



NSW NATIONAL PARKS & WILDLIFE SERVICE

Decision statement

Illawarra Escarpment Mountain Bike Network 1, Mount Kembla

REF CM9 file no.	DOC22/1092665
Park name:	Illawarra Escarpment State Conservation Area
NPWS Area:	Illawarra Highlands Area / South Coast Branch
Applicant:	NPWS Illawarra Highlands Area Manager
Project sponsor:	NPWS South Coast Branch Director

Determination

Based on the Review of Environmental Factors and any additional information obtained, and after having taken into account to the fullest extent possible all matters likely to affect the environment as a result of the proposed activity (in accordance with section 5.5 of the *Environmental Planning and Assessment Act 1979*), **I hereby determine that:**

1. Further information/assessment is **not required**:
 - an Environmental Impact Statement (EIS) is not required as the activity is not likely to significantly affect the environment
 - a Species Impact Statement (SIS) is not required as the activity is not likely to significantly affect threatened species or ecological communities, or their habitats
 - the activity has adequately addressed the matters in Chapter 8 of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* that applied at the time of the REF's submission.
2. **The activity may proceed, subject to the conditions** specified in Schedule 1 and subject to any necessary approvals (if approval required) being obtained first.
3. The activity:
 - **is unlikely to** impact significantly on Matters of National Environmental Significance under the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth of Australia)
 - **is unlikely to** impact significantly on council infrastructure, local heritage items or flood liable land and that a record of all required consultation with the relevant council has been provided
 - **may** require certification to Australian Standards in accordance with the NPWS *Construction Assessment Procedures*.

NPWS Director recommendation for determination:

Name: Kane Weeks

Signature: 

Date: 12/01/2023

I certify that I have reviewed and endorsed the contents of this REF document and, to the best of my knowledge, it is in accordance with the EP&A Act, the EP&A Regulation and the Guidelines approved under section 170 of the EP&A Regulation, and the information it contains is neither false nor misleading.

Determination by A/Executive Director Park Operations Coastal NPWS

Name: Deon van Rensburg

Signature: 

Date: 16 January 2023

Schedule 1: Conditions of determination

General information about this determination

References to the REF

All references to the REF are references to the following documents:

Illawarra Escarpment Mountain Bike Network 1, Mount Kembla, Review of Environmental Factors, National Parks and Wildlife Service, December 2022

Attachments:

- A. Aboriginal Cultural Heritage Assessment, Niche Environment and Heritage December 2022a
- B. Social Impact Comment, Element Environment, June 2022
- C. Ecological Assessment, Niche Environment and Heritage November 2022b
- D. Historic Heritage Assessment, Niche Environment and Heritage June 2022c
- E. Statement of Heritage Impact, Niche Environment and Heritage, June 2022d
- F. Geotechnical Assessment and Landslide Risk Assessment, GHD, March 2022
- G. Neutral or Beneficial Effects (NorBE) Assessment, Niche Environment and Heritage, October 2021
- H. Trail Network Built Features Guide, Bennett Muraga Architects, August 2021
- I. Matters of National Environmental Significance Search Report, Department of Agriculture Water and Environment, June 2021

Responsibilities of the proponent

The proponent is responsible for the manner in which the activity detailed in the REF and this determination is performed.

Inspection of work covered by this REF determination

NPWS staff not involved in the proposal's implementation may be asked by the relevant NPWS Branch Director, another senior executive or Area Manager to examine work undertaken as part of the activity at any reasonable time without notice.

Entry to land

The proponent is responsible for securing permission to enter land outside Illawarra Escarpment State Conservation Area from the controlling body or registered owner or occupier of that land.

Reference to NPWS officers in this determination

The NPWS Branch Director may delegate any functions ascribed to that position in the determination to another NPWS officer including, but not limited to, the relevant NPWS Area Manager.

Explanatory notes to conditions in this determination

Explanatory notes included with this determination do not form part of the conditions.

