



ACT
Government

Environment, Planning and
Sustainable Development

Objective Ref: 18/16923

Mr Adam Perry
Director
Capital Recycling Solutions
15 Lithgow Street
FYSHWICK ACT 2609

Dear Mr Perry

Block 11 Section 8 Fyshwick – Direct Sale and DA201630668

I refer to previous correspondence in relation to Block 11 Section 8 Fyshwick, including the 17 October 2017 letter of offer of direct sale to Capital Recycling Solutions (CRS) and correspondence from the Environment, Planning and Sustainable Development Directorate purporting to extend the offer of direct sale.

I have carefully considered the application for direct sale, the Land Request Advisory Panel report about the direct sale, the Minister's approval and the Territory Plan. I have determined that to exercise my function under section 238 of the *Planning and Development Act 2007* (P&D Act) to grant CRS a lease would be inconsistent with the Territory Plan, specifically the proposed use of the block for railway use is a prohibited use in the IZ2 – Industrial Mixed Use Zone Development Table.

You are, however, permitted to reapply for a direct sale of the block and for the application to be assessed for consistency with the Territory Plan and Ministerial approval under section 240(1)(b) of the P&D Act.

I understand you have had discussions with Mr Brett Phillips about the potential surrender of DA201630668. I have received many representations about the DA, particularly whether the proposed use is consistent with the Territory Plan. While the construction of a hardstand and associated works is permitted under the Territory Plan, I have turned my mind to the proposed development as a whole, including the proposed railway use on the block. I will write to you shortly informing you of the outcome of my further consideration of the matters.

I thank you for your patience in this matter.

Yours sincerely

Ben Ponton
Chief Planning Executive

18 July 2018

Sparke, Chris

From: Fitzgerald, Bruce
Sent: Tuesday, 24 July 2018 9:06 AM
To: Sparke, Chris
Subject: FW: Letter from Ben Ponton, Director-General, Environment, Planning & Sustainable Development Directorate [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]
Attachments: 20180718 Signed Letter to Mr Perry.pdf

FYI

From: Ponton, Ben
Sent: Wednesday, 18 July 2018 1:35 PM
To: Marcantonio, Laura <Laura.Marcantonio@act.gov.au>; Rutledge, Geoffrey <Geoffrey.Rutledge@act.gov.au>; Fitzgerald, Bruce <Bruce.Fitzgerald@act.gov.au>
Cc: Phillips, Brett <Brett.Phillips@act.gov.au>; Cilliers, George <George.Cilliers@act.gov.au>; Bennett, JamesP <JamesP.Bennett@act.gov.au>
Subject: FW: Letter from Ben Ponton, Director-General, Environment, Planning & Sustainable Development Directorate [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]

Thanks Laura.

Geoffrey – fyi. I'd be happy to discuss further with you. I've also spoken to George and James about this one.

I've also written to a number of complainants in relation to this matter in similar terms.

Cheers,

B

Ben Ponton | Director-General

Phone +61 2 6207 8359

Environment, Planning and Sustainable Development Directorate | ACT Government

Level 3, 16 Challis Street, Dickson | GPO Box 158 Canberra ACT 2602 | www.environment.act.gov.au

From: Marcantonio, Laura
Sent: Wednesday, 18 July 2018 1:29 PM
To: Ponton, Ben <Ben.Ponton@act.gov.au>
Cc: Bennett, JamesP <JamesP.Bennett@act.gov.au>; Simmons, Craig <Craig.Simmons@act.gov.au>; O'Neill, Carolyn <Carolyn.O'Neill@act.gov.au>
Subject: FW: Letter from Ben Ponton, Director-General, Environment, Planning & Sustainable Development Directorate [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]

FYI.

From: Round, Jessica
Sent: Wednesday, 18 July 2018 1:28 PM
To: adam@capitalrecyclingsolutions.com.au
Subject: Letter from Ben Ponton, Director-General, Environment, Planning & Sustainable Development Directorate [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]

Good afternoon Mr Perry,

Please see attached letter from Ben Ponton, Director-General, Environment, Planning & Sustainable Development Directorate.

Kind regards
Jess

Jessica Round

Executive Assistant to Mr Craig Simmons |

A/g Chief Operating Officer | Environment, Planning and Sustainable Development Directorate |

Phone: +61 2 620 54887 | Email: Jessica.Round@act.gov.au

Environment, Planning and Sustainable Development Directorate | ACT Government

Level 3 South, Dame Pattie Menzies House, 16 Challis Street Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 |

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Phillips, Brett

Subject: Meeting - Capital Recycling Solutions
Location: DPMH, Conference Room, L3 Sth Bld,12-20 People, Phone

Start: Wed 03/04/2019 11:00 AM
End: Wed 03/04/2019 12:00 PM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Phillips, Brett
Required Attendees: 'Ewen Mckenzie'; 'Ernest [REDACTED]'; 'Adam.Perry@accessrecycling.com.au';
 Bennett, JamesP; Fitzgerald, Bruce

Resources: DPMH, Conference Room, L3 Sth Bld,12-20 People, Phone

Categories: Executive Meeting

Adam Perry and Ewen McKenzie

Bruce F, James Bennett, Brett P

Renew process of Direct Sale,
 Bruce saying preference is that direct sale might be related to rail freight.
 Original offer from Minister related to freight terminal. Initial intent was to hitch to freight DA.

