

NOTICE OF DECISION

DA 201834656

PART C – PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

The development application was originally publicly notified from 12 November 2018 to 30 November 2018. However, an error was identified in the notification process and therefore this application was renotified. Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 22 November 2018 to 12 December 2018. Twenty one written representations were received during public notification.

The main issues raised included the following (this is not an exhaustive list of all issues raised):

- Rail Freight Terminal (rail use) is prohibited in the IZ2 zone.
- Other options must be considered through a strategic planning process for the proposed rail freight terminal.
- Already sufficient hardstand for storage.
- Viability of the freight transport facility.
- EIS process should be concluded prior to any other DA being determined.
- Wrong assessment track.
- Objectives and suitability of the land.
- An environmental assessment of the cumulative impacts (of all proposals) should be provided including social, economic and the environment.
- Documentation is insufficient and lessee details are incorrect.
- All entity advice should be considered.
- Noise impacts on surrounding development needs to be considered, including noise generated from the railway.
- Traffic impacts on the surrounding area, including cumulative and future impacts.
- Relocation of utilities should be at the proponent's expense.
- Contamination has not been appropriately addressed.
- Waste transfer station (hub) will cause impacts.
- A licence or lease has not been granted for Block 11 Section 8 Fyshwick (unleased land).

The issues raised through public representations received were all considered. The assessment did not agree with some of the identified issues. Other issues did not warrant refusal; or were adequately addressed through the documentation which was assessed prior to making this decision or through conditions and advice included in this decision.

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ENTITY ADVICE

Pursuant to Division 7.3.3 of the *Planning and Development Act*, the application was referred to the below entities. Where an entity requested conditions to be imposed on this development, those conditions have been incorporated into Part A of this Decision. A summary of entity comments can be found below.

1. Conservator of Flora and Fauna
The Conservator of Flora and Fauna supports the proposal.
2. Environment Protection Authority (EPA)
The EPA supports the proposal subject to conditions – included in this decision.
3. Transport Canberra and City Services (TCCS)
TCCS supports the proposal subject to conditions – included in this decision.
4. Evoenergy
Evoenergy conditionally supports the proposed development. The relevant statement is attached to this decision.
5. Jemena Gas
Jemena Gas conditionally supports the proposed development. The relevant statement is attached to this decision.
6. Icon Water.
Icon Water issued a “failed to comply” statement requiring resubmission to Icon Water after design acceptance in principle is achieved. It is noted that drawings endorsed “Progress Stamp (In Principle)” dated 01/05/2019 were submitted by the proponent for this DA. This decision does not take effect until a statement of compliance has been obtained from Icon Water.

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ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
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ATTACHMENT 1

ADMINISTRATIVE INFORMATION RELATING TO NOTICE OF DECISION.

Submission of revised drawings or documentation

If a condition of approval requires the applicant to lodge revised drawings and / or documentation with the planning and land authority for approval under section 165 of the *Planning and Development Act 2007*, the submission must be made by completing an application in e-development.

DATE THAT THIS APPROVAL TAKES EFFECT

Unless a condition of approval provides for otherwise this approval takes effect the day after the date of this decision. The effective date for development applications approved subject conditions could also be adjusted if the approval is reconsidered by the planning and land authority or if an application is made to the ACT Civil and Administrative Tribunal.

Pursuant to section 184 of the Act, this approval will expire if:

- the development or any stage of the development is not started within two years after the day the approval takes effect;
- the development is not finished two years after the day the development begins; or
- the development approval relates to land comprised in a lease that requires the development to be completed on a stated date – the date stated in the lease for completion of the development, or the approval is revoked under section 189 of the Act.

Under section 184 of the Act, the applicant may apply to the planning and land authority to extend the prescribed period to finish the development, but such an application must be made within the original period specified for completion.

A development approval, to which section 184 of the Act applies, continues unless the approval ends under sections 184, 185, 186 or 187 of the Act.

Reconsideration of the Decision

If the applicant is not satisfied with the decision made by the planning and land authority, they are entitled to apply to the planning and land authority for reconsideration within 20 working days of being told of this decision under section 191 of the *Planning and Development Act 2007*. A longer timeframe may apply only if granted in writing by the planning and land authority under section 184 of the *Planning and Development Act 2007*.

Other approvals

A notice of decision grants development approval only. Other approvals may be required, including:

1. Building Approval

Most building work requires building approval to ensure it complies with building laws such as the Building Code of Australia. The lessee should engage a private building certifier to determine whether building approval is required and assess and approve the building plans before construction commences. A list of certifiers can be obtained from the Environment, Planning and Sustainable Development Directorate.

