



Tuesday, 11 May 2021

Director of Resource Assessments
Department of Planning & Environment
GPO Box 39,
SYDNEY NSW 2001

Attention: Mr Matthew Sprott

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**SUBJECT: REQUEST FOR EXTENSION TO BIODIVERSITY OFFSET STRATEGY IMPLEMENTATION
TIMING**

Dear Matthew

Further to correspondence dated 22 April 2021 from the Department for the refusal of proposed variation to offset strategy timing and staging request, Wedgetail Project Consulting Pty Ltd have been engaged by Williamtown Sand Syndicate Pty Ltd (WSS), to seek a 12 month extension to the Biodiversity Offset Strategy timing as outlined in Schedule 3, Condition 34 of the Development Consent for the Cabbage Tree Road Sand Quarry (SSD-6125). WSS are the owners of the quarry operator, Newcastle Sand.

Schedule 3, Condition 34 - Biodiversity and Rehabilitation: Biodiversity Offset Strategy states:

"The Applicant must implement the Biodiversity Offset Strategy as shown in Appendix 6 and described in the EIS, and acquire and retire biodiversity credits (within the meaning of the Biodiversity Conservation Act 2016) as set out in Tables 4 and 5 in accordance with the NSW Biodiversity Offsets Policy for Major Projects, to the satisfaction of the Secretary and BCD.

The Applicant must identify the source of these biodiversity credits prior to commencing quarrying operations and retire these credits within 12 months of commencing quarrying operations, unless otherwise agreed with the Secretary."

The quarry commenced 'quarrying operations' on 18 May 2020, with the first load of sand processed and transported from site. On this basis, without variation to the timing as otherwise agreed with the Secretary, all credits (both onsite and offsite are to be retired by 18 May 2021).

This request to the Secretary is for a 12-month extension in the timing from that outlined in the Development Consent enabling the retirement of onsite and offsite credits by 18 May 2022. Background and justification to the extension is outlined on the following pages.

Yours Sincerely

Jonathan Berry
Principal Advisor
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Jewells, NSW 2280
ABN: 93 640 388 683

1. Current Operations

The Cabbage Tree Road Sand Quarry was approved under SSD_6125 on 9 May 2018. The quarry commenced construction in August 2019, after more than nine months of construction, largely owing to delays in the final signoff by Transport for NSW (TfNSW formerly RMS) for the construction of the intersection with Cabbage Tree Road, the quarry received TfNSW signoff on the intersection on 14 May 2020, with operations commencing on 18 May 2020 with the first load of product sand dispatched via the completed intersection.

2. Current Condition 34 Biodiversity Offset Strategy

Schedule 3, Condition 34 - Biodiversity and Rehabilitation: Biodiversity Offset Strategy states:

"The Applicant must implement the Biodiversity Offset Strategy as shown in Appendix 6 and described in the EIS, and acquire and retire biodiversity credits (within the meaning of the Biodiversity Conservation Act 2016) as set out in Tables 4 and 5 in accordance with the NSW Biodiversity Offsets Policy for Major Projects, to the satisfaction of the Secretary and BCD.

The Applicant must identify the source of these biodiversity credits prior to commencing quarrying operations and retire these credits within 12 months of commencing quarrying operations, unless otherwise agreed with the Secretary.

Table 4: Biodiversity credits to be retired from the 131 ha offset area on the development site

Credit type	Number of Credits
Ecosystem Credits	
HU851	311
HU860	273
HU917	80
HU938	388
HU948	115
HU965	22
Total On-site Ecosystem Credits	1,189
Species Credits	
Camfield's Stringybark (<i>Eucalyptus camfieldii</i>)	11,651
Earp's Gum (<i>Eucalyptus parramattensis</i> subsp. <i>Decadens</i>)	4,501
Small-flowered Grevillea (<i>Grevillia parviflora</i> <i>Parviflora</i>)	724
Eastern Osprey	717
Koala	744
Wallum Froglet	606

