



Supplementary Assessment Report

Panel Reference	PPSSWC89
DA Number	DA0119/20
LGA	Hawkesbury City Council
Proposed Development	Designated Development - Landscaping Material Supplies and Resource Recovery Facility
Street Address	99 Sargents Road EBENEZER NSW 2756
Applicant/Owner	Hala Constructions/Mr I Alameddine & Mrs H Alameddine
Date of DA lodgement	21 April 2020
Total number of Submissions Number of Unique Objections	<ul style="list-style-type: none"> 69
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	<p>Schedule 7 Regionally significant development</p> <p>7 Particular Designated development:</p> <p>Development for the purposes of:</p> <p>(c) waste management facilities or works, which meet the requirements for designated development under clause 32 of Schedule 3 to the <i>Environmental Planning and Assessment Regulation 2000</i>.</p>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> Environmental Planning and Assessment Regulation 2000 Clause 32 State Environmental Planning Policy (State and Regional Development) 2011; State Environmental Planning Policy No. 55 (Remediation of Land) SEPP (Infrastructure) 2007; Deemed State Environmental Planning Policy Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005; Hawkesbury Local Environmental Plan 2012; and Hawkesbury Development Control Plan 2002.
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> Benbow Environmental Letter dated 21 April 2021 Ref: 181084_LET10_Rev1 with following attachments; Land Use Compatibility Report Ref: 181054-04_Let1_Site Compatibility; Clause 4.6 Variation Ref: 181084_Clause4.6 Variation Request_Rev1; Revised BDAR Report; Architectural Plans: Drawing No. 01 to 05 Rev B Drawing No. 06 & 07; Draft Hydraulic Plans and Cut and Fill Plans; Progress Report with Attachment 1 Traffic Plans (survey plans); BDAR Peer Review.
Clause 4.6 requests	<ul style="list-style-type: none"> Clause 4.3 Building Height – exceeds maximum 10m building height
Summary of key submissions	<ul style="list-style-type: none"> Heavy vehicle impacts to local road and locality; Traffic impacts and safety concerns from large trucks not fitting adequately on the road; Amenity impacts relating to noise, dust, pollution to creek and truck movements within close proximity to residents; Inappropriate and overdevelopment for the site and locality; Inadequate local infrastructure to support the proposal.
Report prepared by	Natalie Piggott
Report date	1 June 2021





Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Choose an item.

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

No

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Not applicable

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

No

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report



Executive Summary

1. Executive Summary

The following report is a supplementary report to address the outstanding and insufficient information identified in the assessment report considered by the Sydney Western City Planning Panel (SWCPP) on 22 February 2021.

The SWCPP determined at the meeting of 22 February 2021 that the matter be deferred for the following reasons:

- (a) Permit the Applicant to respond to the additional information which the staff assessment report dated 4 February 2021 identifies as being required for a determination (which the panel understands will be renotified at least in relation to adjacent properties and objectors, and then further reported upon by Council assessment staff).
- (b) Resolve the position of the RMS in response to the DA.
- (c) Allow both the Council assessment staff and the Applicant to address the significant issue of compatibility of the development with the established character of the locality.

The Applicant was provided a timeframe of four (4) weeks from the date of the Record of Deferral, being 22 February 2021, to submit the required information.

The Applicant requested an extension of time on 22 March 2021 to 7 April 2021 to submit the required information and a subsequent extension on 31 March 2021 to 7 May 2021. The Applicant was given to 21 April 2021 to submit all information available and a progress report for which was provided to the SWCPP to determine whether any further extensions of time would be given.

The Applicant, in their submission on 21 April 2021, provided the following documentation:

- Land Use Compatibility Report;
- Clause 4.6 Variation;
- Revised BDAR Report dated February 2021;
- Copy of Architectural Plans Revision B dated 07/08/2019;
- Draft Hydraulic Plans and Cut and Fill Plans dated 05/03/2021 by Indesco; and
- Progress Report identifying outstanding information yet to be submitted, being geotechnical report, final hydraulic and cut and fill plans, updated landscape plan and road infrastructure design plans.

The documentation provided on 21 April 2021 has failed to provide all the outstanding information required to be submitted to resolve the above points and the following matters remain outstanding:

- Road infrastructure capability and accessibility to and from the site has not been adequately addressed;
- Confirmation of fill and batter as a result of the platform being fully impervious;
- Geotechnical Report required to support fill;
- Clarification of source of fill;
- Stormwater management;
- State Regional Environmental Planning Policy (Hawkesbury-Nepean No. 20) has not been adequately addressed;
- Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007 identifies the proposal as traffic generating development requiring referral to TfNSW for which clause 104 is applicable. The application was referred to TfNSW numerous times and currently the application is not supported due to insufficient information;
- Clarification of tree removal is required to be submitted.

Given all required information was not submitted on 21 April 2021 the SWCPP scheduled a determination date for 7 June 2021, which was subsequently extended to 15 June 2021, and Council is seeking a determination of the application based on the information provided on 21 April 2021.



