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Watson House
300 George Street
Sydney NSW 2000
Phone (02) 6650 7000
Fax (02) 6651 4853
www.fwolaw.com

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Enquiries:

Ross Fox
6650 7038
rfox@fwolaw.com

Eco Logic Developments Pty Ltd
C/o Dr Mark Jackson
Jackson Environment and Planning Pty Ltd
Suite 102, Level 1, 25-29 Berry Street
NORTH SYDNEY NSW 2060

By Email: mark@jacksonenvironment.com.au

Dear Mark

**Advice in relation to the characterisation of use at Singleton Recycling Facility
Premises: 39 Enterprise Crescent, McDougalls Hill (Lot 17 DP 1062083)**

1. Request for advice

- 1.1 You have sought advice in relation to whether the crushing and shredding components of activities proposed at the proposed Singleton Recycling Centre are permissible within a 'Waste or Resource Transfer Station' use under the Singleton Local Environmental Plan 2013 (**Singleton LEP**).

2. Summary

- 2.1 The proposed crushing and shredding activities at the Singleton Recycling Facility are part of the use of the land for the purpose of a 'Waste or Resource Transfer Station'. The crushing and shredding activities are a small component of the activities undertaken and are for the overarching or dominant purpose of facilitating the collection of waste and its transfer of waste off-site for recycling and re-use.
- 2.2 The definition of Waste or Resource Transfer Station in the Singleton LEP does not provide an exhaustive list of activities which are permitted. In our view crushing to facilitate efficient transport is clearly within the meaning of "compaction" expressly referred to the land use definition. With respect to shredding to facilitate sorting and transfer, this activity is for a similar purpose to compaction and so within the type of activities included within the definition. Accordingly, applying the legal test set out below and focussing on the purpose, both are permissible components of the whole.
- 2.3 In our view it is not necessary to further consider whether the activities are ancillary to the dominant use, although this would clearly be the case.

3. Facts and Assumptions

We are instructed as follows:

- 3.1 On 27 June of 2019, Eco Logic Developments Pty Ltd submitted a development application for the construction and operation of a recycling centre, known as Singleton Recycling Centre, at 39 Enterprise Crescent, McDougalls Hill (Lot 17 DP 1062083) (the **Property**).
- 3.2 The Property is zoned B5 Business Development under the Singleton LEP.

The proposed facility

- 3.3 The proposed facility will be capable of recovering up to 95,000 tonnes per year of building, construction, household clean-up and commercial waste materials from households and businesses in the region.
- 3.4 The proposed facility will operate within a purpose built and fully enclosed warehouse building. Key operational features of the development within the footprint of the Site include:
 - 3.4.1 a Community Recycling Centre for household problem wastes;
 - 3.4.2 a tipping and sorting area for a range of household, business and building waste;
 - 3.4.3 a sorting and processing facility to sort, crush and screen mixed building materials; and
 - 3.4.4 a product manufacturing area for landscaping and civil supplies.
- 3.5 The processing area at the proposed facility involves sorting, screening and size reduction, to produce a series of aggregate, mulch and soil wastes which are then transferred off-site for recycling or further recovery.
- 3.6 The EIS provides that "limited crushing and shredding will be performed as part of the proposed development, though this is considered a minor operational feature, required to compact material (such as timber and masonry) for transport off-site and recycling."
- 3.7 The EIS describes the following processes:
 - 3.7.1 to assist in the recovery of materials from the light fraction of building waste, waste is loaded and sorted through a 30 tonne per hour secondary sorting process;
 - 3.7.2 waste is transferred via a front-end loader into a receiving hopper, where waste is shredded via a slow speed shredder; and
 - 3.7.3 loads of concrete/brick will be removed from the primary and secondary sorting process in order to be crushed and screened into aggregate products. Clean timber will also be shredded via a separate shredding unit.

- 3.8 The purpose of the shredding and crushing activities is to:
- 3.8.1 allow timber and other material to enter onto the conveyor belt and into the sorting process; and
 - 3.8.2 allow large items of brick, concrete and timber to be compacted to allow more efficient loading and distribution for off-site recycling or recovery.