Ewen Expressed frustration with the process. Feel you have suffered on land purchase because of planning processes Feel we are putting other processes.
 Looking for more certainty.
 Direct Sale goes to interested parties.

Further info request is caused because of not being able to progress previous DA's. Didn't elicit any comments on approved DA's.

Good afternoon

Please accept this invite to meet with Brett Phillips to discuss various aspects of the Capital Recycling Solutions proposal at Fyshwick.

Our office is located at Dame Pattie Menzies House, 16 Challis St Dickson.

Please call me from the foyer when you arrive on 77206 and I will meet you for access to the building.

Thank you

Olivia

Olivia Edgar | Executive Assistant

Phone: 02 6207 7206 | Email: olivia.edgar@act.gov.au

Planning Delivery | Environment, Planning and Sustainable Development Directorate | ACT Government

Dame Pattie Menzies House, Challis Street Dickson | GPO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

Meeting with CBS

Date: 3.4.19

Page:

Adam P
Ewen McK.Bruce F
Broth P.Adam P

Direct sale offer reinstatement
 Seeking new offer
 Wouldn't object to fresh valuation

Bruce

Don't need new application from scratch • original purpose is for
 Value in DA process running its course rail freight hub

Ewen

Questions over which DTs are required for approval
 - RFT or hardstand

Bruce

once DTs are approved, a direct sale process offer could be
 given + be seamless re: conditions

Ewen

Going back to previous offer + DTs. → had an offer linked to a DA.

??s over delay in notification of RFT DA

Delay in DTs has affected EIS

→ need to provide A + B options.

→ want rail, not road.

Getting results on hardstand + RFT will help give clarity to EIS.
 Want sale process back on track - certainty

Bruce

No referral agency objections to direct sale.

+ Lessee authorisation of DTs

Direct sale law risks

Ministerial approval for RFT → need DA success

Adam Penny

concerned about reviews of direct sale offer in the future.
 Accept can't have land without consent.
 How do we formalise?

Bruce

For Rail → DAs on both pieces of land req'd.

JB/Both

Discussed further into requirements on Hardford DA.

Bruce

Options → process has halted
 → needs to be reinstated
 → can pick up from Minister approval

Potential Process

① Letter to Bruce requesting reinstatement
 Bruce brief to Min seeking approval
 DA approvals.
 Revised officer

② New application for Freight Terminal → new purpose.
 or based on Hardford / Freight Terminal DA.
 ↳ could possibly refund 1st application fee.
 ↳ always refund if unsuccessful

CRS to consider this as an option.

They open ~~process~~ process again → with
 But gives an alternative

Date: . . .

Page:

Bruce to take advice → timing related

CRS to contact Brett if needed to talk to the Directorate.

Further to meeting, Adam Perry called to request a letter of offer for a direct sale based on an existing contract (i.e. previous offer + acceptance)

→ Dave to seek legal advice on existence of a "contract" before responding

→ Chris Spache pulling together files + request

↳ advised that Sonia Cooper + Shy Sim have provided advice to Planning between a CES proposal



ACT
Government

Environment, Planning and
Sustainable Development

Mr Adam Perry
Director
Capital Recycling Solutions

Via email: Adam.Perry@accessrecycling.com.au

Dear Mr Perry

Direct Sale Application – Block 11 Section 8 Fyshwick

I refer to your recent meeting with Bruce Fitzgerald, Executive Group Manager of Urban Renewal EPSDD and me, where we discussed the direct sale application noted above.

I also note your discussion at that meeting relating to the recent decision made by the Supreme Court on the circumstances surrounding the previous Development Application for the land.

I am writing to confirm the Territory's position on the matter as previously advised by Mr Fitzgerald at that meeting. The Territory's position is that if, and when, the current Development Applications for the site and the wider development have been approved, the Territory is willing to consider reissuing an offer of a Crown lease over Block 11 Section 8 Fyshwick to Capital Recycling Solutions. The conditions of any direct sale will be the same as those previously agreed to by the Minister on your original application.

The Territory believes that this is the best option, in demonstrating a level of transparency relating to the direct sale and the development proposal, to both interested parties and for the community as a whole.

Please note that any future offer of a Crown lease will be subject to an updated valuation process that allows for the length of time between it and the last offer letter that you received and any movements in the market.

I hope that this information provides a clear indication of the Territory's position.

Yours sincerely

Brett Phillips
A/g Deputy Director-General
Sustainability and the Built Environment

6 May 2019



Capital Recycling Solutions

7 May, 2019

Mr Brett Phillips

A/g Deputy Director-General, Sustainability & the Built Environment
Environment, Planning and Sustainable Development Directorate

By email only to: brett.phillips@act.gov.au

Copy to: mick.gentleman@act.gov.au

Dear Mr Phillips,

Re: Revoked Direct Sale of Offer – Block 11 Section 8, Fyshwick

Thank you for yesterday's letter, following on from our meeting just over a month ago.

