

16 March 2026

2250391

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Via email: rebecka.williams@dpie.nsw.gov.au

Dear Rebecka,

SSD-10412-Mod-1 – Breen Resource Recovery Facility – Response to Submissions

We refer to your letter dated 5/11/2025 relating to the proposed modification of SSD-10412 for the Breen Resource Recovery Facility, located at Captain cook Drive, Kurnell. In particular, your correspondence requested a response to the issues raised by submissions in relation to the proposed modification.

Submissions were received from the NSW Environment Protection Authority (EPA) and Sutherland Shire Council. A detailed summary of, and response to, each the issues raised in the submissions is provided in the table below.

Table 1

Issue Summary	Response
EPA	
Hardstand The EPA does not object to the removal of the word 'prevent' from the condition. The EPA does not support the removal of the requirement for the hardstand to be sealed. The EPA notes that the groundwater, surface water and air quality assessments were based on the presence of sealed and impermeable surfaces, and the EPA's support for the development was reliant on this basis. Therefore, the EPA considers that roads and hardstand should be sealed and impermeable to ensure appropriate environmental protection in respect of groundwater, surface water and air quality at minimum.	The stabilised road base hardstand can be designed and installed to be highly resistant to water penetration and is generally considered to be impermeable. The stabilising hydration process creates a solid, bound, and highly impermeable barrier producing surface runoff similar to standard pavements (such as reinforced concrete and asphalt) that limits water ingress into the subgrade. It is noted that the DRAINS analysis outlined in the Surface Water Management Assessment has modelled the pavement as with a runoff coefficient of 0.9 that is consistent with a stabilised pavement solution, and validates identical peak flows and pollutant loads to concrete hardstand assumptions. Engineering advice supports that in high trafficable areas, stabilised road base can deliver a more impermeable surface than reinforced concrete due to construction joints and cracks (due to loading and shrinkage) that form over its lifetime. The monolithic stabilised surface eliminates loose particulates, preventing wheel-generated airborne dust and is equivalent to (or better than) concrete where joints/cracks can trap sediments.

Issue Summary	Response
	Austrroads AGPT04D confirms stabilised bases handle heavy vehicle ESALs (Equivalent Standard Axle Loads) at 2–3x the fatigue life of asphalt-over-granular alternatives, maintaining impermeability long-term without cracking/delamination risks inherent in concrete slabs. For industrial hardstand, stabilisation often outperforms concrete in durability under repeated heavy loading. In this regard, the stabilised road base hardstand has an equivalent or better environmental performance to other types of sealed surfaces.
Landfill Capping Plan The EPA does not support the proposal to approve the 28 October 2020 Capping Plan. The EPA retains concerns that the 28 October 2020 Capping Plan does not adequately meet the minimum standards outlined in the Environmental Guidelines: Solid waste landfills.	The Applicant respectfully requests that the EPA undertakes its detailed assessment of the 28 October 2020 Capping Plan as part of the assessment of this modification application. It is considered by the Applicant that the 28 October 2020 Capping Plan is compliant with the minimum standards outlined in the Solid Waste Landfill Environmental Guidelines. Given the critical nature of the Landfill Capping Plan to the feasibility of the development, any specific compliance concerns should be identified by the EPA now as part of this modification application, rather than being left to a subsequent process.
Greenhouse Gas Emissions The EPA has adopted the principles outlined in the NSW EPA Guide for Large Emitters (the Large Emitters Guide). As greenhouse gas information was not provided, the EPA is unable to determine whether or not the requirements of the Large Emitters Guide will apply in relation to this proposal. The EPA requests the Applicant provide an estimate of Scope 1 and Scope 2 greenhouse gas emissions associated with the proposal to determine whether the proposal is likely to result in 25,000 tonnes per annum (tpa) carbon dioxide equivalent (CO₂-e) or more of Scope 1 and Scope 2 emissions in any financial year. Please note that if the estimated emissions exceed the threshold of 25,000 tpa in any financial year during the project's operational life, then the Applicant should provide a greenhouse gas emission assessment prepared in accordance with the Large Emitters Guide.	Development consent has been formally granted, and this modification request involves only minor administrative updates to consent conditions. Under the <i>Environmental Planning and Assessment Act 1979</i>, the EPA cannot impose new substantive conditions (such as Greenhouse Gas Emissions assessments) as part of a minor modification. Further, the NSW EPA Guide for Large Emitters specifically states that it only applies for modifications where the modification results in additional emissions of 25,000 tpa CO₂-e emissions over and above the approved development. Given that the proposed modification does not involve any change to the operational activities or capacity of the approved development and represents minor administrative changes to the development consent conditions, it is clear that the modification will not result in any additional Greenhouse Gas Emissions. It is therefore not reasonable to require an entirely new greenhouse gas emissions assessment. (Note that Greenhouse Gas Emissions were calculated as part of the Air Quality Impact Assessment report provided at Appendix M of the original EIS.) Further, it is highlighted that the approved development is for a resource recovery facility that will have a positive effect on overall carbon emissions by maximising the diversion of waste from landfill and would also involve replacing old diesel-powered plant currently operated on site, with electrically powered plant reducing greenhouse gas emissions.

