

Submission Responding to  
Draft Environmental Impact Statement:  
Materials Recovery Facility Fyshwick: April 2018

## Introduction

I refer to the above-mentioned Draft EIS. This submission examines certain comments made by the proponent (CRS) in the Draft EIS and the processes so far employed by the Government to further the proposed development. These processes are relevant to the draft EIS because the Government has made decisions necessary for the advancement of the Material Recovery Facility contrary to the law safeguarding the environment. This submission points out that the proposal is by law a prohibited development. It further argues that Government agencies supporting the proponent knew or should have known that the development is prohibited at the proposed Fyshwick site. It discusses the basis for this support and concludes that Government agencies have either been overly influenced by what they perceive to be the desires of Ministers or that they have been lax in their attention to the law.

2. In either case, the Submission concludes that the prohibited development should not be permitted.

## Relevant Extract from Draft EIS

3. The following paragraphs are from the Executive Summary of the draft EIS.

On the former Shell fuel storage facility at Block 9 Section 8 and Block 11 Section 8 Fyshwick (the subject site), Capital Recycling Solutions Pty Ltd (CRS) propose to develop a Materials Recovery Facility (MRF) which will receive, sort, separate and export the ACT's waste that is currently going to the Mugga Lane landfill as well as wastes currently landfilled in surrounding regions.

The proposal integrates the use of an adjacent Rail Freight Terminal (RFT) on Block 11 Section 47 leveraging existing infrastructure and a new concrete hardstand. The RFT hardstand is the subject of a separate Development Application (DA) process to be lodged in April 2018. The proposed RFT is required to replace the former facility in Kingston which is no longer operational. There is no RFT available for general rail freight in Canberra at the time of writing.

Importantly, the Rail use DA is a merit track assessment given Block 11 Section 47 Fyshwick is zoned for this purpose and the use does not trigger a requirement for an EIS under the *ACT Planning and Environment ACT, 2007*. The rail freight terminal activity will operate independently of the MRF. The activity of loading and unloading trains on this siding with either MRF residues or general freight containers has been considered in this EIS in the interest of addressing all perceived impacts. All rail related activities are contained wholly within Block 11 Section 47 Fyshwick which is consistent with the blocks zoning and licence arrangement. In the event that the RFT is not available the flexibility of the intermodal design can utilise trucks to carry the waste to Woodlawn.

4. There are several aspects in these paragraphs that raise concerns, including the possibility that all waste into and out of the Fyshwick site might be carried by trucks. If this foreshadowed possibility eventuated, the Draft EIS comments on transport and traffic implications are vitiated. However, this submission concentrates on some of the planning processes so far adopted for this project. These planning processes include the plan to purchase by 'direct sale' a lease from the Government for Block 11 Section 8 and the

submission of a DA to allow construction on that site of a hardstand to facilitate rail shipment to Woodlawn of residual waste from the proposed MRF.

5. This submission points out that rail use on at least part of the subject site (Block 11 Section 8) is prohibited. The legislation prohibiting rail use at the site was undoubtedly made for good planning and environmental purposes, including the avoidance of trucking and transport problems in an already congested Fyshwick.

### **Direct Sale**

6. The proponent - at the time of preparing this submission - does not own Block 11 Section 8, part of the relevant site. But the proponent was granted approval in March 2016 to purchase the lease under the Government's Direct Sale policies for purposes outlined in its application. There are several problems with the Government's approval for this direct sale. The first is that the application, made in October 2015, was unsigned and thus no one has responsibility for the accuracy or completeness of the application. It is at least arguable that an unsigned application is not a lawful application and should not have been considered.

7. The direct sale was approved despite failing the legislated criterion that the community have a genuine need for the proposed use of the land. Given that the Mugga Lane Tip has a residual expected life of nearly 30 years, there seems to be no community need for an MRF to re-direct waste from that tip in order to transport most of it by train to Woodlawn.

8. The proponent stated it wished to lease the land to establish a rail freight terminal. However, Territory law prohibits the use of that land for rail purposes. This matter was not discussed - or even identified - by the Direct Sale Panel that recommended the sale.

