## *Determination under section 7.9(2) of the Biodiversity Conservation Act 2016*

I, Louisa Clark, Director Greater Sydney, of the Department of Climate Change, Energy, the Environment and Water, under section 7.9(2) of the *Biodiversity Conservation Act 2016*, consider that the proposed SSD-77260958 for a mixed use development and associated works at 20-24 Railway Parade and 2-4 Burleigh Street is not likely to have any significant impact on biodiversity values. Therefore, a Biodiversity Development Assessment Report is not required.

Proposed development means the development as described in DOC24/1025571 and Schedule 1. If the proposed development changes so that it is no longer consistent with this description, a further waiver request is required.

19/02/2025

--- ---

**Louisa Clark**
**Director** **Date**
**Greater Sydney**
**Regional Delivery Compliance Programs, Heritage and Regulation Group**

## SCHEDULE 1 – Description of the proposed development

The State Significant Development Application (SSDA) SSD-77260958 proposes site preparation works, earthworks and construction of a mixed use development and associated works at Burleigh Street and Railway Parade, Burwood, as detailed in the BDAR waiver request, prepared by Abel Ecology, dated 4 December 2024.

Refer to:

- Figure 1 Location Plan
- Figure 2 Subject site
- Figure 3 Proposed plan
- Figure 4 Height of proposed development and similar sized builds nearby
- Figure 5 Demolition Plan
- Figure 6 Concept Design for building

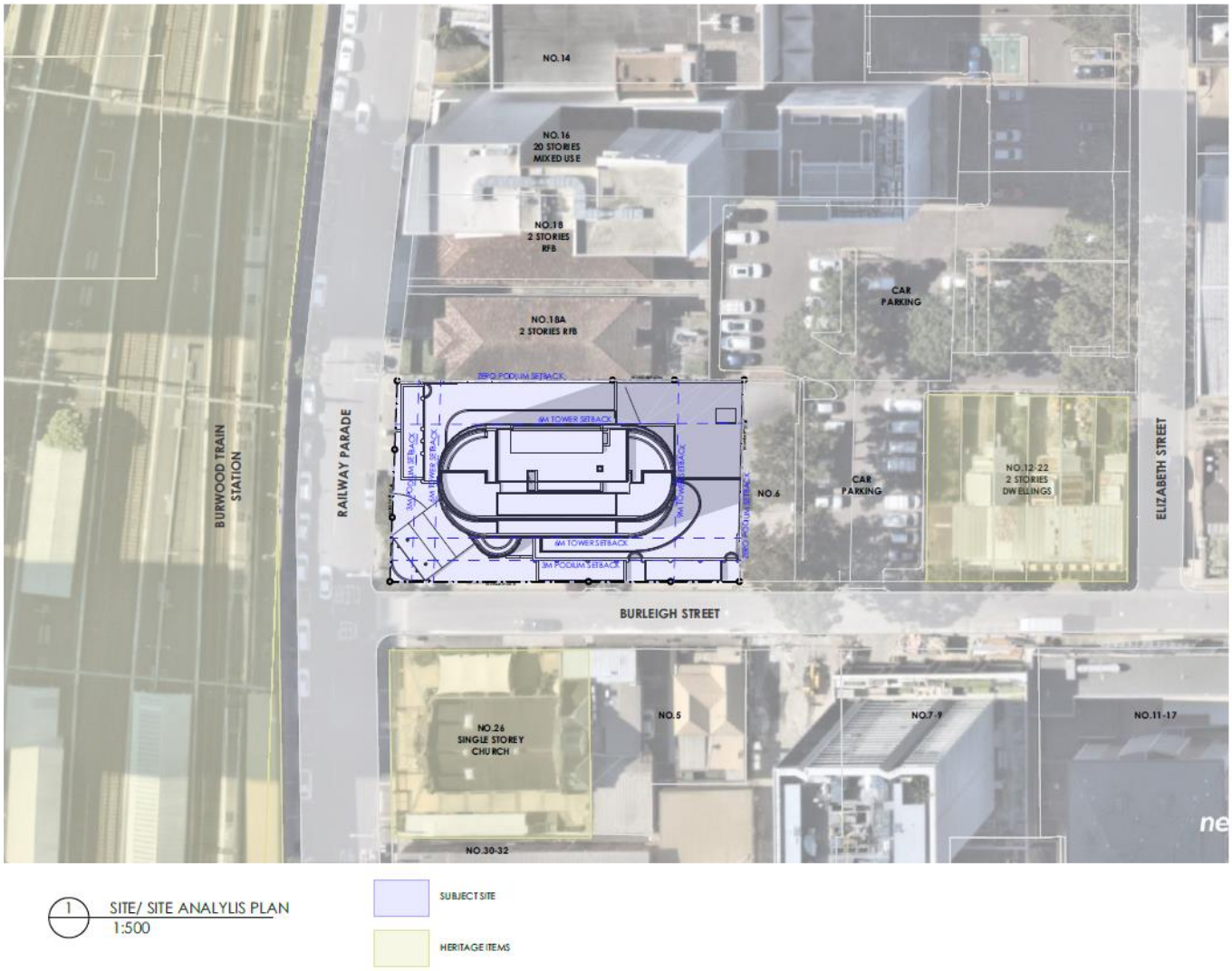
**Figure 1** Aerial Photo of The Site (Source: NearMaps)

