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7 June 2018

Independent Planning Commission NSW
Level 3, 201 Elizabeth Street
Sydney, NSW 2000

By email: ipcn@ipcn.nsw.gov.au

Dear Commissioners

**Energy from Waste Facility (SSD 6236)
Comments on Next Gen Response to DPE Assessment Report on behalf of Jacfin Pty Ltd**

We act for Jacfin Pty Ltd (*Jacfin*), the owner of Lot 1102 in DP 1206997 (previously described as Lot 20 in DP 1206129).

Jacfin has strongly opposed the proposed Energy from Waste Facility (SSD 6236) (*Proposed EfW Facility*) from the first analysis of the original proposal, and continues to oppose the amended application on the basis of receiving independent expert advice on the potential impacts of the Proposed EfW Facility.

Jacfin's land immediately adjoins the site of the Proposed EfW Facility to the south and south-east. Jacfin therefore has a significant interest in whether the Proposed EfW Facility is approved.

1 Previous submissions

Jacfin has invested significant time and resources in preparing a number of detailed submissions to the Department of Planning and Environment (*Department*) in relation to the Proposed EfW Facility, including submissions dated:

- 27 July 2015 (Ref No. 120210) in relation to the original EIS;
- 10 March 2017 (Ref No. 194827) in relation to the Amended EIS; and
- 2 March 2018 in relation to the Response to Submissions Report.

We understand that copies of Jacfin's submissions dated 27 July 2015 and 10 March 2017 have been provided to the Commission by the Department. A full copy of Jacfin's submission dated 2 March 2018 in relation to the Response to Submissions Report, which also included two submissions made by Jacfin to the NSW Parliamentary Inquiry into Energy from Waste Technology held last year (dated 28 May 2017 and 17 August 2017), was provided by email to the Commission on 17 May 2018.

The application for the Proposed EfW Facility was then referred to the Independent Planning Commission (*Commission*) for assessment and determination. Following the making of Jacfin's earlier submissions, the Department published its State Significant Assessment Report for the Proposed EfW Facility dated April 2018 (*Assessment Report*).

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On 21 May 2018, Jacfin made a submission to the IPC in relation to the Assessment Report (*IPC Submission*), stating its strong support for the Department's conclusion that development consent for the Proposed EfW Facility should be refused.

The IPC Submission also sought to bring to the Commission's attention a number of relevant matters which independent expert consultants commissioned by Jacfin had identified as either not having been considered, or which appeared to have been given very little weight by the Department in its assessment of the Proposed EfW Facility. Our client considers that these matters further justify the refusal of development consent for the Proposed EfW Facility.

Jacfin finally notes that the NSW Parliamentary Inquiry recommended that '[t]hat, subject to the current assessment process being conducted by the [Department], the NSW Government not approve the energy from waste facility proposed by The Next Generation at Eastern Creek'.

2 Commission's acceptance of supplementary comments

On 22 May 2018, the Commission made publicly available on its website the Eastern Creek Energy from Waste Facility – SSD 6236 – D510/18 'Response to DPE Assessment Report' (*Proponent's Report*), prepared by Urbis on behalf of The Next Generation NSW Pty Ltd (*Proponent*).

On 30 May 2018, the Commission indicated that it would accept comments from Jacfin in response to the Proponent's Report. The Commission advised it would accept those comments until 7 June 2018.

In addition to the comments in and attached to this letter, Jacfin refers the Commission to the extensive comments and issues raised about the Proposed EfW Facility in its past submissions to the Department and the NSW Parliamentary Inquiry, each of which were supported by independent analysis from various subject matter specialists, when considering the merits of the proposal and the Proponent's Report.

3 Supplementary comments in response to Proponent's Report

Jacfin wishes to take this opportunity to bring to the Commission's attention a number of issues raised by the Proponent's Report.

As outlined in Jacfin's previous submissions, the development of Jacfin's land is likely to be significantly affected by the Proposed EfW Facility, which is entirely incompatible with existing and proposed future employment uses on that land.