2. Deferred Reasons to be addressed

2.1 Insufficient information

The assessment report dated 4 February 2021 clearly identified the information required to allow Council's internal referral officers to carry out a full assessment of the application, as summarised below:

- a. Stormwater management information including supporting documentation to address EPA's General Terms of Approval conditions O3.2, O3.3 and O4.5 together with evidence of agreement to grant easement to drain stormwater from adjoining owner;
- b. Accessibility and intersection upgrade works – engineering plans and details in accordance with Council's requirements to be provided;
- c. Updated Traffic and Parking Impact Assessment;
- d. Earthworks details, including Geotechnical Report;
- e. Resolution of conflicting information between architectural and engineering plans;
- f. Amended landscape plan and updated Arboricultural Impact Assessment;

The additional information submitted on 21 April 2021 did not include plans or reports as requested by Council's internal referral officers, and only draft hydraulic plans were provided which, being incomplete, were unable to be assessed.

Accordingly, insufficient information has been provided to enable a full assessment. The management of stormwater and ability of the road network to be upgraded to provide accessibility to and from the site is a fundamental issue that has not been resolved.

2.2 Resolution of RMS position

Transport for NSW (TfNSW)

The outstanding information requested by TfNSW, as previously identified in the assessment report dated 4 February 2021, has not been provided and concurrence in accordance with Clause 104 of State Environmental Planning Policy (Infrastructure) 2007 has not been granted.

2.3 Compatibility of Development with the established character of the locality

The applicant has provided a response regarding the issue of compatibility of the development with the established character of the locality in its letter dated 1 April 2021 Ref: 181084-04_Let1_Site Compatibility, however this response has replicated sections of the Environmental Impact Statement (EIS) which do not address specifically the established character of the locality. The EIS does not identify what the established character of the locality is and only provides an assessment against the required statutory provisions required to be assessed.

For the application to demonstrate that the proposal is compatible with the established character of the locality, this character must first be established. The subject site is in an area that is zoned RU1 Primary Production. The surrounding properties are made up of the following development:

Property Address	Structures and Use	Size
96 Kolora Road Ebenezer	Dwelling, outbuildings and horse agistment use	9.61ha
102 Kolora Road Ebenezer	Leased to 96 Kolora Road Ebenezer for horse agistment	21.5ha
89 Kolora Road Ebenezer	Dwelling and outbuilding – residential use	10.49ha
477 Sackville Road Ebenezer	Dwelling – residential use	11.82ha
56 Sargents Road Ebenezer	Dwelling and outbuilding – residential use	10ha
28 Sargents Road Ebenezer	Dwelling and outbuilding – residential use	12.65ha
355 Stannix Park Road	Approved potting mix operation DA0183/19 – Designated development – Rural Industry –Expansion of the existing facility and construction of hardstand areas currently with Council under assessment.	12.37ha



	Office and Managers residence	
37 Sargents Road Ebenezer	Mushroom Farm, mushroom growing sheds and dwelling	17.91ha
411 Stannix Park Road Ebenezer	Dwelling and outbuilding – residential	10.28ha
79 Sargents Road Ebenezer	Dwelling and equestrian use	9.745ha
71 Sargents Road Ebenezer	Attached dual occupancy and outbuilding – residential only	10ha

Based on the above, the character of the immediate locality comprises larger rural lots containing, primarily, residential dwellings and outbuildings with separation distances between the dwelling houses and their ancillary structures together with large separation distances to adjoining properties. This creates an open, low density rural residential character. The exception to this is the development at 355 Stannix Park Road Ebenezer, however this development is located 1 kilometre from the subject site.

With the established character of the locality being low density rural residential, the application for a landscaping material supplies and resource recovery facility is inconsistent with the established character of the locality. The submitted response by the applicant has only provided discussions on project justification, site suitability, an assessment of the application against the relevant planning controls being LEP, DCP and other statutory plans, and a conflict risk assessment. No discussion of what the established character of the locality has been provided and no discussion is provided as to how a landscaping material supplies and resource recovery facility is compatible within the low density rural residential character of the locality.

The application has therefore failed to demonstrate the proposed development is consistent with the established character of the locality.

3. Planning Assessment

Matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP & A Act)

As assessment under Section 4.15 of the EP & A Act was carried out in the assessment report dated 4 February 2021. The following matters remain outstanding:

a) The provisions (where applicable) of any:

i. Environmental Planning Instrument:

Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No 2—1997)

The aim of this Plan is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. The Plan includes strategies for the assessment of development in relation to water quality and quantity, scenic quality, aquaculture, recreation and tourism.

The following assessment under the relevant parts of the SEPP are as follows:

Part 2 Clause 6 Specific Planning policies and recommended strategies:

(3) Water quality

Policy: Future development must not prejudice the achievement of the goals of use of the river for primary contact recreation (being recreational activities involving direct water contact, such as swimming) and aquatic ecosystem protection in the river system. If the quality of the receiving waters does not currently allow these uses, the current water quality must be maintained, or improved, so as not to jeopardise the achievement of the goals in the future. When water quality goals are set by the Government these are to be the goals to be achieved under this policy.