**Figure 1 Location Plan**

Key

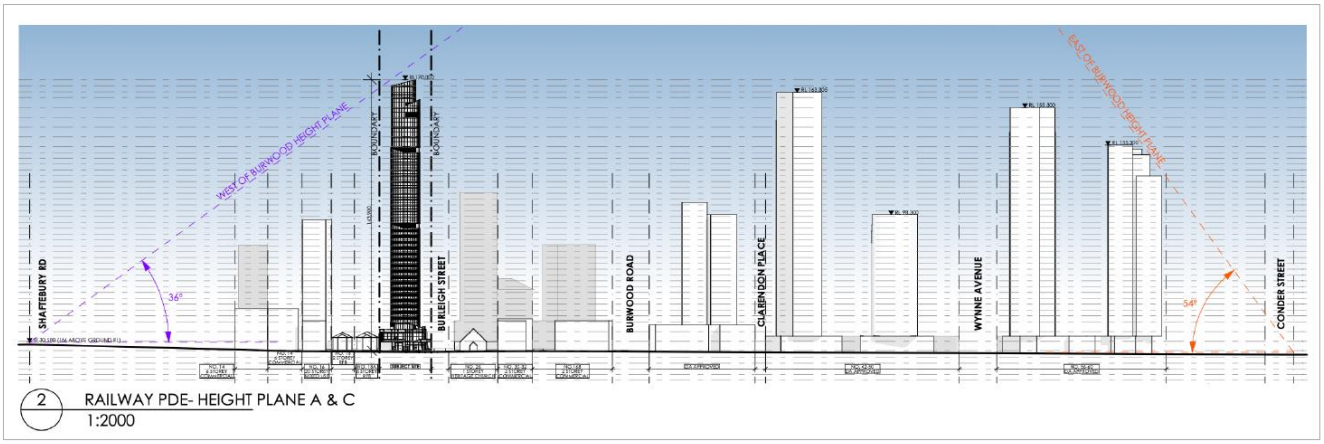
Lot Subject site

**Figure 2 Subject land**




1 SITE/ SITE ANALYLIS PLAN
1:500

**Figure 3 Proposed plan**




2 RAILWAY PDE- HEIGHT PLANE A & C
1:2000

**Figure 4 Height of proposed development and similar sized builds nearby**

**Figure 5 Demolition Plan**

**Figure 6 Concept Design for building**

Our ref: SSD-77260958

Mr Sam Au
Development Manager
NSW HOUSING CORPORATION PTY LTD
Suite 210, 531-533 Kingsway
Miranda NSW 2228

20 February 2025

**Subject: Mixed use development including infill affordable housing, 20-24 Railway Parade and 2-4 Burleigh Street, Burwood (SSD-77260958) – Request to waive requirement to prepare a Biodiversity Development Assessment Report**

Dear Mr Au

I refer to your correspondence from 4 December 2024, regarding the request to waive the requirement for a Biodiversity Development Assessment Report (BDAR) to be submitted as part of the above referenced State significant development (SSD) application.

**Description of proposed development**
The proposal comprises the construction of a mixed-use development with infill affordable housing as detailed in the BDAR waiver application dated 4 December 2024.

