



New South Wales Government  
Independent Planning Commission

# **Genesis Waste Management Facility MOD 6 (MP 06\_0139 MOD 6)**

## **Statement of Reasons for Decision**

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State of New South Wales through the Independent Planning Commission 2020

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## DEFINED TERMS

ABBREVIATION	DEFINITION
<b>AQIA</b>	Proponent's Air Quality Impact Assessment
<b>ARP</b>	Department's Assessment Report Paragraph number
<b>BLEP</b>	Blacktown Local Environmental Plan 2015
<b>Commission</b>	Independent Planning Commission of NSW
<b>Council</b>	Blacktown City Council
<b>Day</b>	7am – 6pm Monday to Saturday; 8am – 6pm Sundays and public holidays
<b>DCP</b>	Development Control Plan
<b>Department</b>	Department of Planning, Industry and Environment
<b>Department's AR</b>	Department's Assessment Report
<b>EA</b>	the Proponent's Environmental Assessment Report dated 30 August 2018
<b>EPA</b>	Environment Protection Authority
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EPI</b>	Environmental Planning Instrument
<b>EPL</b>	Environment Protection Licence
<b>ESD</b>	Ecologically Sustainable Development
<b>Evening</b>	6pm – 10pm
<b>Genesis WMF</b>	Genesis Waste Management Facility
<b>ha</b>	Hectare
<b>Impact Assessment Criteria</b>	Impact Assessment Criteria within the <i>Approved Methods for Modelling and Assessment of Air Pollutants in New South Wales (2016)</i>
<b>INP</b>	<i>NSW Industrial Noise Policy (2000)</i>
<b>ISEPP</b>	<i>State Environmental Planning Policy (Infrastructure) 2007</i>
<b>LGA</b>	Local Government Area
<b>Mandatory Considerations</b>	Relevant mandatory considerations, as provided by the Former Part 3A of the EP&A Act
<b>Material</b>	The material set out in section 5.1
<b>Minister</b>	Minister for Planning and Public Spaces
<b>Modification Request</b>	Proposed Modification 6 as described in the EA, RtS and Updated RtS
<b>Morning Shoulder</b>	6am – 7am Monday to Saturday; 6am – 8am Sundays and public holidays
<b>MPC</b>	Materials Processing Centre
<b>Night</b>	10pm – 7am Monday to Saturday; 10pm – 8am Sundays and public holidays

<b>NIA</b>	Proponent's Noise Impact Assessment
<b>PCC</b>	Penrith City Council
<b>Planning Secretary</b>	Planning Secretary of the Department of Planning, Industry and Environment
<b>Project Approval</b>	The original approval granted under MP06_0139 on 22 November 2009
<b>Proponent</b>	Bingo Industries Pty Ltd
<b>PSNLs</b>	Project Specific Noise Levels
<b>Recommended Conditions</b>	The Department's recommended conditions of approval in the draft modification instrument provided to the Commission (as amended on 7 April 2020)
<b>Roads and Maritime</b>	Transport for NSW (Roads & Maritime)
<b>RtS</b>	Proponent's Response to Submissions dated 29 May 2019
<b>SEARs</b>	Planning Secretary's Environmental Assessment Requirements
<b>SEPP</b>	State Environmental Planning Policy
<b>SEPP 33</b>	<i>State Environmental Planning Policy No. 33 – Hazardous and Offensive Development</i>
<b>Site</b>	The subject site located at 1 Kangaroo Avenue, Eastern Creek
<b>SMA</b>	Segregated Materials Area
<b>STOP Regs</b>	<i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i>
<b>t</b>	Tonnes
<b>tpa</b>	Tonnes per annum
<b>TSP</b>	Total Suspended Particulate matter
<b>Updated RtS</b>	Proponent's Updated Response to Submissions dated November 2019
<b>WARR</b>	<i>NSW Waste Avoidance and Resource Recovery Strategy</i>
<b>WSEA SEPP</b>	<i>State Environmental Planning Policy (Western Sydney Employment Area) 2009</i>

## 1 INTRODUCTION

1. On 27 February 2020, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning, Industry and Environment (**Department**) a modification request from Bingo Industries Pty Ltd (**Proponent**) seeking approval for Modification 6 to the Genesis Waste Management Facility (**Modification Request**). Following assessment, the Department considered that the Modification Request was approvable, subject to its Recommended Conditions in the draft modification instrument (**Recommended Conditions**).
2. The Department's Assessment Report (**Department's AR**) dated February 2020, at Department's AR Paragraph (**ARP**) 4.1.1 and 4.1.2, addresses why the Department considers the Modification Request to be within the scope of the power to modify a project approval under s75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).
3. The Commission finds the project is a transitional Part 3A project under Schedule 2, Clause 3BA of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (**STOP Regs**). Schedule 2, clause 3BA(3) of the STOP Regs allows a project approval to be modified under section 75W if it was lodged before the cut-off date (1 March 2018). In this case, the Planning Secretary issued the Secretary's Environmental Assessment Requirements (**SEARs**) on 3 April 2017. Therefore, the Commission is satisfied the Modification Request is a transitional Part 3A project and can be modified under s75W of the EP&A Act.
4. Accordingly, the Modification Request is determined by the Commission as delegate of the Minister for Planning and Public Spaces (the **Minister**) under the Minister's delegation in force on 27 February 2020. The then delegation was triggered as a result of the Department receiving more than 25 submissions objecting to the Modification Request.
5. Mr Peter Duncan AM, acting Chair of the Commission, nominated Ms Ilona Millar (Panel Chair), Dr Peter Williams, and Mr Tony Pearson to constitute the Commission determining the Modification Request.

