

1 May, 2015

Ms. Glennys James
Assistant General Manager
Director Design and Development
Blacktown City Council
PO Box 63
BLACKTOWN NSW 2148
E: Glennys.James@blacktown.nsw.gov.au

Dear Glennys,

RE: MP 06-0239 PRE-SORT ENCLOSURE PROPOSAL UNDER SECTION 75W OF THE ENVIRONMENTAL PLANNING & ASSESSMENT (EP&A) ACT 1979 AT THE GENESIS WASTE MANAGEMENT FACILITY

I refer to your letter dated 22 April 2015 in which you raise a number of matters in connection with the current application to construct another building within the Genesis Recycling Facility grounds.

I think you have misconceived the purpose and effect of the proposed new building which is only intended to improve the existing functions and can only improve environmental outcomes. I will leave the Town Planners and Consultants to address those specific issues to your satisfaction.

Instead, Ian Malouf has asked me to register on his behalf, his deep unhappiness with the general tone of your letter and disappointment that it should contain so many factual errors.

For instance, you wrote

Council is particularly concerned that the Applicant continues to lodge amendments to the Project Approval that was issued by the Minister for Planning on 22 November 2009 for the waste facility. These additions continue to expand the operation without the obligations in the mother approval being fulfilled.

You will be aware that although there have been a number of modifications to the 'mother consent' none of these have expanded the operations.

Rather, they have been made in order to demonstrate full compliance with the mother approval and to give effect to the operation as described in the EAR upon which that mother approval was based.

Neither Council nor the Department of Planning has drawn to our attention any deficiencies or non-compliances. At the very least this statement is misleading.

Your letter also stated,

Council wrote to the Department on 13 October 2014 (copy attached). The letter involves the same applicant and Council is yet to receive a response from the Department. Council is firmly of the view that no additional development should be approved by the Department until all the outstanding conditions of consent and S75Ws granted to date have been fully met by the applicant.

Until now, when we were provided by the Department with a copy of it, we were unaware of Council's letter of 13 October 2014. Until or unless Council or the Department raise those matters of contributions in a formal sense there seems to be little which we could do about the issue. How for instance were we to know the amount to send, or the body to whom to send it?

In "Attachment A" you raised the following issues.

Compliance with,

Condition 45 -Within five years from the date of this approval or when an adjoining land owner is building a precinct road to a common boundary (whichever is sooner), the Proponent shall design and construct, to the satisfaction of Council, those parts of the Precinct Plan Road network that ultimately fall within the operational area of the facility (See Appendix 3 of approval). These precinct roads shall be dedicated to Council, at no charge, to form part of the public road network

And

Condition 46 -When a Precinct Plan road is constructed, the Proponent shall design and construct any new vehicular connections to the Precinct Plan Road, to the satisfaction of Council.

Your letter asserts that "Both conditions have expired and the road is still not designed or constructed."

With respect, though it is conceded that 5 years has expired from the date of the approval (22 November 2009), only tiny isolated portions of the future roads which form part of the Precinct Plan road network will ultimately fall within the operational area of the existing facility. We have shown these on the attached plan.

When we delineated the boundaries of the operational area and performed a boundary realignment to give effect to the Genesis approval (which we did at the request of Council and the Department of Planning) we took steps [in consultation with the Department and with Council] to ensure that the future road network would not, so far as possible travel through the operational area.

As you may be aware, part of the planned Precinct Road is foreshadowed for construction on the TNG site [even though it cannot operate with connection to the public road network until or unless the Precinct Road is built across the Hanson site].

Until the Precinct Road section is constructed through the Hanson land and then through the TNG land to connect Honeycomb Drive to Archbold Road the condition to which you refer is otiose.

You also raised an issue about Compliance with the outcome of a s34 Conference.

“Compliance with the below issues raised by Blacktown Council at its letter to the Department of the Environment and Planning (DEP) dated 13 October 2014 (a copy attached) addressed to Carolyn McNally regarding the 'enforcement of court orders for project application 06-0139' which outlined the following:

On 11 November 2011, a Section 34 (3) Agreement was reached in the Land and Environment Court for modifications to consent conditions for project application 06-0139 (formally identified as 06-0239). The terms of the project approval were replaced in part by the terms in the agreement.

It has come to Council's attention that one of the terms has not been complied with by the applicant, and another term was required to be addressed by 22 November 2014, these are still outstanding as follows:

New condition 25 (h)

The design calculations, detailed design plans and inspection, operation, monitoring and maintenance plans for the site storm water management system shall be prepared in consultation with DECCW and Council and submitted to the Director General for approval prior to the implementation and shall include any staging requirements / assumptions. Detailed design plans shall comply with Council's current Engineering Guide for Development Engineering Drawings requirements and shall be provided to the Director General within 3 years of the Project Approval (ie. By 22 November 2012) or when a development proposal is lodged for the subject land, whichever is the sooner. Council has not seen the documentation listed above.

