

Light Horse Business Centre

Application No: 06_0139

Proponent's Response to Submissions (PR6) to DOP during the Exhibition Period

Objector: Sumy (Tesrol Holdings Pty Limited)

Executive Summary

APP Corporation Pty Limited acting on behalf of Sumy (Tesrol Holdings Pty Limited) (**Sumy**) sent a letter dated 19 February 2009 to DOP (Submission #86).

The issues raised by Sumy are:

- Inability of Sumy to obtain access to its land resulting in a consequential inability to proceed to redevelop its land
- The existence of an access "handle", said to restrict access for Sumy to Archbold Road
- Infrastructure contributions
- Noise
- Final Landform
- Drainage Easements
- "Obligation" to convert the ROW into a public road

The Proponent responds to each of these issues below.

As a general comment, Sumy's submission is directed to its frustration and inability to develop its own land. Sumy admits its property was, in effect, land-locked by the construction of the M4 Motorway. It also admits that its development application with Council has been unable to proceed as a result of the lack of legal access to Sumy's site. This is a matter that the Proponent has attempted, on a commercial basis, to resolve with Sumy over the years, to no avail.

Inability of Sumy to obtain access to its land

Sumy states (at page 3):

"The ROC in favour of the Light Horse site and its adjoining owner Hansen is intended to provide the vehicle access to the site from Old Wallgrove Road. This ROC traverses land owned by Australand to the immediate east as shown on the ownership plan. The applicant proposes to utilise this ROC for vehicle access for the expected life of operations which is stated as 26 years. This is not

considered a satisfactory and suitable arrangement to provide the access to the site via the ROC which will be traversed by the public to this waste facility....

It is suggested that by applying a suitable condition of consent to the subject application to formalise this ROC as a public road, this will also enable both Sumy and Australand to commence development within their respective sites in accordance with SEPP 59".

This is not a relevant planning matter to be considered during the assessment of the application for the Project. The Proponent has demonstrated the way in which vehicular access to the Site will be arranged for the Project. Access is not sought across Sumy's land and, to the Proponent's knowledge, Sumy's application does not propose access across its land the subject of the Project.

Also, it is noted that Australand has not objected to the Project.

The existence of the access "handle"

Sumy states (at page 3):

"...the Light Horse Waste Facility should be required to make provision for the road systems in accordance with the Precinct Plan and action the removal of the access handle.

It is requested that a condition of consent relating to the approval to construct a public road over this access handle be enforced to rectify this situation, which will facilitate a link through to Archbold Road and enable the Sumy land to be developed for employment purposes".

The access handle referred to by Sumy is a parcel of land being Lot 10 DP 241859 owned by one of the companies that form the Proponent. This land does not form part of the Project. The Proponent strongly objects to the imposition of a condition of this kind upon the Project.

Again, this matter has been the subject of extended negotiation and correspondence between Sumy and the Proponent, including a proposed developer agreement. To date, Sumy has declined to participate, preferring instead to await the construction of the proposed collector road through the Australand site. See correspondence at Appendix 1.

Infrastructure Contributions

Sumy states (at page 4):

"Blacktown Council has provision for a Section 94 contribution from development towards road upgrades and improvements in the area as well as drainage and land needed for public purposes. The proposed waste facility should be required to contribute towards the improvements in the area with the payment of the Section 94 contribution.

The Waste Facility is a significant land use activity and will be a long term development and the applicant should be required to contribute to the upgrade to facilities in the area as required under Blacktown Council's contribution plan.

The precinct road in the alignment of the ROC maybe in part funded through Section 94 Contributions or a Voluntary Planning Agreement.

It is also noted that this Major Project Application should be required to contribute to the State Infrastructure Levy for improvements to regional roads in the area".

The proponent has offered both in the EA and directly in discussions with the DOP to make both local and regional infrastructure contributions. The Proponent is happy to make these contributions through a VPA or pursuant to Council's Section 94 Contributions Plan or a combination of both.

Noise

Sumy states (at page 4):

"The noise assessment report accompanying the application has not had regard to the nearest adjoining land owned by Sumy and where there are any adverse impacts resulting from noise generation onto the adjoining land. The noise assessment needs to be consistent with the planning position under SEPP 59 that noise generated from the development should be restricted for the whole property and note impact on adjoining properties".

