



Panel Reference	PPSSSH-117
DA Number	DA22/0632
LGA	Sutherland Shire Council
Proposed Development	Proposed type of development Waste and resource management facilities Operate a Resource Transfer Station (TRF) or a Materials Recycling Facility (MRF) or a combination of both a TRF and MRF with a maximum annual throughput of 60,000 tonnes per annum, allow for 24-hour operations Mondays to Fridays, with operations from 6:00 am to 4:00 pm Saturdays, Sundays and public holidays.
Street Address	43 Bay Road, Taren Point
Applicant	Visy Industries Australian Pty Ltd
Owner	Maincon Holdings Pty Limited
Date of DA lodgement	13 July 2022
Number of Submissions	One
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Yes
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Regulations 2021 • Protection of Environmental Operations Act 1997 • Roads Act 1993 • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • Sutherland Shire Local Environmental Plan 2015 • Sutherland Shire Development Control Plan 2015
List all documents submitted with this report for the Panel's consideration	Appendix A - Draft Conditions
Report prepared by	Sutherland Shire Council (Daniel Lukic)
Report date	8 May 2023

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

1. REASON FOR THE REPORT

The application is being re-referred to the Sydney South Planning Panel (SSPP) as the determination of the application was deferred pending the submission of additional information and further clarification from the applicant.

2. PROPOSAL

Development consent is sought for the following:

- Remove uncertainty regarding the validity of the previous development consent issued by Council in 2004, and
- Operate a recycling facility as either a Resource Transfer Station (TRF) or a Materials Recovery Facility (MRF) or a combination of both with a maximum annual throughput of 60,000 tonnes per annum, and
- Allow for 24 hour operations on Monday to Friday, with operations from 6am to 4pm on Saturday, Sunday and Public Holidays.

A full description of the proposal can be sourced in the SSPP Business Paper dated 6 March 2023.

3. BACKGROUND

- On 6 March 2023, the application was reported to the SSPP for determination with a recommendation for approval by Council.
- At the meeting, the applicant raised a number of issues with recommended conditions of consent. During deliberation, Council staff advised the applicant and the SSPP that changes to some conditions were accepted without contention, but other conditions could not be accepted as further consultation with Council's Environmental Scientist and Council's Environmental Health Officer was required.
- Members of the SSPP asked a number of questions relating to conditions and operational matters, citing that there appeared to be conflict between details in the assessment report and the application material.
- Due to the issues and matters raised above, the SSPP deferred the determination of the application for the following reasons:

The Panel agreed to defer the determination of the matter to allow for Council to provide further information on the Applicant's request for 24 hours operation on public holidays and amendments to the following conditions:

- *Condition 1- Delete reference to BASIX.*
- *Condition 2A - insert reference.*
- *Condition 5 - amend to change site manager contact details.*
- *Condition 7 - amend to include "source separated" material.*
- *Condition 8A - delete reference to "soft plastic packaging" as "hazardous waste" but include in 4 tonne limit.*
- *Condition 8B - delete reference to 14 day limit to remove hazardous waste.*
- *Condition 9 - delete reference to "3 sided".*

- Condition 20A - amend condition to permit that loading of vehicles may be outside in certain circumstances (not between 10pm and 5am).
- Condition 22A - amend condition to permit 24 hours operation on public holidays.

Council is also to provide the following information:

- *The impact of 24 hours operation on public holidays, including confirmation of the existing hours of operation on public holidays and that the noise assessment was based on 24 hour operation;*
- *Confirmation that the requirement in Condition 16 that the two roller doors located on the south side, close to the eastern wall, are to be shut during night time (i.e. 10.00pm to 5.00am) operation when access to the eastern door is not required "will meet the noise criteria, even if doors are open to enable access";*

The Council, in consultation with the applicant, is to provide the requested information, including amended conditions and a supplementary report, within 2 weeks of the date of this record of deferral. The supplementary report should discuss any conditions that have not been agreed by the Applicant and the reasons.

Once the Panel has received all the information it will be uploaded onto the Planning Portal and the matter will be determined electronically.

The decision to defer the matter was unanimous. The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

- On 13 March 2023, an email was sent to the applicant seeking comments in response to the items and issues raised by the SSPP.
- On 24 March 2023, a response was provided by the applicant.
- The information was reviewed by Council staff and no issues are raised. Changes to conditions have been recommended.

