



Our ref: DOC21/323344
Senders ref: DA 2021/0011

Rohan Johnston
Snowy Valleys Council
76 Capper St
TUMUT NSW 2720

Via Concurrence & Referral Portal CNR-19677
17 May 2021

Dear Mr Johnston

Subject: DA 2021/0011 – Proposed Gilmore Composting Facility – Snowy Mountains Highway, Gilmore (Lot 1 DP 197308)

The following information about the above development application lodged on the NSW Planning Portal on 26 April 2021 is provided by the Biodiversity and Conservation Division (BCD) of the Department of Planning, Industry and Environment (the Department).

We have reviewed the documents supplied and provide the following comments in **Attachment A**.

Biodiversity

The proposal has the potential to harm threatened species. Council has a duty to consider the impact and its mitigation according to Part 7 of the *Biodiversity Conservation Act 2016* (BC Act) prior to consenting. We consider that the evidence provided by the applicant does not satisfy Council's duty

The application relies on an Environmental Study from 2002. Substantial changes to NSW and Australian Government threatened species legislation have since occurred, including new listings for threatened species and ecological communities.

BCD recommend that Council require the applicant to correctly apply the requirements of the BC Act and re-submit the BMAT report consistent with the User Guide.

Flooding

BCD recommend that Council require the causeway and culverts for the access road to be appropriately designed to minimise flooding impacts internal and external to the project site.

If you have any questions about this advice, please contact Miranda Kerr, Senior Biodiversity Conservation Officer, via rog.southwest@environment.nsw.gov.au or 02 6022 0607.

Yours sincerely

Andrew Fisher
Senior Team Leader Planning
South West Branch
Biodiversity and Conservation Division
Department of Planning, Industry and Environment

ATTACHMENT A Detailed comment on DA 2021/0011 – Proposed Gilmore Composting Facility

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Biodiversity

Guidance about the biodiversity assessment provided by BCD in response to the applicant's request for SEARs has not been followed.

The proposal has potential to harm threatened species or their habitats on the subject land because it involves the clearing of native vegetation.

The *Local Land Services Act 2013* (LLS Act) defines 'Native Vegetation' in section 60B and 'Clearing' in section 60C. When determining whether the proposal involves clearing, Council must consider all actions ancillary to the development including, but not limited to, provision of services and utilities, storm water disposal, Asset Protection Zones, and access. Council should consider any clearing in anticipation of a development application (DA) as if the DA had been lodged.

As the development is permitted with consent, Council has a duty to consider the evidence established by Part 7 of the *Biodiversity Conservation Act 2016* (BC Act) prior to consenting. Council must consider a report generated using the Biodiversity Values Map and Thresholds (BMAT) tool and a Test of Significance that assesses the impact of the ancillary clearing. The Test of Significance must be prepared consistent with the Minister's Guidelines established by section 7.3(2) of the BC Act. The guidelines are available at:

<https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-offsets-scheme/entry-requirements/threatened-species-test-of-significance>.

The BMAT report should be prepared using the online tool and the User Guide available at: <https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap>.

If the evidence exceeds the thresholds, including the Test of Significance, Council must also consider a Biodiversity Development Assessment Report (BDAR) prepared according to Part 6 of the BC Act. Council must be satisfied that any BOS credit obligation has been satisfied before consenting.

Council may not consent to development without being satisfied that either no harm to threatened species will occur, or that any harm is offset under the Biodiversity Offset Scheme.

Sections 60Q(2)(a) and 60S(4)(a) of the LLS Act establish that none of the clearing provisions under Part 5A of the LLS Act apply to a development permitted with consent, regardless that the development is proposed on land otherwise regulated by that part. The effect on this matter is that none of the clearing is authorised by the LLS Act despite the land being zoned RU1.

By not adopting clause 5.9(9) of the standard instrument Local Environmental Plan, Routine Agricultural Management Activities (RAMAs) remain available in some zones of the Tumut and Tumbarumba LEPs. RAMAs are always limited to development that is permitted without consent only and are not available on RU1 land. The effect on this matter is that none of the clearing is authorised as a RAMA.

The term 'regrowth' is not relevant to determining whether a plant is native vegetation for the purposes of the BC Act, other than in the identification of Category 1-exempt land established by section 60H of the LLS Act.

Regarding evidence provided in relation to this matter:

- The BMAT report
 - Section E.10 (page 56) of the Environmental Impact Statement (EIS) incorrectly suggests that the BMAT report demonstrates that the BOS thresholds are not exceeded. The BMAT report demonstrates that the Area Clearing Threshold is 1 hectare (clearing more than 1 hectare will exceed the threshold). The Total Digitised Area represents the extent of the proposed clearing as 2.45 hectares. The clearing area (2.45 hectares) exceeds the BOS threshold area (1 hectare).

- When preparing the BMAT report, the applicant should disregard land that meets the definition of category 1 land established by section 60H of the LLS Act and provide supporting evidence such as aerial images and vegetation assessments.
- As the key to the report explains, the Area clearing trigger is reported as 'unknown' because the online tool is not supported by a map of native vegetation. It is not evidence that the threshold is exceeded or otherwise. The applicant should only digitise the vegetation known to be native.
- The 2002 report provided at Appendix L does not provide current information about the likely presence of threatened species and should not be relied on when preparing the Test of Significance. Substantial changes to state and federal threatened species legislation have occurred since 2002, including new listings for threatened species and ecological communities.
- The Test of Significance provided at Table E4 should cite and be supported by evidence from current data sets, records or assessments.
- The EIS (page 4) refers to the BD Act – we assume this is meant to refer to the BC Act.

The EIS states that the proposal will have no impact on koalas or koala habitat because it meets three criteria, including that no regionally relevant trees of species listed in the Schedule 2 of the Koala SEPP will be cleared.

However, Schedule 2 of the Koala Habitat Protection SEPP 2020 includes two species as koala feed tree species that have BioNet records within 10 km of the proposal: *Eucalyptus camaldulensis* and *Eucalyptus albens*. The impacts on koalas should be reassessed once it has been correctly determined if the BOS thresholds will be exceeded by this proposal.

We recommend that if approved, Council condition the development to require locally native species and provenance be used for all screen planting and revegetation works, including the vegetated swales and bunds.

Flooding

Section E.11.2 of the EIS details the flooding assessment performed for the project site. It identifies a major drainage path that transects the site called Killarney Creek which has been hydraulically modelled using a relatively simple approach. Despite its simplicity, we consider the method to be appropriate to this matter because it is a minor ephemeral stream with a small contributing catchment located in a semi-rural area.

The flood modelling confirms that the leachate dam and composting pad are not impacted by the 1% Annual Exceedance Probability (AEP) design flood. However, the flooding impact of the access road has not been assessed. We consider that surprising because it provides the only link to the existing transfer station, located on the other side of Killarney Creek.

If the proposed access road crossing the creek involves waterway structures such as culverts and/or a causeway, it is likely to be a hydraulic control and subject to blockage from debris during major flood events. That effect has the potential to divert water and cause impacts to adjacent infrastructure and property. As such it is important that the design of this waterway structure is appropriately sized and arranged to avoid impacts within and external to the project site.