Strategies:

- Quantify, and assess the likely impact of, any predicted increase in pollutant loads on receiving waters.
- Consider the need to ensure that water quality goals for primary contact recreation and aquatic ecosystem protection are achieved and monitored.



The amended documentation has not provided adequate information to assess the stormwater management for the proposal and the above strategy has therefore not been adequately addressed.

Clause 11(18) Waste management facilities or works

(18) Waste management facilities or works

Definition:

Development for the purpose of waste management facilities or works described in Schedule 3 (Designated Development) to the Environmental Planning and Assessment Regulation 1994.

Consent required.

Additional matters for consideration by the consent authority:

- (a) *Any potential for groundwater contamination.*
- (b) *The adequacy of the proposed leachate management system and surface water controls.*
- (c) *The long-term stability of the final landform and the adequacy of the site management plan.*
- (d) *If extraction of material is involved in the creation or other development of the waste management site, whether the extractive operation will have an adverse impact on the river system.*

The matters listed in (a) and (b) remain unresolved due to insufficient information and the application has failed to carry out an assessment of the matters listed in (c). The resulting landform from the proposed fill to provide the leveled platform has not been adequately addressed in terms of stability as a geotechnical report has not been provided.

State Environmental Planning Policy (Infrastructure) 2007

The proposed application is subject to the requirements of SEPP Infrastructure. The relevant clauses of the SEPP and an assessment against those clauses are provided below:

Clause 2: Aims of the policy

The Aims of the SEPP essentially seek to improve the delivery of infrastructure to the State. The application has been considered against the provisions of this SEPP and is consistent in all relevant respects.

Division 17 Road and Traffic:

Clause 104 Traffic-generating development

Clause 104 Traffic-generating development is applicable as the development is for a waste management facility which is listed in Column 1 of Schedule 3.

Outstanding information has not been received therefore this information remains outstanding and no re-referred to TfNSW has been carried out in accordance with Clause 104(3) and the application remains unsupported for reasons set out in the assessment report dated 22 February 2021.

Hawkesbury LEP 2012

Under Hawkesbury LEP 2012, the property is zoned RU1 Primary Production. The following is a summary of the clauses under HLEP 2012 applicable to the development.

Clause 2.2 Zoning of Land to which Plan applies – Permissibility

Permissibility is provided under Division 23 Part 3, Clause 121 of State Environmental Planning Policy (Infrastructure) 2007:

121 Development permitted with consent

- (1) *Development for the purpose of waste or resource management facilities, other than development referred to in subclause (2), may be carried out by any person with consent on land in a prescribed zone.*
- (2) *Development for the purposes of a waste or resource transfer station may be carried out by any person with consent on:*



- (a) *land in a prescribed zone, or....*

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) *RU1 Primary Production,....*

The proposed development is therefore permissible within the zone.

Clause 2.3 – Zone objectives and Land Use Table

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The objectives for RU1 Primary Production zone are as follows:

Zone RU1 Primary Production

1 Objectives of zone

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage agricultural activities that do not rely on highly fertile land.*
- *To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.*
- *To promote the conservation and enhancement of local native vegetation including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation.*
- *To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.*
- *To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.*

The information submitted on 21 April 2021 provides insufficient information to allow for adequate assessment of the application. Therefore, an assessment of whether the proposal is consistent with the objectives of the zone is unable to be carried out, particularly where information regarding stormwater management remains outstanding which does not allow the proposal to be consistent with the following objective:

- *To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.*

Furthermore, based on the established character of the locality being low density rural residential, the resource recovery facility is unlikely to be consistent with the following zone objectives:

- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage agricultural activities that do not rely on highly fertile land.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.*
- *To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.*

As a full assessment of the application cannot be carried out at this time due to lack of information, consistency with the zone objectives cannot be determined at this time.

Clause 4.3 – Height of Buildings

The maximum building height under Clause 4.3 for the site is 10m. The proposal includes a main processing shed, office building and amenities building which have a height as follows:

Proposed	Height	Complies
Main shed	12.8m – 13.84m	No
Storage bays	4m	Yes
Office block	4m	Yes

The proposed main shed does not comply with the maximum building height development standard of 10m, and a Clause 4.6 Variation is required. The applicant submitted a written request on 21 April 2021 which is considered below.

Clause 4.6 - Exceptions to development standards

Clause 4.6 of LEP 2012 allows exceptions to development standards. Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (4.6(3)(a)) and that there are sufficient environmental planning grounds to justify contravening the development standard (4.6(3)(b)).

The consent authority must be satisfied that the applicant's written request has satisfied the above criteria and that the proposed development will be in the public interest as it is consistent with the zone objectives as well as the objectives of the particular development standard. These matters are discussed below.

