



Your reference : AH:SL207064
Our reference : DOC08/56863; File No. LIC08/1820 TS s95
Contact : Steve Lewer: (02) 4908 6814

LANI; NINO C/- ANTHONY HUDSON, WILSHIRE WEBB STAUNTON BEATTIE LAWYERS
LEVEL 9, 60 YORK STREET, SYDNEY, NSW

Dear Mr Lani

RE: SECTION 91 LICENCE APPLICATION UNDER THE *THREATENED SPECIES CONSERVATION ACT 1995* – HARM THREATENED FLORA (*LINDERNIA ALSINOIDES*) AND ENDANGERED ECOLOGICAL COMMUNITY (SWAMP SCLEROPHYLL FOREST ON COASTAL FLOODPLAINS) AT LOT 23 IN DP 264330 – GOLDEN PONDS PUBLIC RESERVE, CAPE HAWKE DRIVE, FORSTER

I refer to your Section 91 licence application received by the Department of Environment and Climate Change (DECC) on 01-Dec-2008 to harm or pick a threatened species, population, or ecological community, or damage habitat under the *Threatened Species Conservation Act 1995* (TSC Act).

You have proposed, in accordance with a Land and Environment Court order (NSWLEC 681), to remove piles of fallen timber and manage weed infestations on an area of previously cleared land located at Lot 23 in Deposited Plan (DP) 264330, known as the Golden Ponds Public Reserve (managed by the Great Lakes Council), on Cape Hawke Drive at Forster, NSW 2428, in the Great Lakes Local Government Area. The proposal has the potential to impact on the threatened flora species – *Lindernia alsinoides* (Noah's Chickweed) and the endangered ecological community (EEC) – Swamp Sclerophyll Forest on Coastal Floodplains of the North Coast, Sydney Basin and South East Corner Bioregions. The latter is also considered habitat for the threatened plant.

I have assessed your licence application in accordance with the provisions of the *Threatened Species Conservation Act 1995* (TSC Act) and concluded that the proposal is unlikely to have a significant impact on threatened species (or its habitat), endangered populations or endangered ecological communities.

The TSC Act requires the Director General to, as soon as practicable after making this determination, to issue a certificate to that effect.

Certificate number 1095719 is attached to this letter. Please read the terms of the certificate carefully.

Section 95(2) Certificate

Threatened Species Conservation Act 1995

Department of **Environment & Climate Change** NSW



If you have any questions in relation to this matter, please contact Steve Lewer on (02) 4908 6814.

Yours sincerely

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Mr Grahame Clarke
Manager
North East - Hunter

Section 95(2) Certificate

Department of Environment & Climate Change NSW

Threatened Species Conservation Act 1995



Issued To:

LANI; NINO C/- ANTHONY HUDSON, WILSHIRE WEBB STAUNTON BEATTIE LAWYERS,
LEVEL 9, 60 YORK STREET,
SYDNEY NSW 2000

Certificate no. : 1095719
Issue Date: 14-Jan-2009
Expiry date: 30 June 2009

I certify that the proposed activities to remove timber stock piles and to conduct weed control on the 'cleared area' at Lot 23 (Public Reserve), DP 843479 on Cape Hawke Drive at Forster (Great Lakes Local Government Area [LGA]), which contains the threatened species – *Lindernia alsinoides* (Noah's Chickweed) and an endangered ecological community (EEC) – 'Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner', has been determined under Section 94(2) of the *Threatened Species Conservation Act 1995* as unlikely to significantly affect threatened species, populations, ecological communities or their habitats and consequently does not require a licence under the *Threatened Species Conservation Act, 1995* pursuant to Section 95(2).

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

The activities for which the certificate covers are a specific requirement of the respondent to comply with the NSW Land and Environment Court order NSWLEC 681.

In determining the conditions of this certificate the Department of Environment and Climate Change (DECC) has considered the following documentation:

- Mr Nino Lani Section 91 (under the *Threatened Species Conservation Act 1995*) licence application and supporting information; received by the DECC on 1 December 2008;
- NSW Land and Environment Court order (NSWLEC 681) dated 11 October 2007;
- Respondents lawyers – Wilshire Webb Staunton Beattie Lawyers (signed by Anthony Hudson, ref.: AH:207064) correspondence, dated 4 January 2008; and
- Great Lakes Council lawyers – Mallik Rees Lawyers (signed by Marlie Woodbine; ref.: PR:MW:308701) correspondence dated 17 January 2008.
- Joint Ecologists discussion letter dated 4 November 2008 regarding the management of piles of felled timber on Golden Ponds Reserve (Lot 23 DP 843479), as signed by Adam Blundell (EcoBiological) and Matt Bell (Great Lakes Council).

