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19 March 2026

SUBMISSION BY WAY OF OBJECTION

**APPLICATION No. SSD-84090218
MIDCOAST REGIONAL ORGANICS FACILITY
48 Midge Orchid Road, Darawank (Lot 5 DP 1089990)**

I am a solicitor with Stacks Law Firm, Forster and I make this submission in that capacity.

We act for Mr RJ Hill and Mrs SE Hill, the owners of land at Lot 1 DP 125692, 661 The Lakes Way, Darawank.

Our instructions are that our clients **object** to the application for the proposed MidCoast Regional Organics Facility (hereinafter referred to as the MCROF). The reasons our clients object to the application are set out in this submission.

Our clients' land is on the western side of The Lakes Way, opposite the intersection of The Lakes Way and Midge Orchid Road.

An existing dwelling is on our clients' land, about 155 metres from the southern side of The Lakes Way/Midge Orchid Road intersection.

Also, MidCoast Council approved a three (3) lot subdivision of our clients' land on 28 April 2019, via development consent number 246/2018. Our instructions are that the consent for the three (3) lot subdivision of our clients' land remains operational.

A notable aspect of the approved subdivision is that there will be another two (2) dwelling locations established on a new allotment north of the existing dwelling and shed on our clients' land. In effect, then, there will be three (3) dwellings in total on our clients' land.

A review of the approved plans for that subdivision demonstrates that each of the 'new' dwelling locations will be closer to The Lakes Way/Midge Orchid Road intersection, with the northernmost new dwelling location perhaps within about 65 metres of the southern side of the intersection.

A review of the exhibition documents demonstrates that there has been no assessment whatsoever of the impact of the proposal on the approved subdivision of the land at 661 The Lakes Way, Darawank, nor the two (2) additional dwelling locations facilitated via that consent. This is, in our view, a significant failing in the assessment documentation.

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An important point of our clients' submission is that all assessment documentation must be expanded to properly consider not only the existing dwelling on the land at 661 The Lakes Way, Darawank, but also the two (2) future dwelling locations facilitated by the three (3) lot subdivision approved via development consent number 246/2018 (the consent to which will not lapse).

Those additional dwelling locations will be closer to The Lakes Way/Midge Orchid Road intersection and the MCROF location.

The remainder of this submission is prefaced on the fact that all exhibition documentation only assesses the single existing dwelling on our clients' land and does not consider the approved subdivision and/or the two (2) additional dwelling locations facilitated via that consent.

Our clients' position is that there has been inadequate assessment of the proposal generally, together with the points set out below.

In terms of the documentation placed on exhibition, the following issues have been identified.

General

There are inconsistencies in the documentation which require clarification.

Section 2.6.2 of the Environmental Impact Statement (EIS) states that the facility is designed for continuous operation and will operate 24 hours a day, 7 days per week with delivery of input and collection of products also proposed 24 hours a day, 7 days per week.

Despite statements in relation to 24/7 operation, the EIS then states that staffed hours will be limited to Monday to Friday 7am to 5pm. There are varying statements in supporting information that differ from the statements in the EIS about operational hours.

It should be clarified whether the proposed MCROF is primarily intended to service the requirements of the MidCoast local government area, or to service other Council areas. While the EIS contains some varying statements in this regard, the clear indication is that it is intended to serve both.

If the intention is to service other Council areas, then there are serious concerns about directing heavy traffic along The Lakes Way to the Midge Orchid Road site. The logic of increasing traffic along The Lakes Way should be weighed up against other possible site options which are more accessible from the Pacific Motorway (discussed below).

Decisions involving traffic safety should not rest on traffic assessments which seek to abrogate responsibility for upgrades/intersection performance onto Transport for NSW and/or MidCoast Council as not being 'the responsibility of the proponent'.

For all intents and purposes, the 'ultimate' proponent for this project is MidCoast Council as the land and asset owner. In this regard, it is not appropriate for the EIS to defer (future or

concurrent) responsibility for certain matters to Council, when the Council will be the entity obtaining the ultimate benefit from the project.

In other words, if any issues are significant enough for the EIS to make a statement that they (the issues) are, or will be, the responsibility of Council, then those issues should be fully considered and a determination made as to how they will be resolved in the public interest.