Table 5: Biodiversity credits to be retired from off-site offset area

Credit type	Number of Credits
Ecosystem Credits	
Preferably HU860, and including other ecosystem credits generated by the application of variation criterion (f) for mitigated net loss (Tier 3) under the Interim Policy	A minimum of 687 ecosystem credits. All the ecosystem credits concurrently available in securing 306 Koala species credits, up to 1,018 ecosystem credits
Species Credits	
Koala	306

On 29 June 2020, following a request to DPIE, a Statement of assessment of reasonable equivalence of biodiversity credits (refer **Appendix 1**) was issued for the Offsite Offset requirements, the Statement determined 687 credits of HU860 in the Approval is equivalent to 288 credits of PCT 1646 under the Biodiversity Conservation Act 2016, Koala species credits remain consistent with the Approval at 306 credits.

Onsite credits are considered to be met through the implementation of the onsite offset (majority of residual Subject land), accepting the final credit numbers that will be calculated based on new Biodiversity Assessment Methodology and associated calculations and therefore may not align with that noted in Table 4 established under previous legislation and methodology.

3. Time Extension Request

Schedule 3, Condition 34, provides an opportunity for the timing of retiring offsets to be extended by the Secretary. On this basis, variation to the timing is requested to be varied for the reasons stated with Section 4 below, relating to improved cash flow management and availability of offsets. Current offset timing requires 100% to be retired 12 months after operations commence (i.e. 18 May 2021), it is requested that this be extended by 12 months to 18 May 2022.

For clarity, there is no request to vary the quantum of the offset or staged timing of the offset as previously requested, only the timing on which the offsets are required to be fully satisfied.

The Secretary has agreed previously to enable the offsite offsets to be satisfied by paying into the Biodiversity Conservation Trust (BCT), however, economically the costs of paying into the BCT is significant (currently estimated at \$2,224,890), almost four (4) times that budgeted in 2016 or the current costs offered to secure credits on an existing Stewardship site. As such, these costs are not considered reasonably feasible to commit to due to the significant additional financial burden.

4. Justification for Request

The request to vary the timing of the offset credit retirement is based on two key factors:

- Increased economic strain and delays; and
- Practical limitations due to credit availability and clarity on process.

Noting the above, Newcastle Sand are able to meet the required operational costs of the business and as operations continue, the financial security of the business continues to improve, hence the request to vary timing to minimise the financial burden on the business.

4.1 Increased Economic Strain and Delays

A key factor in the economic feasibility of a project, in addition to the cost of construction and operational costs, is the delay between financial outlay and gaining a return on that outlay. This section seeks to document the additional costs and delays experienced by this project as justification for a delay in further expenditure required to meet the Biodiversity offset obligations.

Starting during the approval process, with an Environmental Impact Statement (EIS) lodged in November 2015, the Cabbage Tree Road Sand Quarry has been subject to significant financial hurdles and delay, above that which would be typically expected, this included:

- Declaration of the PFAS investigation zone by the NSW EPA and the Department of Defence. This resulted in substantial delays to the project and significant costs during the assessment process in additional testing and the continuation of additional costs during operations.
- Declaration of the Mahony's toadlet as a threatened species, requiring additional surveys.
- And after achieving approval in May 2018 (some 2.5 years after the EIS was lodged), a court action to challenge the approval by local land holders, resulted in substantial additional legal costs. The action was subsequently withdrawn with agreements with most adjoining residents.

On gaining approval, after negotiating the court action, the project commenced construction in August 2019, some 15 months after Approval. During construction the Project was subject to the following additional costs and delays:

- Establishing a suitable intersection with Transport for NSW (TfNSW) resulted in substantial delays to the construction timing and resulted in increased construction costs beyond that initially budgeted, due to additional retaining wall costs, lengthened acceleration lane, road shoulder works and management of the utilities within the road shoulder. The effect of the increased intersection costs are magnified by the requirement of a bond in favour of TfNSW to cover the full cost of the intersection.
- At the peak of construction in January 2020, COVID 19 began to impose additional costs on construction, to deal with COVID 19 requirements from DPI and the NSW Government. COVID relief measures, such as the extended hours for construction were not feasible given added staffing costs and proximity of neighbours.
- Construction, suitable to enable haulage from the quarry via the weighbridge and an approved intersection, was completed by 14 May 2020 (i.e. 2 years after the approval, 4.5 years after lodging the EIS).

