



Office of
Environment
& Heritage

Your reference: SSD_6624
Our reference: DOC15/163165
Contact: Krister Waern 6640 2503

Mr Thomas Watt
Department of Planning & Environment
GPO Box 39
Sydney NSW 2001

Attention: Director-Resource Assessments

Dear Mr Watt

Re: SSD_6624 – Slys Quarry Expansion Project, Tullymorgan-Jackybulbin Road, Mororo

Thank you for your email dated 19 May 2015 requesting comment from the Office of Environment and Heritage (OEH) in relation to the proposed State Significant Development (SSD) application above. I appreciate the opportunity to provide input.

OEH has statutory responsibilities relating to biodiversity (including threatened species, populations, ecological communities, or their habitats), Aboriginal and historic heritage, National Parks and Wildlife Service estate, flooding and estuary management. Matters relating to noise, air and water quality and any licensing requirements under the *Protection of the Environment Operations Act 1997* should be addressed separately to the Environment Protection Authority because that authority is now independent of OEH.

We have reviewed the documents supplied and advise that although we have no concerns in relation to NPWS estate, flooding, or historic heritage, a number of issues are apparent with respect to the assessments for biodiversity and Aboriginal cultural heritage. These issues are discussed in detail in **Attachment 1**.

In summary we recommend that:

1. The applicant must amend the errors in the BioBanking credit calculations and include indirect impacts as specified by OEH. The amended BioBanking credit calculations should be provided to OEH for review.
2. The applicant should clarify whether clearing of native vegetation for Stage 1 of the quarry has impacted on the areas proposed to be cleared for Stage 2. Any areas in proposed Stage 2 impacted by clearing for stage 1 must be incorporated into the BioBanking credit calculations as fully vegetated land. Any amended BioBanking credit calculations should be provided to OEH for review.
3. The applicant should provide further detail within the Biodiversity Offset Strategy in accordance with the Framework for Biodiversity Assessment. The amended strategy should be provided to OEH for review.

4. A detailed rehabilitation plan should be submitted for approval by the Department of Planning and Environment, which incorporates the comments provided by OEH.
5. Further consultation with Aboriginal cultural heritage knowledge holders should be undertaken in accordance with the Secretary's Environmental Assessment Requirements to ensure that the consent authority is provided with adequate evidence to inform their decision.
6. The results of the consultation with Aboriginal cultural heritage knowledge holders should be incorporated into the existing Aboriginal cultural heritage assessment to inform and support the revised report recommendations and the name of the report should be amended to reflect its purpose as the Aboriginal cultural heritage component of the environmental assessment.
7. The Aboriginal cultural heritage assessment report should include an assessment of the potential for Aboriginal objects to be present in areas referred to as disturbed land.

Should you require further information or clarification, or should Council be in possession of information that suggests that our statutory interests may be affected, please contact Senior Operations Officer, Mr Krister Waern, on 6640 2503.

Yours sincerely

Dimitri Young 24 June 2015

DIMITRI YOUNG
Senior Team Leader Planning, North East Region
Regional Operations

Attachment 1 – Detailed OEH Comments – SSD_6624 – Slys Quarry Expansion Project

Biodiversity comments

OEH notes (section 1.4 of the Biodiversity Assessment Report) that the applicant has chosen to use the BioBanking Methodology (BBAM) in accordance with the NSW Biodiversity Offsets Policy for Major Projects (2014) and the associated Framework for Biodiversity Assessment (FBA) to quantify the proposal's impacts and determine suitable offsets within the policies guidelines.

We have reviewed the Environmental Impact Statement (EIS) supplied by GHD dated May 2015 and provide the following comments:

- We have reviewed the submitted biobanking calculations for the proposal. The following calculator errors need to be corrected:
 - The Mitchell landscape is *Summervale Range* not *Clarence-Manning Basin Margin*.
 - The IBRA subregion is *Clarence lowlands* not *Clarence Sandstone*.
 - The Assessment of geographic / habitat features should tick the *Giant Barred Frog* as the subject site meets the habitat feature of '*land below 1000 m in altitude and within 40 m of rainforest or eucalypt forest with deep leaf litter*'.
 - Vegetation zone 2 has been defined as *NR 114 Blackbutt - bloodwood dry heathy open forest on Quaternary sands of the northern NSW North Coast Bioregion*, however the better aligned plant community type for vegetation zone 2 is *NR 115 Blackbutt - bloodwood dry heathy open forest on sandstones of the northern NSW North Coast Bioregion*.
- The EIS (p92) and the Biodiversity Assessment Report (p38) discuss the indirect impacts that are likely to occur on the remaining vegetation adjacent to the quarry expansion area. Section 8.2.7 of the Biodiversity Assessment Report states, "*provided mitigation measures outlined in Section 7 are implemented there are unlikely to be any substantial indirect impacts associated with construction or operations activities. Therefore no additional indirect impacts have been included in the credit calculations*".

We do not agree that all indirect impacts can be avoided when a new edge is created in a previously intact vegetation community. Indirect impacts such as light, noise, wind will impact on the retained vegetation outside of the proposed expansion. We acknowledge that the mitigation measures will reduce indirect impacts, however there will still be some edge effects that will impact on the remaining vegetation. As such, the BioBanking credit calculations are to be amended to include a portion of indirect impacts associated with the proposed quarry expansion.