2. Tree damaging activity approval

A Tree Management Plan under the *Tree Protection Act 2005* is required for approval where it is proposed to undertake groundwork within the tree protection zone of a protected tree or likely to cause damage to, or remove, any trees defined as protected trees by that Act. More information is available from the Transport Canberra and City Services Directorate.

3. Use of verges or other unleased Territory Land

In accordance with the *Public Unleased Land Act of 2013*, road verges and other unleased Territory land must not be used for the carrying out of works, including the storage of materials or waste, without prior approval of the Territory. Approval can be obtained from the Transport Canberra and City Services Directorate.

4. Works on unleased Territory Land

In accordance with the *Public Unleased Land Act of 2013*, no work can be undertaken on unleased Territory land without the approval of the Territory. Such approval must be obtained from the Manager Development Review and Coordination, Transport Canberra and City Services Directorate by way of:

- (a) a certificate of design acceptance prior to the commencement of any work; and
- (b) a certificate of operational acceptance on completion of all works to be handed over to TCCS.

Works on unleased Territory land may include the construction or upgrading of driveway verge crossings, public footpaths, roads, street lighting, stormwater works, waste collection amenities, street signs and line marking, road furniture and landscaping.

Review by the ACT Civil and Administrative Tribunal (ACAT)

1. Decisions that are reviewable by the ACAT are identified in Schedule 1 of the *Planning and Development Act 2007*, except for matters that are exempted under Schedule 3 of the *Planning and Development Regulations 2008* (matters exempt from third party review).
2. The notice of decision and this advice has been sent to all people who made a representation in relation to the application.
3. The ACAT is an independent body. It can review a large number of decisions made by ACT Government ministers, officials and statutory authorities on their merits. The ACAT can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with ACAT recommendations.
4. If you think you have a right of appeal, you may apply for a review. Application forms can be obtained from the ACAT. You can also download the form from the ACT Legislation Register.

5. If you are applying on behalf of an organisation or association of persons, whether incorporated or not, the Tribunal in deciding whether to support this application will consider the effect of the decision being reviewed on the interests of the organisation or association in terms of its objects or purposes. A copy of the relevant documents will be required to be lodged with the Tribunal.
6. The time limit to make a request for a review is 28 days from the date of this notice of decision. The time limit can be extended in some circumstances (refer to sections 10 (2), 10(3), 25(1)(e) and 25(2) of the *ACT Civil & Administrative Tribunal Act 2008*; section 7 of the *ACT Civil and Administrative Tribunal Procedure Rules 2009 (No 2)*; and section 409 of the *Planning and Development Act 2007*).
7. Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee (the Tribunal Registry will advise of the current fee), unless you are receiving legal or financial assistance from the ACT Attorney-General. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T of the *ACT Civil and Administrative Tribunal Act 2008*). Decisions to grant assistance are made on the grounds of hardship and that it is reasonable, in all the circumstances, for the assistance to be granted. Write to: the Director General, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. Ask the ACAT for more details.
8. The ACAT is required to decide appeals in land and planning and tree protection cases within 120 days after the lodging of the appeal, unless that period is extended by the ACAT upon it being satisfied that it is in the interests of justice to do so.
9. The following organisations may be able provide you with advice and assistance if you are eligible:
 - ACT Attorney-General, write to the Director General, Justice and Community Safety Directorate, GPO Box 158, CANBERRA, ACT, 2601
 - the ACT Legal Aid Office, telephone 1300 654 314
 - ACT Council of the Ageing, telephone 02 6154 9740
 - Welfare Rights Centre, telephone 1800 226 028
 - Environmental Defender's Office (ACT), telephone 02 6243 3460.
10. You will have to pay any costs involved in preparing or presenting your case. The ACAT also has the power to award costs against a party if the party contravenes a direction of the ACAT and the ACAT considers it in the interests of justice to make such an order. This power is in addition to the power of the ACAT to strike out a party and to dismiss an application for failure to comply with the ACAT's directions.
11. You may apply for access to any documents you consider relevant to this decision under the ACT Freedom of Information Act 1989. Information about Freedom of information requests is available on the planning and land authority's web site or by contacting us by phone on 02 6207 1923.

12. The procedures of the ACAT are outlined on the ACAT's website, including in the Guide to the Land and Planning Division and the Guide to the Hearing. Contact the ACAT for alternative ways to access information about the ACAT's procedures.

