



global environmental solutions

The Horsley Drive Business Park
Smithfield

Response to Comments of the OEH

26th September 2012

**HORSLEY DRIVE BUSINESS PARK, SMITHFIELD
RESPONSE to COMMENTS of the OEH**

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1 INTRODUCTION

1.1 Purpose

The Office of Environment & Heritage (OEH) has provided *Comments* regarding the State Significant Development (SSD) proposal for industrial subdivision of land at the Horsley Drive Business Park (SSD No. 5169). The proposal is for the development and leasing of a small area of land (approximately 21ha) within the Western Sydney Parklands for industrial purposes, in order to provide the funds necessary to manage the Parklands, *inter alia* for biodiversity conservation purposes.

The OEH *Comments* (dated the 27th of August 2012) include 13 individual matters regarding the *Ecological Issues & Assessment Report* (EIAR) of SLR Ecology (dated June 2012). The OEH asserts that there are some inadequacies in that *Report*.

The following parts of this *Response Report* provide additional information or material where appropriate and/or responses by the principal author of the EIAR to the comments of the OEH.

1.2 Background

It is important to note the nature, condition and history of the subject site, as well as its context, in considering any ecological matters. In this regard, it is to be noted that:

- the subject site has been cleared and farmed for approximately 100 years;
- the majority of the land consists of pasture grasses and herbs, noxious weeds, horticultural plantings and agricultural features;
- ‘native vegetation’ occupies only a miniscule proportion of the subject land, and that present is generally highly modified; and
- the land is surrounded by other cleared agricultural land and urban infrastructure, and is not contiguous with any relevant native vegetation.

It is also critical to note that the leasing of up to 2% of the Western Sydney Parklands for industrial purposes is identified in the *Western Sydney Parklands Plan of Management* (PoM) as a means of generating income for the management of the Parklands, including in part for the rehabilitation and management of natural habitats and ecosystems. It is noted in the PoM that such development “*will only be permitted to occur on sites with low environmental and recreational values*” – as is the case on the subject site at Horsley Park.

The *Plan of Management* includes the restoration of approximately 1000ha of existing bushland habitat and the development of a further approximately 1000ha of new bushland to provide connectivity between existing fragmented bushland, and to assist the long-term sustainability of native vegetation in the Parklands. These connections will provide wildlife corridors that link to other habitat corridors throughout Western Sydney, and revenues from the business hub sites will fund this larger biodiversity outcome throughout the Parklands.

2 RESPONSE to OEH COMMENTS

2.1 Vegetation Patches and Isolated Trees

- The ‘patches of native vegetation’ which were inspected on the subject land are identified in Figure 6 of the EIAR (see attached Figure 1), and were searched specifically *inter alia* for *Pimelea spicata* and other potentially relevant threatened biota.
- The majority of the “*isolated trees*” across the land (albeit not every single one) were included in the walked site surveys.
- It is the view of the author of this *Report* that “*isolated trees*” do not relevantly “*constitute an endangered or critically endangered ecological community*”, as suggested by the OEH.
- Specific searches for all potentially relevant threatened biota were undertaken during the extensive walked transects across the subject land, as stated in the EIAR.
- As detailed in the EIAR:
 - the overwhelming majority of the subject land has long been cleared for agricultural purposes, ploughed, cropped, fertilised and/or pasture-improved; and
 - the overwhelming majority of the groundcover consists of noxious weeds and pasture species.
- There is no objective basis for concluding that there is any habitat for any potentially relevant threatened flora species on the subject site at Smithfield.

2.2 CMA/OEH 2009 Mapping

- The Sydney Metropolitan Catchment Management Authority (CMA) mapping of vegetation on the subject site and nearby (CMA/OEH 2009) has been reviewed (Figure 2).
- The *Report* associated with the CMA/OEH mapping states *inter alia* that the CMA/OEH mapping should not be used for assessment purposes because of a lack of ground-truthing.
- The mapping of vegetation by SLR Ecology (Figure 1) is more detailed, and has been ground-truthed. It is a more accurate mapping of the vegetation of the site.
- The plant species identified by the OEH in Point 2 of their comments are characteristic of **both** the Cumberland Plain Woodland (CPW) community and Cumberland River-flat Forest, the latter of which is considered to constitute the “*endangered ecological community*” known as River-flat Eucalypt Forest on Coastal Floodplains (REFCF).
- The OEH suggests that the ‘Regrowth Mixed Eucalypt Woodland’ mapped on the subject land by SLR Ecology (and mapped by the SMCMA as Cumberland River-flat Forest) is REFCF.

