



Our ref: DOC20/569521
Senders ref: SSD-10352

Mr Brent Devine
Planning and Assessment Group
Department of Planning, Industry and Environment
4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2150

Dear Mr Devine

Subject: EES comments on Response to Submissions for Moriah College Redevelopment – Queens Park campus – SSD-10352

Thank you for your email of 6 July 2020 requesting advice on the Response to Submissions (RTS) for this State significant development (SSD).

The Environment, Energy and Science Group (EES) appreciates the Planning and Assessment Group providing it with an extension in which to provide its comments. EES recommendations and comments are provided at Attachment A.

Please note that this submission supersedes EES's previous submission dated 27 July 2020.

Please also note that from 1 July 2020 Aboriginal cultural heritage (ACH) regulation, including advice on State significant developments, is now managed by the Heritage NSW. The new contact for the ACH regulation team is heritagemailbox@environment.nsw.gov.au.

If you have any queries regarding this matter, please do not hesitate to contact Janne Grose, Senior Conservation Planning Officer on 02 8837 6017 or at janne.grose@environment.nsw.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'MStewart'.

31/7/20

Marnie Stewart

**A/Senior Team Leader Planning
Greater Sydney Branch
Environment, Energy and Science**

Subject: EES comments on the Response to Submissions for Moriah College redevelopment – Queens Park campus – SSD-10352

The Environment, Energy and Science Group (EES) has reviewed the following documents:

- Response to Submissions (RTS) – 12 June 2020
- Appendix A1 – Urban Design Response
- Appendix A2 – Amended Architectural Drawings
- Appendix B – Amended Landscape Drawings
- Appendix E – Biodiversity Development Assessment Report (BDAR) – 21 February 2020
- Appendix G – Amended Operational Plan of Management
- Appendix I – Amended Stormwater Report
- Appendix J – Amended Civil Services Plan
- Appendix K – Vegetation Management Plan (VMP) – 24 June 2020

and provides the following comments.

Biodiversity assessment and impacts by the development

Eastern Suburbs Banksia Scrub in the Sydney Basin Bioregion ecological community

The primary threatened species conservation issue known in relation to the subject site is the identified presence on the affected land of the Eastern Suburbs Banksia Scrub in the Sydney Basin Bioregion ecological community (ESBS). The NSW Threatened Species Scientific Committee (NSW TSSC) made a final determination, published on 1 December 2017, to raise the threat status of this ecological community from endangered to **critically endangered** and list it on Part 1 of Schedule 2 of the *Biodiversity Conservation Act 2016*. The NSW TSSC's final determination can be found at www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/2017-2018/eastern-suburbs-banksia-scrub-critically-endangered-ecological-community-listing. This means that, in the opinion of the NSW TSSC, this ecological community is facing an extremely high risk of extinction in Australia in the immediate future, as determined in accordance with the criteria as prescribed by the *Biodiversity Conservation Regulation 2017*.

ESBS is also listed as an endangered ecological community under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

According to the NSW TSSC's determination, the distribution of ESBS has been transformed from occupying extensive areas associated with sand sheets to small fragments ranging in size from 0.02 to 69 ha, with the reduction in extent compared to its extent prior to arrival of Europeans estimated to be between 91.2 and 97.4%, the upper bound being based on the most recent vegetation mapping (OEH 2016).

Past and present clearing of ESBS is the primary cause of its critically endangered status. In the past the ESBS extended not only across Lot 23 as it does now, but also more extensively north into Lot 1 DP 701512 and east into Lot 22 DP 879582, prior to clearing by previous developments, including those by Moriah College on those lots.

EES acknowledges that currently ESBS in the immediate vicinity of the proposed development site is restricted primarily to Lot 23, a conservation area in the ownership and management of the Centennial Park and Moore Park Trust (CPMPT), and two adjacent small areas on Lot 1, occupied by the College. While these are not affected by direct clearing from the proposed SSD, the persistence and viability of small and isolated remnants like these are further threatened by and highly susceptible to impacts from adjoining development, such as shading; altered drainage/runoff resulting in changes to soil moisture, erosion, sedimentation, increased pollutants or nutrients (e.g. from petroleum residues on roads/carpark; fertilisers or herbicides used on landscaped areas); dust; litter; hybridisation with native species not of local provenance or weed invasion by species used in landscaping; and inadvertent disturbances during construction.