Section 95(2) Certificate



RELEVANT CONDITIONS:

- This s95 certificate replaces the previously issued certificate: No. 1083520 which was issued by DECC on the 9 April 2008.
- Burning of the timber stockpiles is not permissible; however, minimal retention of no more than three logs from each existing timber stock pile is acceptable. DECC would except the retention of the stump sections of the logs, providing they are equivalent to the volume of three full log sections.

This is to facilitate natural tree fell and habitat retention (e.g. hollow-log dependant ground fauna) on the site, prior to unauthorised clearing. Felled timber that is peripheral to the stock piles must be retained *in situ* and in volume.

- All timber stockpiles must be removed, except for stockpile 1 which shall remain *in-situ*, providing written support is given by Great Lakes Council.
- All works must be conducted in accordance with the EcoBiological (2008) '*Lindernia alsinoides* Population Assessment Report' and the s91 application, unless otherwise stated below.
- A qualified and experienced botanist (a 'botanist'), in accordance with DEC (2004) guidelines (*Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities*, available at: http://www3.environment.nsw.gov.au/pdfs/tbsa_guidelines_draft.pdf), must be present during works to ensure that *Lindernia alsinoides* and its habitat is avoided or the impact is minimal.
- The botanist shall revise and amend the existing plan of access/ egress, including reference to the targeted searches for *Lindernia alsinoides* and mapping of the population of this species on the land. This is to indicate and direct that on-site machinery can utilise the footprint of log piles (except log pile 1) in which to turn and that appropriate turning heads are surveyed and established adjacent to each log pile to be removed from the land, such that excessive reversing is avoided and more efficient access to the piles is provided. All final access ways and turning heads shall be traversed by the botanist and marked in the field immediately prior to the commencement of log pile removal activities. This complies with the joint report (section 3(a)) as agreed and signed by EcoBiological and Great Lakes Council (dated 4 November 2008).
- The access / egress route(s) must not be greater than 4 metres wide and all vehicle movements are to be restricted to these plotted routes. All route(s) are to employ adequate soil erosion and sediment control measures to prevent / minimise adverse impacts occurring to *Lindernia alsinoides*, its habitat and the EEC vegetation.
- The proposed activities must be carried out during dry weather, due to potential negative impacts on the threatened species, its habitat and the EEC vegetation (including regeneration of). Vehicular access to the subject site is not to occur during wet weather. Note: DECC considers the proposed daily 'risk analysis matrix' tendered by the Oze Eco Management Pty Ltd (in the previous application) in correspondence dated 20 January 2008 to be a useful and suitable tool to identify and mitigate impacts. However, DECC suggests that this matrix should reflect the general intent of this certificate in that impacts to *Lindernia alsinoides* and its habitat should be avoided.

- Logs may only be dismantled and removed using a small rubber-tracked vehicle or equivalent (≤ 5.5 tonne in size) and with a shearing attachment to dismantle and load logs. This vehicle is to have no

Section 95(2) Certificate



blade or blade-up and must only traverse the agreed and finalised access/ egress route(s) and turning heads to each pile and each pile's footprint. The vehicle shall move across the land in a manner that tramples existing vegetation on the access corridor route(s) in a manner that forms brush-matting of the access ways.

- Once a log pile has been dismantled, the access/ egress corridor route(s), turning heads and former timber stock pile sites shall be allowed to naturally regenerate and such regeneration shall be supervised and appropriate weed control and removal activities shall be implemented as required, in accordance with the conditions in this Certificate. No active re-shaping of the land must occur following log pile removal and no mulch shall be re-introduced to the subject land.

If natural regeneration is unsuccessful then active planting may be required. The monitoring report will be used to determine whether or not natural regeneration is occurring and if replanting will be required to supplement this. Any replanted stock must be local native tree species (endemic to the site) and be of a local provenance. Replanting of native species must only take place within non-regenerated previously disturbed areas and must not impact upon *Lindernia alsinoides* or its habitat. Revegetation must be in accordance with best practice measures, specifications and principles as outlined Nationally accepted guidelines (where appropriate) - *Flora Bank Guidelines* (1998-2000), *Germplasm conservation guidelines for Australia* (Germplasm Working Group 1997), *Guidelines for the Translocation of Threatened Plants in Australia* (Vallee *et al.* 2004) and revegetation manuals (e.g. Corr & Whyte 2003), using suitably qualified and experienced bush regenerators. Both DECC and Great Lakes Council must be advised in writing of any assisted-regeneration program prior to any works commencing.

