



Office of  
Environment  
& Heritage

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SSD 7520

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Dear Ms Laguna

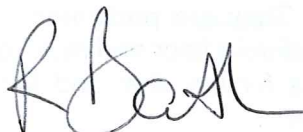
**Review of Kurri Kurri Battery Recycling Facility Environmental Impact Statement (SSD 7520)**

I refer to your letter dated 15 November 2016 seeking comment on the exhibited Environmental Impact Statement (EIS) for the proposed battery recycling facility at Kurri Kurri (SSD 7520) in the Cessnock local government area. The project has a development footprint of about 3.4 hectares, of which 1.48 hectares comprises native vegetation, and occurs on the floodplain of Swamp Creek.

The Office of Environment and Heritage (OEH) has reviewed the EIS and found some unresolved issues in relation to the assessment of Aboriginal cultural heritage, flooding and threatened biodiversity. These include the apparent incomplete consultation with the two Native Title claimant groups in relation to Aboriginal cultural heritage issues; a discrepancy of one metre in the flood level trigger for mitigation actions; and the incomplete presentation of information presented in the Biodiversity Assessment Report. Due to these omissions, OEH is unable to complete its review and present recommended conditions of consent. These issues are discussed in more detail in **Attachment A**.

If you require any further information regarding this matter please contact Robert Gibson, Regional Biodiversity Conservation Officer, on 4927 3154.

Yours sincerely



16 DEC 2016

**RICHARD BATH**  
Senior Team Leader Planning, Hunter Central Coast Region  
Regional Operations

Enclosure: Attachment A

## **ATTACHMENT A: OEH REVIEW OF THE PROPOSED KURRI KURRI BATTERY RECYCLING FACILITY, KURRI KURRI (SSD 7520)**

OEH has reviewed the assessment for this project titled, *Kurri Kurri Battery Recycling Facility, Environmental Impact Statement: Prepared for Pymore Recyclers International Pty Ltd* (EIS), dated 11 November 2016 that was prepared by EMM Consulting Pty Ltd, St Leonards. OEH's review focused on flooding / floodplain management, Aboriginal cultural heritage and threatened biodiversity impacts. Following this review OEH makes the following comments and recommendations:

### **ABORIGINAL CULTURAL HERITAGE**

OEH has reviewed the Aboriginal Cultural Heritage Assessment (ACHA) contained in Appendix L of the EIS. The ACHA report titled *Aboriginal Cultural Heritage Report: Battery Recycling Facility, 129 Mitchell Avenue Kurri Kurri*, prepared for Pymore Recyclers International Pty Ltd (EMM 2016) does not effectively address the Secretary's Environmental Assessment Requirements (SEARs) issued on 18 March 2016 which specifically require an assessment of Aboriginal cultural heritage values that exist across the whole area that will be affected by the development. Specifically:

- the proponent did not provide evidence of adequate consultation with either of the two Native Title claimant groups identified by the Native Title Tribunal (EMM 2016:17)
- he proponent failed to contact/invite one of the Native Title claimant groups (identified by the Native Title Tribunal) to register an interest in the project
- no evidence was provided in the EIS to determine the connection to Country by each of the registered Aboriginal parties.

OEH is concerned that the lack of cultural values/information detailed in the ACHA (EMM 2016) is due in part to the lack of consultation with the registered Native Title claimants for the area.

Based on this review OEH requires that the abovementioned concerns be addressed prior to issuing any recommended conditions of consent for the Aboriginal cultural heritage management of the project area. OEH requires the proponent to consult with both Native Title claimant groups in regard to the Aboriginal cultural values that may be associated with the project area and to submit any relevant consultation material as an addendum to the ACHA provided in the EIS.

### **FLOODING AND FLOODPLAIN MANAGEMENT**

OEH has reviewed the flooding and flood risk assessments for the project which comprise the *Surface Water Assessment* prepared by Royal HaskoningDHV (Dated October 2016) and the *Preliminary Hazard Analysis* prepared by Sherpa Consulting (dated 28 October 2016). They are presented in Appendix J and Appendix E respectively of the EIS. Both reports nominated different floor and racking levels for the project based on their varying assessment of the flood risks for the site; and this discrepancy will need to be resolved before OEH can complete its assessment.

The Royal HaskoningDHV report has nominated a probable maximum flood (PMF) level of 17.6 metres (Australian Height Datum - AHD). To deal with this flood risk, with a 1 in 10,000,000 probability of occurring, they proposed that the both fill and retaining walls to 4.4 metres in height could be used to raise the finished floor level of Buildings 5 and 8 of the battery recycling plant to 15.6 metres AHD. They also proposed that the on-site detention flood water detention basin is located within the flood plain below the retaining walls.