Contact details for relevant agencies

<p>ACT Civil and Administrative Tribunal Level 4, 1 Moore Street CANBERRA CITY ACT 2601 GPO Box 370, CANBERRA, ACT, 2601</p>	<p>www.acat.act.gov.au tribunal@act.gov.au 02 6207 1740 02 6205 4855</p>
<p>Health Directorate</p>	<p>www.health.act.gov.au 02 6205 1700</p>
<p>Environment, Planning and Sustainable Development Directorate <i>Planning and land authority</i> - list of certifiers for building approval - demolition information - asbestos information <i>Environment Protection Authority</i> - environment protection - water resources - asbestos information <i>Conservation, Planning and Research</i> - threatened species/wildlife management</p>	<p>www.planning.act.gov.au 02 6207 1923 www.environment.act.gov.au 02 6207 6251 www.environment.act.gov.au 02 6207 1911</p>
<p>Transport Canberra and City Services - tree damaging activity approval - use of verges or other unleased Territory land - works on unleased Territory land - design acceptance - damage to public assets</p>	<p>www.tccs.gov.au 132 281 02 6207 7480 (asset acceptance)</p>
<p>Utilities - Telstra (networks) - TransACT (networks) - Icon Water - Electricity reticulation</p>	<p>02 8576 9799 02 6229 8000 02 6248 3111 02 6293 5738</p>

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NOTICE OF DECISION

Made under part 7 of the *Planning and Development Act 2007*

I, George Cilliers, delegate of the planning and land authority, pursuant to section 162 of the *Planning and Development Act 2007*, **approve subject to conditions**, the proposal for the construction and use of Block 11 Section 47 Fyshwick for a rail freight terminal, and for the construction and use of Block 11 Section 47, Block 11 Section 8, and Block 9 Section 8 Fyshwick for a freight transport facility, and driveways and associated works; in accordance with the plans, drawings and other documentation approved and endorsed as forming part of this approval.


DA Number: 201835108
 Block/Section: 11/47
 Blocks/Section: 9&11/8
 Suburb: Fyshwick
 Address: 16 Ipswich Street
 Application lodged: 30/01/2019
 Assessment track: Merit

This decision contains the following information:

- Part A – conditions of approval
- Part B– reasons for the Decision
- Part C – entity advice
- Attachment 1 – administrative information

A copy of the development application and this approval may be inspected at the planning and land authority's office from 8.30 am to 4.30 pm, Monday to Friday at 16 Challis Street, Dickson, ACT 2602

Contact:
 Email: DAenquiries@act.gov.au
 Phone: 6207 6383


George Cilliers
 Delegate of the planning and land authority
 5 June 2019

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PART A – CONDITIONS OF APPROVAL

This application is approved subject to the following conditions being satisfied. Some conditions of the approval require attention before work commences or before approved drawings will be released.

1. Utility Services Compliance (ICON Water)

Prior to construction, the lessee/applicant must obtain a Statement of Conditional Acceptance from Icon Water in relation to water networks, and submit the statement to the planning and land authority as satisfying this condition of approval under s165 of the *Planning and Development Act 2007*.

The lessee/applicant must comply with any conditions imposed on such a statement.

Note: Any substantial changes to or redesign of the development required for the above-mentioned statement will need to be submitted for the approval of the planning and land authority with an application to amend the approval under s 197 of the Planning and Development Act 2007.

2. Further information

Within 28 days from the date of this decision, or within such further time as may be approved in writing by the planning and land authority, the applicant shall lodge with the planning and land authority for approval:

- a) a stormwater assessment, prepared by a suitably qualified person, demonstrating compliance with rule/criterion 25 of the Transport and Services Zone Development Code.
- b) revised plans showing any mitigation measures that are required from the stormwater assessment.

Note: Any further treatment devices located on unleased land will need to be endorsed by Transport Canberra and City Services (TCCS).

- c) a schedule of lighting showing that lighting complies with each of the following Australian Standards:
 - i. AS1158.3.1 – Pedestrian Lighting
 - ii. AS1680.5 – Outdoor workplace lighting
 - iii. AS4282 – The Control of Obtrusive Effects of Outdoor Lighting, in the case of security lighting.

Note: Lighting must be placed so that legitimate uses are encouraged and areas not intended for night time use are closed off to pedestrians. All lighting fixtures must minimise damage by using high mounted fixtures with a protective lantern bowl.

- d) revised plans incorporating the acoustic fence / noise protection wall as recommended in the noise management plan (Rudds Consulting, February 2018), which was submitted with the application; and

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- e) revised plans incorporating establishment of advanced stock semi-mature trees with a minimum mature height of 12m along the north-western boundary with Ipswich Street to the satisfaction of the planning and land authority. Information submitted responding to this condition must include a maintenance plan to ensure the establishment and survival of these trees to the satisfaction of the planning and land authority.

Note: Trees must be planted to provide screening from Ipswich Street. The required density will depend on the species and must be clarified with the planning and land authority prior to submitting plans to satisfy this condition.

3. Compliance with approved plans

The plans endorsed as forming part of the approval, including any plans required to be submitted as a condition of the approval, form part of this approval. Any changes to these plans may require a further approval.