This objection is ill-founded and misconceived for a number of reasons. First, it fails to take into account the existing activities on the Site which, (in addition to quarrying, blasting and digging) are exactly the same crushing, grinding and recycling activities that have been undertaken on the Site for the previous 30 or so years.

To that extent (and excluding quarrying), the proposed activities are no more than a continuation of existing uses to which, to the Proponent's knowledge, Sumy has not previously objected.

The Proponent refers Sumy to Section 10 of the EA (page 204) which provides an assessment of the potential for noise from the Project to impact the surrounding community, taking into consideration the existing noise conditions. It also outlines noise mitigation measures to be employed.

The noise impact assessment assessed potential noise impacts associated with construction works, general site operations, project-related traffic on the roads surrounding the site and cumulative impacts from the Project and existing industrial facilities in the area.

The methodology used was in accordance with the DECC (2000) *Industrial Noise Policy* (INP), together with the DECC (1994) *Environmental Noise Control Manual* (ENCM) and DECC (1999a) *Environmental Criteria for Road Traffic Noise* (ECRTN).

The EA recommends certain management/mitigation measures that the Proponent is prepared to undertake as part of its conditions of consent, should the Project be given approval. The EA (at page 219) provides:

"Given the site's location near to residences, due consideration was given from the outset to minimising potential noise impacts to the surrounding neighbours. The Project design incorporates the following noise mitigation measures, which were included in the noise modelling:

- *Restriction of normal hours of operation to 6am to 10pm, with landfilling operations further restricted to the hours between 6am and 6pm (receipt of material would only occur after 10pm on occasion); and*
- *Construction of impervious barriers at various positions around the facility, including 10m high barriers to the north, north-west, west and south of the main area of operations and retention of the existing earth mound to the north-east of the quarry pit.*

In addition, it is recommended that the following noise mitigation measures be included in a Noise Management Plan prepared for the site, potentially as part of the overall WMP:

- *All on-site, fixed and mobile diesel powered plant, excluding road vehicles, are to be correctly fitted and maintained in accordance with the*

manufacturer's specifications. Particular attention is to be given to engine exhaust systems and the care and maintenance of mufflers.

To reduce construction noise experienced at the nearby residences, the following ENCM time limits for construction activities where construction noise is audible at residential premises will be adhered to:

- *Monday to Friday, 7am to 6pm;*
- *Saturday, 8am to 1pm (or 7am to 1pm if inaudible at residential premises); and*
- *No construction on Sundays or public holidays".*

The report concludes (at page 220) that noise levels generated by the Project during construction and operations are not predicted to exceed relevant DECC criteria at sensitive receivers and can be managed by implementation of management measures outlined above.

Further, the EA concludes, **"no adverse cumulative impacts from Project noise plus existing industrial noise in the area are predicted. Night-time operations are not expected to cause sleep disturbance and no significant noise impacts from road traffic generated by the Project are predicted"** (emphasis ours).

Final landform

Sumy states (at page 4):

"The waste facility during its life may at some stage require drainage easements over adjoining properties to be capable of draining water to a natural water course. No description or provision for drainage easements have been made from the landfill operations. Pending the outcome of the final landform the Light Horse waste facility may require drainage easements over the Sumy land; this should be accommodated in any conditions of approval.

The environmental assessment report has not addressed the adjoining Sumy land and the resulting final landform that should be commensurate with the existing natural ground levels at the property boundaries.

Concern is raised that the Waste Facility will finish with large mounds around the perimeter of the site and the area between the mound and the property boundary may become an area that is not maintained by the land owner. The finished ground levels should match the existing natural ground levels at the boundary and should where possible represent a natural landform and details on how the land will be returned to natural land level, whilst causing no impact to the Sumy land should be provided".

The Proponent directs Sumy to:

- Section 3.9 of the EA - Landfill Closure Strategy; and
- Appendix M of the EA - Extraction and Rehabilitation Plan prepared by Hyder Consulting (**Hyder Report**).

At page 79 of the EA it is stated:

"The objective of the landfill closure strategy is for rehabilitation of the landfill/quarry void to ensure it does not cause environmental harm and creates a final landform which is stable and supports the post-landfilling landuse. This will minimise potential for long term adverse impacts.

