

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-20
DA Number	DA20/0247
LGA	Sutherland Shire Council
Proposed Development	Change of use and internal works to unit 3 for use as a waste management facility for storage and processing of food-grade oils
Street Address	3/5 Clerke Place Kurnell
Applicant/Owner	Wynyardz Pty Ltd
Date of DA lodgement	20 April 2020
Number of Submissions	0
Recommendation	Deferred Commencement
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Schedule 7 – Clause 7(c); <i>waste management facilities or works, which meet the requirements for designated development under clause 32 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000.</i>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Infrastructure) 2007.</i> • <i>State Environmental Planning Policy – State & Regional Development 2011 (Schedule 7 Regionally Significant Development).</i> • <i>State Environmental Planning Policy Coastal Management (2018).</i> • <i>State Environmental Planning Policy No. 19 Bushland in Urban Areas.</i> • <i>State Environmental Planning Policy No. 33 Hazardous and Offensive Development</i> • <i>State Environmental Planning Policy No. 55 (Remediation of Land) (SEPP 55).</i> • <i>Sutherland Shire Local Environmental Plan 2015</i> • <i>Sutherland Shire Development Control Plan 2015</i> • <i>Environmental Planning and Assessment Regulations 2000 – Schedule 3 Clause 32</i>
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Appendix A – Draft Deferred Conditions of Consent • Appendix B – SSDCP2015 Compliance Table • Appendix C – PAD19/0042 Letter • Appendix D – Architectural Plans • <i>JMH Living Design – Plan Drawing No.18_13, Sheets 01, 02, 03, dated 26 October 2020.</i> • <i>SLR – Air Quality Impact Assessment (Ref: 610.19157-R01), dated April 2020.</i> • <i>Ecoplanning – biodiversity advice letter, dated 10 December 2019.</i> • <i>DPC – statutory compliance report (Ref: J3176), dated 16 January 2020.</i> • <i>Hayes Environmental Consulting – Soil and Water letter (Ref: MP147AQ), dated 5 November 2019.</i> • <i>Benbow consultancy – Noise Impact Assessment (Ref:191138_NIA_Rev2), dated December 2019.</i> • <i>McLaren Traffic Engineering – Traffic and Parking Impact Assessment (Ref: 190253.01FB), dated 8 April 2020.</i> • <i>Sherpa consulting – Risk Assessment Report (Ref: 21346-RP-001), dated 11 October 2019.</i> • <i>Wynne Planning – Statement of Environmental Effects (includes SEARS in Appendices B, C, D, E), dated April 2020.</i> • <i>Holmes Fire – Fire Management Plan (Ref: 140012.00.FMP01e Version E), dated 14 October 2020.</i> • <i>Holmes Fire – Fire Safety Upgrade Concept Report (Ref: 140012.00.CFSUCR01a Version A), dated 14 October 2020.</i> • <i>Holmes Fire – Fire Safety Upgrade Report (Ref: 140012.00.FSUR01b Version B), dated 19 October 2020.</i> • <i>Wynne Planning – Operational Plan of Management, dated October 2020.</i> • <i>Wynne Planning – Response letter, dated 27 October 2020.</i> • <i>Benbow consultancy – Concrete cap management letter (Ref: 191138-02_CCMPlet_Rev2), dated 26 October 2020.</i> • <i>Benbow consultancy – Waste Management Report (Ref:191138_WMP_Rev4), dated October 2020.</i> • <i>Benbow consultancy – Environmental Management Plan (Ref:191138_EMP_Rev3), dated October 2020.</i>
Report prepared by	Gavin Ho
Report date	9 November 2020

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Report Summary of the assessment report?	Yes
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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 assessment report?	Yes Section 6 -7
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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
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Special Infrastructure Contributions

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

Have draft conditions been provided to the applicant for comment? <i>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</i>	Yes
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REPORT SUMMARY

REASON FOR THE REPORT

State Environmental Planning Policy (State and Regional Development) 2011, requires this application to be referred to the Sydney South Planning Panel (SSPP) as the development is classified as a waste management facility and is Designated Development pursuant to Schedule 3 Clause 32 (1.a.iv), (c), (d.i-ii) of the *Environmental Planning and Assessment Regulation 2000*.

PROPOSAL

The application is for the change of use and internal works to unit 3 for use as a waste management facility for storage and processing of food-grade oils.

THE SITE

The subject site is located at Unit 3 No.5 Clerke Place Kurnell.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

1. Development Application No. 20/0247 for the change of use and internal works to unit 3 for use as a waste management facility for storage and processing of food-grade oils at Lot 8 DP 270440 5 Clerke Place (Private), Kurnell is determined by the granting of a deferred commencement development consent subject to the conditions contained in Appendix "A".

