



**BARRY ANSTEE**

**OBJECT**

Submission ID: 218366

Organisation: N/A	Key issues: <i>Social impacts, Visual impacts, design and landscaping, Land use compatibility (surrounding land uses), Traffic, Other issues</i>
Location: <i>New South Wales 2575</i>	
Attachment: <i>Attached overleaf</i>	

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*See Attached PDF*

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**Barry Anstee B. Arch (Hons) UNSW 1972.**

25 November 2024

**Office of the Independent Planning Commission NSW**

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**Attention Commissioners; Andrew Mills (Panel Chair) Clare Sykes and Janett Milligan**

**RE: MOSS VALE PLASTICS RECYCLING FACILITY – SDD- 9409987**

I have a Degree in Architecture with Honours from the University of New South Wales in 1972.

I have operated in the property development industry for over 50 years and have extensive experience in planning matters. I have been involved in several matters before the Land and Environment Court of NSW as an expert witness.

I note that Wingecarribee Shire Council has requested that the determination of this matter be the subject of a Public Hearing.

If this matter is to be the subject of a Public Hearing, I request permission to appear and present material at any Public Hearing of this matter.

At the Public Meeting on 28 October 2024 at Bowral NSW in relation to this matter I addressed the Panel members and advised in my presentation that I would provide additional written submissions in relation to this matter.

It is my professional opinion that the Independent Planning Commission Panel must REFUSE the proposal by Plasrefine Pty Ltd for a plastics recycling facility at 74-76 Beaconsfield Street for the following reasons.

1. The purpose of the use of the proposed development as proposed by the Applicant, Plasrefine Pty Ltd is prohibited in the E4 General Industrial zoning pursuant to Wingecarribee Local Environmental Plan 2010 (as amended) "WLEP 2010" being the zoning of the land for the proposed development.
2. The purpose of the use of the proposed development as proposed by the Applicant, Plasrefine Pty Ltd is not permissible for consent by State Environmental Planning Policy (Infrastructure) 2007 (now repealed) or State Environmental Planning Policy (Transport and Infrastructure) 2021.
3. The purpose of the use of the proposed development as proposed by the Applicant, Plasrefine Pty Ltd is not permissible for consent by State Environmental Planning Policy No 33 – Hazardous and Offensive Development (now repealed) or State Environmental Planning Policy (Resilience and Hazards) 2021.
4. The architectural plans (including amended architectural plans) provided by the Applicant do not meet the requirements of the Environmental Planning and Assessment Regulations "EP&AR".

5. Insufficient information is provided by the Applicant and The State Significant Development Assessment Report (SDD-9409987) dated October 2024 being a whole of Government Report for the Consent Authority being the Independent Planning Commission NSW Panel to assess all the impacts of the proposed use and of the proposed development.
6. Insufficient information has been provided by the Applicant to allow the Consent Authority being the Independent Planning Commission NSW Panel to consider and assess and be satisfied of the matters referred to in Clause 7.5 Natural resources sensitivity- water of WLEP 2010.
7. Insufficient information has been provided by the Applicant to allow the Consent Authority being the Independent Planning Commission NSW Panel to consider and assess and be satisfied of the matters referred to in Clause 5.21 Flood planning of WLEP 2010.
8. Insufficient information has been provided by the Applicant to allow the Consent Authority being the Independent Planning Commission NSW Panel to consider and assess and be satisfied of the matters related to fire and fire suppression at the proposed development, bushfire in the location of the proposed development, emergency services capacity and capability to respond to an incident at the proposed development.
9. Insufficient information has been provided by the Applicant to allow the Consent Authority being the Independent Planning Commission NSW Panel to consider and assess and be satisfied of the matters related to the suitability of the site for the proposed use and proposed development.
10. Insufficient information has been provided by the Applicant to allow the Consent Authority being the Independent Planning Commission NSW Panel to consider and assess and be satisfied of the matters related to the road works on Council and State Roads and road work approvals required by Section 138 of the Local Government Act 1993.
11. A letter of Owners Consent as required by the EP&AR for the road works proposed on the unmade section of the paper road between Braddon Road and Collins Road has not been provided by the Applicant.
12. Insufficient information has been provided by the Applicant to allow the Consent Authority being the Independent Planning Commission NSW Panel to consider and assess and be satisfied of the matters related to the provision of water supply, sewerage disposal and trade waste disposal from the proposed development and approvals as required by Section 68 of the Local Government Act 1993.
13. The State Significant Development Assessment Report (SDD-9409987) dated October 2024 being a whole of Government Report provides insufficient information, incorrect information, assumptions and conclusions which the Consent Authority being the Independent Planning Commission NSW Panel, cannot rely upon to grant conditional consent.
14. The Proposed Development Consent Conditions for State Significant Development Assessment Report (SDD-9409987) dated October 2024 provides numerous proposed conditions of consent of matters which need to be resolved, determined, and approvals obtained before the Consent Authority being the Independent Planning Commission NSW Panel could consider granting conditional consent or a deferred commencement consent for the proposed use and the proposed development.

