

<b>DATE OF DEFERRAL</b>	Monday, 15 June 2020
<b>PANEL MEMBERS</b>	Justin Doyle (Chair), Ross Fowler and Glenn McCarthy
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	<p>Nicole Gurrán: Employed by University of Sydney which is an adjoining land holder.</p> <p>Louise Camenzuli: Corrs Chambers Westgarth provides advice on unrelated matters to an objector or an affiliated entity of an objector. As a Partner of the firm, she considered that this fact, while the relevant files are unrelated to the proposal being assessed, may result in a reasonably perceived conflict of interest.</p>

Public meeting held via Teleconference Call on 15 June 2020, opened at 11:45am and closed at 2:03pm.

#### **MATTER DEFERRED**

PPSSWC-7 – Penrith City Council – DA19/0470 at 1725A Elizabeth Drive, Badgerys Creek – Alterations to existing approved waste management and resource facility (as described in Schedule 1)

#### **REASONS FOR DEFERRAL**

##### Determination to defer

The panel decided to defer the determination of the matter until a further determination meeting on a date to be fixed by the Secretariat in consultation with the Council.

The decision to defer the matter was unanimous, after the Panel had adjourned to deliberate.

##### Clause 18 WSEA SEPP

One reason for the deferral was the Panel's concern about the effect of Clause 18 of *State Environmental Planning Policy (Western Sydney Employment Area) 2009* (WSEA SEPP) which applies to the land. It reads relevantly:

#### **18 Requirement for development control plans**

(1) **Except in such cases as the Director-General may determine by notice in writing to the consent authority or as provided by clause 19, the consent authority must not grant consent to development on any land to which this Policy applies unless a development control plan has been prepared for that land.**

(2) The requirements specified in Schedule 4 apply in relation to any such development control plan.

Further exceptions are described in clause 19 which do not seem to apply.

Schedule 4 sets out the requirements for the required DCP as follows:

#### **1 General matters**

- (1) A development control plan must make provision for or with respect to the following matters—
- (a) traffic, parking and key access points,

- (b) infrastructure services (including public transport),
- (c) **a detailed staging plan for any proposed development,**
- (d) biodiversity,
- (e) flooding,
- (f) urban design and landscaping,
- (g) subdivision layout,
- (h) heritage conservation (both indigenous and non-indigenous),
- (i) extraction and rehabilitation,
- (j) protection of the Sydney Catchment Authority Warragamba Pipelines,
- (k) protection of electricity transmission facilities,
- (l) management of the public domain,
- (m) community and retail facilities.

(2) A development control plan may include detailed analysis of the development proposed within the precinct (or part of the precinct) to which it applies.

The Council has not adopted a DCP specifically to satisfy that clause, but in its report on the development points to Penrith Development Control Plan 2014. That DCP does apply to which the SEPP applies.

However, while the DCP includes general controls concerning a number of matters listed in Schedule 4, many of the requirements (relevantly in relation to “Urban Structure and Staging”) are contained in Section E which provides specific controls for individual precincts. There is no relevant Precinct for which controls are provided including the subject site. There does not seem to be any discussion of the key issue of staging anywhere else.

The Panel referred that issue to the Department for consideration and has now been informed that the Secretary has now provided the requisite written direction to the Council that the requirements of the clause are not to apply to assessment of this application.

#### Other matters

The panel heard from representatives of the Applicant, and received oral representations made in relation to the DA on behalf of adjoining owners, Western Sydney Airport and the Badgerys Creek Precinct.

An important issue arising from those discussions was the compatibility of extending the operation of the facility with the planned developing future character of the area associated with the new airport.

An associated theme was the impression given at the time the present limits were set for the facility that a compromise had been struck with the local community which should not now be departed from.

The Panel invited those participating in the meeting to provide any additional response on the subjects of:

- Consistency of the proposal with the development of the Western Sydney Airport and anticipated associated development, and proposed mechanisms to impose time limits on the operation of the facility.
- The current Landfill Environmental Management Plan
- The location and sufficiency of existing groundwater monitoring wells
- The draft conditions of consent provided by Penrith City Council (PCC) in their development assessment report.

