



Office of Environment & Heritage

Your Reference: SSD 13_6281
Our reference: DOC 13/87192
Contact: Peter Ewin
03 5021 8915

David Mooney
Senior Planner, Industry Projects
Department of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2001



Dear Mr Mooney

RE: Deniliquin Ethanol Plant: (SSD 13_6281)

Thank you for your electronic mail dated 27 November 2013 to the Office of Environment and Heritage (OEH) requesting our Director General's Requirements for the Environmental Impact Statement (EIS) to be prepared by Dongmun Greentec for the proposed Deniliquin Ethanol Plant in Deniliquin Council. This response is in regard to statutory matters relating to application of the *National Parks and Wildlife Act 1974* and the *Threatened Species Conservation Act 1995*.

OEH has considered the details of the proposal as provided in your e-mail and at the Planning Focus Meeting held on 2 December 2013. From this we have identified the information required to assess the impact of the proposal as outlined in Attachment 'A'. Our key information requirements for the project are as follows.

- Assess the impacts on threatened species and their habitat associated with the development and, if required, use the principles of "avoid, mitigate, offset" to minimise the impacts of the proposal on biodiversity;
- An assessment of the impacts on Aboriginal cultural heritage; and
- The actions that will be taken to avoid or mitigate impacts or compensate for unavoidable impacts identified in the above.

In carrying out the assessment the proponent should refer to the relevant guidelines identified at Attachment 'B'.

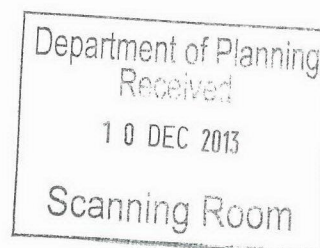
The EIS needs to clearly identify the nature and scope of the complete project including any ancillary activities associated with the project.

Should you wish to discuss this submission further, please contact me on (03) 5021 8915, or at peter.ewin@environment.nsw.gov.au.

Yours sincerely

5/12/13

PETER EWIN
Team Leader Planning
South West Region
Regional Operations
Office of Environment and Heritage



ATTACHMENT 'A'

Aboriginal Cultural Heritage

The *Environmental Planning and Assessment Act 1979* (EP&A Act) requires that proponents of a development/activity and the determining authority adequately assess the impact of a development or activity on Aboriginal cultural heritage.

The *National Parks and Wildlife Act 1974* (NPW Act) protects Aboriginal objects and Aboriginal places in NSW. Under the NPW Act, it is an offence to do any of the following things without an exemption or defence provided for under the NPW Act (penalties apply) –

- knowingly harm or desecrate an Aboriginal object (the 'knowing' offence)
- harm or desecrate an Aboriginal object or Aboriginal place (the 'strict liability' offence)

The NPW Act provides a number of exemptions and defences to these offences and also excludes certain acts and omissions from the definition of harm. Further information about the regulation of Aboriginal cultural heritage is available from the OEH website at

www.environment.nsw.gov.au/licences/achregulation.htm. A Section 90 Aboriginal Heritage Impact Permit under the NPW Act is not required for approved State Significant Development.

It is in the interest of proponents to ensure that all reasonable precautions are taken to prevent the occurrence of damage to Aboriginal objects.

The EIS should address the impacts of the project on Aboriginal cultural heritage values. Aboriginal objects may exist on a parcel of land even though they have not been recorded in AHIMS, and even though the area may have been previously cleared and/or cropped.

It is in the interest of proponents to ensure that all reasonable precautions are taken to prevent the occurrence of damage to Aboriginal objects.

OEH suggests that the proponent undertake a cultural heritage assessment of the potential impacts of the proposed development.

The EIS should contain:

1. a description of the Aboriginal objects and declared Aboriginal places (if any) located within the area of the proposed activity;
2. a description of the cultural heritage values, including the significance of the Aboriginal objects and declared Aboriginal places, that exist across the whole area that will be affected by the proposed activity and the significance of these values for the Aboriginal people who have a cultural association with the land;
3. the views of those Aboriginal people regarding the likely impact of the proposed activity on their cultural heritage (if any submissions have been received as a part of the consultation requirements, the report must include a copy of each submission and your response);
4. actual or likely harm posed to the Aboriginal objects or declared Aboriginal places from the proposed activity, with reference to the cultural heritage values identified;
5. any practical measures that may be taken to protect and conserve those Aboriginal objects or declared Aboriginal places; and
6. any practical measures that may be taken to avoid or mitigate any actual or likely harm, alternatives to harm or, if this is not possible, to manage (minimise) harm.

