



File Ref: DN25/0030

13 January 2026

Rebecka Williams
c/- NSW Department of Planning Housing and Infrastructure
Locked Bag 5022
PARRAMATTA NSW 2124

Email: rebecka.williams@dpie.nsw.gov.au.

Dear Rebecka,

Development Referral No. DN25/0030

Proposal: Construction of a resource recovery facility under State Significant Development - Modification 1 Staging and Timing
Property: 330 to 350 Captain Cook Drive, Kurnell

Thank you for the opportunity to provide comments regarding the above modification application to the State Significant Development at the above property. It is understood the modification seeks to facilitate the staged transition of the facility and ensure consistency between the development consent and Planning Agreement between Council and Breen Resources P/L.

As advised, council has not provided a formal response to the modification application as the applicant has made a letter of offer to council, proposing to make changes to the voluntary planning agreement (VPA). Matters regarding any VPA must be reviewed by the Council and the Executive and reported to a council meeting for resolution.

At the 16 December 2025 meeting, the council resolved to accept the terms of the letter of offer and the amendments to VPA and as such, the public exhibition of the VPA will commence on 12 January 2026. The public exhibition of the VPA will be for a 28 day period, with the submission period closing on 9 February 2026. Following this exhibition period, submissions will be reviewed, and the matter will be reported back to the council in March 2026. If the council agree to enter into the new VPA, it is expected that the VPA will be executed around the 1 May 2026.

It is important for the Department to recognise that the proposed VPA amendments are not consistent with the changes that are proposed in the modification application. Council will contact the applicant requesting clarification on the inconsistencies, and require corrections are made.

Given this circumstance Council objects to the modification and strongly recommends that the Department delay the determination of the modification application or seek its withdrawal pending the execution of the VPA. Overall, the majority of changes sought to conditions are not supported and have the ability to undermine the current and amended VPA in regard to timing of commitments. The VPA is the legislative mechanism to ensure the delivery of public benefits and should be the sole source of timing.

Proposed Modification

The following recommendations are made should the Department not defer determination of the application:

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.*

Condition 5.5 refers to specific dates and timeframes for the delivery of works and the like.

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.*

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 Shire Local Government Area.

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.*

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.*

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.

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 directly 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.

We encourage further decision of this modification and Council is happy to meet with the Department to assist the assessment. Please contact Council's Senior Development Assessment Officer, Mr Daniel Lukic on 9710 0668 or email dlukic@ssc.nsw.gov.au should you have further queries.

Yours faithfully,



Sue McMahon
Senior Manager, Development Assessment