## 2 THE APPLICATION

### 2.1 Site and Locality

6. The Genesis Waste Management Facility (**Genesis WMF**) is located at 1 Kangaroo Avenue, Eastern Creek (the **Site**).
7. The Department's AR describes the site and locality in ARP 1.2.1 to 1.2.8. The site comprises 120 hectares (**ha**), with the operational components of the Genesis WMF contained within an area of 52ha, located on two parcels of land identified as Lot 1 DP 1145808 and Lot 8 DP 1200048.

### 2.2 Background to the Application

8. MP 06\_0139 was approved on 22 November 2009 under the former Part 3A of the EP&A Act, authorising the resource recovery and landfill components of the Genesis WMF (**Project Approval**).
9. The Project Approval is summarised at ARP 1.4.1.
10. ARP 1.4.2 describes how the Project Approval has been modified on five occasions, and Table 1 of the Department's AR outlines these modifications.

## 2.3 Summary of the Modification Request

11. The Department's AR describes the proposed Modification Request at ARP 2.1.1, 2.2.1, 2.3.1, 2.3.2, 2.4.1 and 2.4.2.
12. In summary, the Modification Request seeks approval for the following:
  - increasing the proportion of the annual waste receival limit that can be landfilled from 700,000 to 1,000,000 Tonnes per annum (**tpa**),
  - extending the hours of operation for certain activities, and
  - increasing the noise limits set out in the Project Approval.

*Note: As described in ARP 2.1.2, the Modification Request does not seek to increase the overall permitted volume accepted at the site per year (2,000,000 tpa), does not alter the nature of waste accepted and does not involve any construction works or the installation of new equipment.*
13. The Proponent's position on the need for the Modification Request is summarised in ARP 2.2.3, 2.2.4, 2.2.5, 2.2.6, 2.3.3 and 2.4.3.

## 3 THE DEPARTMENT'S CONSIDERATION OF THE APPLICATION

14. The Department received the Modification Request in August 2018.

### 3.1 Strategic Context

15. The Department's AR summarises the strategic context of the Modification Request in Section 3 of the Department's AR. The Department is satisfied the Modification Request is consistent with the directions and objectives of the following plans:
  - *A Metropolis of Three Cities* (objective 35),
  - *Central City District Plan* (Actions 77 and 78), and
  - *NSW Waste Avoidance and Resource Recovery Strategy (WARR)*.

### 3.2 Statutory Context

16. The Department's AR summarises the statutory context of the Modification Request and describes how the Department is satisfied the Modification Request is a transitional Part 3A project. The Department's AR does not list all applicable EPIs in Section 4; however, ARP 1.2.6 describes the permissibility of the Modification Request under *State Environmental Planning Policy (Western Sydney Employment Area) 2009*. This is discussed further in paragraph 55.

### 3.3 Department's Engagement

17. The Department's AR sets out the Department's engagement and exhibition process at ARP 5.1.1 and 5.1.2. During the exhibition period, the Department received a total of 70 submissions including nine from public authorities, one from a special interest group and 60 from the general public. Of these submissions, 62 objected and eight provided comments.
18. A list of those making a submission, as received by the Department, is provided in Table 1 below. ARP 5.2.4.1 identifies that the main concerns raised to the Department include:
  - noise,
  - management of the facility (compliance issues),
  - traffic impacts,
  - air quality impacts,
  - odour,

- human health risk,
- quality of documents lodged,
- site suitability, and
- general concerns regarding the development assessment process.

Table 1 – Submissions received by the Department

Submitter	Position
<b>Government Agencies &amp; Council (nine submissions)</b>	
• Blacktown City Council ( <b>Council</b> )	Objected
• Penrith City Council ( <b>PCC</b> )	Comments
• The Environment Protection Authority ( <b>EPA</b> )	Requested further info
• Roads and Maritime Services <i>Note: RMS has joined with TfNSW, and is now referred to as TfNSW (Roads &amp; Maritime) (<b>Roads &amp; Maritime</b>)</i>	Comments
• TransGrid	Recommended conditions
• Endeavour Energy	Comments
• Other agencies were consulted and advised no comment: Environment, Energy and Science Group Transport for NSW Sydney Water	No comment
<b>Special Interest Group (Federal Member of Parliament) (one submission)</b>	Objection
<b>Community (60 submissions)</b>	<b>Objections</b>
<b>TOTAL</b>	70

- The Department's AR summarises the Proponent's Response to Submissions report (**RtS**), dated 29 May 2019, at ARP 5.3.1 and 5.3.2, and details the RtS notification process and submissions received by the Department in ARP 5.3.3, 5.3.4 and 5.3.5.
- In response to the submissions received, the Department requested additional information, as described at ARP 5.3.6. The Proponent submitted an updated RtS dated November 2019 (**Updated RtS**).
- The Department is of the view that the Updated RtS resolved many of the outstanding issues (ARP 5.3.7).
- The Department notes, at ARP 5.3.7, receipt of additional submissions from an adjoining property owner following the Updated RtS, which have been considered by the Department and the EPA. Both the Department and the EPA concluded that all issues raised in these additional submissions have been addressed through further clarification from the Proponent or the Department's Recommended Conditions.

### 3.4 Department's Assessment and Recommendation

- As identified in ARP 6.1.2, the Department considered the key assessment issues associated with the Modification Request to be air quality and noise impacts.
- The Department concludes, at ARP 7.1.6, that it considers the Modification Request is approvable, subject to the Recommended Conditions.

