Sundays”.

“C3. Where an extension to the above hours is required due to the nature of the activities to be undertaken, a detailed submission shall be lodged with Council, demonstrating how environmental impacts can be minimised to acceptable levels to support the proposed extended hours of operation inclusive of an acoustic report and operation management plan”.

Furthermore, the objectives of this control are relevant to the DA (repeated at Annexure 1). The DA is non-compliant with this DCP control, noting the DA:

- does not provide justification of the proposed operating hours
- does not propose an enforceable truck route plan, and may involve trucks entering the residential area
- does not assess the noise from large waste trucks on the residential environment.

In the circumstances the hours of operation are a key assessment consideration, without sufficient justification in the DA and with insufficient provisions contained within the Operational Management Plan accompanying the DA.

3 Odours / air quality

The odour assessment report (Appendix I of the DA) finds the proposal acceptable based on mathematical formula and assumptions. However, the proposed Odour Management System is, by its own characterisation, a Concept Design, based on a range of assumptions (modelled parameters).

Whilst modelled by experts in the field, it is by nature, subject to many variables with potential for different results in the operation of the facility.

The odour assessment is not based on modelling of other waste facilities with comparable circumstances, scale, and proximity to residential land.

The assessment cannot be entirely relied upon to ensure that appropriate amenity levels will be achieved to the sensitive land uses near the property. If the site was significantly distanced from established communities, this issue may be less significant, however being 70m from residential land, the potential odour impacts are a key consideration.

The proposal has the potential to severely impact on the quality of life for nearby residents. Therefore, there needs to be the appropriate assurances that odour from the site can be controlled and not adversely impact on the established local communities.

This issue goes towards the unsuitability of the site for the intensity and type of development proposed.

3.1 Truck odour

We observe that the odour modelling accompanying the DA excludes odours from trucks travelling to and from the site, including trucks that may wait/queue within the local road network. The odour management plan states the following:

“All waste vehicles leaving the site containing light and/or potentially malodorous wastes will be securely sheeted or enclosed at all times.”

This provision provides inadequate detail and assurance that the waste being transported to / from the site will have an appropriate impact in terms of its odours. Addressed further in section 9 below.

The DA provides insufficient consideration of these matters. There is no enforceable truck route plan. There is no assessment of the impact of loaded waste trucks queuing and waiting to enter the site. There is no consideration of the impacts and management of this issue.

4 Health and safety impacts

4.1 Fire safety

A ‘fire services plan’ accompanies the DA, however it is inadequately detailed and does not provide an assessment of the fire risk presented by the DA.

The EIS report states on page xii: *“Fires are known to occur at waste management facilities. Mitigation measures, such as a fire suppression system and back to base monitoring would be implemented, in accordance with Building Code of Australia (BCA) and NSW Fire and Rescue guidelines for Fire Safety in Waste Facilities.”*

The SEARs require (inter-alia):

“Details of the size and volume of stockpiles and their arrangements to minimise fire spread and facilitate emergency vehicle access; and

The measures that would be implemented to ensure that the proposed development is consistent with the aims, objectives and guidelines in the NSW Fire and Rescue guideline Fire Safety in Waste Facilities dated 27 February 2020.”

In response to the fire risk, there is inadequate expert assessment accompanying the DA. There is no building code assessment report. Waste stockpiling volumes and heights are not

adequately quantified. The fire services plan accompanying the DA provides inadequate details and responses to the environmental assessment requirements.

4.2 Hazard issue (fire, vermin, odour)

It is noted that the DA states that waste will not be stored on-site for longer than 24 hours.

“No stockpiling of raw putrescible materials would be stored over 24-hours under normal operating conditions”

However, no operation is proposed on a Sunday (after 6:00 pm on a Saturday), meaning that waste received on a Saturday would not be cleared from the site until Monday exceeding the maximum 24 hours on a weekly basis (under ‘normal operating conditions’). This aspect is contrary to the odour assessment that accompanies the DA.

The DA omits to detail the size and volume of stockpiles and their arrangements. The management, size, limitations of these aspects have the potential to generate fire risk, vermin and odour impacts from the facility.

5 Noise impacts

Like the odour assessment, the noise assessment (Appendix J of the DA) finds the proposal acceptable based on mathematical formula and assumptions. The assessment is based on an operational concept, for example, in section 1.2 the report states (emphasis added):

“Primary noise generating sources from the site are expected to include truck movements, operational machinery and equipment associated with the development.”