Under section 7.9(2) of the *Biodiversity Conservation Act 2016* (BCA):

*"Any such application is to be accompanied by a biodiversity development assessment report unless the Planning Agency Head and the Environment Agency Head determine that the proposed development is not likely to have any significant impact on biodiversity values."*

This letter is to confirm that the Secretary of the Department of Planning, Housing and Infrastructure has determined that the proposed development as described above is not likely to have any significant impact on biodiversity values and that a BDAR is therefore not required to accompany any application for development consent or infrastructure approval for the proposed development.

I, as Delegate of the Planning Secretary within the Development Assessment and Infrastructure Division, have determined that the proposed development is not likely to have any significant impacts on biodiversity values. Evidence that the Director Greater Sydney as delegate of the Secretary within the NSW Department of Climate Change,

Energy, the Environment and Water has made the determination is attached (dated 19 February 2025).

If there are any amendments to the proposed development, a fresh request for a BDAR waiver determination will be required or a BDAR may need to be prepared.

Should you have any further enquiries, please contact Michelle Niles on 9274 6272 or via email to michelle.niles@planning.nsw.gov.au.

Yours sincerely,

Keith Ng
**Team Leader, Affordable Housing Assessments**
**As delegate of the Planning Secretary**

Encl: CPHR of NSW DCCEEW determination

Abel Ecology

# Biodiversity Development Assessment Report Waiver

(BDAR Waiver ISS 1)

For

2-4 Burleigh Street & 20-24 Railway Parade, Burwood NSW 2134

Lots A, B, C, D, & E

DP 438222

Proposed in-fill affordable housing

| | |
|---|---|
| Prepared for: | NSW Housing Corporation Pty Ltd |
| Report No: | AE24-2763- BDARW-ISS-1 |
| Prepared by: | Abel Ecology |
| Date: | 4 December 2024 |

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# Disclaimer

This report has been prepared in accordance with the scope of services described in agreement between Abel Ecology and the Client.

In preparing this report, Abel Ecology has relied upon data, surveys and site inspection results taken at or under the particular time and or conditions specified herein. Abel Ecology has also relied on certain verbal information and documentation provided by the Client and/or third parties but did not attempt to independently verify the accuracy or completeness of that information. To the extent that the conclusions and recommendations in this report are based in whole or in part on such information, they are contingent on its validity. Abel Ecology assumes no responsibility for any consequences arising from any information or condition that was concealed, withheld, misrepresented, or otherwise not fully disclosed or available to Abel Ecology.

The findings contained in this report are the result of discrete/specific methods used in accordance with normal practices and standards. To the best of our knowledge, they represent a reasonable interpretation of the general condition of the site in question. Under no circumstances, however, can it be considered that these findings represent the actual state of the site/sites at all points.

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Furthermore, this report has been prepared solely for use by the Client. Abel Ecology accepts no responsibility for its use by other parties.

I confirm that I have read the NSW Land and Environment Court Practice Note commencing on 14 May 2007, Division 2, Part 31 of the Uniform Civil Procedure Rules 2005 and the Expert Witness Code of Conduct in Schedule 7 to the Uniform Civil Procedure Rules 2005. I have prepared this advice in accordance with the requirements of the Practice Note and Code of Conduct and believe this report is consistent with the requirements of the Practice Note and the Code of Conduct. I agree to be bound by the Practice Note and Code of Conduct.

Document History

| Report | Version | Prepared by | Technical Review by | Proofread by | Submission | |
|---|---|---|---|---|---|---|
| | | | | | Method | Date |
| Report | Draft A | Callista Harris | Nicholas Tong | Jeanette Miller | Dropbox | 27 November 2024 |
| Report | Issue 1 | Callista Harris | Nicholas Tong | Jeanette Miller | Dropbox | 04 December 2024 |


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# 1. Introduction

NSW Housing Corporation Pty Ltd (the proponent) proposes to construct in-fill affordable housing (the Project) at 2-4 Burleigh Street & 20-24 Railway Parade, Burwood (the subject site) (Figure 1).

The Project is classified as State Significant Development (SSD) as it falls within the requirements of Clause 26A ("In-fill Affordable Housing") of Schedule 1 of State Environmental Planning Policy (Planning Systems) 2021.

