



Office of
Environment
& Heritage

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05_0098 MOD 6

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GPO Box 39
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Attention: Denise Gill

Dear Ms McNicol

OEH comments on Modification Application – Spring Farm Advanced Resource Recovery Technology Facility – Richardson Road Spring Farm (05_0098 MOD 6)

Thank you for your letter of 7 March 2019 received by the Office of Environment and Heritage (OEH) requesting comments on a modification application for the Spring Farm Advanced Resource Recovery Technology Facility (ARRTF) (formerly known as Jack's Gully Waste Alternative Waste Technology Facility).

OEH has reviewed the modification proposal and provides the following comments regarding biodiversity.

Biodiversity

As DPE is aware, Section 7.17 of the *Biodiversity Conservation Act, 2016* (BC Act) stipulates:

- 2 (b) *a biodiversity development assessment report is required to be submitted and taken into consideration if this Division applies to the original development as proposed to be modified even if a biodiversity development assessment report was submitted in connection with the application for the original development or even if this Division did not apply to the original development (for example, because the modification results in the development exceeding the biodiversity offsets scheme threshold),*
- (c) *however, a further biodiversity development assessment report is not required to be submitted if the authority or person determining the application for modification (or determining the environmental assessment requirements for the application) is satisfied that the modification will not increase the impact on biodiversity values,*
- (3) *The regulations may make further provision with respect to any such applications for modification (including exemptions to the application of this section).*

and Section 30A of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 stipulates:

- (1) *The provisions of Division 4 of Part 7 of the new Act apply to applications for the modification of a planning approval:*

- (a) where the planning approval was granted before the commencement of the new Act, and
 - (b) where the planning approval was granted on or after the commencement of the new Act, as a result of the determination of a pending or interim planning application.
- (2) For that purpose:
- (a) the provisions apply in relation to the original development as proposed to be modified, and
 - (b) a biodiversity development assessment report is required to be submitted and taken into consideration if Division 4 of Part 7 of the new Act would have applied to the original development (as proposed to be modified) if planning approval had been granted after the commencement of the new Act, and
 - (c) however a biodiversity development assessment report is not required to be submitted if the authority or person determining the application for modification (or determining the environmental assessment requirements for the application) is satisfied that the modification will not increase the impact on biodiversity values, and
 - (d) the biodiversity development assessment report submitted with the application for modification:
 - (i) is to take into account any measures already taken to avoid, minimise or offset the impact on biodiversity values in connection with the planning approval before the proposed modification, and
 - (ii) is to take into account only the additional impact on biodiversity values resulting from the modification of the development and not those associated with the development as approved, and
 - (e) if an application for the original development as proposed to be modified would have been required to be refused because of serious and irreversible impacts on biodiversity values, the application for modification is required to be refused.

OEH notes that the applicant has not addressed the BC Act in its application for the proposed modification. If the application is not subject to section 7.17(3), OEH recommends that the applicant be requested to provide an assessment of biodiversity values (sections 1.4 and 6.1 of the *Biodiversity Conservation Regulation 2017* and 1.5 and 6.3 of the BC Act) and the impact of the proposal on the biodiversity values. As the Spring Farm Advanced Resource Recovery Park in which the ARRTF is located is adjacent to the William Howe Regional Park the assessment should assess the potential impact of the MOD 6 proposal on the Regional Park and the flora and fauna that use the regional park.

The provision of this additional information will assist DPE in determining the appropriate planning pathway for biodiversity assessment required for the modification application.

As stipulated in section 7.17 of the BC Act, if the determining authority is not satisfied that the modification will not increase the impact on biodiversity values, then the applicant will need to submit a biodiversity development assessment report.

Should you have any queries regarding this matter, please contact Janne Grose on 8837 6017 or Janne.Grose@environment.nsw.gov.au

Yours sincerely



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