9. Moreover, the Government Panel that recommended the direct sale be approved was dealing with an application that did not reveal the intended use of the land as an MRF. As the minutes of the Panel reveal, it thought the application concerned the metal recycling activities on an adjacent site.

10. The Direct Sale Panel was confused about the identity of the applicant. The Panel believed the applicant company, Somerset Rehabilitation Pty Ltd (synonymous with CRS) was a subsidiary of Access Recycling Services, the metal recycling company that had sub-leased adjacent land. That is incorrect. Somerset/CRS is a joint venture between Access and Benedict Industries Pty Ltd, a major quarrying and waste management company based in and around Sydney. Benedict would be aware that the high charges imposed by the NSW Government for the disposal of waste in that state are not applicable in the ACT.

11. The Direct Sale Panel told the proponent that a number of government agencies did not support direct sale. The proponent responded that the political support he had would outweigh such opposition. The prospect that political support outweighed properly based objections is a worrying prospect.

12. The Direct Sale Panel did no due diligence to ascertain whether the proponent had the finances necessary to undertake its plans for the land.

13. All of the defects in the processes followed by the Direct Sale Panel were mirrored in the advice that the planning agency passed firstly to the Chief Minister, Mr Barr, and then the authorising minister, the Minister for Planning and Land Management, Mr Gentleman. These Ministers purportedly approved the direct sale even though the stated purpose of use of that land was prohibited thus vitiating their approval. Territory law requires that the intended use of land the subject of a direct sale be in accord with Territory law. The sale was conditional on the proponent fulfilling five conditions, not all of which were subsequently applied or enforced, though there is no evidence that ministers approved any variation to those conditions.

### **Development Application**

14. Although the proponent had not, and seemingly at this date still has not, exercised its approval to purchase a lease over Block 11 Section 8, it submitted, in February 2017, a Development Application for that land. The DA was approved in April 2017. The Government's decision-making process adopted for this application suffered many of the problems identified earlier for the Direct Sale.

15. The DA was lodged on the 'merit track' even though the proponent knew or should have known that the IZ2 - Mixed Use Industrial Development Tables required any proposal for railway use to be assessed under the 'impact track' because rail use is a prohibited development under Territory law.

16. The proponent and the delegate should have known or did know that a DA submitted under the 'merit track' instead of the required 'impact track' could not lawfully be approved.

17. Although the decision approving the DA was for a hard stand, the proponent stated that the DA was for a 'heavy rail siding'. Nowhere in the application proper was a hard stand mentioned. It is questionable that a DA can be approved for a purpose not requested by the proponent.

18. The proponent did not mention that its intentions were to develop an MRF on the site, thus misrepresenting the nature of the DA.

19. Not all of the conditions imposed by Ministers when approving the Direct Sale of Block 11 Section 8 were imposed in the conditional approval of the DA.

20. Although the proponent might be entitled to adopt a "salami slicing technique" to achieving Government approvals for its plans, the stated purpose of this DA, for rail purposes, ought to have caused the DA to fail.

### **Draft Environmental Impact Statement**

21. The draft EIS and the preceding Scoping Document have been issued on the necessary premise that the proposed development on the subject land is prima facie lawful. However, under Territory law, Block 11 Section 8 may not be used for rail purposes. It thus seems that the EIS and the Scoping Document lack necessary lawful foundations. It is possible that the development could proceed if the entire transport task were undertaken by trucks, as the proponent theorised in the draft EIS. However, as noted earlier, this total reliance on road vehicles would affect the traffic assumptions and modelling in the draft to such an extent as to invalidate the draft's conclusions.

### **Conclusion**

22. This submission argues that the draft EIS process and the issue of the preceding Scoping Document concern a proposed development that is inconsistent with Territory law because Block 11 Section 8 may not be used for rail purposes and the proponent has not overcome that prohibition. If that means the proposed development will depend on the use of road vehicles for its task, that would totally undermine a crucial part of the draft EIS, that part concerning transport issues, and should ultimately lead to the Government rejecting the proposed development.



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