1. Written request provided by the applicant.

The applicant has provided a written request seeking to justify the variation to the development standard with the lodged application.

2. Whether compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case – Clause 4.6(3)(a)

The applicant has provided the following argument as to why compliance with the development standard would be unreasonable and unnecessary:

The proposed shed will only exceed the 10 m height control by a maximum of 3.84 m on the eastern side. From the photo montages shown above, the proposed shed will be obscured by dense woodlands around the edge of site. The site is not visible from Kolora Road and therefore will not be visible to the residents located along this road. Additionally, it is unlikely to be visible from residents located along Sargents Road due to trees located between the residences and the site. As the vast majority of the trees that surround the site are taller than the proposed shed, it will do little to change the skyline in the area.

The proposed building would be where the material handling and processing would occur such as: receiving, sorting and crushing which would significantly reduce noise, dust and visual impacts in comparison to if these processes occurred outside.

This fulfils clause 4.6(1)(b) by, providing a better outcome for the proponent, that respects the amenity of neighbouring residents and businesses.

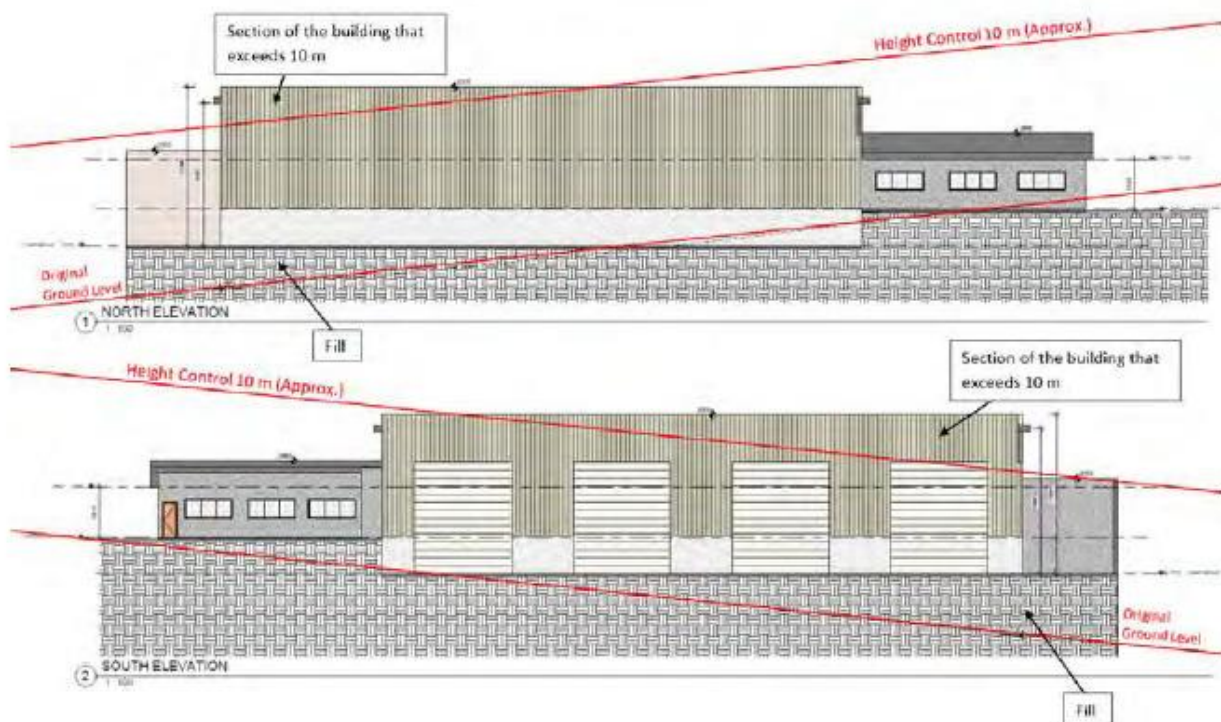
For the reasons outlined above, strict compliance with the development standard is unreasonable and unnecessary for this site's circumstances. The variation would enable the construction of a shed that partially exceeds the height control such that given that the site is surrounded by substantial dense vegetation on the site that is to remain and due to the distance between the proposed development and the nearest receivers there would be negligible impact on the surrounding receivers in terms of overshadowing and visual amenity. The existing land is sloped therefore fill is required to level the ground which has resulted in the shed exceeding the height control at the eastern end. It is also important to note that the nearest residential receiver is at least 255 m away from the proposed shed and the development area is

nested within the larger site that comprises of areas of dense foliage with a number of existing smaller sheds. The closest commercial receiver is a Labrador breeder, west of the site, which is made up of several large sheds; furthermore, other surrounding residents have rural sheds built on their property indicating that the proposed shed is in line with the land use and amenity of the area.

The Clause 4.6 request appears to argue that compliance with the development standard is unreasonable or unnecessary as the breach is only 3.84m on the eastern side, has no amenity impacts in terms of visual or acoustic impacts and that the variation provides a better outcome for the proponent.

