

APPENDIX 4

Pre-lodgement Minutes and Correspondence

Mike McMahon

From: Jenny Simpson on behalf of Darryl Anderson <Jenny@daconsulting.com.au>
Sent: Thursday, 11 September 2014 2:40 PM
To: council@blacktown.nsw.gov.au
Cc: Mike McMahon; Ray Duggan
Subject: Proposed Waste Management Facility and Depot at 14 Rayben Street, Glendenning Lot 123 DP 870988
Attachments: Draft Project Overview 110914.pdf; RI456 PO Figures 140829.pdf; 140909_RI456-00-00 to 04.pdf; Appendix 1 Govt. Searches.pdf; Appendix 2 Previous Approvals -14 Rayben St.pdf; Appendix 3 Previous Approvals - EPA Licence Seven Hills.pdf; AVG Certification.txt

Dear Sir/Madam

We act for the proponents, JJ Richards & Sons Pty Ltd. The company currently operates a Transport Depot at the premises. The company intends to establish a Waste Management Facility (as described in Section 3.2 of the attached Project Overview) as an adjunct to the existing depot on the existing land.

We attach a copy of the draft Project Overview (Duggan & Hede Pty Ltd, August 2014) for the proposed Waste Management Facility, which includes, at Section 3, a detailed description of the proposed development. Also attached are Appendixes 1, 2, 3 and the drawings for the proposed development. The proposal is considered to be Designated Development pursuant to Clause 32 of Schedule 3 of the EP&A Regulations 2000.

A number of key planning issues have arisen during preparation of the Project Overview in relation to which we request Council's advice, prior to proceeding with the preparation of a Development Application and Environmental Impact Statement. In this regard, we would be pleased to participate in a pre-lodgement discussion with Council Officers by way of a teleconference, if required.

In summary, the key issues in relation to which we seek Council's advice are as follows:

1. Blacktown Local Environmental Plan 1988 – the LEP does not contain a definition of “Industry”, but having regard to the characteristics of the proposed Waste Management Facility and the 4(a) Industrial Zone objectives, Council is requested to confirm that the proposed use is permissible, with consent in the 4(a) Zone;
2. Adopted draft Blacktown Local Environmental Plan 2013 – we understand that the draft Plan implements the Standard Instrument and has been adopted by Council following public exhibition. Advice is requested in relation to when the Plan is likely to be made;
3. Adopted Draft Blacktown Local Environmental Plan 2013 – we note that the subject land is proposed to be zoned IN1 General Industrial under the exhibited adopted Draft Blacktown Local Environmental Plan 2013. Based on the definitions contained in this Plan, Council is requested to confirm that the proposal would be characterised as development for the purposes of a “Waste or Resource Management Facility” and specifically a “Resource Recovery Facility”, both of which uses are permissible, with consent in the proposed IN1 Zone;
4. State Environmental Planning Policy (State Regional Development 2011) Clause 8(1) is in the following terms:

“8 Declaration of State significant development: section 89C

(1) Development is declared to be State significant development for the purposes of the Act if:

- (a) *the development on the land concerned is, by the operation of an environmental planning instrument, not permissible without development consent under Part 4 of the Act, and*
- (b) *the development is specified in Schedule 1 or 2.*

The term “not permissible without development consent under Part 4 of the Act” appears to mean that the proposed development either requires development consent, is exempt development, is complying development, or is prohibited. However, the wording is unclear.

Council is requested to confirm that the proposal is permissible, with Development Consent and therefore the development is NOT State Significant Development.

Even if the development is prohibited by BLEP1988, Clause 121(1) of State Environmental Planning Policy (Infrastructure) 2007 provides that:

“121 Development permitted with consent

- (1) Development for the purpose of waste or resource management facilities, other than development referred to in subclause (2), may be carried out by any person with consent on land in a prescribed zone.”*

Clause 120 defines a “prescribed zone” as:

“prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) RU1 Primary Production,*
- (b) RU2 Rural Landscape,*
- (c) IN1 General Industrial,*
- (d) IN3 Heavy Industrial,*
- (e) SP1 Special Activities,*
- (f) SP2 Infrastructure.”*

“resource recovery facility means a facility for the recovery of resources from waste, including such works or activities as separating and sorting, processing or treating the waste, composting, temporary storage, transfer or sale of recovered resources, energy generation from waste gases and water treatment, but not including re-manufacture of material or goods or disposal of the material by landfill or incineration.”

“waste disposal facility means a facility for the disposal of waste by landfill, incineration or other means, including associated works or activities such as recycling, resource recovery and other resource management activities, energy generation from waste gases, leachate management, odour control and the winning of extractive material to generate a void for disposal of waste or to cover waste after its disposal.”

“waste or resource management facility means a waste or resource transfer station, a resource recovery facility or a waste disposal facility.”

“waste or resource transfer station means a facility for the collection and transfer of waste material or resources, including the receipt, sorting, compacting, temporary storage and distribution of waste or resources and the loading or unloading of waste or resources onto or from road or rail transport.”

Clause 6(1) of the Policy provides the following interpretation of “equivalent land use zones”:

“6 Interpretation—references to equivalent land use zones

- (1) A reference in this Policy to a land use zone that is equivalent to a named land use zone is a reference to a land use zone under an environmental planning instrument that is not made as provided by section 33A (2) of the Act:
- (a) that the Director-General has determined under clause 1.6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 is a land use zone in which equivalent land uses are permitted to those permitted in that named land use zone, or
 - (b) if no such determination has been made in respect of the particular zone, that is a land use zone in which (in the opinion of the relevant authority) equivalent land uses are permitted to those permitted in that named land use zone."

