

DETERMINATION AND STATEMENT OF REASONS

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	Monday, 27 July 2020
PANEL MEMBERS	Justin Doyle, Ross Fowler, Sandra Hutton and Stuart McDonald
APOLOGIES	Glenn McCarthy
DECLARATIONS OF INTEREST	<p>Nicole Gurran: 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 Public Teleconference on 27 July 2020, opened at 11:05am and closed at 12:08pm.

MATTER DETERMINED

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)

PANEL CONSIDERATION AND DECISION

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

The panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

Development application

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

The decision was unanimous.

REASONS FOR THE DECISION

1. The proposal will allow for the prolongation of this existing approved waste management & resource recovery facility and associated increase in its approved profile allowing an increase in its waste storage capacity to make a substantial contribution to servicing the waste disposal needs of Metropolitan Sydney and its surrounds.
2. While the site is zoned RU2 Rural Landscape and E2 Environmental Conservation under the Penrith Local Environmental Plan 2010 in which the proposal is prohibited, the use is separately defined under State Environmental Planning Policy (SEPP) (Infrastructure) 2007 which permits the use of RU2 zoned land for the purpose of waste or resource management. The proposal is *appropriate and is compatible* with the objectives of the SEPP Infrastructure. In the context of the existing approved use of the site it is sufficiently compatible with the existing and future anticipated use of adjoining and surrounding land (taking into account the objectives for permitted development in the zoning of the adjoining land).
3. The proposed changes to the permitted profile are sufficiently consistent with the aims of the objectives of State Environmental Planning Policy (Western Sydney Employment Area) 2009 to protect and enhance the Western Sydney Employment Area, in that the facility will operate consistently with the co-ordinated planning and development of land in the Western Sydney Employment Area.

4. The proposal has received no objection from the Roads & Maritime Services (RMS) and integrated referral response from Environment Protection Authority (EPA) who raised no objections to the proposal. The RMS has had regard to the future M12 to the north of the site and considered the proposal as traffic generating development for the purposes of SEPP (Infrastructure). The EPA has issued General Terms of Approval (GTA) for the expansion and the proposal will be required to operate in accordance with the ongoing restrictions of its EPA licensing conditions.
5. Issues of gas flaring, leachate pipe strength, gas extraction, air, odour, greenhouse gases, dust noise, biodiversity, compatibility with the future Western Sydney Airport and the risk of hazardous impacts have been considered in the Council assessment reports and peer review report which have found the potential impacts to be sufficiently managed. The Panel accepts that advice subject to the revisions to the conditions of consent outlined below, and taking into account the general terms of approval issued by EPA, and the licensing regime that will apply.
6. The Panel has considered carefully the view impacts that are likely to arise from the expanded facility taking into account the Visual Impact Assessment submitted with the application that assessed the current and proposed impact from various receptors, as well as the future surrounding land uses as part of the planned Aerotropolis. Council's report and the peer review report accept the conclusions in that report that the visual impact is generally acceptable. The perimeter landscaping required by the conditions will assist in that regard.
7. Noting no objection was received from the RMS and the relevant advice contained in the Council assessment report, the Panel is satisfied that the impact of traffic movements associated with the proposed amendments to the facility will be acceptable, noting the limits to be imposed by condition on the maximum daily, and maximum average daily, truck movements from the site.
8. The Panel has taken into account the matters raised by Part 5 of WSEA SEPP, Clause 123 of ISEPP and Clause 13 of SEPP 33.

CONDITIONS

The Panel agrees to the adoption of the conditions recommended by the council assessment report of 17 July together with amendments reported in the Council assessment staff's subsequent addendum report dated 31 July 2020, but with the following alterations:

Condition 7

- a) The applicant must apply to the Environment Protection Authority and be issued with a variation to the existing Environment Protection Licence No. 4068.
- b) 7 days prior to the commencement of operations under this development consent (and the alterations to the existing approved waste management and resource recovery facility, finished landform and waste capacity at the premises it approves) a copy of the amended Environment Protection Licence No. 4068 is to be provided to Penrith City Council.
- c) The proposal is to operate in accordance with the amended Environment Protection Licence No. 4068 issued by the Environment Protection Authority and the conditions of this development consent at all times.

