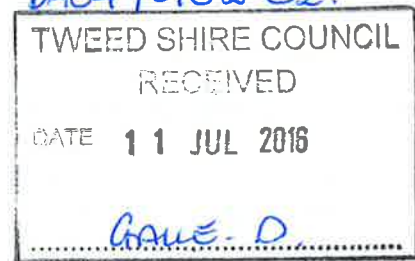




Our Ref: DOC16/207950
Your Ref: DA04/0162.02

Ms Denise Galle
Team Leader – Development Assessment
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2484



Dear Ms Galle

Re: Tumbulgum Quarry S96 Modification – Determination of Appropriate Biodiversity Offsets

Further to the most recent telephone conference between yourself, Mr Darryl Thiedeke (Hy-Tec Quarries), Mr Jim Lawler (Groundwork Plus), Ms Natascha Arens (ngh) and the Office of Environment and Heritage's Conservation Planning Officer Ms Nicky Owner on 1 July 2016, I am pleased to provide additional comments on the proposed Section 96 Modification of the existing Tumbulgum Quarry consent. I appreciate the opportunity to provide ongoing input.

Proposed Offset Measures

We have reviewed the documents supplied and advise that, although we have identified some errors and omissions in both the application of the BioBanking Credit Calculator and in the preparation of the Biodiversity Assessment Report and Biodiversity Offset Strategy (BOS), we are of the view that the applicant has clearly and repeatedly demonstrated an intention to provide an offset for the biodiversity impacts of the proposal.

In addition, following our ongoing discussions with the Accredited Assessor (Mr Matthew Hingee) who is undertaking the BioBanking Assessment on behalf of the applicant, we are of the view that the proposed offset site is likely to generate a sufficient number of biodiversity credits required to offset the impacts of the proposed quarry expansion on biodiversity values. This is because the proposed 12 hectare offset site contains the same Brush Box Moist Forest plant community type as the area to be impacted (impact site is approximately 4.1 hectares), as well as areas of equivalent habitat type and value. Furthermore, the securing of the proposed offset area would also result in the in-perpetuity protection and management of a patch of high conservation value Pepperberry-Giant Stinging Tree – Fig Lowland Rainforest, of which 95% of its pre-European extent has been cleared from across the Northern Rivers CMA region.

Whilst we recognise the precise final number of credits generated by the development and offset sites is not completely resolved, we note that, in the event of a shortfall, the applicant could source these from the BioBanking credit market, or, establish another offset site elsewhere in the vicinity, or, develop additional supplementary measures to address the shortcomings, or a combination thereof.

We are also confident that the resolution of this issue can be addressed through an appropriate condition of consent to ensure that an appropriate offset is developed as part of a BOS and that the offset requirement is implemented.

Recommendation

Based on the discussion points outlined above, the OEH supports the approval of the proposed Section 96 modification for the expansion of the Tumbulgum Quarry, subject to the inclusion of the following as a condition of consent:

Prior to the commencement of the quarry expansion, the proponent must develop a biodiversity offset strategy to the written satisfaction of the Office of Environment and Heritage and the Tweed Shire Council. The strategy must quantify the biodiversity impacts of the quarry expansion using the BioBanking Assessment Methodology and identify the BioBanking biodiversity credit requirements required to offset the impacts of the proposal. The strategy must also identify the measures proposed to offset these impacts. If the measures include the securing of any identified offset site in perpetuity, then this strategy must identify a suitable mechanism to achieve this.

Overall, we think that this condition provides sufficient certainty that the biodiversity impacts of the proposal would be adequately offset, through the implementation of an agreed and acceptable BOS, in a reasonable timeframe, and as per the applicant's stated commitment to do so prior to commencement of the quarry expansion.

Section 79C – Matters for Consideration by the Consent Authority

BioBanking may be used as an alternative pathway for the assessment of the biodiversity impacts of a development. In this instance however, the BioBanking Assessment Methodology has only been used to quantify the biodiversity credit requirement to assist in the identification of an appropriate offset site, to address the loss of biodiversity following the proposed expansion of the quarry. As such, the provisions of Section 5A of the *Environmental Planning and Assessment Act 1979* are still applicable in assessing the significance of the impacts of the proposed Tumbulgum Quarry expansion on threatened species.

BioBanking Benefits

Based on discussions to date, the Applicant proposes to enter into a BioBanking Agreement to secure the offset site in perpetuity. This proposal is supported by the OEH as it provides a number of key benefits for biodiversity, the landowner and for council, as summarised below.

A BioBanking Agreement is attached to the land title in-perpetuity and includes provisions that require current and future landowners to carry out on-going management actions to improve biodiversity values on the site. This will result in the conservation of site's biodiversity values into the future, for the benefit of current and future generations.

By establishing a biobank site, the landowner can:

- Secure in-perpetuity funding for management actions to improve the site's biodiversity values into the future;
- Conserve the site's biodiversity values into the future;
- Retain the land in private management and ownership;
- Make a profit from the proceeds of selling any excess biodiversity credits, beyond the needs of any credit requirement associated with development; and
- Be exempt from paying land tax on the proportion of your land designated as a biobank site.

Unlike a Section 88B instrument under the *Conveyancing Act 1919*, which was originally proposed for the offset site, once a bio-bank site has been established, the council will have no ongoing role in the management of that site, or in compliance monitoring and enforcement. Rather, the OEH is responsible for monitoring and enforcing compliance at biobank sites. A compliance assurance strategy has been developed to provide a framework to establish program priorities and promote,

monitor and enforce compliance, and an audit program will be implemented. The compliance assurance strategy is a public document and is available from www.environment.nsw.gov.au/biobankbiobanking under 'framework'.

If you have any further questions about this issue, Ms Nicky Owner, Conservation Planning Officer, Regional Operations, OEH, can be contacted on 6659 8254 or at nicky.owner@environment.nsw.gov.au.

Yours sincerely

A handwritten signature in blue ink that reads "Dimitri Young" followed by the date "1 July 2016".

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

Contact officer: NICKY OWNER
6659 8254

cc: Mr Darryl Thiedeke, Mr Jim Lawler, Ms Natascha Arens