Since starting construction in May 2020, the quarry has slowly built a customer base, but has had the following unanticipated delays and costs:

- Additional costs of maintaining the site to DPI standards for COVID-19 and additional contractor induction requirements, and no Job Keeper subsidies were received.
- Market uncertainty on account of COVID-19.
- Costs of ongoing PFAS monitoring and reporting compliance.
- Purchase of an air separator at a cost of \$750,000, that, while functional in optimum conditions, was unable to suitably process the sand under the range of conditions found at the quarry.
- Additional extraction costs on account of unanticipated variation in geology within the resource, coupled with the lack of ability to process sand with the air separator.
- The need to seek a modification for and then purchase additional equipment to run a wash plant onsite in order to meet concrete sand specifications borne from changes in market demand.
- The Development Consent was based on the now outdated BioBanking Assessment Methodology (BBAM) and *Threatened Species Conservation Act 1993* (TSC Act). With the introduction of the *Biodiversity Conservation Act 2016* (BC Act) the methodology and process for establishing new offset sites changed to the Biodiversity Assessment Method (BAM). This means the onsite offset is now secured under a Stewardship Agreement. As a result all works previously completed during the approval phase, for which the offset obligations were set, are now null and void, with new

methodology required to establish the offset site and generate the credits to be retired consistent with the Consent. To satisfy the new methodology an additional \$36,000 is required to redo previously completed works, in order to lodge a Biodiversity Stewardship Site Agreement, with the BCT. Williamtown Sand Syndicate has engaged Wedgetail Project Consulting to undertake this work with field work completed at the time of this letter. With the Biodiversity Stewardship Assessment Report (BSAR) and agreement expected to be lodged in June/July 2021.

- The change in legislation (TSC Act to BC Act) has also resulted in, an expected increase to the total fund deposit required to establish the onsite offset area. These increases were not budgeted for in the approval process of the sand quarry. The exact increase in the TFD is currently unknown (this determined in conjunction with the BSAR).

4.2 Practical Limitations

The change in legislation from TSC Act to the BC Act and change of the biobanking BBAM, to the Stewardship agreement BAM, has resulted in meeting the exact obligations of the Development Consent very difficult. Firstly the old style of ecosystem naming does not exist anymore (HU851 does not exist, and is now under a system called Plant Community Type - PCT), nor are the credit requirement equivalent between the BBAM (old credit requirement was 1876 ecosystem credits) and new credit requirement under BAM.

On 29 June 2020, DPIE issued a Statement of Equivalence that determined the number and class of biodiversity credits to meet the Offsite Offset Requirement is 288 ecosystem credits and 306 Koala species credits.

Finding the offsite offsets, has also been a very difficult process due to geographic restriction originally put on the condition, by Port Stephens Council. The offsets were to be located in the general geographic area of Williamtown, numerous property searches and land owner approaches proved fruitless in finding any suitable land of a size suitable to satisfy the offset requirements. To help resolve this issue a request to DPIE (BCD) under the variation criterion (f) to extend the geographic area was made. This was approved, and again finding suitable land for offset was fruitless. A further use of the variation criterion (f), was also approved by DPIE (BCD) that allowed a more extensive search for land in a much larger geographic area and included the relaxing of ecosystem credit types (see Appendix 3). Following that process, after further searches, a source of offsite credits has been identified from a property with an established stewardship site and an agreement made with the credit owner to secure those credits.

4.3 Effects of Staging Offset Obligations

To provide improved economic feasibility of establishing the offset areas, a 12 month extension in the timing of credit retirement is requested.