Jacfin remains deeply concerned about the multitude of serious impacts that have been identified by the Department in its Assessment Report, independent expert consultants, the consultants retained by the Department and EPA, and even the Proponent's own expert consultants. It is our client's view that these impacts either have not been addressed, or misconstrued or misrepresented in the Proponent's Report.

In summary, Jacfin strongly disagrees with the following key themes and contentions raised throughout the Proponent's Report:

- The Department and the NSW Environment Protection Agency (*EPA*) have inappropriately applied the NSW Energy from Waste Policy Statement prepared by the NSW EPA in 2015 (*EfW Policy*), including by concluding that identified reference facilities are not suitable on the grounds that they do not burn suitably similar waste;
- The Department and the NSW EPA have taken an overly conservative approach to its air quality and human health impact assessments;
- That there is sufficient waste generated in Sydney to support the demands of the Proposed EfW Facility; and

- That the Proposed EfW Facility is consistent with the statutory and strategic planning framework for the site.

In addition, Jacfin strongly disputes a significant number of statements and assertions in the Proponent's Report, including but not limited to those contained at:

- section 2 'Strategic importance';
- section 2.1 'Project benefits';
- section 3 'Relevant facts and information';
- section 4 'Responses to reasons for refusal'; and
- section 5 'Conclusion, options & recommendations'.

Jacfin has commissioned independent expert consultants to review the Proponent's Report (albeit in an extremely short timeframe). The purpose of these comments is to bring to the Commission's attention a number of statements and assertions which the independent experts have identified either as incorrect, or which misconstrue or misrepresent the conclusions in the Department's Assessment Report.

Further, a number of experts have identified inconsistencies in the Proponent's Report or deficiencies that remain material considerations as to whether the Proposed EfW Facility should be approved. Jacfin states that these identified matters support a decision to refuse development consent for the Proposed EfW Facility.

We **attach** the following reports commissioned by Jacfin:

- (a) Report by Ethos Urban – town planning; and
- (b) Report by GHD – air quality, waste, human health and odour impacts;
- (c) Report by Katestone – air quality, waste and odour impacts;
- (d) Report by Systra Scott Lister – hazards risk;
- (e) Report by Urbaine – visual impacts.

We have summarised the issues raised in those reports in the following sections of this letter.

4 Town planning

In its review of the Proponent's Report, Ethos Urban has expressed concerns regarding the manner in which the proponent seeks to invalidate, by reference to planning matters, the conclusion in the Department's Assessment Report that the Proposed EfW Facility should be refused. Ethos Urban has made the following comments in respect of the conclusions at section 5 of the Proponent's Report:

- As a matter of planning, community acceptance is a key component in the assessment of the proposal. The EfW Policy sets an appropriately high standard of compliance to reflect the community apprehension towards waste incineration and as a result the Department was correct to place significant weight on community acceptance, particularly given its location in such a heavily developed residential part of the metropolitan area;
- It is not in dispute that the waste stream composition is highly and inherently variable, and that there are inherent risks in the operation of a facility such as the Proposed EfW Facility which currently can only be managed through technology. As such, the presence of inherent risks supports the location of the Facility outside the Sydney basin airshed to ensure substantial set-backs and buffer zones, suitable local topographical and air circulation patterns, and good vehicular or rail access to accommodate traffic loads;

- It is inconsistent for the proponent to argue that the scale of the Proposed EfW Facility should not be considered a planning matter on the grounds that it is solely a commercial risk, but that the scale of the Facility is also justified given the apparent high demand for waste disposal in NSW; and
- The site is clearly logistically and commercially convenient for the proponent, but this convenience is not commensurate with the broad objectives of the statutory and strategic planning framework for the site and its surrounding areas. Ethos Urban has already set out these objectives in its previous submissions, which relate to local amenity impacts and inconsistency with local character, inconsistency with strategic planning objectives, and lack of permissibility under current zoning.

We refer to the more detailed analysis of town planning impacts by Ethos Urban in Jacfin's submissions to the DPE dated 27 July 2015, 10 March 2017, 2 March 2018, submissions to the Parliamentary Inquiry dated 28 May and 7 August 2017, and submission to the IPC dated 21 May 2018, specifically Attachments containing reports by Ethos Urban.