The Director General's published equivalent zones for Blacktown City Council under the Codes SEPP indicate that the IN1 General Industrial zone is equivalent to the 4(a) General Industrial zone.

But Clause 6(2A) provides as follows:

"(2A) Despite subclause (1), in relation to land:

- (a) to which an environmental planning instrument that is not made as provided by section 33A (2) of the Act applies, and*
- (b) to which a draft environmental planning instrument that complies with that section and that has been the subject of community consultation also applies,*

a reference in this Policy to a lot or land in a named land use zone is a reference to a lot or land specified in a land use zone that is equivalent to such a zone in the last such draft environmental planning instrument that was the subject of such community consultation."

The adopted, exhibited Draft Blacktown Local Environmental Plan 2013 proposes to zone the site IN1. It is considered that, under this Clause, the IN1 zone proposed in the exhibited, Draft Blacktown Local Environmental Plan 2013 is the relevant zone and therefore under Clause 121 of State Environmental Planning Policy (Infrastructure) 2007 development for the purposes of a "waste or resource management facility" (which, in this case, would be a "resource recovery facility" as defined above) is permissible, with consent, in the zone pursuant to Clause 121(1).

It follows from the above that the proposed development will therefore NOT be State Significant Development pursuant to Clause 8(1) of State Environmental Planning Policy (State and Regional Development) 2011 as it is not caught by Clause 8(1)(a).

Council is requested to confirm that having regard to the provisions of SEPP State and Regional Development 2011, that the proposal is not state significant development.

Please don't hesitate to contact Darryl Anderson should require any further information in relation to this matter.

Regards

DARRYL ANDERSON
Director/Principal Town Planner

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Mike McMahon

From: Albert Madrigal [mailto:Albert.Madrigal@blacktown.nsw.gov.au]
Sent: Monday, 13 October 2014 2:50 PM
To: Jenny Simpson on behalf of Darryl Anderson
Subject: Waste Management Facility and Depot at 14 Rayben Street, Glendenning Lot 123 DP 870988

Dear Darryl,

I refer to your email enquiry regarding the permissibility of a Waste Management Facility and Depot at 14 Rayben Street, Glendenning Lot 123 DP 870988.

Please see below a response to your queries:

1. A proposed Waste Management Facility is a permissible form of development subject to development consent in the 4(a)-Industrial-General Zone pursuant to the Blacktown Local Environmental Plan 1988 (BLEP 1988).
2. The Draft Blacktown Local Environmental Plan 2013 (BLEP 2013) was submitted to the Department of Planning for consideration in April of this year. Council was initially informed that July/August would be the likely period of gazettal, however, this has not yet occurred. Council expects that gazettal is now likely to occur at approximately the end of this year, or early next year. However, it could occur sooner. As the timing of the draft Blacktown LEP 2013 is in the hands of the Department of Planning it is suggested you contact the Department for their expected timing.
3. In consideration of the definition of a "Waste or Resource Management Facility" pursuant to the BLEP 2013, which is:
 - (a) a resource recovery facility;
 - (b) a waste disposal facility;
 - (c) a waste or resource transfer station;

Based on the description of the proposal as set out in your draft project overview, the proposed use of the subject site falls within this definition. Waste or Resource Management facilities are not listed as a prohibited use under the draft BLEP 2013 with respect to the IN1 general Industrial zone and is therefore permissible under the proposed IN1 zoning in the draft BERP 2013, subject to consent from Council. Clause 121 of the SEPP (Infrastructure) 2007 contains provisions that make development for the purpose of a waste or resource management facility a permitted form of land in a prescribed zone. In clause 120 prescribed zone sets out a list of zones of which the IN1 General Industrial zone is included.

4. Under SEPP State and Regional Development 2011, a proposal which is not listed in schedule 1 is not State Significant Development. Particularly, if the proposal does not meet the following criteria, it does not constitute State Significant Development:

23 Waste and resource management facilities

- (1) Development for the purpose of regional putrescible landfills or an extension to a regional putrescible landfill that:
 - (a) has a capacity to receive more than 75,000 tonnes per year of putrescible waste, or
 - (b) has a capacity to receive more than 650,000 tonnes of putrescible waste over the life of the site, or
 - (c) is located in an environmentally sensitive area of State significance.
- (2) Development for the purpose of waste or resource transfer stations in metropolitan areas of the Sydney region that handle more than 100,000 tonnes per year of waste.
- (3) Development for the purpose of resource recovery or recycling facilities that handle more than 100,000 tonnes per year of waste.
- (4) Development for the purpose of waste incineration that handles more than 1,000 tonnes per year of waste.
- (5) Development for the purpose of hazardous waste facilities that transfer, store or dispose of solid or liquid waste classified in the Australian Dangerous Goods Code or medical, cytotoxic or quarantine waste that handles more than 1,000 tonnes per year of waste.
- (6) Development for the purpose of any other liquid waste depot that treats, stores or disposes of industrial liquid waste and:
 - (a) handles more than 10,000 tonnes per year of liquid food or grease trap waste, or
 - (b) handles more than 1,000 tonnes per year of other aqueous or non-aqueous liquid industrial waste.

AProvided your proposed facility does not exceed the tonnes/quantities specified in section 23 above then the proposed use would not fall under the definition of State Significant Development under the SEPP (State and Regional Development) 2011.

I trust that this information has been of assistance. If you have any questions, please contact me as per the details below.

Regards,

Albert Madrigal

Town Planner | Blacktown City Council

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