

Allens

Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia

T +61 2 9230 4000
F +61 2 9230 5333
www.allens.com.au

GPO Box 50
Sydney NSW 2001 Australia
DX 105 Sydney

ABN 47 702 595 758

Allens > < Linklaters

27 July 2015

The Secretary
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Attention: Manager – Industry Assessments

Via Online Portal

Dear Mr Ritchie

**Submission on behalf of Jacfin Pty Limited
Energy from Waste Facility (SSD 6236)
Premises: Lots 1, 2, 3 and 4 in DP 1145808, Eastern Creek**

We act for Jacfin Pty Limited (**Jacfin**). This submission is made on behalf of our client.

Jacfin **objects** to the development application for the proposed 'Energy from Waste Facility' (the **Facility**) by The Next Generation (NSW) Pty Limited at the Premises, for the reasons outlined in this letter and in the enclosed review undertaken by leading town planning experts, JBA Urban Planning Consultants Pty Limited (**JBA Report**).

Our client submits:

- That no decision-maker acting reasonably would be in a position to determine the development application on the basis of the limited information base presently exhibited in the Environmental Impact Statement (Urbis, April 2005) (**EIS**), which is inadequate in a number of material respects, and therefore approval of the Facility ought be refused by the Minister in making a determination on the application under section 89E of the *Environmental Planning and Assessment Act 1979* (NSW); and
- Even if the Minister proposes to approve the development application in reliance on the information base presented in the EIS, there are a number of critical matters of public health and likely environmental impact that require significant conditioning on any approval or partial approval.

We set out below the basis for these submissions.

1 Background

Our client, Jacfin, is the owner and developer of adjoining land to the south of the Premises (Lot 20 in DP1206129), and for other proximate lands within the Western Sydney Employment Area.

For over a decade Jacfin has made a substantial investment in the development of a high quality business park on the adjacent land, attracting premium tenants such as Fujitsu and DATS to purpose-built high quality warehouse and distribution facilities. The quality of Jacfin's developments

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at its Eastern Creek property has been recognised by the Urban Taskforce, naming Jacfin as the winner of the Development Excellence Award for Industrial Development in 2014 for the Ricoh Distribution Centre, being the first 5 star Green Star industrial development in NSW.

While that part of Jacfin's Eastern Creek property that immediately abuts the Premises is currently used for cattle operations, our client anticipates continuing its investment in and the development of the business park into that part of its property in conjunction with the future extension of Eastern Creek Drive to the south of the Premises.

2 Inappropriate use for site

In view of the projected air emissions, noise impacts and potential health risks associated with the intended operation of a waste incinerator, Jacfin is concerned that the proposed Facility is fundamentally an inappropriate development for the Premises given its location in a highly developed area proximate to existing residential areas and the increasing density of surrounding business park developments being delivered by the strategic planning for the Western Sydney Employment Area.

Notwithstanding the contended synergy for the common corporate owner¹ in locating the Facility adjacent to the existing Genesis zero waste facility and landfill, the Energy from Waste power generation introduces a new heavy industrial, potentially hazardous use² into the midst of existing residential and business park estates with a large population at risk of exposure to potential health impacts. Importantly, the Human Health Risk Assessment identifies cancer risk and annualised cancer risk associated with emissions from the Facility will exceed the 1 in a million adult lifetime cancer risks guidance from the National Health and Medical Research Council.³

In considering the merits of locating the Facility at the Premises, it is submitted that the Minister ought investigate closely the extent to which the potential adverse health risks associated with the use extend beyond the boundaries of the Premises. Our client considers that such a use would ordinarily seek to retain a buffer area within the development site to ensure sufficient set backs from sensitive receptors and areas that would place a significant population at risk of affectation in the event of abnormal / upset operations or emergency conditions.

While the need for separation distances and buffers appears to be accepted by the EIS, it wrongly conceives the presence of the surrounding industrial zoned land uses to fulfil that buffer role⁴. This is unacceptable to our client and it is submitted that it is not an appropriate approach for a 'greenfield' development to introduce a health risk to occupants of existing and planned developments on surrounding land. In that regard, the Eastern Creek Precinct Stage 3 in which the Facility and our client's land is located has a minimum employment density target of 45 persons per hectare. A substantial number of workers in the Eastern Creek Business Park will be readily exposed to air emissions from the Facility.

Our client is concerned that the EIS fails to present a clear assessment of the level of risk to which our client's employees, contractors or future tenants, employees, contractors and visiting members of the public will be exposed by the Facility if approved.

3 Failure to assess alternative locations

The JBA Report notes that development of facilities of this nature would normally be located in low density or rural areas with the potential for substantial set-backs and buffer zones. Against this

¹ EIS, s4.1, p49

² EIS, s8.7.3, p95

³ EIS, Human Health Risk Assessment, Table 7.4; JBA Report, s4.0, p3: (cites 1.09 to 2.53 in a million)

⁴ EIS, s4.2, p50

backdrop, it is a fundamental omission by the EIS to assess the availability of alternative locations that may be available for the introduction of this technology and that may present a more acceptable solution in relation to population at risk and a less constrained air shed.