At 5.2.2 the report states:

“At this stage of the project, the location of major plant items and the exact selection to be installed are not known. As such, a detailed assessment of noise associated from engineering services cannot be undertaken.”

As noted above, the DA proposes operation 6 days per week, 6:00 am to 10:00 pm (16 hours / day) Monday to Friday and 8:00 am to 6:00 pm on Saturday. These hours are excessive for the location which is 70m from residential land and exceed the provisions established in DCP controls C1 and C2 of 2.12 (previously referenced).

There is potential for queuing of waste trucks (bringing waste to the site) on the local public road network noting the site is said to have the capacity to accommodate 5 trucks at any one time. These trucks have the potential to have noise impacts on the local residential communities. The noise report excludes the assessment of this truck noise.

Despite the nature and number of additional vehicle movements proposed by the DA, this noise is not assessed by the DA.

For these reasons we find that the DA proposes a type of land use that is too offensive and too intense for the location and therefore should be refused.

5.1 Actual noise impacts

We understand from the noise report that the specific noise sources and levels are unspecified. The assessment is subject to variables with potential for different results. The modelled assumptions may or may not be accurate and may or may not be implemented in the operation

of the facility. It is also noted that the assessment is not based on modelling of other waste facilities or with comparable circumstances, scale, and proximity to residential land.

6 Truck / transport impacts

The DA proposes:

- receipt of 80,000 tonnes of organic / putrescible waste per annum/ 286 days per year translating to 280 tonnes per day (source: traffic report by EB Traffic Solutions).
- use of 20m Articulated Vehicles (large, heavy trucks)
- 59 trucks per day (or 118 truck movements per day - in and out)
- 16 hours / day operation, Monday to Friday - 6 trucks / hour
- Physical capacity for 5 trucks to be present onsite at any one time.

In response, the following key transport related issues are noted:

The level of annual waste tonnage (80,000) has a direct relationship to number of truck movements (in and out of the site), noise, and odour impacts. Noise and odour impacts from transport are inadequately assessed in the accompanying noise and odour assessment reports.

As previously noted, there is potential for queuing on the local public road network of waste trucks bringing waste to the site. These trucks have the potential to have noise and odour impacts on the local residential communities.

An enforceable truck route plan, that avoids impacting residential streets, does not accompany the DA. Heavy waste trucks travelling to or from the site are inappropriate for local residential streets.

7 Intensity and scale

The proposed intensity and scale of the DA is excessive for the location which is close to established residential communities.

The DA has failed to adequately assess other suitable locations where larger buffers to sensitive land may be achieved.

The intensity, hours of operation and scale of the DA is unsupported and unjustified by the accompanying information, noting there are various information omissions which are separately addressed within section 9 below.

8 Public interest, local character and land value

Public interest matters are generally reflected in the above responses to the various matters that have the potential to inappropriately impact on the residential amenity within the local area.

The Land and Environment Court's principle regarding local character (Project Venture Developments Pty Ltd v Pittwater Council¹) is relevant, in that the DA has the potential to result

¹ Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191- at 22-31

in adverse physical amenity impacts on nearby residential land in relation to noise and odour. The following excerpts from the principle are relevant to the assessment:

At 24, “Are the proposal’s physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.”

At 25, “The physical impacts, such as noise, ...and constraining development potential, can be assessed with relative objectivity.”

There is potential for negative impacts on the value of properties from odours and noise resulting from the location and intensity of the DA.

Relevantly, the DA does not comply with DCP control Part D, Control C1 and C2 related to the restrictions on the hours of operation when the location of noise generating industries close to residential land (previously addressed).

The site’s location in proximity to residential development combined with the type, scale, and intensity of the proposed land use make it inappropriate for the location.

9 Inadequate information

Cumberland Council note the following information which is considered inadequate to respond to the SEARs and justify approval by of the DA.

- Inadequate justification that the proposed development should be given consent to operate outside of regular hours is appropriate to accommodate the proposed development.
- Odours and noise from trucks travelling to and from the site are not assessed.
- Quantification and size limits to waste stockpiles – no quantification is provided. This has direct implications for fire risk, pest control, odour emissions, truck movements and overall development intensity.
- Inadequate analysis of potential alternative land to accommodate the proposed development – required by Chapter 3 “Hazardous and offensive development” of State Environmental Planning Policy (Resilience and Hazards) 2021, Section 3.12 Matters for consideration by consent authorities, which states:

“(d) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application)

(e) any likely future use of the land surrounding the development.”