General conditions

Duration and scope of determination

1. The applicant must have commenced the activity within 5 years from the date of determination¹.
2. This determination only applies to those parts of the activity as identified in the Review of Environmental Factors (REF) that will be undertaken within Illawarra Escarpment State Conservation Area (SCA) at the locations indicated in Map 1. The proposed constructed trail length in this REF is approximately 43.88 km with the total including existing trails of approximately 50.95 km. A total clearing footprint in this REF of approximately 6.00 ha (Tables 8 and 11). The final trail widths are proposed to be between 0.6-0.9 meters, Section 6.2.2 of the REF. The applicant must determine whether any other approvals are required for any associated works that are to occur outside this area, including any works in other parts of the adjacent road reserves (Wollongong City Council and Crown Lands) or outside Illawarra Escarpment State Conservation Area (SCA).
3. The Review of Environmental Factors (REF) and the associated Environmental Management Plans (Conditions 24-26) will be reviewed for operational refinements, additional biodiversity implications, and contemporary mountain bike standards best practice to the NPWS South Coast Branch Director or delegate's satisfaction in consultation with the Biodiversity Conservation Division (BCD), within 5 years from the date of commencement and thereafter on a 5 yearly basis or earlier if the South Coast Branch Director or delegate decides otherwise.
4. Mountain bike riding activities must cease in the identified unsanctioned areas in the Mount Keira area, including rehabilitation of the activity footprint (as per Map 1) and described in the conditioned requirement (26), Rehabilitation Plan (RP) to NPWS South Coast Branch Director or delegate's satisfaction in consultation with the Biodiversity Conservation Division (BCD), within 36 months from the date of commencement.
5. All approved activity in the sanctioned trails as proposed in the Review of Environmental Factors (REF), are to continue indefinitely or until the South Coast Branch Director or delegate decides otherwise. The Operations Environmental Management Plan (OEMP) a conditioned requirement (25) will describe the ongoing track management procedures, and the triggers for closures and maintenance throughout the operating life of the proposed Illawarra Escarpment Trail network.

Emergency works

6. Notwithstanding any other conditions of this determination, in the event that emergency works are required, the applicant must take all reasonable steps to ensure that these occur as expeditiously as possible. Emergency works are generally works of a temporary and reversible nature which are urgently required to arrest an imminent threat to life, safety, public liability, and/or threat to fabric or property.
7. In the event that emergency works are undertaken the applicant must notify the Environment Line on 131555 as soon as practicable. Once notification has been made, the applicant must contact the South Coast Branch Director or delegate to seek direction on any further procedures to be implemented.

¹ If the activity is not substantially commenced within this time, the applicant must seek direction from the NPWS Illawarra Highlands Area Manager as to whether a new REF must be submitted for determination before the activity may proceed.

Undertaking the activity

8. The 'activity' detailed in the REF titled Illawarra Escarpment Mountain Bike Network 1, Mount Kembla submitted to the Biodiversity Conservation Division (BCD) on behalf of NPWS on 9 November 2022 must be undertaken:
 - at the location identified in the REF
 - in accordance with the description of the activity and environmental safeguards or mitigation measures listed in the REF
 - as required or amended by the conditions of this determination.
9. In the event of any inconsistency between the REF and the conditions of this determination, the conditions of the determination shall prevail.
10. This determination, and the conditions of this determination, do not relieve the applicant of any obligation to obtain other statutory approvals necessary to undertake the activity, including but not limited to any approvals required under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.
11. The applicant must undertake the activity in accordance with the requirements of the *Work Health and Safety Act 2011*, including codes of practice adopted under the Act, and the Work Health and Safety Regulation 2011. Any contractors on the site are to have appropriate insurances, including public liability insurance.
12. The applicant must provide the following to the South Coast Branch Director or delegate prior to commencement of the activity:
 - The contact details and qualifications of a person who will be present on site to supervise the activity
 - A list of tradespersons, contractors or subcontractors who will be involved in undertaking the activity. The list must include the trade licence number and information on the expertise and experience of the tradesperson or contractor.