A detailed explanation and reasons as to why of each of the above list of items relating to the Applicants proposed plastic recycling facility should be refused follows.

#### **1. PERMISSABILITY – PROHIBITED USE PURSUANT TO WINGECARRIBEE LEP 2010**

The purpose of the use of the proposed development as stated by the Applicant in the Environmental Impact Statement “EIS” at 5.1.2 states “and meets the definition of a waste or resource management facility under the LEP.”

The purpose of the use of the proposed development as stated in the State Significant Development Assessment Report (SDD-9409987) dated October 2024 being a whole of Government Report “SSDAR” is a “waste or resource management facility” (See page 18 Permissibility).

The EIS and the SSDAR both assert that a ‘waste or resource management facility’ are permissible with consent in the E4 General Industrial Zone of WLEP 2010.

A “waste or resource management facility” is not a nominated use in the E4 General Industrial Zone of WLEP 2010.

A “waste or resource management facility” is an innominate use permitted with consent in the E4 General Industrial Zone of WLEP 2010.

An innominate use requires a detailed assessment, which has not been undertaken as required by either the EIS or SSDAR, of the proposed use of the proposed development to determine that the proposed use is not a prohibited use in the E4 General Industrial Zone of WLEP 2010.

The EIS details the purpose of the use of the proposed development at 5.1.2 as “*a facility to reprocess mixed plastic waste*”

ADR Appendix A Updated Proposal Description details at “*A-5-1 Feedstock quantities and characteristics and Feedstock types, volumes and composition*” and states in part “*The facility would receive mixed plastics such as containers and bottles from other sources such as recycling centres and commercial and industrial facilities*”

ADR Appendix A Updated Proposal Description details at “*A-5-2 Plastic recycling and reprocessing process overview*” and states in part “*Mixed plastics would first be sorted by colour. The sorted materials would then undergo crushing (flacking), washing and batch mixing. Depending on plastic type and intended end use, some of the flakes would either be pelletised (via extrusion granulation) or milled into powder. The resulting flakes, pellets or powder would be either processed further on-site to produce advanced plastic (deep processing) or transported off site for direct sale.*”

Pain J in Director-General, Department of Planning and Infrastructure v Glass Recovery Services Pty Ltd [2015] NSWLEC 49 (1 April 2015) has determined that feedstock such as described in A-5-1 is not “waste” and the process as described in A-5-2 does not conform to the LEP definition of a “waste or resource management facility”.

Hence a “waste or resource management facility” as defined by WLEP 2010 does not apply to the Applicant’s purpose of use for the proposed development.

It is noted from the transcript of 22/10/2024 between representatives of the Applicant and the Independent Planning Commission Panel from the bottom of page 18- MS MASON - JONES said “*So the land use which is a waste management reprocessing facility is a type of industry. So from a permissibility perspective it meets the requirements of general industry in the general industrial zone.*” Thereafter MR MILLS said “*I do appreciate that it actually meets the general industrial zone aspect*”

It is submitted that the purpose of the use of the proposed development has not been determined in accordance with the provisions and definitions of WLEP 2010.

Further the purpose of the use of the proposed development based on the various components and impacts that have been identified by the Applicant and the SSDAR would define the purpose of the use of the proposed development as either a “heavy industrial storage establishment” or a “heavy industry” both of which are prohibited uses in the E4 General Industrial Zone of WLEP 2010 and require separation from other development, as is required by the Hazardous SEPP’s.

The plans for the proposed Plasrefine development indicate that all access to the development will be from Braddon Road which is zoned RU2 Rural Landscape in WLEP 2010.

Roads are a permitted purpose in the RU2 Rural Landscape zone in WLEP 2010.

Industrial purposes are a prohibited use in the RU2 Rural Landscape Zone WLEP 2010.

