



Office of
Environment
& Heritage

Our Ref: DOC17/384532
Your Ref: MOD06_0297

Mr Anthony Barnes
Senior Planning Officer
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Mr Barnes

Re: South Ballina Sand Quarry MOD 06_0297

Thank you for your email dated 21 July 2017 about the proposed expansion of the South Ballina Sand Quarry, seeking comments from the Office of Environment and Heritage (OEH). I appreciate the opportunity to provide input and apologise for the delay in responding.

We have reviewed the documents supplied and advise that, although we have no concerns about NPWS estate, historic heritage or estuaries and flooding, several issues are apparent with the assessments for biodiversity and Aboriginal cultural heritage. These issues are discussed in detail in **Attachment 1** to this letter.

In summary, the OEH:

1. notes that the South Ballina Sand Quarry Cultural Heritage Management Plan (CHMP) has been developed in consultation with the registered Aboriginal parties to the project and for the most part contains appropriate processes and procedures to manage any Aboriginal cultural heritage that is identified with the area of the proposed quarry expansion when and if it such heritage is located.
2. recommends amendments and corrections be made to support the CHMP in achieving its purpose.
3. is unable to support the expert report provided within the Biodiversity Assessment Report (BAR), given the preparation of the expert report is inconsistent with the requirements of the Framework for Biodiversity Assessment.
4. recommends that an expert that meets the requirements of the Framework for Biodiversity Assessment should be identified by the accredited assessor and the OEH Chief Executive's agreement sought for that proposed expert to prepare the expert report for the coastal petaltail. Alternatively, a survey could be conducted to ascertain whether the species is present within the impact area, based on best practice guidelines for the species, following

consultation with the OEH on coastal petaltail survey requirements prior to surveys being conducted.

5. supports the findings of the BAR and the species and ecosystem credit calculations of the BioBanking Credit Calculator.
6. notes the credits required to be secured prior to the development proceeding may change, pending the outcome of any approved expert report or additional coastal petaltail survey work.
7. is unable to support the Biodiversity Offset Strategy (BOS) as all reasonable steps have not been taken by the proponent to secure matching species and ecosystem credits so pursuing supplementary measures to meet offset requirements is not yet justified.
8. recommends further efforts be directed to identifying offsetting opportunities, such as leaving the expression of interest on the biobanking register for at least six months, advertising for credits in local newspapers circulating in the relevant IBRA Subregion, and contacting other accredited assessors to identify forthcoming credit opportunities, before supplementary measures are considered. These efforts should be documented in the revised BOS.

If you have any further questions about this issue, Ms Nicky Owner, Senior Conservation Planning Officer, Regional Operations, OEH, can be contacted on 6659 8254 or at nicky.owner@environment.nsw.gov.au.

Yours sincerely

Dimitri Young 16 August 2017

DIMITRI YOUNG
Senior Team Leader Planning, North East
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6659 8254

Enclosure: Attachment 1 – Detailed OEH Comments – South Ballina Sand Quarry Expansion

Attachment 1: Detailed OEH Comments – South Ballina Sand Quarry Extension

Aboriginal Cultural Heritage Assessment

The Office of Environment and Heritage (OEH) has reviewed the *South Ballina Sand Quarry Expansion Final Cultural Heritage Management Plan* (CHMP) prepared for Land & Fire Assessments Pty Ltd by Everick Heritage Consultants (July 2017) and the accompanying supporting documentation. We note the CHMP has been developed in consultation with the registered Aboriginal parties to the project and for the most part contains appropriate processes and procedures to manage any Aboriginal cultural heritage that is identified with the area of the proposed quarry expansion when and if it such heritage is located.

The CHMP (July 2017) is presented as a 'Final' version. However, there are several errors and anomalies that should be updated before the CHMP is considered finalised.

OEH recommendations:

To support the CHMP in achieving its purpose the OEH recommends that the following matters should be corrected and/or clarified before the CHMP is finalised:

- 2.1 Definitions
 - The omission of Aboriginal Places from the definition of Aboriginal cultural heritage or cultural heritage should be addressed.
 - Incorrect references to 'Section 5 of the *National Parks and Wildlife Act 1974*' instead of 'Part 6 of the *National Parks and Wildlife Act 1974*', should be corrected.
 - 'RAPs' means 'registered Aboriginal party' and needs to include in the definition reference to their registering their interest in being consulted.
- 3.2 Purpose of the CHMP
 - A reference should be included for any 'evaluation of the CHMP' as part of the implementation
 - 3.2 c) should refer to the mandatory recording on AHIMS that is required in NSW for all identified Aboriginal objects.
 - 3.2 d) the phrase relating to Aboriginal cultural heritage which is known to exist in the extraction area should be corrected as it is misleading because there is currently nothing known and the CHMP proposes to manage Aboriginal cultural heritage when it is identified and therefore known to exist in the extraction area.
- 5 e) the words 'evaluation and' prior to 'implementation' should be included to enhance the CHMP process.
- 9.2 b) a. the legal requirement to submit completed site card forms to AHIMS should be included clearly as part of the 'record' process
- 13. (e) should be reworded to say that if resolution is not achieved 'the proponent will investigate as to whether there are any other options available to them'. Alternatively, this sentence could be deleted.
- 18 Costs – the reference to AHIPs is misleading and should be reworded to 'regulation' or deleted.

