



Office of  
Environment  
& Heritage

Our reference: DOC14/253285  
Contact: Marnie Stewart, 9995 6868

Mr Andrew Beattie  
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Dear Mr Beattie

I refer to your letter received by the Office of Environment and Heritage (OEH) on 7 October 2014 inviting comments on the Environmental Impact Statement (EIS) during the public exhibition for the Moorebank Intermodal Terminal at Moorebank Avenue, Moorebank (SSD-5066).

As the Department is aware, OEH provided detailed comments on the Aboriginal cultural heritage, flood risk management and biodiversity aspects of the major project during the adequacy review on 8 August and 11 September 2014.

OEH's comments on the exhibited EIS for the major project are provided in Attachment 1. As detailed in the attachment, OEH raises significant concerns regarding the adequacy of the assessment in regard to Aboriginal cultural heritage and biodiversity matters.

If you have any queries regarding this matter please contact Marnie Stewart, Senior Operations Officer, on 9995 6868.

Yours sincerely

*S. Harrison 05/12/14*

**SUSAN HARRISON**  
**Senior Team Leader Planning**  
**Greater Sydney Region**  
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## **Attachment 1: OEH comments on the exhibited Moorebank Intermodal Terminal Facility SSD 5066 and planning proposal**

### **Flood risk management**

OEH has reviewed that relevant studies and advises that the comments provided in our previous letter dated 8 August 2014 have been satisfactorily addressed in the exhibited EIS. OEH therefore has no further comment to make in regard to floodplain risk management.

### **Aboriginal cultural heritage**

The review of the exhibited EIS has revealed that there has been no amendments or changes made to the relevant reports previously reviewed by OEH at the adequacy review stage. Consequently, our comments in relation to Aboriginal cultural heritage remain as previously provided on 8 August 2014.

### **Biodiversity**

OEH provided detailed comments on biodiversity aspects as part of the adequacy review for the draft EIS in correspondence dated 11 September 2014. OEH's review of the exhibited EIS has revealed that only minor amendments have been made to the relevant studies and that as detailed below, OEH comments have not been adequately addressed.

#### NSW Biodiversity Offset Policy for Major Projects 2014 (Offsets Policy 2014)

Under the Offset Policy 2014 and the associated Framework for Biodiversity Assessment (FBA), an EIS should include a Biodiversity Assessment Report (BAR) to describe the biodiversity values present on the development site and the impacts of the major project on these values, with the Biodiversity Offset Strategy (BOS) outlining how the proponent intends to offset the impacts of the project. For the purposes of this assessment, OEH has considered the Ecological Impact Assessment (EIA) as a BAR. OEH has assessed whether the EIA is consistent with the principles in the Offset Policy 2014 and provides the following comments in this regard.

Principle 1: Before offsets are considered, impacts must first be avoided and unavoidable impacts minimised through mitigation measures. Only then should offsets be considered for the remaining impacts.

OEH's previous comment still applies.

Principle 2: Offset requirements should be based on a reliable and transparent assessment of losses and gains.

OEH's previous comment still applies, that the assessment is not based on a reliable assessment of losses and gains. Furthermore, according to Table 4.5, as part of the BOS, 16.7 ha of Alluvial Woodland is to be revegetated, and 1.1 ha of Riparian Forest is to be revegetated. It is assumed these areas are the areas to be reconstructed as per section 5.2 of Appendix E (Management Plan for Restoration of the Riparian Zone of the Georges River), which are described as having no potential for natural regeneration. Table 5.3 includes a calculation of the "estimated credits provided" of vegetation communities on site. This table has assumed the number of credits generated by the revegetation areas will be the same as the regeneration areas, however this is not supported. The credits generated from revegetation areas are likely to be much lower than the regeneration areas. It is possible these areas will in fact generate no credits.

OEH considers that this is a significant non-compliance with principle 2.

Principle 3: Offsets must be targeted to the biodiversity values being lost or to higher conservation priorities.

OEH's previous comment still applies, in that the EIA proposes far more flexibility than the Offsets Policy 2014 allows. In addition, there is still a shortfall in credits in relation to two vegetation communities, Alluvial Woodland (deficit of between 388 and 507 credits) and Castlereagh Scribbly Gum Woodland (deficit of 225 credits). There are excess credits provided by other vegetation communities on site. The proposal is to:

1. Offset the shortfall in Castlereagh Scribbly Gum Woodland credits by using excess Shale-Gravel Transition Forest credits (45 credits) plus Castlereagh Swamp Woodland credits (180 credits).

It is argued this is allowable under the Offsets Policy 2014 as all three vegetation types are in the same vegetation formation. However, while they are all in the same vegetation formation (Dry Sclerophyll Forest) they are in different sub-formations (Castlereagh Scribbly Gum Woodland is in the shrubby sub-formation, and Shale-Gravel Transition Forest and Castlereagh Swamp Woodland are in the shrub/grass sub-formation), and these sub-formations should be considered as separate formations. Therefore, these 'swaps' aren't allowable under the Offset Policy 2014, and Castlereagh Scribbly Gum Woodland is not adequately offset by the proposal.