A 3.84m height variation is not considered to be minor as this represents a 38.4% variation in height and Figure 1 shows only a small portion of the building along the southern elevation being within the 10m building height. A plan of the building height plane has not been provided that clearly shows how much of the building exceeds the building height limit.

Figure 1: Proposed shed in reference to the height control



The site has a sloping topography which is a constraint of the site. The application has addressed this constraint by proposing significant fill to provide a flat building platform. However simply stating that fill is required to level the ground is not adequate justification for a 38.4% breach in building height.

The argument that the proposal does not have any amenity impact is not adequate justification to contravene the building height development standard. The proposed development is required to achieve these requirements regardless of whether the development standard is complied with or not. Absence of impact does not demonstrate compliance is unreasonable or unnecessary. Furthermore, it is unclear what better outcome has been achieved as a result in the height variation as this has not been clearly identified.

The comment that the surrounding residents have rural sheds built on their property and that the proposal is in line with the land use and amenity of the area has not been further explained. The surrounding residential properties that have sheds are not of the bulk and scale of that which is proposed. For example, the properties at 71 and 28 Sargents Road and 89 Kolara Road have approved outbuildings. 71 Sargents Road has an outbuilding approved or 288m² at a height of 6.166m, 28 Sargents Road has an outbuilding approved for 360m² at a height of 5.1m and 89 Kolara Road has an outbuilding approved for 150m² at a height of 5m. The proposal, excluding the office building, has an area of over 2000m² and a height of 13.84m and is to be used as a waste recovery facility

processing waste material. The surrounding residential properties carry out no such activities within their outbuildings therefore it is unclear how the proposal is in line with the land use and amenity of the area.

The written request has not provided adequate justification as to why compliance with the development standard is unreasonable or unnecessary in this instance.

3. Sufficient environmental grounds to justifying contravening the development standard – Clause 4.6(3)(b).

The decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 demonstrates that the requirement in Clause 4.6(3)(b) of the LEP to justify there are sufficient environmental planning grounds for the variation, requires identification of grounds particular to the circumstances of the proposed development, and not simply grounds that apply to any similar development on the site or in the vicinity.

The Clause 4.6 variation has stated that:

It is reasonable to conclude that ‘there are sufficient environmental planning grounds to justify contravening the development standard’ given the site’s settings and the design of the proposed development is compatible with the height, bulk and scale of the surrounding properties and would result in no loss of visual amenity, privacy or solar access at surrounding premises.

From the above argument it is unclear what the sufficient planning grounds are for the contravention of the development standard. No such evidence has been provided that the proposal is compatible with the height, bulk and scale of surrounding properties, particularly where examples of outbuildings have been given above that clearly demonstrate that the proposal is in fact not compatible with surrounding development.

The argument that the proposal has no visual amenity, privacy or solar access impacts does not demonstrate sufficient environmental planning grounds as these are required to be met regardless. Additionally the application remains deficient in the required information to allow for a full assessment of the proposal, therefore its full impacts have not been determined.

The written variation has not identified any grounds particular to the circumstances of the proposed development that would justify the contravention of the development standard.

4. Written request has adequately addressed subclause (3) – Clause 4.6(a)(i) and Consistent with the zone objectives and objectives of the development standard – Clause 4.6(4)(a)(ii).

Clause 4.6(4) establishes two preconditions that must be satisfied before a consent authority can grant consent for development that contravenes a development standard. These preconditions are explained in *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 at paragraph 179 “*The first precondition in cl 4.6(4)(a) is that the consent authority is satisfied of the two matters in subparagraphs (i) and (ii). The second precondition in s 4.6(4)(b) is that the concurrence of the Secretary of the Department of Planning and Environment has been obtained*”.

The first precondition is explained at paragraph 14 in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 where “*The first precondition, in cl 4.6(4)(a), is that the consent authority,, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii).*” These two opinions of satisfaction are:

1. That the written request has “adequately addressed the matters required to be demonstrated by cl 4.6(3)” (at [15]) and;
2. That “...the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out” (at [26]).

As discussed above the applicant’s written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary nor is there sufficient environmental planning grounds to justify contravening the development standard, therefore it fails the first opinion of satisfaction.

The second opinion of satisfaction as to whether the proposed development will be in the public interest has also not been satisfied as the proposal has not demonstrated that it is consistent with the zone objectives and height of building development standard objectives.

The zone objectives have already been identified in an earlier section of this report and the applicant has argued that the proposal fulfills the zone objectives by:

- ☐ *Providing a business service to local, city and surrounding communities.*
- ☐ *Providing work and employment opportunities.*
- ☐ *The proposed modification is well integrated with the existing site.*
- ☐ *There is no public access to the site the surrounding area is all privately owned.*
- ☐ *The development diversifies industry in the area without being incompatible to the land use.*

However as there is outstanding information to be provided to allow a full assessment of the application it cannot be determined whether the proposal is consistent with the zone objectives at this time.

