



DOC17/314742
DA 344-11-2001 MOD1

Ms Sarah Fabian
Student Planner, Resource Assessments
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Ms Fabian

Wallerawang Quarry Modification 1

I refer to your email dated 25 May 2017 to the Office of Environment and Heritage (OEH) inviting comment on the proposed modification for the Wallerawang Quarry.

We note that the modification application is seeking to address the unauthorised clearing of 2.4 hectares of native vegetation for two stockpile areas outside of the approved footprint of DA 344-11-2001. The SEARs that OEH provided to the proponent dated 20 February 2017 clearly stated that the Framework for Biodiversity Assessment (FBA) should be used to assess the biodiversity values of the habitat adjacent to the unauthorised clearing. The proponent has not provided a Biodiversity Assessment Report (BAR) or a Biodiversity Offset Strategy (BOS) as required by the FBA. Failure to provide the required information in the correct format made our review more difficult and time-consuming. In order to complete our review, we requested, and received, additional information that was fundamental to our assessment of the biodiversity impacts of the project.

Upon provision of the additional data by the proponent we have reviewed the information and provide a summary of recommendations (**Appendix A**) and detailed comments (**Appendix B**).

If you have any questions regarding this matter please contact Renee Shepherd, Conservation Planning Officer, on 02 6883 5355 or renee.shepherd@environment.nsw.gov.au.

Yours sincerely

PETER CHRISTIE
Director North West
Regional Operations Division

26 June 2017

Contact officer: RENEE SHEPHERD
02 6883 5355

Summary of OEH Recommendations

List of acronyms used in this response:

EA	Environmental Assessment
EEC	endangered ecological community
EOI	expression of interest
ESEA	Eastern Stockpile Extension Area
OEH	Office of Environment and Heritage
PCT	plant community type
RTS	Response to Submissions
WSEA	Western Stockpile Extension Area

Recommendations:

1. The proponent should lodge an expression of interest for the required credits on the BioBanking Expression of Interest Register immediately and provide evidence of this in the RTS report.
2. The RTS report should provide a detailed process outlining how the required credits would be secured if the EOI process is unsuccessful.
3. Additional evidence should be provided to justify why it is unlikely that blackthorn occurred in the ESEA. This should include as a minimum surveying within 100 metres of the ESEA boundary for occurrences of blackthorn and reporting the results in the RTS report.
4. The proponent should refer the project to the Australian Government Minister for the Environment and Energy for consideration under the *Environmental Protection and Biodiversity Conservation Act 1999*.

OEH Detailed Comments

Wallerawang Quarry Modification 1

A detailed Biodiversity Offset Strategy should be submitted

Recommendations:

1. The proponent should lodge an expression of interest for the required credits on the BioBanking Expression of Interest Register immediately and provide evidence of this in the Response to Submissions (RTS) report.
2. The RTS report should provide a detailed process outlining how the required credits would be secured if the EOI process is unsuccessful.

OEH acknowledges that Section 4.2.5.2 of the Environmental Assessment (EA) and the additional information provided by the proponent on 19 June 2017 provide three options for a biodiversity offset. However, the proponent has not provided a definitive offset strategy that OEH can assess for its appropriateness to offset the required credits, nor have they indicated the process they intend to follow to secure the required credits.

The proponent states that no market-based ecosystem or species credits were available for purchase at the time of the submission of the EA however the proponent has not demonstrated that they have undertaken all reasonable steps to find like for like offset credits. We recommend that the proponent lodges an expression of interest (EOI) for the required credits on the BioBanking EOI register immediately to allow the proponent to consider the offsetting variation rules once all reasonable steps have been completed.

In the event that no credits are available for purchase at the end of the mandatory six-month all reasonable steps period, the proponent should provide a detailed process in the RTS report outlining how they intend to secure the required credits. This process needs to include sufficient information to allow OEH to assess whether the proposal will fulfil the credit requirement. This should include:

- Evidence of commencing investigations into suitable offset sites as outlined in Section 2, Appendix A of the NSW Biodiversity Offsets Policy for Major Projects.
- Details of the variation rules that would apply, including an indication as to whether the credit requirements could be currently met under these rules.
- An investigation into the estimated cost of meeting the credit requirements by contributing to the Biodiversity Conservation Fund and providing commentary on whether this is a feasible alternative for the proponent. Costs can be estimated using the Draft Offsets Payment Calculator on the NSW Government land management website
- Evidence to support the potential to establish an offset site on the proponent's land, or the land adjoining the site as proposed by the proponent. The proponent should address the minimum information requirements outlined in Table 22 of the Framework for Biodiversity Assessment (FBA).

Additional survey for purple copper butterfly habitat is required

Recommendation:

3. Additional evidence should be provided to justify why it is unlikely that blackthorn occurred in the ESEA. This should include as a minimum surveying within 100 metres of the ESEA boundary for occurrences of blackthorn and reporting the results in the RTS report.

The proponent states that it is likely that the Western Stockpile Extension Area (WSEA) contained purple copper butterfly habitat, and a credit liability has been generated as a result. The proponent has also assessed that the project may have had a significant impact on the purple copper butterfly. However, the proponent argues that as blackthorn was not recorded in the Eastern Stockpile Extension Area (ESEA) surrogate plot or two other vegetation monitoring plots to the north and west, then it is assumed that the ESEA did not contain potential habitat. OEH does not consider this to be sufficient evidence to assume that purple copper butterfly habitat was absent.

Neither of the monitoring plot locations were identified by the proponent in the Ecological Investigation, and it appears that no random meander transect was undertaken around the ESEA. Many blackthorn and purple copper butterfly records exist within or immediately adjacent to the quarry site. Figure 13 of the Environmental Assessment (main report) indicates that some blackthorn sites may be located within 100 metres of the ESEA.

The proponent should provide additional evidence to support their claim as to why habitat was unlikely to have been present. This should include as a minimum searching within 100 metres of the ESEA boundary for the occurrence of blackthorn and reporting the results in the RTS report.

The project should be referred to the Australian Government Minister for the Environment and Energy

Recommendation:

4. The proponent should refer the project to the Australian Government Minister for the Environment and Energy for consideration under the *Environmental Protection and Biodiversity Conservation Act 1999*.

Section 6.1 of the Ecological Investigation states that the clearing of the WSEA may have had a significant impact on the purple copper butterfly. It further concluded that if a biodiversity offset plan is prepared then the project does not need to be referred to the Australian Government Minister for the Environment and Energy for consideration under the *Environmental Protection and Biodiversity Conservation Act 1999*.

Implementation of a biodiversity offset plan does not extinguish the significant impact that the clearing may have created on a Matter of National Environmental Significance. It is not the role of the proponent to determine whether a proposed biodiversity offset will mitigate the impacts of a particular action. The proponent should refer the matter to the Commonwealth and allow the Department of Environment and Energy to undertake their own assessment.