NSW GOVERNMENT | Office of Environment & Heritage

Our Ref: DOC16/401831
Your Ref: SSD7413

Mr David Gibson
Social Infrastructure Assessments
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Attention: Ms Megan Fu

Dear Mr Gibson,

Re: New Grafton Correctional Centre Concept Proposal and Stage 1 Early Works

Thank you for your letter dated 9 August 2016 about the proposed new Grafton Correctional Centre and Stage 1 Early Works seeking comments from the Office of Environment and Heritage (OEH). I appreciate the opportunity to provide input.

The OEH has statutory responsibilities relating to biodiversity (including threatened species, populations, ecological communities, or their habitats), Aboriginal and historic heritage, National Parks and Wildlife Service (NPWS) estate, flooding and estuary management.

We have reviewed the documents supplied and advise that we have no concerns about historic heritage, NPWS estate or flooding. However, a number of issues are apparent with respect to the assessments for biodiversity, Aboriginal cultural heritage and acid sulphate soils (ASS). The main issues identified by the OEH include:

- incorrect identification of freshwater wetlands on coastal floodplains of the NSW North Coast Endangered Ecological Community (FW EEC) on the subject land;
- failure to identify subtropical coastal floodplain forest of the NSW North Coast bioregion Endangered Ecological Community (STCFF EEC) on the subject land;
- possible incorrect identification of the wallum froglet (*Crinia tinnula*) on the subject land;
- insufficient mitigation measures proposed to minimise potential ecological impacts during the construction phase of the project; and
- incomplete stage 1 components of the Biodiversity Offset Strategy;
- incorrect advice provided to the applicant by the consultant regarding the need for further ASS assessment.

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- absence of a supported Aboriginal Cultural Heritage Management Plan (ACHMP) for the project

These issues are discussed in detail in **Attachment 1** to this letter. The OEH recommends that prior to determining the development application the Department of Planning and Environment should require the applicant to:

1. Re-evaluate the FW EEC status of the artificial wetlands on the subject land.

2. Re-assess the vegetation type present in the low-lying portions of lot 26 and assess the potential occurrence of STCFF EEC on the subject land.

3. Undertake an additional targeted field survey during the appropriate season and weather conditions to confirm, through visual identification, presence of the wallum froglet.

4. Include a two-staged clearing procedure where non-habitat trees are removed 48 hours prior to removal of habitat trees.

5. Formulate a fauna relocation procedure for displaced wildlife, identifying potential release sites and timing protocols prior to commencement of clearing works.

6. Ensure that dam dewatering is supervised by a suitably experienced aquatic ecologist.

7. Identify a suitable receiving site for aquatic/amphibian fauna displaced during the dam dewatering process (e.g. eels, native fish, tadpoles and frogs).

8. Incorporate all proposed biodiversity mitigation measures into a Flora and Fauna Management Sub-plan (FFMSP), which should form part of the project Construction Environmental Management Plan (CEMP).

9. Remove the sum total of species credits required from Table 9-2 of the BAR.

10. Refine the Biodiversity Offset Strategy (BOS) to clearly set out the steps that will be undertaken to locate and secure like-for-like offsets to offset the biodiversity impact of the proposed Correctional Facility in accordance with the *NSW Biodiversity Offsets Policy for Major Projects* and the FBA. BOS refinement should be undertaken in accordance with the detailed comments provided in the **Attachment 1**.

11. Prepare an Aboriginal Cultural Heritage Management Plan (ACHMP) for the project prior to the commencement of works. This ACHMP should include the components discussed in the attached detailed OEH comments and must be prepared in consultation with the project Registered Aboriginal Parties (RAPs) and the OEH. The ACHMP should be prepared in accordance with the detailed comments provided in the **Attachment 1**.

12. Ensure that the ACHMP includes protocols for the salvage required for the project and also for the long term management of any areas of cultural or archaeological significant, within the project boundaries, but not subject to salvage excavations.

