

OEH – Key points - Yerriyong Motorsports Facility - RA14/1000

Southern JRPP 29/6/16

KEY POINTS

1. OEH is obligated to objectively review relevant development matters and to apply a standard of appraisal reflecting strategic planning, policy and legislation. OEH has approached this proposal like any other.
2. Assessment of the proposal against the NSW Government's strategic planning direction is very relevant. The biodiversity and conservation values of the site have been well documented for some time. The site's environmental attributes warrant protection and conservation in a regional context. New development is to "*be directed away from areas known to be important for conservation*" and "*be located on largely cleared land or areas where only limited clearing of native vegetation with low conservation values is required*". Any impacts are to be avoided in the first instance, minimised or mitigated (ie offset in regard to a maintain or improve principle). OEH has consistently raised this issue but assessment has been avoided.
3. OEH is cognisant of the regional need and value of the proposal. This is not in dispute. The suitability of the site for the project, however, is a central question. In light of the strategic planning framework, there has been a lack of any genuine appraisal of contemporary alternative sites. From the limited commentary, it appears there are some defined criteria but only Crown land sites have been considered in recent times. And the background to why the recent 2014 local environmental plan zoned the land is only a 'best fit' for the site from the 1985 LEP rather than align with the strategic framework is another story.
4. In regard to supporting documentation, adverse biodiversity impacts remain considerable and some central issues already raised by OEH still have not been addressed. Topping the list would be the long-term viability of an orchid (*Cryptostylis hunterinia*) listed as Vulnerable under both State and Commonwealth legislation and clearing for bushfire overlaps with retained conservation areas. Council's internal report (oddly undated and unsigned) by the Threatened Species Officer/Environmental Assessment Officer (TSO/EAO) also highlighted shortcomings and further unknowns in regard to conservation issues and dependencies on certain conditions being delivered in future development applications (eg buffers, fencing, etc).
5. The proposed "conservation measures" are unsatisfactory and need a great deal of further work and transparency. This issue is well document by the OEH submissions. Depending on management actions not yet defined and relying on habitat areas not yet secured is a serious problem that must be addressed before any determination. It also needs to be clarified if the land west of Braidwood Road is been used or managed for conservation purposes by the Nowra District Motorcycle Club.
6. OEH opposes Council's recommendation to approve with deferred commencement. This recommendation avoids addressing the central matters that have been raised on many occasions by many stakeholders (including recent Council's TSO/EAO internal report) and defers in resolving a satisfactory conservation/offset outcome that is central to the degree of impact. Limited demonstration of how cl.7.5 in 2014 LEP has been addressed by Council. Approving a conceptual "Masterplan" with so many unknowns and uncertainties may be expedient but OEH does not consider it to be robust decision making.
7. The Council position that there is no likely significant impact has been made prior to addressing other identified shortcomings. The Council position also relies heavily on a statistical comparison of the current proposal against the original race track layout that had almost maximum impact on the site's biodiversity. OEH considers the original proposal made only a very limited attempt to avoid or minimise impacts and should not be used for comparative statistical purposes to now underpin a claim of no likely significant impact.

RECOMMENDATIONS

It is recommended the JRPP:

- A. not accept the Council recommendation to approve the application via a deferred commencement.
- B. recognise the NSW government's strategic planning framework is relevant to the decision making process and address the application in light of this framework including reference to the South Coast Regional Strategy, South Coast Regional Conservation Plan that were relevant at the time of lodging the application (and possibly the Illawarra Shoalhaven Regional Plan if deemed relevant)
- C. request alternate sites be genuinely investigated and include to all land tenures (not limited to Crown land) taking account of the above regional planning framework
- D. Note the shortcomings identified in the Council's internal report from the TSO/EAO
- E. Request further matters be addressed as outlined in OEH submissions and in Council's internal reports prior to any determination
- F. Request Council demonstrate consideration of all the provisions in cl.7.5 of LEP 2014
- G. Request Council provide documentation of the lease provisions, consent conditions and/or management requirements (or similar) of the existing Nowra District Motorcycle Club to better understand the site's management and determine whether the land is already been managed for conservation purposes (so that 'double dipping' for conservation management is not arising from the clearing impacts on the east side of Braidwood road).
- H. Provide a framework or criteria for resolving what constitutes a conservation measure prior to any approval been given so that certainty and responsibility is well understood by relevant stakeholders (including the use of the Government's endorsed approach, such as the BioBanking Assessment Methodology, to remove any subjectivity)