Analysis of Alternatives (EIS Section 2.3)

Section 2.3.4 of the EIS includes 'Option 4: Process food and organics at an alternative location'.

Notably, Section 2.3.4 of the EIS does not actually consider any alternative location(s).

If there was any genuine intent to consider alternative locations for the MCROF, it would appear logical to consider the feasibility of the Minimbah landfill site as an alternative location.

The Minimbah landfill site is a much more suitable location for the proposal as it is:

- owned by MidCoast Council;
- already cleared, disturbed land for its intended purpose;
- a site that is 'regional' in terms of its nature, location, and accessibility for heavy vehicles;
- close to the Pacific Motorway without the need for more heavy vehicles to travel on The Lakes Way (which has well documented traffic safety, traffic capacity, and road/intersection issues);
- better located to receive materials from the northern, southern, and western parts of the MidCoast local government area;
- better located to receive materials from any other Council areas (which would necessarily be to the north, west or south of the MidCoast local government area);

As the MidCoast local government area is effectively a 'region' in itself, a more centrally located and accessible site from a National Highway (with established intersections and provision for deceleration/acceleration lanes) such as the Minimbah landfill site is demonstrably more favourable for a MCROF than the site at Midge Orchid Road.

If the MCROF was to be in part of the Minimbah landfill site, it is unlikely there would be any significant impacts on the aquifer in that area. This is because the composting process is an 'above ground' process, without incursion into groundwater.

The EIS also includes significant discussion in relation to Transport for NSW's *Future Transport Strategy*. As the EIS has raised this document as relevant to the MCROF proposal generally, then it is important that this be considered in relation to any analysis of alternatives.

In response to the following statement in the EIS discussion in relation to *Future Transport Strategy*, our comments are:

- *EIS comment:* the focus of the Strategy on improving freight efficiency, access and reliability on roads is addressed by the Project through the positioning of the facility adjacent the existing Tuncurry Waste Management Centre, with existing heavy vehicle access from The Lakes Way.
- *Our comment:* the above focus of the Strategy is not reflected by the project. To be consistent with the Strategy, a detailed assessment would have considered the feasibility of establishing the MCROF on part of the Minimbah landfill site, where there are clear freight efficiencies, being close to the Pacific Motorway. There are no efficiencies in directing heavy vehicles along the already compromised Lakes Way and Failford Road when there is an existing and superior site (with regional scale capacity) closer to the Highway/Motorway.

The EIS also states that where any inputs to the MCROF are identified as containing excessive contamination, or not indicative of target material, they would be rejected and turned away or redirected to a lawful facility. In the latter case, the Minimbah landfill site would potentially facilitate disposal of any rejected material within the adjacent facility, without any need for the rejected material to be conveyed via public roads to another lawful facility. It is noted that the former landfill at the Tuncurry Waste Management Centre is in the process of being capped and may not be available to accept any material rejected from the MCROF.

Suitability of the site (EIS Section 2.4)

The above discussion regarding consideration of alternative sites should be read in conjunction with the discussion below.

The lack of assessment of any alternative location(s) by the EIS raises fundamental questions about the suitability of the site. While the MCROF project has been proposed as a regional scale project, the Midge Orchid Road land is not an appropriate 'regional' site.

The suitability of the site should be considered in relation to not only the 'footprint' of the development or the physical boundaries of the Midge Orchid Road land, but also the intended regional function of the MCROF and the roads it will rely on to provide that function.

There is no proper analysis of alternatives in Section 2.3 of the EIS (discussed above). The premise of analysing alternatives for a project such as this is that it then becomes a demonstration of why the Midge Orchid Road site is a more suitable site for the MCROF site than all others considered.

It is not possible to draw any reliable conclusion in Section 2.4 of the EIS unless there has first been a proper analysis in Section 2.3, which is not the case.

That said, in relation to the following statements in the EIS discussion regarding site suitability, our comments are:

- *EIS comment:* The Site was acquired by the Council to facilitate the development of an organics processing facility.