Prior to commencement of activity conditions

Approvals and compliance

13. Prior to the commencement of the activity, the applicant must comply with any other relevant requirements of this determination, including submission and approval of:
 - A Construction Environmental Management Plan (CEMP) (Condition 24)
 - An Operations Environmental Management Plan (OEMP) (Condition 25)
 - A Rehabilitation Plan for Mount Keira and Mount Kembla (RP) (Condition 26)
 - An Aboriginal Heritage Management Plan (AHMP) (Condition 20)
 - An **Aboriginal Heritage Impact Permit (AHIP)** issued by Heritage NSW (Condition 15)
14. Prior to the commencement of the activity the applicant (including any employees, contractors, sub-contractors and agents involved in undertaking the activity) must hold an on-site meeting with the Illawarra Highlands Area Manager (or their delegate).

Aboriginal cultural heritage requirements and participation

15. No harm may occur to Aboriginal objects unless covered by a valid **Aboriginal Heritage Impact Permit (AHIP)** issued by Heritage NSW.
16. All works must be undertaken in a way that minimises harm to Aboriginal objects and Aboriginal cultural heritage values.

17. Further Aboriginal cultural heritage investigation must be conducted if construction works are proposed outside the assessment corridor described in the Aboriginal Cultural Heritage Assessment Report (ACHAR) (Niche 2022).
18. An Aboriginal cultural heritage induction is required for construction workers to help avoid inadvertent impacts to Aboriginal objects and to ensure the management and mitigation measures described in the ACHAR and any subsequent AHIP are met. The induction must be provided by an appropriate Aboriginal community member determined in consultation with the Registered Aboriginal Parties (RAP).
19. Signage requiring ground excavation may only be installed outside the bounds of recorded sites (Niche 2022).
20. An **Aboriginal Heritage Management Plan (AHMP)** must commence within 6 months of the issue of an AHIP for track construction. The AHMP must be prepared in consultation with the RAP and Heritage NSW. The AHMP needs to consider the impact of increased visitation on Aboriginal cultural heritage values and provide a process for ongoing Aboriginal community consultation on this project.
21. At least 21 days prior to the activity commencing the applicant must invite in writing representatives from the Registered Aboriginal Parties (RAP) to monitor works associated with the undertaking of the activity, for the duration of the activity or as specified in the approved Aboriginal Heritage Management Plan (AHMP) or any AHIP.

Certification of building and infrastructure works prior to commencement

22. For those proposed building and infrastructure works that do not require certification under the OEH *Construction Assessment Procedure*, the applicant must ensure that the activity is undertaken in accordance with any relevant requirements of the BCA, Disability (Access to Premises – Buildings) Standards or Australian Standards, and is safe and fit for the intended purpose.

NPWS notification

23. The applicant must notify the South Coast Branch Director in writing or by email at least 7 days prior to commencing the activity.

Environmental Management Plan

24. A **Construction Environmental Management Plan (CEMP)** identifying the potential risks of the activity and how these will be managed must be prepared by the applicant and submitted to the South Coast Branch Director or delegate in consultation with the Biodiversity Conservation Division (BCD), for review at least 30 days prior to the commencement of the activity. The applicant must comply with all measures identified in the approved CEMP. The plan must detail the environmental management procedures to be applied during the construction of the activity including, but not limited to, the following components:
 - Contact protocols outlining procedures and any notifications to be given before works commence, together with contact details for the NPWS project manager.
 - A detailed map and description of the location of the active work areas, closed areas, material deposition, and storage areas. This should also include the management of a work program to minimise the heli-lifts required for the materials placement/deposition between May and August.
 - A detailed and relevant environmental site induction and the/any training arrangements for all staff involved in the project including contractors, NPWS staff, and others as identified/required.