ASSESSMENT OFFICER'S COMMENTARY

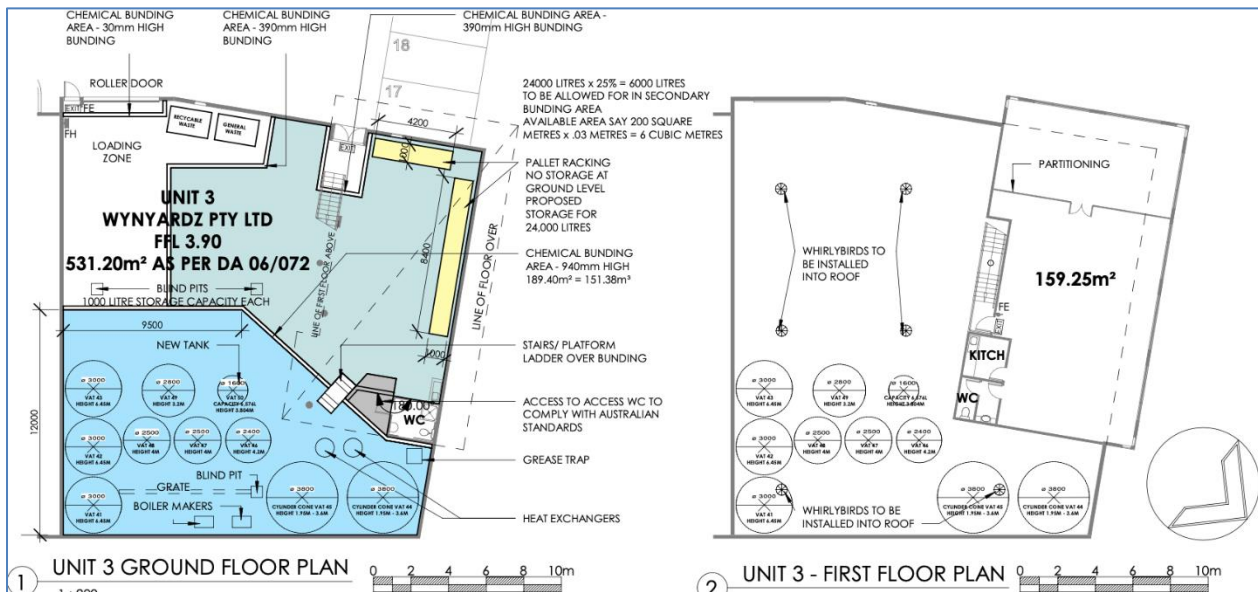
1.0 DESCRIPTION OF PROPOSAL

The proposed development involves the use of industrial unit no.3 at 5 Clerke Place Kurnell for the operation of a *Waste Management Facility*. The tenancy is 2-storey in height with a ground floor warehouse and first floor mezzanine office space. A total of 114 car parking spaces are currently provided at the site, of which 6 spaces have been allocated to Unit 3 under DA18/1366, however this Strata Plan of Subdivision is yet to be registered with NSW LRS.

The *Waste Management Facility* proposes to process oils at the follow rates:

- Blocks of pure margarine: maximum of 10 tonnes per month,
- Blocks of animal fat: approximately 40 tonnes per month,
- New cooking oils: Approximately 550 tonnes per month,
- Used cooking oils: maximum of 300 tonnes per month of liquid used cooking oils and no more than 60 tonnes will be stored on site at any one time.

This subject development application no.DA20/0247 proposes the use and minor construction work, being Vat 50, the boiler maker area, bunding, an external blade wall and a ventilation stack. All other fit out works detailed within the submitted floor plan appear to have been carried out without relevant approval. A ground floor and first floor plan is below.



2.0 SITE DESCRIPTION AND LOCALITY

The site is irregular in shape with a total area of 19,271m². The subject unit no.3 is located at the most northern corner of the complex that is comprised of 19 industrial units. Access to the industrial complex is via the private Clerke Place road off Sir Joseph Banks Drive, with the site located at the end of the cul-de-sac. The site is relatively flat and the adjoining land to the north-east consists of similar industrial complexes/units. The site is identified as affected by Bushfire Prone Land, Kurnell refinery 500m buffer, Acid Sulfate Soils Class 4, Environmentally Sensitive Land (groundwater vulnerability and terrestrial biodiversity), SEPP Coastal Management (Proximity Area Coastal Wetlands, Coastal Zone, Coastal Use Area Map). An aerial photo showing the location of the site is shown below.



