



Office of
Environment
& Heritage

Your reference: MP10-0006
Our reference: DOC14/34809-01; EF14/1159
Contact: Steve Lewer, 4908 6814

Mr Chris Ritchie
Manager - Industry
Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

Attention: Kerry Hamann

Dear Mr Ritchie

RE: REVIEW OF PROPOSED PINDIMAR ABOALONE FARM ENVIRONMENTAL ASSESSMENT (MP10-0006)

I refer to your letter dated 19 March 2014 requesting comments on the Pindimar Abalone Farm Environmental Assessment (EA) as prepared by City Plan Services and dated February 2014, located in the Great Lakes and Port Stephens local government areas. The Office of Environment and Heritage (OEH) understands the EA is on public exhibition from 20 March to 12 May 2014.

OEH has undertaken a review of the above document and our comments are provided in **Attachment A**. OEH acknowledges that in general the EA is considered adequate with respect to biodiversity / threatened species and Aboriginal cultural heritage matters, albeit some minor comments that need to be resolved. Although OEH is able to offer support for the proposal, it is of the opinion the following minor matters need to be addressed before final approval is given to the project:

- assessment of the proposed Biodiversity Offsets against OEH's '*NSW offset principles for major projects (state significant development and state significant infrastructure)*' or the BioBanking Assessment Methodology
- potential additional offset for impacts to Coastal Saltmarsh endangered ecological community
- inclusion of the proposed mechanism for securing and managing the proposed Biodiversity Offsets in perpetuity
- provision of a Vegetation Management Plan
- clarification of some Aboriginal cultural heritage matters.

If you require any further information regarding this matter please contact Steve Lewer, Regional Biodiversity Conservation Officer, on 4908 6814.

Yours sincerely

10 APR 2014

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

Enclosure: Attachment A

ATTACHMENT A: OEH REVIEW OF PROPOSED PINDIMAR ABALONE FARM ENVIRONMENTAL ASSESSMENT (MP10-0006)

THREATENED SPECIES

OEH has reviewed the Environmental Assessment (EA), in particular the report titled '*Statement of Effect on threatened flora and fauna for a proposed abalone farm at Lot 2 DP 1014683, Clarke Street, Pindimar, NSW*' (prepared by Wildthing Environmental Consultants in December 2013) and notes the following issues.

Biodiversity Offset

OEH acknowledges that the proponent has provided a Biodiversity Offset to compensate the loss of biodiversity, including threatened species, ecological communities and their habitat, located in the northern part of the property (i.e. to the north of the proposed development) and as schematically shown on 'Figure 29 – Northern portion of study area showing the location of the proposed offset area'. However, OEH is uncertain if the proposed offset area has been determined in accordance with OEH's offset principles, particularly in regards to quantum (i.e. size) and its 'like-for-like' nature with respect to vegetation types. OEH's Director General Requirements (DGRs) required any determination of an appropriate offset needed to be undertaken in accordance with OEH guidelines / policies. As such any proposed offset package should be assessed against:

- (i) OEH's *NSW offset principles for major projects (state significant development and state significant infrastructure)*, which are available at: www.environment.nsw.gov.au/biocertification/offsets.htm

OR

- (ii) the requirements of the BioBanking Assessment Methodology (DECC 2008) utilising the 'BioBanking Assessment Methodology and Credit Calculator Operational Manual' (DECC 2009) www.environment.nsw.gov.au/resources/biobanking/09181bioopsman.pdf, the Assessors' guide to using the BioBanking Credit Calculator v.2 (OEH 2012) www.environment.nsw.gov.au/resources/biobanking/120182AssessGdeBBCC.pdf, and OEH's 2011 policy, '*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).

OEH recommends that Planning and Infrastructure ensure that the proposed offset has been assessed under one of the above outlined policies.

