



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION SOUTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSTH-449 DAM0118/2024
PROPOSAL	Modification to DA 7.2014.523.1 – (Dunmore Resource Recovery Development) – Modification to extend the operating hours at the FOGO facility
ADDRESS	44 and 58 Buckleys Road Lot 1 DP 491907 Lot 1 DP 110135 Lot 21 DP 653009
APPLICANT	Re.Grow Operations (Shellharbour) Pty Ltd
OWNER	Shellharbour City Council
MOD LODGEMENT DATE	22 nd October 2024
ORIGINAL DA DETERMINATION DATE	26 th August 2015
APPLICATION TYPE	Modification Application under Section 4.55(2) – Modification to a designated development, nominated integrated development, and a regionally significant development.
REGIONALLY SIGNIFICANT CRITERIA	<p>The original DA was declared regionally significant development pursuant to Clause 3 of Schedule 7 of <i>State Environmental Planning Policy (State and Regional Development) 2011</i>, as:</p> <ul style="list-style-type: none"> Council related development over \$5 million <p>Notwithstanding, the same criteria applies in Schedule 6 of the currently in-force <i>State Environmental Planning Policy (Planning Systems) 2021</i>.</p>
Estimated Development Cost (EDC)	Original DA CIV was \$14,500,000.00
CLAUSE 4.6 REQUESTS	Not applicable

KEY SEPP/LEP	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>State Environmental Planning Policy (Resources and Energy) 2021</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Planning Systems) 2021</i> • <i>Shellharbour Local Environmental Plan 2013</i> • <i>Shellharbour Development Control Plan 2013</i>
TOTAL & UNIQUE SUBMISSIONS ISSUES SUBMISSIONS KEY IN	Nil submissions received.
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Re.Group Dunmore FOGO – Statement of Environmental Effects • Best Management Practice Implementation Plan • Re.Group Dunmore – Noise impact Assessment • Shellharbour FOGO Odour Assessment • Shellharbour FOGO – Addendum to the Odour Assessment
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	None required
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	18 March 2025
PLAN VERSION	Statement of Environmental Effects – August 2024
PREPARED BY	Jacob Lia
DATE OF REPORT	10 March 2025

EXECUTIVE SUMMARY

The modification application has been lodged pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') and seeks consent for amendments to a consent granted under DA 7.2014.523.1 approved by the Joint Regional Planning Panel on 26th August 2015. This consent approved the 'Dunmore Resource Recovery Redevelopment' at 44 and 58 Buckleys Road ('the site'). The original approval consisted of a large-scale Waste Disposal Depot facility, consisting of refurbishment and upgrade to all site facilities, including a recycling and re-use centre, waste transfer facility, staff and office facilities, and of relevance to this DA modification, the construction and operation of a Food Organics and Garden Organics (FOGO) facility.

This application is referred to the Southern Regional Planning Panel ('the Panel') as the original development application was regionally significant development pursuant to Clause 3 of Schedule 7 of the *State Environmental Planning Policy (State and Regional Development)* 2011, as the development comprises council-related development over \$5 million. The proposed section 4.55(2) modification satisfies the criteria to be considered by the Panel in the Instruction issued pursuant to Clause 275(2) of the EP&A Regulation 2021 (formerly CI 123BA of the Regulation 2000), as the development is located on Council land, presenting a conflict of interest for Council assessment.

The proposed modification relates to the extension of operating hours for the FOGO facilities at the Dunmore Waste Depot. The FOGO facilities include the storage, processing, composting and handling of organic waste through a pre-treatment shed, bio-filters, and compost storage and maturation areas. The existing operating hours are 7:30am to 4pm from Monday to Sunday. The proposed extension will permit external operations from 7am to 6pm Monday to Friday, and 7am to 4pm Saturday, Sunday and Public Holidays. The proposal will permit internal operations from 6am to 6pm Monday to Sunday, and Public Holidays.

The objective of the proposed operating hours is to improve operational efficiency and flexibility to address poor odour performance associated with the FOGO facilities over several years, which has resulted in a substantial volume of community complaints and regulatory action by the Environmental Protection Agency.

The application was placed on exhibition between 21st November 2025 and 18th December 2024, with zero (0) submissions received.

A briefing was held with the Panel on 17th December 2024 where key issues were discussed including odour and noise impacts upon a recently approved dwelling house nearby, and the practicality of a condition for extended operating hours recommended by the Environmental Protection Agency (EPA). The key issues have been addressed as follows:

1. **Dwelling House at 57 Buckleys Road:** A deferred commencement has been issued for a dwelling house to be erected at 57 Buckleys Road under DA0171/2024, approximately 450m north-east of the subject site's composting areas. The dwelling house DA included its own noise and odour assessments to demonstrate that it will not introduce a sensitive receptor to adjoining industrial land uses. The applicant for the subject application has provided their own noise and odour assessments which are consistent with the dwelling house assessments, and demonstrate suitable impacts upon the dwelling house.
2. **EPA recommended GTA's:** The EPA initially provided recommended conditions which would only permit the extended operating hours once the site operator had achieved compliance with their Environmental Protection Licence (EPL), and good odour performance over a summer period. Council discussed concerns about the practicality of this condition, as the extended operating hours are intended to assist in improving odour performance and EPL compliance. Following consultation between

the EPA, site operator, and Council, the EPA issued a revised condition which permits a trial period of extended operating hours, subject to a new EPL being issued. This condition has resolved Council's concerns and is included in the draft consent.

Both key matters above are considered to be resolved. Following consideration of the matters for consideration under Section 4.15(1) and 4.55 of the EP&A Act 1979, it is considered that the proposed modification can be supported.

1. THE SITE AND LOCALITY

1.1 The Site

The site is located at 44 and 58 Buckleys Road DUNMORE NSW 2529, and consists of several allotments: Lot 1 DP 491907, Lot 1 DP 110135, and Lot 21 653009. The Food Organics Garden Organics (FOGO) facilities and operations are primarily located on Lot 1, DP 110135, thus the site description will focus on this allotment, hereafter referred to as 'the site'.

The site is irregular in shape and is relatively flat across the FOGO facilities, with the site falling from south-north by approximately 2 metres. The site currently contains the Dunmore Resources and Waste Disposal Depot, featuring a public waste drop-off and recycling facilities, in addition to the current FOGO operations: a FOGO receival and pre-processing shed, a maturation pad where compost refinement and processing occurs, and ancillary processing facilities such as an evaporation pond, biofilter, and leachate containers. An aerial photograph of the site is provided at Figures 1 and 2 below. The where the FOGO facilities are located has a total area of 6.04 hectares.

The site is attached to two other allotments (44 Buckleys Road – Lot 1 DP 491907 and Lot 21 DP 653009) which comprises the primary landfill area for the Waste Disposal Depot, hereafter referred to as the 'total site area'. These facilities are primarily used for Council's general waste management, however are considered part of the site for the purpose of this DA modification. With these allotments included, the total site area is 60.69 hectares, and features a steep increase in gradient west due to the landfill siting. The total site area features forest vegetation along the site perimeter, particularly to the south.

The site of the FOGO facilities is affected by the following significant land constraints:

- Transition Area,
- Acid Sulfate Soils – Class 3,
- Bushfire prone land,
- Coastal use area, Coastal environment area, and proximity area to Coastal wetlands,
- Fish habitat,
- Contamination: Shellharbour Waste Depot, and
- Flood-affected in indicative flood modelling.

A location map and photographs are included below.



Figure 1 – Location Map, with the total site area outlined purple, and the site of the FOGO facilities shaded red.



Figure 2 – An aerial map with annotations depicting the FOGO facilities on site, taken from the SEE.



Figure 3 – Site photos depicting the FOGO material receival shed (left) and the compost loading area on the maturation pad (right).

1.2 The Locality

The site is located within a semi-rural setting, consisting of primarily rural, primary production and environmental conservation land uses, and some residential land uses.

Rural and primary production uses include the adjoining Dunmore Resources & Recycling facility at 57 Buckleys Road, east of the site. The site 57 Buckleys Road features a quarry in the process of closure and site rehabilitation, and an active materials recycling facility. The site also has approval for a deferred commencement of a dwelling house under DA0171/2024, subject to completion of physical rehabilitation works. Other rural-industrial land uses include an Endeavour Energy works depot and training facility located north of the site.

Environmental uses consist of vegetated forests retained in the site area, the Killalea Regional Park located east of the site, the Dunmore Wetlands located north-east, and the Rocklow Creek which flows to the Minamurra River to the south of the site.

The total site area borders a row of residential dwellings from 1 – 51 Dunmore Road to the north-west. In the locality is the Shellharbour Couth Coast Train Line, the Shellharbour Hospital (under construction), and the Links Golf Course.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

The proposal seeks consent for modification to DA 7.2014.523.1. This consent relates to the Dunmore Resource Recovery Development, which included refurbishment and upgrade to the existing waste facilities, which had been in operation since the 1970s. The upgrades included works to all site facilities, including the recycling and re-use centre (revolve), waste transfer facility, staff and office facilities, and of relevance to this DA modification, the construction and operation of FOGO facilities. The original application was identified as Designated Development under Clause 32, Schedule 3 of the *Environmental Planning & Assessment Regulation 2000*. The modification application subject to this report has been assessed in accordance with section 106 of the Environmental Planning and Assessment Regulations 2021.

