

Our ref: DOC22/687374

Your ref: SSD 10457

Thomas Piovesan
Department of Planning and Environment
4 Parramatta Square, 12 Darcy Street
Parramatta NSW 2150

23 August 2022

Subject: Eastern Creek retail outlet centre Lot 3 (SSD-10457) (Blacktown)

Dear Mr Piovesan

I refer to your requests received on 2 and 19 August 2022 seeking comments from the Environment and Heritage Group (EHG) in regard to the Eastern Creek retail outlet centre Lot 3 (SSD-10457).

It is noted that the major projects portal engagement notes states that the amended package contains:

- a further revised intersection design at Church Street and Rooty Hill Road South (RHRS) intersection,
- an amended subdivision plan to reflect the revised Church Street and RHRS intersection,
- a revised asset protection zone on the site's western boundary, and
- revised concept plans, an indicative footprint and design guidelines.

EHG has reviewed the relevant documents and provides comments in regard to biodiversity in Attachment 1 and updated advice on *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) listed threatened species and communities in Attachment 2.

Please note that separate comments in regard to flooding will be provided shortly.

If you have any queries, please contact Marnie Stewart via marnie.stewart@environment.nsw.gov.au or 02 9995 6868.

Yours sincerely,



Dana Alderson
A/Senior Team Leader Planning
Greater Sydney, Biodiversity and Conservation

Attachment 1 – EHG comments on Eastern Creek retail outlet centre (SSD-10457)

Biodiversity

EHG has reviewed the biodiversity development assessment report (BDAR) and provides the following comments:

- This review has been undertaken without access to the assessment in the BAM-C. The assessor should finalise and submit the case to the consent authority when submitting for review.
- It is noted that the BDAR states that samples of an unidentified *Pimelea* have been sent to the Herbarium for identification as the threatened species *Pimelea curviflora* var. *curviflora* may be on site, and once identification is received, the BDAR will be updated.
- The information in Table 11 is not complete for *Pultenaea pedunculata*, though it is noted Table 10 states the species was not recorded on site during targeted surveys.
- The information for *Acacia pubescens* in Table 10 is not correct, as the species does not occur on sandy soils with the listed associated species. However, EHG considers that as this species is easy to identify, it is unlikely to be present as it would have been identified during surveys.

Attachment 2 - EHG comments on *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) listed threatened species and communities.

TABLE 1: EHG PROJECT ADVICE TO DPE ON EPBC ACT LISTED THREATENED SPECIES AND COMMUNITIES

Requirement	Information	Reference (BAM / BLA ¹)
Background & Description of Action	Does the EIS/BDAR²: ☒ clearly show how operational and construction footprints, including clearing boundaries, structures to be built and elements of the action are situated with regard to MNES ☒ depict stages and timing of the action that may impact on MNES ☒ provide a map(s) of the subject land boundary showing the final proposal/disturbance footprint with respect to location of MNES, including GIS shape files Include references to where this detail is provided. This information is in section 1.1, 1.2 of BDAR and Figure 2.	BAM Chapters 3, 4, 5 and 8
	Provide advice on the adequacy of the background and action description with respect to MNES and identify any recommended additional information requirements: EHG considers this information is adequate.	
Landscape Context of the MNES	Provide advice on the adequacy of the landscape context information and identify any additional information requirements: Adequate. Provided in BDAR section 4.1.	BAM Section 3.1 BLA clause 7.4
EPBC Act Listed Threatened Species & Communities	Verify that the EIS/BDAR includes relevant information on the identification of all EPBC Act listed threatened species and communities on the site or in the vicinity³ via: ☒ field based survey effort ☒ published peer reviewed literature	BAM Chapters 4 and 5

¹ Bilateral agreement (BLA) made under section 45 of the EPBC Act, including Amending Agreement No. 1 (2020)

² Or revisions of the BDAR and associated documentation made as a result of previous reviews or project changes post-exhibition.