## 4 THE COMMISSION'S MEETINGS AND SITE INSPECTION

### 4.1 Stakeholder Meetings

25. As part of its process, the Commission met with relevant stakeholders as set out in Table 2 below. All meeting transcripts have been made available on the Commission's website.

*Table 2 – Summary of Commission Meetings*

Meeting	Date of Meeting	Transcripts/notes available
Department	17 March 2020	23 March 2020
Proponent	17 March 2020	30 March 2020
BCC	17 March 2020	23 March 2020
EPA	31 March 2020	16 April 2020
Virtual site inspection	2 April 2020	14 April 2020
Individual locality inspection	6, 7 & 8 April 2020	14 April 2020

#### 4.1.1 Meeting with the Department

26. At the meeting with the Department, identified in Table 2, the key discussion points included a summary of the Department's AR and Recommended Conditions, specifically the strategic merit of the Modification Request, air quality impacts, as well as noise impacts. The Department was accompanied at this meeting by its noise expert. The Department's representatives were asked questions, which they took on notice, and provided a written response on 7 April 2020. That written response from the Department was published on the Commission's website on 13 April 2020 and is summarised at paragraph 27.
27. In its response dated 7 April 2020, the Department provided further information to the Commission, including correspondence from NSW Health, further clarity around the Department's recommended air quality audit condition, the nature and hours of operation of uses surrounding the Site, and further details on noise emissions.
28. The Commission requested further information from the Department in relation to a submission received from an adjoining property owner describing concerns that the Department did not consider all submissions in undertaking its assessment. The Department provided its response on 22 April 2020 and it was published on the Commission's website on 24 April 2020. The details of the adjoining property owner submission and the Department's response is described further in paragraph 50.

#### 4.1.2 Meeting with the Proponent

29. At the meeting with the Proponent, identified in Table 2, the key discussion points included the Proponent's response to the Department's AR and Recommended Conditions, noise and air quality impacts, and any complaints received regarding the Genesis WMF. The Proponent's representatives were asked questions, which they took on notice, and provided a written response on 23 April 2020. The Proponent's response was published on the Commission's website on 24 April 2020 and is summarised at paragraph 30.
30. In its response dated 23 April 2020 the Proponent provided further information to the Commission regarding costs associated with sealing the haul road into the landfill pit. This response identified that the ongoing maintenance cost resulting from the heavy vehicle traffic of the asphalt paved option make this option unviable. The Proponent reiterated its position that the proposed dust controls have high efficiency outcomes and are adequate. The Commission's views on this is discussed at paragraph 85.

### 4.1.3 Meeting with Blacktown City Council

31. At the meeting with the Council, identified in Table 2, the key discussion points included the Council's response to the Department's AR and Recommended Conditions, the proposed extension to hours of operation and noise and air quality impacts. The Council's representatives were asked questions, which they took on notice, and provided a written response on 27 March 2020. The Council's response was subsequently published on the Commissions website on 30 March 2020 and is summarised at paragraph 32.
32. In its response dated 27 March 2020, the Council confirmed it had reviewed the air quality information provided by the Proponent in the Updated RtS and agreed with the Department's Recommended Condition for the implementation of an AQMP (see paragraph 77). The Council also provided a copy of its own noise readings taken in Erskine Park and Minchinbury.

### 4.1.4 Meeting with Environment Protection Authority

33. At the meeting with the EPA, identified in Table 2, the key discussion points included whether the current operations have been the subject of any complaints to the EPA, details regarding the noise assessment criteria, potential air quality impacts and the Department's Recommended Condition 37a. The EPA's representatives were asked questions, which they took on notice, and provided a written response on 8 April 2020. The EPA's response was published on the Commission's website on 13 April 2020 and is summarised at paragraph 34.
34. In its response dated 8 April 2020, the EPA provided further information to the Commission regarding any other similar landfill sites that incorporate sealed haul roads, of which the EPA was not aware of any, and provided suggested amendments to the Department's Recommended Condition 37a regarding the requirement of a site-wide air quality audit. These matters are discussed further in paragraph 82.
35. The Commission requested further information from the EPA in relation to a submission received from an adjoining property owner asking the Commission to impose further conditions within the Modification Instrument to regulate the resource recovery rates. The EPA provided its response on 28 April 2020 and it was published on the Commission's website on 28 April 2020. The EPA's response is described further in paragraph 51.

## 4.2 Public Meeting

36. The Commission scheduled a public meeting for Thursday, 2 April 2020, and prior notice was given by advertisement in local papers and in writing to those individuals and groups who had made a submission to the Department during exhibition. However, during March 2020 the Commonwealth and State Governments introduced restrictions on public gatherings and strict social distancing guidelines in response to the COVID-19 (Coronavirus) pandemic. As such, the Commission was unable to proceed with the public meeting as planned. The Commission instead encouraged interested individuals and groups to have their say on the Modification Request by way of written comments. Written comments are weighed the same as face-to-face oral submissions and have been carefully considered by the Commission as part of its decision-making process. Written comments were accepted up until seven days after the public meeting was due to be completed.
37. During this period, seven written submissions were received from members of the public, including two submissions from an adjoining property owner, and comments were also received from Penrith City Council (**PCC**). The concerns raised in the submissions are considered in paragraphs 48 to 53. The main concerns raised in the written submissions were:
  - concerns that the Department did not consider all submissions made prior to it making its

recommendation,

- inadequate assessment of air quality and odour impacts,
- overestimated need for the Modification Request,
- increased noise pollution,
- odour impacts,
- increased truck movements in the area (including concerns regarding increased diesel emissions),
- dust emissions impacting on surrounding businesses and services,
- concerns regarding queuing of trucks waiting to enter the site without appropriate street capacity to accommodate this,
- previous poor management of the facility,
- health impacts on residents from a recent fire at the facility,
- unsecured asbestos from trucks landing on surrounding roads, and
- proposed changes to the Department's Recommended Conditions.

