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EPA Advice on Australian Bay Lobster Facility at Chinderah Submissions Report

Dear Mr Patrick Copas

Thank you for the request for advice from Public Authority Consultation (PAE-15727607), requesting the review by the NSW Environment Protection Authority (EPA) of the Submissions Report for the proposed modification of the Australian Bay Lobster Facility at Chinderah (Application SSD DA282-11-2004-I-Mod-4) at 9484 Tweed Valley Way Chinderah on land described as Lot 51 DP1056966 and Lot 1 DP1192506 .

The EPA has reviewed the following documents:

- Australian Bay Lobster Producers Limited Facility – Modification 4 to DA 282-11-2004-i – Response to Submissions – SSD DA282-11-2004-I-Mod-4
- SSD Modification Application to DA 282-11-2004-i MOD 4, Prepared by North Point Advisory, 2019
- Australian Bay Lobster Facility – EXH-1567 – Issued Request for Response to Submissions
- Waste Management Plan, Prepared by MBR Environmental – Version A, June 2008
- NCC 2019.1 Compliance Report Prepared by Andrew Duggan 27 November 2020
- Flood Response Assessment Plan, Prepared by Australian Bay Lobster Producers Limited – Reviewed 1 December 2020
- Seawater Collection Route, Google Maps 2020
- Proposed Condition Amendments
- Erosion and Sediment Control Plan, Prepared by MBR Environmental – Version A, June 2008
- Revised Traffic Impact Assessment, Prepared by Luke Rytenskild and Dare Janzekovic Version 3, 10 February 2021

The EPA understands the proposal modification relates to:

- Bulk earthworks
- Importation of VENM and ENM to use as fill to raise the Premises
- Short -term emergency accommodation
- Seawater extraction and discharge limits

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Based on the information provided, the proposal will require a variation of Environmental Protection Licence (EPL) number 12947 issued under the *Protection of the Environment Operations Act 1997* (POEO Act).

The EPA has reviewed the Submissions Report and notes the proponent has not addressed the submission made by the EPA. However, the EPA advises that it can support the updated proposal subject to the following comments and recommendations:

1. Matters to be addressed prior to determination

Discharge Limit

The EPA has reviewed the SSD Modification Application to DA 282-11-2004-i MOD 4, June 2019, North Point Advisory, and comments that the author has incorrectly noted that Environment Protection Licence (EPL 12947) 'permits ABLP to discharge 5,497KL per day'. Condition L3.1 of EPL 12947 currently limits discharge to 1800KL per day. If a discharge greater than 1800KL per day is required, the Licensee will need to apply to the EPA for a modification of Condition L3.1 in EPL 12947. This application will require sufficient evidence to support an increase in the daily discharge limit.

Erosion and Sediment Control

A Stormwater Management Plan (SWMP) should to be updated to reflect VENM and ENM is being imported to the premises to be applied to land without being stockpiled. The SWMP should be updated to remove reference to importation of Acid Sulphate Soils and Potential Acid Sulphate Soils as the applicant has indicated that they are no longer seeking importation of this type material to the site. The SVMP needs to be developed in consultation with suitably qualified persons.

Noise, Vibration and Traffic

The proposal involves the importation of significant quantities of fill material on the premises to raise the level of the land to protect against flood impacts. The importation, movement and compaction of the fill material on the premises will require significant noise and vibration producing heavy plant and equipment. The EPA recommends that the proponent be required to supply a Noise Impacts Assessment (NIA) prepared by a suitably qualified Acoustic Practitioner that assesses the potential noise impacts associated with on-premise activities and haulage transport routes. Relevant assessment documents for the NIA include:

- Interim Construction Noise Guideline (DECC, 2009)
- Assessing Vibration a technical guideline (DEC, 2006)
- Road Noise Policy (DECCW, 2011)

Operating Hours

Additionally, the proposal involves an extension to the operating hours beyond the limit in conditions L5.1 of EPL 12947, the potential noise impacts of this proposed change have not been assessed. The above recommended NIA should also consider the implications of increasing operating hours, and the impacts this will have on identified sensitive receivers.

