



NOTICE OF DECISION

Made under part 7 of the *Planning and Development Act 2007*

I, George Cilliers, delegate of the planning and land authority, pursuant to section 162 of the *Planning and Development Act 2007*, **refuse**, the proposal for a **materials recovery facility (waste facility) intending to process 300,000 tonnes per annum and other associated site works at Block 14 (previously Blocks 9 and 11), Section 8, Fyshwick**, in accordance with the plans, drawings and other documentation submitted with this approval.

DA Number: 202037590
Block(s): 14 (previously 9 and 11)
Section: 8
Suburb: Fyshwick
Application lodged: 24 November 2020
Assessment track: Impact

This decision contains the following information:

- Part 1– reasons for the Decision
- Part 2 – administrative information

A copy of the development application and this approval may be inspected at the planning and land authority's office from 9:00 am to 4.00 pm, Monday to Friday at 480 Northbourne Avenue, Dickson, ACT 2602

CONTACT / ENQUIRIES

Phone: (02) 6207 6383

Online Form:

https://www.accesscanberra.act.gov.au/app/forms/epd_feedback


George Cilliers

Delegate of the planning
and land authority

18 March 2021

NOTICE OF DECISION

DA 202037590

PART 1 REASONS FOR THE DECISION

In accordance with section 516 of the *Planning and Development Act 2007* (the Act), which was inserted by the *Planning and Development Amendment Act 2021*, the development application (DA) was refused because the application is a *prohibited waste facility development application*.

Prohibited waste facility development application:

Section 137F(2) of the Act defines a *prohibited waste facility development application* as a DA in relation to a development proposal for the use of land in the division of Fyshwick that would, if it were approved, permit the use of land as a waste facility.

Section 137F(2) of the Act defines a *waste facility* as a site used to store, sort, treat, process, recover, recycle, use, reuse or dispose of waste, as defined under s 10 of the *Waste Management and Resource Recovery Act 2016* (Waste Act).

Section 10 of the Waste Act defines waste as any discarded, rejected, unwanted, surplus or abandoned substance, whether or not intended for sale, recycling, reprocessing, recovery or purification by a separate operation from that which produced it.

The proposal for DA202037590:

The development proposal, as submitted under DA202037590, is for the construction of a materials recovery facility (and associated works) which processes 300,000 tonnes of waste per annum. The application was also for a lease variation to vary the purpose clause in the Crown lease to include a recycling facility and waste transfer station.

The proposal consists of:

- the demolition of the structures relating to the existing fuel facility;
- the construction of a materials recovery building to sort/separate municipal solid waste (MSW), commercial and industrial (C&I) waste, construction and demolition (C&D) waste and other waste streams;
- the construction of ancillary infrastructure including weighbridges, weighbridge offices, parking, hardstand, landscaping (including 6 x 12m+ trees along Ipswich Street), 2.7m noise protection fence along the southern boundary, water tanks, firefighting equipment, and signalised intersection on ingress/egress to Ipswich Street; and
- associated utilities.

The application has outlined that the expected material intended to be sorted and recycled includes timber, plastic, glass, ferrous and non-ferrous metals, inert waste, paper/cardboard and plaster board.

NOTICE OF DECISION

DA 202037590

Consideration of the development application

Section 516 of the Act was introduced through the *Planning and Development Amendment Act 2021* (the Amendment Act) and commenced on 20 February 2021.

Section 516 provides that a *prohibited waste facility development application* must be refused if it is made before the commencement day of section 516 and has not, immediately before the commencement day:

- (a) been withdrawn by the applicant; or
- (b) approved, or approved subject to a condition, by the authority,

The authority is satisfied that the development application (DA202037590) is an application, made on 24 November 2020, for a recycling facility and waste transfer station which meets the definition of *waste facility* at s 137F(2) of the Act.

The authority is also satisfied that the development application is a *prohibited waste facility development application* under the definition at s 137F(2) of the Act.

As the development application was not withdrawn by the applicant or approved, or approved subject to a condition, by the authority immediately before 20 February 2021, it must be refused.

