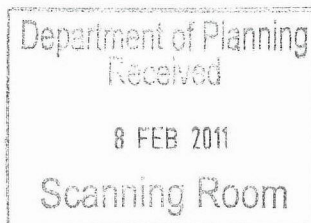


Our Reference: IMS 2786173
Your reference: 1009800 and 10_0077
Contact: Allison Cattell
Phone: 02 4732 7909

4 February 2011

Major Development Assessment
Department of Planning
GPO Box 39
Sydney NSW 2001



Dear Chris Ritchie,

**Exhibition of Environmental Assessment
Proposed Oily Liquid Waste Treatment Facility
Lot 330 in DP 575290, 10-12 Smith Street, Emu Plains NSW 2750**

I refer to your Environmental Assessment (EA) dated September 2010 (Project No.3439.001) received by Council 26 November 2010.

Council's Development Services Department offers the following comments for your consideration of the proposal:

History

The applicant/operator ("No Fuss") of this unit previously occupied Unit 71, 37-47 Borec Road Penrith under the time-limited Development Consent No.07/0862. The unit was vacated before the consent expired and Council received complaint. This unit also caught on fire whilst in the tenancy of 'No Fuss'. The unit was then vacated to Unit 1, 10-12 Smith Street, Emu Plains and a time-limited consent (No.08/1247) was issued for "use of the premises - storage and disposal of collected effluent (holding tank capacity up to 80,000 Litres)". This consent is due to lapse this month.

There is a history of odour complaints in the area, particularly in hot weather. Submissions and odour diaries kept by complainants describe fowl overpowering sewage smells.

Proposed and continued use of the site

The scope of the approval being sought under this application is limited to Unit 2. The applicant/operator has been advised in writing of this condition and has been advised to include the use of Unit 1 into the scope of the EA. It appears this advice was not heeded. Consequently, the assessment of the current application for the use of Unit 2 will need to assume Unit 1 is not being used by the operator; ensuring all services and required provisions are capable of being achieved in Unit 2.

Council has serious reservations about granting any continued use of the site, especially in perpetuity. Compliance with the current consent is under investigation, particularly whether an Occupation Certificate was sought and issued for the site. This raises questions as to whether work and certification required by the consent was undertaken.

The application is not supported by Council for the above referred reasons.

Local Planning Instruments

Local Environmental Plan (LEP)

The Industrial Land LEP 1996 was superseded 22 September 2010. The planning framework outlined in the EA does not satisfactorily address Penrith LEP 2010 which now applies to the site.

The site is zoned IN1 (General Industrial). The proposed use is likely to be defined as a 'waste management facility' which is **not a permissible land use in the zone**. A 'waste management facility' is separately defined as:

"A facility used for the storage, treatment, purifying or disposal of waste, whether or not it is also used for the sorting, processing, recycling, recovering, use or reuse of material from that waste, and whether or not any such operations are carried out on a commercial basis. It may include but is not limited to:

- a) An extractive industry ancillary to, required for or associated with the preparation or remediation of the site for such storage, treatment, purifying or disposal, and*
- b) Eco-generating works ancillary to or associated with such storage, treatment, purifying or disposal."*

NB: The Infrastructure State Environmental Planning Policy (ISEPP) permits "waste or resource management facility" which is a group term for "waste or resource transfer station", "resource recovery facility" and "waste disposal facility". It does NOT permit "waste management facility".

Except as otherwise permitted and determined by the Minister for Planning under Part 3A of the Environmental Planning Assessment Act 1979 (as amended), a waste management facility is prohibited in the zone. The application is not supported by Council for this reason.

Should the application proceed, consideration is to be given to the aims and objectives for the plan and the zone as well as provisions pertaining to design and land capability. This includes relevant flood controls referred later in this submission.

Draft Local Environmental Plan

There is no draft LEP applying to the site.

Development Control Plans

Penrith Development Control Plan 2010 applies to the site. Should the application proceed, Part A (Introduction), Part B (General Principles), Part C (Site Planning and Design Principles) including C3 (Water Management), C5 (Waste Management), C10 (Transport, Access and Parking), C12 (Noise and Vibration), D4 (Industrial development) are to be considered in the proposal. Your attention is also drawn to Part C, Section 3.5 (Flood Liable Land) in relation to flooding (refer to heading titled "Flooding and stormwater" later in this report).

State Planning Legislation & Instruments

Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Protection of the Environment Operations (PoEO) Act 1997, Roads Act 1993, State Environmental Planning Policy (SEPP) No.33 (Hazardous and Offensive Development) and SEPP (Infrastructure) 2008 apply to the site and may apply to the proposal.

Sydney Regional Environmental Plan No.20 – Hawkesbury Nepean River applies to the site and is a deemed SEPP. Environmental considerations throughout the instrument will apply. There are triggers for further assessment within this instrument for waste-related activities.

Other planning issues

Air/O odour

Odour is the main environmental concern in relation to the proposed development. The application is supported by an odour assessment prepared by The Odour Unit dated September 2010. This report states:

'Before discussing the findings of my assessment I would like to highlight the requirement of the DG that a quantitative assessment of the potential odour impacts of the project be made. Given that the plant is unable to commence operations until the necessary approvals are obtained it was not possible to inspect the plant in operation or determine, either qualitatively or quantitatively, the extent to which odour was being generated within the premises. As a result I have made this assessment based on my knowledge and experience in wastewater treatment (25 years experience) and as an odour consultant (since 1991).'