- An identification guide for *Lindernia alsinoides* and related / similar species (e.g. *Gonocarpus* and *Lobelia* species) with coloured photocopies of the plant (including photographs of the plants flower) must be prepared by a botanist. The guide must be provided to all site personnel prior to entering the subject site to conduct any of the proposed activities.
- Site workers must complete a '*Lindernia alsinoides*' induction before working on site. The induction must be conducted by a botanist and include information to assist works to identify the species, including its known and preferred habitat on site.
- Weed control and any associated bush regeneration must utilise methods that will not harm threatened and non-target plant species, namely the Bradley method (as per Bradley 1988), cut and paint (with herbicide) and hand removal. DECC recognises that the 'Bradley Method of Bush Regeneration' focuses on hand weeding, without herbicides, but may also include the following principles which are permissible providing they do not impact on *Lindernia alsinoides* or its habitat. They include:
 - the judicious and minimal use of herbicides, to facilitate where appropriate, less soil disturbance where hand removal of roots may cause significant habitat damage;
 - less dependence on mulching, which may discourage native plant regeneration (e.g. many natives species require bare soil and sufficient light conditions to germinate); and
 - replanting of native species in situations where natural regeneration is not achieved. This should be in accordance with best practice measures, specifications and principles as outlined Nationally accepted guidelines - *Flora Bank Guidelines* (1998-2000), *Germplasm conservation guidelines for Australia* (Germplasm Working Group 1997), *Guidelines for the Translocation of Threatened Plants in Australia* (Vallee *et al.* 2004) and revegetation manuals (e.g. Corr & Whyte 2003), using suitably qualified and experienced bush regenerators.

Section 95(2) Certificate



- A botanist is to implement a monitoring program at the start of the activities to assess their performance, including the natural regeneration, and any breaches of the above conditions. This program is to extend for two (2) years after the completion of work to assess the success of remediation and weed control activities, as well report on the population dynamics of *Lindernia alsinoides*. An annual monitoring report is to be submitted to DECC on the 30 June 2009, and 30 June 2010 for their review. This report should include an appraisal of the natural regeneration process and whether or not re-planting is required.

REFERENCES

- Bradley, J. (1988) *Bringing Back The Bush – The Bradley Method of Bush Regeneration*. Lansdowne Press, Sydney.
- Briggs, J.D. and Leigh, J.H. (1996) *Rare or Threatened Australian Plants*. 5th Revised Edition Australian Nature Conservation Agency / CSIRO Publishing, Collingwood.
- Corr, K. and Whyte, S (ed.), (2003) *Revegetation Techniques – A guide for establishing native vegetation in Victoria*, Greening Australia Victoria.
- DEC (2004) *Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities*. Draft, Department of Environment and Conservation, Hurstville; available at: http://www3.environment.nsw.gov.au/pdfs/tbsa_guidelines_draft.pdf.
- Germplasm Working Group (1997) *Germplasm conservation guidelines for Australia*. Australian Network for Plant Conservation, Canberra.
- L. Vallee, T. Hogbin, L. Monks, B. Makinson, M. Matthes, and M. Rossetto (2004) *Guidelines for the Translocation of Threatened Plants in Australia*. Second Edition, Australian Network for Plant Conservation, Canberra.

FloraBank Guidelines

- Australian Tree Seed Centre (1999) *FloraBank Guidelines 2. Basic Methods for Drying, Extraction and Cleaning of Native Plant Seed*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.
- Australian Tree Seed Centre and W. Mortlock (1999) *FloraBank Guidelines 6. Native Seed Collection Methods*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.
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- Cole, I., Dawson, I., Mortlock, W. and Winder, S. (1998) *FloraBank Guidelines 9. Using Native Grass Seed in Revegetation*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.
- Mortlock, W. (1998) *FloraBank: Model Code Of Practice for Community-based Collectors and Suppliers of Native Plant Seed*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.
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- Mortlock, W. and the Australian Tree Seed Centre (1999) *FloraBank Guidelines 4. Keeping Records on Native Seed*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.
- Mortlock, W. and the Australian Tree Seed Centre (1999) *FloraBank Guidelines 5. Seed Collection from Woody Plants for Local Revegetation*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.
- Mortlock, W. and the Australian Tree Seed Centre (1999) *FloraBank Guidelines 7. Seed Production Areas for Woody Native Plants*. FloraBank, Greening Australia ACT, web address <http://www.florabank.org.au>.
- Mortlock, W. and the Hawkesbury - Nepean Catchment Management Trust (1999) *FloraBank Guidelines 10. Seed Collection Ranges for Revegetation*. FloraBank, Greening Australia ACT and Hawkesbury – Nepean Catchment Management Trust, web address <http://www.florabank.org.au>.

Section 95(2) Certificate

Threatened Species Conservation Act 1995

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