

## DETERMINATION AND STATEMENT OF REASONS

### SYDNEY WESTERN CITY PLANNING PANEL

<b>DATE OF DETERMINATION</b>	19 December 2024
<b>DATE OF PANEL DECISION</b>	19 December 2024
<b>DATE OF PANEL BRIEFING</b>	2 December 2024
<b>PANEL MEMBERS</b>	Justin Doyle (Chair), Louise Camenzuli, David Kitto, Mary-Lynne Taylor, Grant Christmas
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Papers circulated electronically on 26 November 2024

#### MATTER DETERMINED

**PPSSWC-377 – Camden – DA/2023/632/1** – 751 The Northern Road, Bringelly - Staged integrated housing development comprising of demolition, Torrens title subdivision to create 257 residential allotments, 8 lots for future development and 5 lots for open space and drainage, construction of 60 semi-detached dwellings, 4 dwelling houses and 3 garage studios, road construction and associated site works.

#### PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at briefings and the matters listed at item 8 in Schedule 1.

#### 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 (with the exception that the Panel voted 4:1 in relation to deferred commencement condition 1 as noted below, but otherwise unanimously agreed with Council's recommendation).

#### REASONS FOR THE DECISION

The panel determined to approve the application for the reasons outlined in the council assessment report.

Development of the site will commence the realisation of the planned Lowes Creek Maryland Precinct that is envisaged to accommodate up to 7,000 new homes for up to 22,400 people, a local centre, a new school and a community facility, along with open space, cycling and pedestrian paths.

With civil design and use planning found to be acceptable and generally consistent with the area planning for the precinct under the Lowes Creek Maryland Precinct Layout Plan (ILP), the proposal is consistent with the objectives of the R2 Low Density Residential, R3 Medium Density Residential and C2 Environmental Conservation zones applying to the land under Appendix 5, Section 2.2 of the Western Parkland City SEPP. The departures from the ILP planning (variations to the block orientation and layout); amendments to the internal road layout; and configuration of Local Park) were found to be acceptable.

Aboriginal Cultural Heritage Assessment is included with the Development Application which investigates two Aboriginal sites identified within the boundary of the impact area said to contain "low to moderate significant artefact scatter and mudstone artefact". Archaeological salvage excavation has been recommended and an Aboriginal heritage impact permit (AHIP) will have to be obtained before the

subdivision proceeds to disturb those sites. General Terms of Approval have been provided from Heritage NSW. Aboriginal heritage is therefore adequately addressed.

The application was referred to the NSW Rural Fire Service for comment, and no objections were raised. General terms of approval were supplied.

The Report on Detailed Site Investigation (Contamination) as supplemented during the DA process was found to be adequate to address statutory requirements

While significant removal of trees and vegetation, including mapped vegetation, is proposed, the site is identified as biodiversity certified land. The mapped vegetation is in the same location as a future regional detention basin is planned in the ILP. This proposal includes a temporary OSD/WSUD in that location. A vegetation management plan includes provision for replacement vegetation and management.

Council's Environmental Health Specialist considered the acoustic report submitted with the proposal and noise effects from the proposed roads was found to be acceptable subject to the conditions.

Important issues requiring assessment under the applicable State environmental planning instruments are sufficiently addressed by the proposal.

Three issues were found to remain partly unresolved by the DA for which the Council recommended deferred commencement conditions be imposed. Specifically:

### **Odour**

The Greenlife Resource Recovery Facility presently operates close to the subject site at 761 The Northern Road, Bringelly. The operators of Greenlife Facility have raised concerns about the approval of residential development nearby as potentially constraining its activities.

However, with the substantial planning which has been invested into the Lowes Creek Maryland Precinct and consequent rezoning, the Panel is unanimously of the opinion that residential development in the vicinity is both inevitable and beneficial.

The Greenlife Facility operates pursuant to a licence issued under Environmental Protection Authority (EPA), and the Panel would expect the EPA to take regulatory action to require the Facility to alter its operations to avoid offensive odours sufficient to impact on the residential development encouraged by the new zoning, such as through the adoption or imposition of a pollution reduction regime. It may ultimately be that the facility cannot continue in its present location if it cannot meet the necessary standards imposed by the EPA, taking into account the changing area.

