

RECORD OF DEFERRAL

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DEFERRAL	Thursday, 23 December 2021
PANEL MEMBERS	Justin Doyle (Chair), Nicole Gurran and Louise Camenzuli
APOLOGIES	Glenn McCarthy, Ross Fowler and Jeni Pollard
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 15 December 2021, opened at 11:04am and closed at 12:42pm.

MATTER DEFERRED

PPSSWC-80– Penrith – DA20/0262 at 344 Park Road, Wallacia NSW 2745 – Approval is sought for a Resource Recovery Facility (as described in Schedule 1).

REASONS FOR DEFERRAL

The Panel agreed to defer the determination of the matter to be determined by electronic circulation of papers (subject to any further resolution of the panel) after the Panel has inspected the site.

CONSIDERATION AT MEETING

The Panel heard from a number of local residents who expressed substantial concerns about the operation of the premises, including:

Godwin Gauci	<p>Mr Gauci operates a poultry farm from 380 Park Road to the east of property. He was particularly concerned that the impacts that noise would have by way of causing increased stress to his chickens.</p> <p>Mr Gauci explained that feed and feed conversion rates may decrease due to stress, with the result that he may lose commercial contracts.</p> <p>He also noted that his house is close to road, and therefore susceptible to noise impacts.</p>
Graeme McIntosh	<p>Mr McIntosh resides at 334 Park Road to the immediate west of the DA site. He advised that his house is 150 m from the proposed facility.</p> <p>He strongly objects on the basis of noise, run off, and what he saw as the potential for ground water contamination.</p> <p>He argued that the proposed use was inconsistent with the rural residential location.</p> <p>He raised particular concerns about what he described as 'steel bins' outside the enclosed area of the proposal.</p> <p>He noted that the detention pit has an outlet, and could not be relied upon to keep concentrated stormwater within the site.</p> <p>He submitted further that:</p> <p>The proposal will not comply with the District Plan.</p> <p>The proposal was inconsistent with the long term use of the locality identified in Council's adopted Strategic Planning Statement which identifies Council's vision and priorities for land use in the local area, and planning for Luddenham Village</p>

	<p>He pointed to what he said was confusion in the DA material as to whether the assessment period particularly for acoustic impacts was 24 hours or 7 to 6 pm Monday to Friday.</p>
Frank Muscat	<p>Mr Muscat resides at 384 Park Road Luddenam – 2 blocks to the east of the subject site, having operated a market garden for around 40 years.</p> <p>His identified apprehensions were:</p> <ol style="list-style-type: none"> 1. Dust suppression equipment proposed by the applicant will not be adequate, with anticipated air quality impacts on animals, humans and produce. 2. Ground water would be contaminated, with a bore located on his measurement within 500 metres, and what he saw as a potential to pollute dams (noting the Applicant contended that the bore was upstream of the proposal). 3. Unsympathetic noise impacts (with Mr Muscat noting the site is not in an industrial area. 4. General inconsistency with the surrounding agricultural area.
Mike McPherson	<p>Mr McPherson did not live adjacent to the development, but was speaking for relatives who lived next door at 344 Park Road.</p> <p>He was concerned about odour impacts similar to what he had observed at a facility at Eastern Creek.</p> <p>He noted that clean up notices issued in the past by Council had (he said) been ignored by the site owner.</p> <p>He said unsympathetic noise would be directed around residential areas with which he saw the use as incompatible.</p> <p>He was concerned about the effects on property values.</p>
Lisa Chamberlin	<p>Ms Chamberlin resided at 429 Park Road on the northern side of the site.</p> <p>She had lived in the area for a long time and was concerned particularly about the ever increasing impacts of heavy vehicle noise, reporting that she had counted 17 trucks that morning. She echoed concerns that the use would be inconsistent with the local rural area.</p> <p>Her husband is a shift worker with particular sensitivity.</p> <p>She also pointed to the impacts on the local roads with increasing pot holes.</p>
Jane McLuckie	<p>Ms McLuckie spoke on behalf of the Wallacia Progress Association</p> <p>She argued that the use was inconsistent with the local character, with anticipated traffic impacts on Campbell Street and other local streets. She said recent changes to load limits had diverted additional trucks onto Park Road.</p> <p>She queried the Council's reporting of proposed staff numbers with the conditions proposing a limit of 26 staff on site whereas the DA anticipated only 14 staff at one time.</p> <p>She queried the reliability of the applicant's traffic assessment particularly with regard to truck sight distance because the Applicant's report cited a maximum speed on Park Road of 60 kms, whereas the maximum speed was in fact 80 km per hour.</p> <p>She queried the hours of operation proposed noting inconsistency in the documents and the need for controls on public holidays.</p> <p>She cited strategic Planning Priorities W7 (Establishing the land use and transport structure to deliver a liveable, productive and sustainable Western</p>