In terms of the objectives of the building height development standard these objectives state:

- (a) to protect privacy and the use of private open space in new development and on adjoining land,*
- (b) to ensure that the bulk of development is not excessive and relates well to the local context,*
- (c) to nominate heights that will provide a transition in built form and land use intensity,*
- (d) to ensure an appropriate height transition between new buildings and heritage items.*

The applicant has provided the following arguments as to why the proposal is consistent with the building height development standard objectives:

The objectives of height development standards – Clause 4.3 are to protect privacy and the use of private open space as well as, ensuring that the bulk of development is not excessive and relates well to the local context. Nominated heights are to provide a transition in build form and land use intensity and to ensure appropriate height transitions between new buildings and heritage items.

The proposal furthers the objectives of the height control particularly noting that:

- *The height of the proposed shed is compatible with the character of the locality. There is no adverse view loss, privacy or solar access impact arising from the variation.*
- *No heritage impacts arise as the site is not within a heritage conservation area, and no heritage items are listed for adjoining or opposite properties.*
- *The site comfortably accommodates the proposed height and the exceedance is not excessive nor does the entire building exceed the height control.*
- *The trees on site and surrounding the site boundary obscure the proposed development.*

The following comments are provided for each dot point:

- *The height of the proposed shed is compatible with the character of the locality. There is no adverse view loss, privacy or solar access impact arising from the variation.*

Comment: As previously discussed, the argument that the height of the proposal is compatible with the character of the locality has not been demonstrated and no adverse impacts, as a result of the proposal, is required regardless of whether the development standard complies or not.

- *No heritage impacts arise as the site is not within a heritage conservation area, and no heritage items are listed for adjoining or opposite properties.*

Comment: It is acknowledged that objective (d) is not applicable to this site as there are no surrounding heritage items within the vicinity of the subject site.

- *The site comfortably accommodates the proposed height and the exceedance is not excessive nor does the entire building exceed the height control.*

Comment: It is unclear as to what relevance the site being able to accommodate the additional height has to the objectives of the building height development standard. The standard is 10m for which the proposal is in excess of

by 38.4% which, contrary to the above point, is considered to be excessive and, based on the elevation figure (Figure 1) provided, a large portion of the building does breach the building height limit.

- *The trees on site and surrounding the site boundary obscure the proposed development.*

Comment: This statement does not relate to any of the objectives of the development standard.

In accordance with the findings in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, at paragraph 27 where it is stated “*If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)*” Council is not satisfied that the proposed development is in the public interest as it is inconsistent with objective (b) and has not adequately addressed objective (c) of the building height development standard.

Regarding objective (c) *to nominate heights that will provide a transition in built form and land use intensity* it should be noted that whilst the maximum building height of 10m applies under Hawkesbury LEP 2012, Chapter 8 Farm Buildings and Outbuildings of Part D Specific Development of Hawkesbury Development Control Plan 2002 applies building heights of 8m for a farm building and 5.5m or 6.5m for an outbuilding. These building heights are applied as they are ancillary structures only.

These building heights have been applied consistently throughout the Hawkesbury Local Government Area, which has been demonstrated by the two examples of approved outbuilding heights of 5.1m and 6.166m provided earlier in this report. Objective (c) requires a transition in built form for which the nominated maximum building height under the LEP of 10m seeks to provide between primary and ancillary structures. A building more than 10m in height would create a disparity between this transition and the written request has not addressed this.

5. Concurrence of the Director General.

Circular PS 08-003 issued on 9 May 2008 informed Council that it may assume the Director-General's concurrence for exceptions to development standards. As the Clause 4.6 variation is not supported, Council is not willing to assume concurrence from the Director General.

6. Conclusion

Whilst a written request has been made and justification has been put forward to vary the maximum building height development standard under Clause 4.3(2) of Hawkesbury LEP 2012 standard, the request has not demonstrated that compliance with the standard is unreasonable or unnecessary, that there are sufficient environmental grounds to justify contravening the development standard and that it is in the public interest.

The variation to the maximum building height requirement is therefore not supported.

Clause 6.2 Earthworks

The information submitted on 21 April 2021 has not provided the information identified in the assessment report dated 4 February 2021, therefore the objectives of Clause 6.2 have not been adequately considered and this clause has not been satisfied.

Clause 6.4 Terrestrial Biodiversity

The land is identified as “Significant vegetation” and Connectivity between significant vegetation; on the Terrestrial Biodiversity Map. Accordingly the application must be assessed against the following requirements of Clause 6.4:

- (3) *Before determining a development application for development on land to which this clause applies, the consent authority must consider—*

- (a) *whether the development—*
 - (i) *is likely to have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) *is likely to have any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) *has any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) *is likely to have any adverse impact on the habitat elements providing connectivity on the land.*
- (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*
 - (a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
 - (b) *if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The Revised Biodiversity Development Assessment Report by Narla Environmental dated February 2021 has been peer reviewed and found to adequately address the non-compliances and recommendations provided in the first review. The report is considered satisfactory, and no further issues are raised in terms of biodiversity.