EVIDENCE

The following evidence formed part of the assessment of this application:

Development Application: 202037590

Legislative requirements: Sections 137F and 516 of the *Planning and Development Act 2007*

NOTICE OF DECISION

DA 202037590

PART 2 ADMINISTRATIVE INFORMATION

Inspection of the Application and Decision

A copy of the application and the decision can be inspected between 9:00am and 4:00pm weekdays at the Environment, Planning and Sustainable Development Directorate Dickson Customer Service Centre at 480 Northbourne Avenue, Dickson, ACT.

Reconsideration of the Decision

If the applicant is not satisfied with the decision made by the planning and land authority, they are entitled to apply to the planning and land authority for reconsideration within 20 working days of being told of this decision pursuant to section 191 of the Act. A longer timeframe may apply only if granted in writing by the planning and land authority pursuant to section 184 of the Act.

More information is available online at [https://www.planning.act.gov.au/build-buy-
renovate/build-buy-or-renovate/approvals/development-applications/appeal-a-da-decision](https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications/appeal-a-da-decision).

Please contact Access Canberra Customer Services if you wish to lodge a reconsideration application.

Review by the ACT Civil and Administrative Tribunal (ACAT)

1. Decisions that are reviewable by the ACAT are identified in Schedule 1 of the Act, except for matters that are exempted under Schedule 3 of the *Planning and Development Regulation 2008* (matters exempt from third party review).
2. As this is a decision to refuse a DA in the impact track, the Authority is of the opinion that the applicant may apply for review of the decision by the ACAT and no exclusions apply.
3. The ACAT is an independent body. It can review a large number of decisions made by ACT Government ministers, officials and statutory authorities on their merits. The ACAT can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with ACAT recommendations.
4. You may apply to the ACAT for a review of the decision. Application forms can be obtained from the ACAT at the website listed below. You can also download the form from the ACT Legislation Register.
5. More information on appeal rights is available online at [https://www.planning.act.gov.au/build-buy-
renovate/build-buy-or-renovate/approvals/development-applications/appeal-a-da-decision](https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications/appeal-a-da-decision).
6. If you are applying on behalf of an organisation or association, whether incorporated or not, the Tribunal in deciding whether to support this application will consider the effect of the decision being reviewed on the interests of the organisation or association in terms of its objects or purposes. A copy of the relevant documents will be required to be lodged with the Tribunal.
7. The time limit to make a request for a review is 28 days from the date of this notice of decision. The time limit can be extended in some circumstances (refer to sections 10 (2), 10(3), 25(1)(e) and 25(2) of the *ACT Civil & Administrative Tribunal Act 2008*; and rule 38 of the *ACT Civil and Administrative Tribunal Procedures Rules 2020*.

NOTICE OF DECISION

DA 202037590

8. Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee (the Tribunal Registry will advise of the current fee), unless you are receiving legal or financial assistance from the ACT Attorney-General. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T of the *ACT Civil and Administrative Tribunal Act 2008*). Decisions to grant assistance are made on the grounds of hardship and that it is reasonable, in all the circumstances, for the assistance to be granted. Applications should be made in writing to: the Director General, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. You can ask the ACAT for more details.
9. The ACAT is required to decide appeals in land and planning and tree protection cases within 120 days after the lodging of the appeal, unless that period is extended by the ACAT upon it being satisfied that it is in the interests of justice to do so.
10. The following organisations may be able to provide you with advice and assistance if you are eligible:
 - ACT Law Society, telephone 6274 0300ACT
 - Legal Aid Office, telephone 1300 654 314
 - ACT Council of the Ageing, telephone 02 6154 9740
 - Welfare Rights Centre, telephone 1800 226 028
 - Environmental Defender's Office (ACT), telephone 02 6243 3460.
11. You will have to pay any costs involved in preparing or presenting your case. The ACAT also has the power to award costs against a party in the circumstances specified in s 48 of the *ACT Civil and Administrative Tribunal Act 2008*. This power is in addition to the power of the ACAT to strike out a party and to dismiss an application for failure to comply with the ACAT's directions.
12. You may apply for access to any documents you consider relevant to this decision under the *ACT Freedom of Information Act 2016*. Information about Freedom of information requests is available on the planning and land authority's web site at <https://www.environment.act.gov.au/about/access-government-information> or by contacting us by phone on 02 6207 1923.
13. The procedures of the ACAT are outlined on the ACAT's website, including in the Guide to the Land and Planning Division and the Guide to the Hearing. Contact the ACAT for alternative ways to access information about the ACAT's procedures.