General Comments:

- There has been difficulty for OEH to prepare submissions due to the iterative nature of the proposal and currency of various documents, the lateness of key documents been made available and the general lack of notification when documents become available at a late juncture.
- From the socio-economic perspective, OEH is cognisant of the regional need and value of the proposal and this has been acknowledged in OEH's letter of 30 September 2015. It is therefore disappointing that the view of a consultant report prepared for Motorcycling NSW states that, "*Predictably, OEH opposes the proposal*". This is poor conduct and an inaccurate view of OEH. It highlights that many who support the project do not fully appreciate there is an over-arching detailed assessment process accompanied by particular identified regional level strategic outcomes for biodiversity (ie protect land having identified environmental significance, maintain or improve where impacts are unavoidable, avoid, minimise and mitigate, etc). OEH is obligated to uphold the NSW Government's policy and legislative framework.
- It remains unclear why Council has avoided any assessment or commentary on the strategic planning context of the site. There is no commentary in the Council's Assessment Report provided to the JRPP despite acknowledging OEH's ongoing and reiterated concerns regarding the strategic suitability for the site. OEH therefore requests the JRPP uphold the value of the

NSW Government's by addressing the strategic planning framework in place at the time of lodging the application – that is, the South Coast Regional Strategy (2007) – particularly Chapter 4 – Outcomes (p.13) and Appendix 1 – Sustainability Criteria (item 7 – Environmental Protection p.37), and the South Coast Regional Conservation Plan (2010). The Illawarra Shoalhaven Regional Plan (2015) was released after the application was lodged.

- With the existence of the South Coast Regional Strategy (2007), South Coast Regional Conservation Plan (2010) and s.117 Direction – 5.1 Implementation of Regional Strategies many years prior to the 2014 LEP zoning, the JRPP should consider the suitability of the site and zoning given the clear planning guidance on biodiversity issues and mapping of the site as (i) regional corridor, (ii) threatened fauna habitat, (iii) threatened flora habitat and (iv) old growth forest (in part). Council's Assessment Report does not touch on this history in the background section. A lack of genuine investigation of alternate sites is a logical finding – especially commentary that two Crown land sites were assessed (one been National Park) and an unquantified consideration of sites by Council in the mid-1990s. On 30 September 2015, OEH recommended a strategic re-think on the location of an expanded regional-scale Motorsports facility in the Shoalhaven. Notably it did not oppose the race track. To have a sub-optimal race track (as discussed at a meeting with the proponent and Council) as an outcome of a highly constrained site adds validity to investigating less-constrained alternate sites – and sites evaluated consistent with the NSW strategic regional planning framework. While site criteria are established in the various documents, it is unclear why only Crown land has been considered and no other land tenures (wholly or partly). At the end of the day, if the site is utilised for a sub-optimal outcome, it still needs to be appropriately offset.
- OEH understands the proponent was advised on-site by consultants and Council in 2011 of the biodiversity issues of the site. The above strategic documents were available well before the DA was prepared. It is unclear why Shoalhaven Council only undertook a 'best fit' review of the 2014 LEP for this site despite the strategic documents and s.117 Direction been well understood by Council staff. This was not explained in the background section of the Assessment Report.
- OEH holds the view that the consultant assessment process and documented support for the Motorsports Facility has had shortcomings despite engaging consultants who OEH is aware have delivered quality reports elsewhere. For example, a finding of no significant impact was the initial position by the flora and fauna consultant despite not addressing 28 threatened fauna species and 11 flora species readily available on the ATLAS website (and accessed in their reports elsewhere) and also knowing the clearing involved removal of a viable local population of an orchid listed as Vulnerable on both State and Commonwealth legislation. It is unclear why this is, by far, the poorest example of work OEH has come across from this consultant. Hence, the need for a more efficient and non-subjective approach to understanding clearing impacts and adequate offsetting.
- To enable an objective appraisal of conservation impacts and offsets, the JRPP and DPE have previously recommended using the OEH offset methodology (ie BioBanking Assessment Methodology) for planning assessments such as Helensburgh (JRPP) and Manyana (Gateway Determination by DPE) amongst other examples. Councils also draw upon the BBAM to guide objective conservation decisions on the more complex or contentious matters including those that do not trigger a likely significant impact. Given the difficult assessment and documentation process to date, not to mention subjective and opinionated peer review reports, it would be a logical and efficient way for the JRPP to resolve conservation measures upfront and with certainty (and avoid further iterations and peer reviews). The BioBanking methodology is regarded legislatively as "improving or maintaining biodiversity values" and, when applied, the development is deemed to not likely have a significant effect on biodiversity.