2. Offset the shortfall in Alluvial Woodland credits, partly by using excess credits of Riparian Forest, Castlereagh Ironbark Forest and Shale/Gravel Transition Forest. None of these are in the same vegetation formation as Alluvial Woodland, however it is argued the swap should be allowed in this instance as these other vegetation types are of similar or greater conservation value, are located in the same IBRA subregion, contain similar habitat values, and in the case of Riparian Forest, they are part of the same endangered ecological community (River-flat Eucalypt Forest). The EIA also argues that considering the transitional nature of the Offsets Policy 2014 and that the offset sites were identified on the basis of meeting the OEH 2008 Offset Policy, then such a variation should be allowed.

The transitional nature of the Offsets Policy 2014 is not seen as sufficient justification for such a variation. Therefore, the proposal to use of excess credits of Castlereagh Ironbark Forest and Shale/Gravel Transition Forest to offset the shortfall in Alluvial Woodland credits is not supported by OEH. It is noted that in this particular case, OEH considers that Riparian Forest and Alluvial Woodland can be considered to be in the same vegetation formation. However, even if excess Riparian Forest credits are used, there is still a shortfall in available Alluvial Woodland credits.

3. To address the deficit of credits for Alluvial Woodland (of between 29-224 credits), section 5.3.1 of the EIA states that any residual offset requirements will be met through:
  - a. searching the Biobanking credit register, or
  - b. searching for potentially suitable offset sites, or
  - c. applying the variation rules and/or
  - d. proposing supplementary measures, in consultation with the consent authority.

It is noted that this does not meet the Offsets Policy 2014, as the Policy requires undertaking 'reasonable' steps to locate like-for-like offsets. These reasonable steps are defined as:

- checking the biobanking public register and having an expression of interest for credits on it for at least six months;
- liaising with an OEH office and relevant local councils to obtain a list of potential sites that meet the requirements for offsetting;
- considering properties for sale in the required area; and
- providing evidence of why offset sites are not feasible.

OEH remains of the view that Principle 3 has not been met.

Principle 5: Offsets must be enduring, enforceable and auditable.

OEH's previous comments still apply.

Discounting

OEH acknowledges that the reference to discounting has been removed.

Offsets Fund

OEH notes that reference to use of the offset fund has been removed.

Framework for Biodiversity Assessment

Under section 9.2 of the FBA, certain impacts on biodiversity values require further consideration by the consent authority. These are impacts that are considered to be complicated or severe. As detailed in the FBA, a decision will be made by the consent authority on whether it is appropriate for these impacts to occur. In regard to the subject major project, under section 9.2.3 'Impacts on landscape features', the Georges River is at least a 4<sup>th</sup> order stream and it is considered likely that the impacts on the Georges River, particularly from the rail crossing, would constitute 'impacts for further consideration by the consent authority'.

In addition, under section 6.5 'Impacts on threatened species', the two threatened flora species known from the site that will be impacted by the proposal (*Grevillea parviflora* ssp. *parviflora* and *Persoonia nutans*) are listed in the Threatened Species Profile Database as 'species that cannot withstand further loss' in the CMA.

It is recommended that the applicant address these matters in accordance with the FBA.

Moorebank Conservation Area

As previously advised in correspondence dated 11 September 2014, in regard to the proposed Moorebank Conservation Area, OEH raises significant concerns that figures 1.3–1.5 in the EIA depict a much smaller 'conservation area' compared to the proposed 'offset area' depicted in figures 6.1-6.3 in the EIA and figures 4.1-4.3 in the Offset Strategy. Figures 1.3-1.5 depicts the 'conservation area' as extending from the Georges River to the 1% AEP flood level. Whereas, in addition to the 1% AEP flood area, the proposed 'offset area' in figures 4.1-4.3 and 6.1-6.3 also include part of the area identified as 'area available for potential development' (as depicted in figures 1.3-1.5). Furthermore, the 'conservation area' in figure 4.4 in the Offsets Strategy appears to be different again (ie even larger in size) than the 'offset area' in figures 6.1-6.3 and 4.1-4.3. It is also noted that the zoning map (figure 23.1) depicts the 'area available for potential development' as IN2 Light Industrial, not an environmental zoning.

OEH does not consider that the area identified as 'area available for potential development' should form part of the proposed 'offset area'. Therefore the relevant offset plans, figures and calculations should be amended to only include the identified 'conservation area' and remove the 'area identified for development'.

**Planning Proposal - zoning regime**

As advised in previous correspondence dated 17 May 2013 and 11 September 2014, the offset areas should be afforded the highest level of zoning protection. OEH recommends the use of E2 Environmental Conservation for offsets areas as this zone contains the most appropriate objectives and permitted uses to provide for the retention of the conservation values. It is noted that the applicant proposes that the offset area be zoned E3 Environmental Management in order to permit drainage infrastructure. OEH is strongly of the view that an offset area should be for the

conservation and management of the conservation values, not for infrastructure associated with the development.

**OEH estate - William Howe Regional Park**

OEH notes that part of the major project is within close proximity to William Howe Regional Park, which is OEH estate. The EIS should therefore address the matters to be considered outlined in the Guidelines for developments adjoining land and water managed by DECCW (DECCW 2010). This should include any measures proposed to prevent, control, abate, minimise and manage any direct and indirect impacts including an evaluation of the effectiveness and reliability of the proposed measures.