The DA 7.2014.523.1 was modified through DAM0097/2016 to reconfigure numerous components of the FOGO facilities, being the most recent modification to the DA. The FOGO facilities include the storage, processing, composting and handling of organic waste through a pre-treatment shed, bio-filters, and compost storage and maturation areas. The subject modification seeks permission to extend the operating hours of the FOGO facilities in the following manner:

Table 1 – A summary of the proposed operating hours, taken from the SEE.

Day	Current hours of operation	Proposed hours of operation	Difference
Monday to Friday	Between 7:30am and 4pm, both internal and external	External operations: 7am to 6pm Internal operations: 6am to 6pm	Increase by 1.5 hours in the AM and two hours in the PM
Saturday, Sunday and public holidays (excluding Christmas Day and Good Friday)	Between 8am and 4pm, both internal and external	External operations: 7am to 4pm Internal operations: 6am to 6pm	Increase by two hours in the AM and two hours in the PM

The extended hours would apply to the following operations, also depicted in Table 1 above:

- **Internally:** Processing of organics material in the FOGO shed: receipt, decontamination, shredding (pre-processing), and office procedures. Composting occurs via enclosed tunnels from this shed.
- **Externally:** Tunnel downloads, refining of material, turning of material. Includes use of machinery, loaders, trommels, tunnels, and mulchmusters. Includes activities conducted on a maturation pad of 6,700m², and compost loading and screening areas.

Proposed Changes to Conditions

The conditions proposed to be modified will capture the amended hours of operation, stamped plans, and general terms of approval issued by the NSW Environmental Protection Agency, as per below.

Table 1: Proposed Changes to Conditions

Condition No	Condition requirements	Change Proposed	Reason for Change
A3	Approved plans and documents	Modified stamped documents	Modify to capture updated plans, including an SEE and noise/odour assessments
A7	NSW Environmental Protection Authority	Updated General Terms of Approval and condition wording	The NSW EPA have issued General Terms of Approval permitting the hours of operation conditionally. This condition requires modification to refer to the latest GTAs.
EPA Recommended Conditions of Approval – Organics Facility hours of operation	Revised Operating Hours (trial period)	Included correspondence from the EPA permitted revised operating hours on a trial basis.	To enforce the EPA's recommended condition regarding extended operating hours.

Draft modified conditions have been shared with the applicant for comment and all modifications are agreed.

Development Data

Key development data is provided in **Table 2** below.

Table 2: Development Data

Control	Proposal
Site area	60.69 hectares
GFA	No additional GFA proposed.
FSR (retail/residential)	Site does not have FSR controls.
Clause 4.6 Requests	No
Max Height	No built form proposed

2.2 Background

A pre-lodgement meeting was held on 28 February 2024 prior to the lodgement of the application where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- There are a number of existing complaints from the community regarding the current impacts of the FOGO facility. The DA has been exhibited and no submissions were received. The DA has also been referred to the EPA with regard to odour impacts, and received a satisfactory referral from the EPA. facility with regard to compliance with odour requirements, and conditions of the EPL.
- Council would need to be satisfied that impacts such as odour and noise would not be exacerbated from the extended operating hours. The applicant has provided odour and noise reports demonstrating a satisfactory impact, which have been reviewed by Council's Environment team and the EPA – these are discussed below.

The original development consent was issued on 26th August 2015, being determined by the Joint Regional Planning Panel, reference 2015STH001. The key issues considered in the assessment of the original development comprise the following:

- Building height variation against SLEP 2013 (9m maximum height permitted) which was approved
- Environmental matters: vegetation clearing, stormwater and groundwater management, leachate management.
- Visual impacts
- Submission matters: traffic and safety, odour impacts.

These matters were all addressed in the JRPP assessment report. Notably, a submission raised concerns with regard to odour impacts on the industrial operations at 57 Buckleys Road, which at the time of assessment, featured the Dunmore Resource and Recycling facilities, an industrial operation. The applicant provided an odour assessment report and demonstrated that the odour impact of the waste depot development will have an acceptable impact on 57 Buckleys Road, as the odour impact did not surpass the 10 Odour Unit threshold, which is considered the tolerance level for an industrial receiver. The applicant demonstrated that 8 Odour Units would be present at the site of the industrial premise (west end of 57 Buckleys Road).

The assessment also noted that the Odour Units generated from the site would be consistent with the self-generated odour of mulch, chicken manure and other organic garden mixes located on the Dunmore Resources & Recycling site.

With an approval for a dwelling house applied to the site 57 Buckleys Road, located on the east end of the site, further consideration of odour impacts is discussed within this report.

The proposed modification application was lodged on 22nd October 2024. A chronology of the modification application since lodgement is outlined below in **Table 3**, including the Panel's involvement (briefings, deferrals etc) with the application:

Table 3: Chronology of the Modification Application

Date	Event
22 October 2024	Modification application lodged
21 November 2024 – 18 December 2024	Exhibition of the application Nil submissions received.
24 October 2024	Modification referred to external agencies
2 December 2024	Request for Information from Council to applicant (CI 104 of the 2021 Regulation) – addendum to noise and odour assessments to include future dwelling to be located on adjoining lot 2 DP609762
17 December 2024	Panel briefing held. Key issues summarised as follows: - Impact of extended operating hours on future dwelling to be located on adjoining lot 2 DP609762 - EPA recommended GTA's
18 December 2024	Meeting between applicant, EPA and Council to discuss EPA recommended condition and Environmental Protection Licence (EPL).
20 December 2024	Amended documents lodged: - Odour addendum, 20 th December - Noise addendum, 7 th February
18 February 2025	Meeting between EPA and Council to discuss EPL negotiations and EPA condition.
18 March 2025	SRPP Determination Meeting

2.3 Site History

The DA 7.2014.523.1 for the Dunmore Resource Recovery Development has been modified once previously through DAM0097/2016. This DA modification removed a compost building, reduced the height of a pre-treatment building and tunnel access, proposed an alternative

leachate system (leachate ponds), relocated a self-hauled storage area to the eastern end of the site, and reduced the size of the Windrow composting area. This DA modification was approved in February 2017.

The site also features approval for construction of a truck wheel wash bay and storage shed through DA0540/2016, approved in April 2017.

With regard to surrounding sites and development, as relevant to the proposed modification, a deferred commencement (DA0171/2024) has been issued for a dwelling house at the east section of 57 Buckleys Road (east of the subject site). This deferred commencement was issued in November 2024, and issue of an operational consent is conditional upon completion of physical rehabilitation works for closure of quarry operations at the site. It's important to note that the applicant was required to demonstrate that the dwelling house would not encumber adjoining industrial uses in vicinity of the site by introducing an obstructive sensitive receptor, in order to satisfy Clause 5.16 of the SLEP 2013. The applicant provided odour, air quality and noise reports which demonstrated limited adverse impact on adjoining industrial land uses, satisfying the requirements of Clause 5.16, and leading to Council's determination. The main factor which resulted in a satisfactory assessment is siting of the dwelling house on the eastern section of the site, positioned approximately 450m north-east of the Dunmore Recycling and Waste Disposal Depot (Figure 4).

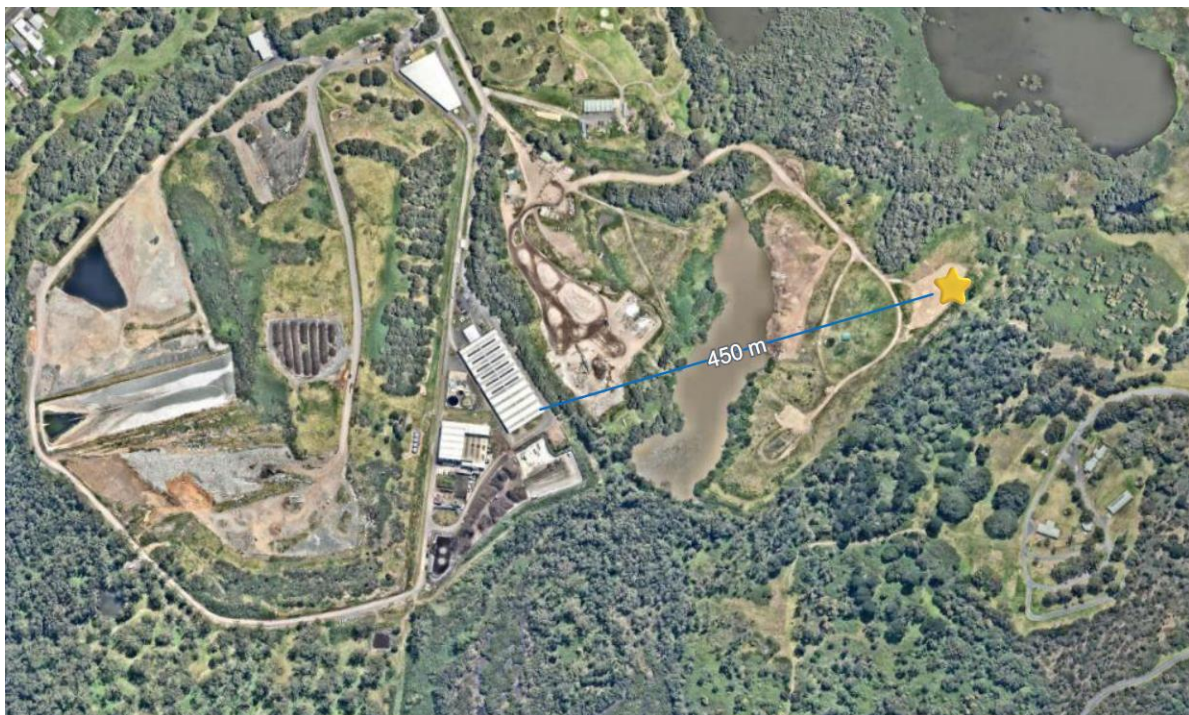


Figure 4: A map depicting the location of the dwelling house's approved location at 57 Buckleys Road (star) relative to the Dunmore Recycling and Waste Disposal Depot. A distance of 450m is shown.

3. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in Section 4.55(2) of the EP&A Act in relation to modification of consents provisions, Section 4.15(1) of the EP&A Act in relation to matters for

consideration for applications and Part 5 of the 2021 EP&A Regulation in relation to information requirements and notification. These matters are considered below.

3.1 Section 4.55 of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act. The matters include the following:

- (a) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) (s4.55(2)(a)), and*

Comment: The proposed changes relate to operating hours only and do not substantially alter the approved development in that the land is still to be used for waste facilities, and does not result in any changes to the built form. The modification focuses on extending the operating hours of the FOGO facility, while keeping the operations, building, machinery, processing, and capacity of the FOGO facility substantially the same. The applicant has prepared a comparative analysis within their Statement of Environmental Effects which establishes that:

- The development size, scale and footprint would be the same;
- The intensity, including rates of production, would be the same – the modification does not increase the tonnes per annum of organic waste received or processed, or the general processes and activities undertaken at the site;
- The primary, secondary and ancillary uses would remain the same;
- The project life and hours of operation would remain substantially the same – minor changes to the operational hours would not change the project life of the development;
- The extent, duration and severity of impacts would remain substantially the same – environmental impacts are considered within this report, specifically regarding noise and odour impacts, and demonstrated to be compliant as per the original approval.

- (b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent (s4.55(2)(b)), and*

The DA has been notified to DPIE Water who have provided a satisfactory referral response, which did not include new GTAs.

The DA has been referred to the EPA, as a concurrence body who issued GTAs for the original approval. The EPA have provided new GTAs which provide conditional terms for extended operating hours. These terms provide conditions which must be met regarding compliance with the Environmental Protection Licence and odour performance.

These GTAs have been discussed over several meetings involving Council, the operator, and the EPA, to refine the terms of the conditions to a more practical standard for all parties involved. Additional details are included in section 4 and 5 of the report.

- (c) *it has notified the application in accordance with—*
- (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.55(2)(c)), and*

The development application was notified in accordance with the Shellharbour Community Participation Plan 2021 and Part 5, Division 2, Section 106 of the *EP&A Regulation 2021* with regard to exhibition of s4.55(2) modification applications for designated development. The application was notified from 21st November 2024 – 18th December 2024, including signage and letters sent to nearby properties and submitters on the original application, in accordance with the requirements of Section 106 in the *EP&A Regulations 2021*.

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be (Section 4.55(2)(d)).*

The modification application was notified from 21st November 2024 – 18th December 2024 and zero (0) submissions were received.

- (e) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (Section 4.55(3)).*

The matters required to be considered include:

- Matters for consideration pursuant to Section 4.15(1) of the EP&A Act – these matters are considered below in Section 3.2 of this report; and
- Reasons given by the consent authority for the grant of the consent that is sought to be modified – outlined below.

Reasons for Grant of Consent

The Joint Regional Planning Panel granted consent to the original development in a notice of determination dated 26th August 2015. The reasons outlined in the Statement of Reasons for this decision included the following:

- The proposed development is consistent with the adopted planning framework.
- The development will provide an environmentally improved outcome to resource recovery within the Shellharbour LGA.

The proposed modification is considered consistent with the reasons for which the consent

was originally granted. The modification remains consistent with the relevant planning framework, including zone objectives and permissibility, and through extended operating hours, is anticipated to improve odour outcomes for the site. The applicant has provided sufficient noise, air quality and odour data to indicate impacts will be in accordance with EPA requirements for environmental impacts. The modification importantly contributes toward the continued success of resource recovery operations in the Shellharbour LGA, by mitigating the environmental impacts of green waste recovery at a Council Waste Depot.

3.2 Section 4.15(1) of the EP&A Act

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to Section 4.55(3), which are of relevance to the application.

These matters include the following, which are considered in detail below:

- (a) *the provisions of—*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates, the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

3.2.1 **Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations**

The relevant provisions under s4.15(1)(a) are considered below.

(a) **Environmental planning instruments (s4.15(1)(a)(i))**

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Resources and Energy) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*

- *Shellharbour Local Environmental Plan 2013*
- *Shellharbour Development Control Plan 2013*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

Table 4: Summary of Applicable State Environmental Planning Policies (Preconditions in bold)

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Planning Systems) 2021	The DA modification meets the requirements for determination by the SRPP as the consent authority, pursuant to the 'Instructions of functions exercisable by Council on behalf of Sydney District or Regional Planning Panels – Application to Modify Development Consents', as the proposed DA meets the criteria for a conflict of interest. Application site is Council owned land.	Y
State Environmental Planning Policy (Resources and Energy) 2021	The total site area includes a 'Mineral Resources Area'. Whilst the FOGO site is not located within this area, the landfill which forms part of the site operations are. This triggers assessment against Chapter 2 , Part 2.3, Section 2.19 in this SEPP. As the proposal to extend FOGO operating hours would not introduce any metrics of incompatibility with the mineral resources area, subject to existing conditions of consent, the proposal satisfies the requirements of this SEPP.	Y
SEPP (Resilience & Hazards) 2021	<p>The FOGO facilities are located in a Coastal Use area, Coastal Environment area, and Coastal wetlands proximity area locations.</p> <p>The site is also contaminated, through operation of the Dunmore Waste Depot.</p> <p>Chapter 2 – Coastal Management Whilst the FOGO facilities subject to this DA modification are located in coastal areas, extending the operating hours is not anticipated to introduce any significant or adverse impact upon the coastal areas beyond the nature of impact approved in the original DA.</p> <p>Chapter 4 – Contamination The DA modification retains the same DA operation which has contaminated the land (Dunmore Waste Depot), and does not necessitate remediation for the land to be suitable. Contamination and remediation requirements are as per the existing approval.</p>	Y

State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2 – Infrastructure</p> <p>Part 2.3, Division 23 of this SEPP permits Waste or Resource Management Facilities with consent in RU1 zones. This overrides permissibility of the development within the SLEP 2013.</p>	Y
Shellharbour Local Environmental Plan 2013	<p>No variations identified under SLEP 2013. Relevant clauses are included below:</p> <p>Clause 2.3 – Whilst Waste or Resource Management Facilities are prohibited in the RU1 zone, the development achieves permissibility through the provisions of the SEPP (Transport and Infrastructure) 2021.</p> <p>Clause 5.21 – The proposal is located on an indicative flood mapping model which has not been endorsed by Council. However, the extension of operating hours does not trigger any additional flood risk considerations.</p> <p>Clause 6.1 – The FOGO facilities are located on Class 3 acid sulfate soils, no works are proposed beyond extension of operating hours. The existing assessment and conditions remain suitable.</p> <p>Clause 6.5 – The FOGO facilities are located in close proximity of terrestrial biodiversity mapping, however the extension of operating hours is not anticipated to cause adverse impacts upon the biodiversity area, beyond the impacts approved as part of the original DA.</p> <p>Clause 6.10 – The landfill area west of the FOGO facilities is classified as a ‘significant mineral resources area’. The proposed extension of operating hours will not adversely impact the mineral resources area, and is considered compatible.</p> <p>Clause 6.11 – The FOGO facilities are located within a ‘transition area’. The extension of operating hours is not anticipated to have any adverse impact upon the availability of mineral or extractive resources, and forms part of the landfill / waste management operations.</p>	Y
Shellharbour Development Control Plan 2013	<p>No variations are identified under the SDCP 2013. The following chapters are relevant:</p> <ul style="list-style-type: none"> Chapter 13 – Parking, Traffic and Transport: the proposed DA modification does not include any changes to the parking configuration on site, or the traffic requirements for the site operations. Notably, the extension of operating hours would not generate 	Y

	<p>any additional traffic. The site's weighbridge will still shut at the standard time of 4pm, preventing operational trucks from leaving or being received at site. The extension of operating hours will solely pertain to on-site personnel and equipment operations.</p> <ul style="list-style-type: none"> • Chapter 15 – Waste Minimisation and Management: the proposed DA contributes positively toward the sustainable management of waste in the LGA. • Chapter 17 – CPTED: the proposed extension of operating hours will not extend operating hours for community facilities. Adequate security for extended operating hours can be provided through existing security fencing / gates, and existing operational arrangement, i.e. controlling weigh-bridge accessibility. 	
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- *State Environmental Planning Policy (Planning Systems) 2021* ('Planning Systems SEPP')

The original development application related to works with a Capital Investment Value over \$5 million being carried out on Council land / with the applicant being Council, and the DA was determined to be regionally significant development pursuant to Clause 20 of the *State Environmental Planning Policy (Stage and Regional Development) 2011* (now repealed). Pursuant to the *EP&A Act 1979*, Part 4, Division 4.2, Section 4.5, regionally significant development must be determined by the appropriate regional planning panel. At the time, this was the Joint Regional Planning Panel.