4. Leasing

Construction on Block 11 Section 47 Fyshwick cannot commence until an agreement has been reached between the proponent and the current Licensee of the block permitting the works/operation within the licenced area. The agreement must be submitted to the planning and land authority prior to construction on the block.

Construction on Block 11 Section 8 Fyshwick cannot commence until a licence or lease has been granted authorising the use of a freight transport facility.

A transfer and grant of easement is to be entered into, between the lessee and the land custodian, outlining the maintenance and access arrangement across leased land.

5. Tree protection

All works are to be in accordance with:

- a) General Arrangement Plan Sheet 1 of 3, Drawing Number: 50518089-C1-1006, Revision G.
- b) General Arrangement Plan Sheet 2 of 3, Drawing Number: 50518089-C1-1007, Revision G.
- c) General Arrangement Plan Sheet 3 of 3, Drawing Number: 50518089-C1-1008, Revision G.

6. Environment Protection Authority (EPA) – Noise Protection Wall

The Noise Protection Wall recommended by Rudds Consulting Engineers in the submitted Noise Management Plan (Rudds, February 2018) must be constructed prior to the issue of a Certificate of Occupation and Use.

7. Environment Protection Authority (EPA) – Site Remediation

- a) The sites must be assessed and remediated by a suitably qualified environmental consultant and these works independently audited by an EPA approved contaminated land auditor prior to any change of use; The auditor's findings into the site's suitability from a contamination perspective for its proposed and permitted uses under the Territory Plan must be reviewed and endorsed by the

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- EPA prior to the commencement of development works and prior to the site being used for other purposes;
- b) All soil subject to disposal from the site must be assessed in accordance with EPA Information Sheet 4 - Requirements for the reuse and disposal of contaminated soil in the ACT; and
 - c) No soil is to be disposed from site without EPA approval.
 - d) All works must be carried out in accordance with Environment Protection Guidelines for Construction & Land Development in the ACT, March 2011, available at www.environment.act.gov.au or by calling 132281.

8. Transport Canberra and City Services (TCCS)

- a) All driveways must be designed and constructed in accordance with TCCS Design Standards.
- b) Stormwater Augmentation work must be undertaken by the applicant through Block 11 Section 8 as per the recommendation of the Stormwater Report by Cardno dated 10 April 2019. A stormwater easement must be created to accommodate TCCS stormwater assets through Block 11 Section 8 Fyshwick.

In addition to the above conditions, the following general conditions will apply as appropriate for works on, and use of, Territory Land:

In accordance with the *Public Unleased Land Act 2013* no work is to be undertaken on road verges and other unleased Territory Land without the approval of the Territory. Such approval must be obtained from the Senior Manager, Place Coordination and Planning, TCCS by the ways of:

- a) a Letter of Design Review prior to the commencement of any work; and
- b) a Certificate of Operational Acceptance on completion of all works to be handed over to TCCS.

Design Review and Operational Acceptance

A Letter of Design Review is required for all off-site works from the Senior Manager, Place Coordination and Planning, TCCS, prior to construction.

In order to obtain the Letter of Design Review, fully detailed drawings (civil, landscape) prepared by suitably qualified persons for all off-site works including roads, driveways, footpaths, street lighting, storm water, landscaping (and any other issues that may be found by audit of the plans) and a design report in accordance with Ref No 06: "Requirements for Design Review Submissions", must be certified by a Chartered Engineer/Landscape Architect and submitted to the Senior Manager, Place Coordination and Planning, TCCS.

A Certificate of Operational Acceptance on completion of the works is required from the Senior Manager, Place Coordination and Planning, TCCS, prior to the issue of a Certificate of Occupancy.

Similarly a Chartered Engineer/Landscape Architect should certify compliance with TCCS Ref No 08: "Requirements for Works as Executed Quality Records Requirements" when the request for Operational Acceptance is made to the Senior Manager, Place Coordination and Planning, TCCS on completion of all off-site works

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A Waste Management Plan in accordance with the Development Control Code for Best Practice Waste Management in the ACT must also be included if not approved at the Development Application stage.

Temporary Traffic Management (TTM)

A TTM plan approval must be obtained from the Manager, Traffic Management & Safety, Roads ACT, TCCS. At all times during construction the site and surrounds must be managed in accordance with the approved TTM, which must be prepared by a suitably qualified person. This plan is to address, as a minimum, measures to be employed during construction to manage all traffic, including construction traffic, in and around the site, provision of safe pedestrian movement around the site, the provision of parking for construction workers, and associated traffic control devices.

Landscape Management & Protection Plan (LMPP)

LMPP approval must be obtained from the Senior Manager, Place Coordination and Planning, TCCS. During construction, all existing vegetation (trees, shrubs and grass) located on the verge and unleased Territory land immediately adjacent to the development shall be managed, protected and maintained in accordance with the approved LMPP. This plan is to be implemented before the commencement of works, including demolition on the site and is to be in accordance with TCCS Guidelines for the Protection of Public Landscape Assets Adjacent to Development Works-REF-04.