OEH also notes that the proposed pipeline route across the area of Coastal Saltmarsh endangered ecological community (EEC), appears to now involve the placement of this infrastructure underground, thus resulting in a greater impact to this threatened vegetation type. Previously OEH was of the understanding the pipeline was to be laid on the ground surface resulting in minimal disturbance. If this has now changed and the pipeline will be buried, OEH would expect that an appropriate additional offset, in accordance with the above mentioned policies, be provided specifically for the Coastal Saltmarsh EEC.

Conservation of Proposed Offsets

OEH acknowledges that the proponent intends to apply an appropriate mechanism to conserve and manage any offset lands in perpetuity, as outlined in Section 5.8.3 of the EA and Section 10 of the flora and fauna report. Both these documents state: '*the legal mechanism to manage the land shall be determined with government Agency stakeholders should the project gain approval*'. OEH is of the opinion that the proposed mechanism for conservation should be provided pre-approval. As such OEH requests the proponent to identify the conservation mechanisms to be used to ensure the long term protection and management of the offset sites. With respect to managing and conserving any proposed offset in perpetuity, OEH considers and supports the following as appropriate conservation mechanisms:

- the establishment of BioBanking sites with BioBanking agreements under the *Threatened Species Conservation Act 1995*
- the dedication of land under the *National Parks and Wildlife Act 1974* (NPW Act)
- a Conservation Agreement under the NPW Act
- a Trust Agreement under the *Nature Conservation Trust Act 2001*
- a Planning Agreement under s93F of the *Environmental Planning and Assessment Act 1979*.

Note:

- OEH no longer supports public positive covenant under s88E of the *Conveyancing Act 1919* as an appropriate conservation mechanism to secure and/or manage biodiversity offsets.
- OEH has previously supported the use of conservation agreements under the NPW Act as one of the acceptable offsetting mechanisms. However, it should be noted that OEH's position on the use of conservation agreements for development applications is currently under review and this approach may no longer be an acceptable conservation outcome for this project. The Conservation Partners Program section of OEH administer the use of conservation agreements and have recently advised that for commercial developments, the preferred method of securing an offset is under the BioBanking provisions of the *Threatened Species Conservation Act 1995* (i.e. a registered BioBanking Agreement site). OEH recommends that the proponent either consider the use of a BioBanking Agreement or contact OEH's Conservation Partners Program group to determine whether or not the use of a conservation agreement for the proposed biodiversity offset area would be supported.

Development of a management plan

To appropriately manage any proposed compensatory offsets, any retained habitat enhancement features within the development footprint and/or impact mitigation measures (including proposed rehabilitation and/or monitoring programs); the DGRs specified that an appropriate Management Plan (such as vegetation or habitat) be developed as a key amelioration measure. These plans should be prepared prior to any potential approval of the development. OEH acknowledges that the EA indicates that a Vegetation Management Plan or similar will be prepared, but this has not been included in the EA. OEH is of the opinion such plans should be incorporated in the EA or provide pre-approval.

Management Plans should clearly document how any retained vegetated areas or habitat features will be managed with respect to long-term conservation and viability, including clear details on how they will be funded. They should cover (where applicable), but not be limited to, the following issues:

- weed management (both control and suppression) and monitoring
- management of retained native vegetation and habitat (including buffer zones)
- feral animal control
- fire management (including asset protection zones)
- public access (including restriction of, increased traffic, and associated impacts, such as increased refuse and pets)
- size and management of buffer zones
- minimisation of edge effects and fragmentation
- stormwater control and changes to hydrology (including stormwater / runoff control and sediment / erosion control measures)
- management of specific habitat enhancement measures (e.g. hollow / habitat trees, animal fencing to facilitate movement, artificial hollows and nest boxes etc.)
- fauna displacement and if appropriate translocation (including any licence requirements)
- proposed surveys, such as pre-extraction baseline, pre-clearance and rehabilitation surveys
- details of long-term monitoring (including proposed timing)
- details of any rehabilitation program, including details of timing (including proposed staging details), rehabilitation measures (including details of proposed revegetation and species mix), and post-rehabilitation monitoring
- measures to ensure conservation in perpetuity (e.g. transfer to OEH [NPWS] estate, conservation agreements or covenants)
- funding details of long-term financial commitment to any proposed conservation measures, including any mechanisms to be implemented to achieve this.

