



Office of  
Environment  
& Heritage

Your reference: MP07\_0153  
Our reference: DOC14/236616

Mr Nick Hall  
A/Manager Industry and Assessments  
Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

Attention: Ms Rebecca Sommer

Dear Mr Hall

I refer to your correspondence to the Office of Environment and Heritage (OEH) dated 9 October 2014 inviting comment on a modification application for the Jacfin Warehousing Facility within the Erskine Park Employment Area MP07\_0153.

Comments on this proposal are provided in Attachment 1.

If you have any queries regarding this correspondence please contact Rachel Lonie, Senior Operations Officer on 9995 6837 or by email at [rachel.lonie@environment.nsw.gov.au](mailto:rachel.lonie@environment.nsw.gov.au).

Yours sincerely,

 23/10/14

**MIRANDA FIRMAN**  
**A/Senior Team Leader, Planning**  
**Regional Operations, Metropolitan**  
**Office of Environment and Heritage**

**ATTACHMENT 1****Office of Environment and Heritage (OEH) comment on a modification application for the Jacfin Warehousing Facility within the Erskine Park Employment Area MP07\_0153**

The modification request concerns the obligation to establish a 7 hectare biodiversity offset area adjacent to Ropes Creek. The applicant seeks to transfer this obligation from a condition of consent to an obligation under a voluntary planning agreement.

The consent conditions for MP07\_0153 required the conservation of 7 hectares of land adjacent to Ropes Creek on a different site to the development area (on Lot 5 DP 262213) and re-establishment and enhancement of vegetation. An Offset Strategy and Bushland Rehabilitation Management Plan has been prepared in accordance with Condition 2 of Schedule 3 of the original consent and these documents were approved by Department of Planning and Environment (DPE).

OEH considers there should be no reduction in the ability to enforce the requirement to implement the offset area as currently required under the consent approval. OEH notes that a Voluntary Planning Agreement (VPA) can be amended or revoked by further agreement in writing signed by the parties to the agreement under 25C of the *Environmental Planning and Assessment Regulation 2000*. OEH is aware that in at least one instance, a VPA was renegotiated between a proponent and DPE with the result that a financial contribution was reduced by 50%. This financial contribution was payable to OEH and to be used for conservation purposes.

OEH therefore seeks the assurance of DPE that the proposed modification will not reduce the legal requirements to implement the Offset Strategy or the ability for DPE to enforce it.

The approved Offset Strategy does not prescribe a commencement date and it is not known if implementation has commenced. OEH recommends that should the VPA be approved that it clearly requires a commencement and completion date and incorporates effective mechanisms to ensure compliance with the approved Offset Strategy and Bushland Rehabilitation Management Plan.

The Offset Strategy also states under 5.7 Permanent Protection of the Offset Area that it is "*anticipated that the whole of the Ropes Creek riparian corridor within this site and adjoining land will be eventually managed as a single unit and transferred to the ownership of the Department of Planning (DoP)*". OEH requests clarity on whether it is still the intent for the land to be transferred to DPE.

If the modification request is supported by DPE, OEH recommends that consideration be given to including OEH as a signatory agency as OEH has an interest in ensuring that the biodiversity offset is secured.

In summary, OEH seeks assurance that the VPA will not reduce the ability to achieve the proposed biodiversity offset. If DPE decides to support the modification request OEH recommends the following:

- Consideration be given to including OEH as a signatory to the VPA.
- The VPA prescribes a commencement and completion date for the re-establishment and enhancement of the offset area in accordance with the approved Offset Strategy and Bushland Rehabilitation Management Plan.
- The VPA include the requirement for a bond or guarantee to provide for the enforcement of the proponent's obligations under the VPA.
- The VPA clarifies the eventual ownership of the land and the timing for the land transfer.