Maroubra Woodland Snail *Meridolum maryae*

Following a preliminary determination that was on public exhibition for comment since 30 August 2019, the NSW TSSC made a final determination, published 15 May 2020, that the Maroubra Woodland Snail *Meridolum maryae* is an endangered species, since in its opinion the species is facing a very high risk of extinction in Australia in the near future as determined in accordance with the criteria as prescribed by the *Biodiversity Conservation Regulation 2017*. The NSW TSSC's final determination can be found at <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/2020/meridolum-maryae-maroubra-woodland-snail-endangered-species-listing>.

The habitat of *Meridolum maryae* includes the vegetation communities which comprise the ESBS ecological community, as well as other coastal vegetation communities, and such habitat is subject to the threats outlined above for ESBS.

This species has not been surveyed for, nor the possible impacts on it, considered at all in the BDAR. The BDAR should be revised accordingly.

Protection of Eastern Suburbs Banksia Scrub critically endangered ecological community – requirements of approvals for previous development on Lot 22 DP 879582

The BDAR and VMP propose establishment of a 'vegetation protection buffer zone' of only one metre width within Lot 22 along its common boundary with Lot 23 to buffer the Eastern Suburbs Banksia Scrub critically endangered ecological community on Lot 23 and to "prevent development occurring in close proximity to the ESBS in the VMP Area" (see Section 8.3.7 page 4 of BDAR and Section 5.4, page 15 of VMP). This one metre buffer is purported to be consistent with conditions of previous development approvals and the provisions of an associated *Vegetation Management Plan for the York Road Bushland, October 2002* by Urban Bushland Management Consultants (UBM VMP).

The Planning and Assessment Group is advised that this is not correct. The UBM VMP was initially developed as part of a package of impact mitigation and compensatory measures for clearing and loss of ESBS on Lot 22 resulting from development by Moriah College on Lot 22 under development application **LD 282/00**, granted consent by Waverley Council on 22 May 2001. A copy of the final UBM VMP, dated October 2002, is provided at Attachment B and shows in Figure 8 the required buffer, which is of variable width but is no less than 3 metres at any point and is as wide as 10 metres at its southern end.

This development was also determined by the then Commonwealth Minister for the Environment and Heritage to be a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) in relation to its impact on the Eastern Suburbs Banksia Scrub which is listed as endangered ecological community under that Act (reference **EPBC 2002/575**). A copy of the referral of that development proposal to the Minister, its declaration as a controlled action, and its approval with conditions (25 October 2002, 11 November 2002) and later varied condition (1 August 2003) can be found on the public notices website of the Australian Government Department of Agriculture, Water and the Environment (<http://epbcnotices.environment.gov.au/publicnoticesreferrals>), but for convenience are also provided at Attachment C. A summary of the conditions of that approval, including as varied, were:

- rehabilitation of ESBS (either on Lot 23 or an "area of equivalent size and condition"), governed by an approved vegetation management plan
- provision in Lot 22 along the boundary with Lot 23 of a vegetated buffer zone as shown on the map (Annexure 2 of the approval) and that was of no lesser width than 3 metres in any part
- measures to prevent grass from landscaped other parts of Lot 22 entering the buffer zone
- fencing along the common boundary of Lots 23 and 22, the construction of which was to avoid impact on ESBS mature tree and shrub species (other than *Leptospermum laevigatum*) on Lot 23
- no structures to be erected on Lot 22 that will cast shadow onto Lot 23.

It is noted that the “vegetation management plan” (in condition 2 of Annexure 1 of the approval) is the UBM VMP of October 2020 and that the “map” referred to (in condition 3) is the same as Figure 8 of the UBM VMP.

EES’s understanding is that the conditions of approval of both the consent by Waverley Council (LD 282/00) and the approval by the Commonwealth Minister for the Environment (EPBC 2002/575) remain in force. Consequently, if this SSD is approved EES recommends that:

- ***The conditions of these prior approvals apply***
- ***The buffer zone be reinstated to the configuration, width and condition required by those prior approvals, including removal of any encroaching structures and hard surfaces***
- ***With the exception of works necessary to achieve the reinstatement of the buffer zone, earthworks, soil disturbance or machinery access be prohibited from the buffer zone.***

The current SSD application disregards these requirements, particularly at the southern (York Road) end where the buffer zone is required to be 10 metres wide, with proposed lower and upper ground level development proposed right up to the boundary with Lot 23.