5 Air quality and human health impacts

Both GHD and Katestone have identified issues in the Proponent's Report regarding the proponent's statements and assertions that the Proposed EfW Facility will operate safely, despite recognising that its air emissions may exceed regulatory limits. Jacfin considers it deeply concerning that the proponent has misconstrued or misrepresented technical and scientific assumptions or findings, particularly where those assumptions and findings may influence whether the Proposed EfW Facility has acceptable air quality impacts.

(a) Exceedances of IED limits

Both GHD and Katestone have identified overly dismissive statements in the letter from ERM (formerly Pacific Environment Limited, who conducted the air quality assessment of the Proposed EfW Facility) at Appendix D of the Proponent's Report. Katestone has referred to the inconsistency between ERM's statement that they were unable to identify any EfW facilities in other countries operating outside of international Industrial Emissions Directive (*IED*) limits, and its own footnote stating that there were two instances where the IED limit for carbon monoxide was exceeded twice by one such facility. The Proponent's Report also contains other references to multiple self-reported carbon monoxide exceedances by another facility. Katestone has noted its disagreement with ERM's dismissal of these exceedances, and has stated that ERM misrepresents the reasons for why carbon monoxide is monitored.

Further, in respect of Appendix E of the Proponent's Report regarding the 'Human Health Response', GHD has expressly disagreed with, and has regarded as incorrect, the assertion that there would only be 'minutes' of exposure during plant shutdown as opposed to long term exposure if IED limits were to be exceeded by the Proposed EfW Facility. GHD has identified two problems with this assertion:

- Due to the lack of available technology to conduct live testing for all chemicals present in the air emissions, it would not be possible to immediately identify exceedances in respect of all toxicants; and
- The assertion that the Facility will be able to be spontaneously shut down is a noticeably bolder claim than its own 2017 AECOM health risk assessment report which states that such upset conditions would not occur for more than four hours uninterrupted, and for no more than 60 hours per year. Overall, the proponent has not provided consistent nor accurate information regarding the duration between failure and plant shutdown.

(b) Lack of new information to substantiate assertions

Both GHD and Katestone have identified the following assertions in the Proponent's Report indicating that the position of the proponent remains both unchanged and unsubstantiated:

- That chlorine levels will not exceed 1% due to the nature of the wastes and the mixing and homogenisation processes used at the Proposed EfW Facility, and
- That the proponent has demonstrated and verified the mixing and homogenisation processes.

The lack of justification and support for these assertions has already been addressed by the experts in their previous reports, including as part of Jacfin's most recent submission to the IPC on 21 May 2018. Jacfin reiterates that the Proponent's Report is meant to respond to the Department's Assessment Report and yet does not appear to provide any new information on these matters.

We refer to the more detailed analysis of air quality and human health impacts by GHD and Katestone in Jacfin's submissions to the DPE dated 27 July 2015, 10 March 2017, 2 March 2018, submissions to the Parliamentary Inquiry dated 28 May and 7 August 2017, and submission to the IPC dated 21 May 2018, specifically Attachments containing reports by GHD and Katestone.

6 Odour impacts and waste composition

Both GHD and Katestone have expressed concerns in each of their reports as to the manner in which the Proponent's Report discusses the Proposed EfW Facility's waste stream used for energy generation and the proposed use of floc waste in particular.

(a) Shredder floc waste

Both GHD and Katestone have identified a lack of clarity surrounding the exact composition of the waste stream of the Proposed EfW Facility. Each expert has individually commented on the Report's lack of clarification around whether the waste mixture set out in the proponent's amended Environmental Impact Statement (*EIS*) remains the same as that for which approval is sought, or whether floc waste as an 'uncommon waste stream' has in fact been removed from the proposal. Jacfin considers that it is important that the proponent clarifies whether it still proposes to use floc waste as a fuel source. Aside from the fact that the proponent should provide sufficient and current information as to the proposed composition of the waste stream, GHD has noted that the question of whether floc waste will be used as fuel source has consequences for the air emission and human health modelling results. The lack of clarity at this stage of the proponent's application is especially concerning given the fact that there is potential for some shredder floc waste to be classified as hazardous waste, based on European Waste Catalogue codes.