4. SPECIALIST COMMENTS AND EXTERNAL REFERRALS

The application was referred to the following internal and external specialists for assessment and the following comments were received:

4.1 Environmental Science Section

Council's Scientist has advised the following:

- The applicant has addressed the deferral matters satisfactorily and approval is recommended.
- The report indicates the increase in air pollutants will be minimal compared to existing background readings.
- There is still a need to comply with legislative changes and strive to minimise and mitigate the impacts of air pollutions through continual improvements in plant, equipment and operating procedures.
- Conditions are recommended.

4.2 Health Regulation Unit

Council's Environmental Health Officer advised the following:

- The additional information provided in response to the deferral reasons is satisfactory and no objections raised.
- The applicant's 'Table Summary of Agreeable Noise-Based Operational Restrictions' are well informed and are recommended to be included as conditions. This will ensure that these are enforceable from any compliance actions should issues arise.

5. ASSESSMENT

5.1 Changes to conditions

At the meeting, the applicant raised a number of issues with recommended conditions of consent, some typographical, other issues affecting contractual and operational obligations with the processing of waste materials through the facility. Following assessment, the following is an assessment of the issues raised and the recommendations proposed.

a) Condition 1- Plan Table

Applicant Issue/comment: BASIX compliance is referenced in the condition.

Comment: BASIX requirements do not apply to the land use activity and its reference in the condition was an oversight. It is recommended that this reference be deleted from the condition.

b) Condition 2(a) – Inconsistencies between Development Consent

Issue: Condition number missing.

Comment: Condition 2(a) referred to 'Condition "XX" having regard to the maximum permitted throughput permitted per annum. Condition XX is to reference Condition 3 which prescribes a threshold of 60,000 tonnes.

c) Condition 5 – Operational Plan of Management

Applicant Issue/comment: Amend the condition to delete contact details of the site manager, add in Visy Hotline being the means of contact for people wanting to complain or contact the operator.

Comment: At the meeting, the applicant advised that Visy Australia have a dedicated national contact hotline, which is the preferred method of contact for the company rather than having the site operator's name and mobile number. No objection is raised regarding the change to the contact information should someone need to contact the company to report or raise an issue for attention and response.

d) Condition 7 – Waste Streams only Permitted

Applicant Issue/comment: Amend the condition to include 'source separated' materials.

Comment: Council's Scientist has confirmed that they raise no objection to including 'source separated' materials forming part of the permitted waste streams permitted to be received at the facility.

e) Condition 8 – Storage of Hazardous Wastes – Part A

Applicant Issue/comment: Delete the reference to soft plastic packaging as being a hazardous waste stream, include a 4 tonne limit of soft plastic storage separate to the 4 tonne threshold storage limit of gas bottles, electronic equipment and fibrous cement.

Comment: No objection has been raised by Council's Scientist removing the soft plastic reference from the list of hazardous materials not permitted to be kept onsite. The storage of 4 tonnes of soft plastics onsite in addition to the storage of 4 tonnes of gas bottles, electronic equipment and fibrous cement is also acceptable.

f) Condition 8 – Storage of Hazardous Wastes – Part B

Applicant Issue/comment: Delete the reference to removal of hazardous waste within 14 days except for lead batteries, which are to be removed quarterly.

Comment: The intention of the condition was to ensure that there is no accumulation of hazardous materials onsite as a result of the daily waste deliveries to the site. At the meeting, the applicant detailed that daily collection will be very problematic as authorised personnel and vehicles are required and it will be financially unviable for daily collection to be undertaken, particularly if there is only a small quantity of hazardous material pending collection. The applicant advised that the collection of hazardous wastes (except for batteries) within 14 days is far more practical and financially viable. This also ensures there will not be a significant build-up of hazardous materials onsite. This has been considered by Council staff who are supportive of the applicant's management of hazardous waste disposal, therefore, the amendment to the condition is supported.

The removal of batteries each quarter is acceptable. The operator has detailed that such items are stored separate to any flammable materials, above the maximum flood level and within a purpose built storage area.

g) Condition 9 – Vermin and Litter Management

Applicant Issue/comment: Delete the reference to 3 sided facility.