This BDAR Waiver Request accompanies the scoping report requesting the Secretary's Environmental Assessment Requirements (SEARs) for the preparation of an Environmental Impact Statement (EIS) to accompany an SSD application.


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Figure 1. The subject site on 30 October 2024 – 2-4 Burleigh Street and 20-24 Railway Parade, Burwood NSW.


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# 2. Project overview

## 2.1 Project background

Complying Development Certificate (CDC) No. 8772/1 was issued by Certis (NSW) Pty Ltd on 14 June 2024 for demolition of the existing structures on the subject site. Demolition has not yet occurred.

Figure 2 Demolition Plan for CDC No. 8772/1 - 2-4 Burleigh Street and 20-24 Railway Parade, Burwood NSW.

The Demolition Plan for the Complying Development Certificate shows that three trees along railway parade were to be retained. As of 20th of November 2024 the three trees along railway parade had been removed as evidenced by the photos below.



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Photo 1.  20-24 Railway Parade, Burwood NSW.


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Photo 2. Rear access for 20-24 Railway Parade, Burwood NSW.


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Photo 3. 4 Burleigh St, Burwood NSW.


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Photo 4. Courtyard of 24 Railway Parade, Burwood NSW.

## 2.2 The Project

The Project is for construction of high-rise in-fill residential/affordable housing, hotel & commercial offices.


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Figure 3. Concept Design for building -2-4 Burleigh Street and 20-24 Railway Parade, Burwood NSW.


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# 3. BDAR Waiver request information

This section provides the information detailed in Tables 1 and 2 of The Department of Planning, Industry & Environment's guideline *'How to apply for a biodiversity development assessment report waiver for a Major Project Application'.*

Table 1. BDAR Waiver Request information requirements

| | |
|---|---|
| Proponent name | NSW Housing Corporation Pty Ltd |
| Project name | Residential/affordable housing, hotel & commercial offices<br>2-4 Burleigh Street and 20-24 Railway Parade, Burwood. |
| Name and ecological qualifications of person completing Table 2 | Nicholas Tong<br>BSc (Biology), MPhil (Ecology), Cert. III CLM, MECA NSW, BAM Accredited Assessor (BAAS22012), 6 years ecological consulting experience. |
| Site details | The subject site is located on the corner of Railway Terrace and Burleigh Street, Burwood. The site comprises five (5) parcels of land: Lots A, B, C, D, & E DP 438222.<br>The subject site is within Burwood Local Government Area. |
| Description of existing development site, i.e., the area of land that is subject to the proposed development application | All pre-existing buildings and structures on the site are to be demolished in accordance with CDC No. 8772/1. |
| Site Map | Refer to Figure 1. |
| Proposed development | In-fill affordable housing. |
| Impacts on biodiversity values | Refer to the completed Table 2 below for potential impacts on Biodiversity Values. |


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Table 2. Impacts of the Project on biodiversity values

| Biodiversity Value | Meaning | Relevance | Impact Assessment |
|---|---|---|---|
| Vegetation abundance – 1.4(b) BC Regulation | Occurrence and abundance of vegetation at a particular site. | ✓ | The remaining vegetation on the site to be cleared is dominated by weeds. The vegetation to be cleared includes *Lomandra longifolia*, tree fern (*Dicksonia* sp./*Cyathea* sp.) going out of brickwork, *Ficus sp. growing out of brickwork, Agapathus spp., Bidens pilosa, Conyza sp.*<br>**Negligible impact.** |
| Vegetation integrity 1.5(2)(a) BC Act 2016 | Degree to which the composition, structure and function of vegetation at a particular site and the surrounding landscape has been altered from a near-natural state. | ✓ | The vegetation on site is far from the natural state. The vegetation on site is an urban garden dominated by weeds and exotics with planted native species (*Lomandra longifolia*) and self seeded landscape natives (tree fern (*Dicksonia* sp./*Cyathea* sp.) going out of brickwork, *Ficus sp. growing out of brickwork).*<br>**Negligible Impact.** |
| Habitat suitability 1.5(2)(b) BC Act 2016 | Degree to which the habitat needs of threatened species are present at a particular site. | ✓ | The vegetation on site does not provide habitat for any of the local threatened species.<br>**Negligible impact.** |
| Threatened species abundance 1.4(a) BC Regulation | Occurrence and abundance of threatened species or threatened ecological communities, or their habitat, at a particular site. | ✓ | Threatened species and Threatened Ecological Communities are not expected to occur at the subject site.<br>**Negligible impact.** |
| Habitat connectivity 1.4(c) BC Regulation | Degree to which a particular site connects different areas of habitat of threatened species to facilitate the movement of those species across their range. | ✓ | The site is in a highly fragmented urban landscape and the vegetation on site does not provide habitat or contribute to the connectivity of threatened species.<br>**Negligible impact.** |


