

ACT Auditor-General's Office

Performance Audit Report

MANAGEMENT OF RECYCLING ESTATES AND E-WASTE

Territory and Municipal Services Directorate

June 2012

PA 11/02

The Speaker
ACT Legislative Assembly
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Mr Speaker

I am pleased to forward to you a Performance Audit Report titled 'Management of Recycling Estates and E-waste' for tabling in the Legislative Assembly pursuant to Section 17(5) of the *Auditor-General Act 1996*.

Yours sincerely

Dr Maxine Cooper
Auditor-General
28 June 2012

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LIST OF ABBREVIATIONS AND DEFINITIONS

ACT	Australian Capital Territory
CMCD	Chief Minister and Cabinet Directorate
CMD	Chief Minister's Department (became CMCD in 2011)
EDD	Economic Development Directorate
ESA	Emergency Services Agency within JACS Directorate
JACS	Justice and Community Safety Directorate
Minister	Minister for Territory and Municipal Services Directorate
TAMS	Territory and Municipal Services Directorate
E-waste	Abbreviation of 'electronic waste'. E-waste is consumer goods that incorporate electronic components, such as mobile phones, computers, televisions, DVD players and gaming consoles.

1. REPORT SUMMARY AND CONCLUSION

INTRODUCTION

- 1.1 In late 2011, the ACT's new Waste Management Strategy 2011-2025, was released. It replaced the 1996 *No Waste By 2010 – Waste Management Strategy* and in so doing it explicitly included e-waste and gives priority to the Hume Resource Recovery Estate for the development of waste infrastructure.
- 1.2 ACT NOWaste, within the Territory and Municipal Services Directorate, administers the Government's waste management strategy and manages contracts and service agreements for a range of waste and recycling activities, including contracts for the disposal of discarded electrical and electronic equipment. This type of waste is called e-waste (electronic waste).
- 1.3 ACT Property Group within the Territory and Municipal Services Directorate is accountable for property management and compliance management of tenant land use.
- 1.4 ACT NOWaste and the ACT Property Group developed a 2005 Protocol so that ACT Property Group could effectively manage sites in the two ACT recycling estates to achieve requirements of ACT NOWaste.
- 1.5 The ACT's two recycling estates are Parkwood Road Recycling Estate and Hume Resource Recovery Estate. Development in Parkwood commenced in 1999 and in the Hume Resource Recovery Estate in 2009.
- 1.6 The generation and disposal of e-waste by households is a growing concern of communities across Australia. Australians are amongst the top ten consumers of electronic technology in the world. Televisions and computers cause the most concern primarily due to their weight and the volume of these products that are now reaching their end of life.
- 1.7 E-waste in Australia is being managed nationally under the National Stewardship Scheme and the ACT is leading other jurisdictions in implementing initiatives under this scheme.
- 1.8 The ACT's Select Committee on Estimates, reporting on the *Appropriation Bill 2011-12*, noted that:

...while the Government indicated its support for procurement from social enterprises in June 2010, two previous e-waste contracts in 2009 and 2011 were given to firms based outside the ACT without apparent regard to environmental or social considerations.¹

¹ The Select Committee on Estimates 2011-2012, *Appropriation Bill 2011-2012*, paragraph 9.56, page 177.

- 1.9 The Committee recommended that:
- the Auditor-General should investigate the previously granted e-waste and other waste contracts.²
- 1.10 This report presents the results of a performance audit that examined the administrative effectiveness in managing the recycling estates located at the Parkwood Road and Hume, and computer and television e-waste.

AUDIT OBJECTIVE

- 1.11 The objective of this audit is to provide an independent opinion to the Legislative Assembly on whether:
- the ACT recycling estates at Parkwood Road and Hume are effectively planned, regulated and managed to optimise recycling activities to meet the ACT's sustainability agenda; and
 - the management of computer and television e-waste is consistent with government legislative and policy requirements.
- 1.12 Accordingly, the main focus of this audit is on the activities of the Territory and Municipal Services Directorate, in particular the business units of ACT NOWaste and ACT Property Group. However, the activities of some of other Directorates - the Economic Development, the Environment and Sustainable Development (Policy and the Environment Protection Authority), and the Justice and Community Safety (ACT Fire and Rescue) - are also considered when their management and/or regulatory functions affect the recycling estates.
- 1.13 **Appendix A** presents the audit criteria, approach and method.

AUDIT CONCLUSION

Management of recycling estates

Overall issues

The regulatory waste function under the *Waste Minimisation Act 2001* (the Act), needs to be activated. At present the ACT does not have a waste regulator even though this can be enacted under Section 4 of the Act by appointing an authorised person. While such a person may be able to address, to a degree, the issue of stockpiling recycling material under the existing legislation, it could be better controlled if the ACT had a regulation for controlling the storage of waste.

The Environment Protection Authority and the Justice and Community Safety Directorate (ACT Fire and Rescue) appear to have fulfilled their regulatory role in accordance with

² The Select Committee on Estimates 2011-2012, *Appropriation Bill 2011-2012*, Recommendation 153, page 177.

legislated requirements with respect to issues considered in this audit.

Hume Resource Recovery Estate

To assist the future management of this Estate and build on the guidance given by its Master Plan, it is timely for a long-term Estate Management Plan to be developed.

Several procurement processes undertaken by ACT NOWaste for the development of the Hume Resource Recovery Estate were considered and all were found to have been conducted in accordance with the appropriate procurement requirements.

Parkwood Road Recycling Estate

The management of this Estate has been poor. There is evidence of communication failures and unresolved disagreements. There is a need for the purpose of the Estate to be clarified and this used to guide the development of a long-term Estate Management Plan.

Also, the ACT Government has incurred considerable costs (approximately \$1m) in cleaning up a recycling site (located in the former West Belconnen landfill site) that posed an unacceptable fire risk due to waste material being stockpiled.

The rental fees charged at this Estate are significantly below current market rates.

It is acknowledged that there is now a commitment to update the 2005 Protocol between ACT Property Group and ACT NOWaste for the management of Parkwood and ensure compliance with its requirements.

Computer and television e-waste

The ACT Government continues to provide leadership in the management of computer and television e-waste. It was the first jurisdiction in Australia to introduce local bans on these going to landfill, and it is taking the lead in implementing the new National Stewardship Scheme. While this is the case, the planning for these initiatives was not always comprehensive and unanticipated costs particularly related to illegal dumping were incurred.

The procurement processes for computer and television e-waste, were generally appropriate and risk based, however there are areas for improvement.

KEY FINDINGS

1.14 The audit conclusion is supported by the following findings:

Managing the recycling estates (Chapter 3) showed:

- A Hume Resource Recovery Estate Management Plan is needed to set the short and long-term objectives for the Estate's development.

- ACT Property Group has not effectively managed the Parkwood Road Recycling Estate. It may be that this is not occurring because the 2005 protocol is out-dated.
- Renewals of a number of licence agreements were not made in accordance with the intent of the 2005 Protocol.
- The cost to the ACT Government of a cleanup of a building waste recycling facility's stockpile at the West Belconnen Landfill during 2011-12 was in the vicinity of \$1 million.
- Notwithstanding a recent decline in rental market values, the average rental charge of \$3.26 per square metre per annum under the current lease agreements is well below a May 2011 independent rental market valuation of the Parkwood Road Recycling Estate at \$33.23 per square metre per annum.
- ACT Property Group has not been able to effectively retain important corporate knowledge. Consequently, important factors such as risk assessments have not been considered in managing the Parkwood Road Recycling Estate since 2007.
- A 2007 Fire Risk assessment found that the Parkwood Road Recycling Estate presented significant fire hazards to the ACT, especially to nearby suburbs.
- The Director-General, Territory and Municipal Services Directorate has not appointed an authorised person under Part 4 (Enforcement Power) of the provisions of the *Waste Minimisation Act 2001*. Such a person could enforce the provisions of the Act, including addressing stockpiling of recycling material, to the degree that the legislation allows, even if this is at present limited due to a lack of specific regulations governing the storage of waste.

Procurement – Hume Resources Recovery Estate

- The expression of interest process for the direct land sale at Hume Resource Recovery Estate was conducted in accordance with requirements and the evaluation criteria outlined in the expression of interest documents was met. However, the sale is not due to be completed until August 2012, due to the block requiring some earthworks, some two years after commencement of the procurement.
- Procurement processes for a commercial dry mixed recycling facility at Hume Resource Recovery Estate were followed. In April 2011, a respondent was short-listed but negotiations are continuing. ACT NOWaste advised Audit that a Memorandum of Understanding will be announced in July 2012.

Computer and television e-waste (Chapter 4) showed:

- Bans on computers (from 2005) and televisions (from 2010) going to landfill have been a major factor in recycling 2 780 tonnes of e-waste that would otherwise have gone to landfill.
- The computer and television bans were largely intended to be offset by the collection of user fees from members of the public disposing of their televisions and computers, but there has been a shortfall in income to fund this e-waste recycling activity of around \$610 000 out of a total cost of \$1.59 million (38 per cent) over the last five years.
- The shortfall has arisen from unanticipated increases in contract prices and illegal dumping. This has occurred particularly at charity bins located in and around town centres, car parks and suburban shopping centres.
- Under the Commonwealth regulated and industry funded National Stewardship Scheme computer and television e-waste services are now free to users, and costs that the ACT Government has incurred are unlikely to be incurred in the future. The early adoption by the ACT Government of the National Stewardship Scheme puts in place a firm arrangement for two years to collect and recycle computer and television e-waste. In the first four weeks of these new arrangements, an estimated 700 tonnes of computer and television e-waste was delivered to the ACT's two recycling centres. This is equivalent to a year's recycled e-waste under the former bans. Canberrans no longer need to pay for a service that attracted a fee. This will save them more than \$400 000 a year. Significant savings are also expected from a reduction in illegal dumping.
- The ACT as yet has no long-term monitoring and evaluative framework for its e-waste initiatives. However, under the National Stewardship Scheme the ACT Government will be contributing to annual reports going to the Commonwealth Government on the new scheme and some of the elements of these reports could form the basis of such a framework.
- ACT NOWaste's financial data on its computer and television e-waste initiatives were not readily available. An important aspect of determining the cost effectiveness of these initiatives is the ability to evaluate financial and other information.

Procurement – computer and television e-waste

- The handling of tendering and contract letting for computer and television e-waste contracts between 2008 and 2011 were, in the main, compliant with policy. However, there were significant delays in progressing the procurement and this led to additional cost.
- Furthermore, in the procurement process, greater attention should have been given to:

- balancing social, economic and environmental factors in the e-waste tendering;
 - the potential for prioritising local companies and local solutions; and
 - the use of contract variations.
- ACT NOWaste failed to monitor aspects of computer and television e-waste contract delivery such as when contracts were expiring and when spending limits had been exceeded.

RECOMMENDATIONS AND RESPONSE TO THE REPORT

- 1.15 The audit has made nine recommendations to address the audit findings detailed in this report.
- 1.16 Priority should be given to Recommendation 1 (management of the Hume Resource Recovery Estate), Recommendation 5 (administrative arrangements under the *Waste Minimisation Act 2001*), and Recommendation 6 (management of the Parkwood Road Recycling Estate).
- 1.17 In accordance with Section 18 of the *Auditor-General Act 1996*, a final draft of this report was provided to the Directors-General of the Territory and Municipal Services Directorate, Environment and Sustainable Development Directorate, Economic Development Directorate and Justice and Community Safety Directorate for consideration and comments.
- 1.18 The Director-General of Territory and Municipal Services Directorate overall response is:
- The Management of Recycling Estates and E-waste Audit Report is timely and will be a valuable tool to progress the existing internal review of the management issues related to the Estates and E-waste operations. The development and alignment of Estate Management Plans is regarded as key to the ongoing professional management of these critical functions.*
- 1.19 In addition, the Director-General of the Territory and Municipal Services Directorate provided responses to each recommendation. The Director-General of Environment and Sustainable Development Directorate's comments in relation to Recommendation 5 are presented.

Recommendation 1 (Chapter 3)

Management of the Hume Resource Recovery Estate

The Territory and Municipal Services Directorate (ACT NOWaste) should enhance its management of the Hume Resource Recovery Estate by developing:

- a. an Estate Management Plan to guide the short and long-term development of the site;
- b. a risk management plan for the Estate; and
- c. a monitoring and evaluation framework to guide an overall assessment of the Estate.

(b and c could be part of the Estate Management Plan)

Territory and Municipal Services Directorate:

Agreed.

All actions will be undertaken upon appointment of the Estate Manager. Interim arrangements will mirror the Estate Management Plan proposed for completion for all Estates at Recommendation 2, and be reviewed as development progresses and tenants are in place.

Recommendation 2 (Chapter 3)

Management of the Recycling Estates

The Territory and Municipal Services Directorate (ACT Property Group) should update the 2005 Protocol between ACT Property Group and ACT NOWaste for managing the ACT's recycling estates.

Territory and Municipal Services Directorate:

Agreed.

The protocol will be updated and implemented by July 2013 and will be developed in conjunction with the Risk Management Plan (Recommendation 4), and the Estate Management Plan (Recommendation 6). Once these documents are finalised, appropriate consultation with tenants will occur prior to implementation.

The updated protocol will be developed in stages with:

- *Fire Risk Assessment updated by 30 September 2012;*
- *full Risk Management Plan review by 31 December 2012;*
- *tenant consultation plan and initial consultation by 28 February 2013;*
- *Draft Estate Management Plan by 31 March 2013;*

- *Estate Management Plan completed by 31 May 2013; and*
- *Revised Protocol adopted by 30 June 2013.*

Recommendation 3 (Chapter 3)

Adjustment of the Parkwood Road Recycling Estate rental charges

The Territory and Municipal Services Directorate (ACT Property Group) should review and increase rental charges for the Parkwood Road Recycling Estate to reflect current market rates.

Territory and Municipal Services Directorate:

Agreed.

ACT Property Group has commenced work on rental rates through the commissioning of a market review that occurred in 2011. Negotiations will commence with tenants as soon as practicable to implement a fair market rent.

It is proposed to:

- *complete a tenant consultation plan by 31 July 2012;*
- *obtain further valuations to ensure the integrity of the “current rental market rates” by 31 August 2012;*
- *determine the introduction of new rent levels, including consideration of phasing to enable tenants to transition from the site if they decide, as well as alignment of capital works program;*
- *commence negotiations with tenants as soon as practicable to implement the rental regime, commencing with renewals; and*
- *align the market review with the protocol by 30 June 2013.*

Recommendation 4 (Chapter 3)

Risk assessment and management plan

The Territory and Municipal Services Directorate (ACT Property Group) should:

- a. finalise its draft Risk Management Plan (June 2011) and draft Tenancies Policy and Procedure Manual (July 2011); and
- b. develop a specific Risk Management Plan for the Parkwood Road Recycling Estate that includes information from a comprehensive fire risk assessment.

This specific Risk Management Plan could form part of the ACT Property Group's Risk Management Plan (a. above) or the proposed Estate Management Plan that is the subject of Recommendation 6.

Territory and Municipal Services Directorate:

Agreed.

The draft Risk Management Plan and draft Tenancies Policy and Procedures Manual will be finalised by July 2013. The updated Plan and Policy will be developed in conjunction with the protocol (Recommendation 1), and the Estate Management Plan (Recommendation 6). Once these documents are finalised appropriate consultation with tenants will occur prior to implementation.

Recommendation 5 (Chapter 3)

Administrative arrangements under the *Waste Minimisation Act 2001*

The Territory and Municipal Services Directorate should activate its role as the ACT's waste regulator by appointing an authorised person under Part 4 (Enforcement Power) of the *Waste Minimisation Act 2001* and this person should:

- a. foster the development of a waste regulation that controls the storage of waste, in particular stockpiling of recycling products; and
- b. request that the Environment Protection Authority in the next review of the *Environment Protection Act 1997* to work collaboratively with the Territory and Municipal Services Directorate to examine whether it or the Environment Protection Authority should be the ACT's waste regulator.

Territory and Municipal Services Directorate:

*The Directorate **agrees in part** to the Administrative arrangements under the Waste Minimisation Act, specifically:*

a. agreed as an interim measure. This will require resources to develop, implement, report and review the required directions necessary to facilitate regulation of activities under the Act; and

b. the review of the Environment Protection Act 1997 should ensure the appropriate regulation of the resource recovery industry occurs without contradiction or replication with regulation provisions under the Waste Minimisation Act 2001.

Agreed in Part. *The activation of the administrative arrangements under the Waste Minimisation Act, specifically:*

- as an interim measure, appoint an authorised person under Part 4 (Enforcement Powers) of the Waste Minimisation Act 2001 based on particular directions that specify the regulation of activities;*
- seek Environment and Sustainable Development Directorate agreement to appoint Environmental Protection Officers as authorised persons under Part 4 (Enforcement Powers) of the Waste Minimisation Act 2001, based on particular directions that specify the regulation of activities;*
- defer the development of controls for storage of waste in particular stockpiling of recycling products until adoption of the new protocol and the Estate Management Plans in Recommendation 2; and*
- engage with Environment and Sustainable Development Directorate during the next review of the Environment Protection Act 1997 to seek the incorporation of appropriate regulation of the resource recovery industry without contradiction or replication of the provisions of the Waste Minimisation Act 2001.*

Environment and Sustainable Development Directorate

Environment and Sustainable Development Directorate agrees that the Territory and Municipal Services Directorate should administer the Waste Minimisation Act 2001..

Environment and Sustainable Development Directorate is developing a detailed policy position on the appropriate regulation of the waste industry as part of the implementation of the ACT Waste Management Strategy 2011-2025.

