



## Office of Environment & Heritage

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Date: 21 September 2017  
Your reference: SSD 6878  
Our reference: SF17/31832  
Contact: Vanessa Allen  
4224 4186

Dear Daniel

### RE: Albion Park Bypass – Preferred Infrastructure Report (SSD 6878)

Thank you for consulting us on the Preferred Infrastructure Report (PIR) that relates primarily to redesign of the central interchange. OEH previously provided comments on the Response to Submissions relating to Flooding and Hydrology and Aboriginal Cultural Heritage (27/7/2017) with most of our comments being addressed. OEH biodiversity comments were in separate correspondence (dated 3/8/2017) and have only been partially addressed in the PIR.

Regarding biodiversity issues, we recently met with RMS and their biodiversity consultants to discuss issues raised in our comments on the Response to Submissions. A key issue discussed was the timing for completion of the Biodiversity Assessment Report (BAR) and the Biodiversity Offsets Strategy (BOS). RMS is progressing with the BAR and BOS updates and clarifications discussed at the meeting. It is important that the BAR be satisfactorily finalised prior to DPE approving the project. The BAR is central to identifying the clearing impacts and the required conservation offsets (ie. credit requirements) which will form part of the conditions of consent (see proposed draft conditions attached). Regarding the BOS, this document needs to be updated following the meeting with RMS. The updated BOS, however, can remain a draft while we will continue to work with RMS post-approval to develop this component. Having a draft BOS will also enable OEH and RMS to address offsetting implications arising from the new biodiversity offset legislation. We have attempted to cater for this timing aspect in the draft conditions of consent.

In summary, prior to approval of the project, the following must be progressed:

- a final Biodiversity Assessment Report (endorsed by OEH), and
- an updated draft Biodiversity Offset Strategy.

Attachment A contains our proposed draft consent conditions for your consideration. We are available to review draft consent conditions for Flooding and Hydrology, and Aboriginal Cultural Heritage if required.

Please contact Vanessa Allen, Senior Conservation Planning Officer on 4224 4186 or via e-mail [Vanessa.Allen@environment.nsw.gov.au](mailto:Vanessa.Allen@environment.nsw.gov.au) should you have any further queries.

Yours sincerely

**CHRIS PAGE**  
Senior Team Leader, Planning (Illawarra)  
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Attachment A – OEH Proposed Conditions of Consent



## ATTACHMENT A – OEH PROPOSED CONDITIONS

### NOTES:

1. We provide draft Conditions below, as requested. These conditions are derived from example conditions provided to us for a previous development (the West Connex SSI development) and do not necessarily reflect all biodiversity conditions which may be implemented for the current project. The numbering reflects that in the example conditions provided. The example conditions have been modified to reflect our suggestions for the current development and where appropriate, comments have been added.

2. It should be noted that the enactment of the new *Biodiversity Conservation Act 2016* has implications for offsetting for this project. This is a complicating factor that is being addressed at high levels between OEH and RMS given the State-wide precedence across various projects. Essentially, multiple offsetting options are now available to the proponent including the following:

- Offsetting in accordance with the Framework for Biodiversity Assessment (FBA)
- Offsetting using the Biodiversity Offsets Scheme only, and
- Offsetting using a mixture of the FBA and the Biodiversity Offsets Scheme.

3. We are continuing to work at the regional level with the proponent to explore practical options for offsetting in relation to the old framework and new Biodiversity Conservation Act. Hence the BOS (ie Biodiversity Offset Package referenced in the draft conditions) is seen as a document that, in practical terms, will need to be finalised post-approval via a condition of consent.

4. We also recommend that biodiversity conditions are discussed with the Commonwealth Department of Environment and Energy to ensure consistency in relation to federal requirements and how they integrate with State biodiversity conditions.

### PROPOSED CONDITIONS:

*B11 The Proponent must offset impacts to the following Plant Community Types and Endangered Population, as specified in Table 1 below, in accordance with the requirements of the NSW Biodiversity Offsets Policy for Major Projects (OEH, 2014), the Framework for Biodiversity Assessment 2014.*

OEH Comment: For B11, we will provide DPE with a table listing Ecosystem and Species credits that need to be offset, areas/number of individuals and credit requirements as specified in the final BAR and the accompanying Biodiversity Credit Report. Again, this is why it is important for the BAR to be finalised and endorsed by OEH prior to approval of the project.

*B12 Prior to the commencement of any development or works, the Proponent must submit a progress report to the Secretary which identifies offsets required and evidence that they should be achievable, or alternatively, details on how offset requirements will be met using the Biodiversity Conservation Fund. This report must be approved by the Secretary prior to any impacts on the vegetation communities or the *Chorizema parviflorum* endangered population.*

OEH Comment: For B12, this is to ensure a higher degree of certainty in securing offsets has advanced. It may be a significant period of time between when the clearing impacts occur and when credits are actually retired under the clause below.

*B13 Within 12 months of the project approval, unless otherwise agreed by the Secretary, the Proponent must finalise and submit to the Secretary for approval, a Biodiversity Offset Package. The Package must be prepared to the satisfaction of OEH and confirm how the impacts of the development will be offset. The Package must be consistent with the biodiversity offset strategy requirements of the NSW Biodiversity Offsets Policy for Major Projects (OEH, 2014) and the Framework for Biodiversity Assessment (OEH 2014), and if appropriate, the Biodiversity Offsets Scheme. The Package must include, but not necessarily be limited to:*

- (a) details on the biodiversity credits (including number and type) identified to offset the impacts of the development and evidence that they can be attained and secured in accordance with the NSW Biodiversity Offsets Policy for Major Projects; and*
- (b) for offsets not secured through the retirement of biodiversity credits, details on how offset requirements will be met.*

*B14 Within two years of the project approval, unless otherwise agreed by the Secretary, the Proponent must retire biodiversity credits of a number and class specified in Table 1 below in accordance with the NSW Biodiversity Offsets Policy for Major Projects and to the satisfaction of the OEH. The Proponent must submit to the Secretary and DoE a copy of the credit retirement report issued by the OEH once the offsets are secured, within one month of receiving the report.*

OEH Comment: B14 may need to be amended to cater for the legal pathway chosen to retire credits (as per Note 2 above, there are multiple options available to RMS that will need to be worked through).

OEH Comment: the details below relate to the use of supplementary measures under the FBA framework only. There are new variation and ancillary rules within the legislation relevant to offsetting in accordance with the new Biodiversity Offsets Scheme if this pathway is pursued.

*Should supplementary measures be proposed, the Package must also provide details on:*

- (a) the management and monitoring requirements for compensatory habitat works and other biodiversity offset measures proposed to ensure the outcomes of the package are achieved, including –*
  - (i) the monitoring of condition of species and ecological communities at offset (including translocation) locations,*
  - (ii) the methodology for the monitoring program(s), including the number and location of offset monitoring sites, and the sampling frequency at these sites,*
  - (iii) provisions for the annual reporting of the monitoring results to the Department, OEH and DoE and the public for a set period of time, as determined in consultation with OEH and DoE, and*
  - (iv) timing and responsibilities for the implementation of the supplementary measures; and*
- (b) processes and/or measures that would be implemented to ensure that any land offsets are protected and managed in perpetuity.*

*The supplementary measures must be implemented by the Proponent according to the timeframes set out in the Biodiversity Offset Package, unless otherwise agreed by the Secretary.*

