



Office of
Environment
& Heritage

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Our reference: DOC15/182866
Contact: Calvin Houlison
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Dear Mr Dumbleton

RE: New Berrima Shale Quarry Major Project Modification (PA08/2012 Mod 1)

Thank you for the opportunity to comment on proposed modifications to the approved New Berrima Clay/Shale Quarry project, pursuant to s75W of the Environmental Planning & Assessment Act 1979. We understand that the proposal comprises relocation and expansion of the extraction footprint and relocation of proposed site infrastructure. Detailed comments on the proposed modification are provided at Attachment A and summarised below.

With regard to Aboriginal cultural heritage, the modified extraction footprint is within the area assessed by Archaeological Survey and Reports Pty Ltd (ASR) in 2010. Therefore, the proposed modifications do not alter the Aboriginal cultural heritage assessment or requirements. You should ensure that your due diligence assessment is conducted in accordance with OEH guidelines and is appropriately documented.

As the proposed development occupies flood prone land, the proposal should be considered in accordance with the NSW Government's Flood Prone Land Policy as set out in the Floodplain Development Manual, 2005 (FDM05). We are aware of Wingecarribee Shire Council having recently completed the [Wingecarribee River Flood Study](#) including the locality of the subject site. We therefore strongly encourage the determining authority to consult with Wingecarribee Shire Council in relation to available flood hazard information to appropriately inform land use planning in this locality and base the determination on information suitable for that purpose.

Finally, we have reviewed the submitted information assessing biodiversity impacts at Chapter 4.9 of the Environmental Assessment and are satisfied with the level of assessment carried out in this regard. Please contact me on 4224 4179 or via e-mail on calvin.houlison@environment.nsw.gov.au should you have any further queries.

Yours sincerely

CALVIN HOULISON
Conservation Planning Officer

Enclosure: Attachment A – Detailed Comments on Section 75W Modification, New Berrima Clay/Shale Quarry

ATTACHMENT A – DETAILED COMMENTS ON PROPOSED SECTION 75W MODIFICATION – NEW BERRIMA CLAY/SHALE QUARRY (PA08/2012 MOD 1)

1. Aboriginal Cultural Heritage

Background

An archaeological investigation was conducted by Archaeological Survey and Reports Pty Ltd (ASR) in 2008 with a report provided in 2010. This considered the potential impact of the proposed New Berrima Clay / Shale Quarry on Aboriginal cultural heritage. The proposal has now been modified to change the extraction area boundary by shifting the boundary to the north.

Modified extraction area

All of the proposed extension to the extraction area is within the land surveyed by ASR. The proposed modifications do not change the Aboriginal cultural heritage assessment or requirements.

Due diligence

Exercising due diligence in accordance with OEH guidelines provides a legal defence against the strict liability provisions of the *National Parks and Wildlife Act 1974*. The *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (DECCW 2010) provides a framework for proponents to follow in order to meet their due diligence obligations.

OEH does not formally assess due diligence reports because it is the proponent's responsibility to ensure that they reasonably consider whether their actions will cause harm to Aboriginal cultural heritage sites. You should consult the *Due diligence code of practice for the protection of Aboriginal objects in New South Wales* (DECCW 2010) and ensure that you have met all the requirements. Your due diligence procedure should be appropriately documented.

AHIMS search

ASR (2010:s4) searched the Aboriginal Heritage Impact Management System (AHIMS) on 29 September 2008. This showed that there are no recorded Aboriginal objects or places in the impact area. However, there are recorded sites within 1km of the subject area. These include grinding grooves and artefact scatters along Stoney Creek and the Wingecarribee River.

An updated AHIMS search was conducted by the proponent on 24 February 2015 (R.W. Corkery 2015:68). This showed that no new sites have been recorded in the vicinity of the subject area since the 2010 assessment. For the purposes of due diligence, AHIMS search results may be relied upon for twelve months.

Aboriginal cultural heritage assessment

The ASR assessment concluded that no known sites will be impacted by the works and that unknown Aboriginal objects are unlikely to be present (ASR 2010). The proposed modifications do not change this assessment.