Pursuant to the *State Environmental Planning Policy (Planning Systems) 2021*, which has superseded the *SEPP (State and Regional Development) 2011*, regionally significant development is classified in Schedule 6 of this SEPP, and includes Council related development over \$5 million. The original DA would have met this criterion.

Pursuant to the 'Instructions of functions exercisable by Council on behalf of Sydney District or Regional Planning Panels – Application to Modify Development Consents', the proposed s4.55(2) DA modification is required to be determined by the Southern Regional Planning Panel as the application meets the conflict of interest criteria specified in Schedule 1(a) of these Instructions. Council is the land-owner of the land on which development is proposed.

- *State Environmental Planning Policy (Resilience and Hazards) 2021*

Chapter 2: Coastal Management

The provisions of Chapter 2 of *State Environmental Planning Policy (Resilience and Hazards) 2021* ('the Resilience and Hazards SEPP') have been considered in the assessment of the development application.

The FOGO facilities subject to this DA modification are located in a Coastal Use area, Coastal Environment area, and Coastal Wetlands proximity area. Mapping of these areas is included

below. The proposed DA modification to extend operating hours is not anticipated to introduce any significant or adverse impacts upon the coastal areas beyond the nature of impact approved in the original DA. In this regard, the proposed modification satisfies the requirements of Chapter 2 in this SEPP.

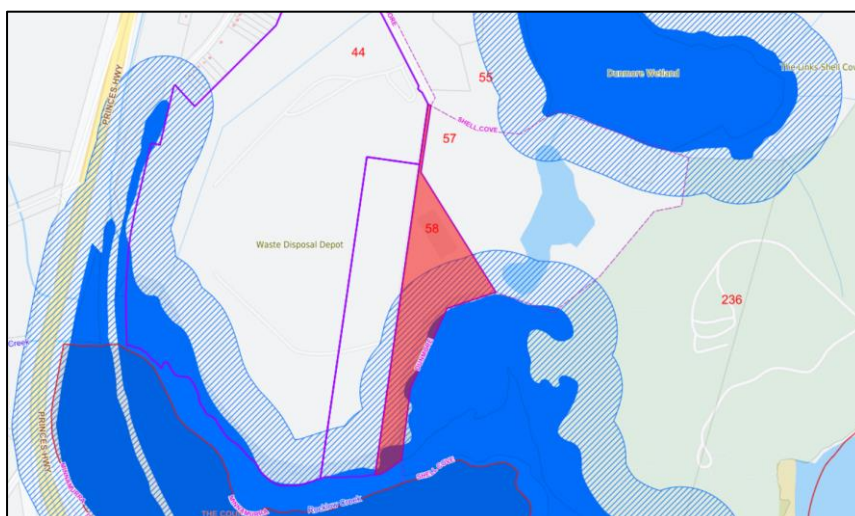
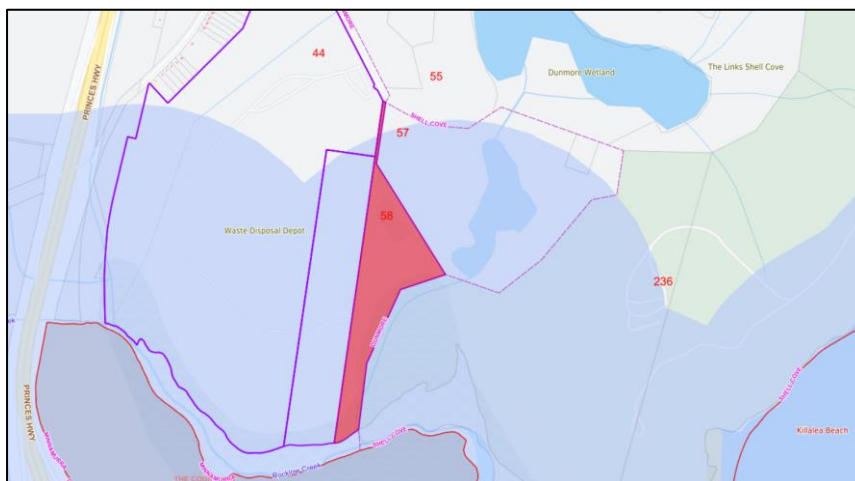
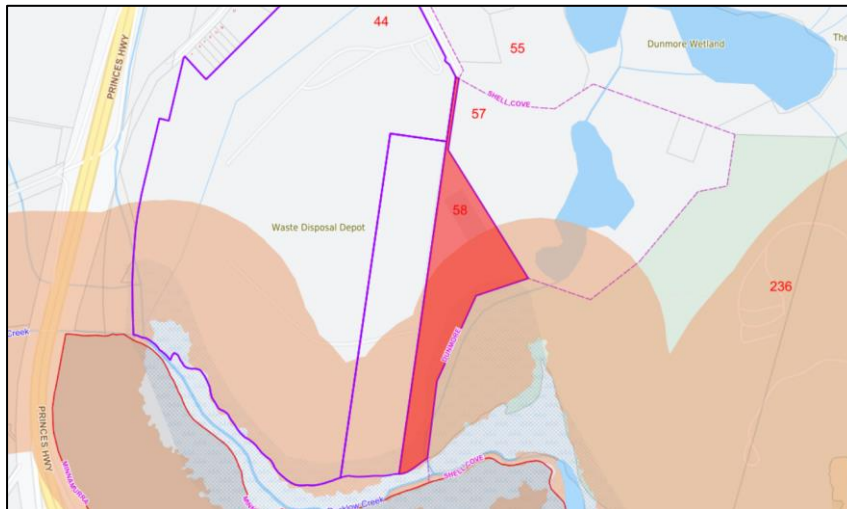


Figure 5: A series of images depicting the coastal land constraints applicable to the site: Coastal Use (orange – top), Coastal Environment (blue – middle), and Coastal wetlands and proximity area (dark blue and hatching – bottom).

Chapter 4: Remediation of Land

The provisions of Chapter 4 of the Resilience and Hazards SEPP have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The site is contaminated as the ‘Dunmore Waste Depot’. The proposed DA modification retains the same operation which has contaminated the land, and does not necessitate remediation for the land to be suitable. Contamination and remediation requirements are as per the existing approval.

State Environmental Planning Policy (Resources and Energy) 2021

The provisions of Chapter 2, Part 2.3, Section 2.19 of the *State Environmental Planning Policy (Resources and Energy) 2021* are relevant. This section requires consideration of the compatibility of development with nearby mining, petroleum production or extractive industry. The landfill area directly west of the FOGO facilities is mapped as a ‘mineral resources area’ pursuant to this SEPP.

Section 2.19, Clause 2 requires the consent authority to consider the following before determining an application:

- i. The existing uses and approved uses of land in the vicinity of the development, and
- ii. Whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and
- iii. Any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery.

The consent authority is also required to evaluate and compare the respective public benefits of the development and extractive uses, and any measures to minimise incompatibility.

The proposed extension of operating hours relates to a FOGO facility, which is associated with the landfill operations within the mineral resource area. Extending the operating hours of the FOGO facility will not introduce any metrics of incompatibility with the current landfill use, or the potential for extractive operations within the mineral resource area, subject to the existing conditions of consent. The extended operating hours do not impede accessibility or assessment of any resources present in the mineral resources area, and the site’s industrial nature is compatible with any future extractive operations. The proposal introduces public benefits by addressing poor odour impacts from the site operators, and no measures are required to minimise incompatibility.