It is impermissible for the Plasrefine development to have access from Braddon Road based on the Judgement of Pain J in Alramon Pty Ltd v City of Ryde Council [2022] NSWLEC 108 (22 August 2022) at Paragraph 164 *“Furthermore, if a proposed development of land for an apparently permissible purpose (a road) is actually designed to enable a primary purpose that would be prohibited on such land, then the development is impermissible.”*

## **2. PERMISSABILITY – PROHIBITED USE PURSUANT TO SEPP’S - INFRASTRUCTURE**

State Environmental Planning Policy (Infrastructure) 2007 (now repealed) and State Environmental Planning Policy (Transport and Infrastructure) 2021 both authorise consent for a “waste or resource management facility” in a prescribed zone which includes the E4 General Industrial Zone of WLEP 2010.

For the reasons set out in above in 1 and the Judgement of Pain J in Director-General, Department of Planning and Infrastructure v Glass Recovery Services Pty Ltd [2015] NSWLEC 49 (1 April 2015) the Applicant’s purpose of use of the proposed development is not a “waste or resource management facility as defined by WLEP 2010.

The Applicant’s purpose of the use of the proposed development is prohibited in the E4 General Industrial Zone of WLEP 2010 and neither State Environmental Planning Policy (Infrastructure) 2007 (now repealed) or State Environmental Planning Policy (Transport and Infrastructure) 2021 provide permissibility for consent to the Applicant’s purpose of use of the proposed development.

## **3. PERMISSABILITY - PROHIBITED USE PURSUANT TO SEPP’S – HAZARDOUS ETC**

State Environmental Planning Policy No 33 – Hazardous and Offensive Development (now repealed) and State Environmental Planning Policy (Resilience and Hazards) 2021 both provide provisions which should be applied to the Applicant’s purpose of use of the proposed development.

Neither State Environmental Planning Policy No 33 – Hazardous and Offensive Development (now repealed) or State Environmental Planning Policy (Resilience and Hazards) 2021 provide permissibility for consent to the Applicant’s purpose of use of the proposed development.

## **4. ARCHITECTURAL PLANS**

The architectural plans (including amended architectural plans) provided by the Applicant do not meet the requirements of the Environmental Planning and Assessment Regulations “EP&AR”.

The architectural plans do not provide boundary setbacks.

The architectural plans do not provide heights of buildings related to site datum or AHD.

The architectural plans do not show that Building 1 is erected on fill of a thickness of 5m to 6m

approximately.

The architectural plans do not show details of retaining walls or embankments.

The height of a building by definition is measured from existing ground levels.

No survey plans of spot levels and existing contours of the land has been provided.

The architectural plans indicate that Building I has a height of 15.5m from ground floor level to the top of the parapet wall, above this are skylights and stacks.

The building height by definition is 23.5m to 28.0m approximately.

The architectural plans show no turning sweeps for trucks to access door openings or ramp gradients particularly for access from Braddon Road.

The architectural plans provided are totally inadequate to enable determination of impacts.

## **5. INSUFFICIENT INFORMATION**

Insufficient information is provided by the Applicant and The State Significant Development Assessment Report (SDD-9409987) dated October 2024 being a whole of Government Report for the Consent Authority being the Independent Planning Commission NSW Panel to assess all the impacts of the proposed use and of the proposed development.

The lack of information and determination of significant issues is the reason that many conditions of consent are proposed in the draft conditions of consent.

Many of the issues raised in the draft conditions of consent are required to be determined and available before a decision can be considered for the determination of the Applicants development application.

## **6. CLAUSE 7.5 NATURAL RESOURCES SENSITIVITY- WATER OF WLEP 2010**

Insufficient information has been provided by the Applicant to allow the Consent Authority being the Independent Planning Commission NSW Panel to consider and assess and be satisfied of the matters referred to in Clause 7.5 Natural resources sensitivity- water of WLEP 2010.

The Applicant has provided no survey details or reports of the existing watercourses and the riparian zones that need to be considered by the Consent Authority before the power to consider the Applicants development application pursuant to Clause 7.5 Natural resources sensitivity- water of WLEP 2010 is activated.

## **7. CLAUSE 5.21 FLOOD PLANNING OF WLEP 2010**

Insufficient information has been provided by the Applicant to allow the Consent Authority being the Independent Planning Commission NSW Panel to consider and assess and be satisfied of the matters referred to in Clause 5.21 Flood planning of WLEP 2010.

The Applicant has indicated that the proposed development will increase flood levels which is not allowable pursuant to NSW Flood Planning Manuals.

The Applicant has provided no survey details or reports of the existing watercourses, riparian zones and flood planning data that needs to be considered by the Consent Authority before the power to consider the Applicants development application pursuant to Clause 5.21 Flood planning of WLEP 2010 is activated.