Use of Verges or other Unleased Territory land

In accordance with the *Public Unleased Land Act 2013*, road verges and other unleased Territory land must not be used for carrying out of works, including storage of materials or waste, without prior approval of the Territory. Such approval can be obtained from Licensing and Compliance, City Services, TCCS.

Repair of Damage to Public Assets

The applicant/lessee is held responsible for all damages to ACT Government assets (including footpaths) caused by the development and they must properly repair any damages to those assets. Before work commences, they should notify TCCS of any existing damage to public facilities.

Notice of Commencement of Construction

Notice of Commencement for the Works in Unleased Territory Land shall be submitted to the Senior Manager, Place Coordination and Planning, TCCS one week prior to the commencement of works. The Notice shall also include the confirmation of any protective measures installed in accordance with the approved LMPP and the programmed implementation of TTM.

9. Compliance with entity requirements

The development must comply with all of the conditions imposed by Evoenergy as stated in their advice (refer to Attachments).

10. Waste Management

All building waste is to be stored on the site in suitable receptacles and collected regularly. The lessee is to take all reasonable steps to ensure that waste, particularly wind borne litter, does not affect adjoining or adjacent properties.

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ADVISORY NOTES

Environment Protection Authority (EPA)

- EPA records indicate that Blocks 9 and 11 were formerly occupied by the Shell Canberra depot and associated raiing sidings. Hydrocarbon related impacts to soil and groundwater have been identified at these sites;
- Block 11 Section 47 is currently occupied by the ACT to NSW rail corridor with potential land contamination issues associated with this activity.

PART B – REASONS FOR THE DECISION

The application was approved because it was found to meet the relevant rules and criteria of the Territory Plan and sections 119 and 120 of the *Planning and Development Act 2007*.

Section 119 of the *Planning and Development Act 2007*

In deciding to approve the application with conditions, the Planning and Land Authority (the Authority) firstly considered under section 119 (1)(a) of the Act whether the application meets the relevant codes, including the Fyshwick Precinct Map and Code and the Industrial Zones Development Code, and all relevant general codes.

In relation to section 119(2)(a), the Authority considered the advice given by each entity to which the application was referred, and is satisfied that, with the conditions set out in Part A, approval of the application would not be inconsistent with the advice received from each entity.

In relation to section 119(2)(b), the Authority is satisfied that this decision is consistent with the object of the Territory Plan as set out in section 48 of the Act.

The key issues identified in the assessment are comments received by entities and representors. Conditions have been imposed to address the key issues and ensure that the proposal is consistent with the Territory Plan and the *Planning and Development Act 2007*.

Section 120 of the *Planning and Development Act 2007*

In deciding to approve the application with conditions, the Authority also considered each of the matters or issues set out in section 120(a) – (g) of the Act.

In relation to section **120(a)**,

- for Blocks 9 and 11 Section 8 Fyshwick, the Authority is satisfied that the proposed development meets objectives (a) – (k) of the *IZ2 – Industrial Mixed Use* zone, noting that the development is proposed to partly take place in that zone.
- for Block 11 Section 47 Fyshwick, the Authority is satisfied that the proposed development meets objectives (a), (b), (d) and (f) of the *TSZ2 – Transport and Services* zone, noting that the development is proposed to partly take place in that zone.

In relation to **120(b)**, the Authority is satisfied that the subject land is suitable for the proposed development, provided each of the conditions imposed as part of this Decision to

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approve the application is met.

In relation to section **120(c)**, the Authority notes that there is no environmental significance opinion required or in force for the development proposal.

In relation to section **120(d)**, the Authority considered all representations received in relation to the application. Refer to Part C of this Decision.

In relation to section **120(e)**, the Authority noted that the relevant entities, did not object to the proposed development, although most did so on the basis that conditions were imposed to address different matters. In accordance with the advice received from entities, where necessary, the Authority has imposed conditions of approval to this Decision pursuant to Section 162(1)(b) of the Act that reflect that advice.

In relation to section **120(f)**, the Authority notes that the subject land is not public land.

In relation to section **120(g)**, the Authority considered the probable impacts, including traffic, environmental and social impacts that the proposed development may have. In this regard, the Authority considered representations received in relation to the application. The Authority also considered the advice and responses from the relevant entities to which the application was referred, who propose conditions to address some of the impacts that might otherwise occur.

With the conditions imposed, and after weighing the competing interests as to whether the application should be approved, the Authority formed the view that the majority of the impacts that might arise from the development are adequately addressed by the conditions imposed.