Recommendation 6 (Chapter 3)

Management of the Parkwood Road Recycling Estate

The Territory and Municipal Services Directorate (ACT Property Group) should:

- a. clarify the purpose of the Parkwood Road Recycling Estate and name it accordingly;
- b. develop an Estate Management Plan to guide the short and long-term development of the Estate;
- c. develop a risk management plan for the Estate; and
- d. develop a monitoring and evaluation framework to guide an overall assessment of the Estate.

(c and d could be part of the Estate Management Plan)

Territory and Municipal Services Directorate:

Agreed.

As part of the protocol to be developed at Recommendation 2 and the Risk Management Plan (Recommendation 4), the purpose of the Parkwood Road Recycling Estate will be clarified and an Estate Management Plan developed. The Estate Management Plan will incorporate the Risk Management Plan and align with the protocol between ACT Property Group and ACT NOWaste

Recommendation 7 (Chapter 4)

E-waste monitoring and evaluation framework

The Territory and Municipal Services Directorate (ACT NOWaste) should develop and implement a long-term e-waste monitoring and evaluation framework to determine and report on the environmental, social and financial effects of e-waste projects. This should complement national requirements for reporting information but also include specific information on local affects that may not require reporting nationally.

Territory and Municipal Services Directorate:

Agreed in Part.

The E-waste monitoring and evaluation framework will be required to be developed in conjunction with Environment and Sustainable Development Directorate, particularly as it relates to the local affects of the National Stewardship Scheme. Resources to implement monitoring and evaluation will require a successful budget bid.

Recommendation 8 (Chapter 4)

Planning, risk and outcomes

The Territory and Municipal Services Directorate (ACT NOWaste) should ensure it undertakes adequate planning, identifies risks and possible and probable outcomes, before seeking the Government's commitment to new e-waste service developments whether or not there is budgetary provision for these developments.

Territory and Municipal Services Directorate:

Agreed.

The ACT Insurance Authority has completed risk management training for ACT NOWaste staff.

Recommendation 9 (Chapter 4)

Procurement processes and monitoring of contracts

The Territory and Municipal Services Directorate (ACT NOWaste) should improve its procurement processes and monitoring of its contracts by:

- a. procurement planning that includes realistic timeframes, explicit consideration of the level of expertise required and available, and the impact on existing service costs due to potential delays; and
- b. routinely considering existing contract timescales, giving sufficient lead-in time to extending or re-letting contracts; and checking compliance with contract conditions.

Territory and Municipal Services Directorate:

Agreed.

ACT NOWaste will continue its practice of routinely consulting with subject matter experts during the development phase of projects, including stakeholders from the private sector, national and state governments and other ACT Government Directorates. Contract compliance and timing of the re-tendering of contracts is regularly impacted by competing contract priorities and the availability of staff/resources in multiple Directorates. The future potential for outsourcing of Shared Services Procurement resources to Territory and Municipal Services Directorate is seen as a proactive response to these issues.

ACKNOWLEDGMENTS

- 1.20 The Auditor-General's Office acknowledges the co-operation and assistance of the management and staff of:

- Territory and Municipal Services Directorate;
- Environment and Sustainable Development Directorate;
- the Justice and Community Safety Directorate; and
- Economic Development Directorate.

in the production of this report.

2. BACKGROUND ON ACT'S WASTE POLICY AND THE ACT RECYCLING ESTATES

2.1 This chapter presents background information on the ACT's waste policy and its two recycling estates; the Parkwood Road Recycling Estate, and Hume Resource Recovery Estate.

BACKGROUND

2.2 Managing waste is always a challenge, particularly in the ACT as according to the *National Waste Report 2010*, we are one of the highest generators of waste per capita in Australia, second only to Western Australia.³ Table 2.1 presents a summary of ACT waste data and trends by sector for 2009-10 and 2010-11.

Table 2.1: Summary of ACT waste totals and trends by sector

Waste to landfill site (in tonnes)	2009-10	2010-11	Change (%)
Construction/demolition	38 895	51 261	32
Commercial/industrial	103 058	127 881	24
Household waste (domestic collection)	68 918	72 410	5
Household waste (private delivery)	17 835	16 536	-7
Total waste to landfill (in tonnes) (a)	228 706	268 088	17
Resource recovery (in tonnes)			
Demolition waste recycling	246 777	368 966	50
Garden waste	186 701	283 572	52
Household/commercial/industrial	154 249	154 138	0
Total resource recovery (in tonnes) (b)	587 727	806 676	37
Total waste generated (in tonnes) (a)+(b)	816 433	1 074 764	32
Total resource recovery rate (%)	72	75	3

Source: ACT NOWaste

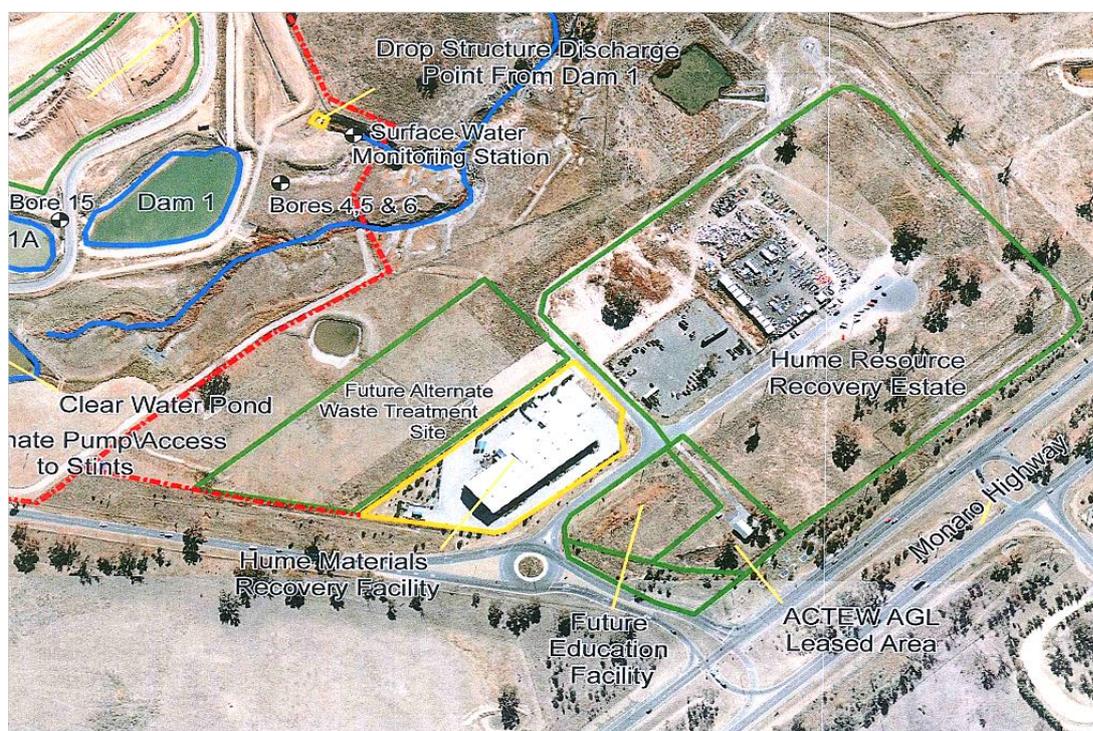
³ Environment Protection and Heritage Council, *National Waste Report 2010*, page 29. Refer www.environment.gov.au/settlements/waste/index.html

Location of ACT's recycling estates

Hume Resource Recovery Estate

- 2.3 The Hume Resource Recovery Estate is located immediately to the north of the intersection of Mugga Lane and the Monaro Highway, opposite the established Hume Industrial Estate.
- 2.4 The Hume Resource Recovery Estate is comprised of Sections 25, 26 and 27 Hume, ACT. The land within the Hume Resource Recovery Estate is zoned 'General Industrial' under the *Territory Plan 2008* that allows general industry, recycling material collection, recycling facilities, a hazardous waste facility, waste transfer station and community facility (education establishment). Figure 2.1 shows the site map of Hume Resource Recovery Estate.

Figure 2.1: Hume Resource Recovery Estate site map



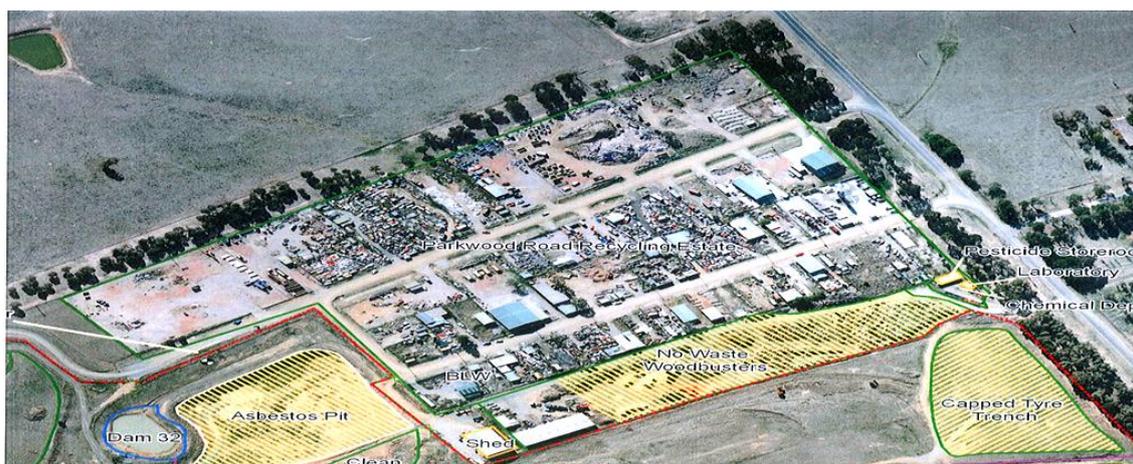
Source: ACT NOWaste 2008

Parkwood Road Recycling Estate

- 2.5 The Parkwood Road Recycling Estate is part of an Executive Crown Lease for Block 1586 District of Belconnen for the West Belconnen Landfill. The Parkwood Road Recycling Estate is located on the western side of Parkwood Road, Macgregor, approximately 200 metres south of the ACT and New South Wales border. The ACT is the registered property owner with a 99 year lease commencing from 1 October 2006.

2.6 The *Territory Plan 2008* is prepared pursuant to Section 12 (1) of the *Planning and Development Act 2007*. Commencement of the *Territory Plan 2008* was effective on 31 March 2008 and replaces the *Territory Plan 2002*. The *Territory Plan 2008* identifies Block 1586 District of Belconnen as being able to have various developments including landfill site, recycling facility and recyclable materials collection.⁴ The site map of the Parkwood Road Recycling Estate is shown in Figure 2.2.

Figure 2.2 Parkwood Road Recycling Estate site map



Source: ACT NOWaste 2008

ACT WASTE POLICY

2.7 The primary policy document that guides waste management in the ACT is the *ACT Waste Management Strategy 2011-2025*⁵ that replaced the *No Waste By 2010 – Waste Management Strategy*. The new Waste Management Strategy has a focus on managing construction, commercial and garden waste, aiming to achieve resource recovery target of 'over 80 per cent by 2015, over 85 per cent by 2020 and over 90 per cent by 2025'.

2.8 The Environment and Sustainable Development Directorate is the lead agent for providing over-arching policy advice to the ACT Government on waste. It was formed in May 2011 and includes what was the Department of the Environment, Climate Change, Energy and Water (DECCEW) that developed the new *ACT Waste Management Strategy 2011-2025* which replaced the *No Waste By 2010 – Waste Management Strategy* that had been developed by ACT NOWaste.

⁴ The *Territory Plan 2008* is the key statutory planning document in the ACT and zones the Block 1586 District of Belconnen as 'NUZ3: Hills Ridges and Buffer Areas' (NI2008-27). The land uses of the Block 1586 include: agriculture, ancillary use, communication facility, consolidation, demolition, farm tourism, land management facility, major facility installation, nature conservation area, outdoor education establishment, outdoor recreation facility, parkland, roads, scientific research establishment, sign, subdivision, temporary use, and woodlot. Additional development includes landfill site, recycling facility and recyclable materials collection.

⁵ Environment and Sustainable Development Directorate, *ACT Waste Management Strategy 2011-2025*, December 2011. Refer <http://www.environment.act.gov.au/waste> website.

2.9 Implementation of the new Waste Management Strategy is being co-ordinated by the Environment and Sustainable Development Directorate. To this end, the Directorate is developing an implementation plan that is to be finalised in the second half of 2012. The Territory and Municipal Services Directorate through ACT NOWaste is accountable for implementing key parts of the new ACT Waste Management Strategy.

Roles and responsibilities of ACT NOWaste and ACT Property Group

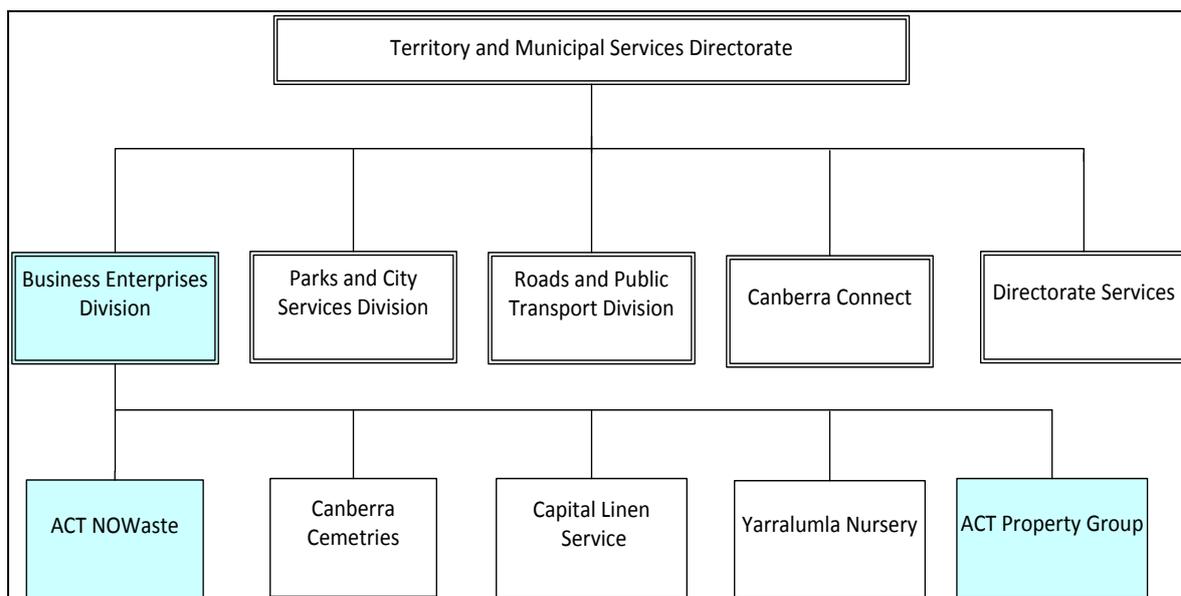
2.10 The Territory and Municipal Services Directorate was created in May 2011 from the Department of Territory and Municipal Services. Prior to 30 June 2006 it was the Department of Urban Services. These entities have been accountable for managing the delivery of waste management services and property services for the ACT community.

2.11 The Territory and Municipal Services Directorate plays a key role in building the ACT's environmental, social and physical infrastructure. It manages and delivers a range of services for the people of the ACT including road infrastructure, public libraries, parks and open space management, environmental and recreational facilities, and Canberra Connect payments and information services.

2.12 The Territory and Municipal Services Directorate is also accountable for managing the ACT Government commercial operations that are in the Business Enterprises Division, and include Capital Linen Service, Yarralumla Nursery, Canberra Cemeteries, ACT NOWaste and ACT Property Group. The latter two are particularly relevant for this audit because of their waste and property management functions, respectively.

2.13 Figure 2.3 presents the organisational chart of the Territory and Municipal Services Directorate (business units accountable for waste and property management are shaded).

Figure 2.3: The Territory and Municipal Services Directorate Organisation Chart



Source: Audit Office, extracted from the Territory and Municipal Services Directorate organisation chart , April 2012

ACT NOWaste

2.14 ACT NOWaste manages the domestic rubbish collection and recycling collections for over 130 000 households in Canberra to protect human health and the environment. It manages three resource management centres, including the domestic Material Recovery Facility and land fill site at Mugga Lane and four regional recycling centres that contain waste and recycling drop-off facilities. It also supports resource recovery by collecting and analysing waste and recycling data, providing educational material and promotional activities, it fosters the development of new recycling initiatives and facilities.

ACT Property Group

2.15 ACT Property Group's role includes strategic asset management and managing government and non-government tenancies. It manages the ACT's owned commercial buildings, government office accommodation and community/multipurpose buildings and leased commercial buildings. ACT Property Group also manages several properties that could be considered unique Government assets; the Parkwood Road Recycling Estate, the Hume Resource Recovery Estate and a number of heritage properties, such as Albert Hall and the Tuggeranong Homestead.

2.16 ACT Property Group was a business unit within the Department of Territory and Municipal Services until November 2009 when it was transferred to the Department of Land and Property Services.⁶ As a result of the ACT Public Sector

⁶ *Administrative Arrangements 2009 (No 3)* of 30 November 2009.