In the event of WSS failing (e.g. becoming bankrupt) prior to the 18 May 2022, it is noted that the DPIE hold a bond of \$259,278 over the quarry to address the first three years of disturbance (i.e. to 2023), this bond coupled with the protected onsite offset areas, means there is negligible long term risk to biodiversity.

As the existing onsite offset is currently being protected by standard onsite quarrying operation procedures, management plans and development consent requirements, there is negligible risk or impact in the short delay in formalising the site as a Stewardship Site. Over the next 12 months there is limited potential for

significant weed outbreak beyond that which would be managed within the Stewardship Site Management Plan.

As demonstrated above, the proposed extension to the timing of the offset credit retirement will have negligible environmental consequence.

5. Conclusion

The delays and additional costs experienced by this Project are considered to be extraordinary and beyond the reasonable expectations for a project of this nature and scale and justify the need for the requested variation in timing.

It is understood that the NSW State Government is keen to support the construction industry through flexibility and collaborative approach to helping business that support the construction industry stay viable during this period and to provide much needed employment and economy stimulus. This requested variation in timing ensures the supply side of the construction industry remains strong and supports the construction industry in its recovery and stimulus of the economy.

The proposed extension is consistent with the spirit of the COVID 19 response to business that support the construction industry, a necessary step to ensure the viability of the quarry moving forward to limit financial exposure.

Appendix 1: Statement of Equivalence

Statement of assessment of reasonable equivalence of biodiversity credits

A delegate of the Environment Agency Head of the Department of Planning Industry and Environment has determined that the number of biodiversity credits required to be retired under the *Threatened Species Conservation Act 1995 (TSC Act)* as part of the development consent listed in Part 1, are reasonably equivalent to the number and class of biodiversity credits under the *Biodiversity Conservation Act 2016 (BC Act)* set out in Part 2.

This document outlines that determination, made in accordance with clause 22(3) of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*.

Part 1 Existing statutory obligation to retire credits

Request made by:	Williamtown Sand Syndicate Pty Limited (ABN 56 606 820 875)
Date request received	7 th April 2020
Development Consent reference	SSD 6125 ¹
Development name	Cabbage Tree Road Sand Quarry

Existing statutory obligation reference	Biodiversity credit name (Plant Community Type name and ID, or threatened species name)	IBRA sub region	Number of credits
SSD 6125	Smooth-barked Apple - Blackbutt - Old Man Banksia woodland on coastal sands of the Central and Lower North Coast (HU860/ PCT1646)	Karuah Manning	687
SSD 6125	Koala (<i>Phascolarctos cinereus</i>)	NA	306

¹ The applicant requested that the credit equivalence be undertaken for only the credit obligations listed under Table 5 in condition 34 of the SSD 6125 development consent. These credit obligations are 687 ecosystem credits for HU860 and 306 species credits for Koala (*Phascolarctos cinereus*). The remaining credit obligation listed under Table 4 in condition 34 are met through an onsite offset.

Part 2 Determination of reasonable equivalence

The number and class of biodiversity credits that are reasonably equivalent under the BC Act are:

Ecosystem Credits

1. **Name of Plant Community Type:** Smooth-barked Apple - Blackbutt - Old Man Banksia woodland on coastal sands of the Central and Lower North Coast, PCT1646 (HU860)

Number of ecosystem credits required²	288 ³
Offset trading group	Coastal Dune Dry Sclerophyll Forests with a percent cleared <50%
Hollow bearing trees	Vegetation containing hollow-bearing trees
Vegetation class	Coastal Dune Dry Sclerophyll Forests
Vegetation formation	Dry Sclerophyll Forests (Shrubby sub-formation)
IBRA⁴ subregion	Karuah Manning and any IBRA subregion that adjoins the subregion within which the development occurs and any such subregion that is within 100 kilometres of the outer edge of the impact site.

² Biobanking Calculator reference 167/2016/3878MP.