Our comment: There is no evidence that the Midge Orchid Road land was acquired for the purpose of the MCROF, or for the purpose of any facility whatsoever. Nevertheless, there is clearly a better alternative location for the MCROF. The Minimbah landfill site, which is also in Council ownership, is more suited to a regional scale facility such as that proposed and closer to the National Highway.

- *EIS comment:* The proximity of the Site to the existing Tuncurry Waste Management Centre.

Our comment: This does not necessarily demonstrate the suitability of the land at 48 Midge Orchid Road for the proposed MCROF. Council has already taken steps to establish an effective regional waste facility at Minimbah, and part of that land would appear more suited to a MCROF. Also, as noted previously, the former landfill at the Tuncurry Waste Management Centre is in the process of being capped and may not be available to accept any material rejected from the MCROF.

- *EIS comment:* The existing access to the Site from major roads and highways.

Our comment: There is a more appropriate alternative site, the Minimbah landfill, which is closer to, and has better access established to, the Pacific Motorway.

Air Quality and Odour (EIS Section 6.3 and Appendix L)

The EIS includes a statement that an Air Quality and Odour Assessment was undertaken, which concluded that nearby premises would not be adversely affected by dust or odour with the implementation of mitigation measures, including use of odour control systems.

There has been no assessment of any potential impacts of the MCROF on the approved subdivision of our clients' land, nor the two (2) additional dwelling locations facilitated via that consent.

The following comments are made in relation to the Air Quality Impact Assessment (AQIA):

AQ1. The AQIA is based on climate data from Taree Airport AWS station.

As more representative weather data is available from the Forster Marine Rescue station, the Taree data does not appear to represent the most suitable data source for modelling.

Given the high proportion of westerly winds recorded at Taree AWS, it is likely that the model would under-represent the frequency of winds from north-easterly directions and may not represent the worst-case scenario. Therefore, the AQIA should be critiqued to understand whether the model results are representative of the site.

AQ2. As above, the local meteorological conditions described in Section 5 of the AQIA are based on Taree Airport and are not representative of the site.

AQ3. While peak-to-mean (P/M) factors are described in Section 4.1.2 of the AQIA, the assessment does not provide any further information on how the factors are applied to the modelled odour sources in Section 7.3.1 of the assessment.

Also, there is no information on whether the modelled odour impacts have considered the P/M factors. As such, it is not possible to determine whether the

results actually represent the worst-case estimate of potential impacts at sensitive receptors based on 1-second concentrations.

AQ4. The AQIA should draw a clear conclusion as to whether any 'odour buffer' is necessary and under what circumstances and/or conditions.

The EIS mentions that a future odour buffer (potential) would be a matter for Council to consider 'and is not part of the SSD proposal'.

The mere mention of the potential need for an odour buffer to mitigate odours suggests that this should be a matter for the AQIA to consider and determine.

The AQIA should be subject to a thorough peer review process to verify its findings.

Also, site-specific odour measurements should be obtained for the Tuncurry Waste Management Centre (TWMC) for consideration in the AQIA in relation to cumulative odour impacts from the MCROF and TWMC.

Noise (EIS Section 6.4 and Appendix M)

The EIS includes a statement that an Acoustical Report was undertaken, which concluded that noise levels would not be expected to reach disturbance level, and vibration would not be a concern.

While it is noted the Acoustical Report found that traffic noise is a dominant feature of the ambient noise environment on our clients' land, there has been no assessment of any potential impacts of the MCROF on the approved subdivision of our clients' land, nor the two (2) additional dwelling locations facilitated via that consent. The additional dwelling locations will be closer to The Lakes Way/Midge Orchid Road intersection and the MCROF location, raising potential sleep disturbance issues.

Page 9 of the Acoustical Report notes that there is no time restriction on when heavy vehicles can access the site.

This is particularly important because, with respect to the issue of noise, the EIS notes that the facility would be operational 24/7. The probability is that there will be some heavy vehicle movements at night and we note that this was considered in the Acoustical Report.

Section 8.1 of the Acoustical Report states :

As the site is proposed to operate 24/7, we have assessed operational noise emissions from the key plant items and work processes during the busiest 15-minute assessment window at all times (DAY/EVENING/NIGHT). At night, however, we have assessed roller doors as closed, whereas during the day and evening, roller doors are assessed as open.