The application in the form modified by the imposed conditions is considered to meet the relevant rules and criteria of the Territory Plan and section 120 of the *Planning and Development Act 2007*.

The following evidence formed part of the assessment of this application:

Development Application:	201835108
Territory Plan Zones:	<i>IZ2 – Industrial Mixed Use zone</i> <i>TSZ2 – Transport and Services zone</i>
Development Codes:	Industrial Zones Development Code and Transport and Services Zone Development Code
Precinct Code:	Fyshwick Precinct Map and Code
Crown Lease:	Volume 832 and Folio 21
Legislative requirements:	Sections 119 and 120 of the <i>Planning and Development Act 2007</i>
Entity advice:	Refer to Part C of this Decision

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PART C – PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 7 March 2019 until 28 March 2019. Following an error in the original notification, the application was again publicly notified from 12 March 2019 until 1 April 2019.

Fifty-nine written representations were received during the public notification period.

The main issues raised included the following (this is not an exhaustive list of all issues raised):

- Rail Freight Terminal (rail use) is prohibited in the IZ2 zone.
- Waste facility and waste incinerator.
- EIS process should be concluded prior to any other DA being determined.
- Other options must be considered through a strategic planning process for the rail freight terminal.
- Viability of the freight transport facility.
- Objectives and suitability of the land.
- Public land management plan.
- An environmental assessment of the cumulative impacts (of all proposals) should be undertaken/provided including social, economic and the environment.
- Documentation is insufficient and lessee details are incorrect.
- Insufficient consultation has been undertaken.
- All entity advice should be considered.
- Noise impacts on surrounding development needs to be considered, including noise generated from the railway.
- Traffic impacts on the surrounding area, including cumulative and future impacts.
- Safety and structural integrity around rail line during construction.
- Relocation of utilities and all works should be at the proponent's expense (no government funding for private development).
- Contamination has not been appropriately addressed.
- A licence or lease has not been granted for Block 11 Section 8 Fyshwick (unleased land).

The issues raised through public representations received were all considered. The assessment did not agree with some of the identified issues. Other issues did not warrant refusal; or were adequately addressed through the documentation which was assessed prior to making this decision, or through conditions and advice included in this decision.

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DA 201835108

ENTITY ADVICE

Pursuant to Division 7.3.3 of the *Planning and Development Act*, the application was referred to the below entities. Where an entity requested conditions to be imposed on this development, those conditions have been incorporated into Part A of this Decision. A summary of entity comments can be found below.

1. Environment Protection Authority (EPA)
The EPA does not support the proposal in its current form, but provided conditions and advice – included in this decision.
2. Transport Canberra and City Services (TCCS)
TCCS supports the proposal subject to conditions – included in this decision.
3. Transport Canberra and City Services (TCCS) – Urban Trees (Tree Protection)
TCCS (Urban Trees) supported the proposal subject to conditions – included in this decision.
4. National Capital Authority (NCA)
The NCA provided advice that the “proposed works are not inconsistent with the National Capital Plan and the NCA has no objection”.
5. Evoenergy
Evoenergy conditionally supports the proposed development. The relevant statement is attached to this decision.
6. Jemena Gas
Referred to Jemena Gas. No comments received.
7. Icon Water.
Icon Water issued a “failed to comply” statement requiring resubmission to Icon Water after design acceptance in principle is achieved. This decision does not take effect until a statement of compliance have been obtained from Icon Water.

NOTICE OF DECISION

DA 201835108

Translation and interpretation services

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TRANSLATING AND INTERPRETING SERVICE

131 450

Canberra and District - 24 hours a day, seven days a week

ATTACHMENT 1

ADMINISTRATIVE INFORMATION RELATING TO NOTICE OF DECISION.

Submission of revised drawings or documentation

If a condition of approval requires the applicant to lodge revised drawings and / or documentation with the planning and land authority for approval under section 165 of the *Planning and Development Act 2007*, the submission must be made by completing an application in e-development.

DATE THAT THIS APPROVAL TAKES EFFECT

Unless a condition of approval provides for otherwise this approval takes effect the day after the date of this decision. The effective date for development applications approved subject conditions could also be adjusted if the approval is reconsidered by the planning and land authority or if an application is made to the ACT Civil and Administrative Tribunal.

Pursuant to section 184 of the Act, this approval will expire if:

- the development or any stage of the development is not started within two years after the day the approval takes effect;
- the development is not finished two years after the day the development begins; or
- the development approval relates to land comprised in a lease that requires the development to be completed on a stated date – the date stated in the lease for completion of the development, or the approval is revoked under section 189 of the Act.

Under section 184 of the Act, the applicant may apply to the planning and land authority to extend the prescribed period to finish the development, but such an application must be made within the original period specified for completion.

A development approval, to which section 184 of the Act applies, continues unless the approval ends under sections 184, 185, 186 or 187 of the Act.