13. Ensure that the salvage works undertaken under the ACHMP are completed at all locations identified in, and in accordance with the recommendations contained within, the Aboriginal cultural heritage assessment and supported documents included in the final EIS for the project.

14. Carry out all ACHMP salvage works under supervision of a qualified archaeologist and representatives of the RAP's for the project.

15. Prepare a final report outlining the results of all salvage work undertaken. This report must be prepared in consultation with the project RAPs and should include all comments provided by

the project RAP's regarding the salvage process and the long term management of Aboriginal objects.

16. Amend the EIS and relevant supporting documents to remove the requirement for additional ASS testing within the footprint of the project prior to construction.

If you have any further questions about this issue, Mr Don Owner, Regional Operations Officer, Regional Operations, OEH, can be contacted on 6659 8233 or at don.owner@environment.nsw.gov.au.

Yours sincerely

29/9/2016

ROSALIE NEVE
A/Senior Team Leader Planning, North East Region
Regional Operations

Contact officer: DON OWNER
6659 8233

Enclosure:

cc: Attachment 1: Detailed OEH Comments – New Grafton Correctional Centre Concept Proposal and Stage 1 Early Works

Attachment 1: Detailed OEH Comments – New Grafton Correctional Centre Concept Proposal and Stage 1 Early Works

A. Biodiversity

The structure of the OEH biodiversity comments has been based on the three stages of the FBA process:

- Stage 1 – biodiversity assessment;
- Stage 2 – impact assessment; and
- Stage 3 – biodiversity offset strategy.

Stage 1: Biodiversity Assessment

Freshwater Wetland EEC

The Biodiversity Assessment Report (BAR) identifies four artificially constructed farm dams on the subject land, which have been considered in the BAR as being representative of the freshwater wetlands on coastal floodplains of the NSW North Coast Endangered Ecological Community (FW EEC). However, the NSW Scientific Committee - final determination for the FW EEC states that "*artificial wetlands created on previously dry land for the purposes of farm production are not regarded as part of the community*". The results of soil sampling on the subject land contained within the geotechnicial report (Appendix G) suggest that the dams have most likely been created in areas that would not have previously been wet as indicated by the absence of silts, muds and humic loams, or other soil types formed through active erosion and aggradation by channelled and overbank streamflow as specified in the EEC final determination.

OEH Recommendation:

1. Re-evaluate the FW EEC status of the artificial wetlands on the subject land. The re-evaluation may require additional soil sampling to determine the edaphic conditions present at the dam sites. If the re-evaluation concludes that FW EEC does not occur on the subject land then adjustments will need to be made within the BioBanking Credit Calculator (BBCC).

Subtropical Coastal Floodplain Forest EEC

The BAR identified the occurrence on the subject land of Biometric Vegetation Type (BVT) NR244 – spotted gum – grey box – grey ironbark dry open forest of the Clarence Valley lowlands of the North Coast Bioregion. The BAR indicated that BVT NR244 was identified within five sampling plots (Plots 1, 2, 3, 8 and 11). However, the floristic assemblage recorded in sample plot 11 more closely resembles BVT NR161 – forest red gum – swamp box of the Clarence Valley lowlands of the NSW North Coast Bioregion. BVT NR161 is representative of the subtropical coastal floodplain forest of the NSW North Coast bioregion Endangered Ecological Community (STCFF EEC).

In order for BVT NR161 to be representative of the STCFF EEC the area occupied would need to be located either on or associated with a coastal floodplain. Sample plot 11 was located in a gully in the southwestern corner of Lot 26. Figure 2-3 of the Geotechnical Working Paper contained a geological mapsheet that identified undifferentiated alluvial and colluvial deposits extending into this gully. Furthermore, near-surface quaternary geology mapping available to the OEH also indicates the presence of alluvium in this gully, which suggests that this low-lying portion of the subject land could be associated with the coastal floodplain of the Clarence River. The geotechnical investigations did not include any soil profile sampling in this gully as evidenced by Figure 3-2 of the Geotechnical Working Paper.

