



**Office of
Environment
& Heritage**

Your reference: SSD 6324
Our reference: DOC15/19578
Contact: Jennifer Charlton
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Ms Kate MacDonald
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Attention: Manager, Industry Assessments

Dear Ms MacDonald

Reference is made to your correspondence received by the Office of Environment and Heritage (OEH) on 19 January 2015, regarding the exhibition of the State Significant Development Application for Bringelly Road Business Hub, Leppington (SSD 6324).

OEH provides comments on biodiversity, Aboriginal cultural heritage and flood risk management in Attachment 1.

Should you have any queries in regard to this correspondence please contact Jennifer Charlton on (02) 8837 6311 or by email at jennifer.charlton@environment.nsw.gov.au

Yours sincerely

S. Harrison 27/02/15

SUSAN HARRISON
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ATTACHMENT 1: OEH comments regarding State Significant Development Application for Bringelly Road Business Hub, Leppington (SSD 6324)

1. Biodiversity

OEH has reviewed the relevant sections of the *Development Application Environmental Impact Statement Bringelly Road, Leppington, Bringelly Road Business Hub* prepared by JBA Urban Planning Consultants (December 2014) and the *Flora and Fauna Assessment for the Bringelly Road Business Hub State Significant Development (SSD 6324)* prepared by Eco Logical Australia (November 2014). DGR matter No. 13 relates to biodiversity.

OEH agrees with the following statement from the Flora and Fauna Assessment:

"Given that any retained vegetation at the subject site would require intensive ongoing management due to the proposed future land use, offsite offset measures in larger consolidated patches are considered the most appropriate mitigation for impacts of the proposal."

OEH also supports the decision to utilise the Biodiversity Banking Assessment Methodology (BBAM) to determine the required offsets.

Whilst OEH agrees a larger consolidated offsite offset would provide more appropriate biodiversity outcomes, and supports the use of BBAM, the following matters need to be addressed:

- The field survey was not undertaken in accordance with the DGRs. The field survey did not follow the nominated guidelines and no vegetation plots or targeted surveys were carried out.
- Notwithstanding the above, field surveys in accordance with BBAM need to be carried out in order to adequately determine the site value score. The one-day habitat assessment conducted in winter is not considered adequate by OEH to appropriately assess the site value score. For example, native grass species that flower in spring/summer may have been overlooked, leading to a lower site attribute score.
- The impact assessment has not been undertaken in accordance with the DGRs. Whilst the Flora and Fauna Assessment acknowledges the limitations of conducting the field survey outside the peak flowering period for some species (e.g. *Pimelea spicata*), it then justifies the assumed absence of these species as being due to the *"modified nature of the subject site, exotic dominated pastures and grazing history."* Yet the report acknowledges that *P. spicata*, for example, has been previously located in "disturbed" areas.

Further, a number of other threatened species, and one endangered population, are listed within the Final Determination for Cumberland Plain Woodland as being previously recorded within the plant community. Despite Cumberland Plain Woodland being identified on site, and records occurring within 10 km of the subject site, all but one (*P. spicata*) are reported as having no potential to occur on site.

No impact assessments have been conducted for these threatened species or endangered population. OEH therefore recommends further justification for the following species and endangered population's assumed absence be provided (e.g. "expert report" in accordance with BBAM), and/or appropriately timed surveys undertaken: *Pimelea spicata* (several records within locality dated between 1987 and 2014; closest record less than 1 km away), *Marsdenia viridiflora* subsp. *viridiflora* endangered population (recorded less than 200 m east of the subject site in 2003 and known by OEH to occur within grazed habitat), *Pultenaea pedunculata* (the most recent records (2005) occur less than 4 km east of the subject site; difficult to detect unless flowering (August to December)) and *Pterostylis saxicola* (previously recorded approximately 8 km south-east of the subject site, in 2010 and 2011; only detectable when in flower, typically September to November).

- Identification of biodiversity offsets has not been undertaken in accordance with the DGRs. The DGRs required that the NSW offset principles for major projects (SSD and SSI) (2013) be used in assessing and determining the adequacy of any offsets. The 2013 offsets principles for major projects included seven (7) offset principles. The Flora and Fauna Assessment has instead utilised OEH's offset principles intended for non-major projects (which consists of thirteen (13) principles). Further to that, only two (2) of the thirteen principles have been discussed; Principles 1 and 9. Regardless, Principle 1 of the thirteen directly relates to Principle 1 of the seven, and Principle 9 of the thirteen relates to aspects of Principles 2, 3 and 5 of the seven. Any approval should be in accordance with current best practice that offsets must be "additional" to other legal requirements, which would address Principle 4 of the seven. Principles 6 (supplementary measures) and 7 (discounted offsets) of the seven have not been raised for consideration.