³ On land to which impacts may extend

Requirement	Information	Reference (BAM / BLA ¹)
	☒ local data ☒ supporting databases (such as the NSW BioNet Vegetation Classification, NSW BioNet Threatened Biodiversity Data Collection, NSW BioNet Atlas, Commonwealth Species Profile and Threats Database search results) ☒ Verify that the EIS/BDAR includes appropriate mapping of all EPBC Act listed threatened species and communities in accordance with the relevant Commonwealth Listing Advice. The EIS/BDAR should include important populations and critical habitat as defined in Approved Listing Advice, Approved Conservation Advice and Recovery Action Plans.	
	Provide advice on the adequacy of the identification methods and mapping information / any additional information requirements: EHG considers the identification methods and mapping information is adequate.	
	• Confirm that all EPBC Act listed threatened species and communities that occur on the subject land, or in the vicinity, have been identified in the BDAR/EIS including those that are ecosystem credit species. • If any species and communities identified in the referral documentation (provided by DAWE) have been ruled out because they don't occur on or near the site, verify that there is robust analysis and justification for why these species can be ruled out. • Provide advice on whether there are any other MNES species or communities that are missing from the assessment based on BCS knowledge and experience. The BDAR does not consider one ecological community, the Coastal Swamp Oak (<i>Casuarina glauca</i>) Forest of NSW and SE Qld ecological community. A number of EPBC listed species in the EPBC Act Protection Matters Report (ERT) report are not discussed in the BDAR, namely <i>Falco hypoleucos</i>, <i>Macquaria australasica</i>, <i>Prototroctes maraena</i>, <i>Petauroides volans</i>, <i>Cuculus optatus</i>, <i>Pandion haliaetus</i>, <i>Ardea ibis</i>, <i>Ardea modesta</i>, <i>Chalcites osculans</i>. However, EHG considers that none of these species or endangered community are expected to occur on the project site. Table 26 of the BDAR discusses the likelihood of occurrence of 51 species and four ecological communities listed under the EPBC Act. Adequate field survey and habitat assessment reduced the listed of likely species/ communities on site to two, being: • Cumberland Plain Shale Woodlands and Shale-Gravel Transition Forest CEEC – present on site • <i>Pteropus poliocephalus</i> (Grey-headed Flying-fox) – the BDAR states that this species is likely to forage over the site.	
	Advise whether there is appropriate justification and supporting evidence for the addition and/or exclusion of any EPBC Act listed threatened species and/or communities from the list (if applicable):	

Requirement	Information	Reference (BAM / BLA ¹)
	EHG considers there is adequate justification for exclusion of species.	
Avoidance, Minimisation, Mitigation & Management	Verify that the EIS/BDAR demonstrates all feasible alternatives and efforts to avoid and minimise impacts on EPBC Act listed threatened species and communities (including direct, indirect and prescribed impacts) including an analysis of alternative: ☒ designs and engineering solutions ☒ modes or technologies ☒ routes and locations of facilities ☒ sites within the subject site ☒ Verify that the EIS/BDAR identifies any other site constraints in determining the location and design of the proposal (such as bushfire protection requirements, flood planning levels, servicing constraints, etc). Verify that the EIS/BDAR provides feasible measures to mitigate and/or manage impacts on EPBC Act listed threatened species and communities (including direct, indirect and prescribed impacts) including: ☒ techniques, timing, frequency and responsibility ☒ identify measures for which there is risk of failure ☒ evaluate the risk and consequence of any residual impacts ☒ any adaptive management strategy proposed to monitor and respond to impacts. Provide advice on whether all feasible impact avoidance, minimisation, mitigation and management measures have been considered and are adequately justified: The sections on avoidance (5.1), minimisation, mitigation and management (5.2) are considered adequate.	BAM Chapters 6, 7 and 8 BLA clause 7.1
Impact Assessment	Verify that the EIS/BDAR: ☒ identifies the residual adverse impacts likely to occur to each EPBC Act listed threatened species and/or community after the proposed avoidance and mitigation measures are taken into account ☒ provides adequate justification and evidence for the predicted level of impact, with reference to the: • Commonwealth's Significant Impact Guideline: https://www.environment.gov.au/system/files/resources/42f84df4-720b-4dcf-b262-48679a3aba58/files/nes-guidelines_1.pdf • DPIE Guidance to Assist a Decision-Maker to Determine a Serious and Irreversible Impact (SAIL): (https://www.environment.gov.au/system/files/resources/42f84df4-720b-4dcf-b262-48679a3aba58/files/nes-guidelines_1.pdf)	BAM Chapters 8 and 9 BLA clauses 6.2(b)(i)-(ii) and 7.1