Relevant planning provisions

- 3.9 Under the Singleton LEP, waste or resource transfer stations are permitted with consent in areas zoned B5. In addition, waste or resource management facilities have the benefit of the application of the State Environmental Planning Policy (Infrastructure) 2007 (the **SEPP**). Section 121(2)(b)(i) of the SEPP provides that development for the purpose of a 'waste or resource transfer station' is a permissible use of land zoned B5 with consent.
- 3.10 Section 120 of the SEPP provides that a waste or resource transfer station has the same meaning as the Standard Instrument which is contained in the Singleton LEP. The Singleton LEP defines '*Waste or Resource Transfer Station*' to mean a building or place:
- "used for the collection and transfer of waste material or resources, including the receipt, sorting, compacting, temporary storage and distribution of waste or resources and the loading or unloading of waste or resources onto or from road or rail transport."

4. Law relating to charactering use

- 4.1 Characterisation of the use of the Premises:
- 4.1.1 must be undertaken in a common sense and practical way;
 - 4.1.2 almost always involves questions of fact and degree; and
 - 4.1.3 must be undertaken at a level of generality which is sufficient to cover the individual activities, processes or transactions and not in terms of the details of the individual activities, processes or transactions (*Chamwell v Strathfield Council (2007)* 151 LGERA 400).
- 4.2 Although uses of the land may be of a different nature, they can serve the same dominant purpose. There is a distinction between the nature of different components of the land use and the *purpose* of the use (*Abret v Wingecarribee Shire Council (2011)* 180 LGERA 343).
- 4.3 If part of the land is being used for a purpose which is subordinate to the purpose of the use of another part of the land, the former may be disregarded and it may be found that the dominant purpose is that for which the whole is being used (*Foodbarn v Solicitor General (1975)* 32 LGERA 157).
- 4.4 It is necessary to look at the fact and degree of the usage, as an ancillary use may also be independent and therefore a prohibited use of the land. To determine if an ancillary use is independent it is necessary to consider whether the ancillary use is 'inextricably bound up' with the permissible use. In such cases, the dominant use

is the permissible use and the ancillary use is not independent (*Macquarie International Health Clinic v University of Sydney (1998) LGERA 218*).

5. Application to Singleton Recycling Facility

- 5.1 In order to determine the characterisation of the use or uses of the land it is first necessary to have regard to the provision enabling the use in the SEPP. In this case, the definition of 'Waste or Resource Transfer Station' is expressed to "include" receipt, sorting, compacting, temporary storage and distribution of waste or resources.
- 5.2 Accordingly, this list of components in the SEPP is not exhaustive and other activities such as shredding or crushing, which serve the same purpose of "collection and transfer of waste material or resources" may be permitted. Further, the reference to "includes" indicates that there is no express limit on the number of processes that may be applied to collect and transfer waste material and resources. The limit must be determined by matters of fact and degree.
- 5.3 Turning to matters of fact and degree in this case, it is necessary to consider the components in question:
 - 5.3.1 **Secondary sorting for the light fraction of the waste**

Waste is transferred via front end loader into a receiving hopper, where waste is shredded via a slow speed shredder. This allows the material to be efficiently loaded and proceed on the conveyor belt for further sorting. It will also assist the material to be more efficiently loaded for transport to a recycling facility for recycling.
 - 5.3.2 **Compacting process for the heavy fraction of the waste**

For loads of concrete/brick removed from the primary and secondary sorting process will be crushed and screened. This will assist transport off-site for recycling. Clean timber is proposed to be separately shredded via a shredding unit for the same purpose.
- 5.4 Characterisation must occur at a level of generality. Considering the minor scale of the crushing and shredding components they are consistent with the overarching purpose of a Waste or Resource Transfer Station.
- 5.5 Even if the components are not within the definition of 'Waste or Resource Transfer Station', which is contrary to our view, the components would be ancillary to that dominant purpose and therefore permissible. Put another way, if not part of a Waste or Resource Transfer Station, the crushing and shredding uses are bound up in a way that makes it clear those components are not for some prohibited or independent purpose.

6. Conclusion

- 6.1 We consider that the crushing and shredding components of the activities are part of the dominant use of the premises as a Waste or Resource Transfer Station.
- 6.2 In the alternative, the crushing and shredding components would be permissible as ancillary activities to the overarching use as a Waste or Resource Transfer Station.

- 6.3 Accordingly, the Panel can be satisfied that the proposed crushing and shredding activities at the facility are permissible.

Yours faithfully,

FISHBURN WATSON O'BRIEN



ROSS FOX

Principal

Accredited Specialist Planning and Environment