GHD has further identified a potentially misleading implication in the Proponent's Report to the effect that because shredder floc has not been excluded in the EfW Policy, it is acceptable for energy generation. GHD has specifically disagreed with this in their report, stating that shredder floc is not automatically acceptable under the EfW Policy. GHD has considered that the most likely scenario involves shredder floc being considered by the NSW EPA on an individual basis.

Both GHD and Katestone have noted the lack of information supporting or justifying the assertion in the Proponent's Report that the floc would consistently comprise '58%' inert dirt.

(b) Examples of other EfW facilities

Both GHD and Katestone have noted that the Proponent's Report relied significantly on the waste streams of the Ferrybridge Facility in the United Kingdom by way of comparison to indicate the effects of 'like' waste streams. The experts considered this example to be an unhelpful and incomparable example for identifying the relevant waste streams in the Proposed EfW Facility on the grounds that the Ferrybridge waste stream appears to be comprised of different materials to that

indicated for the Proposed EfW Facility. GHD has also referred to commentary from Hitachi Zosen Inova attached as Appendix A to the Proponent's Report, which questions whether it is even possible to refer to comparable examples given the 'variability of waste over time and origin as well as evolving EfW technology'. GHD has noted that this is in direct contradiction to the proponent's reliance on the Ferrybridge example.

(c) NSW EPA Policy

GHD has identified inconsistencies among a number of statements in the Proponent's Report regarding the proponent's compliance with the EfW Policy. The Department's Assessment Report had concluded that the Proposed EfW Facility was inconsistent with the EfW Policy, in light of uncertainties regarding the Facility's performance and the long term risks to the environment and health of the local community. GHD notes that in the Proponent's Report, the proponent alleges inconsistencies and broad terminology in the EfW Policy, implying difficulty of compliance, and yet proceeds to assert its compliance with the resource recovery criteria in the EfW Policy.

We refer to the more detailed analysis of air quality and human health impacts by GHD and Katestone in Jacfin's submissions to the DPE dated 27 July 2015, 10 March 2017, 2 March 2018, submissions to the Parliamentary Inquiry dated 28 May and 7 August 2017, and submission to the IPC dated 21 May 2018, specifically Attachments containing reports by GHD and Katestone.

(d) Odour Impacts

GHD has identified a number inaccuracies and omissions in the Proponent's Report regarding the potential for certain components in the proposed waste stream to have odorous impacts. GHD has noted that the waste proposed to be received by the proponent may include processed municipal solid waste (*MSW*). Not only does this particular type of waste have the potential to be odorous, neither the Proponent's Report nor any previous odour assessment by the proponent has considered the potential odour from the receipt of processed MSW.

7 Hazard risks

In previous reports prepared for Jacfin in relation to the Proposed EfW Facility, Systra Scott Lister (*SSL*) identified a number of issues that had not been previously addressed by the proponent nor brought to the Department's attention for the purposes of its Assessment Report. In its review of the Proponent's Report which is intended as a response to the Department's Assessment Report, SSL makes the overarching comment that the proponent has not provided any further information that changes the Department's conclusion that the Proposed EfW Facility should not be approved. In particular, these issues include:

- that the proponent still has not prepared a Level 3 Quantitative Risk Assessment study for the Proposed EfW Facility, despite the location, nature and risks of the proposal clearly justifying such an assessment;
- that the proponent still has not brought to the Department's attention a proper consideration of the various sources of significant fire risks; and
- that the Proponent's Report does not address undertaking any individual or societal risk assessment as to hazardous industries, despite SSL's previous submissions that the Proposed EfW Facility is a hazardous industry and is prohibited in the applicable IN1 General Industrial zone.

Jacfin considers that the continued failure of the Proponent's Report to address the significant hazard risks associated with the Proposed EfW Facility is extremely concerning, especially in light of the subsisting lack of consideration of these risks in the Department's Assessment Report. Jacfin urges the Commission to carefully consider these risks in carrying out its assessment of the

proposal, and considers that it is open to the Commission to find that the hazard risks, in addition to the numerous other issues identified by the Department, EPA, NSW Health, Jacfin and numerous other submitters, strongly justify the refusal of the Proposed EfW Facility.