- We note that part of the proposed stage 2 (southern section) has previously been cleared (figure 2 of the Biodiversity Assessment Report). If the current approval (stage 1) has cleared outside of its approval boundary, then this cleared area should be considered as vegetated for the purposes of calculating the impacts of the quarry expansion for stage 2. Section 1.2 of the Biodiversity Assessment Report indicates that the cleared area in stage 2 is approximately 4,300m². The applicant should clarify the cleared area and incorporate an additional area into the BioBanking credit calculations if appropriate.
- Once the above amendments to the BioBanking credit calculations have been approved by OEH, a final credit report can be generated for the proposed quarry expansion. The required ecosystem and species credits must be retired prior to works commencing on site.
- The FBA requires a Biodiversity Offset Strategy to be prepared. We note that the applicant has prepared a preliminary Biodiversity Offset Strategy in section 10 of the Biodiversity Assessment Report. However this section is lacking details about the suitability of the potential BioBank site and no BioBanking calculations have been submitted for our review. The applicant should provide further detail within the Biodiversity Offset Strategy in accordance with the FBA.

- The rehabilitation plan as outlined in Appendix A lacks sufficient detail. A more detailed rehabilitation plan should be prepared for approval by the Department of Planning and Environment which includes:
 - Staged rehabilitation of the quarry once areas are no longer required;
 - Specified maintenance periods to ensure rehabilitation is progressing towards locally occurring vegetation communities;
 - Regular reporting of works undertaken, and;
 - Instead of a five year maintenance period the rehabilitation of the quarry should be based on specified rehabilitation criteria which will determine when the rehabilitation reaches a self-maintaining phase. This may take longer than five years and would require an inspection from a person with suitable qualifications to determine whether further management actions are necessary.

Recommendations:

1. The applicant must amend the BioBanking credit calculations errors and include indirect impacts as specified by OEH. The amended BioBanking credit calculations should be provided to OEH for review.
2. The applicant is to clarify whether clearing of native vegetation for stage 1 of the quarry has impacted on the areas proposed to be cleared for stage 2. Any areas in proposed Stage 2 impacted by clearing for stage 1 must be incorporated into the BioBanking credit calculations as fully vegetated land. Any amended BioBanking credit calculations should be provided to OEH for review.
3. The applicant should provide further detail within the Biodiversity Offset Strategy in accordance with the FBA.
4. A detailed rehabilitation plan should be submitted for approval by the Department of Planning and Environment, which incorporates the comments provided by OEH.

Aboriginal Cultural Heritage comments

We have reviewed the *Aboriginal cultural heritage Due Diligence Assessment Sly's Quarry Lot 2 DP 1055044 Mororo, Clarence Valley NSW* (November 2014) prepared by Everick Heritage Consultants Pty Ltd and compared it to the Secretary's Environmental Assessment Requirements regarding Aboriginal cultural heritage. Our review indicates that the requirement for a description of consultation with Aboriginal people as specified in clause 80C of the *National Parks and Wildlife Regulation 2009* has not been met.

Failing to adequately consult limits the opportunity for Aboriginal stakeholders to be involved and increases the potential for cultural concerns to be missed. We recommend that further consultation be undertaken and the evidence of that consultation provided to the consent authority to address this omission. The consultation needs to provide evidence of the involvement of Aboriginal stakeholders in the assessment of Aboriginal cultural heritage, the development of the management strategies considered, and support for the recommendations of the report.

Additionally, the executive summary describes the 'brief for the project' as a stand-alone Due Diligence Assessment report to support a development application. This approach is inconsistent with the intention of an environmental assessment. We acknowledge there are times when the results of the preliminary due diligence process indicate that no further assessment or consultation is required. However, if the process is being undertaken to inform a development assessment, the appropriate documentation is the Aboriginal cultural heritage assessment component of the Environmental Assessment, and needs to be titled appropriately.

The body of the report provides conflicting statements regarding disturbance levels within the assessment area. Section 9.5 states the assessment did not conclusively determine that all the subject land is disturbed land. However, other sections of the report refer to past disturbance over all the land to justify a conclusion that no further archaeological assessment is required. We acknowledge that references to 'disturbed land' within the context of an Aboriginal cultural heritage assessment may indicate areas where any evidence of Aboriginal cultural heritage no longer remains *in situ*. It does not however remove the requirement to assess the potential for Aboriginal objects to be present in the area, albeit in a disturbed context.

Recommendations:

1. Further consultation with Aboriginal cultural heritage knowledge holders should be undertaken in accordance with the SEARs to ensure that the consent authority is provided with adequate evidence to inform their decision.
2. The results of the consultation with Aboriginal cultural heritage knowledge holders should be incorporated into the existing Aboriginal cultural heritage assessment to inform and support the revised report recommendations and the name of the report should be amended to reflect its purpose as the Aboriginal cultural heritage component of the environmental assessment.
3. The Aboriginal cultural heritage assessment report should include an assessment of the potential for Aboriginal objects to be present in areas referred to as disturbed land.