I refer to Mr Ben Ponton's letter to me dated 18 July, 2018 (copy attached). Mr Ponton withdrew the land sale offer on the basis that the proposed development was inconsistent with the Territory Plan, specifically the proposed use of the block for *railway use*. The sale offer that was made to us, and the resulting contract for the purchase of the land, were rescinded on a false premise. This matter was entirely resolved by the Supreme Court's decision of 15 March, 2019. As per our previous requests, and the point talked to in your letter yesterday, the Court cleared up the matter of *railway use*, reinstated the development consent upon which the land sale was offered, and therefore we seek to proceed with the purchase.

Your letter yesterday once again moves the goal posts. You state that the land sale shall proceed *if, and when, the current Development Applications* (plural noted) *for the site and wider development have been approved*. This is completely open-ended, unfair and gives us no security to continue with our planning investments. Given that the court has reinstated one consent, how many others (plural) do you expect us to obtain before the land sale can proceed? Furthermore, you go on to note that the Territory will *consider* reissuing an offer. Again, this only points to further ambiguity and a likely opportunity for the EPSD to not consider reissuing an offer.

It has become abundantly clear to us that, for reasons unknown, the EPSD will continue do all it can to delay and frustrate our efforts to develop a railway freight terminal in Canberra. From any perspective, even from a cursory examination of the timeline of events, no other conclusion can be reached.

Capital Recycling Solutions Pty. Ltd. ACN 169 054 353

16 Ipswich Street, FYSHWICK, 2609

PO Box 431 FRENCHS FOREST NSW 1640

Ph: +61 2 9986 3500 www.capitalrecyclingsolutions.com.au



Capital Recycling Solutions

As noted at our meeting, the NSW Government's \$1M grant for railway infrastructure offered in support of this project will soon expire. To avoid further delays we now have no choice but to once again seek judicial relief on the matter. We ask that you again reconsider your decision here, taking into account the fact that an offer was made, a contract entered into, and then unilaterally revoked by EPSD on a premise that the Court has since overturned.

If the land sale offer is not reinstated (or process to do so begun) within seven days we will seek to file to have the matter heard in the ACT Supreme Court. We will be seeking costs and damages from the Territory as the historical handling of this matter has been highly irregular and, indeed, unlawful.

Yours faithfully,



Ernest Dupere and Adam Perry
Directors
Capital Recycling Solutions



ACT
Government

Environment, Planning and
Sustainable Development

Obj: 19/14099

Mr Adam Perry
Director
Capital Recycling Solutions

Via email: Adam.Perry@accessrecycling.com.au

Dear Mr Perry

Re: Direct Sale Application – Block 11 Section 8 Fyshwick

Thank you for your letter of 7 May 2019 concerning a direct sale offer for Block 11 Section 8 Fyshwick.

I accept that the Supreme Court decision of 15 March 2019 means you have an approved Development Application (DA) for a hardstand on this site (DA201630668). I note that you have also submitted a subsequent DA for a driveway and road freight facility (DA201834656) for the same site. I confirm that, given you have an approved DA for the subject site (DA201630668), approval of DA201834656 is not required before a direct sale offer is made.

As previously advised by Bruce Fitzgerald in email correspondence with you in May 2018, the ACT Government is prepared to extend a new offer of a direct sale. At that time, Mr Fitzgerald advised that the ACT Government was withdrawing its original direct sale offer which in any event had already lapsed. Mr Fitzgerald also advised that once the DA submitted on 29 May 2018 (for a rail freight terminal on Block 11 Section 47 Fyshwick) is approved, 'all of the conditions of the Ministerial approval will have been met and the direct sale can proceed immediately, noting that this will be in the form of a new offer'. It is clear from your emails of 13 April and 31 May 2018, that you understood that "At that point (acceptance of the DA) we will be able to proceed with the land purchase"; "We look forward to finalising the land purchase upon getting the DA approved".

As you would be aware, the DA submitted on 29 May 2018 (DA201833951) did not pass a completeness check and has not been approved. I note however that you have subsequently submitted a new application, DA201835108, also for a rail freight terminal on that same Block 11 Section 47 Fyshwick. We are willing to uphold the intent of Mr Fitzgerald's email of May 2018, by substituting that new DA with the previous requirement for approval of the DA of 29 May 2018. That is, the ACT Government is willing to offer a direct sale if DA201835108 is approved. I note that DA201835108 is currently under assessment by the planning and land authority. We therefore do not see any need or utility in you seeking judicial relief. A direct sale offer can be achieved in accordance with the above terms, as has been consistent with our previous correspondence on this issue.

As indicated in my letter of 6 May 2019, the conditions of the direct sale will be the same as those previously agreed to and will be subject to a current market valuation.

I have attached a copy of the previous correspondence with Mr Fitzgerald for your reference. If DA201835108 is approved, I have asked Mr Fitzgerald to make contact with you following the approval to commence the process for a new offer.

I hope that this information provides a clear indication of the Territory's position.

Yours sincerely

A rectangular grey box redacting the signature of Brett Phillips.