In addressing the requirements above, the proponent may refer to the Guidance Material listed in Attachment B.

If Aboriginal objects are found to be directly or indirectly adversely affected by the proposed development, the proponent will need to plan for appropriate management of these objects.

Biodiversity

The primary aims of the EIS for the proposal, as it relates to biodiversity, will be to:

1. Establish the area, character and conservation value of existing ecosystems, and dependent species to be impacted on the site;
2. Provide detailed information about the measures required to avoid and minimise impacts to natural and biological values on the proposed site; and
3. Demonstrate how the development will improve or maintain biodiversity.

The EP&A Act requires that proponents of a development/activity and the determining authority adequately assess the impact of a development or activity on flora and fauna, including threatened species, populations or ecological communities, or their habitats in any environmental assessment documents.

OEH notes that the proposed development site includes a natural depression vegetated by mature box trees, which contain various sized hollows. While the site is predominantly ploughed, variable levels of soil disturbance are evident. Soil type indicates the possibility of habitat suitable for the endangered Plains Wanderer (*Pedionomus torquatus*) if native grassland is present on the site.

The EIS must include a map and document the condition of any remnant vegetation present on the site in order to establish the presence of threatened species habitat, such as hollows, and threatened ecological communities. If necessary, the applicant should then identify methods, using the principles of “avoid, mitigate, offset”, to minimise the impact of the development on these values.

The OEH threatened species website (www.environment.nsw.gov.au/threatenedspecies/) and Atlas of NSW Wildlife (www.bionet.nsw.gov.au/) can be used to generate a list of threatened species, populations and ecological communities predicted or known to occur in the area. Habitat preferences can then be used to determine the likelihood of these species occurring in the study area. If impacts on biodiversity are likely to be significant, then one option to mitigate these impacts is through the use of a biodiversity offset. If an offset is to be used, then the principles for its implementation are available from the OEH website at www.environment.nsw.gov.au/biodivoffsets/nswoffsetprincip.htm.

An assessment of significance should be completed for developments that may impact on threatened flora, fauna, threatened ecological communities or endangered populations. An assessment of significance should address all threatened species potentially occurring on site that may be directly or indirectly impacted by the proposal. Guidelines for completing an assessment of significance can be found on the OEH website at www.environment.nsw.gov.au/resources/threatenedspecies/tsaguide07393.pdf.

ATTACHMENT 'B'

Guidance Material

Assessing Threatened Species Impacts

- NSW Threatened Species website
www.environment.nsw.gov.au/threatenedspecies/index.htm
- NSW offset principles for major projects (state significant development and infrastructure)
www.environment.nsw.gov.au/biodivoffsets/nswoffsetprincip.htm
- Biobanking Assessment Tools
www.environment.nsw.gov.au/biobanking/tools.htm
- Threatened species assessment guidelines (DECC, 2007)
www.environment.nsw.gov.au/threatenedspecies/tsaguide.htm
- Atlas of NSW Wildlife
www.bionet.nsw.gov.au/

Aboriginal Cultural Heritage Impacts

- Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation. Department of Environment and Conservation. July 2005. This guide was developed for EP&A Act Part 3A projects, and is still applicable in the context of SSD and SSI projects.
- Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (OEH 2011). This document provides guidance on the process for investigating and assessing Aboriginal cultural heritage in NSW
www.environment.nsw.gov.au/licences/investassessreport.htm
- Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 (DECCW, 2010). This document further explains the consultation requirements that are set out in clause 80C of the *National Parks and Wildlife Regulation 2009*. The process set out in this document must be followed and documented in the EIS
www.environment.nsw.gov.au/licences/consultation.htm
- Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (DECCW 2010)
www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf
- Code of Practice for the Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW 2010). The process and methods described in this Code should be followed where the assessment of Aboriginal cultural heritage requires an archaeological investigation to be undertaken
www.environment.nsw.gov.au/licences/archinvestigations.htm