The history of this condition was that it was finalised on 11 November 2011, by a Section 34 (3) Agreement. You may remember that Council brought proceedings in respect of the Approval granted to the landowner and then sought to adduce as evidence of regional drainage plans certain consultants' reports which had at that time neither been presented to nor approved by Council.

On 17th December 2010 the Landowner first provided Georg Eberl of Blacktown City Council with plans indicating the capacity of the onsite detention basins [OSDs].

On 27 October 2011 the Landowner provided the Department of Planning with the following documents;

- Martens and Associates Stormwater Report
- LandPartners drawing 72757.00; and
- OSD drawings.

On 14th November 2011 the Landowner received a memo from Georg Eberl of Blacktown City Council outlining the assessment of the current submission. In particular, the basin plans were found not to be consistent with the modelling methodology specified by Council.

On 5th December 2011, confirmation was given by the Department of Planning that the majority of the facility's management plans had been approved except for the Soils, Water & Leachate Management Plan SWLMP which was then currently being revised. The letter also requested that a revised Construction Environmental Management Plan (CEMP) for Stage 2b of construction works be provided.

On 6 December 2011 the Department of Planning was provided with the Environmental Management Strategy which incorporated a Soil, Water & Leachate Management Plan as well as the amended CEMP for Stage 2b.

On 4 January 2012 the Landowner received notification from the Department of Planning dated 23 December 2011. This letter approved the Management Plan & Stage 2b Construction. In addition, the Department requested the following be undertaken and final documentation provided;

The site's stormwater management system designed and constructed to operate in accordance with the Soils, Water & leachate Management Plan and Martens report and modelling, incorporating the OSD basin volumes as shown on the AT&L drawings

The submission to the Department of Planning of;

- A final version of the Soils, Water & Leachate Management Plan which addresses the inconsistencies between the AT&L drawings and the report
- A complete copy of the final construction drawings and associated construction specifications
- The submission of the site's stormwater management systems, construction certification and 'work as executed' plans

On April 5th 2012 the Proponent received from the Department of Planning approval for limited operation of the Eastern Creek Waste Project subject to the provision of plans and documents including those required as part of the s34 Agreement.

On 30 May 2012 letters enclosing

- 'as constructed' drawings and AT&L Certification;
- Building certificates from Blacktown city Council;
- Survey of the ground levels over the proposed operational areas;
- Written advice regarding the implementation of the Environmental Management Strategy; and
- A copy of the colour scheme of the external façade of the buildings

were sent from our office to the Department of Planning and also to Blacktown City Council.

On 7 June 2012, the Department of Planning confirmed that its requirements for the partial operation of the Genesis Recycling Centre were satisfied. The letter also requested that we provide 'works as executed' plans and certification by AT&L demonstrating that the stormwater design is compliant.

"Works as executed" plans and the final completion certificate by AT&L [Consulting Engineers] were sent to the Department of Planning and also Blacktown City Council on 3 August 2012.

Attention was also drawn by you to new condition 49 (a) to (d)

a) By 22 November 2014, the proponent shall contribute towards the acquisition, design and construction of the Precinct Plan Road known as the 'Quarry link Road' between Old Wallgrove Road and Wonderland Drive and Bridge B1 forming part of the Quarry Link Road.

*b) The contribution shall be the amount set out in the Table below or as approved by the Director General under paragraph (c), whichever is the lesser.
Etc. etc.*

With respect, once again the Proponent cannot be expected to make a contribution or satisfy a condition the operation of which depends entirely upon the actions to be taken a Crown Department which is entirely beyond its control.

You may not recall that the question of payment of legal costs connected with the proceedings which were finalised by the s34 Conference was never ultimately resolved.

On the day of agreement, the Counsel for Council offered us \$75,000 in defrayment of our legal costs. That offer was refused because our legal costs thrown away exceeded \$300,000.

The matter has remained in abeyance from that day to this but remains open in the Land and Environment Court.

Those costs have not so far been pursued in the interests of maintaining good relations between the Landowners as ratepayers and Council.

Mr Malouf certainly thinks that your letter is poor reciprocation for that act of goodwill.

I trust that the information provided in this letter will enable you to recover the information from your files and that you will consider revising with the Department the complaints and objections outlined in your letter.

Yours sincerely,



CHRISTOPHER BIGGS
SOLICITOR