The Council assessment report proposes a deferred commencement condition requiring either a termination of composting operations or a reduction of composting operations to a level that satisfies the NSW EPA criteria of 2 odour units. The condition as recommended by the Council also would require a binding agreement or arrangement to entered into by the facility operator.

The Applicant has supplied a letter advising that VE Resource Recovery (operator of the Greenlife facility) commits in principle to take steps to reduce its odour impacts to meet the EPA required odour outcomes. The Applicant informed the Panel determination briefing that it would accept a deferred commencement condition which required the odour issue to be resolved.

The majority of the Panel ultimately resolved to follow the Council's advice that a deferred commencement condition should be imposed to address the odour issue with regard to the "Technical Framework - Assessment and Management of odour from stationary sources in NSW" published by the EPA. However, the members of the Panel who reached that opinion were not convinced that (a) the Panel had sufficient evidence to establish that the NSW EPA criteria of 2 odour units was necessarily the appropriate threshold to adopt, noting odour impacts can be

notoriously difficult to measure and quantify, or (b) that it was appropriate to require the developer to supply a binding agreement or arrangement entered into by the facility operator, when that may not be possible to achieve. It might be that rather than an agreement, regulatory action is necessary to prevent the odour pollution.

The wording of an updated condition is set out below which will require the issue of odour to be resolved prior to the consent becoming operational, but without stipulating the 2 odour unit limit or the requirement for an agreement. In imposing that condition the Panel majority who voted for the condition is not encouraging a position where it is incumbent upon the developer of this proposed residential development to take steps to reduce an odour nuisance arising from a facility which is not under its control. The precise measures necessary to ensure odour impact is resolved is expected to be resolved through the deferred commencement process.

One Panel member was strongly of the opinion that no odour condition should be imposed on the consent to this DA because to do so would be to risk shifting the onus of reducing the odour of the facility onto the residential development, rather than requiring the polluting business to adjust its practices to remove the odour nuisance taking into account the new zoning. While dissenting in that respect, that Panel member was otherwise supportive of the Panel majority's decision to approve the DA and the conditions otherwise to be imposed.

All Panel members agreed that the Council should write to the EPA to alert it to the new zoning and the problem with the odour issue.

### **Sub-arterial road**

Access to the site is via a collector road that runs north / south at the eastern edge of the proposed subdivision, which in turn connects into a northern sub-arterial road which will facilitate east / west traffic movements. The sub-arterial road is planned to connect to The Northern Road further to the east.

Construction of the adjoining sub-arterial road to the north of the site is therefore essential to facilitate road access into the proposed subdivision and is essential for the subdivision to acceptably proceed, noting figure 2-12 - Precinct Road Hierarchy contained within Schedule 6 – Lowes Creek Maryland of Camden Growth Centre Precincts DCP.

The development of the adjoining sub-arterial road, including the construction of the roundabout is presently being considered by Council through its assessment of pending DA DA/2024/467/1.

The Panel accepts that planning for the construction of that road should be resolved before the development consent for this DA becomes operative.

Again, a deferred commencement condition is proposed to that end, which the Applicant advises it is agreeable to.

### **Easement and covenants**

Lastly, an easement and covenant affecting the subject land and the proposed access to that land as discussed in the assessment report are inconsistent with the proposed development and should be released prior to the subdivision proceeding. The Council has again proposed a deferred commencement condition for the resolution of this issue.

While the Panel questions whether this condition needs to be in the form of a deferred commencement condition, the Panel was informed at the determination briefing by representatives of the Applicant that it does not object to the condition.

Accordingly, again the Panel accepts the recommendation of the Council in that regard.

Having regard to the matters discussed above, and for the reasons set out in the Council assessment report (including the separate assessments against *the Camden Growth Centres DCP* and *SEPP Western Parklands City*), the Panel was satisfied that the development described in the DA is in the public interest and should be approved.