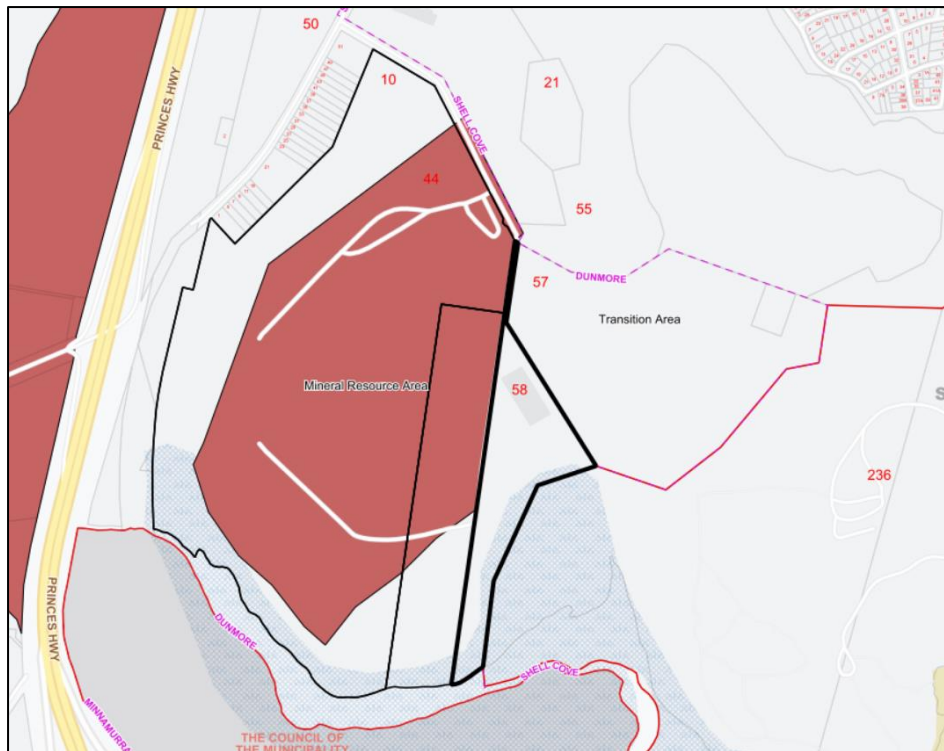


Figure 6 – Mineral Resource Area mapping.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Pursuant to Chapter 2, Part 2.3, Division 23 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021*, Waste or Resource Management Facilities are permitted with consent in *prescribed zones*. Prescribed zones includes RU1 – Primary Production zones.

Therefore, whilst Waste or Resource Management Facilities are prohibited at the site under the Shellharbour Local Environmental Plan 2013, the *SEPP (Transport and Infrastructure) 2021* overrides this and permits the subject development with consent.

Shellharbour Local Environmental Plan 2013

The relevant local environmental plan applying to the site is the *Shellharbour Local Environmental Plan 2013* (the SLEP 2013). The aims of the SLEP 2013 include encouraging development that balances ecological sustainability and economic viability, to enhance the amenity and characteristics of established residential areas, and to encourage a range of development, including employment and services, to meet the needs of existing and future residents, business owners and workers in Shellharbour.

The proposal is consistent with these aims as the proposal addresses operational deficiencies that have contributed to adverse odour impacts from the food-waste operations. These odour impacts have resulted in adverse amenity impacts on nearby established residential areas, and been an obstacle for the food-waste operator to meet their license requirements and operational objectives. The applicant has provided suitable reports and documentation which demonstrate that extended operating hours would not result in adverse amenity impacts on

the nearby established residential areas (detailed further in section 3.2.2 below – likely impacts).

Zoning and Permissibility (Part 2)

The proposed development is located within the RU1 Primary Production zoning pursuant to Clause 2.2 of the SLEP 2013, where Waste or Resource Management Facilities are prohibited (Figure 7). The site also includes C2 – Environmental Conservation zoning, and C3 – Environmental Management zoning, where Waste or Resource Management Facilities are also prohibited. However, as discussed above, the *SEPP (Transport and Infrastructure) 2021* overrules the SLEP 2013, and the proposed development is permissible with consent in the prescribed zone.

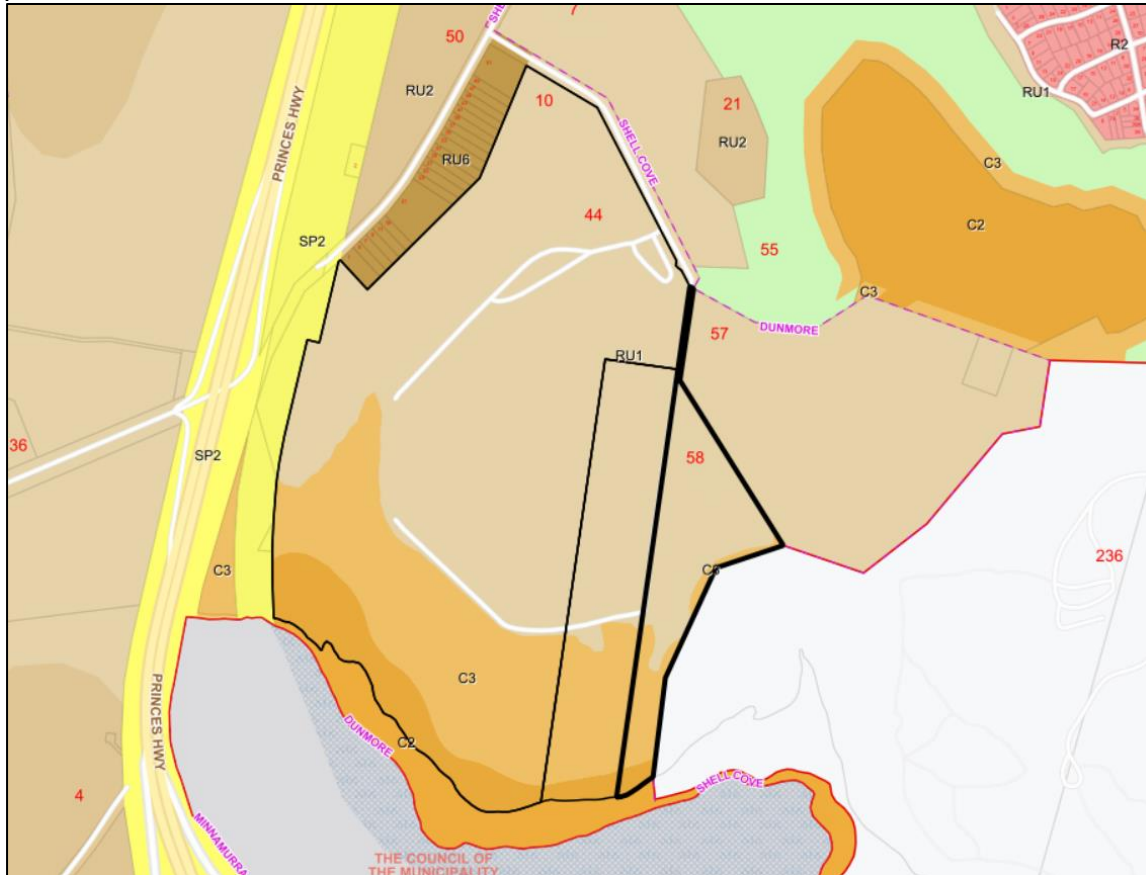


Figure 7 – An excerpt of the SLEP 2013 zoning mapping. The site is zoned within RU1 – Primary Production, C2 – Environmental Conservation, and C3 – Environmental Management zoning.

The RU1 Primary Production zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

Whilst not sited directly within the C2 and C3 zonings on the site, these zone objectives are important to note:

C2 – Environmental Conservation

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

C3 – Environmental Management

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To retain and enhance the visual and scenic qualities of the Illawarra Escarpment.

The proposal is considered to be consistent with the RU1, C2 and C3 zone objectives for the following reasons:

- The proposed extended operating hours will minimise conflict between the Dunmore Waste Depot FOGO operations and adjoining land-uses by assisting to minimise and mitigate odour impacts.
- The extended operating hours are not anticipated to adversely affect adjoining land uses by way of odour, noise or air quality.
- The extended operating hours do not involve any expansion of site operations, and possesses minimal impacts against the vegetation on site, subject to existing conditions of consent.



General Controls and Development Standards (Part 2, 4, 5 and 6)


The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below.

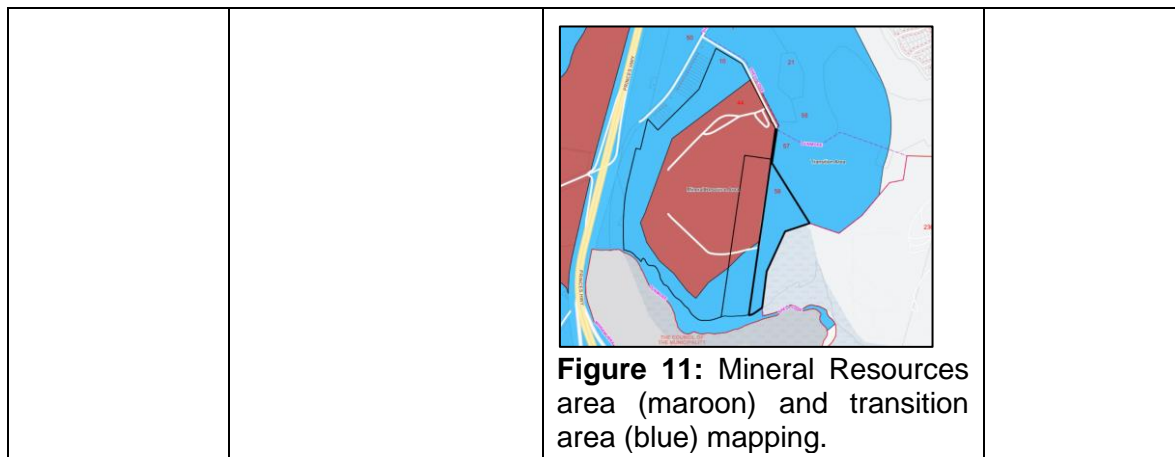
Note that the minimum lot size, height of building, and floor space ratio controls have been excluded from the table, as no built form works or subdivision is proposed.

