



THE CENTRAL COAST GREENS

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19 December 2018

Submission to the NSW Land & Environment Court

Verde Terra v. EPA NSW – appeal to the Court re: refusal of the application to vary EPL 11395
(Mangrove Mountain Landfill)

The Central Coast Greens submit to the Court that the refusal by EPA NSW of the application to vary Environmental Protection License No. EPL11395 as made by Verde Terra Pty Ltd be upheld.

We would like to provide the following reasons for upholding this refusal:

1. In refusing the application the EPA NSW has properly considered its regulatory duties under the Protection of the Environment Operations Act and, in giving its reasons for refusal, chiefly as “presenting as an unacceptable risk to the environment”, has made an appropriate and proportional determination in accordance with that Act.
2. We submit that EPL11395 has been the subject of an unusually large number of variations and that these have had the cumulative effect of exceeding of the limitations imposed by the development consent DA23042 granted by Gosford City Council in 1998, notwithstanding the consent orders made by the Court in 2014 in Gosford City Council v. Verde Terra Pty Ltd.
3. We submit that, in granting consent to DA23042/1998 Gosford City Council acted in known contravention of its duties under the Environmental Planning and Assessment Act when accepting the then applicant’s Environmental Impact Statement of 1992 as a current and conforming document under that Act. The 1998 consent may for this, but not limited to this, reason be defective.

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4. We submit that, for the purpose of considering the eligibility for renewal and variation of EPL11395, the EPA NSW would be required to validate that the purpose of the landfill operations, namely the reconstruction of a golf course, could reasonably be fulfilled, subject to adequate consultation with Central Coast Council as the appropriate Local Planning Authority. It is our view that the designated end-use of the land for private recreation is, for reasons of health and safety, incompatible with the preceding operations of a landfill waste facility and that therefore the approval of a new development application including a change of use of the subject land is required before an application by Verde Terra to vary the license can be considered.
5. We submit that, pursuant to the conditions associated with the Local Water Authority license granted to Central Coast Council (and jointly to predecessors Wyong Shire Council and Gosford City Council) under the NSW Public Health Act, the Council in its concurrent capacity as the Local Water Authority, is prevented from granting development consent to a controlled activity, specifically the operation of a regional-scale waste facility, within its designated source water catchment area. It is our view that the minimum requirement for consent by the Local Water Authority is the preparation and submission of a prescribed formal risk assessment and determination as described in the NSW Public Health Act. We believe that such a risk assessment is absent and that the Council has not made the required determination to date.
6. We submit that, given the circumstances described in 5., the Court's 2014 consent orders in Gosford City Council v. Verde Terra Pty Ltd are defective and need to be set aside.

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7. We submit that, subject to the NSW Water Management Act, the controlled activity carried out or to envisaged be carried out at the Mangrove Mountain landfill site is consistent with that of a regional waste disposal facility. Approval for a controlled activity with potentially serious impact on a local water course, including the operation of a regional waste facility, would be prohibited under that Act. EPA NSW can therefore not consider approving a variation to EPL11395 and, indeed the Court should consider ordering the withdrawal of this license for this reason.
8. We submit that Verde Terra Pty Ltd does not meet the minimum criteria for eligibility to operate a regional waste disposal facility on account of demonstrated past and present poor performance at the Mangrove Mountain site combined with the inability to provide for suitably experienced and qualified management personnel pursuant to applicable EPA guidelines. Approval of the application to vary EPL11395 should therefore not be considered in these circumstances.
9. The application to vary the license does not include particulars for applicable increased capacity to manage the risks of and respond to landfill fires. The significant additional quantities of waste material are associated with a disproportional increase in the risk of landfill fires which are potentially major pollution events. A variation of the environmental protection license should not be considered in these circumstances.
10. The applicant of the license variation has failed to disclose to the EPA NSW the existence of a current effluent water discharge agreement over some 300.000 litres per day from adjoining land occupied by Agrana Pty Ltd. This information is necessary and relevant to consider in the context of the overall water management both within and outside the regulated area. The non-disclosure of this information to regulators is



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indicative of the ineligibility of the applicant to operate the landfill site under both current and applied for license conditions.

11. The Central Coast community has observed the gradual evolution of this erstwhile modest golf course remodelling project into a major landfill waste disposal facility in complete disbelief and with increasing alarm. The landfill site has been the subject of numerous extensive and detailed adverse reporting in local and national media. The NSW Audit Office has compounded community concern with its June 2018 report on “Regulation of water pollution in drinking water catchments and illegal disposal of solid waste” in which it questioned the capacity of the EPA NSW to satisfactorily perform its functions under the POEO Act and to protect the public interest and the environment. We have seen a number of large community meetings in response to concerns about the Mangrove Mountain landfill development. Community leaders and many elected representatives have spoken out against the continued location of this landfill at Mangrove Mountain. Our local Council has publicly called on the NSW Government to appoint a Special Commission of Inquiry into this landfill. A committee of the NSW Parliament has seen fit to specifically recommend an equivalent inquiry to the NSW Government. It is now incumbent on the Court to take the level of community concern and dissatisfaction into account, to diligently examine all relevant circumstances in the case before it and to consider the cumulative impact on the community and the environment that any further approval for landfill operations by the applicant would have. It may be beyond the strictly legitimate deliberations of the Court to include for the concept of natural justice but the community on the Central Coast lives in the hope that it does.

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