	Parkland City) and W8 (Leveraging industry opportunities from the Western Sydney Airport and Badgerys Creek Aerotropolis of the District Plan), arguing that approval of the proposal was inconsistent with the planned future of the area.
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In response to the above concerns, Carlo Ranieri of Benbow spoke for the Applicant. He said:

- The proposed use would incorporate a state-of-the-art facility delivering 26 jobs for the area.
- The environmental management system to be employed would enable 80% to 90% recovery of recycled products from the waste processed, adopting industry best practice.
- All sorting would occur within building, reducing environmental impacts.
- The environmental benefits of the proposed habitat protection to be delivered through the landscape plan with 75% of site to be dedicated into trust.
- All recycling facility legislation would be complied with.
- There was an apparent error in the speed limit for Park Road in the traffic assessment, but TfNSW concurrence had been obtained.


Having regard to the above submissions, the Panel resolved that it should inspect the site and the surrounding locality before determining the matter.

The Panel also sought advice from the Council (in consultation with the Applicant as required) as to:

- (a) The potential and practicality of enclosing all significant noise producing activities;
- (b) The impact of the additional truck movements proposed for Park Road by the facility, noting the Court's advice recorded in *Jonah Pty Ltd v Pittwater Council* [2006] NSWLEC 99. *In that case the Court held that past unlawful use is not relevant of itself in determining an application (such that the applicant in this case cannot rely on the existing impacts of the unlawful use as establishing a baseline to measure the impacts of continuing that use). However, the Court also held that the observed impacts of the past unlawful use may still be relevant in evaluating the likely impacts of the activity continuing, their acceptability and required mitigation measures..*
- (c) The likely acoustic impact of additional heavy vehicles and the reliability of available means to mitigate that impact, noting the advice from the EPA in response to the statutory referral that:

'The NIA has demonstrated that changing the frequency of truck movements materially changes the predicted noise levels and therefore a measurable change in predicted noise levels is expected as the number of truck movements increase. The method by which noise impacts are calculated is based on an average number of truck movements per hour, therefore the EPA is concerned that the noise impacts could be higher if the hourly averages are not adhered to. To ensure that the noise impacts of truck movements is managed in a practical way, the EPA recommends that the number of truck movements is limited to an hourly number through the consent conditions to ensure that the noise generated by truck movements is can be easily complied with and regulated.'
- (d) Any issues of concern arising in relation to the implementation and enforcement of management plans relied upon to mitigate potential unacceptable impacts

PANEL MEMBERS



Justin Doyle (Chair)



Louise Camenzuli



Nicole Gurran

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-80 – Penrith City Council - DA20/0262
2	PROPOSED DEVELOPMENT	Resource Recovery Facility for Processing a Maximum of 95,000 Tonnes Per Year of Construction & Demolition (C&D) & Commercial & Industrial (C&I) Waste including Conversion of Existing Dwelling to Office, Internal Driveways, Car & Truck Parking Areas & Associated Infrastructure
3	STREET ADDRESS	344 Park Road, WALLACIA NSW 2745
4	APPLICANT/OWNER	E A Barikhan
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"> ○ Environmental Planning and Assessment Act 1979 ○ Environmental Planning and Assessment Regulation 2000 ○ Biodiversity Conservation Act 2016 ○ Protection of the Environment Operations Act 1997 ○ State Environmental Planning Policy (State and Regional Development) 2011 ○ State Environmental Planning Policy (Infrastructure) 2007 ○ State Environmental Planning Policy No. 55 - Remediation of Land ○ Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River ○ Draft State Environmental Planning Policy (Western Sydney Corridors) ○ Penrith Local Environmental Plan 2010 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Penrith Development Control Plan 2014 • 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: 7 December 2021 • Council memorandum: 15 December 2021 • Written submissions during public exhibition: 1008 + 3 petitions • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Godwin Gauci, Graeme McIntosh, Frank Muscat, Mike McPherson, Lisa Chamberlin and Jane McLuckie ○ Council assessment officer – Robert Craig, Mitchell Nobbs and Joshua Hall ○ On behalf of the applicant – Carlo Ranieri • Total number of unique submissions received by way of objection: 83

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: Monday, 17 August 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli and Ross Fowler ○ <u>Council assessment staff</u>: Kathryn Saunders, Robert Craig and Gavin Cherry • Final briefing to discuss council's recommendation: Wednesday, 15 December 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran and Louise Camenzuli ○ <u>Council assessment staff</u>: Lauren can Etten, Robert Craig, Michelle Plant, Mitchell Nobbs and Joshua Hall
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report