## CONDITIONS

The development application was approved subject to the conditions in the council assessment report, excepting only that deferred commencement condition (1) is to be amended as follows:

- ~~(1) **Odour** - Compliance with the current NSW EPA Impact Assessment Criteria must be achieved.~~
- ~~The consent authority is to be satisfied that steps will be taken to mitigate potential odour impacts upon on the development having regard to the Technical Framework - Assessment and Management of odour from stationary sources in NSW prior to occupation of the development.~~
- ~~To this extent evidence of the following matters must be demonstrated:~~
- ~~— There must be a permanent change to the operations at the Greenlife Resource Recovery Facility at 761 The Northern Road, Bringelly (Lot 11 DP1218155) to lessen odour concentrations at the boundary of the nearest residential receptor (approved under this consent) to be less than 2 odour units, expressed as the 99<sup>th</sup> percentile value, as a nose response time average.~~
  - ~~— Following the permanent change to the operations, a detailed odour assessment is provided to Council's satisfaction that demonstrates that the actual odour impact at the boundary of the nearest residential receiver is compliant with the NSW EPA Impact Assessment Criteria (described above).~~
  - ~~- A binding agreement or arrangement that has ongoing legal effect (to Council's satisfaction) is to be put in place to ensure the ongoing operation of the Greenlife Resource Recovery Facility is maintained in the manner that achieves the NSW EPA Impact Assessment Criteria. Such measures may include a restrictive covenant on the title of the subject land (Lot 11 DP1218155) that benefits the Council; an appropriate modification to, or surrender of, the Environmental Protection Licence; and/or an appropriate modification to, or surrender of, the development consent relating to the land.~~






## CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition. As summarised in the Council assessment report, those issues of concern generally concerned the impact of the design of the proposal on the present agricultural use, and potential for subdivision, of adjoining land. They included:

- The impact of the proposal on existing easements and access to other properties.
- Consistency with grazing on adjoining land.
- Access to the half road from the adjoining land to the east.
- Clarity concerning integration of proposed earthworks along the eastern boundary and potential impacts on future subdivision.
- Stormwater and flood management impacts.
- Call for sewer and water connections to extend into adjoining property so as to provide capacity for future adjoining development

The panel considers that concerns raised by the community have been adequately addressed in the assessment report.

PANEL MEMBERS	

Justin Doyle (Chair) 	Louise Camenzuli 
David Kitto 	Mary-Lynne Taylor 
Grant Christmas 	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-377 – Camden – DA/2023/632/1
2	PROPOSED DEVELOPMENT	Staged integrated housing development comprising of demolition, Torrens title subdivision to create 257 residential allotments, 8 lots for future development and 5 lots for open space and drainage, construction of 60 semi-detached dwellings, 4 dwelling houses and 3 garage studios, road construction and associated site works.
3	STREET ADDRESS	751 The Northern Road, Bringelly
4	APPLICANT/OWNER	Applicant: VE Estate Developments Pty Ltd Owner: D. Vitocco Constructions ATF The Vitocco Family Trust
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Precincts - Western Parkland City) 2021</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Sustainable Buildings) 2022</li> <li>State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Camden Growth Centre Precincts Development Control Plan</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Nil</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: 26 November 2024</li> <li>Written submissions during public exhibition: Five</li> <li>Total number of unique submissions received by way of objection: Five</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Briefing: 29 January 2024 <ul style="list-style-type: none"> <li><u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Lara Symkowiak, Ashleigh Cagney</li> <li><u>Council assessment staff</u>: Nicholas Clarke</li> <li><u>Applicant representatives</u>: Haydn Dayes</li> </ul> </li> <li>Final briefing to discuss council's recommendation: 2 December 2024 <ul style="list-style-type: none"> <li><u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Mary-Lynne Taylor, Grant Christmas</li> <li><u>Council assessment staff</u>: Nicholas Clarke, Jamie Erken, Ryan Pritchard</li> <li><u>Applicant representatives</u>: Haydn Dayes, Mark Couter, Mairead Dawes</li> </ul> </li> </ul>

9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report