Reconsideration of the Decision

If the applicant is not satisfied with the decision made by the planning and land authority, they are entitled to apply to the planning and land authority for reconsideration within 20 working days of being told of this decision under section 191 of the *Planning and Development Act 2007*. A longer timeframe may apply only if granted in writing by the planning and land authority under section 184 of the *Planning and Development Act 2007*.

Other approvals

A notice of decision grants development approval only. Other approvals may be required, including:

1. Building Approval

Most building work requires building approval to ensure it complies with building laws such as the Building Code of Australia. The lessee should engage a private building certifier to determine whether building approval is required and assess and approve the building plans before construction commences. A list of certifiers can be obtained from the Environment, Planning and Sustainable Development Directorate.

2. Tree damaging activity approval

A Tree Management Plan under the *Tree Protection Act 2005* is required for approval where it is proposed to undertake groundwork within the tree protection zone of a protected tree or likely to cause damage to, or remove, any trees defined as protected trees by that Act. More information is available from the Transport Canberra and City Services Directorate.

3. Use of verges or other unleased Territory Land

In accordance with the *Public Unleased Land Act of 2013*, road verges and other unleased Territory land must not be used for the carrying out of works, including the storage of materials or waste, without prior approval of the Territory. Approval can be obtained from the Transport Canberra and City Services Directorate.

4. Works on unleased Territory Land

In accordance with the *Public Unleased Land Act of 2013*, no work can be undertaken on unleased Territory land without the approval of the Territory. Such approval must be obtained from the Manager Development Review and Coordination, Transport Canberra and City Services Directorate by way of:

- (a) a certificate of design acceptance prior to the commencement of any work; and
- (b) a certificate of operational acceptance on completion of all works to be handed over to TCCS.

Works on unleased Territory land may include the construction or upgrading of driveway verge crossings, public footpaths, roads, street lighting, stormwater works, waste collection amenities, street signs and line marking, road furniture and landscaping.

Review by the ACT Civil and Administrative Tribunal (ACAT)

1. Decisions that are reviewable by the ACAT are identified in Schedule 1 of the *Planning and Development Act 2007*, except for matters that are exempted under Schedule 3 of the *Planning and Development Regulations 2008* (matters exempt from third party review).
2. The notice of decision and this advice has been sent to all people who made a representation in relation to the application.
3. The ACAT is an independent body. It can review a large number of decisions made by ACT Government ministers, officials and statutory authorities on their merits. The ACAT can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with ACAT recommendations.
4. If you think you have a right of appeal, you may apply for a review. Application forms can be obtained from the ACAT. You can also download the form from the ACT Legislation Register.

5. If you are applying on behalf of an organisation or association of persons, whether incorporated or not, the Tribunal in deciding whether to support this application will consider the effect of the decision being reviewed on the interests of the organisation or association in terms of its objects or purposes. A copy of the relevant documents will be required to be lodged with the Tribunal.
6. The time limit to make a request for a review is 28 days from the date of this notice of decision. The time limit can be extended in some circumstances (refer to sections 10 (2), 10(3), 25(1)(e) and 25(2) of the *ACT Civil & Administrative Tribunal Act 2008*; section 7 of the *ACT Civil and Administrative Tribunal Procedure Rules 2009 (No 2)*; and section 409 of the *Planning and Development Act 2007*).
7. Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee (the Tribunal Registry will advise of the current fee), unless you are receiving legal or financial assistance from the ACT Attorney-General. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T of the *ACT Civil and Administrative Tribunal Act 2008*). Decisions to grant assistance are made on the grounds of hardship and that it is reasonable, in all the circumstances, for the assistance to be granted. Write to: the Director General, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. Ask the ACAT for more details.
8. The ACAT is required to decide appeals in land and planning and tree protection cases within 120 days after the lodging of the appeal, unless that period is extended by the ACAT upon it being satisfied that it is in the interests of justice to do so.
9. The following organisations may be able provide you with advice and assistance if you are eligible:
 - ACT Attorney-General, write to the Director General, Justice and Community Safety Directorate, GPO Box 158, CANBERRA, ACT, 2601
 - the ACT Legal Aid Office, telephone 1300 654 314
 - ACT Council of the Ageing, telephone 02 6154 9740
 - Welfare Rights Centre, telephone 1800 226 028
 - Environmental Defender's Office (ACT), telephone 02 6243 3460.
10. You will have to pay any costs involved in preparing or presenting your case. The ACAT also has the power to award costs against a party if the party contravenes a direction of the ACAT and the ACAT considers it in the interests of justice to make such an order. This power is in addition to the power of the ACAT to strike out a party and to dismiss an application for failure to comply with the ACAT's directions.
11. You may apply for access to any documents you consider relevant to this decision under the ACT Freedom of Information Act 1989. Information about Freedom of information requests is available on the planning and land authority's web site or by contacting us by phone on 02 6207 1923.