3.0 BACKGROUND

A history of the development proposal is as follows:

- DA14/1017 was approved for the *initial use of Unit 3 in an existing industrial unit as a light industry and food grade oil warehouse*. However this DA14/1017 lapsed on 14 November 2017.
- DA18/0723 was lodged for the *use of Unit 3 as a food grade oil warehouse* but was withdrawn as the proposed development was classified as Designated Development and required the preparation of an EIS which hadn't been submitted at the time of DA18/0723 lodgement.
- DA18/1366 was approved on 12 June 2019 for the *Strata Subdivision of existing 19 industrial units*. This approval allocated 6 car parking spaces to Unit No.3, however at the time of this report this Strata Plan has not yet been registered with NSW LRS.
- A pre-application discussion (PAD19/0042) was held on 9 September 2019 regarding this development. As a result of this a formal letter of response was issued by Council dated 29 October 2020. A full copy of the advice provided to the Applicant is contained on file and within Appendix C of this report and the main points contained in this letter are as follows:
 - The proposed waste management facility is not hazardous development under SEPP33.
 - SEARs requirements must be addressed via an EIS in accordance with Schedule 2 of the EPA Regs 2000.
 - Plan of Management requirements.
 - Parking and Traffic report is to be submitted.
 - BCA compliance and assessment report is to be submitted.
- The current application was submitted on 20 April 2020.
- The application was placed on exhibition, with the last date for public submissions being 17 June 2020. No submissions were received during the assessment of this application.
- Council conducted a site inspection on 2 July 2020.
- The NSW EPA requested additional information in a letter dated 10 July 2020. The Applicant provided a response to this on 15 July 2020.
- Council on 15 September 2020 requested additional information for an Operational Environmental Management Plan, amendments to the Plan of Management, confirmation of the scope of building works, the existing blind pits and the Concrete Cap Management Plan that applies to the site.
- The Applicant submitted additional information on 20 October 2020, 22 October 2020, 27 October 2020 and 28 October 2020.

4.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application or after a request from Council, the applicant has provided adequate information to Council to enable an assessment of this application.

5.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of Chapter 42 of Sutherland Shire Development Control Plan 2015 (SSDCP 2015). Council notified 42 adjoining or affected owners of the proposal and no submissions were received.

6.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone IN1 General Industrial pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a *Waste Management Facility*, is not listed as a prohibited use and any development that is not specified in Item 2 or 4 is then permitted with consent. Therefore, the proposed use is permitted with development consent from Council.

The following Environmental Planning Instruments (EPIs), Draft EPIs, Development Control Plans (DCPs), Codes or Policies are relevant to this application:

- State Environmental Planning Policy – State & Regional Development 2011 (Schedule 7 Regionally Significant Development).
- State Environmental Planning Policy (Infrastructure) 2007.
- State Environmental Planning Policy No. 55 (Remediation of Land) (SEPP 55).
- State Environmental Planning Policy Coastal Management (2018).
- State Environmental Planning Policy No. 33 Hazardous and Offensive Development
- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015).
- Section 94 Contribution Plans.

Section 7.11 / 7.12 Development Contribution Plan 2016

- Section 7.12 Development Contribution Plan 2016 - Sutherland Shire.

7.0 COMPLIANCE

7.1 State Environmental Planning Policy – State & Regional Development 2011

State Environmental Planning Policy (State and Regional Development) 2011 identifies State and Regionally Significant development in NSW. Schedule 7, Clause 7(c) of the SEPP identifies this application as regionally significant development as the development is for a Waste Management Facility which meets the requirements for Designated Development pursuant to Schedule 3 Clause 32 (1.a.iv), (c), (d.i-ii) of the *Environmental Planning and Assessment Regulation 2000*. As such, the application is referred to the South Sydney Planning Panel for determination.

7.2 State Environmental Planning Policy (Infrastructure) 2007

Division 23 of the Infrastructure SEPP relates to Waste or Resource Management Facilities. This subject development application is seeking approval for the use of Unit 3 as a Waste Management Facility. Clause 121(1) of the Infrastructure SEPP identifies that a Waste or Resource Management Facility is may be carried out with consent in the prescribed zone, in this case the IN1 General Industrial zone.

7.3 State Environmental Planning Policy No. 55 (Remediation of Land) (SEPP 55)

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) requires Council to consider whether the land subject to the development proposal is contaminated; and if the site is contaminated, Council must be satisfied that the site is suitable or can be made suitable (i.e. following remediation) for the proposed land use.

A site inspection identified that the site is currently occupied by an industrial warehouse complex and the subject Unit 3 is has fitted out most works for the operation as a Waste Management Facility.

A review of Council's GIS and historical aerial photos has shown that the above complex has been in place since approximately 2010, following DA06/0721 which approved the 19 units and 114 car parking spaces. Prior to this development the site was vacant.

A search of Council's contaminated land register does not identify the site as affected by contaminated land. In conclusion, the site is suitable for the proposed development and in accordance with requirements of SEPP 55.