(Hawke) Review, ACT Property Group was transferred back to the Territory and Municipal Services Directorate in May 2011.⁷

POLICY AND STRATEGIES RELATING TO ACT'S RECYCLING ESTATES

Policy and strategies under *No Waste By 2010 – Waste Management Strategy*

- 2.17 The *No Waste By 2010 – Waste Management Strategy* supported the ACT Government's Greenhouse Strategy, the guiding principle of Sustainability Policy '*People Place Prosperity*'⁸, and the *Canberra Social Plan*⁹.
- 2.18 The establishment of recycling estates or 'Resource Recovery Estates' was part of the *No Waste By 2010 – Waste Management Strategy*. 'Resource Recovery Estates' were defined in this Strategy (page 23) as "facilities that enable material discarded by the community to be re-used and/or recovered".
- 2.19 The development of dedicated recycling estates would (pages 14 and 15 of the *No Waste By 2010 – Waste Management Strategy*):
- help to reduce waste and the demand to landfill;
 - encourage the establishment and development of private sector recycling and resource recovery businesses;
 - promote innovative solutions to resource recovery and value-adding;
 - create jobs; and
 - provide a focus for cooperation.
- 2.20 The Government released two action plans, *The Next Step in No Waste Strategy* (March 2000) and *Turning Waste into Resources Action Plan 2004-2007* (July 2004), that provided the strategies and initiatives that guided the establishment of the two recycling estates in the ACT, refer to Table 2.2.

⁷ *Administrative Arrangements 2011 (No 1)* of 17 May 2011.

⁸ The guiding principles of Sustainability Policy '*People Place Prosperity*' (issued in March 2003) include: "to increase efficiency in using resources, generate less waste and replace the non-renewable resources with renewable resources".

⁹ The *Canberra Social Plan 2004* identifies under Priority 7 "Respect and Protect the Environment", Action 7.3: "the Government will maintain its commitment to reduce the amount of waste generated and promote recycling".

Table 2.2: Strategies and initiatives –recycling estates

Recycling estates	Next Step in No Waste Strategy ¹⁰	Action Plan 2004-2007 ¹¹
Hume Resource Recovery Estate	Registration of interest was called in December 1997 to identify potential resource recovery businesses interested in operating in Hume. More than twenty suitable industry operators registered their interest.	<ul style="list-style-type: none"> • Continued development of the Hume Estate to encourage a range of businesses operating within the Estate. • The domestic Material Recovery Facility (stage 1) was opened in 2004. • Establishment of a mixed commercial waste sorting facility was planned.
'Temporary' Resource Recovery Estate at West Belconnen Landfill (Parkwood Road)	A temporary Resource Recovery Estate was established to provide assistance to businesses in the form of land and subsidised rental during their establishment phase.	No specific initiative outlined in the Action Plan.

Source: Audit Office based on the Action Plans

2.21 The recycling estates at Parkwood Road and Hume were established in accordance with the *No Waste By 2010 – Waste Management Strategy* and the supporting action plans, namely *The Next Step in No Waste Strategy* (March 2000) and *Turning Waste into Resources Action Plan 2004-2007* (July 2004) respectively. Importantly, the Parkwood Road Recycling Estate was not considered to be the main recycling facility.

Policy and strategies under the *Waste Management Strategy 2011-2025*

2.22 The *Waste Management Strategy 2011-2025* (Strategy 3.3) states that major new recycling waste infrastructure will primarily be located in the Hume Resource Recovery Estate beside the Mugga Lane Resource Management Centre. The Hume Resource Recovery Estate is being developed as a recycling Estate housing a range of facilities. This strategy is silent with respect to the Parkwood Road Recycling Estate.

2.23 The benefits of co-locating waste facilities in the Hume Resource Recovery Estate, including the synergies between different parts of the recycling industry,

¹⁰ TAMS, *The Next Step in No Waste Strategy* March 2000, pages 16 and 17. Refer <http://www.tams.act.gov.au/>

¹¹ TAMS, *Turning Waste into Resources Action Plan 2004-2007*, pages 8, 9 and 11. Refer <http://www.tams.act.gov.au/>

could result in increased resource recovery, reduced costs and reduced traffic movements.

- 2.24 In 1999, the management of the Parkwood Road Recycling Estate was transferred to ACT NOWaste from the then Planning and Land Management (PALM) within the former Department of Urban Services. PALM became ACT Planning and Land Authority in July 2003¹².
- 2.25 Prior to the transfer of the management of the site to ACT NOWaste, the site was primarily used to accommodate semi-industrial businesses. The transfer of the Parkwood Road Recycling Estate to ACT NOWaste was to facilitate the requests for land by some recycling operators and intended to provide rental assistance to the recycling businesses establishing their operations in the Parkwood Road Recycling Estate site in the context of the *No Waste by 2010 - Waste Management Strategy*. In 2005, there were 44 licence holders (tenants) who leased blocks for various waste management and light industrial activities.

Hume Resource Recovery Estate

- 2.26 Under the National Capital Plan, which came into force in 2003, the National Capital Authority (Commonwealth) was required to develop a development plan known as "approach route" over what is referred to as the Hume Resource Recovery Estate and the abutting lands. This plan was developed and provides the broad context for development. The ACT Government must meet its requirements in this plan.
- 2.27 During 2006 and 2007 the ACT Property Group started to develop a plan to guide development in the Hume Resource Recovery Estate but this was never finalised. In its efforts to develop the plan advice was sought from various agencies.
- 2.28 Legal advice from the Government Solicitor's Office was sought in relation to the existing subleases; a domestic materials recovery facility and ActewAGL. In addition legal advice was also sought regarding the subdivision of the Hume Resource Recovery Estate (Block 16 of Section 23 Hume) which was in contravention to Section 182 of the *Land (Planning and Environment) Act 1999*. The legal advice and restrictions of this Act are discussed in paragraphs 3.23 and 3.24.
- 2.29 The ACT Planning and Land Authority advised that its June 2007 Hume Planning Study (draft concept plan) reported that there was evidence of the presence of archaeological deposits of high cultural significance. Although this might not preclude any future development of the areas in question, heritage issues would need to be considered before any land sale.

¹² ACT Planning and Land Authority was established in July 2003 pursuant to the *Planning and Land Act 2002*.

ADMINISTRATIVE FRAMEWORK FOR MANAGING THE RECYCLING ESTATES

Changes in property management responsibilities

2.30 In July 2005, the then Department of Urban Services decided that the management of the Parkwood Road Recycling and the Hume Resource Recovery Estates should be transferred from ACT NOWaste to the ACT Property Group. Also transferred was the management responsibility of the properties located in the site next to the Parkwood Road Recycling Estate (Lot 2056 south of the Parkwood Road Recycling Estate boundary).

The 2005 Protocol between ACT NOWaste and ACT Property Group and the new policy framework

2.31 In December 2005 a Protocol was established between ACT Property Group and ACT NOWaste that clarifies the management responsibility of ACT Property Group as having two discrete functions:

- property management of licences and tenancies, including normal or standard property management services such as compliance with licence conditions of legal usage, rental payments, repairs and maintenance and licence renewals; and
- compliance management of tenant land usage in accordance with resource recycling policies and standards, including conducting desk and field audits of recycling activities, site inspections for environmental compliance, liaison with tenants in their recycling activities and liaison with ACT NOWaste.

2.32 The 2005 Protocol requires that the ACT Property Group must ensure that:

- priority of accommodation is always based on those applications that meet the criteria set under the *No Waste by 2010 - Waste Management Strategy*. If there are non-recyclers and the number of vacant sites fall below five, then the most recent non-recycler will be given notice to vacate. If the number of vacant sites falls below five, and there are no non-recyclers, a waiting list is established on a first in, first served basis as vacancies occur;
- the licence term for recycler and non-recycler is:
 - recycler – a minimum of five years with one year withdrawal or termination clause
 - existing non-recycler – licence offered for five years with one year withdrawal or termination clause
 - new non-recycler – licence offered for a maximum of one year with a three months withdrawal or termination clause;
- ACT NOWaste assesses tenants' eligibility as a Class 'A' or Class 'B' Recycler and their entitlement for rent rebates (40 per cent for Class 'A' and 25 per cent for Class 'B'). **Appendix B** presents the eligibility criteria used to assess classifications of recyclers as per the agreed Protocol. This enables ACT

Property Group to determine rental rates, licence period and terms or conditions; and

- it formally meets with ACT NOWaste at least half-yearly or as often as desired to review the operation of the Protocol and make whatever adjustments or additions are necessary. It is also incumbent on ACT NOWaste to ensure that such meetings occur.

2.33 In December 2005, the Minister approved an ACT Property Group recommendation to establish a new policy framework for managing the Parkwood Road Recycling Estate and the Hume Resource Recovery Estate. Importantly it reinforced the roles of ACT Property Group (refer to paragraph 2.31) and the arrangements (refer to paragraph 2.32) for managing the estates.

2.34 On 24 May 2012, ACT Property Group provided Audit with a copy of an *ACT Government Guidelines for Managing Recycling Estates* and *ACT Government Operational Protocol for Managing Recycling Estates*. Both these documents contain the same information. However, the former was developed when ACT Property Group was part of the Economic Development Directorate. These documents have not been presented to ACT NOWaste or Executives within the Territory and Municipal Services Directorate for consideration therefore the 2005 Protocol is still current.

Waste management legislation

2.35 The Territory and Municipal Services Directorate, specifically ACT NOWaste, is responsible for administering the *Waste Minimisation Act 2001* (the Act) which embeds waste minimisation objectives and principles into how waste is to be managed. The Act provides the legal framework for the management, regulation and reduction of waste.¹³

2.36 ACT Fire and Rescue in the Justice and Community Safety Directorate is responsible under the *Emergencies Act 2004* for fire and other hazards to public safety. The Environment Protection Authority within the Environment and Sustainable Development Directorate is responsible under the *Environment Protection Act 1997* for environmental impacts and risks. Therefore they are both involved in regulating some aspects of the recycling estates but they are not the waste regulator with powers to specifically address the stockpiling of material which is an issue. This is further discussed in the next chapter (refer to paragraph 3.49).

¹³ Section 5 of the *Waste Minimisation Act 2001* (ACT).

3. MANAGING THE RECYCLING ESTATES

- 3.1 This chapter examines the administrative effectiveness of the management of the Parkwood Road Recycling Estate, and the development of the Hume Resource Recovery Estate. As development in the Hume Resource Recovery Estate is just commencing no detail review of the management of this Estate is possible. This chapter also considers regulatory issues related to the storage of waste, in particular recycling materials.

SUMMARY

Conclusion

Overall issues

The regulatory waste function under the *Waste Minimisation Act 2001* (the Act), needs to be activated. At present the ACT does not have a waste regulator even though this can be enacted under Section 4 of the Act by appointing an authorised person. While such a person may be able to address, to a degree, the issue of stockpiling recycling material under the existing legislation, it could be better controlled if the ACT had a regulation for controlling the storage of waste.

The Environment Protection Authority and the Justice and Community Safety Directorate (ACT Fire and Rescue) appear to have fulfilled their regulatory role in accordance with legislated requirements with respect to issues considered in this audit.

Hume Resource Recovery Estate

To assist the future management of this Estate and build on the guidance given by its Master Plan, it is timely for a long-term Estate Management Plan to be developed.

Several procurement processes undertaken by ACT NOWaste for the development of the Hume Resource Recovery Estate were considered and all were found to have been conducted in accordance with the appropriate procurement requirements.

Parkwood Road Recycling Estate

The management of this Estate has been poor. There is evidence of communication failures and unresolved disagreements. There is a need for the purpose of the Estate to be clarified and this used to guide the development of a long-term Estate Management Plan.

Also, the ACT Government has incurred considerable costs (approximately \$1m) in cleaning up a recycling site (located in the former West Belconnen landfill site) that posed an unacceptable fire risk due to waste material being stockpiled.

The rental fees charged at this Estate are significantly below current market rates.

It is acknowledged that there is now a commitment to update the 2005 Protocol between ACT Property Group and ACT NOWaste for the management of Parkwood and ensure compliance with its requirements.

Key findings

- A Hume Resource Recovery Estate Management Plan is needed to set the short and long-term objectives for the Estate's development.
- ACT Property Group has not effectively managed the Parkwood Road Recycling Estate. It may be that this is not occurring because the 2005 protocol is out-dated.
- Renewals of a number of licence agreements were not made in accordance with the intent of the 2005 Protocol.
- The cost to the ACT Government of a cleanup of a building waste recycling facility's stockpile at the West Belconnen Landfill during 2011-12 was in the vicinity of \$1 million.
- Notwithstanding a recent decline in rental market values, the average rental charge of \$3.26 per square metre per annum under the current lease agreements is well below a May 2011 independent rental market valuation of the Parkwood Road Recycling Estate at \$33.23 per square metre per annum.
- ACT Property Group has not been able to effectively retain important corporate knowledge. Consequently, important factors such as risk assessments have not been considered in managing the Parkwood Road Recycling Estate since 2007.
- A 2007 Fire Risk assessment found that the Parkwood Road Recycling Estate presented significant fire hazards to the ACT, especially to nearby suburbs.
- The Director-General, Territory and Municipal Services Directorate has not appointed an authorised person under Part 4 (Enforcement Power) of the provisions of the *Waste Minimisation Act 2001*. Such a person could enforce the provisions of the Act, including addressing stockpiling of recycling material, to the degree that the legislation allows, even if this is at present limited due to a lack of specific regulations governing the storage of waste.

Procurement – Hume Resources Recovery Estate

- The expression of interest process for the direct land sale at Hume Resource Recovery Estate was conducted in accordance with requirements and the evaluation criteria outlined in the expression of interest documents was met. However, the sale is not due to be completed until August 2012, due to the block requiring some earthworks, some two years after commencement of the procurement.
- Procurement processes for a commercial dry mixed recycling facility at Hume Resource Recovery Estate were followed. In April 2011, a respondent was short-listed but negotiations are continuing. ACT NOWaste advised Audit that a Memorandum of Understanding will be announced in July 2012.

HUME RESOURCE RECOVERY ESTATE

3.2 The location of the Hume Resource Recovery Estate is described in paragraph 2.3 with Figure 2.1 (paragraph 2.4) showing a site map.

Land sales at Hume Resource Recovery Estate in 2008-09

3.3 Under the *No Waste By 2010 – Waste Management Strategy* the private resource recovery sector was to be encouraged to divert waste from landfill sites at Mugga Lane Landfill. The West Belconnen Landfill was closed to the public in 2002.

3.4 In September 2008 the Chief Minister’s Department requested that the Strategic Project Facilitation Section, which had become part of the Economic Development Directorate in May 2011, call an expression of interest to establish, in the Hume Resource Recovery Estate, businesses that would recycle and recover resources from targeted waste streams. The targeted waste included organic material, mixed dry commercial waste, wood and timber, mixed dry construction and building waste, mixed or film plastics and problematic waste (such as computers and electrical excluding whitegoods, tyres, paint and textiles, clothing and footwear).

3.5 In the expression of interest process it was proposed that sites ranging from 1 000 to 10 000 square metres with restricted lease purpose clauses would be made available using individual Crown Leases or sub-lease arrangements.

3.6 The expression of interest process involved two stages:

- Stage One: submissions invited from suitably qualified respondents. The purpose of the first stage was to gauge the overall level of interest, capacities and capabilities of the respondents. An evaluation of the respondents and compliance with the terms and conditions of the expression of interest was the basis for selecting successful respondents who would be invited to enter into negotiation to participate in Stage Two.
- Stage Two: the successful respondents would be invited into negotiations for a direct sale under Section 240(2) of the *Planning and Development Act 2007*, to secure a lease, or sublease of a site in the Hume Resource Recovery Estate.

3.7 Audit reviewed the tender documentation in relation to the expression of interest for the direct land sale and is satisfied that the expression of interest process was conducted in accordance with requirements and that the evaluation criteria outlined in the expression of interest documents was met. The evaluation of the expression of interest was completed in May 2009 and then assessed by the Government Solicitor’s Office (Probity Advisor) who concluded that ‘there were no probity matters requiring resolution’. There were eight respondents and only one respondent was selected for further negotiations. The successful respondent at the time of the expression of interest was the actual occupant of the site which was subject of the expression of interest. This

respondent had a skip hire operation on the subject site which is Block 3 of Section 26 Hume.

- 3.8 Now, some two years after the expression of interest, the direct land sale to the preferred respondent has not occurred, partly because of the respondent's initial financial circumstances but also due to the Government's requirements to provide land which is 100 per cent serviced by essential services (sewer, stormwater and water etc.) A lease of this type has not been granted by the ACT Planning and Land Authority since December 2001 due to the Government's preferred policy to achieve a capital return at market value through the outright sale of industrial land.
- 3.9 At the time of this audit, the Economic Development Directorate (EDD) advised Audit that:
- the direct sale of land has not been finalised due to the block requiring earth works. The Environment and Sustainable Development Directorate require that the land is fully serviceable by sewer infrastructure before being released for sale;
 - the earth works are planned to commence in June or July 2012 subject to the licensee's agreement to vacate the site during the construction period; and
 - it is anticipated that the final offer of a commercial Crown Lease to the licensee will be forthcoming on completion of the work with an offer of the lease expected in August 2012.

Development of Hume Resource Recovery Estate Master Plan

- 3.10 In November 2009, ACT NOWaste commissioned a consultant to prepare a Master Plan for the Hume Resource Recovery Estate. This Plan proposes the following types of recycling facilities to effectively increase the recovery of land-fill materials:
- an organic waste processing facility for food waste from commercial sources;
 - a dry waste material recovery facility for commercial wastes, especially recovering clean paper and cardboard, as well as recovering materials including metals, timber and plastic; and
 - comparatively small scale niche resource recovery facilities, such as a plastic waste processing facility, e-waste recycling facility, clothing and textile and specialist glass recycling facilities.

Expression of interest for constructing a commercial dry mixed recycling facility

- 3.11 Early in 2010 ACT NOWaste conducted a pre-proposal industry consultation process and a number of private business operators participated. The presentations and written submissions received indicated that a facility to process commercial only dry mixed waste would be more viable than a commercial organics processing facility.