Brett Phillips
A/g Deputy Director-General
Sustainability and the Built Environment

10 May 2019

From: Rutledge, Geoffrey
Sent: Tuesday, 13 August 2019 9:43 PM
To: EPSD Government Services
Cc: EPSDD Ministerials and Corro Executive Office; Fitzgerald, Bruce
Subject: RE: FOR DD-G Clearance - Due to SLA 08/08 - 19/24115 - Direct sale - letter of Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd (qA759826) [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Aimie

Approved to progress.

Thank you

-----Original Message-----

From: Crisp, Sarah <Sarah.Crisp@act.gov.au>
Sent: Tuesday, 6 August 2019 11:22 AM
To: Rutledge, Geoffrey <Geoffrey.Rutledge@act.gov.au>
Cc: EPSDD Ministerials and Corro Executive Office <EPSDDMinisterialsandCorroExecutiveOffice@act.gov.au>
Subject: FW: FOR DD-G Clearance - Due to SLA 08/08 - 19/24115 - Direct sale - letter of Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd (qA759826) [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]

Hi Geoffrey

Please see attached for your review and clearance, a letter of offer and supporting brief for the direct sale of Block 11 Section 8 Fyshwick to Capital Recycling. This package is going to John Dietz at the SLA.

Thanks
Sarah

Sarah Crisp | Executive Officer to Geoffrey Rutledge, Deputy Director-General, Sustainability & the Built Environment Environment, Planning and Sustainable Development Directorate | ACT Government Phone (02) 620 70665 | Email: Sarah.Crisp@act.gov.au Level 3, 16 Challis Street, Dickson | GPO Box 158 Canberra ACT 2602

-----Original Message-----

From: EPSD Government Services
Sent: Monday, 5 August 2019 2:19 PM
To: EPSDD Ministerials and Corro Executive Office <EPSDDMinisterialsandCorroExecutiveOffice@act.gov.au>
Cc: Crisp, Sarah <Sarah.Crisp@act.gov.au>
Subject: FOR DD-G Clearance - Due to SLA 08/08 - 19/24115 - Direct sale - letter of Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd (qA759826) [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]

UNCLASSIFIED
For-Official-Use-Only

Hi Sarah
A brief for the SLA CEO requiring DD-G clearance please.
Critical date for CEO signature is 12/08.

Thanks

Tash Hartwig
Ph: 620 70701

-----Original Message-----

From: Brooks, Kathleen <Kathleen.Brooks@act.gov.au>
Sent: Monday, 5 August 2019 8:42 AM
To: EPSD Government Services <EPSDGovernmentServices@act.gov.au>
Subject: FW: 19/24115 - Direct sale - letter of Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd (qA759826) [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]

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Hi All

Cleared by Lea.

Thanks
Kathleen

Kathleen Brooks | A/g Executive Assistant Urban Renewal | Environment, Planning and Sustainable Development
Directorate Phone 02 6205 3998 | Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT
2601 | www.environment.act.gov.au

-----Original Message-----

From: Durie, Lea <Lea.Durie@act.gov.au>
Sent: Friday, 2 August 2019 3:44 PM
To: Brooks, Kathleen <Kathleen.Brooks@act.gov.au>
Cc: Round, Jessica <Jessica.Round@act.gov.au>; Sparke, Chris <Chris.Sparke@act.gov.au>
Subject: FW: 19/24115 - Direct sale - letter of Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd (qA759826) [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]

Hi

This one is cleared by me and ready for DDG clearance please

-----Original Message-----

From: Durie, Lea
Sent: Thursday, 1 August 2019 12:50 PM
To: Sparke, Chris <Chris.Sparke@act.gov.au>
Subject: FW: 19/24115 - Direct sale - letter of Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd (qA759826) [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]

Thanks Chris
I changed the lease date to 2019 from 2017 - let me know if this is not correct

-----Original Message-----

From: Sparke, Chris
Sent: Thursday, 1 August 2019 11:42 AM
To: Durie, Lea <Lea.Durie@act.gov.au>
Subject: 19/24115 - Direct sale - letter of Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd (qA759826) [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]

Hi Lea,

Attached is a brief and offer package to the SLA CEO - John Deitz, asking him to sign the letter of offer for the Fyshwick direct sale to CRS.

Please can you review and forward to Geoffrey for approval if you are happy with it.

Regards

Chris Sparke | A/g Director, Direct Sales | Strategic Projects and Infrastructure | Urban Renewal Environment, Planning and Sustainable Development Directorate | ACT Government
Phone: 02 6205 2404
Level 2 South, Dame Pattie Menzies House, 16 Challis Street, Dickson ACT 2902 GPO Box 158 Canberra ACT 2601

Chris Sparke has sent you a link to "19/24115 - Direct sale - letter of Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd" (qA759826) from Objective.

Open in Navigator
Double click on the attachment

Open in ECM for Browser
<https://objective.act.gov.au:8443/#/documents/qA759826/details>

Open in Your Browser
<https://objective.act.gov.au/id:qA759826>

From: EPSD Government Services
Sent: Thursday, 15 August 2019 10:20 AM
To: Marshall, Guenivere
Subject: 19/24115 - Direct sale - Letter of Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd
Attachments: 19_24115 - Direct sale - Letter of Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd.obr

UNCLASSIFIED

Hi Guen,

Please see the attached Brief for John.

