



DOC22/287887-4

21 June 2022

Department of Planning and Environment

Attention: Sally Munk

via Major Projects Portal

Dear Ms Munk

Eastern Creek Energy from Waste Facility - Amended State Significant Development Application (SSD SSD-6236)

I am writing in response to your request received by the Environment Protection Authority (EPA) on 11 April 2022 seeking comments on a proposed amendment to the above State Significant Development (SSD) application for the Eastern Creek Energy from Waste Facility.

The EPA understands that the proponent (The Next Generation (NSW) Pty Ltd) lodged an appeal in the NSW Land and Environment Court in 2019 regarding the Independent Planning Commission's (IPC) refusal of the development application for this Project. As part of this appeal process the Court has allowed the proponent to amend its SSD application to remove floc waste as a fuel feedstock to the proposed facility. This amended application is currently being exhibited by Department of Planning and Environment (DPE) on behalf of the Court.

The EPA objects to this amended proposal because the proponent has not demonstrated that it can comply with the current NSW energy from waste policy and legislative framework (EfW framework) and contemporary air quality goals, which have changed significantly since the IPC determination of the Project in 2018.

The EPA's primary reason for objection to the proposal is that it does not comply with the NSW Government's position regarding future energy from waste development. The [NSW Energy from Waste Infrastructure Plan](#) (EPA 2021) restricts energy from waste facilities to only four priority infrastructure areas in NSW. These areas are the West Lithgow Precinct, Parkes Special Activation Precinct, Richmond Valley Regional Jobs Precinct and Southern Goulburn Mulwaree Precinct, unless particular exceptions apply. Eastern Creek is not identified as one of the priority infrastructure areas. The EPA is currently finalising regulatory amendments to give legal effect to the *NSW Energy from Waste Infrastructure Plan*, which were the subject of public consultation from the 1 February until the 20 March 2022.

The EPA also objects to the proposal as the proponent has not demonstrated that it can comply with the current NSW EfW framework. The following elements have been updated since 2018:

- an update to the [NSW Energy from Waste Policy Statement](#) (EPA June 2021) to incorporate recommendations from the Office of Chief Scientist and Engineer (OCSE) to include air emission standards for energy recovery facilities that are consistent with best practice;
- the [NSW Waste and Sustainable Materials Strategy 2041](#) (DPIE 2021) which outlines the policy reforms and strategic actions needed to help transition to a circular economy. In

particular, it highlights that energy from waste is only supported for managing residual waste as an alternative to landfilling and where risks can be managed;

- the [Guide to the NSW Energy from Waste framework](#) (EPA 2021) which was developed in response to the OCSE recommendations and provides general information on the current regulatory and policy frameworks for energy from waste projects to help guide stakeholders including the community, proponents and planning authorities in relation to the assessment process; and
- variation to the National Environment Protection (Ambient Air Quality) Measure (AAQ NEPM) standards for sulfur dioxide (SO₂), nitrogen dioxide (NO₂), and ozone (O₃). In April 2021, the National Environment Protection Council agreed to vary the AAQ NEPM to include tightening of the numerical value of the standards for SO₂, NO₂ and O₃ and changes to the time-period used to assess some of the standards, including O₃, to reflect contemporary health evidence.

If the Court requires the proponent to provide further information, the EPA recommends that the proponent is required to prepare any additional assessments in line with the contemporary EfW framework. This must include (but not necessarily be limited to):

- Demonstration that the proposal is consistent with the *NSW Energy from Waste Infrastructure Plan* and *Guide to the NSW Energy from Waste framework*.
- A thorough assessment against all technical criteria specified in the current *NSW Energy from Waste Policy Statement*. This is needed because the original application was assessed against the superseded 2015 version of the policy statement. While limited additional information has been provided with the amended application, it has not adequately addressed all the technical criteria specified in the current *Energy from Waste Policy Statement*, this includes but not necessarily limited to justification that the waste fuel will meet resource recovery criteria for energy recovery facilities including adequate supply.
- Consideration of the variation to the AAQ NEPM. Specifically, the results of the air quality impact assessment should be considered against the revised NO₂, SO₂ and O₃ AAQ NEPM standards. This will ensure the project is designed to meet assessment criteria that reflect the most recent evidence regarding the health effects of these pollutants.

Already this proposal has generated significant community interest and objection during the exhibition of the previous amended EIS. As highlighted in the current *NSW Energy from Waste Policy Statement* it is essential that proponents provide effective information and public consultation about energy from waste proposals. In this regard, the proponent should engage with the community on the amended proposal and where necessary adjust the proposal based on the findings from such engagement.

Should you require any further information, please contact Mitchell Bennett via email Mitchell.Bennett@epa.nsw.gov.au or phone (02) 49 086 806.

Yours sincerely



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