Clause 6.7 Essential services

Clause 6.7 requires a consent authority to be satisfied that essential services are available or that adequate arrangements can be made for the provision of these services, which include:

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable road access.*

The additional information provided on 21 April 2021 has not satisfactorily addressed (d) and (e) above. This remains outstanding and this clause has not been satisfied.

- ii. **Any proposed instrument** - (Draft SEPP, Draft LEP or any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4)

Draft State Environmental Planning Policy (Remediation of Land)

The Explanation of Intended Effect for the above draft SEPP was placed on exhibition from 31 January 2018 to 13 April 2018.

The new SEPP will maintain Category 1 - works that require development consent and Category 2 - works that may be carried out without development consent, however Category 1 is to have new classes of remediation works introduced that require development consent.

The provisions of SEPP 55 to require consent authorities to consider land contamination have been retained within the draft SEPP. The proposed development has been considered under the current SEPP and found to have no potential site contamination that warrants further investigation. Accordingly, the proposal satisfies the requirements of the draft SEPP.

Draft State Environmental Planning Policy (Environment)



The Explanation of Intended Effect for the Environment SEPP was placed on exhibition between 31 October 2017 and 31 January 2018.

The intent of the SEPP is to both simplify the planning rules for environmental areas and consolidate several existing SEPPs to allow simplicity in accessing environmental policies in one accessible location. These existing SEPPs include Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No 2—1997) which is applicable to the Hawkesbury. SREP No. 20 will be repealed and replaced with the new Environment SEPP.

SREP No. 20 applies to land within the catchment of the Hawkesbury-Nepean River. The general aim of the plan is to ensure that development and future land uses within the catchment are considered in a regional context. The Plan includes strategies for the assessment of development in relation to water quality and quantity, scenic quality, aquaculture, recreation and tourism.

The Draft SEPP does not remove the requirement for a consent authority to consider the need to protect the environment of the Hawkesbury-Nepean river system.

The proposed development has been considered against the provisions of the existing SREP, provided elsewhere in this report. Accordingly, the requirements of the Draft SEPP have been satisfied.

Hawkesbury DCP 2002

A full assessment of the proposal under DCP 2002 was provided in the assessment report dated 4 February 2021. The following extract of the DCP compliance table has been provided to identify the outstanding issues that have not been addressed by the information provided by the applicant on 21 April 2021.

DCP 2002		
DCP Control	Proposed	Complies
Part C: General Guidelines		
1.2 Landscaping Requirements		
A landscape concept plan is required for most developments in the Hawkesbury. The landscape plan is to be prepared by a suitably qualified person.	<p>A Landscape plan was submitted with the application. The Landscape plan has not depicted all the trees proposed for removal in accordance with the Arborist report. The report recommends 18 trees for removal and only 11 trees are indicated to be removed on the plan and the trees on the landscape plan are not numbered therefore it is unclear which trees are to be removed as part of the development.</p> <p>An amended landscape plan is required to be provided detailing:</p> <ul style="list-style-type: none">• tree number and species identification for all trees to be removed;• replacement plantings in accordance with arborist recommendations;• any canopy tree plantings to provide dust suppression;• landscape treatments to the batter are to include ground covers, shrubs and canopy plantings. This planting is to be in accordance with Planning for Bushfire Protection 2019; and• Asset protection zone.	No
5.0 Bushfire Prone Land		
The application has included a Bushfire Assessment by Bushfire Consulting Services recommending APZ for the site. The proposed development includes earthworks extending throughout the site and the		



DCP 2002		
DCP Control	Proposed	Complies
Landscape plan does not indicate where the APZ is on the site.		
9.0 Preservation of Trees and Vegetation		
The proposal seeks to remove 18 trees indicated in red on the submitted landscape plan. An Arboricultural Implication Assessment by Horticultural Resources Consulting Group has been submitted detailing the proposed trees to be removed.		
Of the 18 trees to be removed five are identified as Category C Low, five are Category B Medium and eight are Category A High. The matrix of determining whether a tree is categorised as A, B or C has not been provided or adequately explained. An assessment of the health, vitality and longevity, retention value and landscape significance on the site, together with the matrix used, and recommendations of what trees should be retained and what amendments to the design layout could be made to facilitate this has not been provided. It would appear that trees 4, 5, 6, 7 and 8 may be able to be retained with the relocation of the driveway and redesign of the platform. The retention of these trees would benefit the proposal significantly in terms of amenity. Further information is therefore required in this instance to determine whether significant trees can be viably retained.		

iiia. Planning agreement that has been entered into under Section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4:

There are no Planning Agreements or Draft Planning Agreements entered into for this development.

iv. Matters prescribed by the Regulations:

Division 8A of the EP & A Regulation 2000 requires the consent authority to consider “Prescribed conditions” of development consent.