Thanks,

Aimie – x72156

From: Marshall, Guenivere
Sent: Friday, 16 August 2019 4:35 PM
To: Dietz, John
Subject: FOR APPROVAL: 19/24115 Direct Sale Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd
Attachments: 19_24115 - Direct sale - Letter of Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd.obr
Follow Up Flag: Follow up
Due By: Wednesday, 21 August 2019 4:00 PM
Flag Status: Flagged
Categories: Chief Executive Officer

UNCLASSIFIED

Hi John

Please see attached direct sale offer for your approval. This has been reviewed by Valuations and the sale is supported.

You previously supported this sale in October 2017. Critical date for signature is 23 August 2019.

Thanks
Guen

From: Terracini, Stephen <Stephen.Terracini@act.gov.au>
Sent: Friday, 16 August 2019 4:31 PM
To: Marshall, Guenivere <Guenivere.Marshall@act.gov.au>
Cc: Ten Donkelaar, Tara <Tara.TenDonkelaar@act.gov.au>; Lee, Joey <Joey.Lee@act.gov.au>
Subject: RE: FOR REVIEW: 19/24115Direct Sale Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd

UNCLASSIFIED

Hi Guen,

Subject: FOR REVIEW: 19/24115Direct Sale Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd

We have reviewed the valuations for the subject site and have no issues or concerns to raise related to the subject sale.

Table of valuations:

Valuer	Date of valuation	Value	Variance (Low)	Variance (High)
CBRE	3 July 2019			
Egan	25 June 2019			
HTW	27 June 2019			

Observations:

- There is a reasonably high variance of 19% between the lowest (HTW) and highest (CBRE) valuations, however the variance between the two highest valuation is under 1%.
- All three valuation reports are current.
- The valuation instructions are consistent and reflect the purpose of the sale and lease conditions.
- It appears offsite works will be attached to the sale, however this information was not provided to the valuers. When selling sites with mandatory offsite works agreements, it is our (SLA's) standard practice to provide indicative costings for the works for consideration by the valuers; depending on the costs of the relevant works, these agreements can impact on the value of the land. However, the direct sales team are accounting for the offsite-works by deducting the estimated cost of the works from the highest valuation (CBRE).

If you have any questions please ask 77231.

Thanks
Stephen Terracini

From: Marshall, Guenivere <Guenivere.Marshall@act.gov.au>
Sent: Thursday, 15 August 2019 10:30 AM
To: Terracini, Stephen <Stephen.Terracini@act.gov.au>; Emerson, Marc (Health) <Marc.Emerson@act.gov.au>
Cc: Ten Donkelaar, Tara <Tara.TenDonkelaar@act.gov.au>; Lee, Joey <Joey.Lee@act.gov.au>
Subject: FOR REVIEW: 19/24115Direct Sale Offer - Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd

UNCLASSIFIED

Good Morning

Please see attached Direct Sale offer for Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd. Could you please review the documentation and provide assurance for John to sign off on this offer, noting he signed off on an earlier offer in October 2017.

Please provide advice by **COB Wednesday, 21 August 2019.**

Thank you
Guen

Guen Marshall
Executive Officer to Chief Executive Officer John Dietz

T: 02 6207 0576 | **M:** [REDACTED]

Suburban Land Agency | ACT Government

TransACT House, 470 Northbourne Avenue, Dickson ACT 2602 | GPO Box 158 Canberra ACT 2601

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BRIEF

Environment, Planning and Sustainable Development Directorate

FOR OFFICIAL USE ONLY

To: Chief Executive Officer – Suburban Land Agency

Tracking No.: 19/24115

Date: 05 August 2019

From: Deputy Director-General, Sustainability and the Built Environment

Subject: Direct Sale – Letter of Offer – Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd

Critical Date: 23 August 2019

Critical Reason: To finalise the Direct Sale

- DG .../.../...

Recommendations

That you:

- Note the information contained in this brief; and

Noted / Please Discuss

- Agree to sign the Letter of Offer at Attachment A and return to Chris Sparke in EPSDD’s Urban Renewal branch for dispatch.

Agreed / Not Agreed / Please Discuss

John Diet

22/8/2019

Feedback

I NOTE USAGE PROVIDED BY SIA VARY TEAM UNTIL 16 AUG 2019

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Background

1. On 24 March 2016, the Minister for Planning and Land Management agreed (Attachment C) to the direct sale of Block 11 Section 8 Fyshwick to Somerset Rehabilitation Pty Ltd (Somerset).
2. Somerset has since changed its business name to Capital Recycling Solutions Pty Ltd (Capital Recycling).
3. Capital Recycling is part of the Access Recycling Services (Access) group, a leading supplier of metal recycling services to the mining, rail and heavy industry sectors throughout the eastern states of Australia.
4. The Access group processes in excess of 85,000 tonnes of scrap metal per annum and its Canberra facility has annual scrap volumes in excess of 40,000 tonnes processing end of life cars, white goods and farm machinery as well as catering for the metal waste produced from the Territory's construction, demolition and manufacturing sectors.

Issues

5. On 17 October 2017, the Suburban Land Agency previously made an offer to Capital Recycling. That offer was subsequently withdrawn by the Director-General of EPSDD as a result of community concerns about the proposed use of the site and a legal challenge against the validity of the original DA decision.
6. Capital Recycling has recently (5 June 2019) obtained two additional Development Application (DA) approvals which EPSDD now considers to meet the conditions of approval set out in the Minister's agreement to the direct sale. Copies of the recent DA decisions are at Attachments D and E.