- Truck arrival coordination to manage / prevent queuing on the local public road network noting the site is said to have the capacity to accommodate 5 trucks at any one time.
- Road network modelling analysis to assess road / congestion and truck movement impacts.
- Means, measures, strategies, and operational management procedures to control vermin / pests, that is, aside from, and in addition to the employment of a pest contractor.
- Hazard – fire risk. There is inadequate expert assessment accompanying the DA. There is no building code assessment report. This SEARs requirement is unsatisfied.

- Hazard - liquid from organic waste. The volumes of liquid produced from the protrusible waste is not detailed. It has the potential to be hazardous to the environment. It has the potential to be flammable and a therefore a fire safety risk to local communities. It has the potential to adversely impact the local amenity.
- Hazard - gas emissions. For example, methane gas is known to be a biproduct of decomposing putrescible waste. There appears to be inadequate assessment of the production, management and impact of these gas emission hazards.
- Inadequate justification that the site is appropriate to accommodate the nature, scale, and intensity of the proposed development and that the proposed development is suitable for the site.

10 Conclusion

Cumberland Council strongly objects to the proposed development in its entirety.

The proposed development represents an inappropriate development of the land that would negatively impact the local community. The development application has made inadequate provision to address its impacts.

We respectfully submit that the proposed development fails to meet the merit assessment considerations pertaining to the land, is not in the public interest and therefore should be refused.

Yours sincerely,



Michael Haynes
Director - BBF Town Planners

Annexure 1 - objectives of DCP control 2.12 Operational management (Part D - Development in Industrial Zones)

- “01. The hours of operation are managed to ensure residential amenity is protected.*
- 02. Ensure potential adverse environmental, public health and amenity impacts from industrial developments are adequately controlled.*
- 03. Development incorporates measures needed to protect the community from dangerous or hazardous goods storage and hazardous processes or uses.*
- 04. Ensure that the use of the land does not create an offensive noise or add significantly to the background noise level of a locality.*
- 05. Minimise impact of noise on sensitive receivers through appropriate design and measures.*
- 06. Provide a pleasant working environment and a high level amenity within industrial areas.*
- 07. Ensure adequate operational arrangements are provided for the development.*
- 08. Minimise unacceptable impacts on surrounding land uses and the transport/road network”.*

Annexure 2 - Planning principle for plans of management

Adequacy or appropriateness of a plan of management to the particular use and situation

Renaldo Plus 3 Pty Limited v Hurstville City Council [2005] NSWLEC 315- [external sitelaunch](#) at 53-55:

53 Management Plans (or similarly named documents) provide further details on the operation of a particular use that may not necessarily be appropriate as conditions of consent. Management Plans are a well known concept in environmental law (*Transport Action Group Against Motorways Inc v Roads & Traffic Authority* [1999] NSWCA 196 at par 122) and can be used in a range of different circumstances. Often, and is the case in this application, the contents of a Management Plan are critical to the decision of whether a development application should be approved or refused.

54 In considering whether a Management Plan is appropriate for a particular use and situation, the following questions should be considered:

1. Do the requirements in the Management Plan relate to the proposed use and complement any conditions of approval?
2. Do the requirements in the Management Plan require people to act in a manner that would be unlikely or unreasonable in the circumstances of the case?
3. Can the source of any breaches of the Management Plan be readily identified to allow for any enforcement action?
4. Do the requirements in the Management Plan require absolute compliance to achieve an acceptable outcome?
5. Can the people the subject of the Management Plan be reasonably expected to know of its requirements?
6. Is the Management Plan to be enforced as a condition of consent?
7. Does the Management Plan contain complaint management procedures?
8. Is there a procedure for updating and changing the Management Plan, including the advertising of any changes?

55 It is appropriate that each of these questions are addressed individually.

In *Amazonia Hotels Pty Ltd v Council of the City of Sydney* [2014] NSWLEC 1247- [external sitelaunch](#), Pearson C set out at (72) that the Commissioners had decided that the planning principle in *Renaldo Plus 3 Pty Ltd v Hurstville City Council* [2005] NSWLEC 315 should be retained but revised to require that, where a Plan of Management is appropriate, it should be incorporated in the conditions of consent. As a consequence, the sixth question in *Renaldo* is re-worded to read:

Is the Management Plan incorporated in the conditions of consent, and to be enforced as a condition of consent?