STRATEGIC CONTEXT

s.117 Direction – Implementation of Regional Strategies – unclear why the 2014 LEP looks like it does for the subject lands. For the 2014 LEP to only be a ‘best fit’ of the 1985 LEP zoning is not consistent with the Direction and it is unclear if the Planning agency was aware and/or satisfied of the inconsistency.

South Coast Regional Strategy (2007) – Outcomes include:

- The quality and distribution of the Region’s biodiversity will be maintained or enhanced over time.
- Development will be directed away from areas known to be or likely to be important for conservation
- Development will be located on largely cleared land or areas where only limited clearing of native vegetation with low conservation values is required
- Important natural assests, many of which also have biodiversity values, will be identified and protected through the land use planning process
- New urban development is to be prohibited by local environmental plans on land assessed as being of high conservation value
- Councils will consider the Regional Conservation Plan to guide implementation of conservation outcomes
- Appendix 1 - Requires that development proposals be considered against the Sustainability Criteria. Includes improve or maintain outcome for areas of significant biodiversity.

South Coast Regional Conservation Plan (2010)

At the strategic planning level, OEH again highlights that the subject lands are acknowledged to be of ‘High Conservation Value’ in the South Coast Regional Conservation Plan. This is confirmed by in the Biosis reports. The Plan maps the site as having the following the values:

- Regional corridor
- Threatened fauna habitat
- Threatened flora habitat
- Old growth forest (in part)

The South Coast Regional Strategy (2007) is clear in the directions for new development and protecting lands of high conservation value (see above).

IMPACTS

Impacts March 2016

Summary impacts	<p>In summary, the amendments have led to a revised suite of impacts, these are outlined in Table 7 of the Biosis report (19 Feb, 2016) and include:</p> <ul style="list-style-type: none"> - Total loss of <u>41.8 hectares of Shoalhaven Sandstone Forest</u>. - Removal of 1 plants of the threatened flora species <i>Cryptosyllis hunteriana</i>, with the retention of the known 41 other known plants. - Removal of at least <u>497 known hollow bearing trees</u> (retention of 504 hollow bearing trees) (noting that 67% of the precinct was surveyed). - Removal of 41.8ha of habitat for 14 threatened fauna species recorded from the site. - Footprint reduced from 58ha to 41ha
Orchid impacts	<p>The most recent iteration of the Master Plan has attempted to reduce impacts to <i>Cryptostylis hunteriana</i>. This has been achieved through the retention of the bulk (41 of 42 known plants) of the known population. New layouts have taken into consideration recent additional survey for orchids undertaken by both Biosis and recognised orchid specialist, Alan Stephenson.</p>