Comment: No objection to the change. The reference to the 3 sided bay was from the applicant's management report and appears to be their oversight.

h) Condition 20 – Industrial Activities Outside the Building

Applicant Issue/comment: Amend the condition to permit loading of vehicles outside of the building in certain circumstances (but not between 10pm to 5am).

On 23 March 2023, the applicant provided further clarification regarding this item as follows:

“Using forklifts to load containers and using the FEL to load glass into trucks are required to be performed outside. These operations are not required to be completed at night.

The acoustic report mentions the worst-case operational scenarios in Table 4-5 on page 17. Trucks idling and the FEL operating outside were part of the worst-case assessment for the Morning shoulder/ Daytime & Evening (5am to 10pm). Forklift operation outside sometimes was included in the nighttime assessment in this same table, but FEL operation was restricted to internal operation in the nighttime assessment (10pm-5am).

Considering this and the information provided in Visy's response to Council's first query above, Visy are open to 'loading outside' being limited to 6am to 10pm, but vehicle movements (FEL, forklift and truck transit) should remain unrestricted. Of course, the restriction that all truck unloading must be carried out inside would still be maintained.”

Comment: It is recognised that the loading and unloading of new equipment, machinery and the like will need to be undertaken outside of the buildings from time to time. It is recommended that the condition be amended to allow for such activities to be undertaken, but only between 5am to 10pm, daily and that such activities do not extend to any MRF and/or TRF waste operation.

i) Condition 22 – Hours of Operation

Applicant Issue/comment: Amend the condition to allow for 24 hour operation on public holidays.

On 23 March 2023, the applicant offered further clarification regarding this item as follows:

“The noise assessment is based on the Noise Policy for Industry which derives criteria for daytime, evening and night-time based on a typical one full week of background data for the assessment periods. The Noise Policy for Industry typically does not require specific considerations of weekends and public holidays.”

Comment: The applicant advised that due to contractual obligations, 24 hour operation is required on public holidays when fall on a weekday. A review of the NSW Government Website shows that there are 9 public holidays per year in New South Wales, being:

- January 1 – New Year's Day.
- January 26 – Australia Day.
- Good Friday (March or April).
- Easter Monday (March or April).
- April 25 - Anzac Day
- June 12 – The King's Birthday.
- Labour Day (October).
- 25 December – Christmas Day.
- 26 December – Boxing Day.

Depending on when some public holidays fall, there are instances where additional public holidays are provided. For example, if New Year's Day falls on a Sunday, the next day (Monday) will be a public holiday. The application does not seek to include public holidays that fall on a weekend to become 24 hour operational days, rather limited only to weekdays. The previous report to the SSPP substantiated that weekday operations will have minimal impacts to adjoining and nearby sensitive receptors. 24 hour operation on weekday public holidays are supported as Council's Environmental Health Officer has advised that such operations will have minimal impacts upon adjoining and nearby sensitive receptors.

5.2 Additional Commentary

a) Comments on the impact of 24 hour operation on public holidays.

As detailed in Section 5.1(i) above, it is recognised that there are contractual obligations for the collection and processing of recyclable waste materials on all weekdays. Council's Environmental Health Officer does not raise objection to 24 operations on public holidays that fall on a weekday and based on the information lodged in response to issues raised by the SSPP, the application is supported.

b) Confirmation on Condition 16 regarding closing of roller doors.

In response to this issue, the applicant provided the following:

"On page 18 of Appendix G – Acoustic Report, the engineer has stated "The model also assumes all roller doors to be open between 5.00am to 10.00pm. During the nighttime period, it assumes that the two roller doors located on the south side, close to the eastern wall, are closed." – The two doors referred to (in yellow in the image below) are the doors adjacent the internal glass stockpile area, where glass falls from the MRF machinery into the glass stockpile. The other doors were open as part of the assessment.

The effects of the MRF operation at nighttime can be seen in table 4-9 of the Acoustic Report with an assessment of the noise prediction following. It reads as follows:

"The predicted noise levels highlighted in bold measured 1 to 2dB above the night criteria. According to the NPfl, if the predicted noise levels minus the criteria is $\leq 2\text{dB}$, the significance of the residual noise level is negligible, and no mitigation is required.

