

16 November 2017

Pamela Morales
Planning Officer
Department of Planning & Environment
GPO Box 39
Sydney NSW 2001

Dear Pamela

Section 75W modification request: Wattle Ridge Layer Complex, West Wyalong

Thank you for your email of 4 September 2017 and our earlier discussion. Please find attached an 'Application to modify a development consent' in relation to DA-116-5-2002-i.

1. Reason for the modification

The independent environmental compliance audit completed in 2016 identified inconsistencies between the Development Approval (DA) and the Environment Protection Licence 11878 (EPL). This was because the EPL had been revised since the original approval in 2002 whereas the Development Approval had not. These related to:

Air quality monitoring

The DA requires air quality monitoring at Point 2 at the layer sheds. An air emissions monitoring program methodology was developed in June 2003 by Mirrabooka Consulting and approved in September 2003. Subsequent monitoring demonstrated that air emissions were consistently below the levels set out in the Environmental Impact Statement. As a result, Pace Farm applied to remove the air monitoring conditions for Point 2 in the EPL. This was agreed by the (then) Department of Conservation on 27 March 2006 by notice 1058316. Since then, no further monitoring has occurred at this point.

The DA includes a note that discharge and monitoring points may be varied by the EPA under the EPL. The intent of this note appears to be to recognise that monitoring requirements may be refined during operation of the facility. However, this note is not sufficient to change the effect of the condition and a formal modification is required. As the condition had not been modified at the time of the audit, it technically continued to apply even though there was agreement with government that it was redundant. Consequently, the audit assessed the failure to comply with the condition as an administrative noncompliance.

Soil and water quality monitoring

It appears that Point 3 (clean water discharge), Point 4 (sludge discharge) and Point 5 (soil in utilisation area) have been confused in the consent conditions.

There is an inconsistency between the DA and EPL regarding frequency of monitoring at Point 3 (discharge pipe to effluent utilisation area). The EPL requires annual monitoring while the DA requires twice annual monitoring. In addition, the EPL requires monitoring at the sludge evaporation trenches (EPA Monitoring Point 4) but this is not required under the DA. This additional monitoring point creates confusion as DA Monitoring Point 4 (soil monitoring points) is EPA Monitoring Point 5.

Given these inconsistencies and the need to update the DA, the independent environmental compliance audit recommended Pace Farm:

Write to [Department of Planning & Environment] to request a variation to the conditions of consent to ensure monitoring requirements are consistent with the EP Licence. Specifically, this should remove the requirements for monitoring at Point 2 and modify the frequency of monitoring at Point 3 so it accords with the EP Licence. DP&E should consider whether it remains necessary to duplicate the monitoring conditions in the conditions of consent, given these are addressed in the EP Licence.

Recent policy developments within DP&E suggest that the preferable approach is to remove the detailed monitoring conditions from the Development Approval that are duplicated in the Environmental Protection Licence. Having identical conditions across two regulatory approvals is not contemporary good practice¹ which seeks to minimise duplication. DP&E notes² 'this arrangement is problematic for two reasons:

- The conditions of the development consent are fixed in time. This means it is not possible to take into account emerging information, a change in the risks being regulated or to reflect a change in standards or best practice. By contrast, the conditions of the ... EPLs are not required to be substantially consistent with the conditions of consent after either the first renewal of the lease or the first five-yearly review of the EPL.
- Over time it can become confusing for operators and the community as to which regulator is managing which risks and impacts'.

The proposed changes to the conditions seek to remove the duplication in detailed monitoring requirements. They take the approach used by DP&E with current approvals such as the Euroley poultry farm in providing high level cross-referencing to the EPL.

2. Environmental impacts of the modification

The proposed changes do not lessen the level of environmental protection at the site as the monitoring requirements in the EPL will continue to apply. The revised conditions will still allow DP&E to enforce any non-compliance with the monitoring requirements of the EPL, should that be necessary.

Condition 5.35 in the DA (also replicated as condition 04.1 in the EPL) requires that: 'The quantity of effluent/solids applied to the utilisation area for the development must not exceed the capacity of the area to effectively utilise the effluent/solids'. Soil monitoring results for the last ten years are shown in the graph below. While these are variable, they do not indicate a sustained build-up of nutrients in the soil that would compromise the capacity of the area to utilise the effluent or result in offsite impacts. The variability in part reflects some problems that occurred with the previous waste treatment plant where the membrane system was found to be unsuitable. This has been replaced with an aeration system which has proven to be far more reliable. Consequently, there is a low risk of non-compliance with the DA and EPL conditions.