#### 4.3 Site and locality inspection

38. The NSW Government's COVID-19 restrictions prevented the Commission from proceeding with a site inspection and locality inspection in the usual manner. As an alternative, a live virtual site inspection was held on 2 April 2020 via a video conferencing platform whereby the Commission nominated the itinerary and was guided by the Proponent around key locations at the site. The virtual site inspection was undertaken in real time and the Commission were able to make requests to see all aspects of the Genesis WMF operations and the Site. In addition, members of the Commission each individually undertook locality inspections between 6 and 8 April 2020 to view the external components of the Site, and visit key areas surrounding the Site to understand the Site's context.
39. Notes taken during the virtual site and individual locality inspections were made available on the Commission's website on 14 April 2020.

## 5 THE COMMISSION'S CONSIDERATION

### 5.1 Material considered by the Commission

40. In this determination, the Commission has carefully considered the following material (**Material**):
  - the Proponent's Environmental Assessment Report dated 30 August 2018, prepared by EMM Consulting,
  - all submissions made to the Department in respect of the Modification Request during the public exhibition period of 3 October 2018 to 17 October 2018,
  - the Proponent's RtS, dated May 2019 prepared by EMM Consulting, and associated documentation,
  - the Proponent's Updated RtS, dated November 2019 prepared by EMM Consulting, and associated documentation,
  - the Department's AR, dated February 2020,

- the Department’s Draft Modification Instrument,
- transcripts for the meetings identified in Table 2,
- letter from the Council dated 27 March 2020, described in paragraph 32,
- letter from the Department dated 7 April 2020, described in paragraph 27,
- letter from the EPA dated 8 April 2020, described in paragraph 34,
- observations made during the virtual site inspection (2 April 2020) and locality inspections (between 6 to 8 April 2020), described in paragraph 38 and 39,
- letter from the Department dated 22 April 2020, described in paragraph 28
- letter from the Proponent dated 23 April 2020, described in paragraph 30,
- further information from the EPA dated 28 April 2020, described in paragraph 35, and
- written submissions received by the Commission by 5pm on 9 April 2020 (seven (7) days after the public meeting was due to occur).

## 5.2 Mandatory considerations

41. In determining this application, the Commission has taken into consideration the following mandatory considerations for determining s75W modification requests (**Mandatory Considerations**):

- the public interest (section 5.2.1),
- the Modification Request (section 5.2.2), and
- any SEAR’s issued (section 5.2.3).

### 5.2.1 Mandatory Considerations: The Public Interest

#### *Proponent’s Consideration:*

42. In the RtS and Updated RtS the Proponent responded to community concerns that the Modification Request is not in the public interest. The Proponent has justified the Modification Request on the basis that it will achieve the delivery of the NSW Government’s waste goals by allowing the facility to better respond to waste disposal market demand and support the state resource recovery rates in the WARR.

#### *Department’s Assessment:*

43. The Department’s AR does not specifically address whether the Modification Request is in the public interest.

#### *Commission’s Findings:*

##### 5.2.1.1 Considerations relevant to the public interest

44. In determining whether the Amended Modification is in the public interest, the Commission considers the following to be relevant considerations:

- the objects of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**),
- the relevant principles of Ecologically Sustainable Development (**ESD**),
- response to the impacts identified in the community submissions, and
- provisions of the following EPIs that apply to the Site:

- *State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP)*,
- *State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)*,
- *State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP 33)*, and
- *Blacktown Local Environmental Plan 2015 (BLEP)*,

#### Objects of the EP&A Act (including the Principles of ESD):

45. The objects of the EP&A Act are set out in section 1.3 of the EP&A Act.
46. The objects of the EP&A Act relevant to this Modification Request are objects (a), (b), (c), (e) and (j).
47. The Commission is of the view that the Modification Request achieves the relevant objects of the EP&A Act for the following reasons:
  - The Modification Request will allow the Genesis WMF to continue the management of non-putrescible waste disposal and resource recovery and therefore promotes the proper management of the State's 'other resources', achieving Object (a);
  - The Modification Request is within the existing development footprint and land use and will not result in additional disturbance or impact on ecological resources. Although the Modification Request seeks to increase the per annum landfill cap, it will not increase the total capacity of the landfill pit or change the remediation requirements once the pit is filled. Therefore, the Commission considers the Modification Request to be consistent with Object (b) with respect to the principles of ESD;
  - The Modification Request is consistent with Object (c) regarding the orderly use of land because it utilises an existing quarry void and existing infrastructure to accommodate increased demand for Sydney based waste acceptance facilities;
  - The Commission is satisfied the Modification Request will not result in any additional ground disturbance and will not impact on any threatened and other species of native animals and plants or their habitats. It will also continue to provide a waste management/resource recovery facility in an appropriate location. Therefore, the Modification Request is consistent with Object (e); and
  - The Department and the Commission have engaged with the community and provided opportunities for the community to make submissions in relation to the Modification Request. Both the Department (ARP 5.2.4.1, 5.3.6, 5.3.7, 6.2.4 and 6.3.5) and the Commission (paragraphs 48 to 53) have considered the community's concerns relevant to the Modification Request. Therefore, the Commission is satisfied sufficient opportunity for community participation has been achieved, fulfilling Object (j).