- 3.12 In December 2010, ACT NOWaste managed an expression of interest process for constructing a dry commercial mixed recycling facility located on Block 10 of Section 25 Hume. The objective of the project was to reduce waste to landfill through the development of innovative resource recovery operations in the Hume Resource Recovery Estate. This private sector owned and operated facility was to accept dry mixed waste from the commercial sector in the ACT and surrounding region.
- 3.13 Audit reviewed all relevant expression of interest documentation and is satisfied that the decision was based on the criteria specified in the expression of interest documents and that all due processes were followed. In April 2011, a respondent was invited to engage in negotiations with ACT NOWaste to establish a Memorandum of Understanding so that they could build a dry commercial mixed recycling facility. Negotiations are still continuing. ACT NOWaste advised Audit that the Memorandum of Understanding will be announced in July 2012.

Existing development in the Hume Resource Recovery Estate

- 3.14 Existing development in the Hume Resource Recovery Estate (refer Figure 2.3) includes:
- a commercial skip operation operated by a private company under temporary licence agreement (part Block 2 of Section 26 Hume) managed by ACT Property Group;
 - a domestic materials recovery facility operated by a private operator under contract to the Territory and Municipal Services Directorate (Block 6 of Section 25 Hume); and
 - water and sewage infrastructure operated by ActewAGL managed by ACT Property Group (sublease plan 5547 for a term of 95 years commencing from March 2004 to February 2099).
- 3.15 Other than the existing domestic materials recovery facility located in Block 6 of Section 25 Hume, ACT Property Group is the land custodian of the other Hume Resource Recovery Estate sites.
- 3.16 ACT Property Group is transferring to ACT NOWaste the Executive Leases for the proposed dry commercial material recycling facility (Block 10 of Section 25 Hume) and proposed construction of storage sheds (Block 4 of Section 27 Hume).
- 3.17 ACT NOWaste has a capital budget of \$1.8 million for 2011-12 to build a fully-serviced industrial workshop at Block 4 of Section 27 Hume. The workshop is to be partitioned, as required, to house multiple operations. The partitioned areas are to be offered for sub-leases to accommodate operations that either target problematic waste streams or create new opportunities or synergies with existing operations. ACT NOWaste advised Audit that construction of the workshop is to commence in June 2012 and is expected to be completed by the end of 2012.

- 3.18 ACT NOWaste have been implementing the 2009 Hume Resource Recovery Estate Master Plan in guiding the initial development of the Hume Estate, including accommodating the proposed commercial dry recycling facility (refer paragraph 3.13), the construction of a fully-serviced industrial workshop (refer paragraph 3.17), and the direct land sale (refer paragraph 3.5).
- 3.19 The Hume Resource Recovery Estate Master Plan is focused on ensuring that the Estate is appropriately subdivided and that operations are located on the most suitable sites. To support this plan it seems timely for the development of the site to be guided by a long-term Estate Management Plan, or something similar. Such a plan may assist in avoiding issues that have occurred at the Parkwood Road Recycling Estate (as discussed in paragraphs 3.21 to 3.43).
- 3.20 The Estate Management Plan should set the short and long-term objectives for the Estate's development; provide guidance for integrating private and public infrastructure development; outline roles and responsibilities of ACT Government agencies that are involved directly or indirectly in managing or regulating activities that occur in the Estate; and establish a communication process to guide ACT Government bodies integrate their activities, where possible etc. This plan should include or be supported by a risk management plan for the Estate and a monitoring and evaluation framework to guide an overall assessment of the development of the Estate.

Recommendation 1 (Chapter 3)

Management of the Hume Resource Recovery Estate

The Territory and Municipal Services Directorate (ACT NOWaste) should enhance its management of the Hume Resource Recovery Estate by developing:

- a. an Estate Management Plan to guide the short and long-term development of the site;
- b. a risk management plan for the Estate; and
- c. a monitoring and evaluation framework to guide an overall assessment of the Estate.

(b and c could be part of the Estate Management Plan)

PARKWOOD ROAD RECYCLING ESTATE

- 3.21 The location of the Parkwood Road Recycling Estate is described in paragraph 2.5, with Figure 2.2 (paragraph 2.6) showing a site map.
- 3.22 As discussed in paragraphs 2.31 and 2.32 there is a 2005 Protocol between ACT Property Group and ACT NOWaste to guide how ACT Property Group manages tenancies for properties in the Parkwood Road Recycling Estate. ACT Property

Group is managing 47 licence agreements occupying 55 separate blocks located in the Parkwood Road Recycling Estate and the block next to the Estate, of which ten are classified as 'Recyclers'. Some of these ten 'recyclers' occupy more than one block of land. The majority of these licences (some 34 licences) are due to expire by end of June 2012 and the remaining will expire between July 2012 and January 2017 with the majority of these expiring in the next two years.

Licences

- 3.23 In September 2006, ACT Property Group sought legal advice from the Government Solicitor's Office regarding what would be the best option for managing tenants under new proposed licence agreements compared to the sub-leasing arrangements. It was advised that it should not offer a sublease of land being part of Block 1586 Belconnen (West Belconnen Landfill site) due to the provisions of Section 182 of the *Land (Planning and Environment) Act 2001* that 'the land comprised in a lease of ACT land must at all times be held and occupied by or under the lessee as 1 undivided parcel'.
- 3.24 The ACT Government is therefore only able to offer a tenant a licence of lot(s) being part of Block 1586 Belconnen.

Insurance requirements

- 3.25 Tenants of the Parkwood Road Recycling Estate are required to have at least \$10 million public liability insurance policy, with relevant interest registered in the name of the ACT Government under the provisions of the *Financial Management (Public Liability) Determination 2005* (the Determination).
- 3.26 The Determination requires that a tenant should:
- register on the ACT Insurance Authority's website and update its risk profile on the website;
 - submit to the ACT Property Group the results of the tenant's risk profile including relevant risk rating for inclusion in the licence;
 - provide evidence of public liability insurance, at a level determined following compliance with the Determination; and
 - notify the ACT Property Group of any change to its activity and the required amount of insurance coverage to be carried in the designated site of the Estate. The tenant should seek approval from ACT Property Group for any change of the intended activity, create a new profile on the website and update the insurance amount.
- 3.27 A limit of public liability insurance coverage of only \$10 million is required if a tenant:
- handles or stores asbestos on the site and this is done in accordance with all relevant Australian Standards;

- provides adequate security on the site to restrict public access; and
- physically restricts access to the office or sale area of the site where public access is permitted for business purpose.

3.28 If the tenant does not satisfy the criteria mentioned in paragraph 3.27, an insurance policy for \$20 million is required.

Updating the 2005 Protocol

3.29 The 2005 Protocol (refer to paragraphs 2.31 to 2.32) provides Audit's basis for assessing the administrative effectiveness of ACT Property Group in managing the Parkwood Road Recycling Estate.

3.30 Although the 2005 Protocol was formally finalised in December 2005 there were on-going negotiations, until mid 2006, between the ACT Property Group and ACT NOWaste regarding security bonds collected from the tenants, tenancy management and occupational health and safety issues within the Parkwood Road Recycling Estate.

3.31 There were different approaches to managing the Parkwood Road Recycling Estate. For example, ACT NOWaste had collected \$1 000 to \$4 000 security bonds from tenants based on a risk assessment and the ACT Property Group refunded it. The reasons for this are not known, however ACT Property Group's policy is not to require bonds from tenants.

3.32 Audit found no evidence that either ACT Property Group or ACT NOWaste had attempted to negotiate changes, or to explicitly and cooperatively address their differences by formally amending the Protocol even though it is required under the Protocol that both parties discuss any tenancy management issues at least every six months. Both ACT NOWaste and ACT Property Group advised Audit that the December 2005 Protocol is still current.

3.33 There is evidence of communication failures and unresolved disagreements. It is acknowledged that the management has changed and there is a commitment to update the 2005 Protocol and ensure compliance with its requirements.

3.34 In examining compliance with the 2005 Protocol, Audit selected a sample of licence agreements (a total of six comprising of four non-recyclers and two recyclers) and found that the Parkwood Road Recycling Estate has not been effectively managed during the period under review (from July 2005 to April 2012).

3.35 The following compliance issues were identified:

- the 2005 Protocol requires that *'at least five sites will be kept vacant at all times for new recycler licences'*; there was a lack of documented evidence to support any action by ACT Property Group to achieve this requirement. This has happened despite opportunities for ACT Property Group to terminate

some licences for not complying with the terms and conditions of the licence agreements, for example monthly rental payments in arrears could have been used as a reason to terminate a licence with a non-recycler and make the subject site available to recyclers;

- ACT Property Group did not have records that demonstrated that it had undertaken the needed compliance actions in accordance with the frequencies outlined in the 2005 Protocol;
- the block register did not provide adequate management information to assist the effective management of the Parkwood Road Recycling Estate, such as information relating to date of renewal of the licences and date of renewal of insurance policies;
- the majority of the cases reviewed by Audit did not have copies of tenants' current insurance policies on files. Although ACT Property Group sought to issue letters to tenants reminding them that they would be required to submit their current insurance policies with interest assigned to the ACT Government, there was no evidence that ACT Property Group had taken any action to ensure that tenants' insurance policies were current and adequate to protect the ACT Government's interests;
- the reminder letters sent to tenants requiring them to comply with certain actions, such as clearance of vegetation within a certain period of time for fire safety, were of a general nature and did not state the consequence of non-compliance. This is likely to reduce the degree of compliance;
- there was confusion with respect to the adequacy of public liability insurance policy coverage. For example, there were two instances where the tenants had an insurance policy for \$20 million despite their insurance profiles (rating at six or below) indicating that an insurance policy of \$10 million would have been adequate to protect the ACT Government's interests;
- there were instances where tenants did not pay their rent on time and this incurred extra administrative resources to recover outstanding rental payments;
- all non-recycling tenants' licences reviewed should have been offered a minimum of five-years with a one year withdrawal or termination notice. However, there were two instances where the tenants were offered a five year licence with a 'no option for renewal' term. Consequently Audit understands that ACT Property Group has had to renew their licence agreements in accordance with the original licensee's terms and conditions. This is problematic as any new requirements cannot be accommodated; and
- all existing recyclers/tenants should have been offered a minimum of five years plus five years with a one year withdrawal or termination notice. However, there was an instance where a tenant was offered five years without any specific withdrawal or termination clause. Audit found that this licence expired in 2011 and was told that ACT Property Group was not aware

of the expiry of the licence, and was continuing to accept the rent, even though the licence had expired.

- 3.36 In April 2010, in accordance with the 2005 Protocol, two new applications were sent from ACT Property Group to ACT NOWaste for assessment of their recyclers' status for suitable sites at the Parkwood Road Recycling Estate. ACT NOWaste approved one of the applications for occupation for Lot 2040 at the Parkwood Road Recycling Estate.
- 3.37 While the 2005 Protocol with respect to the assessment of the eligibility for recycling status and rental rebates is being respected, there are other issues where ACT Property Group is not complying with the Protocol. It may be that this is not occurring because the Protocol is out-dated. However, if this is the case, it should have been updated. It is time for the 2005 Protocol to be updated.
- 3.38 While the 2005 Protocol mainly relates to the Parkwood Road Recycling Estate, it may be appropriate for it to cover the Hume Resource Recovery Estate.

Recommendation 2 (Chapter 3)

Management of the Recycling Estates

The Territory and Municipal Services Directorate (ACT Property Group) should update the 2005 Protocol between ACT Property Group and ACT NOWaste for managing the ACT's recycling estates.

Rental charges at the Parkwood Road Recycling Estate

- 3.39 In August 2006, ACT Property Group advised ACT NOWaste that the cost of managing the Parkwood Road Recycling Estate would include the administrative and financial management fees equivalent to 50 per cent of the top salary range of an Administrative Staff Officer Level 6 and other administrative/financial costs, effectively from July each year. ACT Property Group estimated that the 2006-07 management fee would be \$115 734 which would be adjusted by an increment of the Cost Price Index of 2.5 per cent annually to be in line with an annual rental adjustment.

3.40 Table 3.1 outlines the summary of receipts and expenditure for the Parkwood Road Recycling Estate for the recent five years from 2006-07 to 2010-11.

Table 3.1: Summary of Parkwood Road Recycling Estate receipts and expenditure 2006-07 to 2010-11

Items	2006-07 \$	2007-08 \$	2008-09 \$	2009-10 \$	2010-11 \$	Average (5 years) \$
Receipts						
Rent	262 744	216 860	295 817	259 820	266 026	260 253
Statutory fees (1)			59 344	89 016	14 836	32 639
Water/sewage					2 643	929
Other					246	49
Total Receipts (a)	262 744	216 860	355 161	348 836	285 751	293 870
Expenditure						
Garden fees	23 737	21 714	26 136	30 734	23 166	25 103
ACT NOWaste		33 821		33 429	34 265	20 303
Water/sewage		7 482	10 858	33 402	9 895	12 377
New capital work	3 529	146 147	111 765			52 288
Others	16 915	2 880	7 383	8 297	7 763	8 593
Total Expenditure (b)	44 181	212 044	156 142	105 862	75 089	118 664
Operating results (a) minus (b)	218 563	4 816	199 019	242 974	210 662	175 206
Adjusted by estimated management fee (2)	115 734	118 627	121 593	124 633	127 749	121 667
Estimated net results	102 829	-113 811	77 426	118 341	82 913	53 539
<p>Comments:</p> <p>Statutory fee – loan repayable by a tenant for the landfill fees paid by ACT Property Group on behalf of the tenant in 2008-09. The tenant repaid the loan by 24 monthly instalments.</p> <p>Estimated management fee – based on ACT Property Group’s 2006-07 Budgets (50 per cent of the top range salary and oncost for an ASO 6 and other administrative/finance costs with annual increase of Consumer Price Index of 2.5 per cent based on the 2006-07 Budgets).</p>						

Source: The Territory and Municipal Services Directorate (ACT Property Group)

- 3.41 With respect to information in Table 3.1, the following comments are made:
- although water/sewage charges were paid by ACT Property Group since 2007-08 these charges had not been recovered from tenants until December 2010;
 - the average rental income over a five year period (2006-07 to 2010-11) was \$260 253 which represents an average rental of \$3.26 per square metre (based on total area of the site of 79 741 square metres); and
 - based on the land revaluation by an independent valuer in May 2011, the annual rental value of the Parkwood Road Recycling Estate is \$2.65 million excluding goods and services tax. The average rent based on this was \$33.23 goods and services tax exclusive per square metre per annum. Since the May 2011 land revaluation report, the rental market value has declined significantly. Nonetheless, the present rent at \$3.26 goods and services tax exclusive per square metre per annum based on a 2006 land revaluation report represents only one-tenth of the recent land valuation.
- 3.42 It is recognised that to encourage recycling industries rental incentives are likely to be needed. The Territory and Municipal Services Directorate is proposing to do this using an innovative incentive approach whereby fees will be reduced once the recycling operation is functional.
- 3.43 As shown by the information in Table 3.1 an average operating result, after adjusting the management fees charged by ACT Property Group for managing the Parkwood Road Recycling Estate, was \$53 539. This indicates that ACT Property Group would have inadequate funding to invest in any major improvements and development in the Parkwood Road Recycling Estate infrastructure in order to attract sunrise recycling businesses. Major improvements of capital works in the Parkwood Road Recycling Estate were made in 2007-08 and 2008-09 only.

Recommendation 3 (Chapter 3)

Adjustment of the Parkwood Road Recycling Estate rental charges

The Territory and Municipal Services Directorate (ACT Property Group) should review and increase rental charges for the Parkwood Road Recycling Estate to reflect current market rates.

RISK ASSESSMENT AND MANAGEMENT

- 3.44 At the time of audit, ACT Property Group only had a draft Risk Management Plan (June 2011) and draft Tenancies Policy and Procedure Manual (July 2011). ACT Property Group advised Audit that these documents are currently under review. A lack of an approved Risk Management Plan and Tenancies Policy and Procedure Manual may lead to inconsistent practices in managing tenancies.

- 3.45 ACT Property Group advised Audit that there was no risk management plan being developed for the Parkwood Road Recycling Estate and nearby precincts within the West Belconnen Landfill sites. Given the Estate's location, the types of business in the Estate, the relatively recent changes in nearby land uses, and legacies of previous land uses, there is a need for a risk management plan for this Estate. An important part of such plan would be ensuring fire planning was routinely considered.
- 3.46 ACT Property Group appears not to be aware that the Justice and Community Safety Directorate (ACT Fire and Rescue) had completed a comprehensive risk assessment of the Parkwood Road Recycling Estate in October 2007 and liaised with other key stakeholders to form an inter-departmental working committee that included ACT Property Group, ACT NOWaste, Office of Regulatory Office (ACT WorkCover), the Government Solicitor's Office, Health Directorate and ActewAGL since then. This indicates problems with retaining corporate knowledge.
- 3.47 The 2007 risk assessments by the Justice and Community Safety Directorate (ACT Fire and Rescue) are presented in Case study 1.

Case study 1 - Fire Risk Assessment 2007 by Emergency Services Agency

An assessment of the inherent risks throughout the Parkwood Road Recycling Estate has identified that should a fire occur within the precinct, particularly a fire that may impact the used tyre stockpile, then significant disruption could be expected to surrounding residential areas and adjacent critical ACT Infrastructure (Parkwood high-voltage electrical distribution station). The very high to extreme consequence of a fire incident requires that amelioration activities be undertaken as soon as possible.

Risk planning and indicative smoke plume modelling (refer **Appendix C**)

- Parkwood was not a good selection for a recycling Estate with it being located at the north-western edge of the ACT (due to prevailing wind direction and risk from cross border grass fire) and because of its proximity to electricity infrastructure.
- Water supply to the area is poor, limiting fire fighting response capacity.
- Should a fire occur, the resultant smoke plume may cause evacuations to nearby suburbs of Holt and Macgregor. Smoke also significantly hampers response by emergency crews via the only access road.
- There is a constant risk of ignition from many recycling materials (spontaneous ignition) and industrial activities (welding).
- Should a major fire occur, it would cost likely a minimum of 75 per cent of ACT Fire and Rescue's resources and, leaving the rest of Canberra very exposed for fire fighting capacity for extended periods of time.
- Smoke from a major fire could cut-off the whole electricity supply to Canberra due to its closeness to a key electricity station. In addition, major fire in the area may pose a serious health risk to residents.