Review by the ACT Supreme Court

1. The Authority's decision may be subject to judicial review by the ACT Supreme Court under the *Administrative Decisions (Judicial Review) Act 1989* (ADJR Act).
2. Under the ADJR Act, an *eligible person* may make an application for review of a decision.
3. An *eligible person* must demonstrate that their interests are adversely affected by the decision and that the application raises a significant issue of public importance.
4. Section 5 of the ADJR Act sets out the grounds on which a decision can be reviewed.
5. The time limit to make an application for review is 28 days from the date the Notice of Decision is provided to the applicant and those people who made a representation.
6. The ACT Supreme Court is a costs jurisdiction where costs generally follow the event. This means that the unsuccessful party is required to pay the costs of the successful party.

NOTICE OF DECISION

DA 202037590

7. For more information on ACT Supreme Court processes and fees, please visit <https://courts.act.gov.au/home>.

Contact details for relevant agencies

<p>ACT Civil and Administrative Tribunal Level 4, 1 Moore Street CANBERRA CITY ACT 2601 GPO Box 370, CANBERRA, ACT 2601</p>	<p>www.acat.act.gov.au tribunal@act.gov.au 02 6207 1740 02 6205 4855</p>
<p>ACT Supreme Court 4-6 Knowles Place, CANBERRA CITY ACT 2601 GPO Box 1548, CANBERRA CITY, ACT 2601</p>	<p>www.courts.act.gov.au 02 6205 0000</p>
<p>Environment, Planning and Sustainable Development Directorate 480 Northbourne Avenue DICKSON ACT 2602 GPO Box 158, CANBERRA 2601</p> <ul style="list-style-type: none"> • <i>Planning and land authority</i> <ul style="list-style-type: none"> - list of certifiers for building approval - demolition information - asbestos information • <i>Environment Protection Authority</i> <ul style="list-style-type: none"> - environment protection - water resources - asbestos information • <i>Conservation, Planning and Research</i> <ul style="list-style-type: none"> - threatened species/wildlife management 	<p>www.planning.act.gov.au 02 6207 1923</p> <p>www.environment.act.gov.au 132 281</p> <p>www.environment.act.gov.au 132 281</p>
<p>Transport Canberra and City Services</p> <ul style="list-style-type: none"> - tree damaging activity approval - use of verges or other unleased Territory land - works on unleased Territory land - design acceptance - damage to public assets 	<p>www.tccs.act.gov.au</p> <p>132 281 02 6207 0019 (place coordination)</p>
<p>Health Directorate</p>	<p>www.health.act.gov.au 02 6205 1700</p>
<p>Utilities</p> <ul style="list-style-type: none"> - Telstra (networks) - TransACT (networks) - Icon Water - Electricity reticulation 	<p>02 8576 9799 02 6229 8000 02 6248 3111 02 6293 5738</p>

NOTICE OF DECISION

DA 202037590

Translation and interpretation services

The ACT Government's translation and interpreter service runs 24 hours a day, every day of the week by calling 131 450.

ENGLISH	If you need interpreting help, telephone:
ARABIC	: إذا احتجت لمساعدة في الترجمة الشفوية ، إتصل برقم الهاتف :
CHINESE	如果你需要传译员的帮助，请打电话：
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήστε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajjnuna t'interpretu, ċempel:
PERSIAN	: اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ако вам је потребна помоћ преводиоца телефонирајте:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacımız varsa lütfen telefon ediniz:
VIETNAMESE	Nếu bạn cần một người thông-ngôn hãy gọi điện-thoại:

TRANSLATING AND INTERPRETING SERVICE

131 450

Canberra and District - 24 hours a day, seven days a week