



Ms Melissa Dunlop  
Principal Planning Officer  
Department of Planning, Housing and Infrastructure  
12 Darcy Street, Parramatta NSW 2150

Via the Major Projects Portal: PAE-71027206

Dear Melissa

**Subject: Major Projects – New Request for Advice – Response to Submissions –  
Modification 13 Dunmore Quarry Pit Extension (DA470-11-2003-Mod-13) (Shellharbour City)**

Thank you for the notification dated 21 May 2024, via the Major Projects Portal, about the Response to Submissions for the Modification 13 Dunmore Quarry Pit Extension (DA470-11-2003-Mod-13) and your request for input from the Biodiversity, Conservation and Science Group (BCS) of the NSW Department of Climate Change, Energy, the Environment and Water.

We have reviewed the Response to Further Information (RFI) prepared by Boral Limited dated 18 April 2024 to address the matters we raised in our letter dated 15 March 2024 (DOC24/178544).

We welcome the proponent's formal commitment to a Biodiversity Stewardship Agreement (BSA) and commitment to actively manage the lands within six months of establishment. However, the footprint of the BSA as presented in Figure 3.1 of the Submissions Report is a less than optimal outcome to minimise the impact of losing 8.63 ha of *Melaleuca armillaris Tall Shrubland in the Sydney Basin Bioregion* (MaTS), given this loss is likely to be a serious and irreversible impact (SAIL), as stated in our initial letter dated 28 June 2023 (DOC23/519408).

Boral's has raised concerns about committing to a larger BSA due to the complexity of having several different areas under a BSA. BCS believes the additional steps for a larger BSA are not onerous and deliver long term efficiencies to multiple stakeholders. Boral could achieve a better conservation outcome for MaTS by implementing the following actions to improve the conservation package:

- obtain a letter of in-principal support for establishing the BSA from the Nature Markets and Offset Division of DCCEEW (NMO) (formerly known as the Credit Supply Taskforce)
- include the following four areas not required for resource extraction into the final BSA which would conserve an additional 5.9ha of MaTS and ensure it is managed and reported on in-perpetuity:
  - the "Offset Area"
  - the "Compensatory Habitat Area"
  - the Translocation Area (which may realise more area of MaTS if successful) and
  - the additional small area of MaTS near the dwelling to the south-east (pending Boral's bushfire assessment).

The rationale for these actions is set out below.

### **In-principle support for BSA assists the process**

The BSA is the key component of the conservation package to addressing the impacts to MaTS. It is essential to have the NMO's in-principle support for the BSA proposal to ensure they do not foresee any significant impediments or risks in establishing the BSA. The preliminary advice we have is that the NMO is unaware of Boral's proposal. If the assessment process moves closer to determination only to find out the NMO has concerns about establishing the proposed BSA, a lot more time will be needed to identify alternative additional and appropriate measures to address the SAIL in line with section 7.16(3) of the *Biodiversity Conservation Act 2016*.

### **Improving efficiency and effectiveness of conservation management**

Boral discounted the following three areas that BCS recommended be included in a BSA due to issues related to legal exclusion, bushfire hazard and complexity. BCS believes all aspects can be overcome as described below:

1. Boral stated that including the "Offset Area" and "Compensatory Habitat Area" in a BSA was not feasible based on clause 5.1 of the *Biodiversity Conservation Regulation 2017*. This is not correct as clause 5.1 (1) (c) (i) and (ii) makes provision to include such lands. All Boral would need to do to establish such a BSA is address certain administrative issues. Preparing any BSA comes with its own complexities so including the two Areas is not adding considerably to the overall complexity. Including the two Areas generates considerable benefits, including:
  - a. an additional 5 ha of MaTS that will be more effectively conserved, managed and reported on in perpetuity
  - b. additional biodiversity credits for Boral, which Boral could trade on the market given the additional credits generated are likely to be in demand by other stakeholders for offsetting purposes.
2. Boral noted that completing a bushfire assessment is necessary before extending the BSA over the small area of MaTS (approximately 0.9 ha) near the dwelling in the south-east on Lot 2 DP 598671. We note that BSAs can include easements and Asset Protection Zones, and so can account for appropriate vegetation management regimes on an annual basis. As such, BCS notes Boral's intention to include this area pending a Bushfire Assessment but recommends Boral is given a timeframe for completing a Bushfire Assessment and extending the BSA (as relevant).
3. Boral stated that including the Translocation Area into the BSA would be overly onerous and complex. BCS is aware that BSAs are already complex documents and adding the Translocation Area would not be onerous. The added benefit of a more extensive BSA is that Boral can manage and report in a consistent format and timeframe, and in a manner that the Biodiversity Conservation Trust (BCT) can oversee. This enables the consent authority to pass the oversight of the Translocation Area to the BCT who is appropriately staffed and skilled for this work. It would also reduce the administrative burden in perpetuity for Boral once the BSA is established.