7.4 State Environmental Planning Policy (Coastal Management) 2018

State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management consistent with the Coastal Management Act 2016. The CM SEPP applies to land within the coastal zone across NSW. All foreshore land within the Sutherland Shire is identified as being within the coastal zone, in some instances the coastal zone extends beyond waterfront properties. In addition, much of the Sutherland Shire foreshore is identified as being within the coastal environment area and the coastal use area.

Before granting development consent on any land within the coastal zone the consent authority must be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. Council is satisfied that the proposed Waste Management Facility is unlikely to cause increased risk of coastal hazards on that land or other land. It is noted at this stage Council does not have any certified coastal management programs which require consideration.

The subject site is within the coastal zone and is also identified on the CM SEPP map as a proximity area to coastal wetlands and coastal use area.

Development on land in proximity to coastal wetlands or littoral rainforest (clause 11)

As the site is identified as being land in proximity to coastal wetlands on the CM SEPP map the consent authority cannot grant development consent unless it is satisfied that the proposed development will not significantly impact on:

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest.
- (b) the quantity and quality of surface and groundwater flows to and from the adjacent coastal wetland or littoral rainforest.

Minimal building works are proposed under this application which would significantly impact on either (a) or (b) above. The Applicant has submitted a Soil & Water Environmental Impact Statement prepared by Hayes Environmental Consulting (Ref: MP147AQ, dated 5 November 2019), which satisfactorily addressed the potential impacts and mitigation measures to ensure that the development and its operation does not adversely impact on the adjacent coastal wetland. Additionally, with a suitable Plan of Management and conditions, Council expects the premises can operate in a satisfactory manner.

Development on land within the coastal use area (clause 14)

The site is identified as being land within the “coastal use area” on the CM SEPP map. This requires the consent authority to consider certain factors and be satisfied of certain requirements before development consent is granted. Specifically, the consent authority must consider whether the proposed development is likely to cause an adverse impact on existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability; overshadowing, wind funneling and the loss of views from public places to foreshores; the visual amenity and scenic qualities of the coast, including coastal headlands; Aboriginal cultural heritage, practices and places, and cultural and built environment heritage.

These factors have been considered in the assessment of this application and Council is satisfied that the proposed development will not adversely impact on the matters detailed in Clause 14(1).

7.5 State Environmental Planning Policy No.33 – Hazardous and Offensive Development

A requirement of the SEAR's is to conduct preliminary risk screening to determine if the proposed development is Potentially Hazardous or Offensive Development.

SEPP 33 defines ‘**Potentially Hazardous Industry**’ as ‘a development for the purposes of any industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would pose a significant risk in relation to the locality—

(a) to human health, life or property, or

(b) to the biophysical environment and includes a hazardous industry and a hazardous storage establishment.’

SEPP 33 defines ‘**Potentially Offensive Industry**’ as ‘a development for the purposes of an industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would emit a polluting discharge (including for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land, and includes an offensive industry and an offensive storage establishment.’

If the proposed development was to be considered as Potentially Hazardous Industry or Potentially Offensive Industry, the development would be classified as Heavy Industry under SSLEP2015 which is prohibited with the IN1 General Industrial Zone.

At the time of PAD19/0042, a Risk Assessment Report prepared by Sherpa Consulting (dated 11 October 2019) was submitted. This report identified that risk screening had been undertaken for the purpose to ascertain if the proposed development would be classified as Potentially Hazardous or Offensive Development. The submitted report concluded that the proposal is not classified as ‘potentially hazardous’ under SEPP 33 and a Preliminary Hazard Analysis is not required. Therefore, on this conclusion the proposed development may be classified as a Waste Management Facility and is permitted with consent within the IN1 General Industry zone.

7.6 Sutherland Shire Local Environmental Plan 2015

The proposal has been assessed for compliance against Sutherland Shire Local Environmental Plan 2015. A compliance table with a summary of the applicable development standards is contained below:

Sutherland Shire Local Environmental Plan 2015			
CLAUSE	REQUIRED	PROPOSAL	COMPLIANCE
Clause 6.14 Landscaped Areas	10% (1,927.1m ²)	13% (2,505.2m ²)	Yes Unchanged from DA18/1366

7.7 Sutherland Shire Development Control Plan 2015

The proposal has been assessed for compliance with SSDCP 2015. A compliance table with a summary of the applicable development controls is contained in Appendix B.

Notably the proposal fails to comply with the minimum car parking controls and also proposes 24 hour operation. This is discussed further in the assessment section of this report.

7.8 Draft Environmental Planning Instruments

Draft State Environmental Planning Policy (Environment) (draft Environment SEPP)

The draft Environment SEPP seeks to simplify the NSW planning system and reduce complexity without reducing the rigour of considering matters of State and Regional significance. The draft SEPP was exhibited between October 2017 and January 2018. The SEPP effectively consolidates several SEPPs including SEPP19, SEPP (Sydney Drinking Water Catchment), and GMREP2 and remove duplicate considerations across EPIs. Relevant considerations have been taken into account against the in-force EPIs in this report.