The contingent liability to the ACT Government could be in the range of \$300 000 to \$500 000. In addition there is the risk of considerable flow-on costs to the ACT business sector and the broader community. Should a fire occur that involved the entire tyre pile, ACT Fire and Rescue fire fighting operations would exceed one week duration, at an estimated cost of about \$1 million.

3.48 The Emergency Services Agency conducted a comprehensive fire risk assessment in 2007. ACT Property Group advised that the assessment is being updated in June 2012. ACT Property Group should request a copy of this and use this information to develop a specific Risk Management Plan for the Parkwood Road Recycling Estate.

Recommendation 4 (Chapter 3)

Risk assessment and management plan

The Territory and Municipal Services Directorate (ACT Property Group) should:

- a. finalise its draft Risk Management Plan (June 2011) and draft Tenancies Policy and Procedure Manual (July 2011); and
- b. develop a specific Risk Management Plan for the Parkwood Road Recycling Estate that includes information from a comprehensive fire risk assessment.

This specific Risk Management Plan could form part of the ACT Property Group's Risk Management Plan (a. above) or the proposed Estate Management Plan that is the subject of Recommendation 6.

MANAGING STOCKPILING OF RECYCLING WASTE

Existing controls

- 3.49 The existing licence agreement (clause 8.6) requires a tenant at the Parkwood Road Recycling Estate to comply, at their own expense, with all laws and the requirements of any authority in connection with a tenant's use or occupation of a lot.
- 3.50 The agreement (clause 8.7) has a 'make clean' clause to ensure that a tenant:
- keeps the lot and immediate surroundings clean and tidy, and free from refuse and vermin;
 - regularly mows the lot;
 - does not store or place any objects on the area surrounding the lot; and
 - allows reasonable access to the lot by the licensor (ACT Property Group) and its contractors and employees to enable it to carry out its obligation required by this licence agreement.
- 3.51 The cancellation of tenants' security bonds by ACT Property Group after the commencement of the 2005 Protocol has exposed the ACT Government to additional financial risks. Although the bonds were small without these there are no funds available, for example, to enforce the 'make clean' clause in a licence agreement if a tenant cannot afford to undertake a clean-up. If a clean-up is required the ACT Government may ultimately need to cover costs, as has happened, consider Case study 2.

Case study 2 – Inappropriate stockpiling of material at West Belconnen Landfill next to the Parkwood Road Recycling Estate

A building and demolition operator, incorporated as a limited company, was issued with a licence for a site in the West Belconnen Landfill (next to the Parkwood Road Recycling Estate part of Block 1586). The business was to accept construction waste for a fee based on the type of material accepted. This was its main revenue. However, it aimed to process the waste to gain additional revenue. Processing expenses varied significantly by material, with the end product being either sold or transported for disposal at landfill.

In view of a number of complaints regarding the stockpiles of timbers and other waste management issues, ACT NOWaste in June 2008 resumed managing the tenancy under a fortnightly lease agreement. Under an agreed short-term licence dated December 2008, the operator agreed to reduce the stockpiled materials within or below the required limit of 40 000 cubic metres.

In January and March 2009, certified surveys were undertaken and ACT NOWaste officers' site inspections indicated that the operator's stockpiles were in excess of 60 000 cubic metres.

In June 2009, the operator was issued a Cease Accepting Inbound Material Order Notice (CAIMON) under the short-term licence agreement. If the operator failed to comply with the CAIMON by end of June 2009, it would result in termination of the licence agreement. The operator agreed to reduce its stockpiles by late August 2009.

The operator became insolvent in June 2010 and the ACT Government started to clean-up the site in July 2011. It has cost the ACT Government in the vicinity of \$1 million to clean-up the site.

ACT NOWaste reported that the clean-up work commenced in July 2011 and that about 62 000 tonnes of material was removed from the premises to other ACT builders' recyclers and operators, with 8 220 tonnes being recycled. Another 15 000 cubic metres of wood (not weighed and not included in the aforementioned figure) was processed in November and December 2010.

- 3.52 Ineffective management of the property that is the subject of Case study 2 led to the accumulation of recycling waste such that it presented an unacceptable high potential fire risk. As the operator went into liquidation in June 2011 and there was a lack of an adequate security bond or any other financial support from the operator, the ACT Government had to fund the clean-up cost of \$1 million.
- 3.53 This raises the question of what could have been undertaken to prevent or mitigate the chances of material being stockpiled in the future.
- 3.54 Since early 2011 ACT Property Group has been working with the Government Solicitor's Office to draft new licence agreement templates ready to use for renewal of the majority of licence agreements by the end of June 2012. The new templates for recyclers and non-recyclers will replace the existing licence agreements which are found to be inadequate in a significant number of ways, including controlling stockpiling. ACT Property Group proposes to impose an onus of proof on a recycler to prove its status as a genuine recycler by submitting

a business plan and meeting the objectives of the business plan before being eligible for any rental rebates on its licence fee.

- 3.55 This will only address issues such as stockpiling for those sites with the new licence agreements. It is important that stockpiling issues that could occur on sites where there are existing licences be addressed. This may require the development of a specific regulation and the appointment of an authorised person under section 4 of the *Waste Minimisation Act 2001*.

New regulation to control stockpiling and appointment of a waste regulator

- 3.56 Under the current licence agreements, a tenant in the Parkwood Road Recycling Estate is required to comply with relevant legislation. However, there appears to be no regulation that allows for excessively large stockpiles of recycling material to be managed unless they become problematic for environmental or fire reasons. By this time managing a large stockpile can be expensive, as illustrated in Case study 2 in this chapter.
- 3.57 Audit considered whether the regulatory role of the Environment Protection Authority and the Justice and Community Safety Directorate (ACT Fire and Rescue) covered controlling stockpiling of waste.
- 3.58 The Environment Protection Authority within the Environment and Sustainable Development Directorate has legislative responsibility for administering the *Environment Protection Act 1997* covering activities that can affect air, land and water quality such as environmental noise, contaminated sites, waste transport and disposal and pesticide use.
- 3.59 Section 22 of the *Environment Protection Act 1997* creates a general environmental duty. The general environmental duty requires all people to take practicable and reasonable steps to prevent or minimise any environmental harm or environmental nuisance that their actions may cause. Generally Section 22 of the Act is actioned by the Environment Protection Authority on a complaints basis. At the time of the audit, the Environment Protection Authority advised that it had not received any complaints relating to the two ACT recycling estates. Furthermore, its mandate does not cover stockpiling unless it has potential to cause environmental harm.
- 3.60 The Justice and Community Safety Directorate (ACT Fire and Rescue) is responsible for regulating fire risks. It conducted a comprehensive fire risk assessment at the Parkwood Road Recycling Estate in October 2007. Details of this are outlined in Case study 1 (refer page 40). Its fire management mandate does not include directly managing stockpiles unless they are a fire risk.
- 3.61 Audit sought legal advice from the Government Solicitor's Office in respect of several issues associated with regulating recycling waste, in particular stockpiling. The Government Solicitor's Office response is below:
- Under what legislation can the volume and type of waste be regulated?

Waste disposal in the Territory is regulated under Part 3 of the *Waste Minimisation Act 2001 (the Act)* and the *Waste Minimisation Regulation 2001 (the Regulation)*.

Section 26 of the Act provides that regulations may make provision for Part 3 of the Act in relation to the storage, collection or disposal of waste. However, specific regulations governing the storage of waste have not been made under the Act. Nevertheless, Regulation 11 governs waste where it is being kept on premises in an insanitary or unsightly condition.

- Related to this legal advice Audit was also advised that:

... if an authorised person was reasonably able to form the belief that the waste was being stored in an insanitary or unsightly manner then they would have power to give written notice under Regulation 11(2).

The question arises as to the extent that the Licence agreement with the ACT allows an occupant to stockpile waste. Having examined a 2010 version of the Licence where the Licensee is a recycler the permitted use of the lot as provided in Schedule 1 Item 10 are the:

‘Reprocessing of electronic scrap and associated recycling activities of [name of company].

In regard to this particular licence the ACT has permitted the occupant to use the lot for the reprocessing of waste and associated recycling activities, which would reasonably include the storage of at least some waste on the Lot. The ACT could potentially argue that if waste was being stockpiled to such an extent beyond what is necessary or convenient to conduct a recycling facility that the licence had been breached...if a licence agreement specifies that a particular lot at the Parkwood Road Recycling Estate is to be used for recycling and no recycling is taking place then this could potentially constitute a breach of the licence.

However in the absence of clear conditions outlining the volume and type of waste that may be stored in a particular lot, this argument may be a difficult one to make.

- Related to this legal advice Audit was further advised that:

...this solution will not be available where an older version of the licence agreement remains in place between parties.

- How can the Territory and Municipal Services Directorate exercise the enforcement power?

The enforcement powers of the Act and regulation are reliant on an authorised person having been appointed to exercise them.

- Is it mandatory for the Territory and Municipal Services Directorate to have in place necessary administrative arrangements to comply with the Act or is this optional?

...the power of the director-general under the Act to appoint an authorised person is discretionary rather than mandatory. However, for the enforcement powers under the Act to be exercised an authorised person must be appointed.

3.62 The Government Solicitor' Office concluded that:

It is our view that the current legal position as provided by the Act does not give scope to regulate stockpiling at the Parkwood Road Recycling Estate due to:

(a) there being no regulation governing the volume and type of waste that can be stored at a waste facility; and

(b) if it is the case that no authorised person is appointed under the Act the enforcement provisions in part 4 cannot be exercised....

Section 26 of the Act does provide the Minister with a regulation making power [to] make provisions for the storage of waste. Should the Territory and Municipal Services Directorate seek [to] enact such provisions this should be discussed with Parliamentary Counsel.

3.63 The issues of appointing an authorised person has been a matter that was highlighted in the Territory and Municipal Services Directorate's Internal Audit Report; *Legislative Compliance Report*, April 2010:

The legislative provision for enforcement identifies specific regulated activities. To date there have been no significant related issues raised. ACT NOWaste does not have authorised persons to perform such duties. Reported breaches are infrequent (approximately 10 reports a year). The current informal arrangement is that issues are referred to rangers from Licensing and Compliance Section (LMP Division). Such "powers" as exercised from time to time by the rangers have no legal effect.

3.64 ACT NOWaste agreed with the Internal Audit's recommendation to address the issue by September 2011. ACT NOWaste advised Audit that there has not been any further action undertaken. ACT NOWaste considers that its primary function is as a service delivery agency and not a regulator. The ACT Government's administrative orders of May 2011 have assigned to the Territory and Municipal Services Directorate the *Waste Minimisation Act 2001* and therefore its role is to ensure that waste is appropriately regulated.

3.65 Audit could not find evidence that the Director-General, Territory and Municipal Services Directorate had made an explicit decision to appoint or otherwise not appoint an authorised person under Part 4 (Enforcement Power) of the *Waste Minimisation Act 2001*. This needs to be rectified as a matter of high priority and Audit recommends that such a person be appointed so that some action can be taken to enforce the *Waste Minimisation Act 2001*, including addressing stockpiling to the degree that the legislation allows, even if this is at present limited due to a lack of specific regulations governing the storage of waste.

3.66 It was suggested to Audit that given the ACT's local government/Territory arrangements that the Environment Protection Authority may be an appropriate body for regulating waste. Audit considers that this should be further considered by the Environment Protection Authority and the Territory and Municipal Services Directorate in the next review of the *Environment Protection Act 1997*.

Recommendation 5 (Chapter 3)

Administrative arrangements under the *Waste Minimisation Act 2001*

The Territory and Municipal Services Directorate should activate its role as the ACT's waste regulator by appointing an authorised person under Part 4 (Enforcement Power) of the *Waste Minimisation Act 2001* and this person should:

- a. foster the development of a waste regulation that controls the storage of waste, in particular stockpiling of recycling products; and
- b. request that the Environment Protection Authority in the next review of the *Environment Protection Act 1997* to work collaboratively with the Territory and Municipal Services Directorate to examine whether it or the Environment Protection Authority should be the ACT's waste regulator.

- 3.67 It is unclear as to whether or not the Parkwood Road Recycling Estate, as its name suggests, is actually a recycling Estate or a light industrial Estate with some recycling activities. The latter seems to be the case. It is unclear as to the relationship between this Estate and the Hume Estate. If the Hume Resource Recovery Estate is to be the ACT's main recycling Estate, there needs to be a process for potential developments to be directed towards it.
- 3.68 ACT Property Group has to rely on other directorates and agencies, such as the Environment Protection Authority within the Environment and Sustainable Development Directorate and the ACT Fire and Rescue within the Justice and Community Safety Directorate to regulate potential environmental and fire risks. It is therefore important that the ACT Property Group effectively communicates and coordinates its activities with those of these directorates.

REGULATORY FUNCTIONS UNDERTAKEN AT THE PARKWOOD ROAD RECYCLING ESTATE BY THE ENVIRONMENT PROTECTION AUTHORITY AND THE JUSTICE AND COMMUNITY SAFETY DIRECTORATE (ACT FIRE AND RESCUE)

Environmental Protection Authority

- 3.69 The Environment Protection Authority only regulates four licence holders of which three are operating in the Parkwood Road Recycling Estate and the other is located adjacent to this area on the southern boundary. These tenants are regulated as they undertake either a Class A or a Class B activity under the *Environment Protection Act 1997*, which includes: a recycling facility for the crushing, grinding or separating of materials; a concrete mixer for production of concrete or concrete products; transport of regulated waste (tyres) within the ACT or a recycling facility for timber chipping, pulping or milling.
- 3.70 Environmental authorisations are one of the most important regulatory tools available to the Environment Protection Authority as they set out conditions for

those activities carrying the greatest environmental risk. Each authorisation can be individually tailored to an activity that it authorises, and specific conditions can be imposed on the conduct of the activity. The *Environment Protection Act 1997* also provides for penalties for pollution of the environment by certain pollutants which are detailed in the *Environment Protection Regulation 2005*.

- 3.71 Audit reviewed the four licences mentioned in paragraph 3.69 that are required under Section 49 of the *Environment Protection Act 1997* and found that the conduct of annual reviews of these by the Environment Protection Authority were generally performed within a reasonable time. Warning letters were issued to one of the tenants for non-compliances with the *Environment Protection Act 1997* during the annual reviews in 2009-10 and 2010-11 respectively.
- 3.72 The Environment Protection Authority advised Audit that there was limited formal communication between it and the ACT Property Group until March 2012 to discuss the proposed new licence agreements templates for use for renewal of the majority of licence agreements by 30 June 2012 (refer to paragraph 3.54). The Environment Protection Authority suggested that tenants should be required to submit an Environmental Management Plan and regulate their waste management issues in accordance with the *Waste Minimisation Act 2001* as part of the terms and condition in the proposed licence agreements to be applied as of July 2012.
- 3.73 ACT Property Group advised audit that the Environment Protection Authority did not respond until they were requested regarding a waste management plan relating to a tenant of the Parkwood Road Recycling Estate in March 2012. The Environment Protection Authority considers that it did respond. This illustrates communication issues between these groups.

Justice and Community Safety Directorate (ACT Fire and Rescue)

- 3.74 The ACT Fire and Rescue has the authority to issue an Improvement Notice under Section 86 of the *Emergencies Act 2004*. In October 2007 an Improvement Notice was issued to an operator within the Parkwood Road Recycling Estate which was revoked in November 2007.
- 3.75 The Justice and Community Safety Directorate (ACT Fire and Rescue) had actively managed the fire risk hazards at the Parkwood Road Recycling Estate and since February 2007 and until August 2011 it issued a total of five Improvement Notices and a Notice of Revocation. A fire was controlled at the Parkwood Road Recycling Estate in August 2011 at an estimated cost of around \$200 000 for the ACT Fire and Rescue to be able to extinguish it.
- 3.76 The Justice and Community Safety Directorate (ACT Fire and Rescue) considers that the nature of businesses at the Parkwood Road Recycling Estate means that the volume, substance and layout of recyclable material stored on each site can change on a regular basis. It provides advice to owners/occupiers to develop

strategies for reducing fire risk at individual sites; specific risk management plans for individual facilities are best catered for in the licence agreement.

- 3.77 The Justice and Community Safety Directorate (ACT Fire and Rescue) has liaised with ACT Property Group to manage potential fire risk and hazards at the Parkwood Road Recycling Estate, as needed.

FUTURE DEVELOPMENT AT THE PARKWOOD ROAD RECYCLING ESTATE

- 3.78 Since the Parkwood Road Recycling Estate was developed there have been some significant changes in nearby areas, in particular the development of the suburb of Macgregor.
- 3.79 The Parkwood Road Recycling Estate is primarily a light industrial estate with some recycling activities. Under the ACT Government's peak waste policy document, the Hume Resource Recovery Estate is the focus of recycling activities in the ACT.
- 3.80 There have been some significant issues at the Parkwood Road Recycling Estate that have taken considerable ACT Government funds to manage.
- 3.81 The prime purpose of the Parkwood Road Recycling Estate needs to be clarified and this be used to guide the development of a long-term Estate Management Plan.
- 3.82 Such a plan should be developed in consultation with all relevant Directorates and cover a wide range of issues, as has been advocated in relation to the development of a similar plan for the Hume Resource Recovery Estate (refer to Recommendation 1 at page 32). It should include the development of a risk management plan and a monitoring and evaluation framework to guide an overall assessment of the Estate.