Table 5: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Flood planning (Cl 5.21)	Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development satisfies	<p>The site is mapped within a 'hydrotec rationalised' flood layer, which is an informal flood modelling map produced by Council's flooding team that has not been officially adopted.</p> <p>The proposed extended operating hours are not considered to introduce any</p>	Yes

	<p>numerous criteria related to compatibility with flood functionality, safe occupation and evacuation of people, risk mitigation measures, and stability of river banks and watercourses.</p>	<p>additional flood risk consideration. The proposed modification satisfies the requirements of this clause.</p>  <p>Figure 8: 'Hydrotec rationalised' informal flood mapping</p>	
<p>Acid sulphate soils (CI 6.1)</p>	<p>Development consent and an acid sulfate soils management plan is required for carrying out works based on the classification of the acid sulfate soils on the site, and the works proposed.</p>	<p>The site is mapped as a Class 2 and Class 3 ASS site, with the FOGO operations primarily located within Class 3.</p> <p>As the proposed extended operating hours do not include any physical works, there is no additional risk of acid sulfate soils being uncovered, and risks are suitably controlled through existing conditions of consent.</p>  <p>Figure 9: Acid sulfate soils mapping (Class 3 – light pink) (Class 2 – dark pink)</p>	<p>Yes</p>
<p>Terrestrial Biodiversity (CI 6.5)</p>	<p>Before determining a development application on land which includes terrestrial biodiversity area, the consent authority must consider whether the development is likely to have any adverse</p>	<p>The site features a small area of terrestrial biodiversity along the southern edge of the FOGO operations, and a large area on the south-west section of the site, closer to the landfill operations.</p> <p>The proposed extended operating hours do not expand</p>	<p>Yes</p>

	impacts on the ecology, vegetation, fauna, habitat elements, and biodiversity composition of the land.	<p>the site operations, or otherwise adversely affect the terrestrial biodiversity area, subject to the existing conditions of consent.</p>  <p>Figure 10: Terrestrial Biodiversity mapping</p>	
Significant Mineral Resources area (CI 6.10)	This clause identifies land with significant resource minerals & extractive materials, and indicates that Section 2.19 of the <i>SEPP (Resources and Energy) 2021</i> applies.	Assessment against this requirement is considered in the SEPP assessments above. The proposal is suitably compliant.	Yes
Development within the Transition Area (CI 6.11)	Development consent must not be granted for development in the transition area unless the consent authority has considered whether the development would have any adverse impacts on the availability of extractive resources, impacts arising from extractive operations, or mitigative measures.	<p>The FOGO facility is located within a transition area, surrounding a mineral resource area located on the subject site.</p> <p>Matters of compatibility and adverse impacts are discussed in the <i>SEPP (Resources and Energy) 2021</i> assessment above.</p> <p>In summary, the proposed extended operating hours at the FOGO facility would not adversely impact the availability of extractive resources. The landfill and extractive operations approved do not currently, and would not be anticipated to, adversely affect the FOGO operations through extended hours. There are existing mitigative measures in place through the existing conditions of consent.</p>	Yes



The proposal is considered to be generally consistent with the LEP.

(b) Provisions of any Proposed Instruments (s4.15 (1)(a)(ii))

There are no draft instruments that are applicable to the proposed DA modification.

(c) Provisions of any Development Control Plan (s4.15(1)(a)(iii))

The following Development Control Plan is relevant to this application:

- Shellharbour Development Control Plan 2013 ('the SDCP 2013')

In summary, no non-compliances have been identified against the provisions of the SDCP 2013. As a proposal for extension of operating hours, there is minimal assessment considerations. Commentary against relevant chapters is included below:

- Chapter 13 – Parking, Traffic and Transport: the proposed DA modification does not include any changes to the parking or traffic configuration of the site. Notably, the extended operating hours would not generate additional traffic. The site's weighbridge will continue to close at the standard time of 4pm, preventing operational trucks from leaving or being received at the site.
- Chapter 15 – Waste Minimisation and Management: the proposed DA modification contributes positively toward the sustainable management of waste in the Shellharbour Local Government Area.
- Chapter 17 – Crime Prevention through Environmental Design: the proposed extension of operating hours will not extend operating hours for any community or publicly accessible facilities on site. There is adequate existing security measures for extended operating hours to proceed safely, i.e. security fencing, gates, and operational arrangement's such as the weigh-bridge control.

The Shellharbour City Council Local Infrastructure Contributions Plan 2019 (9th Review) does not apply to the subject application, as there is no increase in dwellings or commercial/industrial floor area.

(d) Planning agreements under Section 7.4 of the EP&A Act (s4.15(1)(a)(iia))

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Provisions of Regulations (s4.15(1)(a)(iv))

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- The proposal does not involve demolition,
- The proposal does not relate to land subject to a subdivision order,
- The proposal does not relate to a manor house or multi dwelling housing (terraces),
- The proposal does not relate to a change of use,
- The proposal does not relate to a temporary structure,
- The proposal does not relate to built form works / building upgrades.

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are not relevant to the proposal.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended existing conditions (where necessary).

3.2.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – the proposed modification retains essentially the same context and setting of the site. The proposal does not include any built form works, and the extended operating hours, which are relatively minor in comparison to the originally approved hours, are appropriate considering the rural / industrial setting of the site. Amenity impacts on nearby sensitive receptors is considered through noise and odour impacts below, and considered suitable for the site context.
- Access and traffic – the proposed modification for extended operating hours will not include any addition traffic, travel demand, parking demand, or changes to the general parking configuration on site. There will be negligible road impacts, apart from slightly earlier and later travel times for workers travelling to and from the site.
- Public Domain – the proposal does not include any built-form modifications. There is no public open space or pedestrian linkage affiliated with the FOGO facilities. The FOGO drop-off times will remain the same, cutting off when the weigh-bridge closes at 4pm.

- Utilities – all utilities are available at the site for the required site operations, as per the existing approval. This includes sewerage, electricity, and water, as relevant to the site functions.
- Heritage – the site does not contain any heritage items, and is not located in proximity of any heritage items.
- Other land resources – the site is located in close proximity to the Dunmore Wetlands and Minnamurra Wetlands (to the east and south). A ‘minerals resource area’ is indicated at the site of the Dunmore landfill, however it is important to note this site has been historically used as a landfill since at least 1990 (earliest records of aerial mapping and planning history). The site does not adjoin any agricultural land.

The proposed extension of FOGO facility operating hours will not adversely affect the adjoining land uses and resources. The FOGO facilities are considered compatible with the landfill and waste depot operations on site, and the development does not present incompatibility with the mineral resources area. Operation of the FOGO facility is subject to existing conditions of consent and Environmental Protection License requirements which control environmental impacts, such as impacts on the nearby wetlands.

- Water/air/soils impacts – The site is listed as contaminated through operation of the ‘Dunmore Waste Depot’. The FOGO facilities form part of the Dunmore Waste Depot, and extension of operating hours for these facilities will not change the contamination status of the site. Water, air and soil impacts are all controlled through existing conditions of consent and terms of the Environmental Protection License for the site operations.
- Flora and fauna impacts – the proposed modification does not include any tree or vegetation removal. While there is terrestrial biodiversity located on site, the proposed extended operating hours will not adversely affect this terrestrial biodiversity area, subject to existing conditions of consent.
- Natural environment – There are no built form changes proposed, thus no changes to the site’s natural environment and conditions. The extended operating hours will not include an expansion of operational capacity or operational area, thus the nearby natural environment will not be adversely affected, subject to existing conditions of consent.
- Noise and vibration – the proposed extended operating hours will include additional noise impacts from site operations earlier in the morning, and later in the afternoon. The proposed modification was accompanied by a noise impact assessment. This noise impact assessment established the operational noise trigger levels using noise monitoring at several adjoining sites, and determined the predicted noise impacts on nearby receptors, in accordance with the EPA document ‘Noise Policy for Industry’.

The noise impact assessment determined that the noise levels from extended operating hours are predicted to comply with the Project Intrusiveness Noise Levels (a decibel value 5 units above the background noise level from nearby receptors). This assessment included the residential receptors along Dunmore Road (R1), 21 Buckleys Road (R2), in Shell Cove (R3), and the Killalea campgrounds (R4).