EES also notes from examination of aerial photography that existing buildings and hard surfaces within Lot 22 may be encroaching within the buffer zone required by those conditions.

Protection of Eastern Suburbs Banksia Scrub critically endangered ecological community – requirements of previous approvals for development on Lot 1 DP 701512

Approval by the then Department of Infrastructure, Planning and Natural Resources (DIPNR) of major project development by Moriah College on Lot 1 DP 701512 under development application DA **446-10-2003** was also subject to conditions for the protection of ESBS, following DIPNR’s determination that the proposed development was likely to have a significant effect on the endangered ecological community (at that time considered only endangered). The proponent subsequently entered into discussions with the then Department of Environment and Conservation (DEC) which resulted in a number of conditions being accepted by the proponent. These were specified by DEC by letter to DIPNR dated 20 May 2004 (Attachment D) and subsequently incorporated by DIPNR into the approval granted by the Minister for Planning on 21 October 2004 (Attachment E). The conditions included requirements for set aside, and protection and ongoing active management subject to an approved vegetation management plan, of two areas of ESBS within Lot 1; fencing of those areas; and restrictions and requirements regarding landscaping and stormwater management in relation to these areas.

This development was also referred to the Commonwealth government for consideration as a ‘controlled action’ under the EPBC Act (reference **EPBC 2004/1676**). It was determined by the relevant Minister to be ‘not a controlled action’ subject to it being undertaken in accordance with the conditions specified by NPWS in its letter of 20 May 2004. A copy of the referral, its declaration as a controlled action, and its approval with conditions (20 August 2004) can be found on the public notices website of the Australian Government Department of Agriculture, Water and the Environment (<http://epbcnotices.environment.gov.au/publicnoticesreferrals>), but for convenience are also provided at Attachment F.

EES’s understanding is that the conditions of approval of both the consent by DIPNR (DA 446-10-2003) and the approval by the Commonwealth Minister for the Environment (EPBC 2004/1676) remain in force. Consequently, if this SSD is approved EES recommends that the conditions of these prior approvals apply.

Vegetation Management Plan

According to the RTS the Vegetation Management Plan (VMP) has been prepared by Cumberland Ecology to satisfy the request of Waverley Council (RTS, page 28). The ‘VMP Area’ to which the plan applies is the ESBS on Lot 23 DP 879582 and Lot 1 DP 701512 (see Figure 1). Lot 23

contains about 90 percent of the ESBS area remaining on these two lots. However, is not understood why the 'subject land' shown on Figure 1 of the VMP includes Lot 23, since this lot is owned and managed by the Centennial Park and Moore Park Trust (CPMPT). Management of the land and ESBS on Lot 23 is guided by CPMPT's own ESBS management plan. There is also no mention of this in the VMP, nor any indication that the CPMPT has been consulted. Consequently, the VMP would appear to have no bearing on the management of the majority of the ESBS in this locality.

Statements in the BDAR that "Direct impacts have been *completely avoided* throughout the 1.19 ha area of Eastern Suburbs Banksia Scrub" (section 7.1.1); that "the location of the project and the development design have been focused on avoiding areas of native vegetation, with a specific focus on avoiding areas of TECs [threatened ecological communities]"; and in the VMP (section 4.1, page 12) that "the VMP Area is comprised of areas containing ESBS that *are to be retained* by the development" are misleading, implying that the applicant has made a decision to not develop these areas. In fact, these areas were never subject to the development proposal.

If the SSD is approved EES considers it is important that the following are included in conditions of consent:

- ***Prior to issue of a construction certificate, a revised Vegetation Management Plan must be revised in consultation with and be endorsed by Environment, Energy and Science Group of DPIE, Waverley Council, and Centennial Park and Moore Park Trust (CPMPT).***

The revised VMP should

- apply only to land under the ownership or control of Moriah War Memorial College
- be consistent with, and not compromise the objectives and methods of, the current *Centennial Parklands and York Road Eastern Suburbs Banksia Scrub Vegetation Management Plan* of the Centennial Park and Moore Park Trust (CPMPT) that applies to conservation of ESBS on Lot 23 in DP 879582
- take into account, and not contain any provisions that are inconsistent with, the conditions of previous NSW and Commonwealth development approvals LD 282/00, EPBC 2002/575, 446-10-2003 and EPBC 2004/1676 relating to protection and conservation of ESBS
- include information about and conservation management measures relating to the endangered Maroubra Woodland Snail *Meridolum maryae*.