#### Impacts Identified in Community Submissions

48. The matters raised by the community during the Department's exhibition period are summarised in ARP 5.2.4 and in paragraph 18.
49. In the submissions made to the Commission, the community reiterated its concerns about noise and air quality in impacts. Other concerns were also raised, as summarised in paragraph 37.

50. One submission from an adjoining property owner raised concerns that the Department did not consider all submissions prior to it concluding its AR and recommendation. The submission also contended that the Proponent's assessment of air quality and odour impacts is deficient. This submission was accompanied by copies of material previously submitted to the Department, including independent reviews of impacts in relation to air quality, waste management and occupational hygiene. The Commission referred this submission and attachments to the Department for comment (as detailed in paragraph 28). A response was received from the Department on 22 April 2020, stating all submissions made to the Department, including the submissions from the adjoining property owner, were considered in its AR and recommendation. No new issues have been raised in the submissions to the Commission that alter the Department's AR or recommendation.
51. A second submission from the same adjoining property owner referenced in paragraph 50 also sought that the Commission impose conditions in addition to the Department's Recommended Conditions. These proposed conditions have been considered by the Commission, and for the reasons outlined in paragraphs 85, 102 and 117 the Commission finds the conditions recommended by the Department and EPA, as amended by the Commission, to be appropriate for the anticipated impacts from the Modification Request. One of the conditions sought by the adjoining property owner would have imposed reporting requirements to verify the resource recovery rates at the Genesis WMF. The Commission has considered this condition and requested further information from the EPA with respect to the regulatory requirements of resource recovery under the WARR Strategy (paragraph 35). The EPA responded on 28 April 2020 advising resource recovery rates are not imposed via Environment Protection Licences (EPLs). These are State-wide targets identified in the WARR Strategy and there are a range of drivers, such as the waste levy (which applies to landfilling of non-recovered materials), to encourage facility operators to maximise recovery rates. The EPA, as the agency administering EPLs found that attempting to mandate this at a facility level via an EPL would be challenging. It would also be problematic if the Department was to monitor the resource recovery rates due to potential reliance of different information to that held by the EPA, which may lead to different rates being calculated. The Commission is satisfied that the EPA is able to monitor and incentivise resource recovery under the WARR Strategy and finds it is not necessary to impose additional reporting requirements under the Modification Instrument.
52. Other comments received by the Commission raised concerns with increased traffic impacts from the Modification Request. The Commission's consideration of traffic impacts is provided at paragraph 103 to 107.
53. For the reasons set out in paragraphs 61, 65, 86, 102, 107, 111, 114 and 117, the Commission finds the information submitted with the Modification Request has generally resolved most issues raised, and others have been addressed through the Recommended Conditions.

## Relevant Environmental Planning Instruments

### *Proponent's consideration*

54. The Proponent's EA declares the Modification Request to be consistent with the relevant EPIs.

### *Department's Assessment*

55. ARP 1.2.6 indicates the Modification Request is consistent with the WSEA SEPP because Schedule 1 Clause 1 makes a specific provision for non-putrescible landfill on the Site, thereby providing permissibility for the facility. The Department's AR does not address compliance with any other relevant EPI's.

### Commission's Findings

56. The Commission notes that the Modification Request is within the footprint of the Project Approval and involves land use already assessed and approved under the Project Approval.
57. The Commission has considered the relevant EPIs listed in paragraph 44 in further detail, as summarised below. The Commission finds the Modification Request to be consistent with the provisions of the relevant EPIs:
- State Environmental Planning Policy (Western Sydney Employment Area) 2009:

The primary objectives of the WSEA SEPP are to protect and enhance land for employment purposes and provide for coordinated development of the WSEA. The Site is located within Precinct 2 of the WSEA SEPP and is zoned IN1 General Residential. Although *Waste or Resource Management Facilities* are not a permitted use within the IN1 zone in WSEA SEPP, the Commission agrees with the Department's statement in ARP 1.2.6, whereby Schedule 1 of the WSEA SEPP provides an additional permitted use at the Site for the purposes of a waste facility for general solid waste (non-putrescible). The WMF continues to be consistent with the development standards within the WSEA SEPP, and the Modification Request does not introduce any concerns under this EPI.
  - State Environmental Planning Policy (Infrastructure) 2007:

The ISEPP requires a consent authority to consider whether a justifiable demand exists when determining a development application for landfill. Clause 123(c) relates to a new or expanded landfill and requires the consent authority to consider whether the land is degraded land and whether the development is located to avoid land use conflicts. The Commission is satisfied the Modification Request achieves the objectives of the ISEPP because it is in the same footprint as the Project Approval and will not amend the overall volume of waste accepted by the facility. The proposed increase to the landfill limit and hours of operation are not expected to generate unreasonable impacts in the context of the Site, subject to the Recommended Conditions.
  - State Environmental Planning Policy No. 33 – Hazardous and Offensive Development:

SEPP 33 aims to identify proposed developments with the potential for significant off-site impacts, in terms of risk and/or offence (e.g. odour, noise etc). A development is defined as potentially hazardous and/or potentially offensive if, without mitigating measures in place, the development would have a significant risk and/or offence impact, on off-site receptors. SEPP 33 was considered as part of the Project Approval and a number of hazard related conditions were imposed in accordance with the provisions of the SEPP. The Commission finds the Modification Request will not introduce any new potentially hazardous or offensive components to the existing development, under the Project Approval, and impacts associated with the increased hours of operation and per annum landfill limit can be appropriately mitigated through the Recommended Conditions;
  - Blacktown Local Environmental Plan 2015:

The Site is located within the Blacktown LGA. However, the development provisions relating to the Site are contained within the WSEA SEPP. There are no development standards within the BLEP that apply to the Site.