Draft State Environmental Planning Policy (Remediation of Land) (Draft Remediation of Land SEPP)

The draft Remediation of Land SEPP seeks to repeal and replace SEPP55 in relation to the management and approval pathways of contaminated land. The draft SEPP was exhibited between January and April 2018. New provisions will be added which will:

- require all remediation work carried out without the need for development consent to be reviewed and certified by a certified contaminated land consultant,
- categorise remediation work based on the scale, risk and complexity of the work, and
- require environmental management plans relating to post remediation, maintenance and management of on-site remediation measures to be provided to Council.

The site and proposal has been assessed against the provisions of SEPP55 and the proposal is considered satisfactory.

8.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

NSW Environmental Protection Authority (EPA)

The application was referred to the NSW EPA for comment. A NSW EPA assessment officer of the Sydney office attended the site with Council on 2 July 2020. The NSW EPA on 10 July 2020 requested further information relating to how the products and materials will be processed. The Applicant then provided a detailed response to the NSW EPA questions on 15 July 2020.

On 31 July 2020 the NSW EPA provided either General Terms of Approval. This response identified that there are environmental issues relating to odour emissions and control which will require further studies to be undertaken and building works. Specific conditions relate to the need to design a stack to manage emissions, preparation of an Odour Management Plan, and that all waste storage and processing activities must occur within the building at all times. Subject to the recommended conditions of consent the NSW EPA is satisfied.

Engineering (Assessment Team)

The application was referred to Council's Assessment Team Engineer who reviewed the proposal and provided comment. It was recognised that the site does not comply with the minimum required car parking rates as stipulated in SSDCP2015 Chapter 36, this is further discussed within Section 9 below. The submitted traffic and parking report prepared by McLaren Traffic Engineering provided swept path diagrams for HRV. It is recognised that MRV can enter, exit and park wholly within the loading dock of Unit 3, however HRV are not able to park wholly within the loading dock of Unit 3 and will overhang into the common property and the roller doors will not be able to be closed.

With suitable conditions of consent, the application is considered to be satisfactory and can be supported.

Environmental Health Officer

The application was referred to Council's Environmental Health Unit who reviewed the proposal and provided comment. Concern was initially raised with the operation of the waste management facility as critical information regarding its operation was not provided, such as details of; delivery load sizes, emergency shut off protocols, odour management, and operation times of vats. Through the submission of further information by the Applicant, these matters were generally able to be addressed. Council's Environmental Health Officer, considers that the application is supportable subject to conditions of development consent, which include and are not limited to; operation, including deliveries must occur wholly within the tenancy with all doors closed, and that an Acoustic Assessment must be undertaken within 3 months of the premises operating and provided to Council for review.

Building Surveyor

The application was referred to Council's Building Surveyor Unit who reviewed the proposal and provided comment. The DPC Compliance Report which advises that the application of Clause 94 of the EPA Regulations 2000 is not appropriate, however Council's Building Surveyor disagrees with this as the existing building has inadequate fire safety provisions. Council's has considered that without the appropriate upgrade works, the building in its current form is considered to be inadequate to protect persons using the building, to facilitate egress from the building in the event of a fire or to restrict the spread of fire from other buildings nearby. As a result a specific condition has been applied requiring that the building be upgraded in accordance with Clause 94 of the EPA Regulations 2000. No further concerns with the proposal are raised, subject to the addition of this condition.

Environmental Scientist (Contaminated Lands)

The application was referred to Council's Environmental Scientist Unit who reviewed the proposal and provided comment. An Operational Environmental Management Plan was requested to be undertaken to clearly outline how the use is to operate and what risk mitigation measures and monitoring will be implemented. The Applicant submitted an Environmental Management Plan on 28 October 2020. No significant concern was raised with this plan subject to the retitling of the plan to recognise that it applies ongoing whilst the waste management facility is operational.

Environmental Scientist (Air Quality)

The application was referred to Council's Environmental Scientist Unit who reviewed the proposal and provided comment. Whilst an Air Quality Impact Assessment was undertaken by SLR, concern was initially raised with the insufficient information relating to odour and air quality management for the proposed development. The major limitation of this SLR study is that the potential impact on air quality is based on a qualitative desktop assessment. While this may be satisfactory for other types of industrial developments, but for this type and scale of waste management facility it would be anticipated that a Level 1 odour impact assessment in accordance with the EPA "Technical notes – Assessment and management of odour from stationary sources in NSW" is undertaken. This Level 1 odour impact assessment would provide rudimentary air quality modelling and provide a more technical and robust analysis of processes and associated fugitive and non-fugitive sources of air pollution.