Our clients have concerns about the effectiveness of the assumption that roller doors will be closed at night. The 24/7 operations, and heavy vehicle deliveries and offtake during night-time hours, suggest that there may be a propensity for roller doors to be left open at various times of the night.

In view of this, the Acoustical Report should be revised to provide a worst-case assessment of noise impacts on the existing residence on our clients' land and the additional dwelling locations (which will be closer to the MCROF location). This should include consideration of noise from heavy vehicles on The Lakes Way decelerating and accelerating to enter and leave the MCROF during the night-time period, noting that no heavy vehicle access is currently available to the Tuncurry Waste Management Centre facility at night.

Also, consideration should be given to the imposition of a curfew window, with no night-time heavy vehicle receivals/offtake, unless and until independent monitoring demonstrates that sleep disturbance triggers are not exceeded at the nearest residence(s).

Biodiversity (EIS Section 6.5 and Appendix N)

This issue is related to the above issue concerning suitability of the site.

From a biodiversity impact avoidance perspective, a fundamental principle of the Biodiversity Assessment Method (BAM) and broader environmental assessment frameworks is that development should be preferentially directed towards sites that minimise ecological disturbance and associated environmental risks.

The Secretary's environmental assessment requirements (SEARs) include:

The BDAR must document the application of the avoid, minimise and offset framework including assessing all direct, indirect and prescribed impacts in accordance with the Biodiversity Assessment Method 2020.

The *avoid–minimise–offset* framework, or hierarchy, has its basis in legislation via Section 6.3A (*Avoid, minimise and offset hierarchy*) of the *Biodiversity Conservation Act 2016*, viz:

*For the purposes of the biodiversity offsets scheme, the **avoid, minimise and offset hierarchy** is the principle that avoiding, minimising and offsetting the impacts of actions on biodiversity values be approached as follows:*

- (a) the proponent of the action first takes all reasonable measures to avoid the impacts of the action on biodiversity values,*
- (b) after taking all reasonable measures under paragraph (a), the proponent then takes all reasonable measures to minimise the impacts that have not been avoided,*
- (c) having taken the measures under paragraph (b), the proponent then takes biodiversity conservation measures under the biodiversity offsets scheme to offset or compensate for any residual impact on biodiversity values.*

While the Biodiversity Development Assessment Report (BDAR) demonstrates that the impacts of the proposed MCROF can be quantified and offset in accordance with the Biodiversity Offsets Scheme (BOS), the issue of site selection remains central to the application of the *avoid–minimise–offset* hierarchy.

In this regard, the EIS provides limited evidence that the Midge Orchid Road site represents the option with the least biodiversity constraint, with the site selection rationale focusing largely on land ownership and proximity to the existing (former) landfill rather than a

transparent comparison of feasible alternative locations which could avoid biodiversity impacts altogether.

A robust alternatives assessment would be expected to consider whether previously cleared or historically disturbed land could accommodate the proposed use with substantially reduced ecological impacts.

In particular, the existing waste facility land at Minimbah, which has been already modified and prepared for a similar purpose, may represent a more suitable option from an avoidance perspective.

Directing intensive waste infrastructure to an already disturbed setting would be more consistent with established impact avoidance principles, as it would reduce the need for vegetation clearing, habitat fragmentation and associated biodiversity offset obligations.

It may also lessen broader cumulative environmental risks, including air quality and amenity impacts (such as odour) affecting nearby residents and traffic along key regional routes between Tuncurry and surrounding localities.

In the absence of a clear comparative assessment demonstrating why such alternatives are not feasible, it is difficult to conclude that opportunities to minimise overall cumulative environmental impacts have been fully explored.

Water Cycle Management Strategy (EIS Section 6.6 and Appendix P)

The following comments are made in relation to the Water Cycle Management Strategy (WCMS):

- W1. The MUSIC model in the WCMS adopts a mixed land use of 'forest' (1.9 hectares) and 'rural' (1.92 hectares) for the pre-development case. As described in Section 1.1 of the WCMS, the site is 'predominantly bushland' and is entirely vegetated with heath/forest vegetation (with reference to Figure 13 of the BDAR).