### 5.2.2 Mandatory consideration: The Modification Request itself

#### Proponent's consideration

58. The Proponent's Modification Request is summarised in paragraph 12. The Modification Request was not amended through the RtS or Updated RtS, but rather those documents provided further justification or clarity in response to issues raised in submissions.

#### *EPA's Advice*

59. The Commission has reviewed letters from the EPA to the Department dated 19 October 2018; 15 November 2018; 21 June 2019; 30 August 2019; 15 October 2019; 8 November 2019; and 6 February 2020. In this correspondence and at its meeting with the Commission, the EPA confirmed it is satisfied with the information provided, subject to the Recommended Conditions with respect to noise and air quality.

#### *Department's Assessment*

60. The Department is of the view that the Proponent has provided enough information to allow a full assessment of the Modification Request and potential impacts, and to ensure appropriate measures are implemented to manage any adverse impacts on surrounding receivers (ARP 7.1.4). The Department recommends that the Modification Request can be approved, subject to the Recommended Conditions (ARP 7.1.6).

#### *Commission's Findings*

61. The Commission agrees with the Department and EPA, set out in paragraphs 59 and 60. The Commission finds that the Modification Request provides enough detail to enable the Commission to make its determination.

### **5.2.3 Mandatory consideration: SEARs issued**

62. The Commission notes the Planning Secretary issued SEARs for the Modification Request on 3 April 2017. The SEARs required the Proponent to describe the Modification Request in detail, describe the need and justification for the proposal, and include a detailed assessment of noise, air quality, water, waste management, traffic and transport, and amenity impacts. The SEARs also required the Proponent to identify any proposed condition amendments.

#### *Proponent's consideration*

63. Table 1.2 of the Proponent's EA describes the way the SEARs have been addressed.

#### *Department's Assessment*

64. The Department's AR did not specify whether all SEARs were addressed by the Proponent.

#### *Commission's Findings*

65. The Commission has reviewed the Proponent's EA, RtS and Updated RtS and considers all information requested in the SEARs has been provided to enable the assessment of the Modification Request.

## **5.3 Key Issues**

66. The Commission views the key issues for consideration to be air quality and noise impacts. These issues are considered in detail below. The Commission has also addressed other issues, including traffic impacts and leachate.

### **5.3.1 Air Quality**

#### *Proponent's Consideration*

67. The Proponent's EA included an Air Quality Impact Assessment (**AQIA**) identifying the key pollutant as dust, and the main emission sources as waste handling and processing and trucks travelling along the haul road. Diesel fuel emissions were also identified. The Updated RtS included Appendix M (dated 22 October 2019 and prepared by EMM), which provided

further air quality advice relating to different landfill scenarios, noting changes to the volume of waste being transported to the landfill pit impacts the dust emissions from trucks travelling along the haul roads. The modelling included an analysis of predicted concentrations for three scenarios: a typical day (2,740 tonnes per day); a peak day (4,100 tonnes per day) and a theoretical worst-case scenario (5,400 tonnes per day).

68. The AQIA measured Total Suspended Particulate matter (**TSP**), PM<sub>10</sub> and PM<sub>2.5</sub>. The AQIA measured the baseline concentrations and combined these with the emissions modelled for the Modification Request to assess the cumulative impact. At its meeting with the Commission (detailed in Table 2) and in the Updated RtS advice (Appendix M described in paragraph 67) the Proponent described how the peak daily disposal rate would only occur five to ten days per year and the worst case scenario of landfill disposal is a highly conservative assessment and is unlikely to occur.
69. The predicted cumulative average TSP and PM<sub>10</sub> concentrations were predicted to comply with the Impact Assessment Criteria within the *Approved Methods for Modelling and Assessment of Air Pollutants in New South Wales (2016)* (**Impact Assessment Criteria**).
70. The AQIA predicted the PM<sub>2.5</sub> concentrations would exceed the Impact Assessment Criteria. However, the Proponent argued the background concentrations of PM<sub>2.5</sub> already exceed the Impact Assessment Criteria and the contribution resulting from the Modification Request would be minimal. The Proponent further argued that the proposed mitigation measures and boundary monitoring devices facilitate real time responses to reduce exceedances below the criteria. The Proponent maintains sealing the full length of the haul road is not viable, when taking into account the maintenance costs, and is unnecessary because the proposed controls are adequate with high efficiency outcomes (paragraph 30).

#### *Council Comments*

71. The Council did not raise any concerns with the potential air quality impacts during the Department's assessment of the Modification Request.
72. At its meeting with the Commission (Table 2), the Council requested the opportunity to review the air quality information in the Updated RtS. The comments provided by the Council (as summarised in paragraph 32) confirm that the Council did not raise any concerns regarding the air quality impacts and agrees with the Department's Recommended Condition 37 requiring the implementation of an Air Quality Management Plan (**AQMP**).