The noise impact assessment also demonstrates compliant noise impacts upon a residential dwelling (receiver R5) determined as a deferred commencement

(DA0171/2024) at 57 Buckleys Road. Similar to the noise impact assessment received for the deferred commencement application DA0171/2024, the noise report identifies the dwelling as a caretaker's quarters, as the dwelling is located on the site of an ongoing industrial land-use (materials recycling operation). This is considered suitable and consistent with the deferred commencement noise assessment.

Vibration impacts from the landfill operations, or any future extractive operations are not anticipated to adversely affect the FOGO facilities, as an industrial operation. The FOGO facilities themselves present limited adverse vibration impacts on nearby receptors, as they are significantly distanced from these properties.

With all of the above taken into consideration, the noise and vibration impacts of the proposed extended operating hours is demonstrated to be suitable. The extended operating hours will have limited adverse impacts on nearby sensitive receptors. No additional noise mitigation and management measures are required for the extended operating hours and the existing conditions of consent are sufficient to protect nearby sensitive receivers.

- **Odour impacts** – the current FOGO facilities operations include the decontamination, shredding, and loading of food waste into enclosed compost tunnels and processing on an open-air maturation pad, which results in odour impacts in the area. As part of the original application, the applicant demonstrated that operations within the approved operating hours would present suitable odour impacts. However, there have been numerous odour complaints in recent years, which have resulted in compliance and regulatory action being taken against the operator. This includes investigation by the EPA which revealed that the operator's management practices at the facility, such as stockpile management, contributed to adverse odour impacts.

The proposed modification was accompanied by an odour assessment which modelled the odour impacts from the continuous emission of odour (24/7), considered a worst-case scenario. The odour assessment generated an 'odour contour' map, where odour units 1 (being least offensive) to 7 (highest permitted for residential receptors) were shown. The odour assessment depicts all residential receptors within an acceptable odour range, primarily in the 1 unit – 3 unit range. The Killalea campgrounds are shown in the 5 unit - 7 unit range (Figure 12).



Figure 12: An 'odour contour' map from the Odour Assessment, indicating the odour unit modelling (1 = least offensive, 7 = highest tolerance for residential properties).

An addendum to the odour assessment was provided to address the odour impacts upon a dwelling house approved at 57 Buckleys Road through a deferred commencement. This addendum depicts the dwelling house in the 5 unit – 7 unit range. A 7 unit odour impact is considered appropriate for a single rural residence as per the 'Approved Methods for Modelling and Assessment of Air Pollutants in NSW', published by the EPA in August 2022. The 'Approved Methods' document justifies that it is suitable for low population densities to be exposed to higher odour impacts, particularly in rural areas where agricultural and industry activities are more prominent. This is consistent with the odour and air quality assessment provided by the applicant for the dwelling house at 57 Buckleys Road, which was required to demonstrate it would not introduce a sensitive receptor that would compromise development of nearby industrial land uses to satisfy Clause 5.16 in the *SLEP 2013*, and Clause 2.19 of the *SEPP (Resources and Energy) 2021*.

As such, the odour assessment demonstrates acceptable odour impacts at the Site and surrounding area. Notably, the odour assessment also references a suite of Best Management Practice measures that the applicant is planning to implement through ongoing consultation with the EPA, and other structural upgrades and operational modifications on site.

The odour assessment notes that numerous factors can worsen odour impacts, including airflow rate, temperature, moisture levels, retention time, green waste composition, turnover frequency, aeration practices, size and design of compost facility, handling and storage methods, and duration of material storage. The proposed extended operating hours do not introduce any additional factors that may worsen odour impacts, rather, the proposed operating hours would allow greater efficiency and flexibility around weather, turnover frequency, aeration practices, handling and storage methods, and duration of material storage. There is a clear benefit to odour

management resulting from extended operating hours, supported by the accompanying documentation.

- Natural hazards – the site is affected by flooding and bushfire. The proposed modification for extended operating hours does not introduce any additional flood or bushfire risk, and the proposal is considered satisfactory subject to the existing conditions of consent.
- Safety, security and crime prevention – the proposed modification for extended operating hours triggers some consideration of CPTED principles. Namely, the extended operating hours may be affiliated with additional safety concerns, however these are satisfactorily addressed through existing site arrangements. The site's weighbridge will continue to close at the standard 4pm time, minimising trespass and crime opportunity at the site. The site also features security fencing and gates which minimise opportunity for unauthorised entry. The safety, security and crime prevention measures at the site are considered appropriate.
- Social impact – subject to conditions of consent, the extended operating hours are anticipated to improve social impacts by mitigating the risk and likelihood of odour impacts on nearby properties.
- Economic impact – by achieving improved odour impacts, the operator will be able to improve their Environmental performance, to address regulatory and compliance action taken against the operator.
- Site design and internal design – the site is set out appropriately to facilitate extended operating hours, with appropriate lighting, site security, weighbridge control and navigation.
- Construction – the proposed extension of operating hours does not include any construction.
- Cumulative impacts – the proposal is considered unlikely to result in cumulative impacts, considering the proposal does not include an expansion of their operational capacity (i.e. waste in-take volume and processing), rather additional time to improve operational efficiency and flexibility to address odour impacts.

Accordingly, it is considered that the proposed modification will not result in any significant adverse impacts in the locality as outlined above.

3.2.3 Section 4.15(1)(c) - Suitability of the site

The proposed modification of extended operating hours at the existing FOGO facilities is considered suitable for the site characteristics. The site features adequate security, office, and operational infrastructure to accommodate extended operating hours in an effective manner. It's important to note the extended operating hours will not increase the intake or production caps set on the operator, thus intensification of operations is not anticipated, rather increased efficiency and operational flexibility. The proposal has demonstrated suitable noise and odour impacts on the locality as per EPA Guidelines, noting the site is located within a rural setting with various industrial and environmental uses nearby that are conducive of the site operations, with good separation from nearby residential dwellings. The extended operating hours does not introduce any foreseeable risk from existing natural hazards. In this regard, the site and locality are considered suitable for the proposed extension of operating hours.

3.2.4 Section 4.15(1)(d) - Public Submissions

The proposed modification did not receive any submissions during the exhibition period.

3.2.5 Section 4.15(1)(e) - Public interest

The proposed modification for extended operating hours is considered in the public interest, noting that the objective of the modification is to increase operational efficiency and flexibility to address odour impacts. Given the odour complaints that had been received in recent operations, and the recommendations from the EPA to undertake numerous operational and infrastructural changes to address odour impacts, the proposal is considered to serve the public interest by addressing public concern and regulatory investigations. The modification is anticipated to improve health and amenity of the public, and is not anticipated to introduce adverse odour, noise, or operational effects through extended operating hours.

3.3 Part 5 of the 2021 EP&A Regulation

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the 2021 EP&A Regulation. These matters are considered in **Table 7** below.

Table 6: Consideration of the Requirements under the Regulation

Matter	Comment	Comply
Clause 100 Application for modification of development consent		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (CI 98(1))	The application has been made by the operator at the site (Re.Grow Operations Pty Ltd), with consent from the owner of the land, being Shellharbour City Council.	Y
NSW Aboriginal Land Council consent required for land owned by a Local Aboriginal Land Council (CI 98(6)).	The land is not owned by a Local Aboriginal Land Council and consent is not required.	N/A
Form approved by Planning Secretary and on portal (CI 99).	The application has been provided in accordance with the Regulation.	Y
Applicant details (CI 100(1)(a))	Provided on the NSW Planning Portal ('the Portal').	Y
Description of the development (CI 100(1)(b))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Address and title details (CI 100(1)(c))	Provided on the Portal and outlined in Section 1 of this Report.	Y
Description of the proposed modification (CI 100(1)(d))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Whether to correct a minor error, mis-description or miscalculation, or	The proposed modification is to modify the original consent under Section 4.55(2) to	Y

some other effect (CI 100(1)(e))	allow extended operating hours at the existing FOGO facilities, and is not to correct a minor error, misdescription or miscalculation.	
Description of the expected impacts of the modification (CI 100(1)(f))	There are unlikely to be any significant impacts resulting from the proposed modification, given there are no built form changes proposed. The only change is an extension of operating hours to accommodate operational flexibility and efficiency, with the objective of improving upon odour impacts and stockpile management at the FOGO facility. Any other impacts were considered in the original proposal, which was supported by Council.	Y
Undertaking that modified development will remain substantially same as development originally approved (CI 100(1)(g))	The modified development will remain substantially the same development as that originally approved. Refer to Section 3.1 of this Report.	Y
If accompanied by a Biodiversity development assessment report, the biodiversity credits information (CI 100(1)(h))	The proposed modification was not required to be accompanied by a Biodiversity development assessment report.	N/A
Owner's consent (CI 100(1)(i))	An undertaking has been provided on the Portal.	Y
Whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56) (CI 100(1)(j)).	This Application is made to the consent authority pursuant to Section 4.55(2) of the EP&A Act.	Y
BASIX Certificate (CI 100(3))	The proposed modification does not involve BASIX development and an updated BASIX Certificate is not required.	N/A
Penrith Lakes Development Corporation (CI 101)	The proposed modification does not involve the Penrith Lakes Development Corporation.	N/A
Qualified designer statement for residential apartment development (CI 102)	The proposed modification does not involve residential apartment development and a qualified designer statement is not required.	N/A
Mining and petroleum development consents (CI 102)	The proposed modification does not modify mining and petroleum development consents.	N/A
Notification and exhibition requirements (CII 105-112)	Refer to Section 4.3 of this report.	Y
Notification of concurrence authorities and approval bodies (CI 109) (to be undertaken by Council)	The modification application has been referred to the relevant concurrence and	Y

	approval bodies as outlined in Section 4.1 of this Report.	
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4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The modification application is requiring concurrence and referral pursuant to section 4.13 of the *EP&A Act 1979*.

