Department of Planning and Environment

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Department of Planning and Environment
32 Mann Street, Gosford NSW 2251
Via Major Projects Portal: PAE-43089079

Our ref: DOC22/101347
Sender's ref: SSD-10369

17 June 2022

Dear Ms Sharp

Subject: Major Projects – New Request for Advice - Albion Park Quarry - Stage 7 (SSD-10369) (Shellharbour City)

Thank you for your email dated 18 May 2022 seeking comments from the Biodiversity and Conservation Division (BCD) on the Albion Park Quarry (Stage 7) proposal.

There are technical shortcomings in the Biodiversity Development Assessment Report (BDAR) (see Attachment A) that need to be addressed to ensure that it conforms to the Biodiversity Assessment Method (BAM) 2020. Other issues are:

1. A cumulative impact assessment on biodiversity has not been undertaken as required by the SEARs. This is particularly important given there are multiple local quarry operators who own land with similar biodiversity values in the area
2. The offset strategy needs to contain further detail and commitment beyond the broad-level options provided.
3. Contrary to the BDAR, BCD is of the view that the proposal may result in serious and irreversible impacts (SAII) on to the Critically Endangered Melaleuca community. Given this, greater consideration should be given to its protection.

A summary of our assessment, advice and recommended response is provided in Attachment A. Detailed comments are in Attachment B.

If you have any questions about this advice, please contact Chris Page, Senior Team Leader, Planning (Illawarra), South East, Biodiversity and Conservation Division at chris.page@environment.nsw.gov.au.

Yours sincerely

MICHAEL SAXON
Director South East
Biodiversity and Conservation Division
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ATTACHMENT A BDAR Assessment Summary - Albion Park Quarry - Stage 7 EIS (SSD 10369)

Key Issues

1.	***Currency of biodiversity assessment report***	The BDAR has not been finalised and credit reports not generated within 14 days of the submission date. There are also sections in the BDAR that do not follow BAM 2020. **Recommended action:** • *Finalisation of BDAR must be within 14 days of submission date.* • *Use BAM 2020*
	Extent and Timing	Pre-determination
2.	***Assessment of planted native vegetation***	The BDAR does not follow the BAM 2020 for assessment of planted native vegetation proposed to be cleared within the subject site. **Recommended action:** • *Follow guidance in Appendix D of BAM 2020 to determine appropriate level of assessment for planted native vegetation.*
	Extent and Timing	Pre-determination
3.	***Justification for removal of two species credit species***	The BDAR excludes two predicted species credit species (Green and Gold Bell Frog and Eastern Pygmy-possum) without survey or expert report. **Recommended action:** • *Further justification is required as per BAM 2020 (e.g.: section 5.2.3).*
	Extent and Timing	Pre-determination
4.	***Mitigation measures***	Elements of BAM 2020 section 8.4 have not been addressed. **Recommended action:** • *Address all requirements in section 8.4 of BAM 2020*
	Extent and Timing	Pre-determination
5.	***Additional mitigation measures***	Additional mitigation measures have been identified for consideration **Recommended action:** *Consider additional mitigation measures for inclusion into BDAR*
	Extent and Timing	Pre-determination
6.	***Assessment of Serious and Irreversible Impact (SAII)***	The BDAR does not address requirements of section 9.1.1 of the BAM 2020 **Recommended action:** • *Address all requirements in section 9.1.1 of BAM 2020*
	Extent and Timing	Pre-determination
7.	***Melaleuca shrubland is critically endangered ecological community***	The BDAR needs to consistently identify Melaleuca shrubland as "critically endangered ecological community" **Recommended action:** • *Update BDAR accordingly*
	Extent and Timing	Pre-determination

ATTACHMENT B **Detailed comments for Albion Park Quarry – Stage 7 Environmental Impact Statement (SSD 10369)**

Biodiversity Development Assessment Report

Currency of biodiversity assessment report

- The BDAR has not been finalised and credit reports not generated within 14 days of the submission date i.e. BDAR submitted May 2022, report dated "March 2022" and credit reports dated "9/03/2022".
- It is a requirement under section 6.15 of the *Biodiversity Conservation Act 2016* (BC Act) that the accredited person certifies in the report that the report has been prepared on the basis of the requirements of (and information provided under) the biodiversity assessment method as at a specified date and that date is within 14 days of the date the report is so submitted.
- In addition, BCD note that from 22 October 2020, transitional arrangements allow proponents and landholders to submit a biodiversity assessment report based on BAM 2017, for 12 months for state significant development or infrastructure and non-strategic (standard) biodiversity certification.