The relevant prescribed conditions would have been included in the conditions of consent were the application to be approved.

b) The likely impacts of that development, including environmental impacts on both the natural and built environments and the social and economic impacts in the locality:

All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report. The development is not considered satisfactory in terms of environmental impacts as discussed in the body of this report as insufficient information has been provided.

c) Suitability of the site for the development:

The site is considered to be unsuitable for the proposed development. The amount of earthworks required to be carried out will have a detrimental environmental impact to the site with potential environmental impacts to the wetlands and watercourses located on and adjacent to the site due to the unknown impact from soil erosion, runoff and other such matters that have not been taken into consideration by the applicant.

d) Any submissions made in accordance with the Act or the Regulations:

The additional information provided on 21 April 2021 has not been re-notified as there is no additional information that addresses any of the outstanding concerns raised by the submissions, in particular:

- Heavy vehicle impacts to local road and locality;
- Traffic impacts and safety concerns from large trucks not fitting adequately on the road;
- Amenity impacts relating to noise, dust, pollution to creek and truck movements within close proximity to residents;

- Inappropriate and overdevelopment for the site and locality;
- Inadequate local infrastructure to support the proposal.

An additional submission was received on 18 March 2021 after the meeting of 22 February 2021 by the neighbouring property at 96 Kolora Road Ebenezer. This submission raises concerns regarding waste water discharging into the wetlands. The issue of stormwater management remains outstanding.

e) The Public Interest:

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised.

The proposal has been assessed against the relevant environmental planning instruments and insufficient information has been provided to determine the environmental impacts, therefore the application cannot be supported in its current form.

Development Contributions

Section 7.12 Fixed development consent levies (Hawkesbury Section 94A Contributions Plan 2015)

The following development contributions apply to this development:

- Estimated cost of works: \$3,400,000.00 with contribution at 1% = \$34,000.00

Accordingly, were the application to be supported a condition of consent would be required to be imposed.

Conclusion

The matters in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979 have been taken into consideration. The application is unable to demonstrate that the site is suitable for the proposed development due to insufficient information.

The application is therefore recommended for refusal.

Recommendation

That the Sydney Western Planning Panel, as the consent authority pursuant to Clause 4.16(1)(b) of the Environmental Planning and Assessment Act 1979, refuse development consent to DA0119/20 on land known as 99 Sargents Road EBENEZER NSW 2756, Lot 288 in DP751665, for Designated Development - Landscaping Material Supplies and Resource Recovery Facility, for the following reasons:

1. Insufficient information

The development application has provided insufficient information to enable a proper assessment of the development application. All impacts, including environmental impacts, are unable to be assessed due the lack of information provided.

2. Inadequate Clause 4.6 variation of Clause 4.3 of Hawkesbury LEP 2012

The written Clause 4.6 request prepared by Benbow Environmental dated 23 February has failed to demonstrate that compliance with the 10m height of buildings development standard is unreasonable or unnecessary, that there are sufficient environmental grounds to justify contravening the development standard and that it is in the public interest.

3. Concurrence not provided



Concurrence from Transport for NSW (TfNSW) in accordance with Clause 104 of State Environmental Planning Policy (Infrastructure) 2007 has not been provided.

Attachments

Attachment 1: Benbow Environmental Letter dated 21 April 2021 Ref: 181084_LET10_Rev1 with following attachments:

Attachment 1	Land Use Compatibility Report Ref: 181054-04_Let1_Site Compatibility	Benbow Environmental	01/04/2021
Attachment 2	Clause 4.6 Variation Ref: 181084_Clause4.6 Variation Request_Rev1	Benbow Environmental	23/02/2021
Attachment 3	Revised BDAR Report	Narla Environmental	09/02/2021
Attachment 4	Architectural Plans: Drawing No. 01 to 05 Rev B Drawing No. 06 & 07	Bainidesign	07/08/2019 01/31/2020
Attachment 5	Draft Hydraulic Plans and Cut and Fill Plans: Engineering Drawings for Drainage and Site Works Drawing Nos. 010, 011, 020, 030, 031, 040, 045, 046, 050, 065, 070, 080, 081, 082, Rev A	Indesco	05/03/2021
Attachment 6	Progress Report with Attachment 1 Traffic Plans (survey plans) Ref: 181084- 04_ProgressRep_Rev1	Benbow Environmental	21 April 2021
	Plan showing levels and contours along part of Sargents Road & Stannix Park Road Ebenezer sheets 1 & 2	McKinlay Morgan & Associates Pty Ltd	16/03/21
	Plan showing levels and contours along part of Sackville Road & Stannix Park Road Ebenezer sheets 1 & 2	McKinlay Morgan & Associates Pty Ltd	16/03/2021, 26/03/2021 & 29/03/2021
Attachment 2	BDAR Peer Review	Cumberland Ecology	19 March 2021

Assessment Officer

Natalie Piggott | Senior Town Planner | Hawkesbury City Council

☎ (02) 4560 4573 | 📠 (02) 4587 7740 | 🌐 www.hawkesbury.nsw.gov.au