Office of Environment & Heritage

Our reference : DOC13/72669; File No: 12/6349-02
Contact : Steve Lewer: (02) 4908 6804

PORT STEPHENS COUNCIL
PO BOX 42
RAYMOND TERRACE NSW 2324

Attention: Michelle Viola – Civil Assets Engineer

Dear Ms Viola

RE: SECTION 91 LICENCE TO CONDUCT DRAIN MAINTENANCE ACTIVITIES AND WEED SPRAYING ACTIVITIES IN TWO OPEN STORMWATER DRAINS AT MEDOWIE AND WILLIAMTOWN

I refer to Port Stephen Council's (Council) Section 91 licence application received by the Office of Environment and Heritage (OEH) on 22-Aug-2011.

The Section 91 application is to undertake maintenance operations (including desilting and vegetation removal) and weed spraying in two Council owned drains located at Medowie and Williamtown; which contain and is habitat for the threatened species *Maundia triglochinoides*, listed as 'vulnerable' under the *Threatened Species Conservation Act 1995* (TSC Act). The proposal will include the removal and attempted relocation of *Maundia triglochinoides* that is present in these drains. OEH reviewed this application and in accordance with Division 2 of the TSC Act requested in correspondence dated 27 July 2011 Council to submit a Species Impact Statement (SIS) to assist OEH in determining the licence application. OEH received a SIS from Council on 1 July 2013.

OEH understands the proposed works will be undertaken along two open water drains located at:

- Campvale Drain below Ferodale Road for a distance of approximately 1,000m; and
- a roadside drain west of Nelson Bay Road, between the Williamtown Airport entrance and Cabbage Tree Road.

The works will remove silt and associated plants to improve water flow along the drain and remove impediments which are causing flooding on adjoining land. The areal extent of the affected areas is 14,400 square metres and 3,600 square metres respectively. The proposal intends to remove up to 50 per cent of the *Maundia* and its habitat in the affected drains. This will be offset by creating new habitat in a diversion drain off the side of the Campvale Drain (Medowie); as described in the SIS.

I have assessed your licence application in accordance with the provisions of the TSC Act and concluded that the proposal may have a significant impact on one or more local populations of the 'vulnerable' plant *Maundia triglochinoides*, including its habitat, as the action will remove up to 50 per cent of the current geographic extent within two of six known populations of this species in the

Port Stephens local government area. Nevertheless, based on the social considerations of not taking action with respect to ongoing significant flooding of neighbouring land and impacts on impacts on existing infrastructure (including residential land) land, I have recommended a licence be issued subject to conditions.

OEH acknowledges and supports Council's intention to develop a long-term Property Management Plan in conjunction with OEH pursuant to Section113B of the TSC Act to manage and address threatened species matters across the entire drainage network. It is envisaged that this process will be undertaken within 12 months of the date of the licence approval. OEH offers support to Council in developing this plan and will actively engage in this process to ensure a balanced approach to threatened species management.

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

Yours sincerely

23 OCT 2013

RICHARD BATH
Senior Team Leader - Planning
Regional Operations

Section 91 Licence

Threatened Species Conservation Act 1995

NSW GOVERNMENT | Office of Environment & Heritage

Issued To:

PORT STEPHENS COUNCIL

ABN 16 744 377 876

PO BOX 42

RAYMOND TERRACE NSW 2324

[redacted]

CIRAM No.:	**C0000073**
Issue Date:	**23 October 2013**
Expiry date:	**31 October 2015**

I authorise the picking/harming of *Maundia triglochinoides* for the purposes of drain maintenance, (including desilting and vegetation removal) and weed spraying in two council-owned drains located at Medowie and Williamtown, as described in your Section 91 application received by the Office of Environment and Heritage (OEH) on 22-Aug-2011.