Recommendation 6 (Chapter 3)

Management of the Parkwood Road Recycling Estate

The Territory and Municipal Services Directorate (ACT Property Group) should:

- a. clarify the purpose of the Parkwood Road Recycling Estate and name it accordingly;
- b. develop an Estate Management Plan to guide the short and long-term development of the Estate;
- c. develop a risk management plan for the Estate; and
- d. develop a monitoring and evaluation framework to guide an overall assessment of the Estate.

(c and d could be part of the Estate Management Plan).

4. COMPUTER AND TELEVISION E-WASTE

- 4.1 This chapter presents information on the development of the ACT Government's approach to computer and television electronic waste (e-waste) and how the ACT Government's e-waste contracts were tendered, let and managed.

SUMMARY

Conclusion

- The ACT Government continues to provide leadership in the management of computer and television e-waste. It was the first jurisdiction in Australia to introduce local bans on these going to landfill, and it is taking the lead in implementing the new National Stewardship Scheme. While this is the case, the planning for these initiatives was not always comprehensive and unanticipated costs particularly related to illegal dumping were incurred.
- The procurement processes for computer and television e-waste, were generally appropriate and risk based, however there are areas for improvement.

Key findings

- Bans on computers (from 2005) and televisions (from 2010) going to landfill have been a major factor in recycling 2 780 tonnes of e-waste that would otherwise have gone to landfill.
- The computer and television bans were largely intended to be offset by the collection of user fees from members of the public disposing of their televisions and computers, but there has been a shortfall in income to fund this e-waste recycling activity of around \$610 000 out of a total cost of \$1.59 million¹⁴ (38 per cent) over the last five years.
- The shortfall has arisen from unanticipated increases in contract prices and illegal dumping. This has occurred particularly at charity bins located in and around town centres, car parks and suburban shopping centres.
- Under the Commonwealth regulated and industry funded National Stewardship Scheme computer and television e-waste services are now free to users, and costs that the ACT Government has incurred are unlikely to be incurred in the future. The early adoption by the ACT Government of the National Stewardship Scheme puts in place a firm arrangement for two years to collect and recycle computer and television e-waste. In the first four weeks of these new arrangements, an estimated 700 tonnes of computer and television e-waste

¹⁴ This figure (excl GST) is a minimum figure based on data supplied by TAMS. It includes contract costs from May 2010 to April 2012 where both television and computer waste bans were in place. However, it only includes around \$180 000 in costs associated with the computer waste ban between 2007 and 2010. Audit asserts the cost of this earlier computer e-waste ban could be substantially higher. This would mean the shortfall figure would be higher too.

was delivered to the ACT's two recycling centres. This is equivalent to a year's recycled e-waste under the former bans. Canberrans no longer need to pay for a service that attracted a fee. This will save them more than \$400 000 a year. Significant savings are also expected from a reduction in illegal dumping.

- The ACT as yet has no long-term monitoring and evaluative framework for its e-waste initiatives. However, under the National Stewardship Scheme the ACT Government will be contributing to annual reports going to the Commonwealth Government on the new scheme and some of the elements of these reports could form the basis of such a framework.
- ACT NOWaste's financial data on its computer and television e-waste initiatives were not readily available. An important aspect of determining the cost effectiveness of these initiatives is the ability to evaluate financial and other information.

Procurement – Computer and Television e-waste

- The handling of tendering and contract letting for computer and television e-waste contracts between 2008 and 2011 were, in the main, compliant with policy. However, there were significant delays in progressing the procurement and this led to additional cost.
- Furthermore, in the procurement process, greater attention should have been given to:
 - balancing social, economic and environmental factors in the e-waste tendering;
 - the potential for prioritising local companies and local solutions; and
 - the use of contract variations.
- ACT NOWaste failed to monitor aspects of computer and television e-waste contract delivery such as when contracts were expiring and when spending limits had been exceeded.

The growing problem of e-waste

4.2 The generation and disposal of e-waste by households is a growing concern of communities across Australia. Australians are amongst the top ten consumers of electronic technology in the world.¹⁵ Like many in this top ten, Australia is putting in place measures at the Commonwealth level to ensure electronic products, when they reach their 'end of life', are not simply treated as waste to be dumped in landfill sites. Australia has recently adopted an end-of-life stewardship scheme, called the National Stewardship Scheme.¹⁶

¹⁵ Australian Bureau of Statistics, *Australia's Environment Issues and Trends*, 2006 p19.

¹⁶ Australian Commonwealth Government, *Product Stewardship Act 2011*

4.3 In Australia, two product groups within e-waste cause the most concern, primarily due to their weight and the volume of products that are now reaching their end of life. These are computers and televisions. These are the first two product groups targeted in the National Stewardship Scheme. According to the *Tipping Point* report (2008)¹⁷, there were:

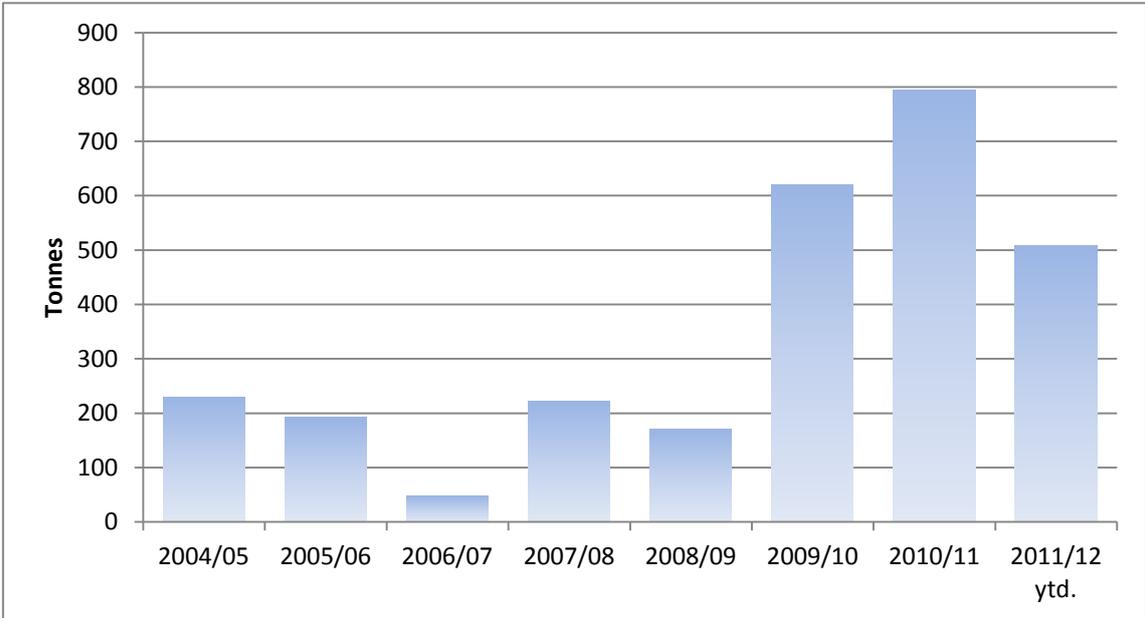
- an estimated 37 million computers already in landfill (2008) with only around 1.5 per cent of that figure having been recycled; and
- an estimated 17 million televisions already in landfill (2008) with less than 1 per cent of that figure having been recycled.

E-waste in the ACT

4.4 In Australia as a whole, low levels of e-waste recycling have been typical over the last ten years. The Commonwealth Government estimated that 17 per cent of all e-waste was recycled in 2010¹⁸. In contrast, in the ACT, over the last eight years, there has been a policy of preventing computers (2005), and televisions (2010), from going to landfill in favour of recycling. These are the major components of all e-waste. These ‘bans’ are discussed further later in paragraphs 4.23 to 4.50.

4.5 The two bans have been a major contributor to the 2 780 tonnes of all e-waste that have been diverted from landfill for recycling since 2004, either by site operators at the ACT’s two Resource Management Centres (Mugga Lane and Mitchell) or by private recycling businesses in the ACT.

Figure 4.1 All e-waste recycled prior to the National Stewardship Scheme, May 2012



Source: ACT NOWaste to 30 April 2012

¹⁷ *Tipping Point: Australia’s E-waste crisis*, Total Environment Centre, December 2008

¹⁸ National Stewardship Scheme media release 6 March 2012

- 4.6 It is not known what proportion of all household and small business e-waste generated in the ACT is recycled. Data from two recent audits of landfill waste suggests that at least 100 and possibly up to 400 tonnes of all types of e-waste a year still goes to landfill, even after the introduction of both bans. Prior to the introduction of the television waste ban, the ACT Government estimated that around 200 tonnes of televisions alone were disposed of in landfill in the ACT each year.
- 4.7 No precise data is available in the ACT for the growth specifically of the television and computer elements of the e-waste stream, as ACT waste audits do not consistently distinguish between computers and other office equipment, or between televisions and other medium-sized house electrical goods.
- 4.8 Much computer and television e-waste is brought to the ACT's two resource management centres by residents and small businesses. A small but significant volume of computer and television e-waste is dumped illegally in parks and on nature strips. A much larger volume of e-waste has been left at the many charity bins in the ACT for collection, little of which on inspection has been re-useable or re-saleable.
- 4.9 It is only possible to arrive at a broad estimate, and that is, that at least half, and probably up to three quarters of the householder and small business e-waste in all its forms brought to the resource management centres is separated, collected and then recycled, rather than going to landfill in the ACT. The figure for the recycling specifically of televisions and computers will be significantly higher, that is, well in excess of 75 per cent.

THE STRATEGY FOR MANAGING COMPUTER AND TELEVISION E-WASTE

The national response

- 4.10 In November 2009, all Environment Ministers, including the ACT's, agreed to introduce a national policy for waste management and to guide resource recovery direction to the year 2020. The policy contains 16 strategies, one of which is to implement a National Stewardship Scheme for computer and televisions. This allows for the environmental impacts of a range of products to be responsibly managed at their end-of-life. The National Stewardship Scheme resulted in the *Product Stewardship Act, 2011* (Commonwealth Government).
- 4.11 Under the National Stewardship Scheme, which is to be funded by television and computer manufacturers and regulated by the Commonwealth Government, approved organisations will collect, dismantle, recycle, recover or dispose of television and computer e-waste in a managed manner. It will be a free service to consumers across Australia. It is planned to have nation-wide coverage by the end of 2013. One goal of the Scheme is to boost the recycling rate for televisions and computers from 17 per cent in 2010 to 80 per cent by 2020-21, providing a long-term solution to television and computer waste.

- 4.12 State and Territory governments will be assisting the approved organisations¹⁹ in each jurisdiction to assess the adequacy of environmental, health and safety practices and policies of all services operating under the National Stewardship Scheme. Approved organisations are required to provide the Commonwealth Government with an annual report on a range of operational matters, including:
- governance matters in respect to their television and computer industry members;
 - details of each collection service, including weight of products collected, the weight of products sent for recycling, and the total weight of products in storage;
 - details of recycling services, including the total weight of products sent for recycling, the total weight of products processed, the weight and type of all materials recovered and the total weight of material sent to landfill;
 - details on the export of products and materials;
 - details of Occupational Health and Safety issues, and environmental incidents or breaches; and
 - details of further processing into new products (from 2014-15).
- 4.13 Annual reports are to be received by 30 October each year, and will be made publicly available.
- 4.14 There is also a requirement for third-party auditor reports on the financial status of the arrangement and the performance against the National Stewardship Scheme outcomes.

ACT participation in the National Stewardship Scheme

- 4.15 In May 2012, the ACT Government announced the start of computer and television e-waste collection and recycling in the ACT as part of the National Stewardship Scheme roll out.²⁰ This makes the ACT the first jurisdiction in Australia to progress this initiative.
- 4.16 The new arrangements for the free recycling of computer and television e-waste via the ACT's two resource management centres are in place at least for the next two years and can be used by residents and small businesses. These will be the first of several sites in the ACT. In the first four weeks of these new arrangements, an estimated 700 tonnes of computer and television e-waste was brought to the two centres. This is equivalent to a year's recycled e-waste under the former bans. Canberrans no longer need to pay for a service previously

¹⁹ The Australian Government's Department of Sustainability, Environment, Water, Population and Communities refers to 'approved co-regulatory arrangements'. These arrangements are partnerships of organisations that collect and recycle e-waste.

²⁰ Joint ministerial announcement *Canberra first to start free e-waste recycling service* 30 April 2012. Senator Don Farrell, Katy Gallagher MLA

attracting a fee. The savings to the community based on the last two years' receipts will be \$400 000 a year in user charges. Significant savings may also arise from the reduction in illegal dumping.

- 4.17 These new arrangements supersede all other contractual arrangements relating to the collection and recycling of computer and television e-waste by the ACT. The choice, implementation and success of these former arrangements are the subject of the rest of this chapter.

ACT approach

- 4.18 In the ACT, the Government has set its sights over the past two decades on reducing waste to landfill, with the ultimate aim of sending no waste to landfill. It's *No Waste By 2010 – Waste Management Strategy (1996 – 2010)* focused in turn on the major components of household waste that were going to landfill, that is, paper, cardboard, plastic and organic (green) matter. It was not specific about e-waste.
- 4.19 Further mid-term reviews of the *No Waste By 2010 – Waste Management Strategy* in 2000 and 2004 focused on overall progress towards the target of zero waste to landfill. There was again no reference to e-waste.
- 4.20 The Office of the Commissioner for Sustainability and the Environment identified 'e-waste as an emerging and significant issue' in *the State of the Environment Report 2007* and recommended that the ACT take a stronger stance on e-waste, including showing leadership to other jurisdictions. The Government's response, tabled in June 2009, was supportive, and put its weight behind the National Stewardship Scheme, as 'more cost effective and more efficient than individual jurisdictional schemes'.
- 4.21 In 2011, the newly adopted *ACT Waste Management Strategy (2011 - 2025)* set the aim of moving from 70 per cent of all waste currently diverted from landfill to 90 per cent by 2025. For the first time, the ACT's long-term waste strategy refers to computer and television e-waste. The strategy sets out proposals to:
- participate in the National Stewardship Scheme;
 - provide free drop-off facilities under the national scheme by end of 2012; and
 - work towards extending producer responsibility for end-of-life electronic products.
- 4.22 Audit's review of the ACT's approach for waste management identifies that the ACT's ambitions and plans for its e-waste are primarily captured in the National Stewardship Scheme.

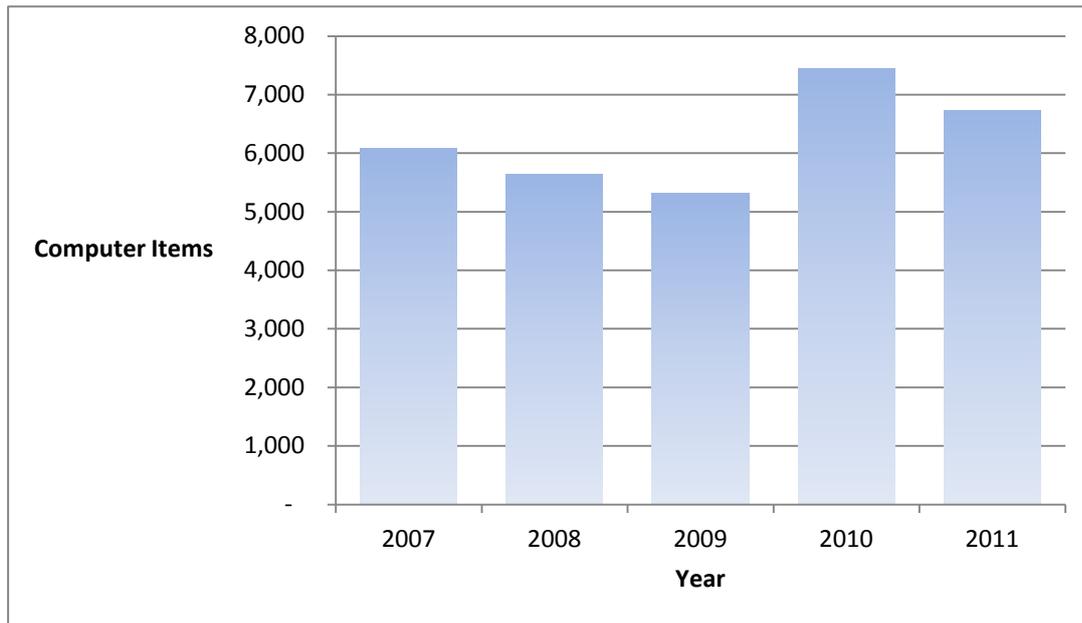
Introducing computer and television e-waste bans

- 4.23 The bans introduced in 2005 for computer equipment, and then in 2010 on televisions going to landfill were ground-breaking, in that the ACT was the first jurisdiction in Australia to introduce such bans, but there were some difficulties.
- 4.24 In 2003, the ACT Government first introduced an operational ban on householders' computer equipment being taken in at resource management centres for landfill. By 2005, a service user fee was introduced, providing the means to pay for the subsequent recycling of the computers.
- 4.25 The operational ban was implemented to ensure that the growing volume of computer equipment would be diverted from landfill and be passed to recyclers, dismantlers, and potentially to refurbishers. The service was designed to be paid for by charging a fee to service users which would in turn broadly reflect the costs associated with the dismantling and recycling of their goods.
- 4.26 A further ban, again to be paid for by service users, on televisions going to landfill, was introduced in April 2010, six months after the Commonwealth had announced that the National Stewardship Scheme, free to service users, would be rolled out within the next few years. The ACT ban was promoted as an interim ban until the National Stewardship Scheme was put in place in January 2011. Similar to the computer waste approach, the ban on televisions was accompanied by a fees system where the service user would pay a fee for the service, from \$15 up to \$40 and subsequently \$60 depending on the size of the television.