Accordingly, the modification application was referred to various agencies for comment and concurrence as required by the EP&A Act and Clause 109 of the 2021 EP&A Regulation and outlined in **Table 8**.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 7: Concurrence and Referral Agencies

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Environmental Protection Agency (EPA)	S109 of the EP&A Regulation 2021 (notification of a modification to a concurrence authority)	<p>The original development application was reliant on concurrence from the EPA, whom provided a conditionally satisfactory response including General Terms of Approval. The operator also relies on an Environmental Protection Licence for the FOGO facility operations.</p> <p>The proposed modification will modify the EPA's GTAs, as their conditions set out the operating hours for the premise.</p> <p>The modification application was referred to the EPA, whom initially provided a conditionally satisfactory and General Terms of Approval, providing consent for the extended operating hour, provided the applicant complies with their EPL,</p>	Y

		<p>and demonstrates good odour performance. The EPA must provide written confirmation that these criteria are met.</p> <p>Council raised concerns about the practicality of such a condition, as the condition required good odour performance within the current operating hours, and would not allow extended operating hours to assist with achieving odour performance until after the matter. This ran contradictory to the intent of the modification.</p> <p>Following discussion between Council, the operator, and the EPA, revised General Terms of Approval were provided to Council dated 4 March 2025 which instead permitted a 1-yr trial period as a more practical solution. During this trial period, the operator must demonstrate compliance with their Environmental Protection Licence, and good odour performance. An excerpt of this condition is included in Section 5 'Key Issues' below.</p>	
DPE Water	S109 of the EP&A Regulation 2021 (notification of a modification to a concurrence authority)	DPE Water have advised that a controlled activity approval is not required for the proposed DA modification, and no further assessment by DPE Water is necessary.	Y
Referral/Consultation Agencies			

Electricity supply authority (Endeavour Energy)	S2.48 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	Council received advice from Endeavour Energy detailing conditionally approval. As the proposed modification does not include any physical works, and the consent document features existing condition requirements from Endeavour Energy (Condition D3), no further information was required to be included within the consent.	Y
Integrated Development (s4.46 of the EP&A Act) – N/A, none required			

4.2 Council Referrals

The modification application was referred to various Council officers for technical review as outlined **Table 9**. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

Table 8: Consideration of Council Referrals

Officer	Comments	Resolved
Environment	Council's Environment officer reviewed both the Noise and Odour assessment reports provided by the applicant, and provided a satisfactory referral response. The reports are in alignment with the EPA's noise and odour guidelines. No conditions were recommended.	Y
Property	Council's Property Services team reviewed the application, and indicated their support for the proposal. No conditions were recommended.	Y
Waste	<p>Council's Waste team reviewed the application, providing information on the odour complaints received regarding the FOGO facility operations for EPL 12903 over the past years, as detailed below:</p> <ul style="list-style-type: none"> - 6 in 2021; - 13 in 2022; - 15 in 2023; and - 47 in 2024. <p>Council's waste team provide details on the Pollution Reduction Program (PRP) implemented by the EPA, which included measures such as restricted stockpile sizes and amount of material on site, requiring improvement in procedures, and requiring physical</p>	Y

	<p>rectification to the outdoor maturation pad area. The vast majority of the PRP works have been completed.</p> <p>Council's Waste team noted that Council had not received any noise complaints about the FOGO facilities since it became operational in 2017.</p> <p>Council's Waste team supported the proposed modification.</p>	
Transport	Council's Transport team reviewed the application, and did not note any objections to the proposal.	Y

4.3 Notification and Community Consultation

The modification application was notified in accordance with the Shellharbour Community Participation Plan 2021. The application was notified from 21st November 2024 to 18th December 2024. The notification included:

- Notification on the Council's website;
- Notification letters sent to adjoining and adjacent properties, and submitters from the original development application (36 letters sent); and
- Two (x2) advertisement signs placed on the site.

The Council received a total of zero (0) unique submissions.

5. KEY ISSUES

Two key issues were noted in the briefing report, being a dwelling house at Lot 2 DP609702 (57 Buckleys Road), and the practicality of the EPA's condition. These two issues have been resolved, as discussed below:

- **Dwelling House at 57 Buckleys Road:** A deferred commencement has been issued for a dwelling house to be erected at 57 Buckleys Road (DA0171/2024). The dwelling house is proposed approximately 450m north-east of the maturation pad, and 550m north-east of the FOGO receival shed.

The dwelling house DA included its own noise and odour assessments to demonstrate that the dwelling house will not introduce a sensitive receptor to adjoining industrial uses. The applicant has also provided addendums to their noise and odour assessments, which demonstrate suitable impacts on this dwelling house. The assessment reports between the dwelling house application and the subject application are consistent, and considered satisfactory from Council, having been discussed in Section 3.2 of this report when considering the likely impacts of the development. This matter is considered to be resolved.

- **EPA Condition Practicality:** The EPA initially recommended a condition of consent which only permitted the extended hours of operation if the applicant can demonstrate compliance with their Environmental Protection Licence (EPL), and good odour

performance for a summer period of normal operations. This condition would require a written confirmation that the applicant has met these criteria before extended operating hours are activated.

This condition presented a challenge in practicality that has been discussed between Council, the EPA, and the applicant. Discussions focused on the operator's odour non-compliances, and revised terms for their Environmental Protection Licence 12903 which were being negotiated separate to the subject application. Council and the EPA have agreed on utilising a timed 'trial period' condition instead, which would allow a trial period of extended operating hours, subject to revised terms of the operator's EPL. This condition is seen as a more practical approach which achieves two key objectives:

- Improves practicality of the EPA's condition, by allowing extended operating hours to assist in achieving odour and EPL compliance; and
- Ties the extended operating hours to the revised terms of the EPL, which will assist to ensure good operational practice and odour performance, addressing a record of odour complaints in recent years. The extended operating hours will assist the operator to achieve compliance with their new EPL.

This revised condition is taken as a more logical and practical approach which is more suitable for all parties involved. The timed trial period will require a further DA modification to make the extended operating hours permanent, at which time, the EPA will be required to provide concurrence, providing an opportunity to review the operator's performance. This matter is considered to be resolved.

An excerpt of the revised condition provided by the EPA, and included within the draft consent, is shown below.



Recommended Conditions of Approval

Organics facility hours of operation

1. The organics processing facility may operate between:

Day	Hours of Operation
Monday to Friday	External operations: 7.30am to 4pm Internal operations: 7.30am to 4pm
Saturday, Sunday and public holidays (excluding Christmas Day and Good Friday)	External operations: 8am to 4pm Internal operations: 8am to 4pm

2. Between 11 April 2025 and 11 April 2026, the organics processing facility may operate with the extended operating hours, as a trial, as detailed below. The trial is subject to draft Notice of Variation of Licence no.12903 (Notice. 1645821) being issued by the EPA and the following parameters (a) and b)) being met throughout the trial period:

- a) Compliance with all conditions of Environment Protection Licence number 12903, including completion of Pollution Reduction Programs; and
- b) Good odour performance (no to minimal odour impacts reported by the surrounding community).

Day	Hours of Operation
Monday to Friday	External operations: 7am to 6pm Internal operations: 6am to 6pm
Saturday, Sunday and public holidays (excluding Christmas Day and Good Friday)	External operations: 7am to 4pm Internal operations: 6am to 6pm

6. CONCLUSION

This modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls and the key issues identified in this report, it is considered that the application can be supported.

The key issues centred on odour and noise impacts of the extended operating hours, and the practicality of the General Terms of Approval provided by the EPA. These matters have been suitably addressed through addendums to the odour and noise assessments to address all sensitive receptors in vicinity of the site, and revision of the GTA's following productive discussion between Council, the EPA and the applicant. These key matters are considered resolved.

The site and locality characteristics are considered suitable for the proposed extension of operating hours for the FOGO facility, noting that no built form works are proposed, and there are limited adverse impacts on nearby properties, benefited by the rural – industrial character of the area, and substantial distance from residential properties. The development is considered compatible with the locality.

7. RECOMMENDATION

It is recommended:

- That the Modification Application DA 7.2014.523.1 (Part 3) DAM0118/2024 (PPSSTH-449) be approved pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A; and
- Pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021*, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

The following attachments are provided:

- Attachment A: Draft Conditions of consent