³ Matching credits are available on the Biobanking Register from BioBanking Agreement BA225, however the applicant contacted the credit owner who advised these credits are already committed and not available for sale (see DOC20/407470). A full recalculation of credits for HU860 was therefore undertaken. The consent conditions for SSD 6125 require an offsite offset obligation which is not linked to a Biobanking Calculator output. In consultation with the applicant, the data from the onsite offset calculations for HU860 (PCT1646) (Biobanking Calculator reference 167/2016/3878MP) was used as a surrogate to determine credit equivalence for the offsite offset for HU860 (PCT1646).

⁴ Interim Biogeographic Regionalisation for Australia

Species Credits

1. Name of threatened species: Koala *Phascolarctos cinereus*⁵

Number of species credits required	306
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This statement was issued on 29 June 2020.

Authorised by:



DEREK RUTHERFORD
Director Conservation Programs
Department of Planning Industry and Environment
Delegate of the Environment Agency Head

⁵ Matching credits are available on the public register of Biobanking credits for Koala from 21 Biobanking agreements including BA398, BA228 and BA379. In accordance with the approved method there was no recalculation of credit numbers.

Appendix 2: Email for Offsite Credit agreement

From: Mark Farrell <[email removed for privacy](#)>
Sent: Friday, 19 March 2021 11:46 AM
To: darren@arbus.com.au
Cc: Adam Blundell <ablundell@wedgetail.com.au>
Subject: Re: Introduction email

Darren,

This is to confirm agreement for the purchase by you of 288 ecosystem credits and 306 koala credits valued at \$630,002.88 from Stewardship Site BS 0017 which is owned by me.

This agreement is subject to the approval by the OEH of the offsite offset proposal for purchase of credits from BS0017.

The agreed payment date is May 2022.

Yours sincerely,

Mark Farrell

Appendix 3: BCD Letter on Use of Variation Criteria



Our ref: DOC20/634055-2

Your ref: n/a

Mr. Adam Blundell
Principal Advisor
Wedgetail Project Consulting

ablundell@wedgetail.com.au

Dear Mr Blundell

Karuah offsets for Cabbage Tree Road Sand Quarry (SSD 6125), Tomago – Williamtown Sand Syndicate

I refer to your emails (dated 6 and 11 August 2020) requesting clarification on the use of Biodiversity and Conservation Division's (BCD) of the Department of Planning, Industry and Environment (the Department) Offset Policy for State Significant Developments - '*NSW OEH interim policy on assessing and offsetting biodiversity impacts of Part 3A, State significant development (SSD) and State significant infrastructure (SSI) projects*' (OEH 2011) (the Policy). Your e-mail was in relation to the potential use of the Karuah Biobanking Agreement ID 97 and whether its use would comply with Criteria F of the Policy.

Under the Policy, Criteria F (Attachment B: Variation criteria for mitigated net loss (Tier 3)) permits the conversion of ecosystem credits to a regional conservation priority as identified in a regional conservation plan or similar. BCD have provided previous advice to Wedgetail Project Consulting that the Hunter Regional Plan – 2036 is considered a suitable regional conservation plan. BCD concurs that Criteria F permits the use of any Plant Community Type (PCT) / ecosystem credit providing it is located within a high conservation priority area; and when no matching credits are available and Variation Criteria A (of attachment B of the Policy) is not feasible. As such Wedgetail Project Consulting will need to provide justification as to why Tier 1 and Tier 2 options of the Policy are not available, as well as why Variation Criteria A is not feasible. The justifications should follow the guidance provided in the Policy.

If you have any further questions in relation to this advice, please contact Steve Lewer, Senior Regional Biodiversity Conservation Officer, on 4927 3158 or via email at rog.hcc@environment.nsw.gov.au.

Yours sincerely

27 August 2020

STEVEN COX
Senior Team Leader Planning
Hunter Central Coast Branch
Biodiversity and Conservation Division

References:

OEH (2011) *NSW OEH interim policy on assessing and offsetting biodiversity impacts of Part 3A, State significant development (SSD) and State significant infrastructure (SSI) projects*. NSW Office of Environment and Heritage, Sydney, June 2011.