

<b>DATE OF DETERMINATION</b>	Select Date (When decision is uploaded on to the portal)
<b>DATE OF PANEL DECISION</b>	Select Date (When the decision is agreed in writing by all members)
<b>DATE OF PANEL MEETING</b>	25 October 2022
<b>PANEL MEMBERS</b>	Chris Wilson (Acting Chair), Renata Brooks, Susan Budd
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Papers circulated electronically on 13 October 2022 and 13 December 2022.

#### **MATTER DETERMINED**

PPSSTH-136 – Shoalhaven – RA21/1002 – Flatrock Road, Mundamia – Construction of Materials Recycling Facility as Addition to an Existing Waste or Resource Management Facility (as described in Schedule 1).

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

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

Prior to the final distribution of documents to the Panel for determination, the Applicants requested the Panel defer consideration of the development application (DA) until such time as Council had investigated a compliance matter affecting the site. The Panel considered this request and determined not to defer consideration of the application given:

- The independence of the development assessment and regulatory compliance processes;
- The lack of certainty in relation to potential outcomes of any regulatory compliance action; and
- The fact that Council would have up to five years to act on any consent that might be issued allowing sufficient time for the regulatory compliance matter to be resolved.

Subsequently, the Panel requested Council's assessment staff provide an addendum assessment report and updated draft conditions to enable the determination of the DA.

#### **Application to vary a development standard**

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Shoalhaven Local Environmental Plan 2014 (LEP), that has demonstrated that:

- a) compliance with cl. 4.3 (Height of Buildings) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

the Panel is satisfied that:

- a) the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 (Height of Buildings) of the LEP and the objectives for development in the SP2 Infrastructure zone; and
- c) the concurrence of the Secretary has been assumed.

## Development application

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

The decision was unanimous.

## REASONS FOR THE DECISION

The Panel determined to uphold the Clause 4.6 variation to building height and approve the application for the reasons outlined in the Council Assessment and Addendum Assessment Reports.

At the Panel's briefing on 25 October 2022, the Panel sought clarification/additional information from the Council on a number of matters by way of an addendum report. These included the following:

1. For accuracy of determination the provision of a clear description of the proposal particularly as some of the proposed works relate to existing works;
2. Additional justification for the proposed Materials Recycling Facility particularly as it relates to the Council's Waste Reduction Management Strategy and broader policies relating to the diversion of waste from landfill;
3. Clarification regarding the location of the asset protection zones (APZ) for the site;
4. Additional detail on stormwater management for the site; and
5. Clarification relating to the assessment of potential traffic increases on the acceptability of road traffic noise as highlighted in the Environment Protection Authority's (EPA) submission when issuing its General Terms of Approval (GTA).

At its final meeting on 16 December 2022, the Panel was satisfied that these matters had been adequately addressed except for item 5. The Panel sought additional confirmation that road traffic noise had been appropriately addressed. Specifically, the Panel sought confirmation relating to any increase in traffic and what the impact of any increase in traffic might mean for noise outcomes at sensitive receivers.

The additional information provided by the Council confirmed that estimated traffic levels associated with the proposal will not increase noise levels at sensitive receivers substantially above existing levels and that the predicted noise levels will meet the NSW Noise Policy limits for both day and night.

## CONDITIONS

The Development Application was approved subject to the amended draft conditions provided on 13<sup>th</sup> December 2022 and in the Council Assessment and Addendum Reports with the following amendments.

- **Condition 18 – Amended Waste Management Plan**

Amend as follows to clarify waste management requirements during construction and operational phases:

18. *An amended Waste Management Plan (WMP), to address both construction and operational waste, must be prepared in accordance with Chapter G7 of Shoalhaven Development Control Plan 2014. The WMP must be approved by Council or the Certifier prior to the commencement of works.*

*The amended plan must be consistent with EPA Standards for managing construction waste in NSW and must ensure all waste is contained within the site during construction and then recycled in accordance with the plan required by this condition. or removed to an authorised waste disposal facility. Waste must not be placed in any location or in any manner that would allow it to fall, descend, blow, wash, percolate or otherwise escape from the site.*

*Note: "Waste" is defined in the Dictionary to the Protection of the Environment Operations Act 1997 (POEO Act).*

- **Condition 32 – Vegetation Management Plan**

*Delete condition 32 as Lot 437 DP 808145 is not included in the development application and it would not be a lawful condition of consent.*

- **Condition 35 – Waste Management Plan**

*Delete paragraph 2 and incorporate provisions into Condition 18 as described above.*

- **New Condition 57 – Complaints Handling Protocol**




*57. Throughout the life of the development, the operator shall ensure that:*

- a) contact details are publicly available outlining the mechanism for community complaints to be made; and*
- b) a procedure is in place for the register and public availability of any complaints.*

*Procedures, including contact details as to how a complaint may be made, must be publicly available on any website associated with the operation of the facility and must be provided on a sign erected at the site entrance.*

*Details of all complaints (including date/time, means by which complaint is made, nature of the complaint, action taken.) are to be recorded in a Complaints Register which must be made available for public inspection.*

In coming to its decision, the Panel noted that no written submissions were made during the public exhibition of the application and therefore no issues of concern were raised.

PANEL MEMBERS	
 Chris Wilson (Acting Chair)	 Renata Brooks
 Susan Budd	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-136 – Shoalhaven – RA21/1002
2	PROPOSED DEVELOPMENT	Construction of Materials Recycling Facility as Addition to an Existing Waste or Resource Management Facility.
3	STREET ADDRESS	Lot 436 DP 808415 (Flatrock Road, Mundamia)
4	APPLICANT/OWNER	Lorri Field – PDC Lawyers & Town Planners / Shoalhaven City Council
5	TYPE OF REGIONAL DEVELOPMENT	<b>Council related development over \$5 million</b>
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments:</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>• State Environmental Planning Policy (Planning Systems) 2021</li> <li>• Shoalhaven Local Environmental Plan 2014</li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans:</li> </ul>

		<ul style="list-style-type: none"> <li>• Shoalhaven Development Control Plan 2014</li> <li>• Planning agreements: Nil</li> <li>• Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council Assessment Report: <b>12 October 2022</b></li> <li>• Council memo/supplementary report received: <b>14 December 2022</b></li> <li>• Email from Council regarding assessment of road traffic noise: <b>19 December 2022.</b></li> <li>• Written submissions during public exhibition: 0</li> <li>• Total number of unique submissions received by way of objection: 0</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: 9 March 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Susan Budd</li> <li>○ <u>Council assessment staff</u>: Rebecca Lockart, Andre Vernez</li> </ul> </li> <li>• Site inspection: 3 May 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Susan Budd</li> <li>○ <u>Council assessment staff</u>: Andre Vernez, Cathy Bern</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: 25 October 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Susan Budd</li> <li>○ <u>Council assessment staff</u>: Andre Vernez, Cathy Bern, Daniel Lidbetter (Cardno), Nadine Page – Consultant Assessment Planner (Cardno)</li> <li>○ <u>Applicant representatives</u>: Lorri Field (Director PDC), Peter Windley (Shoalhaven City Council)</li> <li>○ <u>DPE</u>: Amanda Moylan</li> </ul> </li> <li>• Briefing to discuss Council's final recommendation: 16 December 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Susan Budd</li> <li>○ <u>Apology</u>: Renata Brooks</li> <li>○ <u>Council assessment staff</u>: Andre Vernez, Cathy Bern</li> <li>○ <u>DPE</u>: Amanda Moylan</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the addendum Council Assessment Report