



Mrs Helen Cleary  
Executive General Manager – Development and Partnerships  
Cleary Bros (Bombo) Pty Ltd  
39 Five Islands Road  
Port Kembla, NSW 2505

11/03/2021

Dear Mrs Cleary

**Supplementary Environmental Assessment Requirements  
Albion Park Quarry – Stage 7 Expansion (SSD-10369)**

I refer to the Planning Secretary's Environmental Assessment Requirements (SEARs) for the above Project dated 3 October 2019 and your letter dated 10 February 2021 requesting amended SEARs.

As you are aware, on 5 February 2021, the Project was determined to be a controlled action under Section 75 of the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). The proposed development will now also require assessment and approval under the EPBC Act before it can proceed and will be assessed under the Bilateral Agreement between the NSW and Commonwealth Governments.

Accordingly, the Planning Secretary has issued supplementary SEARs to incorporate relevant matters for assessment under the EPBC Act. A copy of the supplementary SEARs is enclosed and should be read as Attachment 3 to the SEARs issued on 3 October 2019.

I also note your advice that the proposed disturbance and quarry area has been amended in response to reduce potential biodiversity impacts. While this changes the project disturbance boundary, I note that it does not change the relevant lots and DPs for the proposal, and as such can confirm that the existing SEARs can continued to be applied to this amended area.

If you have any enquiries about these requirements, please contact Robert Hodgkins on the details listed above.

Yours sincerely

Matthew Sprott  
**Director Resource Assessments**  
as delegate for the Planning Secretary

Enclosed: Supplementary SEARs

## ATTACHMENT 1

### Commonwealth Department of Agriculture, Water and the Environment assessment requirements

#### Guidelines for preparing assessment documentation relevant to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) for proposals being assessed under the Amended Bilateral Agreement

#### Albion Park Quarry Stage 7 (EPBC 2020/8871) (SSD-10369)

##### Introduction

1. On 5 February 2021, a delegate of the Federal Minister for the Department of Agriculture, Water and the Environment (formerly the Department of Environment and Energy), determined that the Albion Park Quarry Stage 7 project is a controlled action under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The EPBC Act controlling provisions for the proposed action are:
  - i. listed threatened species and communities (sections 18 and 18A).
2. The delegate also confirmed that the proposed action will be assessed in accordance with the bilateral assessment agreement *Amending Agreement No. 1*, and as such, is required to be assessed in the manner specified in Schedule 1 to that Agreement, including, addressing the matters outlined in Schedule 4 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations).
3. The Applicant must undertake an assessment of all protected matters that may be impacted by the development under the controlling provisions identified in paragraph 1. The Commonwealth Department of Agriculture, Water and the Environment (DAWE) considers that the proposed action is likely to have a significant impact on the following:
  - i. listed threatened species and communities (sections 18 and 18A):
    - a) *Illawarra-Shoalhaven Subtropical Rainforest of the Sydney Basin Bioregion* – listed as **Critically Endangered** under the EPBC act;
    - b) *Illawarra Zieria (Zieria granulata)* – listed as **Endangered** under the EPBC Act; and
    - c) *Grey-headed Flying-fox (Pteropus poliocephalus)* – listed as **Vulnerable** under the EPBC Act.
4. The Applicant must consider the protected matters under the triggered controlling provisions that may be impacted by the action. Note that this may not be a complete list and it is the responsibility of the Applicant to undertake an analysis of the relevant impacts and ensure all protected matters that are likely to be impacted are assessed for the Commonwealth Minister's consideration.

## **General Requirements**

### Relevant Regulations

5. The Environmental Impact Statement (EIS) must address the matters outlined in Schedule 4 of the EPBC Regulations and the matters outlined below in relation to the controlling provisions.

### Project Description

6. The title of the action, background to the action of the action and current status.
7. The precise location and description of all works to be undertaken (including associated offsite works and infrastructure), structures to be built or elements of the action that may have impacts on Matters of National Environmental Significance (MNES).
8. How the action relates to any other actions that have been, or are being taken in the region affected by the action.
9. How the works are to be undertaken and design parameters for those aspects of the structures or elements of the action that may have relevant impacts on MNES.

### Impacts

10. The EIS must include an assessment of the relevant impacts of the action on the matters protected by the controlling provisions, including:
  - i. a description and detailed assessment of the nature and extent of the likely direct, indirect and consequential impacts, including short term and long term relevant impacts;
  - ii. a statement whether any relevant impacts are likely to be unknown, unpredictable or irreversible;
  - iii. analysis of the significance of the relevant impacts; and
  - iv. any technical data and other information used or needed to make a detailed assessment of the relevant impacts.

### Avoidance, mitigation and offsetting

11. For each of the relevant matters protected that are likely to be significantly impacted by the action, the EIS must provide information on proposed avoidance and mitigation measures to manage the relevant impacts of the action including:
  - i. a description, and an assessment of the expected or predicted effectiveness of the mitigation measures,
  - ii. any statutory policy basis for the mitigation measures;
  - iii. the cost of the mitigation measures;
  - iv. an outline of an environmental management plan that sets out the framework for continuing management, mitigation and monitoring programs for the relevant impacts of the action, including any provisions for independent environmental auditing;
  - v. the name of the agency responsible for endorsing or approving each mitigation measure or monitoring program.
12. Where a significant residual adverse impact to a relevant protected matter is considered likely, the EIS must provide information on the proposed offset strategy, including discussion of the conservation benefit associated with the proposed offset strategy.
13. For each of the relevant matters likely to be impacted by the action the EIS must provide reference to, and consideration of, relevant Commonwealth guidelines and policy statements including any:

- i. conservation advice or recovery plan for the species or community,
- ii. relevant threat abatement plan for the species;
- iii. wildlife conservation plan for the species; and
- iv. any strategic assessment.