While naturally disturbed in places due to fire, there is no evidence of any rural land uses that would substantiate the adoption of the mixed pre-development land uses. Therefore, the pre-development land use assumptions significantly over-represent the pre-development pollutant loads and are inconsistent with *MidCoast Council's Guidelines for Water Sensitive Design Strategies* (October 2019).

- W2. The treatment train adopts swales and raingardens with an unlined base, allowing exfiltration into the underlying sands. As detailed in Table 7-8 of the WCMS, the exfiltration rate for raingardens has been set at 250mm/hr which is likely to apply to swales.

There are no details of swales in Section 7.3 of the WCMS, and no information on how swales have been configured and/or whether they have a post-development treatment function in relation to the contributing catchments.

It is not clear whether the swale treatment, or the exfiltration losses from swales, have been accounted for in the post-development pollutant loads and analysis of NorBE targets.

- W3. Groundwater levels are assumed to be 1.2 metres AHD (existing) based on a single borehole measurement in September 2025 (Geotechnical investigation by HGS, 2025). As the HGS report did not include any analysis of seasonal groundwater fluctuations, there is significant uncertainty regarding the suitability of the adopted levels for raingarden and infiltration basin designs. More detailed groundwater investigations are required to determine the actual variation in ground water levels at the site.

The WCMS, MUSIC model and geotechnical investigation should be subject to a thorough peer review process to verify findings.

Bushfire (EIS Section 6.9 and Appendix S)

The following comments are made in relation to the Bushfire Assessment Report:

- BF1. The Preliminary Hazard Analysis (PHA) at Appendix V of the EIS identifies accepted criteria for incident propagation for the digester as being a radiant heat tolerance of 23kW/m².
- BF2. Plot 5 of the Bushfire Assessment Report adopts tall heath as the predominant vegetation, which is inconsistent with the finding of the BDAR.
- BF3. Adoption of a vegetation formation of forest/dry sclerophyll forest would be consistent with the findings of the BDAR and would likely identify a Bushfire Attack Level (BAL) of BAL-29 for the digesters. This indicates that the digesters may be expected to be subject to radiant heat flux (RHF) of up to 29kW/m² during a bushfire.

This would affect the assumptions of the PHA (which are based on a maximum radiant heat tolerance of 23kw/m² for the digesters before ignition).

In relation to BF2 and BF3 above, the Bushfire Assessment Report should be revised to address any inconsistencies with the BDAR.

It is important that the assumptions of the PHA be reviewed against a more conservative vegetation formation/classification of forest/dry sclerophyll forest for Plot 5 in the Bushfire Assessment Report, and potential RHF of up to 29kW/m² at the digesters.

Traffic (EIS Section 6.9 and Appendix T)

Preceding sections of this assessment have discussed concerns in relation to the need for heavy vehicles along the already compromised roads and intersections along The Lakes Way and Failford Road to the Midge Orchid Road site proposed for the MCROF.

The findings of the Transport Impact Assessment (TIA) have been noted and the following comments made:

- There will be a noted drop in performance of The Lakes Way/Midge Orchid Road intersection as a result of additional heavy vehicles accessing/egressing the MCROF facility from/to The Lakes Way. This raises the question as to whether there is a need for acceleration and deceleration lanes to be provided for heavy vehicles at The Lakes

Way/Midge Orchid Road intersection to minimise impacts on other northbound and southbound traffic using The Lakes Way.

- The intersection at The Lakes Way and Failford Road is beyond its functional capacity with or without the Project. This raises the question as to whether there is a better alternative site available for the MCROF which would not necessitate travel for heavy vehicles via The Lakes Way and Failford Road.

Conclusion

Our clients reserve their rights to review amended documentation and provide further comment on this proposal.

Also, if the proposal is to go ahead, our clients seek:

- the establishment of a monitoring regime and complaints resolution process; and
- if the proposal results in any fall in property value (of either or both the parent lot and the additional allotment(s) in the approved subdivision):
 - compensation for any fall in property value; and/or
 - land acquisition.

Yours faithfully

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