- Whether a maximum number of daily truck movements ought to be imposed (the condition proposed by Council mandated a maximum of 640), or an average daily maximum.

Correspondence received from the Applicant addressed matters which will be the subject of further consideration at the deferred meeting. One submission made in the correspondence was:

“... that any matter expressly managed within the Environment Protection Licence for the site should **not** also be included in the development consent conditions. This This ‘double up’ of conditions has the potential to lead to confusion over the management of specific elements of the site, particularly given that the EPL may be varied in consultation with the EPA from time to time in response to changing local conditions.”

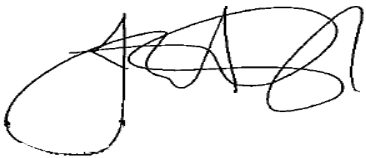


It must be remembered that the EPL and the development consent are issued under different legislation with different considerations. It may be that a condition of the EPL directed to the objectives of the Protection of the Environment Operations Act 1997 may have different relevance with reference to the considerations under the EP&A Act. The integrated operation of a development consent and an EPL is desirable, but it may well be appropriate for conditions of the two to overlap.

The submissions made in relation to the consent conditions will be considered at the adjourned meeting, after considering the comments of Council staff and taking into account the submission also received from Ethos Urban on behalf of the landowner of 1699-1732 Elizabeth Drive, and any further submissions. One matter of concern is photographs shown of windblown litter on adjoining land apparently emanating from the facility.

It might be useful if the Applicant and Ethos Urban could be provided with copies of the respective additional submissions made, and attachments.

The Panel also noted the agreement of the Applicant to consider the boundary detail to the adjoining property at 1783 Elizabeth Drive to ensure the proposal if approved would be adequately screened.

The constitution of the Panel on the day of the meeting was affected by conflicts of interest arising unusually in relation to two of the professional Panel members arising from objection letters. The meeting was advised by the Chair of the Panel’s preference for the usual 5 members (requiring 2 alternate members to review the material) to sit in determination when the Panel reconvenes, and that therefore any oral representation to be made to all of the Panel members would need to be made to the deferred meeting.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Glenn McCarthy
 Ross Fowler	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-7 – Penrith City Council – DA19/0470
2	PROPOSED DEVELOPMENT	Alterations to existing approved waste management and resource recovery facility – alterations to finished landform and increase in waste capacity
3	STREET ADDRESS	1725A Elizabeth Drive, Badgerys Creek
4	APPLICANT/OWNER	Suez Recycling and Recovery Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Designated development - waste management facility or works
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>Relationship to future Strategic Planning surrounding the Western Sydney Airport</li> <li>Relationship with the future Western Sydney Airport</li> <li>Environmental impact from continued use of landfill operations</li> <li>Visual impact</li> <li>Traffic and transport implications</li> <li>Modification of existing Development Consent DA08/0958</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: Nil</li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</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: 1 June 2020</li> <li>Written submissions during public exhibition: 7</li> <li>Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>Melanie Aliberti, Kirk Osborne, Lange Jorstad and Paul Sims</li> <li>Council assessment officer - Paul Anzellotti</li> <li>On behalf of the applicant – Phil Carbins, Jamie McMahon and Chandra Mohan</li> </ul> </li> </ul>
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Briefing: Monday, 18 November 2019 <ul style="list-style-type: none"> <li><u>Panel members</u>: Bruce McDonald (Acting Chair) and Glenn McCarthy</li> <li><u>Council assessment staff</u>: Paul Anzellotti and Kathryn Saunders</li> </ul> </li> <li>Final briefing to discuss council's recommendation, Monday, 15 June 2020, 10:45am. Attendees: <ul style="list-style-type: none"> <li><u>Panel members</u>: Justin Doyle (Chair), Ross Fowler, Glenn McCarthy</li> <li><u>Council assessment staff</u>: Paul Anzellotti, Gavin Cherry and Robert Craig</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report