NSW GOVERNMENT | Office of Environment & Heritage

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SSD 6612

Ms Genevieve Seed
Planning Officer, Resource Assessments
Department of Planning and Environment
genevieve.seed@planning.nsw.gov.au

Attention: Thomas Watt

Dear Ms Seed

Martins Creek Quarry Extension Project – Environmental Impact Statement

I refer to your email dated 10 October 2016, seeking comment on the Martins Creek Quarry Extension Project (SSD 6612) located on Station Street, Martins Creek in the Dungog local government area. The Office of Environment and Heritage (OEH) has undertaken a review of the Environmental Impact Statement (EIS) titled '*Environmental Impact Statement: Martins Creek Quarry*' (including Appendices), prepared for Buttai Gravel Pty Ltd by Monteath & Powys Pty Ltd (dated September 2016). OEH's review is in relation to threatened biodiversity, Aboriginal cultural heritage, and flooding / floodplain management issues.

OEH understands that the proponent assessed the project under the NSW Biodiversity Offsets Policy for Major Projects which includes the requirement to comply with the Framework for Biodiversity Assessment (FBA). As part of this process the EIS must include a Biodiversity Assessment Report (BAR) and a Biodiversity Offset Strategy (BOS), which assesses the impacts on threatened biodiversity. Although the EIS contains a BAR, OEH is of the opinion it does not comply with the requirements of the FBA guidelines and as such OEH cannot support the findings of the EIS until these non-compliant issues are adequately addressed. **Attachment A** provides details of where the EIS is non-compliant with offsetting guidelines. Furthermore, the EIS does not contain a complete BOS, only a summary document which indicates that offsets will be required. OEH understands the Department of Planning and Environment have provided approval for the proponent to provide this document during the 'Response to Submissions' phase. However, this lack of information means that OEH is unable to conduct a full assessment of the project, and is unable to determine if the project will be adequately offset with respect to biodiversity. OEH requires the BOS to determine whether or not the proposed biodiversity offsets are appropriate with respect to the quantum and the type of vegetation / habitats being conserved.

Given that OEH will need to review the FBA again (including the revised BAR and the full BOS report) during the 'Response of Submissions' (RTS) phase of the assessment it is likely that this cannot be undertaken in the normal time frame provided. The typical two week turnaround for the RTS is too short for OEH to conduct a full appraisal of the FBA, particularly as a field inspection of the development site is recommended to check the veracity of the data used and to confirm the process has been undertaken correctly.

Locked Bag 1002 Dangar NSW 2309
Level 4/26 Honeysuckle Drive Newcastle NSW 2300
rog.hcc@environment.nsw.gov.au
ABN 30 841 387 271
www.environment.nsw.gov.au

In addition, OEH understands that the project has been declared a controlled action by the Australian Government Department of the Environment and Energy and as such is also being assessed under the Commonwealth Bilateral Agreement with respect to 'matters of National environmental significance' (MNES) under the *Environment Protection and Biodiversity Conservation Act 1999*. Given that the FBA is currently non-compliant and OEH has not been able to fully assess the EIS, no assessment of the MNES has been undertaken to date.

In summary, OEH is of the opinion the EIS does not adequately address biodiversity issues, but sufficiently addresses Aboriginal cultural heritage and flooding. Further detailed comments are provided in Attachment A. The EIS will need to be amended to satisfactorily address our concerns to enable OEH to complete its assessment.

If you require any further information regarding this matter please contact Steve Lewer, Regional Biodiversity Conservation Officer, on 4927 3158.

Yours sincerely

24 NOV 2016

RICHARD BATH
Senior Team Leader Planning, Hunter Central Coast Region
Regional Operations

Enclosure: Attachment A

ATTACHMENT A: OEH REVIEW - ENVIRONMENTAL IMPACT STATEMENT - MARTINS CREEK QUARRY EXTENSION PROJECT (SSD 6612)

THREATENED BIODIVERSITY

A specific requirement of the issued Secretary's Environmental Assessment Requirements (SEARs) is that biodiversity / threatened species aspects of the project are to be assessed under the NSW Biodiversity Offsets Policy for Major Projects. This includes the requirement to comply with the Framework for Biodiversity Assessment (FBA - OEH 2014). As part of this process the EIS must include a (i) Biodiversity Assessment Report (BAR), which assesses the impacts on threatened biodiversity and a (ii) Biodiversity Offset Strategy (BOS), which outlines the approach to provide compensatory habitat that is commensurate with the development footprint. The

Biodiversity Assessment Report

A BAR has been included as part of the EIS as Appendix L, which is titled '*Biodiversity Assessment Report Prepared for Martins Creek Quarry, Station Street, Martins Creek*', prepared by Conacher Consulting (dated August 2016). OEH can confirm that the assessment was undertaken by an accredited person under section 142B(1)(c) of the *Threatened Species Conservation Act 1995*.