12. The procedures of the ACAT are outlined on the ACAT's website, including in the Guide to the Land and Planning Division and the Guide to the Hearing. Contact the ACAT for alternative ways to access information about the ACAT's procedures.

Contact details for relevant agencies

<p>ACT Civil and Administrative Tribunal Level 4, 1 Moore Street CANBERRA CITY ACT 2601 GPO Box 370, CANBERRA, ACT, 2601</p>	<p>www.acat.act.gov.au tribunal@act.gov.au 02 6207 1740 02 6205 4855</p>
<p>Health Directorate</p>	<p>www.health.act.gov.au 02 6205 1700</p>
<p>Environment, Planning and Sustainable Development Directorate <i>Planning and land authority</i> - list of certifiers for building approval - demolition information - asbestos information <i>Environment Protection Authority</i> - environment protection - water resources - asbestos information <i>Conservation, Planning and Research</i> - threatened species/wildlife management</p>	<p>www.planning.act.gov.au 02 6207 1923 www.environment.act.gov.au 02 6207 6251 www.environment.act.gov.au 02 6207 1911</p>
<p>Transport Canberra and City Services - tree damaging activity approval - use of verges or other unleased Territory land - works on unleased Territory land - design acceptance - damage to public assets</p>	<p>www.tccs.gov.au 132 281 02 6207 7480 (asset acceptance)</p>
<p>Utilities - Telstra (networks) - TransACT (networks) - Icon Water - Electricity reticulation</p>	<p>02 8576 9799 02 6229 8000 02 6248 3111 02 6293 5738</p>

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Our Ref: 50517058:JPS;gz

Contact: [REDACTED]

13 June 2019

Mr Adrian Arul
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Environment, Planning and Sustainable Development Directorate
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ACT 2601

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CPBC ACT 2610
Australia

Phone: 61 2 6112 4500
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www.cardno.com.au

Dear Adrian,

RE: FYSHWICK BLOCK 11 SECTION 8 – PROPOSED RAILWAY SIDING WATERMAIN RELOCATION COST ESTIMATE

Cardno have been requested by the LDA to prepare a cost estimate for the railway siding watermain relocation works to be undertaken for Block 11 Section 8 Fyshwick. These works are proposed to maximise the developable area of the block to more feasible opportunities.

DESCRIPTION OF SITE AND BACKGROUND

Block 9 Section 8 Fyshwick was previously utilised by Shell Co as a fuel depot. Access Recycling purchased the block late last year with the view of redeveloping the site as a new heavy rail terminal for the ACT. The NSW government has committed \$1 million to support redevelopment of this site.

Access Recycling is now in the process of purchasing Block 11 Section 8, the Fyshwick south shunt, via a direct land sale. The proponent plans to rehabilitate this block noting that it is currently used for dumping and crossing the railway; both of which are prohibited activities. Once rehabilitated, a hardstand structure will be constructed across a portion of the Block 9 Section 8 and on part of Block 11 Section 47, these works will form part of a future DA application.

COST ESTIMATE

Cardno have prepared a cost estimate for the LDA based on the proposed watermain relocation works detailed in the following drawings.

Table 1-1 Proposed Works Plans

Drawing Description	Drawing #	Revision
Proposed Works	50517058-1005	B
Erosion and Sediment Control Plan	50517058-1010	B
Tree Removal and Protection Plan	50517058-1015	B

The below cost estimate was prepared by Cardno based on recently tendered rates received from tenders on projects of a similar scale.

Table 1-2 Cost Estimate

Works Component	Cost
Watermain Demolition and Replacement including ICON Water disconnection and connection costs and removal of trees	\$161,655.00
20% Contingency	\$44,766.00
12.5% Design and Superintendence	\$20,206.88
10% GST	\$22,662.79
Total (Inc GST, Design and Super, Contingency)	\$249,290.66

EXCLUSIONS/ALLOWANCES

The Cost Estimate provided is based on the following exclusions and allowances:

- 20% Contingency.
- 30% Site Establishment and Sundries (incorporated into rates for each item).
- 12.5% Design and Superintendence Fee.
- ICON Water have advised that the existing watermain must be exhumed unless existing trees (works within 2m of dripline) or infrastructure prevents removal. In which case grout filling and abandonment is an acceptable option. Cardno have allowed for abandoning the watermain in the rail corridor and where trees prohibit removal. Lengths of existing watermain abandoned and exhumed are 355m and 350m respectively.
- Allowed \$1300/day for a 3 week construction period for the state rail authority supervision of works within railway corridor (2 weeks for construction and 1 week for ICON Water testing and connections).