The EIS is clear that "no alternative sites were considered for the Proposed Development"⁵. This is a defect that infects the entirety of the assessment process for the Facility, as no attempt has been made to comparatively assess the extent to which similar benefits might be secured through selection of an alternative site. No assessment has been presented in relation to any other site that might provide a more suitable location for the waste incinerator, nor of any additional technical measures that might be deployed within the Facility to remove or further reduce potential risks to human health.

4 Whole / partial approval

The EIS acknowledges that the development approval that is sought is for the whole development, yet the EIS states that it will be developed in two phases⁶.

Our client submits that seeking approval for the whole development is therefore premature and, for the reasons supported by the JBA Report enclosed, it is submitted that approval should only be given for the first phase so that the ability of the operator to manage and operate the facility to the best available technology standards proposed can be tested and proven before the second phase commences.

If this submission seeking partial approval only is not accepted and the Minister intends to grant approval to the whole Facility, it is submitted that it would be prudent to require as a condition of that development approval that an assessment of the performance of the first phase be undertaken (once commissioned and in operation for a suitable period) in order to obtain confirmation as to the adequacy of the projected environmental impacts and verification of the accuracy of the impacts modelling, including air quality at stack release points and emission dispersion from the stacks, prior to the commencement of construction for the second phase of the Facility.

5 Proposed Development Control Plan

The EIS acknowledges in several locations that a site specific Development Control Plan is in preparation concurrently with the EIS, however there is no draft exhibited with the EIS materials⁷.

The content of the proposed DCP is material to a proper understanding of the future development of the Premises. The ability of the public to understand the proposed development form of the Facility and respond is prejudiced by the failure to exhibit even a draft DCP with the EIS. Importantly, the site specific DCP must demonstrate the manner in which the Premises will integrate into the planning for the whole of the Eastern Creek Precinct and take into account the Eastern Creek Stage 3 Precinct Plan (now DCP).

It is submitted that the public exhibition of the EIS is compromised by the failure to provide the DCP so that intending submitters have all relevant information available during the limited period of statutory exhibition.

⁵ EIS, s4.1, p50

⁶ EIS, Executive Summary, p.iii

⁷ EIS, eg s7.3.1, p71

6 Noise impacts

The Premises is located within Noise Emission Zone 4 of the Eastern Creek Stage 3 Precinct Plan and our client's land is within Noise Emission Zone 5.⁸ Each zone is required to meet noise levels as extracted below:

- (e) The optimised noise level goals for the Precinct are outlined in Table 1. These goals will provide adequate protection to the noise amenity of residential areas surrounding the Precinct without unduly restricting the operation of development.

Period	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
Day	57 dBA	54 dBA	56 dBA	54 dBA	49 dBA	52 dBA
Evening	47 dBA	44 dBA	46 dBA	44 dBA	39 dBA	42 dBA
Night	42 dBA	40 dBA	40dBA	39 dBA	34 dBA	37 dBA

Table 1 – Optimum Noise Level Goals

The EIS does not address the noise requirements of the Precinct Plan in any depth or detail. No assessment has been provided as to whether the relevant Zone 4 noise level goals will be met once the proposed Facility is operational. Further, our client is concerned that the impact of the Facility on the overall noise goals for Zone 4 will be to cause the goals to be exceeded and therefore to place undue pressure on development in adjoining zones to minimise noise emissions to avoid cumulative exceedances in residential receptor areas.

Further, the noise assessment focus is only on the residential receptors and no consideration has been given to the occupants of our client's business park.

It is therefore submitted that:

- The proponent should provide further information and assessment of the impact of the development on the Zone 4 noise goals and the impact on the achievement of goals in adjoining zones;
- Further assessment should be carried out to ensure an appropriate level of amenity is achieved at the commercial receptors on our client's site;
- Depending upon the results of the further assessment, requirements should be imposed for additional noise mitigation measures to be incorporated into the Facility to minimise noise emissions beyond the boundary of the Premises.

7 Odour impacts

While the predicted odour concentration in the EIS materials for the southern boundary of the Premises is less than the allowable level of detection, there is no sensitivity testing to identify how robust the results are to the various assumptions in the odour modelling.

It is therefore submitted that:

- The proponent should provide further modelling to ensure the robustness of the results at the southern boundary;

⁸ Eastern Creek Stage 3 Precinct Plan, p7-9 and 7-10

- Conditions should be imposed on any development approval requiring no odour to be emitted beyond the boundary of the Premises so as to protect the amenity of the current and future occupants of the adjacent business park.

8 Air emissions / health impacts

As noted in the JBA Report enclosed:

It is acknowledged that the facility will incorporate Best-Available-Technology in relation to the treatment of air emissions during normal operations, as required under the EPA's *Energy from Waste Policy Statement*. However, the proponent has not demonstrated that it has the experience or the capability to match the Best-Available-Technology with the necessary management and governance systems to ensure the facility can be operated in accordance with best practices. Given the size and scale of the proposed energy-from-waste facility and its location within the centre of Sydney's heavily constrained metropolitan air shed, there must be suitable interrogation of the proponents proposed management systems and the proponent's capability (both financial and technical) in operating the facility in accordance with best practice techniques.