You should ensure that your review of previous heritage assessments conducted as part of Steps 4 and 5 of the *Due diligence code of practice for the protection of Aboriginal objects in New South Wales* (DECCW 2010) considers the outcomes of any more recent heritage studies in the region that may have a bearing on the assessment of archaeological potential in the subject area.

Aboriginal community consultation

Aboriginal community consultation is not a formal requirement of due diligence assessments. However, a representative of the Illawarra Local Aboriginal Land Council (ILALC) assisted on the survey. ILALC did not identify any cultural constraints to the proposed works (ASR 2010:s10).

Recommendations

You should ensure that your due diligence assessment has been conducted in accordance with OEH guidelines and has been appropriately documented.

Unexpected finds

If unexpected Aboriginal objects are found during construction work you must stop work in the vicinity of the find, secure the find and contact the OEH Illawarra Regional Office immediately. A qualified archaeologist should be engaged to assess the find. An AHIP may be required.

If human remains are uncovered, work in the vicinity of the remains must stop immediately, the site must be secured and the police must be informed. OEH should be contacted if the remains are suspected to be of Aboriginal origin.

OEH Guidelines

Further information about Aboriginal cultural heritage regulation can be found at <http://www.environment.nsw.gov.au/licences/achregulation.htm>. OEH guidelines are also available online:

- *Due diligence code of practice for the protection of Aboriginal objects in New South Wales*, DECCW 2010. Available online via:
<http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf>
- *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW*. OEH 2011. Available online via:
<http://www.environment.nsw.gov.au/resources/cultureheritage/20110263ACHguide.pdf>
- *Aboriginal cultural heritage consultation requirements for proponents 2010*. DECC 2010. Available online via:
<http://www.environment.nsw.gov.au/resources/cultureheritage/commconsultation/09781ACHconsultreq.pdf>
- *Code of practice for archaeological investigation of Aboriginal objects in New South Wales*. DECCW 2010. Available online via:
<http://www.environment.nsw.gov.au/resources/cultureheritage/10783FinalArchCoP.pdf>

References

- Archaeological Survey and Reports Pty Ltd (ASR). 2010. New Berrima Clay / Shale Quarry: cultural heritage assessment, dated August 2010, Specialist Consultant Studies Compendium: Part 8. Unpublished report to R.W. Corkery and Co. on behalf of The Austral Brick Company Pty Ltd.
- R.W. Corkery and Co. Pty Ltd. 2015. Environmental Assessment to Support a Section 75W Modification of PA08_0212 for the New Berrima Clay/Shale Quarry, April 2015.

2. Flooding

We note that the proposed development site adjoins the Wingecarribee River and is traversed by several watercourses. The proposed modification also appears to include extraction to levels below the adjacent river bed. The documents supplied with the current modification make no reference to any flood impact assessment and the 2010 documentation supporting the original project assessment contains only cursory consideration of flooding inferred from geomorphology. We are therefore concerned that the matter may be determined without due consideration of the nature, extent or hazard of potential flood affection.

As the proposed development occupies flood prone land, the proposal should be considered in accordance with the NSW Government's Flood Prone Land Policy as set out in the Floodplain Development Manual, 2005 (FDM05). The primary objective of the flood policy is to reduce the impact of flooding and flood

liability on individual owners and occupiers, and to reduce the private and public losses resulting from flooding, utilising ecologically positive methods wherever possible.

The implications of the full range of floods, up to the probable maximum flood (PMF) should be considered including:

- the impact of flooding on the development
- the impact of the development on flood behaviour, and;
- the impact of flooding on the safety of people/users of the development.

With regard to available flood information, we are aware of Wingecarribee Shire Council having recently completed the [Wingecarribee River Flood Study](#) including the locality of the subject site. We therefore strongly encourage the determining authority to consult with Wingecarribee Shire Council in relation to available flood hazard information to appropriately inform land use planning in this locality and to base the determination of the matter on information suitable for that purpose.