Requirement	Information	Reference (BAM / BLA ¹)
	Complete the following information for each EPBC Act listed threatened species and/or community (add/remove rows as necessary): • EPBC Act listed threatened species and/or community • nature and consequences of impacts (i.e. direct and indirect) • duration of impact (e.g. construction, operation, life of project) • quantum of impact • consequences of impacts on the species, the population and / or extent of the community at local, state and national scales Confirm the level of predicted impact (cross appropriate): ☐ high risk of impact (requiring offsets)[#] or SAIL ☐ Low risk of impact (not requiring offsets) [#] For purposes of EPBC approval, as a minimum, significant adverse residual impacts must be offset (significant impact can be evaluated with reference to the significance impact guidelines) Provide advice on whether adequate justification and evidence is provided for species and communities that have been identified as being at low risk of impact. All vegetation is to be 100% cleared, so impacts are generally direct impacts and will occur during construction. All CPW to be cleared is to be offset. CPW is a potential SAIL entity, but in relation to this proposal, the impact would not be considered to be a SAIL.	
Offsets	Verify that the EIS/BDAR: ☒ identifies any MNES that haven't been offset using the BAM ☒ identifies how impacts requiring offsets correlate to MNES impacts ☒ identifies the plant community types (PCTs) requiring offset and the number and type of ecosystem credits required for impacts to MNES ☒ identifies threatened species requiring offset and the number of species credits required for impacts to MNES ☒ correctly uses the BAM (and BAM calculator) to identify the number and class of biodiversity credits that need to be offset to achieve a standard of 'no net loss' of biodiversity ☒ identifies if ecological rehabilitation and/or biodiversity conservation actions are proposed for offsetting ☐ if known, identifies any other offsetting approach proposed, such as land-based offsets, retiring credits by payment into the Biodiversity Conservation Fund and/or through supplementary measures[#]. [#] In accordance the BAM there is no longer a requirement to define the offsetting approach at EIS stage. Complete the Impacts and Offsets Summary table below (Table 2)	BAM Chapter 10 BLA clauses 7.1 and 7.2

Requirement	Information	Reference (BAM / BLA ¹)
	Provide advice on the adequacy of the proposed offsets in meeting the requirements of the BAM: The proposed method of offsetting (purchasing credits, payments to BCT, or creation of stewardship site) is unknown but if approved, there will be a condition of consent included that requires the proponent to demonstrate that offsets have been provided prior to construction.	
Other Considerations	Verify if any relevant Commonwealth guidelines and policy statements are applicable to the action and listed threatened species and/or community, including but not limited to: ☒ International environmental obligations ☒ Recovery Plans ☒ Approved Conservation Advice ☒ Threat Abatement Plans <i>The relevant Commonwealth guidelines and policy statements for each species and community are available at: http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl</i>	BLA clauses 6.2(b)(iv), 7.2(c), 7.3 and 7.4
	For each EPBC Act listed threatened species and/or community, provide advice on whether the assessment has been adequately informed by applicable Commonwealth guidelines and/or policy statements. For example, the interaction between the proposed action and important populations or critical habitat identified in policy documents and/or the interaction between the proposed action and threatening processes or recommended conservation actions outlined in Commonwealth policies and plans. The table of contents for the BDAR state that Appendix E is an assessment of significance for CPW under the EPBC Act, but there is no Appendix E attached in the version sent to EHG. Section 6.1 of the BDAR states that CPW and the Grey-headed Flying-fox (GHFF) were assessed consistent with the Significant Impact Guidelines, and that a summary letter will be submitted to DAWE. EHG has not been sent a copy of this letter. Table 1 states that the conclusion of the assessment of significance is that the proposal is likely to constitute a significant impact to CPW, but not the GHFF. Despite not seeing the additional advice sent to DAWE, EHG considers that it is reasonable to conclude that there will be a significant impact to CPW but not to the GHFF.	
Recommended Conditions	Provide advice on any recommended conditions and reasons for imposing the conditions: N/A. EHG hasn't seen any recommended conditions.	BLA clause 6.2(c)(iii)

TABLE 2: MNES IMPACT AND OFFSET SUMMARY

Threatened Species / Community listed under EPBC Act	PCTs associated with the ecosystem credit species / ecological community (if applicable)	Area of Impact (ha)	Credits Required	Offsetting Approach	Reference (EIS, BDAR)
Cumberland Plain Shale Woodlands and Shale-Gravel Transition Forest	Grey Box - Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion	1.2 ha	37	Unknown	App H

END OF SUBMISSION