Preventing contamination from imported waste fill entering the Premises

The EPA understands that the applicant proposes to source waste VENM and ENM from various locations within the southern Gold Coast and northern NSW region.

The EPA is concerned that some of the waste material sourced to be processed could potentially contain asbestos or other contaminants.

The EPA requests the applicant to develop procedures to prevent asbestos and other contaminated material from entering the Premises. The Draft Protocol for managing asbestos released by the EPA in 2014 may assist the applicant in developing these procedures (<https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/waste/140345-asbestos-draft.pdf>).

Importation of VENM

EPA understands that the applicant has a development consent to import VENM as fill. The applicant must be able to demonstrate that any VENM used for filling at the Premises complies with the classification requirements details on the EPA website located at: <https://www.epa.nsw.gov.au/your-environment/waste/classifying-waste/virgin-excavated-natural-material>.

Importation of ENM

EPA understands that the applicant proposes to import ENM to use as fill to raise the Premises. The applicant plans to land apply ENM without the need for it to be stockpiled.

The applicant must demonstrate that any recovered waste material used for filling at the Premises complies with all requirements of the relevant Resource Recovery Order and Exemption for that material. Resource Recovery Orders and Exemptions can be found on the EPA website located at <https://www.epa.nsw.gov.au/your-environment/recycling-and-reuse/resource-recovery-framework/current-orders-and-exemption>.

Management of waste fill material

Though the Plan appears to refer to the tracking of waste material from the waste generator to the Premises, details of the tracking and management of waste received, processed and stored onsite (i.e. at which one of the treatment pads) required to ensure each batch of waste material is effectively and efficiently processed, are lacking.

Impacts associated with the Application must be assessed for the maximum amount of waste materials to be received, stored, treated and placed. The maximum meaning the worst-case activity/operations scenario/s. In addition, the management and mitigation measures for the receipt, treatment, storage and placement of waste materials to be used at the Premises must be designed to handle the maximum amount of waste materials that may be received, or be required to be stored, treated and placed each day.

It is unclear if the assessment of proposed modification impacts and the proposed management and mitigation measures have considered, and been designed for the maximum volumes for each activity to be undertaken at the Premises.

The EPA requests the applicant confirm:

- The maximum amount of waste material that may be used each day at the Premises for each activity to be undertaken.
- Impacts associated with worst case operational scenarios have been considered and assessed.

- Management and mitigation measures have been designed to address worst case operational scenarios with respect to the amount of waste material received, stored, treated and placed as a part of the proposed modification.

Dust management

The specific location of each activity to be performed and the storage and placement/disposal areas is not clearly defined in the Application or Plan. Material handling activities have a risk of causing dust and air impacts. The mitigation measures that have been considered and proposed (provided in Section 6.12 of the Application) lack detail and require clarification. For example the application states that it will ensure 'no stockpiling ... in order to reduce airborne dust', despite stockpiling being referred to in Section 6.5 and 6.8 of the Application.

Further information required on management strategies to prevent or mitigate potential environmental impacts.

The Application states the project will be 'equipped to treat and stabilised the material on site free of adverse environmental impacts on adjoining neighbours' however details are lacking in the Application on how this will be achieved.

2. Matters to be addressed with conditions

The EPA has reviewed the documents included as part of the Response to Submission report based on the information that has been provided and recommends that the following conditions be included with the modified development consent.

Soil and Water Management Plan

The EPA recommends that a Soil and Water Management Plan (SWMP) be required as a condition of approval to manage erosion and storm water impacts from the proposal.

THE SWMP should be prepared by an appropriately qualified person and in accordance with the requirements of the guideline *Managing Urban Stormwater, Soils and Construction Volume 1*, March 2004.

The SWMP should include sediment basins to capture and treat run off from the proposal which should be designed, constructed, maintained and operated in accordance with the following proposed conditions.