Revegetation within the VMP Area

Where the VMP may legitimately apply, proposed revegetation should be undertaken by a suitably qualified bush regenerator with experience in restoring and maintaining the Eastern Suburbs Banksia Scrub in the Sydney Basin Bioregion (ESBS) vegetation community.

If the SSD is approved EES considers it is important that the following condition of consent is included:

- ***Any revegetation of the VMP Area must be undertaken by suitably qualified bush regenerators with experience in restoring and maintaining the Eastern Suburbs Banksia Scrub in the Sydney Basin Bioregion (ESBS) vegetation community.***

The VMP states "all plants must be sourced from local provenance, ideally within 10 km of the subject land." (Section 7.3.3, page 25). It is important that local provenance plant species are used in the VMP Area.

Local provenance plants are grown from seed collected from plants growing near to and in similar environmental conditions as the planting site, which gives new plants the best chance of survival

This is because different populations of a particular species may change slightly to become specifically adapted to local conditions and individual habitats. Native plants of an area have evolved over a long period of time to suit local conditions such as climate (rainfall, temperatures) and the area's topography and soils. It is vitally important to conserve these genetic variations.

If the SSD is approved, it is recommended the following conditions are included for the rehabilitation of the VMP Area/Banksia Reserve and/or the landscaping of the site:

- ***All plants to be used in the VMP Area must be of local ESBS provenance. Local ESBS provenance means plants that are grown from seed or cuttings collected from plants growing Eastern Suburbs Banksia Scrub in the Sydney Basin Bioregion (ESBS) ecological community near to and in similar environmental conditions as the planting site.***
- ***The VMP must include procedures to demonstrate how plants and seed of local ESBS provenance are to be obtained and used.***

Ongoing Weed Maintenance

The VMP states “the VMP Area will be managed in perpetuity according to the specifications outlined in this VMP” (section 1.3, page 3). It notes “there will be an ongoing maintenance program, including monitoring, general weed maintenance and plant failure replacement activities that will be undertaken into perpetuity to sustain the health of the ESBS community within the VMP Area” (section 4.0, page 10). But it also indicates “this VMP will be current only for the first five years” and then after this “management requirements will be reviewed and if required a new VMP will be prepared to guide subsequent management of the VMP” (section 8.2, page 28). Table 3 states that “Post the 5-year intensive period, reporting will occur on an annual basis into perpetuity” (page 32).

If the SSD is approved it is important that a condition of consent is included to ensure the VMP Area is managed, maintained and monitored on an ongoing basis by the proponent in perpetuity

- ***The VMP Area must be managed, maintained and monitored in perpetuity by a suitably qualified bush regenerator with experience in restoring and maintaining the Eastern Suburbs Banksia Scrub in the Sydney Basin Bioregion (ESBS) vegetation community.***

Site landscaping outside ‘VMP Area’

EES previously recommended the site landscaping, particularly the buffer areas adjacent to Lot 23 and Lot 1, should also use a diversity of local native provenance species from the relevant ESBS native vegetation community, rather than use exotic species and non-locally occurring native species. The BDAR and RTS include differing statements in relation to the proposed use of ESBS species in the site landscaping. The Planning and Assessment Group should clarify this with the proponent, for example:

- the BDAR states “Area of landscaping to incorporate locally indigenous species, including those conforming with the TEC of Eastern Suburbs Banksia Scrub” (Section 7.1.2) (underlining is EES emphasis)
- the BDAR states “Cumberland Ecology has informed the planting list of the landscape plan to only include flora species indicative of Eastern Suburbs Banksia Scrub. No native species not of local provenance or exotic species will be planted within the subject land as part of the Project”. (Section 8.2.3, page 42). Section 5.3.3 of RTS repeats this statement
- the RTS states “The species selection is represented by a majority of ESBS native trees. There remains a selection of exotic and broader native species to ensure the cross-cultural narrative of the school is clearly illustrated” (section 2.3.5, page 11). It is unclear why “broader native species” are proposed to be planted rather than ESBS provenance species
- The RTS notes the landscape planting schedule has been amended to include the provision of a greater diversity and quantity of local native provenance trees, shrubs and ground cover species from the ESBS native vegetation community (section 2.3.5, page 11).