Recommended action: *Finalisation of BDAR must be within 14 days of submission date.*

Assessment of planted native vegetation (BDAR section 2.2.4)

- The BDAR does not follow the BAM 2020 for assessment of planted native vegetation proposed to be cleared within the subject site. One area is mapped in the northwest corner of subject site (0.52 ha) and an additional area (not mapped) to its south.
- There is guidance in Appendix D of BAM 2020 to determine application of a streamlined assessment.

Recommended action: F*ollow guidance in Appendix D of BAM 2020 to determine appropriate level of assessment for planted native vegetation.*

Justification for removal of two species credit species (BDAR section 2.3.5 and Table 13)

- The BDAR excludes two predicted species credit species (Green and Gold Bell Frog and Eastern Pygmy-possum) without survey or expert report – but based on degraded habitat – yet the BDAR appears to describe the habitat presence of both species in various sections. Further justification is required as per BAM 2020 (e.g. section 5.2.3).

- Green and Gold Bell Frog (GGBF) is associated with PCT1300 and Eastern Pygmy-possum (EPP) is associated with PCT720 and PCT1300. For both GGBF and EPP there is no mention in the BDAR of "survey" conducted or "expert report" provided to remove this species.

- Other options to exclude GGBF or EPP based on habitat suitability must be based on: "Habitat degraded" or "Species vagrant". GGBF has the following additional option for exclusion based on habitat suitability: "Habitat constraints:

    - N/A|Semi-permanent/ephemeral wet areas
    - Within 1km of wet areas|Swamps
    - Within 1km of swamp|Waterbodies
    - Within 1km of waterbody"

- For GGBF, the BDAR (in Table 4 and in section 2.3.3) identifies a mapped 1st order stream within the Project Area which links with another stream to form a 2nd order stream east of the Project Area; and two farm dams present in the Project Area, providing low to poor quality habitat for aquatic or water dependent fauna species.
- The 'habitat constraints' would not exclude this species as waterbodies occur within 1km. Some areas of this species habitat are known to occur in highly disturbed areas. The reference in the species profile regarding "free of predatory fish" relate to 'optimum' habitat – and as such is not a habitat constraint. This species in not vagrant to the Illawarra IBRA subregion.
- For EPP, the BDAR (Table 18) identifies species of *Eucalyptus* and *Melaleuca* – both identified as "important food resource" for many species including Eastern Pygmy-possum in Nectar food trees - factsheet (DEC, 2004) and this factsheet specifically lists *Eucalyptus tereticornis*. In addition, the species profile identifies that the species feeds largely on nectar and pollen collected from banksias, eucalypts and bottlebrushes; the latter being closely related to Melaleuca (and this genus is abundant in study area). Nonetheless, this species is also known to feed on insects throughout the year. Also identified in the BDAR are high and moderate conditions of PCT720 and high condition of PCT1300 identified in the subject site, suggesting habitat that is not degraded. In addition, this species in not vagrant to the Illawarra IBRA subregion.
- On this basis, without survey or expert report – or evidence such as published literature (as per BAM section 5.2.3.), there is evidence identifying both GGBF and EPP habitat is present within the subject site and as such credits should be calculated and included in the credit obligation.

Recommended action: *Further justification is required as per BAM 2020 (e.g. section 5.2.3).*

Mitigation measures (BDAR section 3.2.2)

- The BDAR lists mitigation measures, however, some elements of BAM 2020 section 8.4 have not been addressed, such as (and ideally summarised in a table): identify for each measure, the techniques, timing, frequency, responsibility; or risk of failure.