To ensure the development is not of significant adverse air quality and odour impacts, a deferred commencement conditions has been applied requiring that the Applicant engage a suitable qualified and experienced air quality specialist to prepare an Odour and Air Quality Management Plan with considerations of the requirements specified within the EPA GTAs and Council's environmental conditions.

Environmental Waste Officer

The application was referred to Council's Environmental Waste Officer Unit who reviewed the proposal and provided comment. No significant concern was raised with the waste generation from the proposed waste facility and no specific conditions were recommended by this Officer.

9.0 ASSESSMENT

A detailed assessment of the application has been carried out having regard to the matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979. The following matters are considered important to this application.

9.1 Operation of the Waste Management Facility – Air & Odour impacts

Insufficient information has been lodged with this application to address the potential air and odour impacts from the proposed development. This has been discussed above in Council's Environmental Scientist (Air Quality) referral section. A deferred commencement condition will be applied requiring that the Applicant engage a suitable qualified and experienced air quality specialist to prepare an Odour and Air Quality Management Plan with considerations of the requirements specified within the EPA GTAs and Council's environmental conditions. This will then need to be submitted to the satisfaction of Council.

9.2 Traffic and Parking

Based on floor area of Unit 3 and Council's practice of determining car parking spaces, the Unit is deficient in the minimum number of car parking spaces. As tabulated in Appendix B SSDCP2015 Compliance Table and described above in Section 7.7, Unit 3 requires a minimum of 11 spaces based on the floor area. DA18/1366 was approved on 12 June 2019 for the *Strata Subdivision of existing 19 industrial units*. This approval allocated 6 car parking spaces to Unit No.3, however at the time of this report this Strata Plan has not yet been registered with NSW LRS. This DA18/1366 will lapse on 12 June 2024, so there is still sufficient time for the consent to be commenced.

Whilst SSDCP2015 requires 11 car parking spaces based on the floor area and DA18/1366 allocated 6 car parking spaces, the proposed operation of the Waste Management Facility requires a maximum of 2 staff. Given the small number of staff required, the car parking deficiency is considered acceptable.

The Waste Management Facility proposes to operate with daily delivery vehicle movements at the following rates:

- 1 x small-medium truck (SRV or MRV). This truck will take approximately 15 minutes for loading / unloading; and,
- 1 x Heavy Rigid Vehicle (HRV), which will also take approximately 15 minutes for loading / unloading,
- 1 additional Heavy Rigid Vehicle (HRV) will attend the site per week for a period of 1 hour for loading / unloading.

No concern is raised with the overall number of traffic movements, being approximately 15 per week, however concern is raised with the proposed HRV. Council's Development Assessment Engineer has reviewed the submitted information and recognises that a HRV cannot parking wholly within the unit. A HRV is not support given the matters discussed in the below Section 9.3 (noise).

9.3 Noise

The Noise Impact Assessment report prepared by BenBow consulting dated 2 December 2019 identifies on Page 4 of the report:

"This noise impact assessment finds that predicted noise levels will be below the project noise trigger levels set out in accordance with the NSW Noise Policy for Industry (EPA, 2017), at all receivers surrounding the site for all time periods if the doors are kept closed. With the doors open there are exceedances at two of the adjacent industrial receivers. Therefore it is recommended that all doors be kept closed during pump use as this is the dominant noise source.

This report concludes that the proposed site activities will not have an unreasonable noise impact on the surrounding receivers with all the doors closed".

The Environmental Management Plan prepared by BenBow consulting dated October 2020 identifies on Page 3 of Attachment A1 that; *"loading and unloading oils would be undertaken within the enclosed building".*

Additionally, the NSW EPA GTAs detail that “all waste storage and processing activities must occur within the building at all times”.