References

- DECC (2008) *BioBanking Assessment Methodology*. Department of Environment and Climate Change NSW, detailed at: www.environment.nsw.gov.au/biobanking/index.htm.
- DECC (2009) *BioBanking Assessment Methodology and Credit Calculator Operational Manual*. DECC 2009/181, Department of Environment and Climate Change (NSW), Goulburn Street, Sydney, available at: www.environment.nsw.gov.au/resources/biobanking/09181bioopsman.pdf.
- 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.
- OEH (2012) *Assessors' Guide To Using The BioBanking Credit Calculator V2*. Office of Environment and Heritage NSW, Sydney; April 2012, available at: www.environment.nsw.gov.au/resources/biobanking/120182AssessGdeBBCC.pdf.

ABORIGINAL CULTURAL HERITAGE ASSESSMENT

OEH has reviewed the '*Aboriginal Heritage and Archaeological Assessment - Abalone Farm, Pindimar NSW, Report to City plan and Development Newcastle NSW 2300, March 2013, Myall Coast Archaeological Services*' and provides the following comments and recommendations.

Two Aboriginal archaeological and cultural heritage assessments have been conducted of the present subject area for the proposed abalone farm. '*Aboriginal Heritage Assessment for a proposed Abalone Farm at Lot 2 DP1014683, Carruthers Avenue, South Pindimar NSW, August 2002, Wildthing Environmental Consultants, for Austasis Leefield Pty Ltd*'. This initial assessment identified an Aboriginal midden within the development footprint. It was further noted that the proposed pipeline route was too close to the midden. Since that time, the proponent has relocated the pipeline route to avoid any 'direct' disturbance to the midden site. This assessment found no other archaeological evidence within the development footprint. This assessment has not been reviewed by OEH.

The current 2013 assessment, found no additional archaeological evidence during the re-survey of the subject area, however, the potential extent of the shell midden site was considered to be larger than initially recorded. This assessment concluded that the nature and extent of the total development in relation to the midden was now acceptable and that the amended route for the pipeline would avoid any impacts to the shell midden site. Whilst this assessment is basically adequate, it is lacking in detail with respect to the shell midden significance and extent of the site in relation to the proposed development footprint. OEH acknowledges that it is the local Aboriginal communities' preference not to disturb such sites, however, archaeological testing to define the middens extent would seem appropriate in this instance. Furthermore, given the generally high archaeological sensitivity of the foreshore of Port Stephens it would seem more appropriate that the midden site be clearly defined and excluded entirely from the development footprint.

OEH notes that no Aboriginal Heritage Management Information System (AHIMS) site card was included with either assessment despite being completed by Worth in 2002. *AHIMS Site # 38-5-0224* (Pindimar 1) indicates that the midden site is approximately 12 metres wide which further supports the need for additional archaeological investigation to determine the nature, extent and significance of the site.

The 2013 assessment further identifies that a "*Management Plan*" for the midden site be developed "*post approval*" (L. Roberts, 2013, p.44). While OEH concurs that a Heritage Management Plan should be developed for the proposed development, OEH strongly recommends that this occur prior to approval begin granted to ensure that the extent of the midden footprint is known and can be protected from any associated development impacts.

With respect to Aboriginal community consultation, the assessment further notes that: "*the Aboriginal stakeholders have no objection from a cultural heritage perspective for the proposal proceeding as all known areas, objects and features of value to the Aboriginal community have been left in-situ outside of the proposed development*" (L. Roberts, 2013, p.53). OEH again recommends that the midden site be further examined, adequately recoded and tested in order to determine the extent and significance of the site. Once this has occurred an appropriate Heritage Management Plan can be developed to protect the site for the life of the proposed development.