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| | | | |
|---|---|---|---|
| Threatened species movement 1.4(d) BC Regulation | Degree to which a particular site contributes to the movement of threatened species to maintain their life cycle. | ✓ | The vegetation on site does not contribute to the movement of threatened species essential to maintaining their life cycle.<br>Negligible impact. |
| Flight path integrity 1.4(e) BC Regulation | Degree to which the flight paths of protected animals over a particular site are free from interference. | ✓ | The proposed development is for a 39 apartment and office tower located within Burwood. While this building is proposed to be the tallest in the area, there are a number of exsiting buildings of similar height (see Figure 4). While there will be some impact to the flight paths of protected animals, there is sufficient room for protected animals to fly over and around the proposed development.<br>Negligible impact. |
| Water sustainability 1.4(f) BC Regulation | Degree to which water quality, water bodies and hydrological processes sustain threatened species and threatened ecological communities at a particular site. | ✓ | The Project is not expected to have any greater impact on water quality, water bodies or hydrological processes.<br>The Project would be constructed in accordance with a development approval, which would contain appropriate sediment and erosion controls.<br>Negligible impact. |

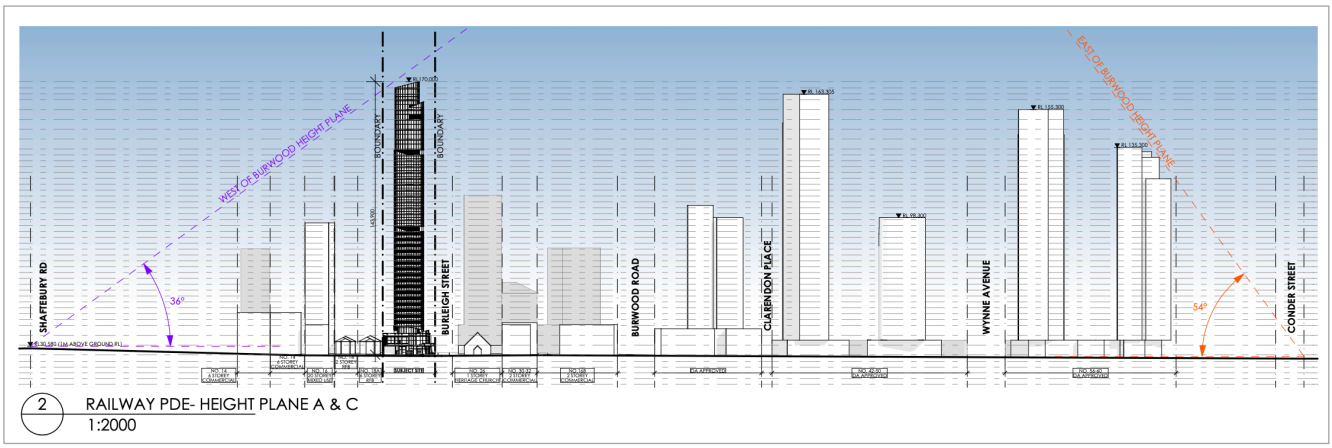


Figure 4. Height of proposed development and similar sized builds nearby - 2-4 Burleigh Street and 20-24 Railway Parade, Burwood NSW.


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# 4. Conclusion

The Project is considered unlikely to have a significant impact on threatened species or their habitats for the following reasons:

- The Project involves minimal removal of landscape and weedy vegetation.
- No threatened species or threatened ecological communities have been identified within the subject site.
- The site is not part of a recognised movement corridor between breeding grounds, foraging grounds, or other habitats important for the lifecycle of species such as staging points for migration.
- No barriers to movement will be introduced and no further fragmentation of habitats will occur.
- Impacts to flight path integrity will be minor.
- Water quality, water bodies and hydrological processes do not sustain threatened species at the subject site.


