



Our ref: DOC20/100836

Senders ref: SSD 9601 (Fairfield City)

Shaun Williams  
Environmental Assessment Officer  
Industry Assessments  
Department of Planning, Industry and Environment  
GPO Box 39  
SYDNEY NSW 2001

Dear Mr Williams,

**Subject: EES comments on Response to Submissions – Horsley Park Brickworks Plant 2 Upgrade at 780 Wallgrove Road, Horsley Park - SSD 9601 (Fairfield City).**

Thank you for your email of 7 February 2020 requesting input from Environment, Energy and Science Group (EES) on the Response to Submissions (RtS) for Horsley Park Brickworks Plant 2 Upgrade at 780 Wallgrove Road, Horsley Park - SSD 9601 (Fairfield City).

EES have reviewed the relevant documents and make the following comments:

Aboriginal Cultural Heritage

It is noted that within the RtS table prepared by Willow Tree Planning dated 6 February 2020, the proponent states *"In an email dated 6 December 2019, the NSW DPIE confirmed that an Aboriginal Due Diligence Assessment would suffice with respect to addressing Aboriginal Cultural Heritage impacts anticipated for the proposed development."*

The due diligence process outlined in the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (DECCW, 2010) is not a substitute for undertaking an Aboriginal cultural heritage assessment. Due diligence is a legal defence against harm under section 87 of the National Parks and Wildlife Act 1979 (NPW Act) and is not designed for the assessment of major projects. Under the NPW Act, regardless of the existence of due diligence, if an object is found and is going to be harmed, even in a disturbed context, work must stop, and an Aboriginal Heritage Impact Permit applied for. As the NPW Act does not apply to major projects, the use of the due diligence process for these projects is not appropriate.

Biodiversity

The Biodiversity Development Assessment Report prepared by Cumberland Ecology dated 6 December 2019, has been reviewed and is adequate. There is no further comment in relation to Biodiversity.

Flooding

There are no further comments in relation to flooding.

Sustainability

The proponent has noted and agreed within RtS table prepared by Willow Tree Planning dated 6 February 2020, that EES recommendations for sustainability measures in conjunction with water management will be implemented where deemed practical and applicable across the subject site. On this basis there are no further comments in relation to sustainability.

If you have any queries or would like additional information regarding this matter, please do not hesitate to contact Bronwyn Smith Senior Conservation Planning Officer on 02 8973 8604 or at [Bronwyn.smith@environment.nsw.gov.au](mailto:Bronwyn.smith@environment.nsw.gov.au)

Yours sincerely

*S. Harrison 19/02/20*

**Susan Harrison  
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Environment, Energy and Science**