Issue Summary	Response
Lot and DP Locations The EPA notes that the Lot and DP locations identified in development consent SSD-10412 may be outdated, specifically as Lot 1123 DP 794114 appears to have been subdivided. The EPA recommends that DPHI request that the Applicant clarify the Lot and DP locations for which the development consent relates.	Lots 1122 in DP 794114, Lot 1123 in DP794114 and Lot 6 in DP1158627 have been amalgamated and re-subdivided as Lot 1 in DP 1321964 and Lot 1 in DP 1307772. As such, the current real property description of the land subject of the development consent SSD-10412 is described as follows: • Lot 1 DP 1321964 • Lot 5 DP 1307772
Sutherland Shire Council	
Amendment to Condition A14 (timing of completion and dedication of parklands) The proposed amendment to the condition is not supported as referring to an unspecified timeframe within the VPA is not practical. The condition must be very specific to avoid any ambiguity. It is further recommended that alternate reference to the Planning Secretary with an authority to agree on a time frame for completion and dedication be deleted from the condition. This is a dedication to Council and managed by VPA as required under the legislation. There should be no ability to undermine the agreement. Therefore, it is recommended that reference to as agreed by the Planning Secretary is deleted. The condition is recommended to read: The Marang Parklands including the panoramic lookout as detailed in Condition D1, must be completed and dedicated to Council no later than the date imposed by Condition 5.5 from the VPA 31 May 2026 or as otherwise agreed with the Planning Secretary.	It is highlighted that Condition A14 relates to the timing of completion and dedication of the parklands, whereas Condition 5.5 of the VPA relates to the cessation of commercial activities on the land to be dedicated. These dates are unrelated to each other, so there is no basis for referencing Condition 5.5 from the VPA in Condition A14 of the consent. We note that Conditions 5.2, 5.3 and 5.4 of the VPA actually relate to the timing for completion of the parklands and would be more appropriately referenced in this condition, as sought in the proposed modification. We also note that 'as otherwise agreed with the Planning Secretary' is only necessary where the consent imposes a timeframe that is not covered by the full range of provisions under the VPA – that is where the conditions specifies the date without also allowing for the variations to that date established under the VPA.
Amendment to Condition A15 (connection of Lot 6 to state walking trail) Based on the above rationale, it is also recommended that the condition is amended as follows: Lot 6 must be connected to the State Park walking trail to the south to provide direct access for users of the trail no later than 31 May 2026 the date imposed in Condition 5.5 from the VPA, or as otherwise agreed with the Planning Secretary. The access must remain open to the public during all operational hours.	Similar to the item above, Condition A15 relates to the timing for providing a walking trail, whereas Condition 5.5 of the VPA relates to the cessation of commercial activities on the land to be dedicated. These dates are unrelated to each other, so there is no basis for referencing Condition 5.5 from the VPA in Condition A14 of the consent. We note that Condition 5.4 of the VPA actually relate to the timing for completion of the Stage 3 playing fields (located on what was previously known as Lot 6) and would be more appropriately referenced in this condition, as sought in the proposed modification.