Lease Approval

7. The proposed Crown lease for the land has been drafted internally and approved by EPSDD's Leasing Services unit. A copy of the proposed Crown lease is at Attachment B.

Financial Implications**Land Valuation**

8. As per a long standing direction from Treasury relating to direct sales to commercial applicants, the market value for the land has been ascertained by adopting the highest of three valuations undertaken by three independent valuation firms that are on the ACT Government's Valuation Services Panel. The highest valuation resulted in a market value for the land being set at \$970,000 (ex GST). Copies of the Valuations received are at Attachments F, G and H.

Contribution for Required Works

9. During the application process, it was identified (through discussions with Icon Water) that the site is not able to be developed unless the existing water main that traverses the site is relocated off the block. The Territory's consultants (Cardno) have confirmed that the cost of these works will equate to a total of \$249,000 including all supervision costs, contingencies and GST. A copy of Cardno's report detailing the costings is at Attachment I.

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10. The contribution to the proponent avoids the Territory having to undertake these works prior to the sale of the land and transfers the control of the works and any further associated risks to the proponent. This has been discussed with the proponent, and it is comfortable with this proposal.
11. If this offer is accepted by the proponent the SLA will receive \$818,000 (GST Inclusive) from this sale.

Communications, media and engagement implications

12. The direct sale of this land will undoubtedly attract media attention; the recent DA decisions and the proponents proposed use for this land have been widely discussed in the media and resulted in a number of Freedom of Information requests being received by EPSDD.

Signatory Name: Geoffrey Rutledge

Phone: 75001

Action Officer: Chris Sparke

Phone: 52404

Attachments

Attachment	Title
Attachment A	Letter of offer
Attachment B	Proposed Crown Lease
Attachment C	Minister Gentleman's agreement
Attachment D	DA Decision – 201834656
Attachment E	DA Decision - 201835108
Attachment F	CBRE Valuation
Attachment G	Egan Valuation
Attachment H	Herron Todd White Valuation
Attachment I	Cardno's report



ACT
Government

Suburban Land
Agency

Mr Adam Perry
Director
Capital Recycling Solutions Pty Ltd
16 Ipswich Street
FYSHWICK ACT 2604

Dear Mr Perry

Re: Letter of Offer for the direct sale of Block 11 Section 8 Fyshwick to Capital Recycling Solutions Pty Ltd

I refer to the direct sale application by Capital Recycling Solutions Pty Ltd (Capital Recycling) to purchase the land noted above.

OFFER

I am pleased to advise that I am now in a position to offer Capital Recycling a Crown lease over the land under the *Planning and Development Act 2007* for a term of 99 years under the following terms:-

Sale Price

Land at market value	\$ 970,000	
Plus GST (@10%)	\$ 97,000	
Subtotal	\$1,067,000	GST Inc
Less contribution for required works	\$ 249,000	GST Inc
Final Sales Price	<u>\$ 818,000</u>	GST Inc

Conditions of Sale

- Please note that this letter of offer is conditional on you agreeing to consolidate the Crown Lease for Block 8 Section 11 Fyshwick with the Crown Lease of your adjacent property, known as Block 9 Section 11 Fyshwick, within 12 months.
- The offer is open for 28 days from the date of this letter.
- Furthermore, it is a condition of this direct sale that Capital Recycling shall not be entitled to raise any objection, requisition or claim for compensation against the Commonwealth, Territory, their servants or agents in respect of the existence of regrading, fill or any other disability on

the land, whether caused by the Commonwealth, the Territory, their servants or agents or by previous owners of the land or otherwise.

Acceptance of Offer

If this offer is acceptable to Capital Recycling (the LESSEE), on or before the date that is 28 days from the date of this letter please:

1. sign this offer letter at the bottom of each page and return it to this office;
2. arrange for the Crown Lease (in duplicate – Attachment A) to be appropriately executed by the LESSEE (in black ink) where indicated; and
3. return (by hand) both copies of the executed original Crown lease document, together with a cheque in the amount of \$818,000, being the sale price payable for the Crown lease, in favour of the “Suburban Land Agency” directly to Chris Sparke at the address below:

Mr Chris Sparke
Strategic Projects and Infrastructure
Environment Planning and Sustainable Development Directorate
Level 2 South
Dame Pattie Menzies House
16 Challis Street
DICKSON ACT 2602

If you wish to pay via electronic means please contact Chris Sparke on 02 6205 2404 for the appropriate account details.

Once received by the Territory, you will be provided with:

1. the fully executed Crown Lease (in duplicate) for presentation at the ACT Revenue Office for assessment of stamp duty followed by registration with Access Canberra;
2. a signed letter to the ACT Revenue Office; and
3. a tax invoice.

Obligation to make own enquiries

The LESSEE must make its own interpretations, deductions and conclusions from the information made available and accept full responsibility for such interpretations, deductions and conclusions. We recommend you obtain legal and financial advice before accepting the offer of a Crown lease.