We refer to the more detailed analysis of hazard risks by SSL in Jacfin's submissions to the DPE dated 27 July 2015, 10 March 2017, 2 March 2018, submissions to the Parliamentary Inquiry dated 28 May and 7 August 2017, and submission to the IPC dated 21 May 2018, specifically Attachments containing reports by SSL.

8 Visual impacts

Urbaine has identified a number of potentially misleading statements and assertions in the Proponent's Report regarding the visual impacts of the Proposed EfW Facility. A summary of the issues raised by Urbaine in relation to these statements and assertions is provided below:

- *That the site topography minimises the visual impact of the Facility* – Urbaine considers this misleading on the basis that the site is in an elevated position relative to the surrounding residential areas, and further, the proponent has given no consideration to screening or any other forms of actively minimising the visual impacts of a Facility that would be clearly visible due to its scale and elevation. Urbaine has referred to photomontages provided as part of previous submissions to the Department for an illustration of this impact;
- *That the site is well separated from residential localities, and that the Facility has been designed to respond to the site's natural topography* - Urbaine considers this misleading on the basis that the height and scale of the Facility renders its separation from residential localities less significant. Further, the fact of the Facility being located at the highest location on the site and increasing in height as it slopes upward north does not indicate that the design responds to the natural topography;
- *That the applicant has entered into a genuine and adequate consultative process with the community* – Urbaine questions this statement on two grounds. First, the viewpoints selected by the proponent do not provide an objective basis for the assessment of visual impacts and may be considered to minimise the impression of the impact of the Facility. Secondly, in its review of the material produced by the proponent for exhibition of the proposal, Urbaine concludes that the incomplete nature of the material does not enable the community, the Department nor the Commission to properly respond to the proposal's visual impacts.

Jacfin considers it problematic and concerning that the Proponent's Report makes a series of misleading statements and assertions to minimise the unacceptable visual impacts associated with the Proposed EfW Facility. Jacfin requests the Commission to take into consideration the significant visual impacts that the Proposed EfW Facility would have if approved on Jacfin and other nearby landowners and to refuse consent for the proposal on that basis.

We refer to the more detailed analysis of visual impacts by Urbaine in Jacfin's submissions to the DPE dated 27 July 2015, 10 March 2017, 2 March 2018, submissions to the Parliamentary Inquiry dated 28 May and 7 August 2017, and submission to the IPC dated 21 May 2018, specifically Attachments containing reports by Urbaine.

9 Conclusion

Jacfin strongly disagrees with and disputes many of the conclusions and contentions asserted in the Proponent's Report.

Jacfin does not consider that, as stated by the Proponent, the proposal is a 'strategic and local solution to waste management and energy production within NSW'.

Jacfin further considers that if accurate, the Proponent's assertion that the Department's Assessment Report 'does not provide a balanced assessment of the Proposed EfW Facility' can be attributed in large part to the Proponent's own failure to provide a sufficient and fulsome assessment of the various environmental, community and individual impacts arising from the Proposed EfW Facility.

These comments do not seek to repeat the concerns raised in its earlier submissions, including the IPC Submission, although we note the serious nature of these concerns and request the Commission carefully consider them in its assessment of the Proposed EfW Facility, and to read this submission in conjunction with all earlier submissions lodged for Jacfin.

Jacfin considers that the additional issues outlined in this letter support the conclusion that the Proponent has not been able to explain or overcome the unacceptable impacts of the Proposed EfW Facility. This should provide additional justification for the Commission to refuse the application.

Finally, we understand the Proponent intends to provide a formal response to the Commission about the matters raised in the public meeting. Jacfin requests a reasonable opportunity to provide the Commission with further comments following the public release of the Proponent's response.

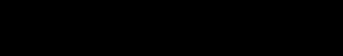
Yours sincerely



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Attachments:

- 1 Report by Ethos Urban – town planning
- 2 Report by GHD – air quality, waste, human health and odour impacts
- 3 Report by Katestone – air quality, waste and odour impacts
- 4 Report by Systra Scott Lister – hazards risk
- 5 Report by Urbaine – visual impacts