The report goes on to outline the most likely cause of odour stating:

'The Holding Tank, and the pit beneath it, is considered to be the major odour source. The proximity of this source to the roller door is potentially problematic, and could result in short term odour emissions if the door remains open during waste unloading. The design of the Holding tank and pit does not lend itself to full enclosure and capture of a foul air stream for

possible treatment. Similarly, the open design of the DAF renders the enclosure and air capture difficult.'

The report has suggested several odour mitigation measures, however it is very unclear which (if any) of these mitigation measures are going to be employed as part of the proposed development. The report seems to suggest that they would consider these measures if odour becomes an issue once operational. This approach is unsatisfactory as it is environmentally damaging and very difficult to manage from a compliance perspective.

Although the proposed plant is not yet operational, an assessment of a similar plant which is currently operating should be provided for assessment of odour and its mitigation prior to any approval be granted to:

- understand the potential impacts the proposed development may have on the surrounding area by way of odour;
- recommend with certainty specific methods of odour mitigation;
- provide the consent authority satisfactory information for the purposes of odour assessment to determine the matter; and
- assist the Department of Planning with all future compliance action that may be required by having documented acceptable outcomes.

The report outlines that the existing (no fuss) operations at the site does not cause any odour issue. There is a history of complaints about a sewage odour in the area, with the current "no fuss" operations being identified in submissions and odour diaries. Whilst it was difficult to confirm the source of the odour, it would be equally difficult to confirm it was not emanating from the site.

The management of the proposed development is being relied upon to minimise the likelihood of any environmental impacts. You are advised that environmental compliance has not been demonstrated by the current operators of the site.

Noise

The application is accompanied by a noise assessment prepared by BGMA Pty Ltd dated September 2010. The proposed activity is based in an existing industrial area and the operators are to ensure the use accords with the relevant noise criteria established in the aforementioned noise report and the provisions of the Industrial Noise Policy.

You are advised that there are remnant residential uses within the industrial zone in the vicinity of the site. Consideration is to be given to the hours of operation, particularly outside normal business hours (evening and weekends) and the noise generated from delivery vehicles and other sources.

Should the application be supported, it is recommended that appropriate conditions are placed on any consent to ensure that the activity does not adversely impact the adjoining properties.

Licensing

A license under the POEO Act 1997 is to be obtained from the Department of Environment, Climate Change and Water.

Environmental Management

Any impact from the proposed development on the environment will be dependant on how well it is managed. If the Department proceeds to approve this development, it is recommended that appropriate conditions are placed on the consent to ensure the appropriate daily and long term management of the site. This can be through an approved environmental management plan (EMP). Prior to approving any EMP's it is requested that it be forwarded to Council for review and comment.

Car parking, traffic and road work

A Traffic Report is recommended to address potential impacts including sufficient car parking provision on site. In particular, truck parking and manoeuvring is to be satisfactorily addressed and service vehicles must be able to enter and exit the site in a forward direction with all manoeuvring occurring on-site. Roads Act approvals will be required for any works within the Smith Street road reserve (vehicular crossings, stormwater and services).

Hours of operation

There are residential uses in the vicinity of the site, despite being located within an industrial zone. Whilst the site may operate 24 hours a day, operations are to be detailed such that noise from truck visits and cooling units are minimised, particularly during night time periods as outlined in the Industrial Noise Policy (INP).

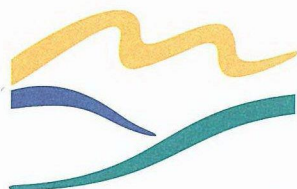
Community concern

There is a history of community concern in this area regarding odours and extensive community consultation should occur before progressing the proposal as unreasonable impacts on the existing community will not be accepted.

Flooding and stormwater

The site is classified as a low flood island. This is a major issue that has not been addressed in the Environmental Assessment Report. The application must demonstrate that:

- a. The proposed use is appropriate in a low flood island.
- b. Adequate provision can be made for the evacuation of employees and that any such plan is compatible with the requirements of the State Emergency Services.
- c. The proposal is socially responsible with the potential for loss of property and employment if business is impacted during flood events.



- d. The proposal is environmentally responsible if flood waters damage the treatment plant.
- e. Post development stormwater runoff from the site shall not exceed pre-development runoff.

The development must be assessed against the State Government Floodplain Development Manual and the objectives of Council's Development Control Plan. Insufficient information has been provided to assess the proposal. Flood, site and floor levels to Australian Height Datum and details of the plant and storage setup would be required to fully assess the proposal. Should further detail be required, including the 1% AEP flood level, please contact Council's Development Engineering Coordinator on 02 4732 7772.

The application as made is not supported. It does not represent the full use of the site (Unit 1 and 2) and the application does not satisfactorily address the relevant planning controls that apply to the site and the proposed use. Of particular concern is site suitability including odour, flood and noise mitigation.

Should you have any further queries, please contact me on 02 4732 7909.

Yours faithfully,

Allison Cattell
Senior Environmental Planner