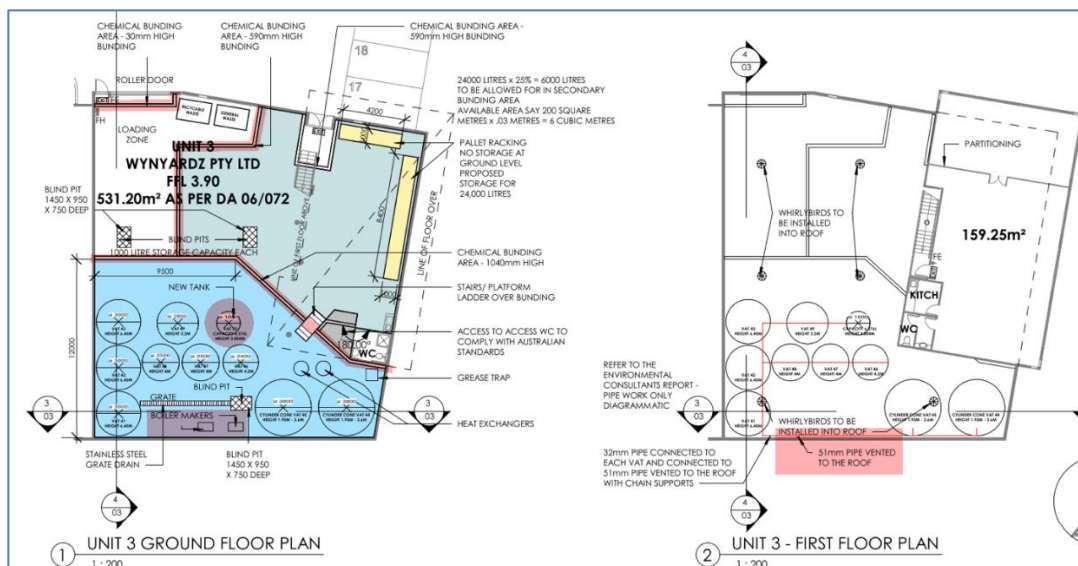
Given the above information, the Noise Impact Assessment, Environmental Plan of Management and the NSW EPA GTAs require all doors to closed during operation to manage noise, as well as odour. As a HRV cannot fit wholly within the loading dock and unit so that all doors are closed, a condition will be applied that will limit MRVs as the largest vehicle to enter the site and that operation of the premises must occur with doors closed at all times.

9.4 Hours of Operation

Unit 3 is seeking to operate 24 hours 7 days a week. The base hours of operation for the site in the Low Activity Area is 6am to 10pm. 24-hour operation may be permitted as extended hours subject to a Plan of Management (POM) which has been submitted with this application. This POM details that the Vats are only in operation when a staff member is present and will generally only operate between 1pm to 5pm. The proposed hours of operation with consideration of the POM and the context of the site and surrounding uses, which are typically not occupied beyond 6pm, there is little opportunity for adverse impacts to the neighbouring tenancies and properties. Therefore, the proposed 24/7 hours of operations are considered to be acceptable.

9.5 Unapproved Building Works

Council’s site inspection revealed that the tenancy has been fitted out prior to this DA approval. The works proposed under this development application include: Vat 50, the boiler maker area, bunding, an external blade wall and a ventilation stack. For ease of recognition these works have been highlighted red in the below floor plan. All other fit out works detailed within the submitted floor plan appear to have been carried out without relevant approval, as previous DA14/1017 lapsed on 14 November 2017 and DA18/0723 was withdrawn. The Wynne Planning Response Letter dated 27 October 2020, advises that the Applicant is in the process of preparing and lodging a Building Information Certificate for the unapproved works.



Additionally, a ventilation stack as required by the NSW EPA GTAs has been detailed on the architectural plans, this stack has a 51mm diameter and is approximately 480mm above the roof level of the building. This is not considered to be acceptable and a deferred commencement condition will be applied requiring revised plans to be submitted which satisfies the requirements of the NSW EPA stack design.

9.6 Acid Sulfate Soils

The subject site is identified as within 'Class 4' Acid Sulfate Soils Maps and the provisions of Clause 6.1 are applicable. The objectives of this Clause are to ensure that development does not disturb, expose or drain acid sulphate soils and cause environmental damage. Within Class 4, the trigger under SSLEP 2015 is works beyond 2m below the natural ground surface or works by which the watertable is likely to be lowered beyond 2 metres below the natural ground surface.

The construction works proposed under this DA include Vat 50, the boiler maker area, bunding and a ventilation stack. All other fit out works detailed within the submitted floor plan, including the vats, blind pits, grates, whirly birds, have been carried out without relevant approval and will be subject to a Building Information Certificate. Given the works listed above, there is unlikely to be any significant impact on Acid Sulfate Soils.

9.7 Stormwater Management

Clause 6.4 requires Council to be satisfied of certain matters in relation to stormwater management prior to development consent being granted. These matters include maximising permeable surfaces; on-site stormwater retention minimising the impacts on stormwater runoff. These matters have been addressed to Council's satisfaction.

9.8 Terrestrial biodiversity

The subject land is identified as containing "Biodiversity" on the Terrestrial Biodiversity Map. Clause 6.5 requires Council's assessment to consider certain matters. Council must consider the potential adverse impact of the development on vegetation/ flora, fauna, biodiversity and habitat. Of further consideration is the conservation and recovery of flora and fauna and their habitats and the potential to fragment or diminish the biodiversity structure, function and connectivity of the land. The relevant matters have been considered as part of the assessment of this application and the proposal is acceptable in this regard.

Further, clause 6.5 requires Council to be satisfied of certain matters prior to development consent being granted. These matters include the design of the development to avoid or minimise the impact; management to minimise the impact if it cannot be avoided and mitigation if the impact cannot be minimised. These matters have been addressed to Council's satisfaction.

