

ETHOS URBAN

Our Ref: 15494
Your Ref: D510/18
7 June 2018

The Independent Planning Commission
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000

Attention: Matthew Todd Jones

Dear Mr Jones,

EASTERN CREEK ENERGY FROM WASTE FACILITY, HONEYCOMB DRIVE, EASTERN CREEK (SSD 6236) JACFIN SUBMISSION

This submission relates to the State Significant Development SSD 6236 for an energy-from-waste facility at Honeycomb Drive, Eastern Creek. The submission has been prepared by Ethos Urban on behalf of Jacfin.

Ethos Urban has been previously engaged by Jacfin to review the original development application, the amended Environmental Impact Statement (EIS), the Response to Submissions Report and the Department of Planning and Environment's (DPE) Assessment Report. We understand that the proposal has now been referred to the Independent Planning Commission (IPC) for determination and that in addition to Jacfin's submission to the IPC, it is willing to accept supplementary comments from Jacfin in response to the proponent's 'Response to the Department's Assessment Report', prepared by Urbis. Ethos Urban now has been engaged to undertake a review of the proponent's Response and advise whether any statements are incorrect, or misconstrue or misrepresent the conclusions in the Department's Assessment Report.

The Urbis report responds very specifically to the matters raised in the DPE's Assessment Report, and seeks to invalidate the reasons for refusal put forward by the DPE. There are some key messages contended by Urbis in responding to the reasons for refusal, which are:

- That the DPE and the EPA (and their technical advisors) have inappropriately applied technical parameters of the Energy from Waste (EfW) Policy – including that the identified reference facility is not suitable and whether the reference facility burns suitably similar waste. Further, that the requirement under the EfW Policy to obtain 'community acceptance' is not supported by the EP&A Act and is not a relevant planning consideration.
- That the DPE and the EPA (and their technical advisors) have applied an overly conservative approach to assessment of air quality and human health impacts, which does not take into account the capability of the emissions treatment technology to achieve the prescribed discharge limits even if the fuel mix is varied.
- That there is sufficient waste generated in Sydney to support the proposed facility, and that recent changes in the export of waste to Queensland and China will drive further demand for the facility. Notwithstanding this, that the scale of the facility is a commercial risk for the proponent and should not be considered as a planning matter.
- That the proposed facility is consistent with the statutory and strategic planning framework for the site, including that its location adjacent to the Genesis waste management facility and proximity to the metropolitan motorway system make the site most suitable for the proposed facility.

We will not make any specific comment on the detailed technical analyses relating to the application of the EfW Policy nor the Air Quality and Human Health risk assessments. However, there are some key planning principles put forward by Urbis in its report which should be incorrect. In addition to the matters discussed below, we note

that our earlier submissions prepared on behalf of Jacfin set out a wide range of relevant planning matters that should also be considered by the IPC in its assessment of the proposal, including air quality impacts, noise impacts, and visual amenity impacts – some of which arise in the discussion below.

1.0 Energy from Waste Policy

Waste is a unique industry – it is subject to a unique set of drivers and a special relationship with each and every person in NSW as participants in the generation and treatment of waste. Whereas we have a broad community acceptance towards the need to reliably generate electricity, produce clean drinking, grow food, and for carrying out most manufacturing activities, the acceptance of the community toward the incineration of waste is largely untested, due to the long-term moratorium that was in place in NSW prior to the development of the EfW Policy. The acceptance of the community towards the reuse and recycling of waste is well established, as is the landfilling of residual wastes given the long-standing use of landfilling in NSW. The EfW Policy reflects the uniqueness of the waste industry and establishes a framework that sets out the conditions upon which the NSW Government and its relevant regulatory authorities should consider the appropriateness of an EfW proposal. Importantly, the EfW Policy reflects broader community sentiment in relation to the incineration of waste, and specifically the community's apprehension towards it. In this context, the EfW Policy sets a higher standard compared to most industrial or waste management activities, and it is right to do so given the unique nature of the waste industry and the issues that arise from the incineration of waste. It is therefore very much a planning matter to take into consideration this pre-requisite in relation to ensuring broad community acceptance of the proposal as part of the environmental impact assessment stage for the project. Further, whilst it may be a difficult hurdle to cross, to imply that a properly adopted policy of a NSW Government agency is not a planning matter (see 4.1.1 of the Urbis report) simply because it is not fully defined or is difficult to comply with, is nonsensical, and inconsistent with the Planning Principle established by the Land and Environment Court in *Stockland Development Pty Ltd v Manly Council* [2004] NSW LEC 184.