As previously advised, the planting of exotic and non-locally occurring native plants in the past has impacted ESBS at the site. Except for the proposed garden plantings (which includes a cultural garden/ science garden/ edible produce garden/learning gardens and performance garden – see Landscape drawings -24), EES recommends local provenance ESBS species are only used in the site landscaping.

The proponent needs to clarify if the ESBS species listed in the amended Landscape Drawings (see Stage 2 Tree Species Masterplan and amended Plant Schedule) were recommended by Cumberland Ecology. The species listed in the Landscape Drawings are not included in Cumberland Ecology's VMP ESBS plant list (see Table 6, Appendix C in the VMP). It is not clear if these additional species occur naturally in remnant ESBS in the local area. Reconciliation is required between the species listed in the landscape drawings, those listed in the VMP and species that are locally indigenous to ESBS.

The RTS indicates locally endemic tree species are proposed to dominate the interface with the adjoining ESBS conservation reserve on Lot 23 (owned by CPMPT) and landscape treatment fronting Baronga Avenue and Queens Park, and their presence continues throughout the campus to strengthen the ecological network, interspersed with culturally significant species and regional natives. It also notes that all previously listed invasive species (including *Lampratinthus spectabilis* and *Thunbergia grandiflora*) have been removed from the planting schedule (page 12).

If the SSD is approved, it is recommended the following conditions of consent are included for the site landscaping:

- ***The site landscaping (except for the learning landscape gardens) -including areas adjacent to the VMP Area shall use a diversity of local native species from the ESBS.***
- ***In Lot 22 DP 879582 landscaping in the buffer zone should be consistent with the requirements of previous development approvals LD 282/00 and EPBC 2002/575, including no trees within the buffer zone***
- ***In Lot 1 DP 701512 landscaping in the ESBS area(s) must be consistent with the requirements of previous development approvals 446-10-2003 and EPBC 2004/1676***
- ***Enough area/space is provided on site to allow the trees to grow to maturity***
- ***Tree planting at the site shall use advanced and established local native provenance trees with a minimum plant container pot size of 100 litres, or greater for local native tree species which are commercially available. Other local native tree species which are not commercially available may be sourced as juvenile sized trees or pre-grown from provenance seed.***

Pre-clearance surveys

The BDAR and VMP state a pre-clearance survey needs to be undertaken by a qualified ecologist within one week of any clearing activities (see Section 8.3.4, page 2 of BDAR and Section 5.6, page 16) of VMP. It is recommended a further pre-clearance survey is undertaken immediately prior to any clearing occurring to ensure that fauna potentially disturbed/removed during the initial survey have not returned to the vegetation/habitat that is to be cleared.

If the SSD is approved EES recommends the following conditions of consent are included to minimise potential impacts from clearing of vegetation on native fauna:

- ***A pre-clearance survey for native fauna must be undertaken by a suitably qualified ecologist in all areas of vegetation on the site that is required to be cleared within (a) one week of any clearing activities commencing and (b) immediately prior to any clearing of vegetation commencing on the site. Any resident native fauna found during the pre-clearance surveys should be appropriately captured by a licensed wildlife carer prior to any clearing commencing and relocated in a sensitive manner to appropriate nearby habitat locations under the supervision of a qualified ecologist/licensed wildlife handler.***

- ***A qualified ecologist/licensed wildlife handler must be present on site during the clearing of any vegetation. Any resident native fauna found during the clearing should be appropriately captured by a licensed wildlife carer and relocated in a sensitive manner to appropriate nearby habitat locations under the supervision of a qualified ecologist/licensed wildlife handler.***

Stormwater runoff

The EES submission on the EIS advises that the BDAR assess the potential impacts of the development on the remnant ESBS including altered drainage/runoff resulting in changes to soil moisture, erosion, sedimentation, increased pollutants or nutrients. The amended Civil Services Plan includes the following Note: “confirming that no additional stormwater will impact the Eastern Suburbs Banksia reserve post development”. The Plan also show the proposed location of the on-site detention (OSD).

The Stormwater Report indicates a temporary sedimentation basin is required and that the basin is to be located at the downstream portion of the site, but the report does not include a scaled plan which shows the proposed location of this basin (section 3.3, page 11). EES seeks clarification as to whether the temporary sedimentation basin is proposed in the same location as the OSD.

End of Submission