OEH Recommendation:

2. Re-assess the vegetation type present in the low-lying portions (i.e. gullies) of lot 26 and assess the potential occurrence of STCFF EEC on the subject land. The re-evaluation may require additional soil sampling to determine whether alluvial soils are present. If the re-evaluation concludes that STCFF EEC is present on the subject land then adjustments will need to be made within the BBCC.

Wallum Froglet Records

The subject land did not contain any "wallum" habitats (e.g. wet heath, acid paperbark swamp etc.) suitable for the wallum froglet (*Crinia tinnula*). Conversely, habitats on site were more suitable for the more common species, eastern sign-bearing froglet (*Crinia parinsignifera*). The calls of the wallum froglet and eastern sign-bearing froglet are very similar and often difficult to distinguish. Therefore, given that the wallum froglet records for the BAR were based only on calling individuals, the OEH suspects that the eastern sign-bearing froglet probably occurred on the subject land and may have been misidentified during the fauna survey undertaken for the BAR.

OEH Recommendation:

3. Undertake an additional targeted field survey during the appropriate season and weather conditions to confirm, through visual identification, presence of the wallum froglet. The presence of wallum froglet on the subject land should not be assumed based solely on calling individuals. If the results of additional survey conclude that the wallum froglet is absent from the subject land then adjustments will need to be made within the BBCC.

Stage 2: Impact Assessment

Proposed Mitigation Measures

The OEH is generally supportive of the proposed mitigation measures outlined in Section 8 of the BAR. However, additional procedures could be added to improve the protection of fauna, particularly during clearing of vegetation and dewatering of dams on the subject land.

OEH Recommendations:

4. Include a two-staged clearing procedure where non-habitat trees (i.e. trees with no hollows) are removed 48 hours prior to removal of habitat trees; and

5. Formulate a fauna relocation procedure for displaced wildlife, identifying potential release sites and timing protocols prior to commencement of clearing works.

6. Dam dewatering should be supervised by a suitably experienced aquatic ecologist.

7. A suitable receiving site should be identified for aquatic/amphibian fauna displaced during the dam dewatering process (e.g. eels, native fish, tadpoles and frogs).

8. All proposed biodiversity mitigation measures should be incorporated into a Flora and Fauna Management Sub-plan (FFMSP), which should form part of the project Construction Environmental Management Plan (CEMP).

Species Credit Summary

The total number of species credits required for the project (i.e. 4,825 credits) was provided in Table 9-2 of the BAR. The inclusion of a sum total of species credits required is unnecessary as it over-estimates the species credits required given that many of the species credit species occupy similar habitat types. Therefore, species credits acquired for one species credit species will most likely represent credits for other species credit species that occupy the same habitat types. Consequently, the total of species credits required by the applicant will be substantially less than the sum total of species credits listed in the table.

OEH Recommendation:

9. The applicant should remove the sum total of species credits required from Table 9-2 of the BAR.

Stage 3: Biodiversity Offset Strategy

As required by the *NSW Biodiversity Offsets Policy for Major Projects* and its associated Framework for Biodiversity Assessment (FBA), the accredited assessor has prepared a Biodiversity Offset Strategy (BOS). The purpose of the BOS is to set out the proposal for meeting the project's offset requirements.

Upon review, it appears that the BOS is in a very early stage of development and that it does not satisfy the requirement for offsets to be identified prior to the lodgement of the development application. This includes the requirement for an assessment of the identified offset site(s) in accordance with the BioBanking Assessment Methodology (2014).