(note also the requirements in relation to the updated Landfill Environmental Management Plan (LEMP) required by condition 38)

Condition 9

- a) Only non-putrescible solid wastes as defined by the Waste Classification Guideline as provided by the NSW Environmental Protection Authority are to be accepted for disposal on the site.

- b) The maximum amount of non-putrescible solid waste which may be imported onto the site for landfilling is 950,000 tonnes per annum. The quantity of waste received is not to exceed that required to achieve the final landform profile and height as approved.

Condition 10

Prior to the commencement of any works associated with this consent, the approved landscape plan as provided in Condition 1 is to be amended to the satisfaction of Penrith City Council to provide for the following:

- a) plans and sections are to be provided identifying the boundary interface to adjoining sites including the following requirements:
- Adjoining sites RL levels, existing buffer conditions including width, heights of mound, fencing and vegetation;
 - Identify any augmentation to the mounds/fencing/screening,
 - An identification of all new plant species, number of new plants to be planted and pot size to be provided (for each new species), to the existing vegetation buffers along the northern, eastern and southern perimeter of the subject site, and
 - Extent to which visual mitigation of operations and final landform is anticipated to be achieved by the above measures.
- b) Evidence that SUEZ taken into account reasonable consultation with the owners of adjacent properties along its southern, eastern and northern boundary in regard to visual screening mitigation to be provided and maintained.

Condition 27

All boundary buffers (mounds, fencing, planting etc) are to be inspected by a suitably qualified person on an annual basis for the operating life of the facility. All boundary buffers are to be maintained following the capping of the operations as approved.

Condition 38

- 1) 7 days prior to the commencement of operations under this development consent, the applicant must supply to Penrith Council written confirmation of satisfaction from the Environmental Protection Authority of an updated Landfill Environmental Management Plan (LEMP) reflective of the approved development and requirement to amend the existing Environmental Protection Licence No. 4068 as provided by Condition 7 of this Consent, together with a copy of that updated LEMP.
- 2) The updated LEMP is to:
- (a) reflect conformity with the EPAs Environmental Guideline: Solid Waste Landfills 2016 (or such similar guidelines as are then applicable),
 - (b) identify any updates to the monitoring and reporting on impacts and environmental performance of the development given the increased scale of facility, its location and adjoining current and future uses.
 - (c) provide for the progressive rehabilitation of the completed landfill cells to achieve the final landform as approved.
 - (d) detail the vegetation types, maintenance, monitoring and performance criteria for the proposed rehabilitation;
 - (e) include a Landfill Closure and Rehabilitation Plan (LCP) for the Site and the E2 zoned land (under DA 08/0958 as modified which form part of operations and rehabilitation commitments) prepared by a suitably qualified and experienced expert(s) taking into

account consultation with Penrith Council and EPA. The LCP is to define objectives and criteria for rehabilitation and closure, describe the measures to be implemented, calculate the anticipated cost of implementing the measures, describe how performance of measures would be monitored over time and include details of the post closure management measures for all aspects of the site and E2 lands, including ongoing management of the capped waste mass, procedures for the final capping and rehabilitation, describe ongoing surface water and leachate management and other environmental controls, detail landfill gas monitoring and maintenance and identify future land use/s on the site. The LCP may identify further detail to be provided to the EPA and Penrith Council where considered appropriate at nominated times prior to the anticipated closure of the facility.