#### *Public Comments*

73. During both the Department's exhibition process and in written submissions made to the Commission, several concerns were raised in relation to air quality. The concerns primarily related to increased dust emissions and deficiencies in the Proponent's AQIA.

#### *Department's Assessment*

74. The Department's assessment of air quality impacts is provided in the Department's AR at ARP 6.2.5.2 to 6.2.5.10.
75. The Department was satisfied with the modelling approach adopted in the AQIA and noted the largest source of dust emissions to be the unpaved haul roads.
76. Although the PM<sub>2.5</sub> concentrations exceed the Impact Assessment Criteria, the Department acknowledged that the levels were already elevated due to the proximity of major motorways and the surrounding industrial environment of the locality. The Department also recognised that although the incremental impact of the Modification Request would be minor, the Genesis WMF as a whole is a contributor to air quality emissions in the locality (ARP 6.2.5.3 and 6.2.5.4).
77. Therefore, the Department has provided the Commission with Recommended Conditions requiring a Site-wide air quality audit of all operations, management practices and conditions of the Site (ARP 6.2.5.4 and Recommended Condition 37a) and the preparation of an AQMP

(ARP 6.2.5.5 and Recommended Condition 37). The site-wide air quality audit (at Recommended Condition 37a) must be prepared by an independent expert, to the satisfaction of the Planning Secretary, and will identify any mitigation measures required to address any exceedances, which may include sealing part or all of the site haul road.

78. The Department also noted that the operations of the Genesis WMF are currently regulated by the Department through monitoring requirements under the Project Approval and by the EPA through two EPLs.
79. At its meeting with the Commission set out in Table 2, the Commission asked the Department if consultation with NSW Health had occurred. In its response dated 7 April 2020 (paragraph 27) the Department provided correspondence from NSW Health noting the air quality issues have been addressed to the satisfaction of the EPA, and that the Recommended Conditions require the Proponent to apply best practice measures and to minimise air quality impacts.

#### *EPA's Advice*

80. The EPA noted the largest dust emission source is associated with the unsealed haul roads and accepted the Proponent's AQIA modelling and mitigation measures. In advice to the Department dated 8 November 2019, the EPA advised the letter from EMM dated 22 October 2019 (Appendix M of the Updated RtS) addresses the residual issues raised by the EPA and notes reactive measures can be used to minimise the potential for adverse impacts from site operations.
81. The EPA recommended conditions with respect to air quality management, the investigation of additional proactive emission control measures and the implementation of an AQMP, which were generally included in the Department's Recommended Conditions (as described in paragraph 77).
82. At its meeting with the Commission (Table 2) the EPA provided suggested amendments to the Department's Recommended Condition requiring a site-wide air quality audit (paragraph 77) to ensure the condition better aligned with the EPA's regulatory frameworks, guidance and best management practices and would provide mechanisms for continual improvement and maintained consistency with standard EPL conditions.

#### *Commission's Findings*

83. The Commission notes the findings of the Proponent's AQIA that TSP and PM<sub>10</sub> are within the Impact Assessment Criteria, as described in paragraph 69.
84. The Commission further notes the conclusion in the Proponent's AQIA and the EPA and Department's advice that PM<sub>2.5</sub> has been identified as exceeding the Impact Assessment Criteria. The predominant source of this impact is from dust emissions from the haul road, however other sources include waste handling and processing (paragraphs 67, 75 and 80). The Commission further notes that the particulate matter emission results for the representative peak day and the theoretical worst-case scenario models the potential for exceedance of the Impact Assessment Criteria. The Commission notes the Proponent has identified a range of mitigation measures that can be implemented, together with real time boundary monitoring, to control the potential cumulative exceedance days, and that the development of proactive and reactive management strategies is a recommended condition of consent from the EPA.
85. The Commission generally finds the conditions recommended by the Department and EPA to be appropriate with respect to the updated AQMP and site-wide air quality audit requirements. These Recommended Conditions 37 and 37a, as amended by the Commission, provide the mechanisms for ongoing monitoring of the entire Genesis WMF, including the increased hours of operation and per annum landfill cap to ensure a holistic approach is adopted to mitigating dust emissions at the Site. Noting the Proponent's and Department's consideration of sealing the haul road (paragraphs 30 and 77 respectively),

the Commission is satisfied Recommended Condition 37a provides flexibility for the site-wide air quality audit to identify appropriate mitigation measures, which may include sealing the haul road.

86. The Commission, therefore, finds that, subject to the Recommended Conditions, the potential air quality impacts associated with the Modification Request can be appropriately managed and mitigated.

### 5.3.2 Noise

#### *Proponent's consideration*

87. The Proponent's EA included a Noise Impact Assessment (**NIA**), which was carried out in accordance with the *NSW Industrial Noise Policy (2000)* (**INP**).
88. The Proponent's EA indicated that the presence of vegetated bund walls surrounding the Site (10m in height), the M4 Motorway to the north and vegetation to the west, provide acoustic barriers that significantly reduce the audibility of the WMF operations at the sensitive residential receivers.
89. The NIA also identifies that the noise limits under the existing Project Approval are unachievable because the background noise levels already exceed the criteria. Therefore, the NIA proposes Project Specific Noise Levels (**PSNLs**) in accordance with the INP and concludes the predicted Site noise emissions resulting from the Modification Request would meet the PSNL's at all assessment locations.

#### *Council Comments*

90. The Council objects to the proposed increased hours of operation because it will allow noise generating activities within night-time sleep disturbance periods.
91. The Council recommended a condition requiring the Proponent prepare a post commissioning report to validate the noise predictions submitted in the NIA (ARP 6.3.6.8).