Based upon the results of environmental noise modelling, operational noise emissions (with MRF operating) achieve the applicable assessment criteria during the night period. However, it should be noted that under standard conditions, which would occur for the majority of the time, the assessment predicts operational noise compliance. Only under noise enhancing meteorological conditions that the assessment predicts minor exceedances during nighttime period. And even then, the noise enhancing meteorological conditions would only occur sparingly.

Any time the MRF is operating, the FEL needs to access the glass storage area periodically. A few times a night, the FEL would need to leave the Intake bay (highlighted green below), drive across the hardstand outside to the glass storage area (through the yellow doors), and shift the glass within that area to prevent

it from building up under the glass ejection point. The doors would need to be open while doing this to allow manoeuvring of the FEL. This would be for a maximum of 5 minutes at a time.

Draft Condition 17 recognises that the modelling indicates marginal exceedance and therefore requires an acoustic post validation report with 12 weeks of the commencement of increased operating hours and if there are exceedances above those predicted in the RWDI Noise Impact Assessment then rectification works are required within 28 days. This condition would capture and require rectification of any noise exceedance caused by operation of the FEL outside the warehouse.

The acoustic engineer has recommended that only the glass stockpile doors (yellow above) are closed at nighttime when access is not required. The other doors were assessed as being open. Trucks enter the Intake bay (green highlighted area) to tip or be loaded with material. The roller doors accessing this area were assessed as being open without restrictions, with the MRF running and the FEL operating during nighttime. So, in terms of the doors being open to 'receive a waste truck', the doors used in this operation are able to remain open during nighttime operations without adversely affecting the noise impact of the site.

would mean an extended downtime (due to the complicated plant start-up routine) that would severely hinder the plant's ability to run at night.

Also, as a side note, the FEL operates in this area to load the glass into a truck, but this is already restricted to being outside of nighttime hours (i.e. during morning or daytime 6am-10pm)."

Council's Environmental Health Officer has reviewed the information provided by the applicant in response to the potential noise and amenity impacts having regard to the roller door concerns and has not raised any objection and supports the application.

6. DEVELOPMENT CONTRIBUTIONS

Due to its nature, the proposed development will not require or increase the demand for local and district facilities within the area. Accordingly, it does not generate any Section 7.12 contributions. Further the proposed development has a value of less than \$100,000 and therefore does not attract any Section 7.12 Contributions in accordance with Council's adopted Section 7.12 Development Contribution Plan 2016.

7. DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS

Section 10.4 of the Environmental Planning and Assessment Act, 1979 requires the declaration of donations/gifts in excess of \$1000. In addition, Council's development application form requires a general declaration of affiliation. In relation to this development application no declaration has been made.

8. CONCLUSION

The subject land is located within Zone IN1 General Industry pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a waste or resource management facility is a permissible land use within the zone with development consent.

In response to the public notification, 1 submission was received. The matters raised in these submissions have been considered and based on the responses provided from TfNSW and Council's Traffic Section, the issues are not considered substantive.

The proposal requests to vary the late night trading hours specified in Chapter 37 of the Sutherland Shire Development Control Plan 2015. The site is located within a 'low' activity zone and normally limited to base hours of 6am to 10pm and extended hours only up to midnight. Based on the merits of the application, the detailed investigation and modelling undertaken by the applicant and subject to recommended operational conditions from Council's Environmental Health Officer, including post validation reporting and necessary works, it is considered that a 24 hour operation on Monday to Friday is supportable.

The applicant has detailed that there is a genuine need to intensify the operational aspects of the site in order to meet the Commonwealth Government's and NSW Government's commitments to recycling strategies and targets, helping to divert recyclable and reusable wastes from landfill, provide a commercial return and increased employment opportunities. Additionally, the expansion of hours will also allow for SSC to meet their waste strategies and goals as identified in the Sutherland Shire Local Strategic Planning

Statement (LSPS) and the Sutherland Shire Council: Our Community Plan 2017.

The application has been assessed having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. The application will not result in any significant impact on the environment or the amenity of nearby residents. Following assessment, Development Application No. DA22/0632 may be supported for the reasons outlined in this report.

The officer responsible for the preparation of this Report is the Development Assessment and Certification Manager (Beth Morris), who can be contacted on 9710 0333.