Success of the computer ban

- 4.27 Audit identified that the bans would discourage computer e-waste going to landfill thereby dealing with the waste in a more environmentally responsible manner, provide for the consistent recycling of computer and television e-waste, improve overall recycling rates, and be, as far as possible, on a cost recovery basis. No additional budget provision was secured for implementing the bans, and no likely additional costs were quantified as a result of introducing the bans.
- 4.28 The ACT's computer waste ban and associated user fee policy was in place for seven years, and over this period it was responsible for diverting an average 6 250 computer terminals and monitors per year from going to landfill. Most of these computers were recycled, with a very small proportion (2 per cent) being refurbished, and therefore this has been a positive outcome in terms of e-waste diversion from landfill, recycling and materials recovery.

Figure 4.2 Monitors and terminals brought to resource management centres



Source: ACT Auditor General's Office estimates based on ACT NOWaste data.

4.29 However, there have been two important unintended consequences of the introduction of the ban and the requirement for a fee from service users. These are that:

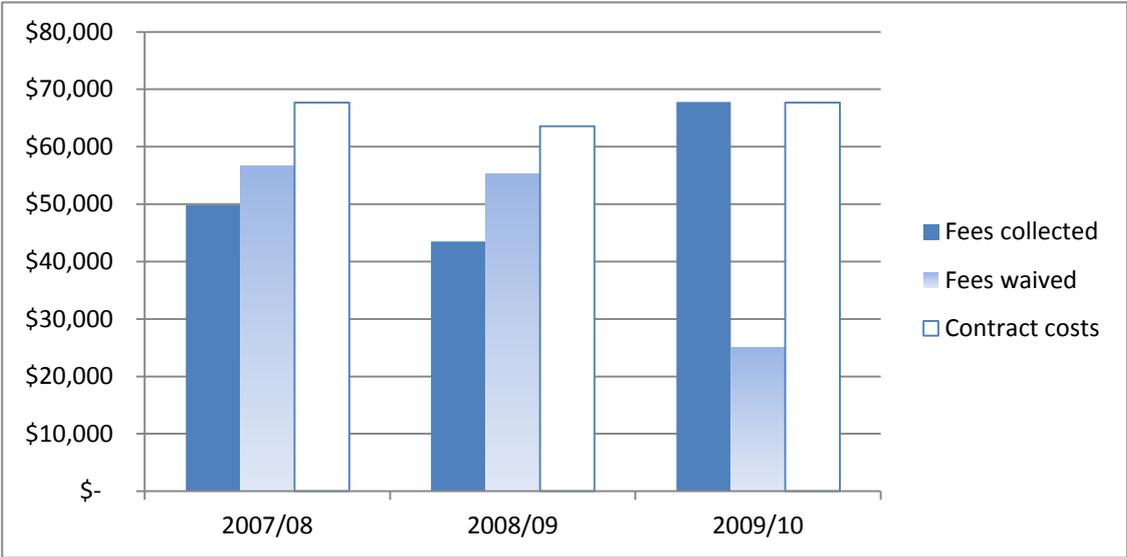
- the volume of computers left in the vicinity of charity bins over the period was significant. This was not foreseen and has ended up having a quantified financial consequence for the ACT; and
- there was a change in the volume of computers being stored, or discarded in the household residual (unrecyclable) waste bin rather than being taken for recycling as residents and businesses sought to avoid paying recycling fees. This has not been quantified.

4.30 After 2005, the volume of computers left at charity bins steadily increased, as some residents and business increasingly saw this as an alternative to taking unwanted computers to the resource management centres where user fees would be due. Under a ministerial approval dating back to 1997 charities have been granted a fee waiver when their unwanted donations arrived at the resource management centres, since charities were not able to meet the costs associated with disposal of equipment that could not be repaired, resold or reused. This fee waiver continued to be applied to charities throughout the computer waste ban period. Resource management centre operators also separated out some computer e-waste at the two centres from mixed waste loads and this waste was also diverted for recycling without user fees being collected.

4.31 Over time the cost to the ACT Government of accepting computers for recycling for which no user fee could be collected increased. Audit estimates that at the peak in 2008, more of these items were coming into the resource management

centres on a fee waiver than not. Over the five years to April 2012, on average, no fees were collected for around a quarter of the monitors and terminals brought to the resources management centres for recycling.

Figure 4.3 Total cost of computer recycling versus fees waived



Source: The Territory and Municipal Services Directorate (ACT NOWaste) Oracle data, May 2012

- 4.32 The cost of operating the ban was designed to be largely offset by service user fees. While \$160 000 in user fees met most of the operational costs of the computer ban²¹ over the three-year period to June 2010, a further \$137 000 could not be collected as no service users were identifiable, that is, computers were illegally dumped and the ACT Government chose to waive the fee as per its charity fee waiver policy.
- 4.33 Audit has been able to substantiate a figure of \$137 000 over this three-year period, plus a further \$11 000 for subsequent computer fee waivers from July 2010 to April 2012. However the Territory and Municipal Services Directorate (ACT NOWaste) has advised Audit that the Directorate’s method for collecting such data is likely to significantly underestimate the volume of e-waste where no fee was collected. In ACT NOWaste’s assessment, the figures could well be at least double the figures presented here.
- 4.34 The ACT Government also sought to test whether new contracting arrangements would provide better value for money for residents and the ACT Government. A tendering exercise began in 2008 to determine if it would be more cost effective to secure a dedicated contract rather than an add-on to an existing larger contract. This is discussed in paragraphs 4.59 to 4.68.

²¹ Figure 4.3 identifies around \$180,000 in Computer e-waste contract costs for the three years ending 2009/10. However, Audit asserts that this is only a proportion of the contract costs. The figure could be substantially higher.

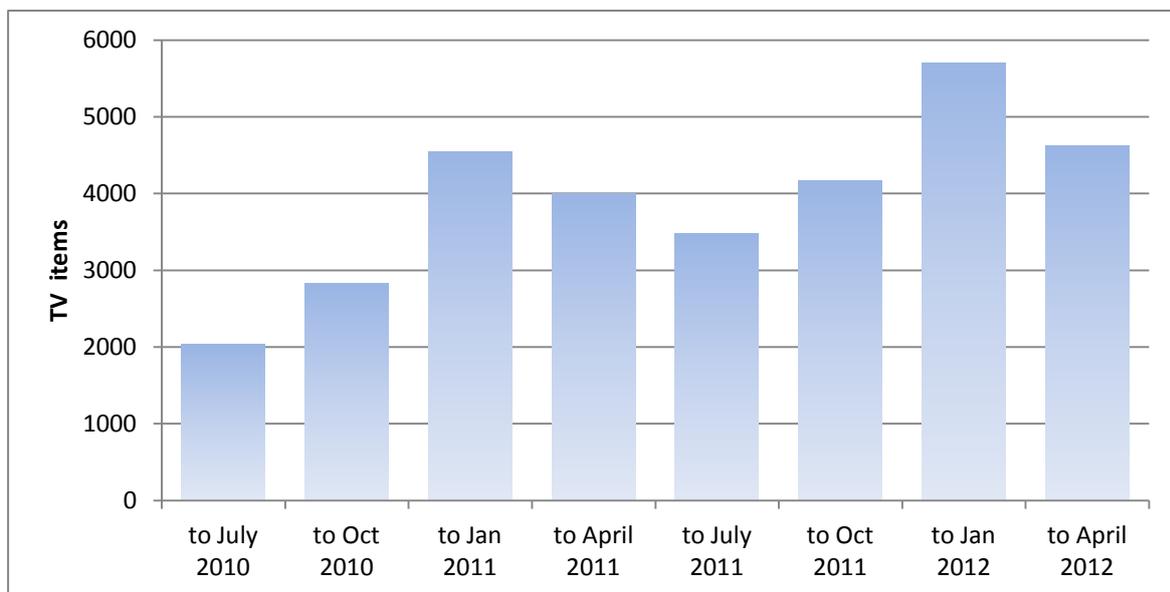
4.35 As can be seen by the fall in fee waivers in Figure 4.3 in 2009-10, it took a concerted effort across the Territory and Municipal Services Directorate to raise awareness and improve signage, and apply spot fines where appropriate at such sites and this then led to a rapid reduction in the problem of the dumping computers in the vicinity of charity bins.

Success of the television ban

4.36 A ministerial briefing paper, with ministerial sign-off, the month before this ban was announced in April 2010 outlined the concept of a user-funded television recycling scheme, aiming to divert much of an estimated 200 tonnes of televisions a year that would otherwise have gone to landfill. The briefing paper stated that the ban would deal with the waste in a more environmentally responsible manner, provide for the consistent recycling of computer and television e-waste, improve overall recycling rates, divert e-waste from landfill for recycling, and recover costs from users.

4.37 During the period from May 2010 to April 2012, the ACT Government’s television waste ban prevented over 31 000 televisions from becoming landfill. This equates to just under one in four households in the ACT recycling a television in this manner. Around 530 tonnes of televisions a year have been diverted from landfill, for recycling and materials recovery. Given the original estimate was that 200 tonnes of televisions per year were previously in the waste going to landfill, this has been a major, but unexpected success.

Figure 4.4 Televisions presented (by quarter) at resource management centres for recycling



Source: ACT NOWaste contract management data, April 2012

4.38 As with the computer ban, the costs of recycling televisions exceeded the income received from fees. In this instance, costs to the ACT Government escalated because of computer and television e-waste coming from dumping and from

charity bin collections when no fee was collectable, and also because the per item user fee, set to achieve a substantial cost recovery, was set too low. Contract costs rose considerably from the outset, by as much as 60 per cent after user fees had been set for the year. The resulting shortfall in fee income was then amplified by the sheer volume of televisions being presented at the resource management centres for recycling, and to a lesser extent, by delays in introducing more cost effective contracting arrangements.

- 4.39 During the period of the television waste ban from May 2010 to April 2012, the contract costs for recycling both televisions and computers reached an estimated \$1.41 million²². Fee income over the same period reached \$833 000²³. The shortfall of \$582 000 is significant, but to some extent explained by the tonnage of computer and television e-waste where no fee could be collected. During the period of the television e-waste ban, from May 2010 to April 2012, around \$55 000 in fees could not be collected for televisions arriving at resource management centres. As previously stated, the Territory and Municipal Services Directorate's (ACT NOWaste) advice is that this figure, while drawn from its Oracle financial reporting system, is a underestimation due to classification errors.
- 4.40 Under the Commonwealth regulated and industry funded National Stewardship Scheme the ACT Government should no longer incur these e-waste costs.
- 4.41 It is clear from these outcomes that by volume, the bans have been successful in reducing computer and television e-waste to landfill. Also, they have been successful in diverting this e-waste to be recycled, and this is quantifiable. However the amount of computer and television e-waste not arriving at resource management centres due to the bans is unquantifiable. It is reasonable to expect that some residents and businesses either stored their computer and television e-waste, given that the television ban was presented to the public as a short-term interim measure, or possibly delayed replacement of televisions and computers.
- 4.42 A free computer and television e-waste recycling event running over three days in August 2009 yielded 450 tonnes of e-waste, and that equates to around two-thirds of the volume taken in for recycling, for a fee, per year in recent years. This suggests there may be a considerable volume of 'hidden' e-waste that presents itself opportunistically, depending in part on ease and price of disposal. Early results, yielding 700 tonnes of television and computer-related e-waste in first four weeks of the newly established free recycling service under the National Stewardship Scheme, support this view.

²² This is an excluding GST figure, based on contract payment rates from TAMS Oracle General Ledger, accounting for the recycling of 1,255 tonnes of e-waste for the period May 2010 to April 2012

²³ This figure reflects two months of the 2009/10 year as well as 2010/11 and 2011/12 to the end of April 2012

- 4.43 In conclusion, it can be seen that the bans have not been successful in terms of cost recovery. However, they have been successful in terms of:
- increasing significantly the percentage of computer and television e-waste that goes for recycling and materials recovery, which is well in excess of the levels likely to be achieved nationally over the next five years; and
 - reducing e-waste to landfill, by encouraging residents to participate in a ‘user pays’ recycling activity (a positive outcome), or to store their e-waste or dispose of it in more creative ways (with associated neutral or negative outcomes). It is not clear which has had the greater impact on the reduction of e-waste to landfill.
- 4.44 By imposing the bans, the ACT positioned itself to provide leadership in the management of computer and television e-waste, and should now maximise its learning opportunities because of its pioneering efforts.
- 4.45 Furthermore, the e-waste bans were capable of contributing to a wider set of ACT Government objectives, but they were not designed to do so, and their impact not evaluated. Such a perspective could reasonably have taken into account the following, with a balance of qualitative and quantitative outcomes:
- management and operational cost, and service availability;
 - maximising resource value of computer and television e-waste;
 - reducing computer and television e-waste to landfill and increasing e-waste recycling;
 - level of recycling and resource recovery within the ACT or Australia;
 - employment and social outcomes;
 - changing consumer behaviour and attitudes; and
 - a reduction in illegal dumping in the ACT.
- 4.46 ACT NOWaste advises that the issues listed in paragraph 4.45 need to be considered in the context of the viability and capability of commencement in the eight month window prior to the then introduction of the National Stewardship Scheme on 1 January 2011.
- 4.47 It is difficult to reach a rounded ‘value for money’ assessment of the overall success of the bans in the absence of clearly articulated objectives.
- 4.48 Looking to the future, the ACT as yet has no long-term monitoring and evaluative framework to guide the examination of the effectiveness of its e-waste initiatives. However, Audit recognises that the ACT Government and its National Stewardship Scheme partners will be contributing to new annual reporting arrangements to the Commonwealth Government (refer to paragraph 4.13) and some of the elements of these reports could form the basis of a long-term monitoring and evaluative framework within the ACT.

- 4.49 While it is important to aid Commonwealth accountability for the National Stewardship Scheme, it would also be instructive for the ACT Government to identify any local affects that may be beneficial to monitor and evaluate that are not captured in reporting requirements of the Commonwealth Government. In addition to the themes in paragraph 4.48, further considerations for monitoring could include collecting information about:
- new industries created;
 - new jobs created within the ACT;
 - the costs directly incurred by the ACT Government; and
 - other specific benefits for the ACT.
- 4.50 Annual reports required by the Commonwealth Government under the National Stewardship Scheme are to be prepared by National Steward Scheme partners over the coming years. Given this, it would seem appropriate for the Territory and Municipal Services Directorate (ACT NOWaste) to also prepare a long-term e-waste monitoring and evaluation framework. The Environment and Sustainable Development Directorate should be consulted in the development of the framework and kept informed of the results so that this information informs whole-of-government waste policy development.

Recommendation 7 (Chapter 4)

E-waste monitoring and evaluation framework

The Territory and Municipal Services Directorate (ACT NOWaste) should develop and implement a long-term e-waste monitoring and evaluation framework to determine and report on the environmental, social and financial effects of e-waste projects. This should complement national requirements for reporting information but also include specific information on local affects that may not require reporting nationally.

MANAGEMENT OF THE IMPLEMENTATION OF THE BANS

Computer waste recycling implementation

- 4.51 From 2005 with the introduction of the computer ban, the collection and recycling of computers was managed as a contract extension for the existing resource management centre contractor via payments from the ACT Government at the same rate as that charged to the public. This was, in theory, to have fully offset the cost of recycling computers brought to the resource management centres by residents and small businesses.
- 4.52 By 2007, with the ACT Government liable for the 'per item' payments to the contractor even though up to half the items were not attracting service user fees, the gap between fee revenue and contract costs was growing. By November 2008, the Territory and Municipal Services Directorate (ACT

NOWaste), which was responsible for managing the service, agreed to tender for the service as a standalone service in order to test the market competitiveness of the existing arrangements. The process by which this contract was tendered and let is the subject of paragraphs 4.59 to 4.68.

Preparing for the television ban

- 4.53 Discussions began between an existing contractor and the Territory and Municipal Services Directorate (ACT NOWaste), in February 2010, for the introduction of an operational ban on television e-waste. By March 2010 a ministerial briefing paper had been drafted, by April 2010 the ban was announced and implemented, and by May 2010 discussions were taking place on how to contractually integrate television recycling into the existing contract.
- 4.54 Audit concludes that the ACT ban was planned and implemented without adequate preparatory work. Firstly, there was too narrow a view of what the success measures would be for the ban. Secondly, there was a poor mutual understanding, between the contractor and the Territory and Municipal Services Directorate (ACT NOWaste), of the impact of the ban on contract delivery. There was misunderstanding about what e-waste could be included, and whether this was core or supplementary to the contract. Public commitments were made that were not supported by agreed delivery arrangements.
- 4.55 In addition, there was a lack of sound estimating and planning. Once the e-waste focus had shifted to television recycling, television volume estimates were underestimated. Given that the National Stewardship Scheme for television and computer e-waste was announced in November 2009, and the ACT Government had already participated in a three-day pilot including television waste in August 2009, and an industry consultation in February 2009, there was little preparatory work done to consider the likely volumes, unit pricing, or contractor capacity to handle television waste at different price points prior to the introduction of the ban in April 2010. It is respected that there were difficulties in estimating the affects of the ban given that there were no statistics or precedents elsewhere in Australia. For example, in the initial weeks of the free national television and computer recycling scheme where up to 700 tonnes of material had been received in the first four weeks.

Challenges facing the ACT Government in procuring television recycling services

- 4.56 The Commonwealth National Stewardship Scheme, announced in November 2009, created expectations that the computer and television e-waste rollout would begin in early 2011. The ACT television e-waste ban in April 2010 was designed and implemented as an interim ban until this national scheme was launched. Potentially the ACT ban would last just eight months. Since the national scheme slipped by just over a year, the ACT's television ban was in place for 25, not eight months.