Recommended action: *Address all requirements in section 8.4 of BAM 2020.*

Additional mitigation measures (BDAR section 3.2.2)

- Mitigation measures for the clearing of hollow-bearing trees needs to be extended to include "clearing of hollow-bearing trees should not be undertaken during winter roosting (i.e. torpor) for mammals such as bats or possums".
- A protocol to manage injured fauna must be developed and followed during construction and operation, so that all site staff are aware of their responsibilities to manage injured or displaced fauna including contacting wildlife carers for assistance.
- A proposal to manage Illawarra Zieria seedbank is encouraged to be detailed in a Biodiversity Management Plan (or Vegetation Management Plan). The following are factors to consider: Mapping the location where topsoil will be stripped, stored and applied; and identify the timing of each; include fencing types to restrict access; describe management to prevent topsoil stockpiles mixing; and describe weed management during storage and post topsoil application.

Recommended action: *Consider above additional mitigation measures for inclusion into BDAR.*

Status of Melaleuca shrubland

- The Melaleuca shrubland was listed as critically endangered ecological community (CEEC) in February 2021.
- The BDAR identifies this correctly in Table 8. However, the BDAR also lists the Melaleuca shrubland as an endangered ecological community elsewhere (e.g. Executive Summary, Table 6, s.3.2.1 and s.3.3).

Recommended action: Update the BDAR to consistently recognise the CEEC status.

Assessment of Serious and Irreversible Impact (BDAR section 3.3 and Annexure 9)

- The BDAR must address the requirements of section 9.1.1 of the BAM 2020. It seems that the former additional impact assessment provisions of BAM 2017 are provided. The provisions in BAM 2020 were revised so that a BDAR addresses how a proposed impact will contribute to extinction risk of a SAII entity against the IUCN criteria. The BAM revisions will help consent authorities to form an opinion on a serious and irreversible impact, and better align with the IUCN criteria.
- In the BDAR, approximately 68% of best condition Melaleuca shrubland (i.e. high, moderate to high, and moderate) is proposed to be removed in the subject site. Compared to 78% of Melaleuca shrubland in total proposed to be removed in the subject site. This displays little difference in avoiding areas of best condition Melaleuca shrubland. Furthermore, areas of avoidance of Melaleuca shrubland identified in the BDAR also largely correlate with existing constraints such as boundary access, C2 Environmental Conservation zoning or category 2-vulnerable regulated land.
- There are imminent high threats considering the land tenure situation where Melaleuca shrubland occurs. The majority of the remaining Melaleuca shrubland is located on land understood to be in the ownership of quarry operators with only 8ha under public ownership which offers any longer-term protection/conservation.
- In addition, Melaleuca shrubland credits are likely to be rare to source and retire. If not able to purchase such credits on the offset market, the option of paying into the Biodiversity Conservation Fund is available but that would possibly result in the credits being retired via variation by the Biodiversity Conservation Trust on the next best fit PCT (e.g. native vegetation of same formation in the region) and lead to overall loss for the Melaleuca shrubland.
- Conserving biodiversity at bioregional and State scales is a purpose of the *Biodiversity Conservation Act 2016* and Melaleuca shrubland occurs solely within the local area around Dunmore Hills (extending north to nearby Killalea reserve and south to Jamberoo).
- Latest mapping commissioned by BCD for Melaleuca shrubland identifies the current mapped extent at 164 ha (Dec 2021) compared to the BDAR noting 200-276 ha (based on NSW Threatened Species Scientific Committee 2020). The BCD's 2021 mapping report has been separately provided to Planning and Assessment Group. The new mapped extent of 164 ha should be referred to the proponent to consider for SAII assessment in the BDAR.
- BCD is of the view that the loss of this much Melaleuca shrubland can be considered a serious and irreversible impacts. Given this, greater consideration should be given to protecting this community,

that is retaining the Melaleuca shrubland as mapped by Niche (2022) with an appropriate buffer to avoid SAII.

Recommended action: *Update the BDAR to address the above comments and consider redesigning the footprint to avoid impacts on the Melaleuca shrubland CEEC.*

References

Biodiversity Conservation Act 2016. Accessed 9 June 2022 via: https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2016-063#statusinformation

Department of Environment and Conservation (2004). Nectar food trees - factsheet. Accessed via: https://www.environment.nsw.gov.au/resources/nature/landholderNotes04NectarFoodTrees.pdf

New South Wales and Department of Planning, Industry and Environment (2020). Biodiversity Assessment Method. Available from: https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/biodiversity-assessment-method-2020-200438.pdf