- A suitably qualified ecologist will be engaged to confirm the track alignment stays within the survey corridor (micro-siting) as per the construction methodology and mitigation measures in the proposed REF and the Attachment C, Environmental Assessment. This is with specific reference to ensuring the proposed clearing stays within the predicted impact footprint and study area.
 - A suitably qualified geotechnical engineer to confirm the track alignment stays within the survey corridor (micro-siting) as per the construction methodology and mitigation measures proposed REF and the Attachment F, Geotechnical Assessment
 - The measures to protect Aboriginal cultural heritage including reporting and communication pathways as per the requirements described in the REF and the Aboriginal Cultural Heritage Assessment Report (ACHAR) in Attachment A, and any subsequent conditions of an Aboriginal Heritage Impact Permit (AHIP) (Condition 15) application or the Aboriginal Heritage Management Plan (ACHMP) (Condition 20).
 - The construction methodology and finishing measures, demonstrating how the areas of environmental sensitivity will be managed, specifically in relation to:
 - Biodiversity (importantly the Illawarra Subtropical Rainforest), and hollow bearing trees,
 - Waterways, and minor creek crossings
 - Bush rock, and other rock formations,
 - Soils, stockpiles, and erosion control measures,
 - Cleared vegetation and trail stabilisation measures, and
 - Weed and pest management including hygiene awareness (phytophthora).
 - This plan should also include the monitoring and reporting (project management and compliance) and communication pathways (internal and external) for the site.
 - The environmental safeguards, including water pollution controls, waste management, and the management of hazardous substances.
 - The site rehabilitation measures during construction, including the management of contaminated materials and soils or accidental spills etc.
 - The communication and response protocols for incidents and emergencies and contingency planning, including reporting pathways.
 - The vehicle and pedestrian access arrangements, including contractor parking during construction.
 - The public safety, including location, design and timeframes of information signage and public relations media releases by the applicant.
 - How trails will be tested to check compliance with the IMBA guidelines of construction design.
25. An **Operations Environmental Management Plan (OEMP)** must be prepared by the applicant and submitted to the South Coast Branch Director or delegate for review in consultation with the Biodiversity Conservation Division (BCD), at least 90 days prior to the finalisation of the construction activities relating to Condition 24 and the formal opening of the new trails associated with this REF. The OEMP must include, but is not limited to, the following:
- Schedule for the ongoing monitoring and assessment procedures for track quality and assurance of compliance with the vegetation clearing, erosion management, and the operational trail widths as proposed in the REF and Attachment C Environmental Assessment as much as is practical.
 - The controls and methods for the ongoing scheduled maintenance and operations of the track, and the systematic triggers for track closures, rotational closures for track resting, repairs, and rehabilitation.

- The relationship of the ongoing Illawarra Escarpment Mountain Bike network to the day to day management operations of the Illawarra Escarpment State Conservation Area (SCA) by NPWS, and other relevant land managers including the Wollongong City Council, and volunteers.

26. A **Rehabilitation Plan (RP)** for the closed unsanctioned trails for Mount Keira and Mount Kembla must be prepared by the applicant with respect of the REF and Aboriginal Cultural Heritage Assessment Report (ACHAR) recommendations and submitted to the South Coast Branch Director or delegate for review in consultation with the Biodiversity Conservation Division (BCD), at least 90 days prior to the finalisation of the construction activities relating to Condition 24 and the formal opening of the new trails associated with this REF. The RP must include, but is not limited to, the following:

- Schedule of works based on priority rehabilitation areas and how it relates to other on ground activities/sequencing associated with this REF.
- Designated zones and actions for weed and biodiversity management.
- Techniques for rehabilitation of general impacted track areas.
- Methods for the removal (and/or demolition) of illegal structures and subsequent rehabilitation of highly modified areas.
- Ongoing monitoring, management, and compliance activities to ensure rehabilitation is successful and areas remain unused. Particularly any that are identified in the Aboriginal Cultural Heritage Assessment Report (ACHAR) in Attachment A, and any subsequent conditions of an Aboriginal Heritage Impact Permit (AHIP) application or the Aboriginal Heritage Management Plan (ACHMP).