1. The sites sediment basin/s must be designed, constructed, maintained and operated to ensure that:
 - a) All runoff from a 5 - day rainfall event up to 126.8 mm (the 95th percentile 5-day rain event) is captured.
 - b) Any discharge from the sediment basin that occurs as a result of rainfall below the 5-day total of 126.8mm must meet the limit conditions specified
2. The licensee must ensure the design storage capacity of the sediment basins installed on the premises is reinstated within 5 days of the cessation of a rainfall event that causes runoff to occur on or from the premises
3. The licensee must ensure that sampling point(s) for water discharged from the sediment basin(s) are provided and maintained in an appropriate condition to permit:
 - a) the clear identification of each sediment basin and discharge point;
 - b) the collection of representative samples of the water discharged from the sediment basin(s); and

- c) access to the sampling point(s) at all times by an authorised officer of the EPA.
- 4. The licensee must maximise the diversion of run-on waters from lands upslope and around the site whilst land disturbance activities are being undertaken.
- 5. The licensee must maximise the diversion of stormwater runoff containing suspended solids to sediment basins installed on the premises.
- 6. Each sedimentation basin must have a marker (the “sedimentation basin marker”) that identifies the upper level of the sediment storage zone. Whenever the level of liquid and other material in any sedimentation basin exceeds the level indicated by the sedimentation basin marker, the licensee must take all practical measures as soon as possible to reduce the level of liquid and other material in the sedimentation basin.
- 7. Sediment Basins shall be treated, if required, to reduce the Total Suspended Solids level to the licenced concentration limit before being discharged to the environment. Treatment can be with gypsum or any other material that has been approved in writing by the EPA.
- 8. The proponent must maximise the reuse of captured stormwater on the premises.

Air Quality Management Plan

The EPA recommends that an air quality management plan be developed and implemented prior to the commencement of any dust generating activities associated with the premises:

The air quality management plan must include as a minimum:

- i) Risk assessment
- ii) Proactive mitigation measures of all significant, and potentially significant, emissions sources
- iii) Key performance indicator(s);
- iv) Monitoring methods(s);
- v) Location, frequency and duration of monitoring;
- vi) Record keeping;
- vii) Response mechanisms and contingency measures; and
- viii) Responsibilities;
- ix) Compliance reporting

The EPA recommends the following proposed conditions to control dust at the premises.

- 1. All operations and activities occurring at the premises must be carried out in a manner that prevents or minimises the emissions of air pollutants from the premises
- 2. The premises must be maintained in a manner that prevents or minimised the emission of air pollutants
- 3. Trucks entering and leaving the premises that are carrying loads must always have their loads covered at all time, except during loading and unloading
- 4. The licensee must ensure that no material is tracked from the premises

Waste Fill Management

The EPA recommends that the conditions of approval for the proposal prohibit the importation into or onto the premises of Acid Sulphate Soils and Potential Acid Sulphate Soils.

To ensure that the only fill materials permitted to be taken onto or into the premises have been assessed in accordance with this application, the EPA recommends that the conditions of approval only permit the following materials to be brought onto the premises

- Virgin excavated natural material (VENM) as defined in the Protection of the Environment Operations Act 1997.
- Excavated natural material (ENM) that complies with all the requirements of the following EPA's Resource Recovery orders and exemptions, *The excavated natural material order 2014* and *The excavated natural material exemption 2014*.

The EPA recommends that a Fill Management Plan be developed and implemented that outlines:

- The locations, heights and extents of any stockpiles of fill material.
- The maximum quantity of materials that may be stockpiled prior to land application.
- The filling plan for the actual emplacement of the fill material.

The EPA also recommends the following conditions:

- The licensee must ensure that a standard operating procedure/s is developed, maintained and documented for the delivery and receipt of ENM and VENM. This must include provision of the following:
 - (a) All material must be inspected as it is being unloaded for evidence of contamination or non-conforming material;
 - (b) Inspections must be undertaken by competent and trained personnel, familiar with the material characteristics;
- A copy of this procedure must be provided to the EPA whenever it is updated by the licensee
- Copies of all invoice's, receipts and other records relating to the importation of ENM and VENM must be retained on the premises.

Noise

As the proposal seeks to extend the operating hours but does not assess the potential noise impacts of such a change the EPA recommends that the current operating hours approved for the project be retained.

If you have any questions about this request, please contact Jarrod Grimston on 02 9895 6602 or via email at jarrod.grimston@epa.nsw.gov.au.

Yours sincerely



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