If Boral's preferred approach is pursued, Boral's accountabilities would be as follows:

- Conservation Area – accountable to the Minister administering the *National Parks and Wildlife Act 1974*. This area is managed under a Conservation Agreement and is not proposed to be brought under a single BSA (but, if added, it would offer efficiency gains)
- Offset Area – the consent is not specific, but BCS assumes accountability is with the consent authority

- Compensatory Habitat Area – the consent is not specific, but BCS assumes accountability is with the consent authority
- Proposed Biodiversity Stewardship Agreement – if approved, BCS assumes the BSA would be accountable to the BCT
- Proposed Translocation Area – if approved, BCS assumes accountability would be to the consent authority.

Consolidating four of the five above areas into a BSA will bring in-perpetuity efficiencies to all stakeholders for managing, reporting, funding and auditing. The short-term complexities are outweighed by the long-term effectiveness given there have been instances where key stakeholders have lost oversight with some of the conservation works. A BSA, by design, ensures the key stakeholders have oversight and that the proponents are held accountable. This is critical where the conservation management centres around a SAIL matter.

In summary, **BCS recommends DPHI pursue or require:**

- the final BSA to be extended to include the “Offset Area” and “Compensatory Habitat Area” via clause 5.1(1)(c)(i)
- the Bushfire Assessment Report be carried out early such that the final BSA considers the small area of MaTS near the dwelling on Lot 2 DP 598671
- the Translocation Area be included in the BSA.

A more comprehensive BSA will integrate an additional 5.9 ha of MaTS and be overseen by the BCT who is best placed to have this responsibility. An additional area MaTS may eventuate from translocation success. The alternative is that the consent authority remains responsible for overseeing and enforcing the three Areas sitting outside the BSA. This is a significant SAIL matter so the relative complexities to deliver a more comprehensive BSA are not overly onerous and it would mean Boral presents a far better conservation package to the consent authority and the broader community.

The potential to look at the BSA in a two-stage approach is an option to further explore where:

- a modified BSA is established including the Translocation Area and small area to south-east (pending early bushfire assessment)
- then the Offset Area and the Compensatory Habitat Area are included in the BSA.

The legal mechanism (e.g. consent conditions) to enable this staged approach should be implemented by requiring an expanded BSA to be established before Boral could commence a relevant future extraction stage.

## **Finalising the Vegetation Translocation Plan**

BCS’s recommendation to address our four points on the Vegetation Translocation Plan (VTP) would be relatively easy to achieve. As such, the final VTP can then be referred to in the consent conditions. As this is a SAIL matter, BCS does not consider it appropriate to complete the VTP post-approval. BCS does not believe the final VTP needs to be deferred.

### **BCS recommends:**

- DPHI require that the VTP be finalised now and, if approved, the final Plan referenced in the consent conditions.

## **Resolving matters with DPHI**

Two of BCS’s recommendations in our letter dated 15 March 2024 (addressed to D) still need further clarification. These include comments relating to:

- clarifying the legal mechanisms that will be used to secure and implement the outcomes,
- reducing the future risk of extraction and impacts to MaTS (i.e. to amend the State Environmental Planning Policy (Resources and Energy) 2021).

The seriousness of impacts to the critically endangered MaTS warrants BCS having a more complete understanding of how the negotiated outcomes will be legally implemented, reported and be enforceable. As such, BCS requests DPHI provide advice on the legal mechanism/s, and that we be given the opportunity to comment on any draft conditions of consent.

While we appreciate that Boral alone cannot have the SEPP modified, BCS would like to see Boral and DPHI to be willing to consider this approach as it would help protect and conserve MaTS matter. In particular, BCS believes it would be a good outcome if Boral's southern lands be included in Schedule 1 of the State Environmental Planning Policy (Resources and Energy) 2021.

If you have any further questions about this issue, please contact Mr Chris Page, Senior Team Leader, Planning (Illawarra), Biodiversity, Conservation and Science Group, on 02 4224 4180 or at [chris.page@environment.nsw.gov.au](mailto:chris.page@environment.nsw.gov.au).

Yours sincerely



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6 June 2024