The impact of the proposed fill on adjoining properties has been modelled and shown to have a maximum of 14mm increase in flood level for the 1% annual exceedance probability flood (AEP). Minimal impacts are also demonstrated for the 0.5% and PMF event. The impact assessment is considered to be acceptable.



The proposed use of fill has elevated much of the facility well above the 1% AEP flood level which minimises the likelihood of floodwaters entering the facility. The impact assessment has been carried out as requested in the SEARs for floods of up to the PMF event.

The *Preliminary Hazard Analysis* prepared by Sherpa Consulting, in contrast, recommended that the flood mitigation levels were in place in the event that flood levels exceed 16.6 metres AHD. They propose having a concrete encasement with weir gates for the material preparation and slag room set at a level of 18.1 metres AHD. In addition they propose that the lower 1.5 metre of racking remain vacant to minimise the risk of mobilisation of hazardous goods.

The flood mitigation levels nominated in the Risk Assessment are one (1) metre higher than those recommended in the Surface Water Assessment report. The inconsistencies between the two reports will need to be resolved so that OEH can complete its assessment and prior to approval of the facility.

### **Detention Basin**

An on-site flood water detention basin is proposed to be located on the floodplain. This will be ineffective in mitigating the full range of events required by Cessnock City Council because the basin is proposed to be located with a crest below the 1% AEP flood level. OEH recommends that the need for this flood water detention basin is discussed with council officers. If it is required to be installed then the detention basin will need to be relocated above the 1% AEP level. Such a move may change the extent of fill and site disturbance currently proposed for this project.

Significant stormwater storage, treatment and reuse is proposed on site however this system has long draw down times if filled by a large or extended rainfall event. The effectiveness of stormwater storage does not form part of this assessment but should form part of the Environment Protection Authority's licensing requirements.

Based on the review of the flood risk assessment for this project OEH is unable to complete its assessment until the difference in probably maximum flood height levels is resolved. Once this is completed OEH will be in a position to provide recommended conditions of consent.

### **THREATENED SPECIES**

OEH has undertaken a review of the Biodiversity Assessment Report (BAR) prepared for this project by EMM Environmental Consulting Pty Ltd (dated 28 October 2016) that was presented as Appendix N of the EIS. The BAR was prepared to meet requirements of the Framework for Biodiversity Assessment (FBA) (OEH, 2014a), and that the offset package is to be provided in accordance with the *Biodiversity offsets policy for major projects in NSW* (OEH, 2014b).

The development footprint for the project is about 3.4 hectares (ha), of which about 1.48 ha is mapped as Parramatta Red Gum – Narrow Leaved Apple shrubby woodland (HU 592) in either moderate-good (0.87 ha) or poor condition. The remainder of the site is mapped as either exotic grassland or cleared land (Figure 3.3 of Appendix N of the EIS). 37 plants of Earp's Gum (*Eucalyptus parramattensis* subsp. *decadens*) over 1.56 ha of habitat was also recorded. The proponent ran a credit calculator report on 27 September 2016 based on available information which generated 59 ecosystem credits and 518 ecosystem credits to be retired. Section 7.1 of the BAR provides a list of four options for the biodiversity offset strategy being considered for this project, and that after searching the BioBanking credit register on 10 October 2016 that there were no suitable credits available for the required credits to be retired, and so the proponent was likely to pursue applying for a variation to the FBA (Sections 10.5.4.2 and 10.5.7.2) for the types of credits that may be used to match the credit requirements for this project.

The FBA (OEH, 2014a) has very specific requirements about the type of information to be provided in the BAR; which is summarised in Table 20, in Appendix 7 of that document. The BAR makes reference to planned targeted surveys in November 2016 for threatened species were identified in FBA for which there appeared to be suitable habitat on the development site – it is not known if such surveys have occurred, and thus whether all threatened species have been assessed for this project. In relation to



the Biodiversity Offset Strategy the need to show that reasonable efforts have been made to find either appropriate land, or appropriate credits requires more time and effort than what has been described so far in the BAR. These matters are described below.

### **Biodiversity Assessment Report**

A BAR was included as part of the EIS as Appendix N. As required, the BAR assessment was undertaken by an accredited person under section 142B(1)(c) of the *Threatened Species Conservation Act 1995*.

Upon reviewing the BAR against the requirements summarised in Table 20 there are many areas of the BAR that appear to be incomplete. These include the following:

1. **Introduction** – shape files not provided; Site and Location maps not fully prepared as per Section 3.2 of the FBA;
2. **Landscape Features** – connectivity value; and patch size and landscape value score;
3. **Native Vegetation** – provision of copies of plot and transect field data sheets;
4. **Threatened Species** – a discussion of threatened species unable to withstand further loss; consideration of an expert report if the window to survey all threatened species to be considered for this development has been missed; and a species credit polygon for threatened species considered for this project; and
5. Submission of the credit calculator files to OEH.