9.9 Ground water vulnerability

The subject land is identified as "groundwater vulnerable" on the Groundwater Vulnerability Map and the provisions of Clause 6.6 are applicable. Clause 6.6 requires Council's assessment to consider certain matters. Council must consider the likelihood of groundwater contamination; impacts on groundwater dependant ecosystems; the cumulative impact on groundwater and appropriate measures to avoid, minimise or mitigate the impacts. The relevant matters have been considered as part of the assessment of this application and the proposal is acceptable in this regard.

Further, Clause 6.6 requires Council to be satisfied of certain matters prior to development consent being

granted. These matters include the design of the development to avoid or minimise impact; management to minimise the impact if it cannot be avoided and mitigation if the impact cannot be minimised. These matters have been addressed to Council's satisfaction.

9.10 Airspace operations

This Clause applies to the land mapped as Sydney Airport OLS and Airport OLS Affected by Building Height. The subject site of 5 Clerke Place has an OLS of 120m and the industrial complex is not affected by the Airport OLS Affected by Building Height, as shown in the below image.



For this matter to become of concern, a building on the site of 5 Clerke Place, would need to be at or near to 120m above AHD. The slab level of the complex is at approximately 4AHD and the subject building has a height of 8.55m, therefore the building is approximately 12.55m above AHD. A controlled activity permit from Sydney Airport is not required for this use and fit out proposal.

9.11 Aircraft noise

The subject site is located within the ANEF contour of 20 (green). Contour 25 (yellow) and contour 15 (blue) is shown in the below image.



SSLEP2015 Clause 6.13 – Development in Areas Subject to Aircraft Noise, details the following Objectives:

- (1) *The objectives of this clause are as follows—*
 - (a) *to prevent certain noise sensitive developments from being located near the Sydney Airport and its flight paths,*
 - (b) *to assist in minimising the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation measures in noise sensitive buildings,*

- (c) *to ensure that land use and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing, safe and efficient operation of that airport.*

The proposed waste management facility is to occupy a tenancy in an existing industrial complex and minimal building works are proposed and/or required for the fit out, given the majority of the works have been completed without appropriate approval. The shell of the tenancy remains largely unaltered from the DA06/0721 approval. No further noise attenuation measures are required for this use and fit out proposal.

9.12 Energy Efficiency and sustainable building techniques

Clause 6.15 of SSLEP 2015 contains matters for consideration relating to ecologically sustainable development and energy efficiency and sustainable building techniques. The relevant matters have been considered as a part of the assessment of the application and the proposal is considered to be acceptable.

9.13 Urban design (non residential)

Clause 6.16 of SSLEP 2015 contains certain matters of consideration relating to urban design. The relevant matters have been considered as a part of the assessment of the application and the proposal is considered to be acceptable.

9.14 Kurnell Peninsula

The subject site is located within the Refinery Risk Area identified on the Activity Hazard Risk Map. The proposed development being a Waste Management Facility is not listed as a prohibited use and any development that is not specified in Item 2 or 4 is then permitted with consent.

Clause 6.19 of SSLEP2015 identifies the Objective is to “minimise risk to life or property in the event of an emergency on Kurnell Peninsula”. The following uses are prohibited within the Refinery Risk Area; dual occupancies, multi dwelling housing, secondary dwellings, seniors housing, shop top housing.

In assessing this application council has had regard to the relevant reports submitted in relation to risk assessment, transportation, dangerous goods routes and guidelines on risk assessment criteria and methodology.

9.15 Bushfire

Council records indicate that the site is bushfire prone land. The SEARs obtained by the Applicant include comment from the NSW RFS. In a letter dated 19 February 2019, the NSW RFS advised that they did not have any specific recommendations for bushfire protection for the site and development.

9.16 Archaeological Sensitivity

Council records indicate that the subject site is rated high in terms of Archaeological Sensitivity. Council's mapping system identifies a Potential Archaeological Deposit on the site of 5 Clerke Place. A site inspection did not identify this item or reveal any evidence of shell material or significant sandstone features within the development zone, given that the complex is a newly constructed development with a concrete cap. The proposal does not warrant an Aboriginal Archaeological Study being undertaken.

10.0 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 7.11 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.

11.0 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.

12.0 CONCLUSION

The subject land is located within Zone IN1 General Industrial pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a *Waste Management Facility*, is not listed as a prohibited use and any development that is not specified in Item 2 or 4 is then permitted with consent. Therefore, the proposed use is permitted with development consent from Council.

In response to public exhibition, no submissions were received.

The proposal does not involve any variations to SSLEP2015.

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. 20/0247 may be supported for the reasons outlined in this report.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Major Development Assessment (GH).