OEH Recommendation

10. To minimise delays in the progression of the development application, rather than requiring the proponent to identify and assess offset sites prior to the granting of development consent, the OEH recommends that the BOS be refined to clearly set out the steps that will be undertaken to locate and secure like-for-like offsets to offset the biodiversity impact of the proposed Correctional Facility in accordance with the *NSW Biodiversity Offsets Policy for Major Projects* and the FBA. As a minimum, we recommend that the assessor, in collaboration with the proponent, outline and commit to undertaking the following steps within the BOS prior to the granting of development consent:

    - Checking the bio-banking 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.
    - Where the proponent determines to establish a BioBank site on their own land, the BOS must address the matters contained at Appendix 7 of the FBA, including a comprehensive assessment of the offset site in accordance with the BioBanking Assessment Methodology 2014.
    - If necessary, providing evidence of why offset sites are not feasible – suitable evidence may include:
        - The unwillingness of a landowner to sell or establish a biobank site.
        - The cost of an offset site itself should not be a factor unless it can be demonstrated the landowner is charging significantly above market rates.
    - Consideration of supplementary measures should be a last resort. Proponents must undertake the above reasonable steps to locate like-for-like offsets before applying supplementary measures.

We look forward to the opportunity to review the revised BOS upon lodgement with DPE for consideration.

In addition, while we generally prefer offsets to be secured prior to the commencement of construction, in this instance we would recommend the inclusion of conditions of consent to ensure that the required biodiversity offsets are identified and secured in a timely fashion, and generally, no longer than 12 months after construction commences. We would be happy to discuss the wording for suitable offset conditions upon completion of the suggested BAR and BOS amendments, as outlined in previous sections of this submission.

B. Aboriginal Cultural Heritage

The OEH has reviewed the proposal from the perspective of Aboriginal cultural heritage (ACH) values and has the following comments and recommended conditions of approval.

The OEH supports the recommendations for ACH management and considers the level of ACH assessment and consultation with registered Aboriginal parties to have been adequate for informing the proposal. Nevertheless, the project will need to be appropriately conditioned to ensure effective management of ACH values.

OEH Recommendations:

11. Prior to commencement of works the proponent must prepare an Aboriginal Cultural Heritage Management Plan (ACHMP) for the project. This ACHMP must be prepared in consultation with the project Registered Aboriginal Parties (RAPs) and the OEH. The ACHMP must contain appropriate triggers to identify situations where the proposed mechanical salvage excavations cease and manual salvage is commenced. These triggers should include the following contingencies;

    i. Any location where the mechanical salvage identifies a density of Aboriginal objects equal to, or greater than, 5 Aboriginal objects in a single linear measure;

    ii. Any location where the mechanical salvage reveals evidence of any intact archaeological feature including, but not limited to, hearths, stone arrangements, knapping events and/or butchering events;

    iii. Any location where the mechanical salvage reveals evidence of native faunal remains,

    iv. Any location where the mechanical salvage reveals evidence of specific rare or unique Aboriginal objects including, but not limited to; grinding tools (portable or other), hafted tools, Aboriginal objects exhibiting extensive visible residue, use wear and/or retouch; and

    v. Protocols for the long term curation of all Aboriginal objects identified within the project area.

12. The ACHMP should include protocols for the salvage required for the project and also for the long term management of any areas of cultural or archaeological significant, within the project boundaries, but not subject to salvage excavations.

13. Salvage works must be completed at all locations identified in, and in accordance with the recommendations contained within, the Aboriginal cultural heritage assessment and supported documents included in the final EIS for the project.

14. All salvage works must be carried out under supervision of a qualified archaeologist and representatives of the RAP's for the project.

15. A final report must be prepared outlining the results of all salvage work undertaken. This report must be prepared in consultation with the project RAPs and should include all

comments provided by the project RAP's regarding the salvage process and any long term management of Aboriginal objects.

C. Acid Sulphate Soils

In reference to Acid Sulphate Soils (ASS) a recommendation contained in Section 9 of the Geotechnical Working Paper (Appendix G) stated that "*additional sampling be completed prior to construction occurring in the exact location of the footprint of the project*". The OEH considers this recommendation to be unnecessary given that the materials recorded on the subject land were neither of estuarine origin nor located on a floodplain. Furthermore, the preliminary ASS testing suggested no significant pH drop on oxidation. Therefore ASS are unlikely to be a constraint on the subject land.

OEH Recommendation:

16. Amend the EIS and relevant supporting documents to remove the requirement for additional ASS testing within the footprint of the project prior to construction.