Incident and emergency preparedness and management

27. An Incident Management Plan must be prepared and kept on site by the applicant. The Plan must be submitted for approval of the South Coast Branch Director or delegate prior to the commencement of the activity. The applicant must implement the approved plan. The content of the plan must be developed in consultation with the Illawarra Highlands Area Manager and must detail procedures to be followed in the event of an emergency or similar event including bushfires. These procedures must include, but are not limited to, the following:

- Measures to ensure all workers are made aware of the plan and its provisions and be trained in the use of emergency equipment and procedures for evacuation and seeking refuge
- Equipment to be tested in accordance with manufacturer's recommendations during training of employees
- The plan is to be displayed in a prominent location and should clearly highlight recommended actions and 24-hour contacts
- The plan must be reviewed/updated at least every 24 months.

Signage and barriers to close the worksite

28. At least 5 days before the activity commences, the applicant must erect signs at the park entrance or in the immediate vicinity of the activity site, the size, location and content of which must be to the satisfaction of the NPWS Illawarra Highlands Area Manager. Signs must be visible and clearly identify the applicant and list:

- A description of the activity, reasons for undertaking the activity and duration of the activity.
- The hours of operation.
- A contact telephone number for public inquiries.

Operational conditions

Availability of REF determination and conditions

29. A copy of the REF, this determination and attached schedule of conditions must be kept at the site to which the REF applies.
30. The REF, this determination and attached schedule of conditions must be produced to any authorised officer of NPWS who asks to see it.
31. The REF, this determination and attached schedule of conditions must be available for inspection by any employee or agent of the applicant working at the site.

Discovery of unknown Aboriginal and historic heritage values

32. If, during the course of the activity:
 - any Aboriginal objects, as defined under the National Parks and Wildlife Act, are uncovered or discovered, and/or
 - any relics, as defined under the *Heritage Act 1977*, are uncovered or discoveredthe applicant must cease work immediately and notify the Environment Line on 131555 unless the objects and/or relics are subject to the Aboriginal Heritage Impact Permit or a valid Heritage Permit. Work must not recommence until written advice to do so has been provided by Heritage NSW.
33. Unless explicitly covered by the REF, this determination does not authorise the disturbance or movement of any human skeletal remains. If, during the course of the activity, any human skeletal remains are located the applicant must:
 - Immediately cease the activity and not further harm these remains;
 - Secure the area so as to avoid further harm to the remains;
 - Notify the local police and Environment Line on 131555 as soon as practicable and at that time provide any available details about the nature and location of the remains;
 - Notify the South Coast Branch Director or delegate; and
 - Recommence the activity only after receiving confirmation in writing from the local police or Heritage NSW that it is appropriate to do so.

Discovery of unknown biodiversity values

34. If, during the course of undertaking the activity, the applicant becomes aware of the presence of threatened species or endangered ecological communities, or their habitats, that were not identified and assessed in the REF and which are likely to be affected by the activity, the applicant must:
 - Immediately cease all work likely to affect the threatened species or endangered ecological communities, or their habitats;
 - Inform the South Coast Branch Director or delegate and/or the local NSW DPIE Fisheries office (for threatened fish or marine vegetation matters) as relevant. Notification must be made as soon as practicable by phone, electronically or in writing; and
 - Not recommence work likely to affect the threatened species or endangered ecological communities, or their habitats until receiving written advice from the Biodiversity Conservation Division and/or DPIE Fisheries to do so.

Notification of environmental harm

35. The applicant or its employees (including any contractors) must notify NPWS of incidents causing or threatening material harm to the environment as soon as practicable after the person becomes aware of the incident.
36. Notifications must be made by telephoning the Environment Line on 131555.
37. Once notification has been made the applicant must also contact South Coast Branch Director or delegate to seek direction on any further procedures to be implemented.
38. The applicant must provide written details of the notification to NPWS within 7 days of the date on which the incident occurred.

Equipment and materials storage

39. The applicant must store any machinery, equipment or materials required for the activity in existing cleared areas or areas determined to be cleared in accordance with the REF.
40. Machinery, vehicles and other construction equipment must be cleaned (e.g. washed down) by the applicant prior to entry into Illawarra Escarpment State Conservation Area (SCA) to remove any soil or plant matter. This should also apply to other lands/tenures associated with this REF.
41. At all times that the activity is not being undertaken, machinery, vehicles and equipment must be stored in a secure location with authorised access only.