Issue Summary	Response
Amendment to Condition A19 (surrender of consent) The proposed amendment is not supported due to the ambiguity in the condition and the lack of finality. The timeframe in the condition must be very specific to provide certainty to all parties, particularly the date of when the site operates under the new consent. Based on the proposal in its current form, it infers that the benefitted party may have the ability to defer taking up the new consent and continual operating in accordance with DA/269/90. In this case, the timeframes for delivery of the requirements in the VPA will be further delayed, and this is not an acceptable outcome for council and the residents of the Sutherland LGA. Further and for the reasons detailed above, reference to the Planning Secretary is recommended for deletion. It is recommended that the condition be amended as follows: In accordance with the date imposed in Condition 5.5 from the VPA, Within 12 months of commencement of operation of any part of the development, or within another timeframe agreed by the Planning Secretary, the Applicant must surrender the existing Sutherland Shire Council development consent for the existing Breen waste facility (DA/269/90) in accordance with the EP&A Regulation.	It is not a preferred outcome for Breen either, however it is a simple fact that the applicant is under no obligation to take up (or enact) the development consent. In this regard, the development consent SSD 10412 is a right to carry out the development, but not an obligation. If Breen does not enact SSD 10412 then it is not obliged to surrender DA/269/90, which would remain a valid consent on the land and could continue to be relied upon.
Amendment to Condition A20 (removal of buildings etc) Based on the described rationale above, Condition A19 be amended as follows: In accordance with the date imposed in Condition 5.5 from the VPA, Within 12 months of commencement of operation of any part of the development, or within another timeframe agreed by the Planning Secretary, the Applicant must remove all buildings, weigh bridges and ancillary infrastructure associated with the waste facility approved under Sutherland Shire development consent DA/269/90.	Similar to the items above, Condition A20 relates to the removal of buildings and infrastructure whereas Condition 5.5 of the VPA relates to the cessation of commercial activities on the land to be dedicated. These dates are unrelated to each other, so there is no basis for referencing Condition 5.5 from the VPA in Condition A14 of the consent. We note that the VPA does not include a corresponding condition relating to removal of buildings and infrastructure. We also highlight that the there is no requirement for conditions in the consent and the VPA to be identical – both sets of conditions apply independently and be enforced separately. The purpose of our proposed amendments to Condition A20 is to provide some additional flexibility to Condition A20 commensurate with the VPA's variation provisions.
Amendment to Condition B45 (sealed hardstand) Council supports the position of the NSW Environment Protection Agency in their letter dated 3 November 2025 in not supporting the amendment to the condition, advising that insufficient information has been provided to justify the change to the finished surface from hardstand to 'sealed' and adequate assurance that the environmental concerns in relation to groundwater, surface water and air quality will be addressed. For the same reasons, council does not agree to the amendment.	See response to the EPA above.

Issue Summary	Response
Amend the Management and Mitigation Table to provide certainty in relation to the approved version of the Progressive Site Capping Plan. It is acknowledged that the NSW Environment Protection Agency in their letter dated 3 November 2025 do not support the amendment to the condition, reiterating that the issues and concerns of the 28 October 2020 Capping Plan do not adequately meet the minimum standards outlined in the Environmental Guidelines: Solid Waste Landfills. For the same reasons, council does not agree to the amendment. In addition, the following comments are also made: • The site capping levels has direct impacts on the timing of payments set in the VPA. • The change is not supported as there needs to be certainty in the approval levels and quantum of fill brought to the site. The openness of the condition alludes to the proponent being able to from time to time, propose changes without formally amending the SSD approval. Changes to any aspect of the application must be considered and assessed against the planning legislation which also requires the public exhibition of any changes for scrutiny from interested and potentially affected parties.	See response to the EPA above. The proposed modification does not seek to change the final capping levels. Rather, the capping plan establishes the environmental performance standards to be applied, and these standards have a material impact on the feasibility of the development. Breen simply wants to agree the capping arrangements up front with the EPA, rather than leaving these capping standards subject to subsequent negotiation. We highlight that this principle is a standard and long-standing feature of the relationship between the environmental planning and assessment regime and the environmental protection regime – that is, where the EPA has agreed to an environmental protection standard as part of a development approval process, the EPA cannot immediately impose a stricter environmental protection standard inconsistent with the development consent. Stricter environmental performance standards can only be imposed as part of subsequent licence variations.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request.

Sincerely,



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