The final landform of the landfill area will be a gently sloping surface, consistent with topography of surrounding area. Throughout operations, progressive rehabilitation will take place to the extent possible. The Extraction and Rehabilitation Plan prepared by Hyder Consulting dated May 2007 (contained in Appendix M, Volume 2) details the rehabilitation plan for the pit, MPC and overburden stockpiles included within the 'proposed area of operations'. The plan makes reference to the requirements and intended future land uses specified within SEPP 59 –Eastern Creek Precinct Plan.

A landfill closure plan will be developed and submitted to DECC for approval 12 months prior to the estimated completion date for landfilling of waste. The plan will be developed with consideration to relevant regulations, guidelines and policies for landfill closure planning and implementation, and conditions of consent. It will include:

- *objectives for landscape management and rehabilitation;*
- *a conceptual plan and proposed implementation methodology for decommissioning and landscape management and rehabilitation to achieve the objectives (including an indicative timetable for closure), along with proposed final land use for this area; and*
- *post-landfilling monitoring and maintenance program to ensure the long-term integrity of the landfill and that it does not result in pollution of the surrounding environment. This will address air quality, protection of land use and local amenity, drainage, erosion and sediment control and monitoring and reporting practices. Post-landfilling monitoring will cover site settlement, leachate collection, gas collection and stormwater.*

Final capping will be in accordance with relevant DECC guidelines for solid waste landfilling. Final surface cover material will be VENM or an EPA approved substitute material. The VENM may be sourced from existing overburden stockpiles currently on-site which have been assessed by Douglas Partners Geotechnical Assessment of Material dated April 2006. Final capping is anticipated to require:

- *prevention of infiltration of rainwater to less than 10% of the monthly average rainfall;*
- *prevention of the uncontrolled release of landfill gas by ensuring methane concentration at surface does not exceed 500ppm at any place on the landfill cap; and*
- *maintenance of maximum permissible leachate levels inside landfill cells.*

The Hyder Report (at page 29) provides that the final landform at the completion of rehabilitation will be as industrial employment lands to conform to the objectives of SEPP 59. The fill level of the pit will be raised to form an appropriate topography to meet the surrounding surface levels.

Drainage easements

Sumy states (at page 4):

"The waste facility during its life may at some stage require drainage easements over adjoining properties to be capable of draining water to a natural water course. No description or provision for drainage easements have been made from the landfill operations. Pending the outcome of the final landform the Light Horse waste facility may require drainage easements over the Sumy land; this should be accommodated in any conditions of approval".

Due to the contouring of the land and as identified in various Council drainage diagrams, it is unlikely that the Project area will require drainage easements across Sumy land. To the contrary, it is more likely that the Sumy land which drains to the Quarry North catchment will require drainage westwards along the northern boundary of the Proponent's land and to the precinct detention basin on the Proponent's land (not part of this proposal).

The Proponent has given an undertaking to Blacktown Council that it will grant the appropriate easements for drainage to Sumy at the appropriate time should they be required.

“Obligation” to convert the ROW into a public road

Finally, Sumy has made the extraordinary suggestion that the proponent should bear the cost and carry out the construction of a collector road connecting Old Wallgrove Road with the Proponent's land. This is, with respect, a ludicrous suggestion and one that the Proponent vehemently opposes for the following reasons:

- The construction of a collector road is generally the responsibility of the landowner through whose land it passes (Australand);
- Australand has already entered into a funding agreement with Blacktown Council in respect of the Collector road;
- The precise route of the future Collector road has not yet been determined and may or may not be along the same route as the ROW;
- It is not legally permissible for the Proponent to construct a road across another's land;
- The Proponent already shares with Hanson a beneficial use of a registered right of carriageway and until a public road is constructed has no requirement or need for another means of access for the Project; and
- Sumy's suggestion is wholly without merit and motivated only by its own inability to use the ROW to progress the development of its own land.

Conclusion

Sumy's submission is not based on reasonable planning or environmental concerns. It is a self-serving document with the objective to manipulate the DOP to imposing conditions upon the Project to enable Sumy to develop its own land. Its submission should be given no weight.