

JOINT REGIONAL PLANNING PANEL

(Western Region)

JRPP No	JRPP Reference Number: 2015WES017DA
DA Number	2015/0426
Local Government Area	Bathurst Regional
Proposed Development	Resource Recovery Facility – Receiving, processing and composting of organic liquid and solid wastes. Using the existing building and facilities, construction of catchment ponds and construction of concrete walls for compost windows
Street Address	296 Ophir Road, Stewards Mount
Applicant/Owner	Montgomery Planning Solutions (applicant) Mr P H Stewart (owner)
Number of Submissions	80
Recommendation	Refusal
Report by	Loretta McLean, Development Control Planner

PLANNING CONTEXT

NSW LEGISLATION
Environmental Planning and Assessment Act 1979 (as amended) Protection of the Environment Operations Act 1997 Roads Act 1993
REGULATIONS
Environmental Planning and Assessment Regulation 2000

RECOMMENDATION AND ASSESSMENT REPORT

Development Application Information

Application No:	2015/426
Applicant:	Montgomery Planning Solutions
Property:	Lot 1 & 2 DP 1170456, 296 Ophir Road, Stewarts Mount
Proposal:	Resource Recovery Facility – Receiving, processing and composting of organic liquid and solid wastes. Using the existing building and facilities, construction of catchment ponds and construction of concrete walls for compost windrows

Purpose of Report

The purpose of this report is to seek determination from the Western Joint Regional Planning Panel of the subject Development Application for a Resource Recovery Facility at 296 Ophir Road, Stewarts Mount.

Recommendation

That the Western Region Joint Regional Planning Panel refuse consent to Development Application No 2015/0426 for a

RESOURCE RECOVERY FACILITY

Pursuant to section 80(1)(b) of the Environmental planning and Assessment Act 1979, as amended for the following reasons:

1. The applicant has not provided information requested under Clause 67 of the Environmental Planning and Assessment Regulations 2000; and
2. The approval bodies (Environment Protection Authority and Roads and Maritime Services) have advised that they will not grant an approval for the development and the Application must be refused pursuant to Section 91A(4) of the Environmental Planning and Assessment Act 1979.

Executive Summary

Development Application 2015/0426 (2015WES017DA) for a Resource Recovery Facility was lodged with Council on the 2 December 2015. The subject site is Lot 1 and 2, DP 1170456, 296 Ophir Road, Stewarts Mount.

The property address is Ophir Road, but the proposed development will be utilising an existing access to the Mitchell Highway.

The subject site has a combined area of 929.97Ha.

The site has historically been used as an extractive industry. The site currently contains infrastructure consistent with its long term use including an extraction pit, sheds and offices. The extractive industry is not currently active and the consent to operate as a quarry was voluntarily surrendered in 2015.

The proposal seeks consent for a resource recovery facility that would occupy the quarry floor and existing buildings, infrastructure and surrounding area. The remainder of the property will continue to be used for sheep grazing and other agricultural pursuits.

The type and volume of resources proposed for recovery under the proposed development are as follows:

Waste Type	Volume (Tonnes)
Garden organics and food and garden organics	40,000
Food organics	10,000
Biosolids	20,000
Animal Wastes	5,000
Forestry Residues and Gyprock	15,000
Drill mud, fly ash, grease trap, oily water, water based inks and dyes, clean timber	9,000
Total Annual Volume	99,000

The final product from the site is organic soil conditioning products for use in agricultural land improvement and as a base for other growing media.

The proposed development is Integrated Development under Section 91 of the Environmental Planning and Assessment Act 1979. The proposed development requires approval under the protection of the Environment Operations Act 1997 which is regulated by the Environmental Protection Authority (EPA).

The principle access to the site is from the Roads and Maritime Services (RMS) controlled Mitchell Highway. The RMS has identified that the existing access does not achieve safe intersection sight distance in each direction and warrants further investigation and upgrading.

Council, the RMS and the EPA requested additional information from the Applicant on 11 February 2016. To date that additional information has not been lodged with Council.

Due to the absence of this additional information and the position of the respective approval bodies (EPA and RMS) that they will not grant an approval without it the consent authority must refuse consent to the application (s91A(4) of the EP&A Act).

Report

Summary of development

The proposal involves the use of a former hard rock quarry for the composting of various forms of waste in order to generate organic soil conditioning products for beneficial reuse in the agricultural and other markets.

The proposal involves the utilisation of the former quarry floor which has an area of approximately 12 hectares and is cut in 15 metres below the surrounding natural ground.

Construction works include:

- Drainage and retention ponds
- Concrete walled windrows
- Regrading of hard stand areas
- Upgrading existing building, weighbridge and wheel wash
- Site rehabilitation and improvement works.