**Note:** the relevant guidelines and policy statements for each species and community are available from the Department of Agriculture, Water and the Environment Species Profile and Threats Database.

<http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>

## Key Issues

### Biodiversity (threatened species and communities and migratory species)

#### Assessment Requirements

14. For each of the EPBC Act listed species predicted to occur in the project site, and each of the EPBC Act listed ecological communities likely to be significantly impacted, the EIS/Biodiversity Development Assessment Report (BDAR) must provide:
- a) survey results, including details of the scope, timing and methodology for studies or surveys used and how they are consistent with (or justification for divergence from) published Commonwealth guidelines and policy statements and/or the NSW Biodiversity Assessment Method (BAM);
  - b) a description and quantification of habitat in the study area (including suitable breeding habitat, suitable foraging habitat, important populations and habitat critical for survival), with consideration of, and reference to, any relevant Commonwealth guidelines and policy statements including listing advices, conservation advices and recovery plans, threat abatement plans and wildlife conservation plans; and
  - c) maps displaying the above information (specific to each EPBC protected matter) overlaid with the proposed action.

**Note:** it is acceptable, where possible, to use the mapping and assessment of Plant Community Types (PCTs) and the species surveys prescribed by the BAM as the basis for identifying EPBC Act-listed species and communities. The EIS/BDAR must clearly identify which PCTs are considered to align with habitat for the relevant EPBC Act listed species or community, and provide individual maps for each species or community.

15. The EIS/BDAR must describe the nature, geographic extent, magnitude, timing and duration of any likely direct, indirect and consequential impacts on any relevant EPBC Act listed species and communities. It must clearly identify the location and quantify the extent of all impact areas to each relevant EPBC Act listed species or community.
16. For each of the EPBC Act listed species and communities likely to be impacted by the development, the EIS/BDAR must provide information on proposed avoidance and mitigation measures to deal with the impacts of the action, and a description of the predicted effectiveness and outcomes that the avoidance and mitigation measures will achieve.
17. The EIS/BDAR must identify each EPBC Act listed species and community likely to be significantly impacted by the proposed action. Where a significant impact is likely, the EIS must provide information on the proposed offset strategy, including discussion of the conservation benefit, how offsets will be secured, and timing of protection.

**Note:** not all of the offset options under the NSW *Biodiversity Conservation Act 2016* are endorsed under the EPBC Act for approval purposes. It is a requirement that offsets directly contribute to the ongoing viability of the specific protected matter impacted by a proposed action i.e. 'like for like'. Like-for-like includes protection of native vegetation that is the same EEC or habitat being impacted, or funding to provide a direct benefit to the matter being impacted i.e. threat abatement, breeding and propagation programs or other relevant conservation measures.

#### Indigenous Community Consultation

18. The NSW assessment process includes a public consultation phase, in which any third parties can comment on the proposed action. Indigenous communities should also be consulted during the assessment process. The Department recommends that the EIS include:
- a) Identification of all the Aboriginal people that have been consulted on the proposal and the processes used to ensure they understand the proposal and potential impacts (and proposed actions to mitigate impacts on Indigenous heritage values).

- b) Concerns raised by Aboriginal people identified during consultation about the Indigenous heritage values and how they have been addressed.
- c) Detail of any MOUs/agreements/plans (including those with confidentiality arrangements) to manage the Indigenous heritage values over the development timeframe.
- d) Written confirmation from the appropriate Registered Aboriginal Parties, including the Illawarra Local Aboriginal Land Council, that confirms the above points and providing their support or otherwise for the works in relation to the protection of their heritage values and sites.
- e) Strategies to address the handling and reporting of unforeseen heritage discoveries during works, including Indigenous and non-Indigenous archaeology and unexpected human remains. Heritage monitors should be present on site for all relevant works, including representatives of the Traditional custodians and Aboriginal people with rights or interests in the area, if there is an identified likelihood that Indigenous and non-Indigenous archaeology and unexpected human remains are likely to be encountered.

**Note:** For more information on indigenous engagement, please refer to the Indigenous engagement guidelines <http://www.environment.gov.au/epbc/publications/engagearly>

#### **Other approvals and conditions**

- 19. Information in relation to any other approvals or conditions required must include the information prescribed in Schedule 4 Clause 5 (a) (b) (c) and (d) of the EPBC Regulations 2000.

#### **Environmental Record of person proposing to take the action**

- 20. Information in relation to the environmental record of a person proposing to take the action must include details as prescribed in Schedule 4 Clause 6 of the EPBC Regulations 2000.

#### **Information Sources**

- 21. For information given in an EIS, the EIS must state the source of the information, how recent the information is, how the reliability of the information was tested; and what uncertainties (if any) are in the information.

#### **Anticipated Engagement**

- 22. The Applicant should consult with DAWE again after detailed survey work is undertaken and before the EIS is finalised to ensure that all relevant species have been considered and the above assessment requirements have been met.

#### **REFERENCES**

- *Environment Protection and Biodiversity Conservation Act 1999* - section 51-55, section 96A(3)(a)(b), 101A(3)(a)(b), section 136, section 527E
- *Environment Protection and Biodiversity Conservation Regulations 2000 Schedule 4*
- NSW Assessment Bilateral Agreement (2015) - Item 18.1, Item 18.5, Schedule 1
- *Matters of National Environmental Significance - Significant impact guidelines 1.1* (2013) EPBC Act
- *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy* October 2012