Despite a BAR being provided, OEH is of the opinion that this document is not compliant with the FBA guidelines (OEH 2014), as outlined in Table 20 of this document. OEH is unable to undertake an assessment until it addresses the following non-compliance issues, including the provision of data as per the FBA guidelines. OEH contacted the Department of Planning and Environment (DPE) on 25 October 2016 and requested additional information with respect to the BAR. Conacher Consulting partly addressed this request in correspondence dated 2 November 2016, however, OEH is still of the opinion information is missing and some data appeared to contradict what is stated in the BAR (as outlined below). A further request to DPE on 3 November 2016 (which was also forwarded to the proponent) requested the missing information, outlined data discrepancies and the requirement for a site inspection. To date there has been no response to this request.

Table 20 of the FBA guidelines (OEH 2014), clearly sets out the minimum requirements that need to be included in a BAR. The BAR appended to the EIS is non-compliant for the following reasons:

- A full set of all the completed plot and transect field sheets has not been provided. OEH acknowledges that the additional information provided by Conacher Consulting on 2 November 2016 provided some of the required data sheets (i.e. transects), however, completed floristic plot data sheets was not provided. Floristic plots, detailing dominant and sub-dominant species per strata, cover and abundance, species richness and weediness (as well other vegetation and habitat indices required in the FBA / BioBanking Assessment Methodology [BBAM] process) are required under the FBA process to determine the Plant Community Types (PCTs) present on both the development site and offset areas. The field data is used to check the veracity of the plot data entered for each vegetation zone, as well as informing and checking that the correct PCTs have been chosen. Without this data OEH is unable to conclude that the correct PCTs were used and whether that data has been entered into the credit calculator correctly. OEH questions how the PCTs were determined. Given that the PCT is one of the core attributes to determine the type and quantum of biodiversity credits generated under the BBAM credit calculator, OEH questions the overall credit calculations given the veracity of the data used cannot be checked. The guidelines clearly state this information must to be provided and to date, despite two requests, it is still outstanding.

  OEH acknowledges that plot and transect field data must also be supplied in MS Excel format and that the BAR has complied with this requirement. However, in this instance the way the plot data has been presented is confusing (i.e. difficult to read), as species have been duplicated and information about strata is unclear. There appear to be obvious errors in the data. OEH encountered discrepancies between the MS Excel spreadsheet and the field transect / plot sheets Conacher Consulting have provided (on 2 November 2016), particularly with respect to species

richness. Based on randomly checking a couple of plots: (i) for Plot 1, OEH notes in the MS Excel spread sheet the native species richness is 50 compared to the field plot sheet which is 25 – this is half the total on spreadsheet and as such could have a bearing on the credit calculations if the latter was recorded; and (ii) for Plot 7 the results were not as dramatic but still different 48 vs 44 species. Given these errors OEH questions the overall data included in the MS Excel spreadsheet and BAR, given that we have not been able to check this data against the original field data sheets. Clearly there appear to be errors which could have bearing on the credit calculations and the overall biodiversity credits being generated. Note: OEH has not accessed whether or not the PCTs are correct as this cannot occur until the field plot sheets are made available and they are verified during a site inspection.

- In light of the above concerns regarding the veracity of the data, OEH has requested a field inspection, which is a typical process in the assessment of FBA / BBAM. A site inspection will enable OEH to check: - the accuracy of the field data, the adequacy and location of plots / transect, the assessment of vegetation zones / PCTs, the location of threatened species (i.e. plants) and ecological communities, and the proposed management actions (particularly for offset areas). OEH is unwilling to commit to the assessment until an appropriate field inspection is undertaken to assess the above factors and alleviate any concerns we have about the process, particularly in light of the obvious data errors. OEH will expect that the accredited assessor (Mr. Jacob Manners – BioBanking Assessor Accreditation No. 0132) is present during the site inspect to answer any specific queries. OEH requested a site inspect during the exhibition phase of the EIS but to date this request has remain unanswered.

- OEH notes that the methodology utilised to determine the threatened *Eucalyptus glaucina* is not consistent with OEH guidelines (i.e. Threatened Flora Guidelines, OEH 2016) and provides an estimation rather than an accurate count. OEH guidelines specify that belt transects are the recommended technique for determine presence of threatened flora (including population counts). These are spaced at an appropriate width across the potential / likely habitat, based on the target species habit (i.e. tree, forb, etc.). The method outlined in the BAR (Section 3.1.2 Flora Survey Details) is not consistent with this approach and has used 13 quadrats to extrapolate the density / numbers across the entire site. OEH is concerned this approach could underestimate numbers on site and is not consistent with other Major Projects with similar species (e.g. *Eucalyptus camfieldii*, *E. glaucina* and *E. parramattensis* subsp. *decadens*) that have utilised full counts (as per the guidelines). Furthermore, it appears the approach in the BAR did not sample all know areas of *E. glaucina* on site, based on non-sampled areas shown on Figure 3.1.