- Page 21 The paragraph referencing The Police Commissioner’s Instruction 120.08 is misleading and should be amended to reflect current protocol in NSW.
- 1.3 the procedure for when Aboriginal remains are located must include the process outlined in the following wording.
In the event that human remains are located following surface disturbance, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are to be contacted immediately. No action is to be undertaken until the NSW Police provide written notification to the proponent. If the skeletal remains are identified as ancestral Aboriginal, the proponent must contact DPE, OEH’s Environment Line on 131 555 and representatives of the RAPs. No works are to continue until DPE provides written notification to the applicant.
- Other typographic errors that should be corrected include:
 - Introduction 2nd paragraph ‘allow for enable’
 - ‘find procedure’ incorrectly references Section 11 of the CHMP and not Section 9
 - 3.2 e) DEP instead of DPE
 - 9.2 c) e. the point is incomplete and requires clarification or deletion
 - Page 14 opens with the words ‘In the event that any Aboriginal Stakeholder(s)’ – is this meant to say ‘In the event that an Aboriginal Stakeholder(s)’?

Biodiversity Assessment

The OEH has undertaken a review of the Biodiversity Assessment Report (BAR) that accompanied the Modification Application. The review of the BAR has been undertaken with reference to the NSW Biodiversity Offsets Policy for Major Projects and its underlying tools including the Framework for Biodiversity Assessment (FBA) and the BioBanking Credit Calculator (BBCC).

Expert Report – Coastal Petaltail

We note that an expert report has been prepared for the coastal petaltail (*Petalura litorea*). The expert that prepared the expert report is Mr Tony Coyle (of Land and Fire Assessments Pty Ltd).

As stipulated at Section 6.6.2 of the FBA, an expert report must only be prepared by a person who is accredited under Section 142B(1) of the *Threatened Species Conservation Act 1995* (TSC Act), or a person who, in the opinion of the Chief Executive of the OEH, possesses specialised knowledge based on training, study or experience to provide an expert opinion in relation to the biodiversity values to which an expert report relates.

No experts have been accredited by the Chief Executive for the purposes of Section 142B(1) of the TSC Act and as far as we are aware, the Chief Executive has not been consulted on the expert used to prepare this expert report.

Expert status can be demonstrated by:

- expert’s qualifications such as relevant degrees, post graduate qualifications, and
- history of experience in the ecological research and/or survey method, for the relevant species, and
- a resume detailing the list of projects pertaining to the survey of the relevant species over the previous ten years and their employer’s name and period of employment (where relevant), and
- relevant peer reviewed publications, and
- evidence that the person is a well-known authority on the relevant species to which the survey relates.

Given OEH has not been provided with the above details, and our own internal discussions indicate that Mr Coyle is not recognised as an authority on the coastal petaltail, we do not support the expert report provided within the BAR.

OEH recommendation:

It is recommended that an expert that meets the requirements of the Framework for Biodiversity Assessment should be identified by the accredited assessor and the OEH Chief Executive's agreement sought for that proposed expert to prepare the expert report for the coastal petaltail.

Alternatively, a survey could be conducted to ascertain whether the species is present within the impact area, based on best practice guidelines for the species, following consultation with the OEH on coastal petaltail survey requirements prior to surveys being conducted. This would omit the requirement for an expert report to be prepared.

Credit requirements

With the exception of any outstanding work for the coastal petaltail, we support the findings of the BAR and the species and ecosystem credit calculations of the BBCC. However, the credits required to be secured prior to the development proceeding may change, pending the outcome of any approved expert report or additional coastal petaltail survey work.

Biodiversity Offset Strategy

Our review of the Biodiversity Offset Strategy (BOS) indicates that all reasonable steps have not been taken by the proponent to secure matching species and ecosystem credits and that pursuing supplementary measures to meet offset requirements is not yet justified.

The Offsets Policy states that reasonable steps are to include checking the biobanking register and having an expression of interest for credits on it for at least six months (amongst other things). As of the date of this submission, the expression of interest for credits had only been active for two months (since June 2017), and therefore, it is premature for the applicant to seek the use of supplementary measures at this time.

To assist in identifying potential offset sites, the OEH would encourage the accredited assessor to liaise with other accredited biobanking assessors that operate within the Clarence Lowlands IBRA Subregion and its immediate surrounds. Many accredited assessors are involved with biobanking agreement projects that are in preparation, and that may have suitable credits available in the near future.

In addition, an expression of interest for credits should be placed in local newspapers that are circulating in areas within and adjacent to the relevant IBRA subregion. This has been used successfully in the past to acquire both species and ecosystem credits to offset development impacts.

The Offsets Policy also states that the cost of an offset site itself should not be a factor unless it can be demonstrated the landowner is charging significantly above market rates. Such evidence has not been provided in the BOS.

Furthermore, the claim that the requirement for offsets is unreasonable given the provision of compensatory habitat as part of a previous approval is irrelevant. Principle 4 of the Offsets Policy states that offsets must be additional to other legal requirements. This includes the requirement for compensatory habitat to offset the loss of native vegetation as part of a previous development consent.

OEH recommendation:

The OEH recommends that further efforts be directed to identifying offsetting opportunities.

