

DOC20/67718-2

Mr Warwick Winn
General Manager
Penrith City Council
PO Box 60
Penrith NSW 2751

Dear Mr Winn

Advisory Letter – 1669-1723 Elizabeth Drive, Badgerys Creek – Mirvac Projects Pty Ltd – Development Application DA/19/0826 for Waste Disposal Facility

On 27 November 2019, Mirvac Projects Pty Ltd (**Mirvac**) submitted Development Application 19/0826 (**the DA Application**) to Penrith City Council (**Council**) seeking approval for the construction and operation of a Waste Disposal Facility at 1669-1723 Elizabeth Drive, Badgerys Creek (**the Premises**). The Environment Protection Authority (**EPA**) was consulted by Council during the assessment stage to review the proposed development and the Environmental Impact Statement (**EIS**).

Based on the information presented in the EIS and DA Application, Mirvac proposes to import and landfill material verified to be Virgin Excavated Natural Material (VENM), Excavated Natural Material (ENM) and materials covered by NSW EPA Resource Recovery Orders (RRO) and Exemptions.

It does not appear that an Environment Protection Licence to perform the proposed activities at the Premises is required

The Protection of the Environment Operations Act 1997 (the POEO Act) defines activities requiring regulation under an Environment Protection Licence (EPL). However, the material that Mirvac has proposed to import does not require an EPL under the POEO Act and relevant regulations.

Mirvac still must comply with all relevant environmental legislation including but not limited to, sections 115, 116, 120, 126, 140, 142A, 143, 144, 144AAA, 144AAB, 144AA, 148 of the POEO Act Without an EPL, Mirvac must still ensure compliance with sections of the POEO Act relevant to activities and conditions at the Premises. This includes ensuring activities do not cause water, air or noise pollution. Mirvac must also ensure that all waste that is imported or exported from the Premises is classified appropriately, in accordance with the NSW EPA's Waste Classification Guidelines (as in force from time to time).

Mirvac must ensure that:

- No asbestos waste is imported, or recycled, reused or applied to land at the site.
- Mirvac complies with all RRO & Exemptions including record keeping. The EPA may audit the use of these exemptions at any time.
- Where the owner of the waste has employed a transporter to dispose of their waste, the owner should have adequate systems in place to ensure that the waste is being disposed of in a lawful manner. Systems may include protocols and procedures and adequate supervision to ensure that these procedures are properly carried out.
- Due diligence be exercised in relation to the disposal of waste to ensure compliance with the POEO Act. Although a contract may be in place between the owner of the waste and the

transporter of the waste, the owner of the waste cannot contract out of a legal responsibility. Due diligence may include regular audits of contractors and transporters. You cannot contract out your responsibilities under the POEO Act.

If, at a later stage, Mirvac determines that they require an EPL, Mirvac must cease the scheduled activity and apply for an EPL at that stage. It is an offence to conduct scheduled activities without an EPL under the POEO Act.

Tunnel spoil

The EPA notes that Mirvac may import material from infrastructure projects, which may include material from tunnelling projects (commonly referred to as tunnel spoil).

Please note that, not all tunnel spoil is classified as VENM or ENM. Tunnel boring activities can introduce a range of contaminants to tunnel spoil including (but not limited to) bentonite, staples (small metal fragments), and acid sulfate soils. Tunnel spoil can be further contaminated during stockpiling and onsite processing. These contaminants and activities preclude tunnel spoil material from being classified as VENM or ENM. There are also no general resource recovery exemptions at this time that apply to tunnel spoil material.

Please note that the EPA has issued several specific resource recovery exemptions, however they only apply to tunnel spoil material generated at certain locations. Mirvac must ensure that all material imported onto the Premises is covered by valid certifications, classifications or resource recovery exemptions to ensure compliance with the legislation.

Use of resource recovery exemptions and orders for genuine resource recovery

The EPA advises that resource recovery exemptions and orders are only appropriate for material that is intended for genuine resource recovery, rather than a means of waste disposal. Given that the description of the proposal is for a “waste disposal facility”, Council may wish to make further enquiries as to whether the importation and land application of the material is genuine, fit-for-purpose and beneficial for the Premises.

If you have any questions, please contact Philippe Koenig on (02) 9995 5752.

Yours sincerely



2 March 2020

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