- 4.57 It was not known with certainty at the time of the announcement of the ban how long the national scheme arrangements would take to establish, nor how the rollout would be handled. Audit considers that it would have been difficult for the ACT to plan for different timeframes and scenarios in terms of industry capacity to provide the recycling service and the level of resident response to the ban.
- 4.58 However, Audit did not find sufficient evidence that comprehensive planning had taken place, given the scale of the resulting activity over the next two years. The level of uncertainty inherent in introducing the bans was not made clear, nor was the Territory and Municipal Services Directorate's exposure to financial risk prior to seeking Ministerial approval.

Recommendation 8 (Chapter 4)

Planning, risk and outcomes

The Territory and Municipal Services Directorate (ACT NOWaste) should ensure it undertakes adequate planning, identifies risks and possible and probable outcomes, before seeking the Government's commitment to new e-waste service developments whether or not there is budgetary provision for these developments.

THE COMPUTER AND TELEVISION E-WASTE PROCUREMENT PROCESS

Scope of the audit of computer and television e-waste procurement processes

- 4.59 This section covers Audit's review of how the Territory and Municipal Services Directorate (ACT NOWaste) approached the task of providing the e-waste collection and recycling services, firstly for computers and then for televisions. Audit has not considered in detail the computer recycling arrangements before 2008, but has focused on two procurement processes between 2008 and 2011 that resulted in three contracts, related to the provision of dedicated computer and television e-waste services. Audit considered whether:
- procurement activity adequately respected procurement policy;
 - contracts were tendered and let effectively; and
 - contracts were subsequently managed effectively.

Taking account of procurement rules

- 4.60 Audit finds that ACT NOWaste complied with most aspects of procurement guidance. These included the consistent use of ACT Procurement Solutions (the Government's in-house procurement team), procurement planning, standing offer arrangements, evaluation and panel arrangements, and using price and quality considerations to arrive at value for money outcomes.

- 4.61 In addition, selection criteria for the tenders were specified in the initial discussions between the Territory and Municipal Services Directorate (ACT NOWaste) staff and ACT Procurement Solutions. Non-scored and scored criteria were established, as was a system using scoring bands and descriptors, and weighting, and price and quality factors. Audit's view is that this was applied fairly and transparently. The procurement route was discussed and agreed by officers, including that these procurements would not need to be considered by the Government Procurement Board due to their scale.
- 4.62 There are however some shortcomings where interpretation and application of procurement policy was weaker. Audit identified:
- Policies balancing social, economic and environmental factors (PC02, 2007-08, 2010-11) The evidence indicates that this aspect either was inconsistently understood, was poorly reflected in guidance and evaluations, or was not adequately considered. The narrative in plans, briefs, and evaluations was not handled consistently.
 - Australian free trade agreements AUSFTA (PC03) This allows for smaller procurements (less than \$675 000) to take account of selection criteria that favour local companies, if desirable. The issue of whether local companies could or should be prioritised was inadequately addressed.
 - Quotation and tender thresholds (PC23) The choice of different tendering routes was poorly informed due to very inaccurate estimates of contract values and this led to delays.
 - Contract variations (2007-04) Audit's view is that not all foreseeable options were explored and factored in at the initial proposal stage in either of the two tendering processes. Also a contract variation took place subsequently that was inappropriate as it fundamentally changed the core activity of the contract, and was accompanied by a tenfold increase in the scale of the contract.
 - Pretender industry consultation policy (2007/13) The reasons for having industry consultation prior to the first tendering exercise were not documented. Given that the contract was estimated as being small in scale at the time and that the consultation delayed finalising the contract by four months, the reasons for this consultation should have been documented. The value of this consultation is questionable.
- 4.63 Some of above shortcomings would be reduced if there had been a clearer statement of the objectives and measures of success of each ban. While there are some shortcomings in the procurement process, their significance is difficult to judge in the absence of a clearer sense of what exactly was trying to be achieved other than the better management of computer and television e-waste.

Letting contracts effectively

- 4.64 There was significant delay in both tendering exercises, leading to the issuing of three contracts. The predicted timeframe, that is, the timeframe set out in the agreed procurement plans was around 2.5 months from publication of the opportunity through to execution of the contract. In reality the three contracts took 15 months, 9 months, and 12 months respectively from initial concept through to execution.
- 4.65 The delay in progressing each procurement represents a small opportunity cost to the Government. This is because in each case a more expensive provision remained in place longer than was planned.
- 4.66 Audit estimates that this represents an additional cost to the Territory and Municipal Services Directorate budgets of \$15 000 a year (up to 12 per cent of total cost could have been avoided with faster procurement) for the delay in computer recycling tendering, and \$10 000 a year in the case of the television recycling tendering. This means contract costs for the establishment, or continuance, of the two computer and television e-waste recycling service contracts were \$25 000 higher due to delays beyond the anticipated ten week period planned for undertaking the tendering process.
- 4.67 ACT NOWaste seriously underestimated the level of demand for a 'user pays' television recycling service, particularly once the National Stewardship Scheme was delayed, and the complexity of introducing new services given the resources available to it. This led to delays in contractors being able to quickly provide more cost efficient services to either hand-on to fee paying service users, or to increase the level of cost recovery achieved by the Territory and Municipal Services Directorate. There was also additional cost to the Territory and Municipal Services Directorate associated with the long period of managing existing contracts while preparing for new arrangements, as well as the need to take short-term reactive measures ahead of stable contracts being put in place.
- 4.68 It is acknowledged that ways to reduce procurement delays will be dependent on ACT Procurement Solutions' support as well as the actions of ACT NOWaste.

CONTRACT MANAGEMENT

Monitoring headline indicators

- 4.69 The addition of television recycling was incorporated into the first contract within two months of its execution. By May 2010 significant volumes of televisions were arriving at the resource management centres. The contractor was aware of this by June but it took the Territory and Municipal Services Directorate (ACT NOWaste) a total of four months to respond to the impact of the change in the nature of computer and television e-waste being handled by the contractor. Closer monitoring and regular dialogue between the Territory and Municipal Services Directorate (ACT NOWaste) and the contractor would

have raised concerns and the potential to commence a change in arrangements earlier. ACT NOWaste have advised that the delay was impacted due to other pressing contractual issue and available resources with ACT NOWaste, along with the (then) value of the contract.

- 4.70 Even after the contract variation was agreed (August 2010), poor contract cost monitoring meant the early warning signs were not detected as spend on this contract escalated. By November, (seven months after the contract began) it was already overspent in relation to its \$200 000 limit. Overspending continued including for two months after the contract expiry in February 2011. This reflects poor oversight of contracts at that time.

Ongoing monitoring of delivery

- 4.71 Audit's review of the three contracts finds that these contain sufficient clauses and conditions to enable an appropriate level of control over service cost, quality, quantity and timeliness. There were many checks and balances in place, including 'as and when necessary' clauses. The extent to which these have been pursued by the Territory and Municipal Services Directorate (ACT NOWaste) is generally appropriate and risk based. There are, however, some areas where the Territory and Municipal Services Directorate (ACT NOWaste) should take a more prudent approach. These are:
- when officers undertake 'fit for purpose' visits to contractors' sites, these should be formally recorded, so subsequent visits can follow up issues or build on this knowledge;
 - certain provisions, such as checking contractors' public liability and professional indemnity insurances are in place, should be followed up on the annual extensions of the contract;
 - sufficient preparation should be undertaken ahead of contract anniversary or expiry dates so that a rounded performance review can be undertaken before granting extensions; and
 - a stronger focus on key performance indicators should be maintained to provide early warning to all levels of contract management.

Recommendation 9 (Chapter 4)

Procurement processes and monitoring of contracts

The Territory and Municipal Services Directorate (ACT NOWaste) should improve its procurement processes and monitoring of its contracts by:

- a. procurement planning that includes realistic timeframes, explicit consideration of the level of expertise required and available, and the impact on existing service costs due to potential delays; and
- b. routinely considering existing contract timescales, giving sufficient lead-in time to extending or re-letting contracts; and checking compliance with contract conditions.

APPENDIX A: AUDIT CRITERIA, APPROACH AND METHOD

AUDIT OBJECTIVE

The objective of the audit was to provide an independent opinion to the Legislative Assembly on whether:

- the ACT Recycling Estates at Parkwood Road and Hume are effectively planned, regulated and managed to optimise recycling activities to meet the ACT sustainability agenda; and
- the management of e-waste is consistent with government legislative and policy requirements.

AUDIT CRITERIA

Assessment of the effectiveness of the Territory and Municipal Services Directorate's activities in the management of the recycling estates and e-waste were based on the following key considerations and criteria:

- Establishment of the recycling estates is well defined and planned
 - Policy and strategy regarding establishment of the recycling estates is clearly defined in achieving the ACT sustainability agenda.
 - Roles and responsibilities of various parties in the management of the recycling estates are well defined and understood.
- The recycling estates are effectively managed.
 - Management of the recycling estates is consistent with the policy and strategy.
 - Policy and procedures in the management of tenants are sound.
 - Risks to the management of tenancy agreements have been identified and risk treatments identified.
 - Contracts, if relevant, are sound and monitored.
 - Governance and accountability arrangements, associated mechanisms and procedures are in place to coordinate the inter-agencies' activities in the management of the recycling estates.
- The regulatory activities are effective to minimise environmental and public health risks.
 - Coordination between Directorates/agencies with respect to regulatory activities is effective and timely.
 - Preventive measures are undertaken to safeguard the community from any significant risks.
- E- waste is managed according to Government policies.

- Procedures are in accordance with government policies.
- Procurement guidelines incorporate government policies in determining value for money.
- Criteria for the selection of a preferred contractor in tender documents are complete and in accordance with procurement guidelines.
- Contracts that are let are assessed in accordance with tender requirements and government policies.
- Contracts are managed to ensure that contract provisions are implemented.

AUDIT APPROACH AND METHOD

The performance audit was conducted under the authority of the *Auditor-General Act 1996*, and in accordance with the principles, procedures, and guidance contained in Australian Auditing Standards relevant to performance auditing. These standards prescribe the minimum standards of professional audit work expected of performance auditors. Of particular relevance is the professional standard on assurance engagements - *ASAE 3500 Performance Engagements*.

Evidence was collected by:

- conducting a literature review of relevant ACT waste minimisation legislation and the recent ACT State of the Environment Report published by the Office of the Commissioner for Sustainability and the Environment²⁴;
- conducting a literature review of work undertaken on the waste management by other jurisdictions including other audit offices to identify better practices;
- conducting interviews and discussions with management and key staff who have responsibility for implementing the Territory and Municipal Services' strategies and activities for managing the recycling estates and e-waste;
- examining relevant information and documentation, including policies, procedural guidance, records (including tenants' files) and reports in relation to tenancy management of the recycling estates and e-waste disposal and recycling contracts;
- conducting interviews and discussions with management and key personnel of the Economic Development Directorate (Sustainable Land Strategy), the Environment and Sustainable Development Directorate (Policy Unit and the Environment Protection Authority) and the Justice and Community Safety Directorate (ACT Fire and Rescue) and examining relevant records maintained by these Directorates;

²⁴ Office of Commissioner for Sustainability and the Environment, *ACT State of Environment Report 2011*, April 2012. Refer <http://www.environmentcommissioner.act.gov.au/>

- conducting site visits to Parkwood Road and Hume Recycling Estates;
- consulting other key stakeholders (such as the Office of the Commissioner for Sustainability and the Environment); and
- briefings, interviews, and correspondence with relevant directorate / agency staff.

APPENDIX B: ELIGIBILITY CRITERIA FOR RECYCLERS

The following eligibility criteria are outlined in the Protocol agreed between ACT NOWaste and ACT Property Group in December 2005 (pages 4-5 and Attachment A).

ACT NOWaste assesses whether an application is a:

- Class 'A' Recycler – who targets priority or problematic waste and is able to meet one of weight or volumetric targets for diversion from landfill,
- Class 'B' Recycler – who targets priority or problematic wastes for diversion from landfill, or
- Not a recycler, except it can demonstrate other innovative proposals, not covered in the waste stream classification, may be considered as Class 'A' or Class 'B' Recycler on application.

Table B.1: Diversion of waste stream

Waste stream	Annual weight diversion target (tonnes)	Annual volume diversion target (cubic metres)
Mixed commercial and business waste	2 000	4 000
Mixed construction and demolition waste	7 500	10 000
Organics and food / kitchen waste	1 000	1 000
Mixed skip waste	2 500	3 500
Mixed trash pack waste	2 500	4 000 uncompacted
Wood and timber	2 500	4 000
Other problematic waste	500	To be negotiated

Source: The Territory and Municipal Services Directorate Protocol (December 2005, pages 4-5)

Definitions of Priority Wastes and Problematic Wastes

Priority waste:

- Mixed commercial and business waste, e.g. office wastes, packaging and production waste;
- Mixed construction and demolition waste, e.g. concrete. Bricks, gyprock and timber;
- Organics and food / kitchen waste, e.g. from green grocers and food outlets;
- Mixed skip waste, e.g. home renovation waste, garden waste and soils;

- Mixed trash pack waste, e.g. garden waste, timber and soils;
- Wood and timber, e.g. from home renovations, builders and fences;

Problematic waste:

- Non-rigid plastics expanded polystyrene and plastic films;
- Computers;
- Other electronic and electric goods;
- Tyres;
- Mattresses;
- Batteries;
- Cooking oil; and
- Paint.

APPENDIX C: PARKWOOD ROAD RECYCLING ESTATE WIND DIRECTION AND RISKS

Figure C.1: Estimated wind direction from Parkwood Road Recycling Estate to south-east

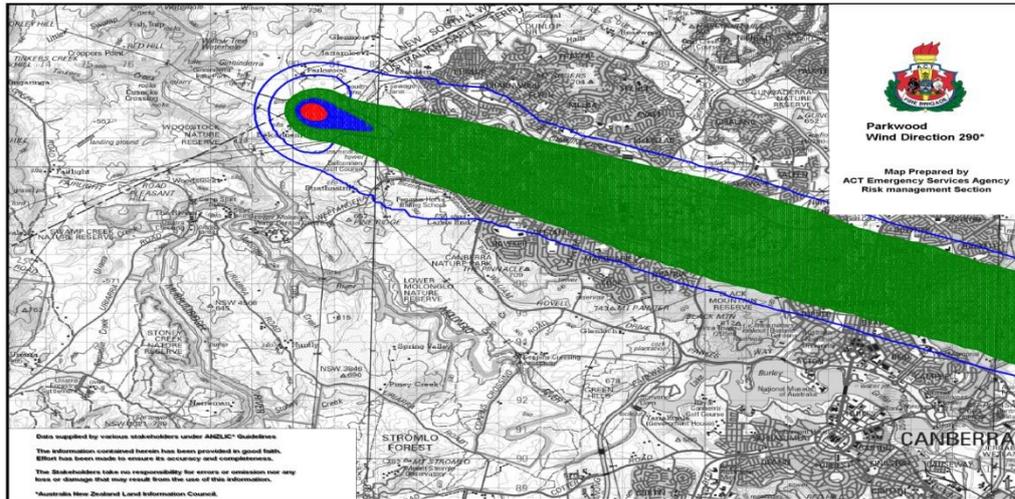
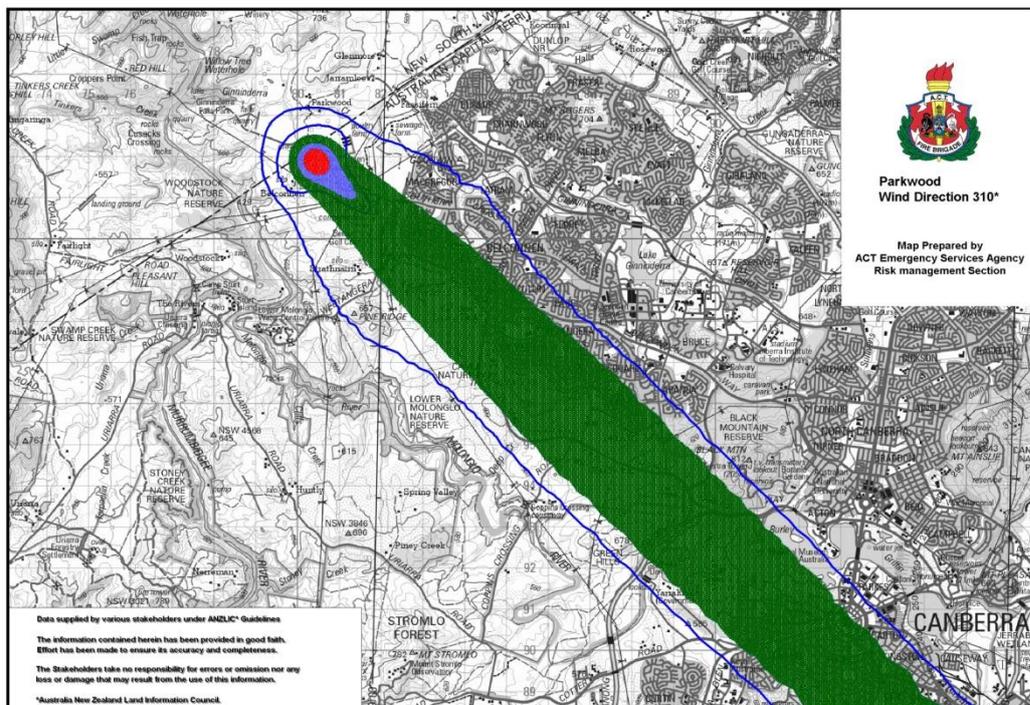


Figure C.2: Estimated wind direction from Parkwood Road Recycling Estate to south-east and to central Canberra



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