Fire prevention and control

42. The applicant must ensure that at least 5000 litres of freshwater are provided on site at all times. Dedicated pumps must be positioned next to each water supply to service fire appliances or extinguish small fires that may start at the site. Each pump must have Storz fittings of 25mm and 38mm. Hoses of 25mm diameter with 30m length should be used for firefighting and hoses 38mm diameter and 10m in length should be used for filling of fire appliances. Workers at the sites must be able to operate these pumps to extinguish fires or transfer water into firefighting appliances.
43. Firefighting foams or gels are not to be used in firefighting operations in landscapes below 10 metres above mean sea level or within 50 metres of the edge of a creek, swamp or freshwater lake.
44. NPWS may direct that works will cease if fire danger reaches very high or above
45. The applicant must store fuel and other similar flammable materials, such as gas cylinders and paint, in appropriate fire-resistant storage containers.

Demolition

46. The applicant must carry out all demolition works of the unsanctioned trails network as described in the Rehabilitation Plan (RP), in accordance with the provisions of relevant Australian Standards, including AS2601-2001 *Demolition of structures*. Any demolition works involving asbestos materials must also comply with the *Protection of the Environment Operations (Waste) Regulation 2014* with regard to handling and movement of asbestos material.

Construction operational hours / Site access

47. Construction works must only be conducted between the following hours: 7am to 6pm Mondays to Fridays and 7am to 12pm on Saturdays (except public holidays). Work may

only occur on public holidays or Sundays with prior written approval of the Illawarra Highlands Area Manager.

48. The applicant must take reasonable steps to limit restrictions on public access during the activity. Where access restrictions are required, such as in areas where works are under way, temporary barriers (e.g. brightly coloured tape and/or moveable barriers) and appropriate signage must be erected by the applicant around the work area prior to commencement.
49. The applicant is to encourage staff and contractors involved in the activity to carpool to the site in light vehicles during the proposed activity.

Topsoil

50. The applicant must ensure that during any excavation associated with the activity, contaminated soil will be managed as specified in the Construction Environmental Management Plan (CEMP). Uncontaminated topsoil will be removed and stockpiled in an area identified and agreed to in writing by the Illawarra Highlands Area Manager, and later re-spread across the disturbed area with the consent of the Illawarra Highlands Area Manager if the soil is deemed safe to re-use.

Use of rainforest timbers

51. The applicant must not use rainforest timbers in undertaking the activity unless written approval is obtained from the South Coast Branch Director noting that the Construction Environmental Management Plan (CEMP) (Condition 24) posits reuse of some approved cleared timbers/native vegetation in its stabilisation methodology.

Waste management

52. Waste generated at the site from works undertaken as part of the activity must be managed in accordance with the *Protection of the Environment (Waste) Regulation 2014*.
53. Removal of any asbestos-containing material must be undertaken in accordance with *Working with Asbestos: Guide 2008* published by the WorkCover Authority.

Waterway protection

54. Except as may be expressly provided in any other condition of this determination, the applicant must comply with s.120 of the *Protection of the Environment Operations Act 1997*.

Post activity conditions

Certification on completion of works

55. Upon completion of building or infrastructure works, and prior to use of the works or infrastructure works being made operational, the applicant must ensure that the completed works are certified to comply with the Building Code of Australia (BCA), Disability (Access to Premises – Buildings) Standards, or relevant Australian Standards, if required by the OEH *Construction Assessment Procedure*. Evidence of compliance with the BCA, Disability (Access to Premises – Buildings) Standards, or Australian Standards must be submitted to the satisfaction of the South Coast Branch Director.

Site rehabilitation

56. Within 14 days of any area being damaged by vehicular or other access to the site, the applicant must repair and rehabilitate such land to the satisfaction of the South Coast Branch Director or delegate.
57. The applicant must only use locally sourced indigenous plant species for site restoration works, unless otherwise agreed in writing by the Illawarra Highlands Area Manager.