This certificate is a defence against prosecution under Sections 118A-D of the *National Parks and Wildlife Act 1974.*

RELEVANT CONDITIONS:

- The works (including mitigation measures) must be carried out in accordance with the information provided in the application, the Species Impact Statement (as prepared by Gary Worth for Port Stephens Council and dated March 2013) and its Appendices, notably Appendix I 'Draft Property management Plan', unless otherwise stated below. Specifically the following conditions must be adhered to as outlined in the Draft Property Management plan (Appendix I):
    - An appropriate diversion drain must be in place at the Campvale drain location at Medowie (at a minimum of 50 metres long and connected to the main drain via two culverts) prior to any removal of *Maundia* or sediment which may contain root stock or habitat.
    - Prior to any activity that may adversely affect the local population of *Maundia triglochinoides* rootstock shall be excavated and placed in the diversion drain.
    - Leaves of *Maundia triglochinoides* shall only be mowed down to the average water level during maintenance activities.
    - No removal of sediment will be undertaken that will remove more than 50 per cent of the local *in situ* extent of the *Maundia* in any one drainage system (i.e. drain).
    - Maintenance excavation will be undertaken by an excavator bucket only.
    - Spraying for Alligator Weed will only be done with a dicotyledonous selective herbicide, namely Metsulfuron methyl (Brush-Off), where *Maundia triglochinoides* occurs in accordance with the pesticide label and by an accredited person (as licensed under the requirements of the *Pesticides Act 1999*).
    - Flood debris containing *Maundia* can be removed from the drain(s) to prevent blockages.

- All works are restricted to the localities shown on the maps provided in the Species Impact Statement (as prepared by Gary Worth for Port Stephens Council and dated March 2013), namely Figure 1 'Williamtown site locality' and Figure 2 'Medowie Site Locality'. The works are restricted to an area of up to 14,400m^2 of Campvale Drain and 3,600m^2 of Williamtown drain, as specified in the Section 91 application.

- All proposed works that directly impact on *Maundia triglochinoides* (e.g. removal and translocation of this species) must be supervised by an appropriately qualified and experienced ecologist (an 'ecologist'), in accordance with DEC (2004) guidelines (*Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities*, available at: www.environment.nsw.gov.au/resources/nature/TBSAGuidelinesDraft.pdf).

- All weed spraying activities must be undertaken in accordance with the pesticide label and by an accredited person (as licensed under the requirements of the *Pesticides Act 1999*). OEH also notes that given spraying will occur on a waterway (either wet or dry) a licence from the Environment Protection Authority will be required.

- A conservation 'covenant' (such as an 88B-E under the *Conveyancing Act 1919*) must be placed on the area subject to the diversion drain at Campvale Drain, Medowie. This is to be done in consultation with OEH (Bull Street, Newcastle West Office) to ensure long-term conservation in perpetuity for *Maundia triglochinoides* and its habitat while in the species occurs *in situ*.

- The excavation of silt must be undertaken with a 'reed bucket' which removes in-drain vegetation and sediment while permitting the escape of aquatic fauna, such as frogs. Removed spoil must be placed on the slope of the bank above the drain to facilitate the escape of frogs and other aquatic fauna.

- Access to the drain(s) is restricted to the existing tracks / roads that run along the edge of the drain(s). No additional disturbance to adjoining land, including vegetation and/or habitat is to occur.

- The ecologist must submit to the Senior Team Leader - Planning (OEH), by the 31 March 2014 a report detailing and assessing the performance of the works, including assessment of impacts on *Maundia triglochinoides* and appraisal of the mitigation measures. This report is to include any breaches of the above conditions. Following the initial report, subsequent monitoring reports are to be submitted to OEH every six months for two years following the initial report, that is: 30 September 2014, 31 March 2015, 30 September 2015 and 31 March 2016. These reports are to be submitted to:

  Senior Team Leader – Planning
  Office of Environment and Heritage
  PO Box 488G
  NEWCASTLE NSW 2300

References

DEC (2004) *Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities*. Draft, Department of Environment and Conservation, Hurstville; available at: www3.environment.nsw.gov.au/pdfs/tbsa_guidelines_draft.pdf.