ACT Revenue

All new Crown leases are subject to ACT Stamp Duty. All enquiries concerning the payment of stamp duty should be directed to:

The Commissioner for ACT Revenue
ACT Revenue Office
255 Canberra Avenue
Fyshwick ACT 2609
(Phone: 02 6207 0028)

Please note that Crown lease documentation must be lodged and any applicable duties paid for within 90 days from the date of grant. The *Taxation (Administration) Act 1999* provides for interest on tax defaults and various culpability penalties on tax defaults of the stamp duty payable.

If you require any further information, please contact Chris Sparke of Strategic Projects and Infrastructure on 02 6205 2404.

Yours sincerely



John Dietz
Chief Executive Officer
Suburban Land Agency

22 August 2019



ACT
Government

Chief Minister, Treasury and
Economic Development

COMPLETED

TRIM: BM16/456

To: Minister for Planning and Land Management

- Minister for Urban Renewal *AB 22.3.16*
- Director-General, Environment and Planning Directorate

Subject: Direct Sale - Application by Somerset Rehabilitation Pty Ltd to acquire Block 11 Section 8 Fyshwick

Critical date and reason

1. As soon as possible to facilitate the timely direct sale of land.

Recommendations

2. That you agree, subject to the conditions noted below (Para 16), to the direct sale of a lease, at market value, for Block 11 Section 8 Fyshwick to Somerset Rehabilitation Pty Ltd.

Mick Gentleman MLA

AGREED/NOT AGREED/PLEASE DISCUSS

Supporting Reasoning

3. In October 2015, Somerset Rehabilitation Pty Ltd (Somerset) approached the government to acquire a Crown lease over Block 11 Section 8 Fyshwick for incorporation into the adjacent Block 9 (the former Shell fuel storage site) which it has just recently arranged to purchase.
4. Somerset is a subsidiary of Access Recycling Services (Access), a leading supplier of metal recycling services to the mining, rail and other heavy industries throughout the eastern states of Australia. Access recycling processes in excess of 85,000 tonnes of metal per annum across Australia. The existing Canberra facility has annual scrap volumes in excess of 40,000 tonnes, processing end-of-life cars, white goods and farm machinery produced in the region. It also caters for metal waste produced from Canberra's construction, demolition and manufacturing sectors.
5. Access has recently moved its transporting operation to rail, for which it currently uses the Kingston rail terminal under a two year licence agreement with John Holland Rail and Transport for NSW. This operation results in the region of 100 heavy duty truck movements per week between Fyshwick and Kingston to load its products onto a train.

6. The rail service currently ships between 50 and 60 shipping containers to Port Botany per week, from where it is shipped to South East Asia. This freight transport route has also developed alternative low cost export opportunities for other regional producers that utilise the freight service run by Access.
7. During the recent wet winter the mainly earth and deteriorating bitumen surface of the Kingston site has caused significant delays due to the heavy duty forklifts that load the train getting stuck in mud, and despite Access claiming to have spent in excess of \$100,000 in an attempt to fix the drainage of the site it has not proved adequate.
8. The remaining term of the licence and the knowledge that the Kingston rail site has been earmarked for residential development in the future, means that Access cannot justify spending the level funding needed to repair the terminal's surface to a useable state.

The land

9. Block 11 is currently unleased Territory land under the custodianship of TAMS; it has an area of approximately 12,090m² and is zoned as *IZ2: Industrial Mixed Use* under the Territory Plan. A map highlighting the land sought is at **Attachment A**.

The Development Proposal

10. Somerset/Access wishes to develop a concrete loading platform and freight hub on Block 11 to satisfy its needs and that of the other exporters wishing to use the Territory's only rail freight service. The value/cost of these works would be in the region of \$600,000 and would reduce the need for the above quoted number of trucks travelling between Fyshwick and Kingston every week.
11. It is also anticipated that a move to the Fyshwick site would free up the Kingston site for potential redevelopment, allow larger freight trains to be utilised, and make the freight service more attractive to the industrial sector in Fyshwick.

Consultation and Communication

12. The direct sale proposal was previously raised, discussed and generally supported by the Land Requests Advisory Committee.

Existing Services

13. There are a number of services that cross the land at various points. There are two separate stormwater culverts that discharge storm water from under the adjacent rail tracks into the site. Economic Development has been advised by Icon Water that there is an existing water supply main located within the block which may need to be either relocated or have an acceptable engineering solution approved by Icon. Somerset has acknowledged this and will address these issues as part of its Development Application.

Stakeholder Support

14. Both John Holland Rail and Transport for NSW are supportive of the development of this freight rail service and have informally advised that funding will be arranged to be available to pay for the track infrastructure upgrade required to allow the reactivation of the former Shell (Block 9) site's connection to the main line for the proposal to go ahead.
15. The application submitted by Somerset was considered by the Direct Sale Panel (the Panel) on 10 February 2016. The Panel reviewed the assessment of the eligibility criteria under Section 122 of the Planning and Development Regulation 2008. A copy of the assessment is at **Attachment B**.
16. The Panel recommends that, in this instance, the eligibility for the direct sale of a parcel of contiguous land can be supported subject to the following:-
 - Somerset finalising the purchase of Block 9 Section 8 Fyshwick;
 - Somerset acquiring an approved Development Application (DA) for the development proposal;
 - an easement on Block 11 being created to allow access by the owner of Block 13 Section 8 Fyshwick to the rail tracks should it require it in the future;
 - that when the new lease is granted, it is to be consolidated (within 12 months) by Somerset with its existing lease over Block 9 Section 8 Fyshwick to form one single parcel; and
 - Somerset acknowledging the potential that the site may be contaminated, and confirming that it is prepared to accept the land in its current condition.

