

28 November 2014

Our Ref: ECM No. 6425336
Contact: Gavin Cherry
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Troy Loveday
Department of Planning and Environment
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Dear Mr Loveday

Re: Notice of Exhibition – Proposed Section 75W Modification Application to DA1 for Residual Materials

Reference is made to your correspondence received on 11 November 2014 seeking comment on the above proposed modification application and supporting Environmental Assessment Report.

It is understood that the modification application seeks consent to carry out works associated with the development of a “residual materials consolidation area” that is proposed for the permanent consolidation of on-materials that have accumulated on the Penrith Lakes site (as a result of development activities associated within that site). In simple terms the application seeks consent for the permanent on-site disposal (by burial and encapsulation) of approximately 23,500m³ of waste materials that have been generated from previous agricultural and quarrying activities that have occurred within the site. The application indicates that the materials are currently stockpiled in various locations on the site and comprise concrete, 1,500m³ of tyres, metal piping, general plastics, vehicle parts, 12,000m³ of bitumen and road materials (including those associated with the removal of Old Castlereagh Road), glass, plasterboard, bricks, wood and demolition materials, as well as non-putrescible garden and vegetative materials. The proposed “consolidation” area where it is proposed to bury these materials is located in the south west part of the site where a depression currently exists and which is likely intended for future open space uses and parkland.

The documentation submitted in support of the abovementioned project has been reviewed and the following submission comments are provided for your consideration and action:

1. Insufficient Justification for on-site burial proposal and inadequate address of feasible alternatives:

- Part 1 of Schedule 2 of State Environmental Planning Policy (Penrith Lakes Scheme) requires the statement of environmental effects to, amongst other things, “justify the proposed development in terms of environmental,

economic and social considerations” and to include “*any feasible alternatives to the carrying out of the proposed development and the reasons for choosing the latter*” [Schedule 2, 1(j)]. The Environmental Assessment Report (EAR) does not address Schedule 2 of the SEPP in entirety, focussing only on those matters listed in Part 2 of the schedule and omitting Part 1 matters.

- Given the nature of the proposal it is considered imperative that the matters listed in Part 1 of Schedule 2 be addressed, particularly in regard to justifying the proposal and investigating and assessing feasible alternatives which would be a more appropriate resolution rather than creating a land fill scenario where post quarrying use is yet to be established.
- Whilst the EAR states that the proposed works will result in fewer impacts associated with heavy vehicle movements on local roads within the Penrith LGA, the EAR does not adequately demonstrate or justify the overall benefit of the proposal compared to feasible alternatives and it does not investigate the potential environmental, economic and social gains that may be achieved through alternative higher order reuse opportunities, such as the recycling and reuse of the recyclable materials. The proposed land filling approach is considered unsatisfactory, particularly given that a significant proportion of the residual materials identified for on-site burial are recyclable with extensive reuse and recycling opportunities, both on and off site.

2. Inconsistency with the objectives of environmental legislation and ecologically sustainable principles

- The objectives of the Protection of the Environment Operations (POEO) Act include the “reuse, recovery or recycling of materials” and “to assist in the achievement of the objectives of the Waste Minimisation and Resource Recovery Act 2001”. In turn, the objectives of the Waste Avoidance and Resource Recovery Act 2001 are to encourage the most efficient use of resources and to ensure that resource management options are considered against a hierarchy whereby resource recovery (through reuse, recycling, reprocessing and energy recovery) is considered above the least favourable option being disposal.
- The proposal to bury the residual (waste) materials on site, has not sufficiently considered opportunities available for the resource recovery of the recyclable materials and therefore does not address the hierarchy of considerations of the Waste Avoidance and Resource Recovery Act whereby disposal is recognised as the last and least favourable option. Consequently, the proposal is inconsistent with environmental legislative objectives and contemporary ecologically sustainable development principles.
- It is considered that the proposal is seeking consent for the easiest and cheapest waste disposal methodology without sufficiently considering the potential environmental and social impacts of the works as outlined above. This is not an approach that should be supported by the Department.

3. Master Planning for the Future Recreational and Residential Occupation of the Penrith Lakes Development

- It is understood that the applicant has enacted requests with the Department of Planning and Environment to commence a master planning process for the

future development of the Penrith lakes Scheme. It is also understood that the Office of Penrith Lakes in collaboration with the Department of Planning and Environment has been preparing a "Vision Document" for the development of the Penrith Lakes Scheme. Until such time as it can be established what is agreed to be developed for residential development, what is to be dedicated to the state government as recreational open space and where key infrastructure requirements will be delivered, a land fill scenario should not be entertained.

4. Concurrence and Licencing Requirements

- The proposal for waste material to be used as fill may trigger various regulatory requirements such as the need to hold an environment protection licence or pay the waste and environment levy. Under the POEO (Waste) Regulation 2014, the EPA has the power to exempt waste material from some of these requirements where it can be demonstrated that the use of the waste is a "bona-fide, fit for purpose reuse opportunity" rather than a cheaper method of waste disposal. This issue will require consideration by the Department in determining this application.

5. Determination

- In the event that the Department of Planning and Environment do not pursue Council's requests for an alternate disposal methodology and associated recycling and re-use, it is requested that the Department ensure that all works (including design, construction and ongoing monitoring) be carried out in accordance with relevant NSW Environment Protection Authority contaminated land and waste management guidelines, ANZECC and NHMRC Guidelines and the National Environment Protection (Assessment of Site Contamination) Amendment Measure 2013 and be supervised and validated by a suitably qualified environmental consultant, demonstrating that the site is suitable for the proposed end use.
- It is also requested that, upon completion of site validation works and reporting, Council be furnished with a copy of the validation report for the works. Council will record the validation report on its property information system in accordance with the Penrith Contaminated Land Development Control Plan and SEPP 55 – Remediation of Land. In approving site validation works, the Department will need to ensure that appropriate mechanisms are in place to manage the long-term and ongoing integrity of the on-site containment and capping. This may require, subject to site validation findings, the development of a long-term management plan for the site in addition to appropriate property notations and covenants.

Please ensure these comments are considered in the assessment of the application and that any additional information submitted in response is made available to Council for further review and comment.

Should you require any clarification on the issues raised above or wish to discuss the matters in further detail, please don't hesitate to contact me on (02) 4732 8125.

Yours faithfully,


Gavin Cherry

PRINCIPAL PLANNER