- However, other species recorded in that patch (particularly the Spotted Gum and the Narrow-leaved Ironbark) are not mentioned in the REFCF community *Final Determination*, and importantly are not characteristic of mesic or 'River-flat' communities.
- Given those considerations, that patch of vegetation more closely resembles the CPW community than the REFCF community, and an assessment of the REFCF community is not considered relevant.

2.3 Cumberland Plain Woodland

- The author acknowledges that the word “[native]” was inserted into the sentence regarding groundcover in the *Final Determination* “near-continuous groundcover dominated by [native] grasses and herbs”). It cannot be likely that the *Final Determination* for the CPW community refers to introduced groundcover species.
- The OEH states that “*The most relevant factors to consider in the final determination is [sic] the assemblage of species that are listed, and the location that is specified*”.
- The OEH refers to “*Land & Environment Court*” findings in VAW (Kurri Kurri) Pty Ltd v the Scientific Committee 2003 [NSW CA 297].
- However, the findings in that Court of Appeal judgement do not state that the floristic assemblage and the location specified are the “*most relevant factors to consider*”. Indeed, that judgement does not relate to the interpretation of a *Final Determination* but rather to whether a particular *Final Determination* satisfies the definition of an “*ecological community*” pursuant to the TSC Act.
- A far more relevant Land & Environment Court judgement is that of Preston CJ in Gales Holdings Pty Ltd v Tweed Shire Council [2008] NSWLEC 209, at paragraphs 61-133, on the site at Horsley Park which clearly establishes that edaphic, locational and topographic criteria are essential in determining the presence or otherwise of an EEC.
- Whether or not the CPW community is present, a *Section 5A Assessment of Significance* has been prepared for the proposal.
- The *Section 5A Assessment of Significance* concluded that the loss of those highly degraded, miniscule, fragmented and isolated patches of possible CPW vegetation would not constitute a “*significant effect*”.

2.4 Ecological Surveys

- The OEH “*considers*” that the “*amount of survey effort [undertaken by SLR Ecology in April 2012] may not be an adequate [sic]*”.
- As noted above, the overwhelming majority of the subject site is highly modified, and consists of introduced grasses, pasture plants and weeds (such as Lantana and Blackberry).

- The SLR Ecology team is highly experienced in undertaking ecological surveys in western Sydney and in assessing the likelihood or otherwise of threatened biota being present, including on degraded sites such as the subject site at Horsley Park.
- Given the nature and condition of the subject site, the author of this *Response Report* believes the surveys conducted by SLR Ecology are appropriate.

2.5 Hollow-bearing Trees

- The paragraph referred to by OEH should have read *inter alia* “Even if there were any **other** hollow-bearing trees on the subject land ..”.

2.6 Generic Section 5A Assessment of Significance

- There are no “*endangered populations*” of relevance listed in the TSC Act.
- The only potentially relevant EEC (the CPW community which is not conceded to be present) was addressed in a dedicated *Section 5A Assessment of Significance*.
- There are no other EECs present or likely on the subject land, and no further *Section 5A Assessment of Significance* is required.
- Given the highly degraded and long modified nature of the overwhelming majority of the subject land, a generic *Section 5A Assessment of Significance* of the form provided in the SLR Ecology EIAR is considered appropriate and reasonable.

2.7 Wildlife Atlas Search

- The author of this *Report* is not aware of any relevant difference between the Wildlife Atlas included with the SLR Ecology *Report* and a “*full wildlife atlas report under the licence from OEH*”.
- Given the circumstances, it is not considered likely that the “*full wildlife atlas report*” would provide any additional information.

2.8 Habitat for threatened Biota

- The author of this *Response Report* maintains the classification of the subject land as being of either low or no relevance as habitat for the threatened fauna species recorded in the locality, given that:
 - the overwhelming majority of the site is highly degraded, cleared, weed-infested agricultural land; and
 - there are only minimal resources present on the subject site for any potential threatened species.
- In the event that the subject site constitutes significant habitat for any threatened species, including those identified by the OEH, the proposed development could not conceivably impose a “*significant*”

effect upon any such biota because there are thousands of hectares of such habitat in western Sydney.