	<p>Buildings in the Motorsport Facility Masterplan will also need similar APZ setbacks that will impact on the orchid retention area.</p> <p>The traffic report suggests fencing as bollards and cable but this will be insufficient to exclude human disturbance of orchid habitat.</p> <p>Uncertain how the population will be managed during the operational phase as retaining the land will not ensure long-term protection. Poor understanding of species ecology.</p>
Fauna impacts	<p>Removal of at least 497 known hollow bearing trees (HBTs) and retention of 504 hollow bearing trees (noting that 67% of the precinct was surveyed)</p> <p>HBTs provide habitat for up to 14 threatened fauna species.</p> <p>March 16 - The loss of approximately 50% of hollow-bearing trees across the site and the cumulative impacts on 12 hollow-dependent threatened fauna species predicted to occur at the site have not been adequately assessed. There is no scientific evidence or previous experience to suggest the proposed translocation of hollows would successfully mitigate this impact.</p>
Bushfire	<p>Impacts from asset protection have not been quantified in the ecological assessment by Biosis.</p> <p>Bushfire report (Bushfire Planning and Design, 5 May 2016) indicates 100m APZs for clubhouse. Buildings in the Motorsport Facility Masterplan will also need similar APZ setbacks that will impact on the orchid retention area.</p> <p>The RFS letter 14/6/16 to Council indicates that carparks, clubhouse need to comply with Section 4.2.7 internal roads of Planning for Bushfire. There is potential for these to conflict with the proposed corridor and retained habitat area for the orchids.</p> <p>OEH cannot see where the impacts from APZ management have been quantified or mapped. This is important in the context of managing the orchid habitat and corridor for it.</p> <p>Our previous advice (13/5/14, and 30/9/15) expressed concern regarding management of fires at the existing facility. National Parks and Wildlife Service request that asset protection measures be included in the facility to limit impact from fires to surrounding bushland and reserves, Parma Creek Nature Reserve and Colymea State Conservation Area</p>
Aboriginal cultural heritage item	<p>The recent record of an Aboriginal cultural heritage site in the proposal area requires the proponent to revisit the Aboriginal cultural heritage assessment of the site (March,16)</p>

CONSERVATION MANAGEMENT

Proposed	- 136.9h (1:3) of proposed vegetated as offset surrounding enduro track area west of Braidwood Rd
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	<ul style="list-style-type: none"> - Total 182ha of vegetation management (with vegetation retained surrounding Race track facility on east side of Braidwood Rd) - Closure/consolidation of Enduro tracks and rehabilitation
Shortcomings	<p>Management of lands west of Braidwood Road considered an existing operational management issue for the Nowra Motor Cycle Club. Long-term failure to manage site effectively is not a good indicator for the operator or Council's enforcement/regulator role.</p> <p>Has not been quantified and assessed to align with the South Coast Regional Strategy's Sustainability Criteria to 'maintain or improve' outcomes in regard to biodiversity (ie vegetation type, extent, condition, etc)</p> <p>Management actions not defined upfront. No details of active management, timeframes, or stakeholder responsibilities Unclear if Nowra Motor Cycle Club has existing obligations for conservation management. If so, the use of this land to address biodiversity impacts on east side of Braidwood Road is 'double dipping' on the use of the western side as a conservation outcome.</p> <p>Reliance on the long-term security of habitat resources located outside of the site (eg HBTs) in absence of a legal mechanism/s.</p> <p>Short-term monitoring of orchid area and no contingency plan.</p> <p>Poor practice to defer such a central issue in Council's recommendation.</p>
Principles	<p>In-perpetuity (eg attached to land title) Secure (eg binding legal agreement) Funded (eg bond, Trust) Certainty of conservation actions, responsibilities and timeframes (eg Management Plan) Reporting, auditing and accountability (eg legal Agreement, legislation) Compliance and enforcement framework (eg legislation) No double-dipping on land with existing conservation management obligations (eg check existing obligations of Nowra Motor Cycle Club)</p>