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# Appendix 1. Company Profile

Abel Ecology has been in the biodiversity consulting business since 1991, starting in the Sydney Region, and progressively more statewide in New South Wales since 1998, and now also in Victoria. During this time extensive expertise has been gained with regard to Master Planning, Environmental Impact assessments including flora and fauna, bushfire reports, Vegetation Management Plans, Management of threatened species, Review of Environmental Factors, Species Impact Statements, Biodiversity Development Assessment Reports and as Expert Witness in the Land and Environment Court. We have done consultancy work for industrial and commercial developments, golf courses, civil engineering projects, tourist developments as well as residential and rural projects. This process has also generated many connections with relevant government departments and city councils in NSW. Our team consists of four scientists and two administrative staff, plus casual assistants as required.

## Licences

NPWS s132C Scientific licence number is SL100780
NPWS GIS data licence number is CON95034
NSW Dept of Primary Industries Secretary's Animal Care and Ethics Committee Approval: 18/575
NSW Dept of Primary Industries Animal Research Authority. Accreditation No: 84207

## The Consultancy Team

### Dr Danny Wotherspoon

BSc, DipEd, MA, PhD, Grad Dip Bushfire Protection,

MECA NSW, MEPLA, MNELA, MESA, MEIANZ, White card.

Danny has practised as an ecological and bushfire consultant since 1991. He is a consulting ecologist to private developers, State Government agencies and various City Councils on a regular basis, for development applications, government projects, and as expert witness in the NSW Land and Environment Court.

Danny's PhD researched fragmented vegetation and fauna habitat use. He has special expertise in fauna habitat use. Danny has presented invited papers at international conferences since 2001 in Australia, China, South Africa, Sri Lanka and Israel on his PhD and other research, including golf course habitat management. Danny's scientific papers have been published in both international and Australian academic journals.


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Koala survey qualification Dr Danny Wotherspoon

Requirements of SEPP Koala habitat Protection 2021

Surveys Must be Carried Out by a Suitably Qualified Person.

This is taken to mean a person with:

| Criterion | Dr Wotherspoon |
|---|---|
| A minimum undergraduate qualification in natural sciences, ecology, environmental management forestry or similar from a university; and | BSc (zoology and ecology)<br>PhD (animal ecology) |
| A minimum 3 years' experience in environmental assessment including field identification of plant and animal species and habitat. | Ecological consultant since 1991<br>Certified Practicing Ecological Consultant (ECA NSW registration no. 1). |

This includes having as a minimum the following experience in conducting koala surveys:

| Criterion | Dr Wotherspoon |
|---|---|
| • Greater than 10 surveys | Many surveys over more than 20 years.<br>LGAs include Hawkesbury, Campbelltown, Port Macquarie, Blue Mountains, Pittwater, Snowy Monaro etc. |
| • Experience in using the koala presence survey methods identified below | Yes.<br>Training workshop AKF annual Conference Philip Island 1999.<br>NSW LEC expert witness. |
| • Can accurately identify preferred koala use trees | Yes.<br>Arborist expert witness, so experience in identifying trees. |
| • Can distinguish between koala faecal pellets and those from other species that may present similar characteristics | Yes.<br>Training workshop AKF annual Conference Philip Island 1999.<br>Museum collection of pellets held in our office. |

The person's skills in koala survey should be demonstrable by relevant qualifications and the following:

| Criterion | Dr Wotherspoon |
|---|---|
| • A history of experience in koala habitat / population assessments and associated survey methods and/or | Research paper published by Australian Koala Foundation (AKF) (1999).<br>Paper presented AKF annual Conference Philip Island 1999<br>Wotherspoon, D, (2021, in press) Koala survey and the SEPP (Koala Habitat Protection) 2019. *Consulting Ecology.* |
| • A resume giving details of koala survey projects conducted over the previous 10 years including employers' names and periods of employment (where relevant). | Owner and founder of Abel Ecology P/L (previously Blue Mountain Wilderness Services P/L) since 1991. |


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### Mark Mackinnon

B Env. Sci. (Hons); Grad. Dip. in Bushfire Protection
Bushfire Planning & Design (BPAD), Accredited Practitioner Level 3. Accreditation number 36395.
MEIANZ, White Card

Mark is a passionate and enthusiastic scientist who thrives in the field of natural resource management. Mark has worked for a number of interstate government agencies and environmental consultancies. He has experience in threatened species, fire ecology, bushfire management, pest plant and animals, and landscape restoration. In particular, he specializes in ornithology and bushfire management. Mark has a number of specialized field-based skills including simple and complex tree climbing, working at heights, general firefighter departmental fire accreditation, venomous snake and reptile handling, immunization to handle bat species, and an A - class bird banding license with mist-net endorsement. Mark is also skilled in ArcGIS mapping, first-aid, four -wheel-driving.