- Even if any of those threatened biota did occur on the subject site, the minuscule potential resources present represent a minute fraction of similar (or in many places better) habitats and resources present in the immediate vicinity and general locality.

2.9 Location of the Subject Site

- Typographical error – the site is at Horsley Park, not Kellyville.

2.10 Appendix F of the EIAR

- The correct quote from page vii of Appendix F is the statement that “*there is in essence no “**native vegetation**” present*”.
- That statement in Factor (g) of the *Section 5A Assessment of Significance* applies specifically and precisely to the “*key threatening process*” listed in the TSC Act as the “*clearing of **native vegetation***”.
- Whilst there are doubtless ‘native plants’ on the subject site, the levels of degradation and clearing have removed essentially all of the “*native vegetation*” from the land.
- The statement on page ix of Appendix F of the EIAR should perhaps have read “*the minute patches of possible CPW vegetation on the subject site are isolated, highly degraded and of absolutely no biodiversity or ecological conservation value **with respect to the conservation or protection of the CPW community** “in the locality”*”.

2.11 Native Vegetation and Habitats

- In the opinion of the author of this *Response Report*, the minute patches of native vegetation present on the subject land at Horsley Park are more likely to be “*regrowth*” than “*remnant vegetation*”.
- Furthermore, it is relevant to note that:
 - the areas of ‘native vegetation’ on the subject site at Horsley Park are minute in area, and constitute only a minute fraction of the vegetation present on the subject land;
 - the tiny patches of partially ‘native vegetation’ present are highly fragmented and isolated within a broad area of land characterised by and dominated by introduced pasture grasses, weeds and horticultural plantings; and
 - the landscape generally (where not already be developed) is characterised by broad areas of weeds (including many noxious species) and pasture grasses and herbs.
- As noted above, the overwhelming majority of the subject land, and of adjoining lands, consists of highly degraded, extremely modified, substantially weed-infested and essentially artificial non-vegetation. Whilst even patches of weeds or isolated native plants have some “*conservation values*”

(eg for some small birds), those on the subject site cannot be regarded as of any particular conservation significance or value.

- The potential for a range of threatened (and other native) biota occurring, on occasions at least, on the subject land was taken into account in the EIAR (SLR Ecology 2012).
- The survey effort undertaken by SLR Ecology in 2012 is entirely appropriate given the nature and condition of the subject land, its context and the extremely minimal area of partly 'native' vegetation present.
- The biodiversity conservation value of the subject land at Horsley Park, given its nature, condition and context, is negligible, notwithstanding the implied possible or potential use of the land by occasional individuals of a few threatened species.
- The matters raised by the OEH in this item of their comments appear to disregard the nature and condition of the subject land, its context, and the role that the development of this land has in providing funds for the rehabilitation and maintenance of the overwhelming majority of the western Sydney Parklands area (approximately 5,500ha).

2.12 Cumberland Plain Recovery Plan

- The *January 2012 Cumberland Plain Recovery Plan* is acknowledged.
- The proposed development of the subject land at Horsley Park (given its highly degraded and substantially modified condition, the extent of weed-infestation, the minuscule quantum of native vegetation or habitats, and its context) cannot be considered an activity which would contravene any element of the *Cumberland Plain Recovery Plan*.

2.13 Offsets

- Development of the subject land is part of the overall management regime for the Western Sydney Parklands (see the *Western Sydney Parklands Plan of Management*).
- The author is of the view that no EEC is present, and that no offset is required.
- The "offsets" allegedly required by the OEH for development of this highly degraded and weed-infested patch of land are more than adequately provided by the habitat rehabilitation works to be undertaken over hundreds of additional hectares within the Western Sydney Parklands.

3 CONCLUSIONS

It is a fundamental element of the *WSP Plan of Management* that up to 2% of the Parklands are to be made available for leasing, including for Business hubs, in order to generate the funds required to rehabilitate (in parts) and manage the thousands of hectares of land within the Western Sydney Parklands Trust area.

It is also an element of the *Plan of Management* that such development “*will only be permitted to occur on sites with low environmental .. values*”. Such is the case on the subject site at Horsley Park.

The subject land is extremely highly degraded, contains only minuscule areas of degraded and weed-infested native vegetation, and is of marginal conservation value. Furthermore, this development will facilitate the rehabilitation of substantial other areas of CPW and habitats for threatened biota (approximately 1000ha long-term) according to the *WSP Plan of Management* within the Sydney Western Parklands.



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