We therefore submit that it is clearly a planning matter and in the public interest to consider properly adopted NSW Government policies in the assessment of development proposals, and that the DPE rightly places a significant weight on the huge community opposition to the proposed development in the context of the EfW Policy. This huge community opposition, that has united parliamentarians, businesses, agencies, councils and local residents, clearly reflects the lack of a broad community acceptance of the proposed development, including the unsuitability of the site. It further supports the arguments that we have made in our earlier submissions on behalf of Jacfin that the proposed EfW facility is clearly not suitable for a site located in such a heavily developed part of the metropolitan area, not to mention the significant growth projections (and associated increased residential densities) for the surrounding areas provided for via the Greater Penrith to Eastern Creek Growth Area under the Greater Sydney Metropolitan Plan and the Central and Western District Plans.

2.0 Inherent Risks of Technical Assessments

The proponent argues in the Urbis report that the technical assessments in relation to air quality and human health impacts are sufficiently conservative and that it is appropriate to rely on the capability of the emissions technology given the inherent variability on the wastes to be incinerated. Whilst we will leave the analysis of technical aspects of the assessment to those who are appropriately qualified, we note that there is no dispute around the highly variable nature of the wastes to be incinerated. Whilst we accept that the EfW Policy provides technical parameters where best-practice technology may be sufficient to manage emissions in certain circumstances, inherent risks remain in the operation of a facility of this nature and at this scale, and the inability of the proponent to precisely control the level of contamination within the waste feedstock is directly related to the potential magnitude of impacts arising from failure to manage or control these risks.

Commensurate with the inherent risks associated with this type of facility, it should be located outside of the Sydney basin airshed, in a very low density area that has:

- The potential for substantial set-backs and buffer zones to be established without the pressures of existing urban areas in close proximity, and away from areas with the projected significant population growth; and
- An airshed that provides suitable local topographical and air circulation patterns to avoid air quality (and associated human health) impacts to local residents; and
- Offers good vehicular access to the Sydney Metropolitan Area, with capacity to accommodate the additional traffic loads (or the ability to receive waste from Sydney via rail).

Whilst, the site for the proposed facility may be logistically well connected arterial traffic routes and close to waste generation, it is located in an already constrained regional airshed, which regularly experiences poor circulation and dispersion conditions, with a very large residential population close by. The site therefore does not take into account the inherent risks associated with this type of facility.

3.0 Availability of Waste

The proponent inconsistently argues that the scale of the facility is a commercial risk for the proponent and should not be considered as a planning matter, whilst also justifying the scale of the facility on the basis of waste generated in Sydney and recent changes in the export of waste to Queensland and China that will drive further demand for waste disposal in NSW.

Whilst it is acknowledged that, to a degree, the availability of waste is a commercial matter, as we note above waste is a unique industry. As a unique industry, it is subject to a unique regulatory framework that involves extensive efforts to reinforce the waste hierarchy, and in particular to support higher order waste reuse and recycling outcomes. Given the unique nature of the waste industry, it is clearly not sufficient to view the supply/demand arrangement solely through a commercial lens. Where a project or an action weakens the identified policy objectives then it is the purpose of the regulatory framework to seek to protect those policy objectives.