Our client is concerned that the ability of the applicant to operate the facility is unproven and, as noted in the JBA assessment, there is uncertainty about how the applicant will manage the need to adjust the operational parameters (particularly temperature) depending upon the characteristics of the waste materials (particularly halogenated organic substances containing chlorine) while still ensuring acceptable ambient air quality standards are met. In this regard, note that the Human Health Risk Assessment is based on modelling for residential receptors only.

Our client's concern is heightened as the EIS materials do not include plots with contour lines to be able to assess the impact on our client's land during upset or emergency conditions at which times significant exceedances of the Regulation discharge limits for particulate matter, mercury and cadmium are predicted, including at ground level.

Additionally, there is a need to ensure appropriate communication protocols are implemented to inform occupants on nearby land, including our client's business park, of any emergency events.

It is therefore submitted that:

- Approval should only be given for the first stage so that the applicant's ability to adequately manage the facility can be tested (as noted above);
- Further air quality data (and associated human health risk assessment) should be provided in the form of predicted contours for upset and emergency conditions extending to surrounding sites including our client's land and its commercial occupants (not just the residential receptors);
- Conditions imposing a requirement to prepare and comply with an approved Emergency Management Plan need to be included in any development approval including obligations to notify nearby occupants and visitors if evacuation or other recommended action (such as remaining indoors) is required; and
- Operational conditions need to be developed to govern the operational parameters to identify types of wastes (eg chlorinated wastes) and ability to adjust temperature of the burn.

9 Visual impacts

The Visual Impact Assessment in the EIS has given no consideration to the impact on our client's land. While Viewpoint 7 is from broadly the same southerly direction, it is substantially further away from the Premises than our client's site. At the boundary, the proposed development height will be some 60m from the ground and the stacks will rise over 107m above the common boundary levels. These heights are significantly above other industrial buildings in the area and will have a significant

visual impact likely to affect the potential development of the remaining vacant land on our client's property.

It is submitted that:

- Additional planting along the southern boundary of the Premises (to the south of the bio-retention basin) be included as a requirement of a Landscaping Plan. This should be consistent with maintaining the vegetation visual catchment indicated under the Eastern Creek Stage 3 Precinct Plan⁹.

10 Power supply and connection

The EIS indicates that the power to be generated at the Facility will be transmitted via underground 132kV cables within a 4 metre wide trench collocated in an existing TransGrid transmission line easement to the Sydney West 330kV substation.¹⁰

The EIS omits any proper description, map or assessment of these proposed works. This is a key component of the proposal which is omitted from the EIS. If the cable is not to be installed by the applicant, it remains a facilitated impact of the development that should be assessed in conjunction with the Facility. Any other approach would be to accept a piecemeal assessment process by default.

Jacfin is concerned that any such cables are wholly located within the Premises and the parcel immediately adjoining the Premises on its western boundary, owned by the Ministerial for Planning and administered by the Department of Planning and Environment.

11 Regional transport infrastructure contributions

The EIS fails to indicate what provision will be made by the applicant for regional transport infrastructure contributions.¹¹

The usual requirement for development governed by the Western Sydney Employment Area SEPP for contributions (monetary, works in kind and/or land dedication) to the value of \$180,000 per net developable hectare should be noted, with delivery pursuant to the terms of a voluntary planning agreement.

It is submitted that the level of contributions to be made to regional transport infrastructure in connection with the Facility is a matter of public interest that should be clearly indicated in the EIS.

12 Laydown areas

The EIS does not clearly explain the proposed use of the laydown areas.

While the EIS states that all waste will be received and unloaded inside the tipping hall buildings, Jacfin is concerned that these hardstand areas may become temporary storage areas for waste received onsite and have the potential for associated odour and noise emissions.

It is submitted that appropriate approval conditions governing the loading and unloading of deliveries of waste at the Premises are warranted, prohibiting the use of the laydown areas for such purposes.

⁹ Eastern Creek Stage 3 Precinct Plan, Figure 7, p2-7

¹⁰ EIS, s3.17.8, p47

¹¹ EIS, s8.6, p94

13 Bio-retention pond and riparian area

The EIS does not contain any detailed information about the bio-retention pond located on proposed Lot 4 and close to the boundary of our client's site. Similarly, there is little information regarding the treatment of the area within the riparian setback to the Ropes Creek Tributary near the southern boundary of the Premises.¹²

It is submitted that:

- Further information is required about the construction and proposed operation of the bio-retention pond to ensure it does not become a source of odour or pollution; and
- Further information is required on the establishment and management of the area within the riparian setback and the land between the southern boundary and the riparian area.

Yours sincerely

Bill McCredie
Partner
Allens
Bill.McCredie@allens.com.au
T +61 2 9230 4319

Meg Lee
Managing Associate
Allens
Meg.Lee@allens.com.au
T +61 3 9613 8154

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¹² EIS, s3.3, Figure 16 – Site Master Plan, p27