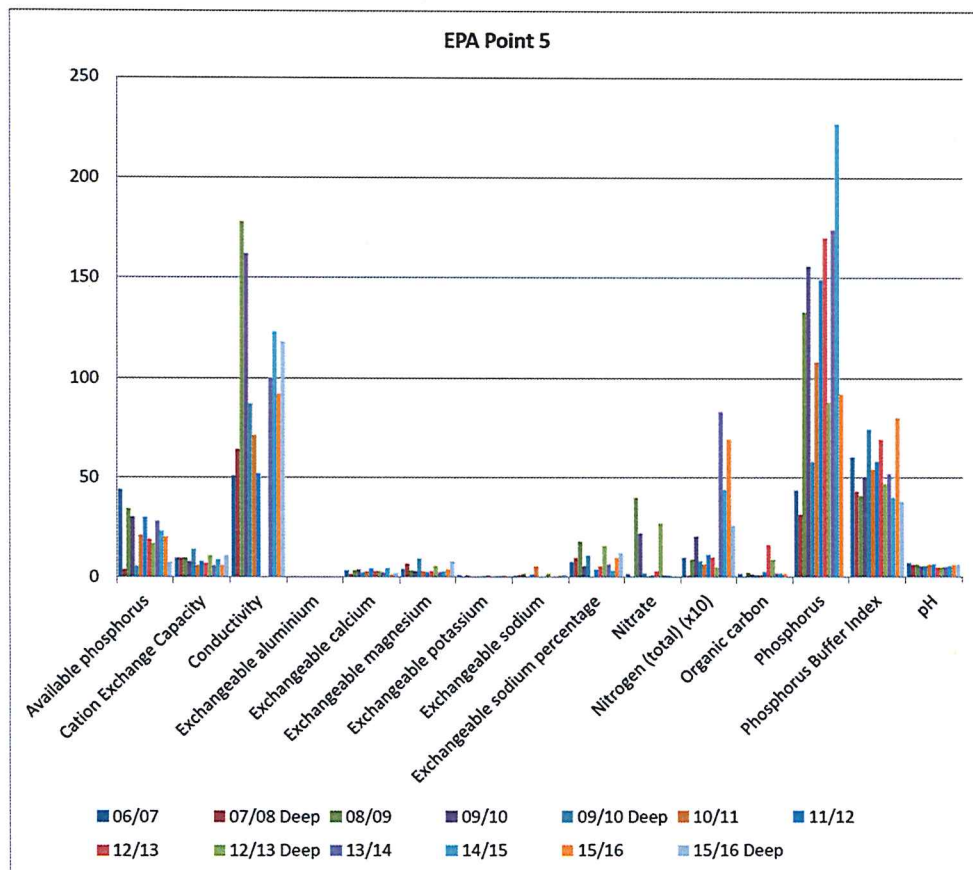
¹ See, for example, recommendation 8.1 in Productivity Commission 2013, Major Project Development Assessment Processes, Research Report

² Planning Legislation Updates: Summary of proposals January 2017
<http://www.planning.nsw.gov.au/~media/Files/DPE/Other/summary-of-proposals-2017-01-09.ashx>

The 2016 independent audit confirmed that Pace Farm is appropriately managing its environmental risks concluding that: 'Environmental performance at the site is excellent with no significant areas for improvement identified'. The audit did not identify any non-compliances but did note several administrative matters that needed attention. This letter addresses one of those and Pace Farm has been addressing the others through a revised environmental management plan.

In summary, the proposed modifications are for administrative efficiency and will have no environmental impact. All current environmental monitoring requirements will continue to apply through the EPL and be enforceable through the modified DA.

Figure 2-1: Soil monitoring results



3. Proposed changes

The proposed changes to conditions in Schedule 2 of the approval and justification for each are detailed in the table below.

Proposed change	Justification
In Definitions, insert the following: EPL - Environment Protection Licence under the <i>Protection of the Environment Operations Act 1997</i>	Allows reference to the EPL in the amended conditions.
Amend condition 4.2(g) to read: 'Incorporate an environmental monitoring program; and'.	This removes the cross-reference to condition 6 which focuses on the detailed monitoring requirements that are duplicated in the EPL but ensures that the Operational EMP still includes an environmental monitoring program.
Delete condition 5.8	Concentration limits are specified in the EPL in conditions L2.4 and L2.5.
Amend condition 5.35 to read: <i>'The applicant shall undertake monitoring as specified in the EPL to ensure the quantity of effluent/solids applied to the utilisation area for the development does not exceed the capacity of the area to effectively utilise the effluent/solids'.</i>	This makes the condition consistent with the other conditions that cross-reference the EPL., and with the approach adopted in the Euroley approval.
Add new condition 5.42 under the heading 'Air quality': 'The Applicant shall install and operate equipment in line with best practice to ensure that the development complies with all load limits, air quality criteria and air quality monitoring requirements as specified in the EPL for the site'.	Adopts same wording as the Euroley approval. With deletion of specific air quality monitoring requirements, this allows DP&E to ensure that Pace Farm is taking the necessary actions to comply with the air quality monitoring requirements in the EPL.
Delete condition 6.1	The environmental monitoring program is specified in the EPL under 5 Monitoring and Recording Conditions.
Delete the heading 'Location of monitoring/discharge points and areas' that occurs above condition 6.2.	This heading will be redundant with the proposed changes.

Delete existing condition 6.2 and replace with the following: 'The Applicant shall undertake monitoring of discharges to water and land from the development in accordance with any requirements as specified in the EPL for the site'.	This condition is duplicated in the EPL as condition P1.1. With deletion of specific monitoring requirements, the revised condition allows DP&E to ensure that Pace Farm is taking the necessary actions to comply with the water and land monitoring requirements in the EPL.
Delete conditions 6.3, 6.4, 6.5 and 6.6.	These detailed monitoring conditions are duplicated in the EPL as conditions: P1.3, M2.2-2.3, M6.1 and M3.2 respectively.
Delete conditions 6.7 and 6.8.	The monitoring conditions have been completed and are now redundant.
In condition 7.1: a. delete ' ; and ' from the end of (e) and replace with a full stop b. delete (f).	As the conditions, will no longer contain detailed monitoring requirements, this reporting is not necessary. Reporting on the environmental monitoring program will continue to be provided to the EPA under the EPL.

Please contact me on (02) 9830 9805 or nnoall@pacefarm.com if you have any questions.

Yours sincerely,



Natalie Noall

Executive Assistant to CEO/GM