## **8. FIRE AND FIRE SUPPRESSION, BUSHFIRE AND EMERGENCY SERVICES**

Insufficient information has been provided by the Applicant to allow the Consent Authority being the Independent Planning Commission NSW Panel to consider and assess and be satisfied of the matters related to fire and fire suppression at the proposed development,

bushfire in the location of the proposed development, emergency services capacity and capability to respond to an incident at the proposed development.

The Applicant has asserted the land for the proposed development is NOT bushfire prone land. This is incorrect a current search of the land for the proposed development on the Rural Fire Service website indicates the land is bushfire prone land.

The lack of information and determination of significant issues is the reason that many conditions of consent are proposed in the draft conditions of consent.

Many of the issues raised in the draft conditions of consent are required to be determined and available before a decision can be considered for the determination of the application.

Emergency services capacity and capability need to be known before a determination for consent can be considered, they cannot be subject to a condition of consent.

#### **9. SITE SUITABILITY**

Insufficient information has been provided by the Applicant to allow the Consent Authority being the Independent Planning Commission NSW Panel to consider and assess and be satisfied of the matters related to the suitability of the site for the proposed use and proposed development.

Many of the issues raised in the draft conditions of consent are required to be determined and available before a decision can be considered for the determination of the application.

The determination of the issues raised in the draft conditions of consent are fundamental to determining if the site is suitable for the Applicants proposed development.

#### **10. ROAD WORKS**

Insufficient information has been provided by the Applicant to allow the Consent Authority being the Independent Planning Commission NSW Panel to consider and assess and be satisfied of the matters related to the road works on Council and State Roads and road work approvals required by Section 138 of the Local Government Act 1993.

The Applicant has provided no information as to proposed road works being able to comply and conform with Wingecarribee Shire Council Engineering Standards.

The Applicant has provided no information on road works crossing the watercourse as has been indicated or the approval of Water NSW to piping of this natural watercourse.

These are issues that cannot be conditioned as conditions of consent as they totally impact the ability of the Applicants proposed development to proceed.

#### **11. OWNERS CONSENT**

A letter of Owners Consent as required by the EP&AR for the road works proposed on the unmade section of the paper road between Braddon Road and Collins Road has not been provided by the Applicant.

The Consent Authority being the Independent Planning Commission NSW Panel has no legal power to deal with the Applicant's development application until all required Owners Consents for development covered by the Applicants development application have been provided as required by the EP&AR.

#### **12. WATER SUPPLY, SEWERAGE DISPOSAL AND TRADE WASTE DISPOSAL**

Insufficient information has been provided by the Applicant to allow the Consent Authority being the Independent Planning Commission NSW Panel to consider and assess and be satisfied of the matters related to the provision of water supply, sewerage disposal and trade

waste disposal from the proposed development and approvals as required by Section 68 of the Local Government Act 1993.

Wingecarribee Shire Council "WSC" is the local Water and Sewer Authority.

WSC requires that a development application of the size of the Applicants development proposal submit and have approved by WSC water, sewerage and trade waste approvals prior to the lodgement of a development application.

These are issues that cannot be conditioned as conditions of consent as they totally impact the ability of the Applicants proposed development to proceed.

### **13. THE STATE SIGNIFICANT DEVELOPMENT ASSESSMENT REPORT (SDD-9409987)**

The State Significant Development Assessment Report (SDD-9409987) dated October 2024 being a whole of Government Report provides insufficient information, incorrect information, assumptions and conclusions which the Consent Authority being the Independent Planning Commission NSW Panel, cannot rely upon to grant conditional consent.

The matters outlined above detail some of the inadequacies of the State Significant Development Assessment Report (SDD-9409987) dated October 2024 being a whole of Government Report.

There are numerous other impacts and aspects of the report and the assessments undertaken within the report which are not correct or fundamentally flawed.

The report and assessment has resulted in numerous submissions and issues raised by residents and property owners many of which are valid and require further investigation, assessment and reporting.

### **14. PROPOSED DEVELOPMENT CONDITIONS OF CONSENT**

The Proposed Development Consent Conditions for State Significant Development Assessment Report (SDD-9409987) dated October 2024 provides numerous proposed conditions of consent of matters which need to be resolved, determined, and approvals obtained before the Consent Authority being the Independent Planning Commission NSW Panel could consider granting conditional consent or a deferred commencement consent for the proposed use and the proposed development.

The Proposed Development Consent Conditions do not support the approval of the Applicant's proposed development as voluminous issues and impacts need to be assessed and determined before the Consent Authority being the Independent Planning Commission NSW Panel has the required statutory power to consider the Applicants development proposal.

Thank you, Commissioners, for reading and considering my submissions.

Yours faithfully,



Barry Anstee