The below table describes the type and volume of resources proposed for recovery under the proposed development:

Waste Type	Volume (Tonnes)
Garden organics and food and garden organics	40,000
Food organics	10,000
Biosolids	20,000
Animal Wastes	5,000
Forestry Residues and Gyprock	15,000
Drill mud, fly ash, grease trap, oily water, water based inks and dyes, clean timber	9,000
Total Annual Volume	99,000

Access to the site is proposed via the existing quarry entrance off Mitchell Highway. Traffic generation is estimated to be in the order of an average of 35 heavy vehicles per day.

The development application has been accompanied by an Environmental Impact Statement which is provided at **attachment 1**. The EIS provides an overall summary of the development including the processes involved in the receipt and composting of material.

Statutory Regime

The proposed development is Designated Development pursuant to Schedule 3, Clause 32 *Waste management facilities or works* of the Environmental Planning and Assessment Regulation 2000.

Pursuant to Schedule 4A of the Environmental Planning and Assessment Act 1979 (as amended) the consent authority is the Joint Regional Planning Panel.

The proposed development is also Integrated Development under Section 91 of the Environmental Planning and Assessment Act 1979. The development requires an Environmental Protection Licence under the Protection of the Environment Operations Act 1997 as a resource recovery facility.

The Application also requires referral to the RMS pursuant to Clause 104 Traffic Generating Development of State Environmental Planning Policy (Infrastructure). The RMS has identified the need for further investigation and works to upgrade the current intersection. Approval of those works would be required from the RMS under the Roads Act 1993.

The Development Application has also been referred to a number of Government Authorities under clause 77 of the Environmental Planning and Assessment Regulation 2000 inclusive of Department of Primary Industries Water, NSW Fisheries, NSW Department of Industry Resources and Energy, Roads and Maritime Authority and Office of Environment and Heritage.

The Development Application was publicly exhibited in accordance with the statutory requirements for Designated Development between 14 December 2015 and 25 January 2016. The proposal was notified to property owners adjoining the site and those only separated by a road. During the exhibition period, eighty (80) submissions were received with concerns for the proposed development (**attachment 2** includes all the submissions.)

Additional Information Requested

For the purposes of the Act and Regulations, the EPA and RMS are referred to as an “approval body” given their respective need to provide approvals under the Protection of the Environment Operations Act and the Roads Act. With the absence of these approvals the proposal is unable to proceed.

Under Clause 67(1) of the Environmental Planning and Assessment Regulations 2000 (EP&A Reg 2000) an approval body may request the consent authority to provide it with such information about the proposed development as it considers necessary to its proper consideration of the general terms of approval.

The Environment Protection Authority (EPA) requested additional information for the Development Application on the 20 January 2016 pursuant to its powers under Clause 67(1) of the EP&A Regulation 2000. The EPA required additional information and clarification on issues associated with potential noise, water, waste and odour impacts of the development before the EPA could issue their General Terms of Approval (GTAs) (see **attachment 3**).

The Roads and Maritime Services raised issues with the Traffic Study dated June 2015 in relation to a number of inaccuracies. Concerns were also raised that the existing vehicular access to the proposed development needs to be safe and efficient. The existing intersection treatment does not provide a high level of safety and is not suitable in its current layout to safely accommodate turning movements into and out of the site. To achieve a safe access intersection treatment, at a minimum, a channelized right turn lane and a westbound acceleration lane on the Mitchell Highway is required (see **attachment 4**).

In accordance with Clause 67(3) of the EP&A Regulation 2000, Council requested in writing that the applicant provide it with the additional information requested by the EPA and RMS (and a number of its own issues) on the 11 February 2016. The request for additional information did not provide any specific timetable for providing the information given the complexity of the issues to be resolved.

To date the Applicant has not provided the additional information as requested in February 2016.

In accordance with Clause 67(6)(a) of the EP&A Regulation 2000, if the Applicant has failed to provide the information within a reasonable timeframe then the applicant is taken to have

notified the consent authority that the information will not be provided, and application may be dealt with accordingly.

In accordance with Section 91A(4) of the EP&A Act 1979, if the approval body will not grant an approval that is required for the development to be lawfully carried out, the consent authority must refuse the Development Application.

In this case the EPA and RMS have both advised that they are not prepared to issue requisite approvals based on the information currently available. The subject Development Application must therefore be refused under Section 91A(4) of the EP&A Act 1979. Determination of the Application by refusal does not preclude its use for the identified purposes however acknowledges that the issues outlined need to be addressed for proper consideration to occur.

Summary

The Development Application is Integrated Development pursuant to Section 91(1) of the EP&A Act 1979. The Development Application requires approval under the Protection of the Environment Operations Act (POEO Act) 1997. The EPA administer the POEO Act 1997 and are required to issue the General Terms of Approval under 91(A)(1) of the EP&A Act 1979. In this case the EPA has advised that they are not prepared to issue the required General Terms of Approval.

Likewise the RMS have identified the need for further investigation and upgrading of the existing entrance from the Mitchell Highway. The RMS have advised that it is not in a position to provide its agreement to the works.

In the absence of the agreement of the Approval Bodies the Application must be determined by way of refusal pursuant to Section 91A(4) of the EP&A Act 1979.