- (g) provide for the measures to address the mitigation considerations discussed in the Visual Impact Assessment.
 - (h) describe required dust monitoring and groundwater, subsurface gas and leachate monitoring.
 - (h) identify infrastructure on the E2 zoned land that the operation is directly reliant upon (such as stormwater dams which receive stormwater received from the approved waste management and resource facility and leachate storage tanks).
 - (i) minimisation of the consumption of potable water, and greenhouse gas emissions.
- 3) The applicant must implement the LEMP (and the LCP it includes) so provided for the duration of the development.
 - 4) A copy of the updated LEMP is to be made available to immediate neighbours at no cost on request.
 - 5) The updated LEMP is to identify infrastructure on the E2 zoned land that the operation is directly reliant upon (such as dams which receive stormwater received from the approved waste management and resource facility).
 - 6) All infrastructure on the E2 zoned land that the LEMP identifies the operation is directly reliant upon must be maintained as required by the LEMP for the life of the facility (and into perpetuity where identified in the LEMP as being so required).

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel.

- Past commitments said to have been made to the final landform and use of the completed facility;
- Adequacy of dust and ground water monitoring;
- Truck movements;
- Boundary screening;
- Wind-blown litter;
- Environmental impacts;
- Compatibility with the development of surrounding lands and the intended development under the WSEA SEPP;
- Landscaping and the attraction of birds;
- Gas flaring particularly as it might impact on the Western Sydney Airport; and
- The visual impact of the proposed profile.

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting. The panel notes that in addressing these issues appropriate conditions have been imposed, particularly in relation to the required updated LEMP.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Sandra Hutton
 Stuart McDonald	 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"> Environmental planning instruments: <ul style="list-style-type: none"> Local Environmental Plan 2010 (Amendment 4) Development Control Plan 2014 State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy (Western Sydney Employment Area) 2009 State Environmental Planning Policy No 33—Hazardous and Offensive Development State Environmental Planning Policy No 55—Remediation of Land Sydney Regional Environmental Plan No.20 Hawkesbury Nepean River Draft Western Sydney Aerotropolis Plan Response from the RMS and the EPA General Terms of Approval (GTAs) Development control plans: Nil Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 1 June 2020 Addendum reports dated 12 June 2020, 17 July 2020 and 31 July 2020 Peer review report by Landmark Planning dated 30 May 2020 Material referred to in those reports and material published on the Planning Panel's Portal SUEZ development application and accompanying materials and material presented to the Panel by Suez Written submissions during public exhibition: Verbal submissions at the public meeting 27 July 2020: <ul style="list-style-type: none"> Diana Vokavit, Lang Jorstad and Paul Sims Council assessment officer – Paul Anzellotti On behalf of the applicant - Phil Carbins Verbal submissions at the public meetings 15 June 2020: <ul style="list-style-type: none"> Melanie Aliberti, Kirk Osborne, Lange Jorstad and Paul Sims Council assessment officer - Paul Anzellotti On behalf of the applicant - Phil Carbins, Jamie McMahon and Chandra Mohan

8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection: Sunday, 26 July 2020 <ul style="list-style-type: none"> ○ Panel members: Stuart McDonald • Site inspection: Friday, 24 July 2020 <ul style="list-style-type: none"> ○ Panel members: Sandra Hutton • Briefing: Monday, 18 November 2019 <ul style="list-style-type: none"> ○ Panel members: Bruce McDonald (Acting Chair) and Glenn McCarthy ○ Council assessment staff: Paul Anzellotti and Kathryn Saunders • Final briefing to discuss council's recommendation, Monday, 15 June 2020, 10:45am. Attendees: <ul style="list-style-type: none"> ○ Panel members: Justin Doyle (Chair), Ross Fowler, Glenn McCarthy Council assessment staff: Paul Anzellotti, Gavin Cherry and Robert Craig • Final briefing to discuss council's recommendation, Monday, 27 July 2020, 10:00am. Attendees: <ul style="list-style-type: none"> ○ Panel members: Justin Doyle (Chair), Ross Fowler, Glenn McCarthy, Sandra Hutton and Stuart McDonald ○ Council assessment staff: Paul Anzellotti, Gavin Cherry and Robert Craig
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report