### Mark Sherring

BM, MAABR, Cert. Hort., Cert. Bush Regen, Cert. Rural Ops, White Card.

Member of the Australian Association of Bush Regenerators

Mark has extensive knowledge and experience of plant species in New South Wales. He has built up his expert knowledge on NSW native plant species over the many years that he has practised as a Botanist. He is regularly asked to contribute to the extensive (ongoing) flora surveys of the Sydney Basin and Blue Mountains carried out by the Royal Botanic Gardens, Sydney. Mark has extensive field survey experience, having worked for over ten years in various plant-related roles. His role in Abel Ecology is to provide expert advice on flora and on the full range of flora management issues encountered and in the design and management of environmental monitoring projects.

### Nicholas Tong

BSc (Biology), MPhil (Ecology), Cert. III CLM
BAM Accredited Assessor (BAAS22012),
MECA NSW, Snr First Aid, White card.

Nicholas is an experienced ecologist with expertise in fauna, plant species identification, vegetation assessment and ecological restoration. In the last six years, he has been a consulting ecologist to private developers and large corporations, for a variety of projecting including State Significant Developments. Nick has extensive field work experience in Sydney, the Blue Mountains and Central West NSW. His Master's project investigated the impacts of exotic predators on herpetofauna in the arid zone. His role at Abel Ecology is to provide expert advice on fauna and the application of the Biodiversity Offset Scheme.


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### Emily Barbaro

BA, MPublishing, Grad. Cert. EnvSc, MEScM (enrolled).

Ecologist

Emily has completed a Graduate Certificate in Environmental Science and is currently enrolled in a Masters of Environmental Science and Management. Emily has previously worked as a Bush Regenerator and has been volunteering with Bushcare for Blue Mountains City Council for the last three years. She is passionate about learning more about her local Blue Mountains flora and fauna.

### Erin Parker

B Biodiversity and Conservation, Macquarie University.

Junior Ecologist

Erin has completed a Bachelor of Biodiversity and Conservation at Macquarie University. Erin has previously worked as a bush regeneration team member while completing her degree. There she was able to develop plant ID skills and understanding of the procedures of weed management and restoration. Erin has also taken part in a casual position assisting with threatened species surveys in the Central West of NSW. This involved various tasks including tree hollow surveys for Glossy Black Cockatoos, preparation for reptile surveys, spotlighting, harp trapping surveys of microbats, and Koala SAT plot surveys. Erin is passionate about furthering her knowledge on native Australian flora and fauna, their ecology and impacts.

### Callista Harris

BPlan (Hons), White Card, Apply First Aid, Work Safely at Heights, Maintain and Operate Chainsaws, Operate Elevating Work Platform (scissor lift), High Risk Work Licence - Boom-Type Elevating Work Platform (WP) (over 11 metres), Venomous snake handling certificate, Damage Mitigation Permit for Removal and relocation of protected animals, Operate and maintain 4WD.

Callista has 9 years' experience as an urban planner. She has a strong knowledge of NSW environmental legislation and has secured approvals for a wide range of developments, including housing developments, industrial developments, solar farms, and infrastructure. She has recently changed careers and has gained valuable on the ground experience working as a fauna spotter catcher, ecologist, and botanist on various projects.

### Dr Stephanie Clark

B Sc (Hons), PhD

Stephanie has over 30 years' experience in the collection, identification and taxonomy of marine, estuarine, freshwater and terrestrial molluscs. She has conducted numerous targeted surveys for endangered and threatened species (particularly land and freshwater molluscs) in both Australia and the United States. She is particularly interested in the systematics, taxonomy, morphology (external and internal), population and conservation genetics and conservation of molluscs particularly terrestrial (especially the Helicoidea) and freshwater (especially the Hydrobiidae and related families) groups.


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