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16 January 2018

Ms Carolyn McNally
Secretary
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Attention: Ms Karen Harragon/Mr David Gibson

Dear Ms McNally

SSD 8894 - REQUEST FOR A WAIVER UNDER SECTION 7.9(2) OF THE BIODIVERSITY CONSERVATION ACT 2016

I am writing to request a waiver under section 7.9(2) of the *Biodiversity Conservation Act 2016* (BC Act) in respect to the requirement for a “biodiversity development assessment report” for the State significant development application for Tower B: Stage 2 Design and Construction, 12 Frederick Street, St Leonards (SSD 8894).

The Secretary’s Environmental Assessment Requirements (SEARs) for the proposal were issued on 1 December 2017 and include the following requirement:

Biodiversity impacts related to the proposed development are to be assessed in accordance with the requirements of Section 7.9 of the Biodiversity Conservation Act 2016, including the preparation of a Biodiversity Development Assessment Report where required.

The proposed development is a Stage 2 DA for the concept proposal SSD 8499 and which sets out detailed design and construction for Tower B, situated on the northern and eastern sides of the 2-storey podium of Tower A (SSD 7543) on the site (**Figure 1**).

All existing vegetation on the site is proposed to be cleared as part of SSD 7543. A Flora and Fauna Assessment was undertaken by Cumberland Ecology in February 2017 in support of the EIS for Tower A (**Attachment 1**). The assessment concluded that the site does not comprise of remnant vegetation communities and does not conform to any threatened ecological community listed under current legislation.

As no additional tree removal or other associated impacts are proposed as part of the Tower B development, these findings remain relevant to the Tower B application.



Figure 1: Integration of Tower A and Tower B (Tower B is subject to this request)

As part of this waiver request we have considered whether the construction of Tower B is likely to significantly affect threatened species or ecological communities, or their habitats. We understand that this requires consideration of “biodiversity values” as outlined in section 1.5 of the BC Act and clause 1.4 of the *Biodiversity Conservation Regulation 2017* (BD Reg). Consideration of these values is outlined in **Table 1** below.

Act or Regulation	Response
Clause 1.5 Biodiversity and biodiversity values (BD Act 2016)	
<p>1) For the purposes of this Act, Biodiversity values are the following:</p> <p>a) Vegetation integrity – being the 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</p> <p>b) Habitat suitability – being the degree to which the habitat needs of threatened species are present at a particular site</p> <p>c) Biodiversity values, or biodiversity related values, prescribed by the regulations</p>	<p>Construction of Tower B will not have an impact on the “biodiversity values” as:</p> <ul style="list-style-type: none"> historically the site was a working quarry for brick-making materials and was completely cleared of all native vegetation by 1943 the site is situated in a highly urbanised area, predominantly surrounding by industrial and commercial land uses, with minimal vegetation vegetation on-site no longer comprises of natural remnant vegetation or vegetation that is regarded to be representative of the structure and floristics of the original vegetation the site provides poor roosting, nesting and denning habitat for native species and provides marginal foraging habitat for more mobile species such as birds and bats the proposal relates to construction of a tower on a podium subject to another DA (SSD 7543) does not involve tree removal or other associated impacts.
Clause 1.4 Additional biodiversity values (BD Reg 2017)	
<p>The following are prescribed as additional biodiversity values for the purposes of the Act:</p>	<p>As outlined above the construction of Tower B is unlikely to have an impact on any “additional biodiversity values” as defined by the Regulations, as:</p>

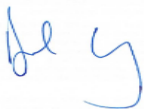
Act or Regulation	Response
a) <i>threatened species abundance— being the occurrence and abundance of threatened species or threatened ecological communities, or their habitat, at a particular site</i>	<ul style="list-style-type: none"> • vegetation on-site is not considered to be representative of the structure and floristics of natural vegetation that would of once occupied the site
b) <i>vegetation abundance - being the occurrence and abundance of vegetation at a particular site</i>	<ul style="list-style-type: none"> • vegetation on-site is considered urban native, exotic vegetation and noxious weeds
c) <i>habitat connectivity - being the degree to which a particular site connects different areas of habitat of threatened species to facilitate the movement of those species across their range</i>	<ul style="list-style-type: none"> • considering the limited patch size, disconnect from surrounding habitat, low composition of native species and intensity of surrounding land uses the site is considered to be of marginal value for native fauna and very poor for threatened species
d) <i>threatened species movement - being the degree to which a particular site contributes to the movement of threatened species to maintain their lifecycle</i>	<ul style="list-style-type: none"> • additionally, it is unlikely that any threatened fauna species known to occur in the locality of the site would be dependent on the site for roosting, nesting or foraging
e) <i>flight path integrity - being the degree to which the flight paths of protected animals over a particular site are free from interference</i>	<ul style="list-style-type: none"> • the proposal does not involve tree clearance or any other site disturbance activity
f) <i>water sustainability - being the degree to which water quality, water bodies and hydrological processes sustain threatened species and threated ecological communities at a particular site.</i>	

Table 1: Consideration of “biodiversity values”

On the basis of the above, we request that under section 7.9(2) of the BC Act, the Planning and Environment Agency Heads (or their delegates) determine that the proposed development is not likely to have any significant impact on “biodiversity values” and that a “biodiversity development assessment report” is not required in relation to SSD 8894.

Please contact Dan Keary on 8459 7511 if you wish to discuss any aspect of this request.

Yours sincerely



Dan Keary BSc MURP MPIA
Director



Michael Woodland BTP
Director

Attachments:

1. Flora and Fauna Assessment, Cumberland Ecology, February 2017