#### *Public Comments*

92. Several submissions received by the Department raised concerns with noise generation, particularly with regard to the residential receivers in Minchinbury and Erskine Park.
93. Noise was also mentioned in the submissions received by the Commission.

#### *Department's Assessment*

94. In ARP 6.3.3.1 and 6.3.3.2, the Department noted the noise levels imposed on the Project Approval were imposed in a very different Site context. The land within the Western Sydney Employment Lands has been progressively developed since 2009, and the current noise environment is significantly altered, with the nearby Motorways (M4 and M7) and the rapid development of the industrial precinct. Therefore, in ARP 6.3.6.2 the Department agrees that the background noise levels are already in excess of the noise limits set in the Project Approval.
95. The EPA provided recommended noise levels to the Department. The Department concurred with the methodology used by the EPA to arrive at those levels and agrees with the condition recommended by the EPA (ARP 6.3.6.4).
96. The Department also included the Council's recommended condition (paragraph 91) in the Department's Recommended Conditions.
97. The Department concluded the potential noise impacts can be managed through the existing and Recommended Conditions.

### *EPA's Advice*

98. At its meeting with the Commission (Table 2) the EPA confirmed that all the issues it raised during the Department's assessment in relation to noise impacts have been adequately addressed through clarification from the Proponent in the RtS or Updated RtS or in the Department's Recommended Conditions.

### *Commission's Findings*

99. The Commission has considered all input from the Proponent, the Department, the EPA and the community.
100. The Commission agrees with the Department's analysis (paragraph 94) that the Site is in a high noise environment.
101. The Commission is also of the view that the predicted noise levels, as set out by the Proponent and in the condition recommended by the EPA, are within the INP's requirements.
102. The Commission agrees with the position taken by the Department (paragraph 97) and the EPA (paragraph 98) that the noise limits imposed by the Recommended Conditions will ensure the noise levels from the Modification Request are less than the applicable threshold and will not have an unreasonable impact on sensitive receivers in the vicinity of the Site.

### **5.3.3 Other issues**

#### *Traffic*

103. The Commission notes submissions received during the exhibition period raised traffic as a concern, including additional truck movements to and from the Site.
104. The Department's AR notes the Proponent's Traffic Impact Assessment considers the additional truck movements generated by the Modification Request and demonstrates the existing infrastructure can accommodate the additional movements.
105. The Department also notes TfNSW (Roads and Maritime) did not raise any concerns with traffic movements.
106. In Table 9 of the Department's EA, the Department concludes the traffic impacts of the modification can be adequately addressed through the existing conditions of the Project Approval, which govern Site access, vehicle movements and parking.
107. The Commission agrees with the Department's conclusion set out in paragraph 106 and is also satisfied that there is enough queuing space within the boundaries of the site to ensure trucks will not be queuing in the street. The Commission finds the Modification Request will not result in adverse traffic impacts.

#### *Odour*

108. The Commission notes several public submissions objected to the Modification Request based on odour impacts.
109. At its meeting with the Commission, the EPA advised it has received two complaints pertaining to odour for the Genesis WMF (one in 2015, and one in 2016). The EPA noted these complaints were investigated but there was no follow up action required. The EPA also acknowledged odour impacts were experienced following the chute fire at the Genesis WMF at the end of 2019.
110. The Department's AR (Table 9) identifies the Genesis WMF does not accept putrescible waste, which is commonly associated with odour, and the Modification Request does not introduce any new waste streams. As such, the Department's AR concludes the Modification

Request would not result in odour emissions in addition to what has been previously assessed and approved in conjunction with the Project Approval.

111. The Commission agrees with the Department's conclusion in paragraph 110 and finds that Recommended Condition 37 includes appropriate measures for the ongoing assessment and management of odour emissions from the Site.

### *Leachate*

112. The Department's AR notes the Modification Request has the potential to increase the generation of leachate by increasing the surface area of waste exposed to rain following the increased landfilling rate and through additional water used for dust suppression (Table 9 in the Department's AR).
113. The Proponent's EA included a Leachate Generation Model Report, which was reviewed by the EPA. The Department and the EPA are ultimately satisfied that the existing leachate management system has enough capacity for the additional leachate predicted as a result of the Modification Request.
114. The Commission agrees with the Department and EPA's position on leachate. The Commission is of the view that the existing conditions in the Project Approval requiring a Soil, Water and Leachate Management Plan that includes a monitoring program and response plan is adequate to ensure any impacts resulting from additional leachate can be identified and mitigated.

## **6 CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION**

115. The views of the community were expressed through public submissions as outlined in paragraph 37. The Commission carefully considered all these views as part of making its decision. The way in which these concerns were considered by the Commission is set out in section 5 above.
116. The Commission has carefully considered the Material before it (paragraph 40).
117. For the reasons set out in this Statement of Reasons, the Commission determines the Modification Request should be approved subject to the Department's Recommended Conditions as modified by the Commission, which the Commission finds have been designed to:
- prevent, minimise and mitigate adverse impacts;
  - set standards and performance measures for acceptable environmental performance;
  - require regular monitoring and reporting; and
  - provide for the ongoing environmental management of the WMF.
118. The reasons for the Decision are given in this Statement of Reasons for Decision dated 29 April 2020.



**Ms Ilona Millar (Chair)**  
Member of the Commission



**Dr Peter Williams**  
Member of the Commission



**Mr Tony Pearson**  
Member of the Commission