In this case, the proponent argues that cessation of waste export will generate demand for waste disposal, and therefore contributes to the need for the proposed EfW facility. However, what the proponent disregards is that one of the core objectives of the waste levy is to promote reuse and recycling of waste in NSW, and that the export of waste (to Queensland or China) was a perverse outcome of the waste levy, where industry operators sought a way of avoiding the need to invest in appropriate NSW-based reuse and recycling initiatives. It is therefore submitted that the recent changes in the export of waste to Queensland and China will allow the waste levy to function as it was originally intended to do, that is – to promote reuse and recycling initiatives by encouraging investment in appropriate NSW-based facilities.

Installation of a EfW facility of the scale proposed would create a market-distorting demand for the waste feedstocks, that would undermine the delivery of these reuse and recycling initiatives, and would therefore undermine one of the core objectives of the waste levy.

4.0 Statutory and Strategic Planning

The proponent argues that the proposed facility is consistent with the statutory and strategic planning framework for the site and that its location adjacent to the Genesis waste management facility and proximity to the metropolitan motorway system make this the most suitable site for it. The site is clearly logistically and commercially convenient for the proponent. However, that convenience should not be confused with the broader objectives of the statutory and strategic planning framework for the site and its surrounding areas. As detailed in our previous submissions, the proposed EfW facility is:

- Consistent in size, scale, character and environmental impacts of a heavy industry, with the potential to adversely affect existing and future land uses within the surrounding area.

- Should be assessed as an 'offensive industry' under *State Environmental Planning Policy No. 33 – Hazardous and Offensive Development* given the continued objection by the EPA, and therefore be considered as prohibited development in the General Industrial zone.
- Inconsistent with the objectives of the IN1 Zone in *State Environmental Planning Policy (Western Sydney Employment Area) 2009* as it will undermine the ability of the Eastern Creek Business Hub to continue to attract prominent end-users and tenants who will deliver high quality development bringing new well paid higher order jobs for Western Sydney, as envisaged by the Western City District Plan.
- Contradictory to the strategic intent of the surrounding area being the Western City District and the Central City District – the two fastest growing districts in the Greater Sydney Metropolitan area. The Greater Sydney Region Plan projects that approximately 93,350 new dwellings will be required within these two districts over the next 5 years (50% of all new dwellings in Sydney), and approximately 392,000 new dwellings over 20 years (54% of new dwellings in Sydney). The Plan specifies a Greater Penrith to Eastern Creek Growth Area stretching through the residential areas of Minchinbury, St Clair and St Marys, which will support and manage land release development and urban renewal in order to capitalise on the investment in transport infrastructure as well as health, education and other social infrastructure in the Western City. These are the closest residential suburbs to the site. These growth projections, as well as the intent of the Greater Penrith to Eastern Creek Growth Area are reinforced by the two District Plans, and are expected to result in increased residential density in close proximity to the site. The proposed energy-from-waste facility is clearly not suitable for a site located in such a heavily developed part of the metropolitan area, especially in the context of the future vision for the Central and Western cities and the levels of growth expected to be accommodated in these districts.

5.0 Conclusion

The proposed energy-from-waste facility is clearly not suitable for a site located in such a heavily developed part of the metropolitan area, especially in the context of the future vision for the Central and Western cities and the levels of growth expected to be accommodated in these districts, and in close proximity to the site of the proposed facility. Commensurate with the inherent risks associated with this type of facility, it should be located outside of the Sydney basin airshed, in a very low density area that has:

- The potential for substantial set-backs and buffer zones to be established without the pressures of existing urban areas in close proximity, and away from areas with the projected significant population growth.
- An airshed that provides suitable local topographical and air circulation patterns to avoid air quality impacts.

It is also submitted that the proponent has disregarded key objectives of the E_fW Policy and the waste levy in order to justify the need for the proposed facility. However, these properly adopted policies of a NSW Government agency are very much planning matters that should be taken into consideration, and significant weight should be applied to the objectives of these policies in assessing whether the proposal is in the public interest.

It is therefore requested that the IPC determines that the proposed energy-from-waste facility is not in the public interest and refuses SSD6236.

Should you have any queries about this matter, please do not hesitate to contact Tim Ward on 9409 4962.

Yours sincerely,



Tim Ward
Director



Julie Bindon
Director