Financial

17. Under the existing direct sale charging policy Somerset would be required to pay full market value for the land and be responsible for all due diligence assessments that will be required for a Development Application to be lodged with the Environment and Planning Directorate.
18. As the purchaser of a contiguous land parcel Somerset would be responsible for undertaking its own site investigation reports and other due diligence assessments that will be required for the DA. It will also be responsible for providing service connections for any part of the proposed development from within its existing block.
19. The sale of this site would move the maintenance responsibility from TAMS to the proponent and represent a minor saving for TAMS' budget.

Managementt of Other Risks

20. It is unlikely that this direct sale will result in any risks to the Territory.

Director-General: David Dawes

Executive Clearance: Ben Ponton, Coordinator-General, Urban Renewal

Liz Lopa, Executive Director, Urban Renewal

Date: February 2016

Action Officer: Chris Sparke

Phone: 52404



ACT
Government

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 of a new driveway from Lithgow Street (across Block 11 Section 8 Fyshwick);
- the construction of a hardstand for use as a freight transport facility on Block 11 Section 8 Fyshwick and an internal driveway to access Block 9 Section 8 Fyshwick;
- relocation of an existing water main, which runs through the middle of Block 11 Section 8 Fyshwick [Block 11 Section 47 (railway siding) is included in this development application to show the extent of these works to be carried out by Icon Water in relation to the water main relocation];
- removal of trees; and
- associated works;

in accordance with the plans, drawings and other documentation approved and endorsed as forming part of this approval.

DA Number: 201834656
 Block/Section: 11/47
 Blocks/Section: 9&11/8
 Suburb: Fyshwick
 Address: 16 Ipswich Street
 Application lodged: 06/11/2018
 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

NOTICE OF DECISION

DA 201834656

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. Transfer and grant of easements

Prior to construction, the lessee/land custodian of Block 11 Section 8 Division of Fyshwick, in consultation and subject to agreement with the lessee of Block 9 Section 8 Division of Fyshwick must prepare an Instrument granting an encumbering Transfer and Grant of Easement (TGE) for registration at Access Canberra (Land Titles and Rental Bonds) against the Crown lease of the block.

At a minimum, the TGE's shall address the use, inspection and maintenance arrangements surrounding the new driveway easement on Block 9 Section 8 Fyshwick.

2. 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: It is noted that drawings endorsed "Progress Stamp (In Principle)" dated 01/05/2019 was submitted by the proponent on 22/05/2019 for this DA. 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.

3. 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 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.

- b) revised plans incorporating establishment of advanced stock semi-mature trees with a minimum mature height of 12 m 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.

NOTICE OF DECISION

DA 201834656

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.

4. 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.

5. Leasing

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

6. Tree Protection

All works are to be in accordance with:

- i. General Arrangement Plan Sheet 1 of 4, Drawing Number: 50518089-C1-2006, Revision F.
- ii. General Arrangement Plan Sheet 2 of 4, Drawing Number: 50518089-C1-2007, Revision F.
- iii. General Arrangement Plan Sheet 4 of 5, Drawing Number: 50518089-C1-2008, Revision I.
- iv. General Arrangement Plan Sheet 5 of 6, Drawing Number: 50518089-C1-2009, Revision I.

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 findings of the independent audit into the site's suitability for its proposed and permitted uses or appropriate auditor interim advice where acceptable to the EPA must be reviewed and endorsed by the EPA prior to the commencement of development works.
- 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. Restoration works

Restoration works must be undertaken for the water main relocation to return all natural features to the conditions existing before the work commenced – to the satisfaction of Transport Canberra and City Services (TCCS).

NOTICE OF DECISION

DA 201834656

9. Transport Canberra and City Services (TCCS)

- a) All driveways must be designed and constructed in accordance with TCCS Design Standards.
- b) The existing driveway off Ipswich Street must be designed for heavy vehicle exit only via signalised arrangement. TCCS must be consulted on and endorse the final detail design of this driveway layout and signalisation work.
- c) 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.

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.

NOTICE OF DECISION

DA 201834656

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 plan, 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.

10. Compliance with entity requirements

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

11. 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.

NOTICE OF DECISION

DA 201834656

ADVISORY NOTES

Environment Protection Authority (EPA)

All rain water that enters the site and pools in excavations during a rain storm event would be considered as a sediment control pond, and must meet the following condition:

- No discharge from pond unless sediment level is less than 60mg/litre. If sediment level is greater, then prior to discharge, the dam must be dosed with either Alum or Gypsum and allowed to settle until the sediment is less than 60 mg/litre.

NOTICE OF DECISION

DA 201834656

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 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.

NOTICE OF DECISION

DA 201834656

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:	201834656
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