The list above is not complete, and OEH recommends that the proponent prepares a table based on Table 20 in the FBA in which cross-references to the BAR are included. This process will help guide the development of a package of supplementary information that will enable OEH to complete its assessment.

OEH acknowledges that most, if not all of the data not yet provided in the BAR was generated in order to run the assessment. Therefore, it appears likely that the provision of such data would be a relatively quick and straight-forward process.

### **Impact Assessment (Biodiversity Values)**

The proponent has identified in Section 2.2.1 of the BAR that not all threatened species that required survey had been surveyed by the time the BAR had been put together. And that targeted surveys were planned for the development site in November 2016. It is not known if those planned surveys have been undertaken. Alternatively, section 6.6.2 of the FBA allows for the preparation and submission of Expert Reports to be done instead of undertaking threatened species survey at a development site, provided all requirements for an Expert Report are met.

In the absence of either the results of the planned survey, or an Expert Report, OEH considers the biodiversity assessment for the development site to be incomplete, and awaits further details from the proponent, and, if required, a re-running of the credit calculation with all affected threatened species included.

### **Biodiversity Offset Strategy**

Section 7 of the BAR includes a Biodiversity Offset Strategy in which four offset options are listed:

1. Buying and retiring ecosystem credits and species credits from the open market; or
2. Buying land that contains vegetation that generates the required type and amount of ecosystem credits and species credits needed, and retiring those credits; or
3. If options 1 and 2 are unavailable the proponent will apply to the consent authority for a variation under Sections 10.5.4.2 or 10.5.7.2, or both, to seek to vary the allowable range of credits to be broadened so that the offset obligation can be met; or
4. Payment into the BioBanking Trust Fund.

The proponent searched the BioBanking credit register on 10 October 2016, and upon not finding the required type and amount of credits available to retire for this project, decided to follow option 3 (above), which could include the purchase of land nearby, which contains Earp's Gum, or if that land is not available to seek to vary the Plant Community Type that may be traded for the Kurri Sand Swamp Woodland on-site, such as with Warkworth Sands Woodland, and if that is not available, to discuss payment of the appropriate sum of money into the BioBanking Trust Fund.

OEH is of the view that the proponent has not yet undertaken enough to demonstrate that it has taken all reasonable steps to look for available credits on the registers. A single search of the available credits register done before the final credit requirement for the development site has been prepared, before all targeted surveys have been done, and before the credit calculation has been checked and verified by OEH does not constitute a reasonable basis on which to argue that Option '3' (above) is now able to be pursued. At the very least the following would need to happen:

1. Completion of all required threatened species surveys, or the provision of an Expert Report for species unable to be surveyed, to determine the total impact of the development site that requires offsetting;
2. The re-running of the credit calculator if final site surveys find additional species;
3. Verification of the biodiversity credit calculations by OEH for which the provision of information in the BAR, as spelt out in Table 20 of the FBA is required;
4. Once the credit yield of the development site has been finalised then the proponent will need to demonstrate that they have checked the available credits register on multiple occasions, and also that they have lodged an expression of interest for the required credits on the 'credits wanted' register, which is available at: [www.environment.nsw.gov.au/biobanking/index.htm](http://www.environment.nsw.gov.au/biobanking/index.htm) for a period of at least 6 months.

OEH acknowledges that the proposed development site is a small area, and that it generates a small number of ecosystem and species credits. However, at present it is not possible for OEH to complete its assessment of threatened biodiversity impacts for this project. Therefore OEH cannot recommend any conditions of consent until the proponent has been able to address points 1 to 4 inclusive (above).

#### **References:**

EMM (2016) *Aboriginal Cultural Heritage Report: Battery Recycling Facility, 129 Mitchell Avenue Kurri Kurri*, prepared for Pymore Recyclers International Pty Ltd. EMM Consulting.

OEH (2014a) *Framework for Biodiversity Assessment. NSW Biodiversity Offsets Policy for Major Projects. September 2014*. NSW Office of Environment and Heritage, Sydney. [www.environment.nsw.gov.au/resources/biodiversity/140675fba.pdf](http://www.environment.nsw.gov.au/resources/biodiversity/140675fba.pdf)

OEH (2014b) *NSW Biodiversity Offsets Policy for Major Projects. September 2016*. NSW Office of Environment and Heritage, Sydney. [www.environment.nsw.gov.au/resources/biodiversity/140672biopolicy.pdf](http://www.environment.nsw.gov.au/resources/biodiversity/140672biopolicy.pdf)

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