  Given that this is not a cryptic species the expectation would be an accurate count was undertaken (as OEH 2016). Although OEH guidelines do note that the above approach can be modified, and that we have permitted estimations based on a sub-sample, this needs to be done in consultation with OEH. Nevertheless, given this is a quite large species (i.e. a eucalypt tree) our advice would have been specific counts, as per other similar projects with large, easily detectable species. OEH recommends that the EIS employ specific counts in accordance with the Threatened Flora guidelines across all know areas and potential habitat on site (as schematically shown on Figure 3.1).

- Threatened flora targeted searches locations are not shown (except for *Eucalyptus glaucina*). Plus it is unclear whether or not OEH (2016) survey guidelines for threatened flora have been used – which requires appropriately belt transects, not opportunistic or random meanders. Section 3.1.2 does not specify the technique that was undertaken. This will need to be clarified and potentially redone if the incorrect was utilised, particularly if the site was under sampled utilising 'random meanders'.

- No apparent assessment or inclusion of indirect impacts of the proposal.

- Digital shape files for all maps and corresponding data has not been provided.

Biodiversity Offset Strategy

OEH notes the EIS does not contain a complete BOS. OEH understands that DPE have provided approval for the proponent to provide this document during the 'Response to Submissions' phase. This lack of information means that OEH is unable to conduct a full assessment of the project, and is unable to determine if the project will be adequately offset with respect to biodiversity. OEH requires the BOS to determine whether or not the proposed biodiversity offsets are appropriate with respect to the quantum and the type of vegetation / habitats being conserved.

References:

OEH (2014) *Framework for Biodiversity Assessment.* September 2014. NSW Office of Environment and Heritage, Sydney. www.environment.nsw.gov.au/resources/biodiversity/140675fba.pdf

OEH (2016) NSW Guide to Surveying Threatened Plants. February 2016. NSW Office of Environment and Heritage, Sydney. www.environment.nsw.gov.au/resources/threatenedspecies/160129-threatened-plants-survey-guide.pdf

ABORIGINAL CULTURAL HERITAGE

OEH has reviewed the '*Martins Creek Quarry Aboriginal Cultural Heritage Assessment, Prepared for Buttai Gravel, Prepared by Niche Environmental and Heritage, 8 June 2016*', with respect to Aboriginal cultural heritage. The Aboriginal cultural heritage assessment report (ACHAR) was prepared for the proposed expansion of Martins Creek Quarry to access the potential harm that the quarry expansion could have on Aboriginal objects, places or potential archaeological deposits (PAD's) within the subject area. The ACHAR found that there were three Aboriginal objects located within the proposed extraction area, AHIMS site # 38-4-0214 isolated artefact, AHIMS site # 38-4-0217 and AHIMS Site # 38-4-0218 both comprising scar trees. The ACHAR concluded that only the isolated artefact (site # 38-4-0214) will be harmed by the proposed expansion proceeding. OEH concurs with this assessment.

The two scar tree sites - AHIMS site # 38-4-0217 and AHIMS Site # 38-4-0218, have now been removed from AHIMS register in consultation with OEH. AHIMS site # 38-4-0217 was determined not to be of cultural origin and AHIMS Site # 38-4-0218 was unable to be relocated. The only remaining sites within the impact zone is AHIMS site # 38-4-0214 which could also not be relocated during the field assessments for this ACHAR. Therefore, the findings that the ACHAR that the proposed works are unlikely to impact on Aboriginal cultural heritage values is considered appropriate by OEH.

The ACHAR also notes an appropriate management process for the discovery and management of Aboriginal objects should be in place prior to any works commencing. OEH also supports this recommendation. Additionally, there were no concerns raised regarding the management recommendations of the ACHAR by the registered Aboriginal parties for this proposal. OEH therefore has no further concerns with respect to Aboriginal cultural heritage and the proposed expansion of the Martins Creek Quarry.

FLOODING AND FLOODPLAIN MANAGEMENT

OEH has reviewed the flooding / floodplain management component of the EIS and is satisfied that the project will have no significant impact on flooding in the vicinity or lead to increased runoff from the development footprint.

However, OEH notes that the proposal will intercept first, second and third order streams which will impact on availability of water for downstream users. The Department of Primary Industries Water should provide advice in relation to this issue.

OEH – NOVEMBER 2016