Further to the above, OEH's advice to then Department of Planning and Infrastructure (DoPI) dated 15 January 2014 stated that a Biodiversity Offset Package is expected. However, the Flora and Fauna Assessment has not undertaken a site-specific assessment for this purpose and has instead made an estimate of offsetting requirements using data from a previous BBAM assessment undertaken for a proposal at Eastern Creek. OEH acknowledges that the Flora and Fauna Assessment states *the offset ratio cannot be reliably calculated without the collection of site specific BBAM plot data from the Bringelly Road Business Hub and a Biodiversity Offset Strategy will be prepared for the residual impacts of 1.82 ha of Cumberland Plain Woodland vegetation to more accurately quantify the appropriate offset requirements*. However, OEH considers that this should have already occurred, during preparation of the EIS, in order to address the requirements of the DGRs. OEH's advice to DoPI dated 15 January 2014 also recommended a specific Statement of Commitments relating to biodiversity; this has not been provided.

- Neither the EIS nor Flora and Fauna Assessment specifically address the DGR relating to assessment of the impacts of the proposal in regard to the Biodiversity Certification Order for the Sydney Region Growth Centres. However, Figure 3 of the Flora and Fauna Assessment identifies existing native vegetation (ENV) as defined by the Order; OEH notes that no ENV would be removed by the proposed project.

2. Aboriginal Cultural Heritage

There are two DGR matters that relate to Aboriginal cultural heritage for this project. They state:

19. Heritage

Address Aboriginal Heritage in accordance with the Draft Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation Requirements for Proponents (2005) and Aboriginal Cultural Heritage Consultation Requirements for Proponents (DECW2010). Impacts to Aboriginal cultural heritage must be avoided or adequately mitigated (in consultation with Aboriginal Stakeholders).

20. Archaeological Impacts

If relevant, an archaeological study is to be carried out on the site to identify any European and/or Aboriginal archaeological impacts associated with the proposal. Address recommendations in any archaeological zoning plan or archaeological management plan held by Liverpool City Council.

The archaeological assessment presented here (*Aboriginal & Historical Archaeological Assessment - Bringelly Road Business Hub*, Report to Western Sydney Parklands Trust, Dominic Steele Consulting Archaeology, 30 November 2014) provides a preliminary assessment of the potential archaeological deposits within the Bringelly Road Business Hub. It appears to have been undertaken as a Due Diligence assessment, rather than an assessment in accordance with the *Draft Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation Requirements for Proponents* (2005), as required by the DGRs.

A Due Diligence assessment is not an archaeological and cultural heritage assessment, rather, it is a legal defence against prosecution if Aboriginal objects are uncovered during the course of works where a preliminary assessment identified that they were unlikely to be present. It is specific to the *National Parks and Wildlife Act*, not the *Environmental Planning & Assessment Act*. It is inappropriate to undertake a Due Diligence assessment in this context, particularly as it does not accord with the requirements of the DGRs. OEH has previously provided advice regarding this to then DoPI in a letter dated 15 January 2014. At that time, OEH noted that the "... *Preliminary Environmental Investigation Report states that the "assessment will go through the Office of Environment and Heritage Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales" (Due Diligence)"* and provided the following advice:

"The Department of Planning and Infrastructure (DOP&I) is advised that Due Diligence is not an Aboriginal archaeological and cultural assessment and therefore should not be a requirement of the DGRs or EIS. Due Diligence is merely a mechanism that provides a legal defence against prosecution if Aboriginal objects are harmed in an area that has been assessed though the Due Diligence process as being unlikely to contain Aboriginal objects. Further, as this project will be given an approval under the EP&A Act, the defence of Due Diligence will not be required. OEH's expectation for the DGRs and the EIS is that the assessment will provide sufficient information about all Aboriginal objects and cultural values within the proposed development area. This includes areas that may require conservation and any constraints that Aboriginal heritage may pose to the development."

As the Aboriginal heritage assessment presented in this report was undertaken in accordance with OEH's Due Diligence requirements, it is very preliminary in nature, consisting of a desktop assessment and limited site survey, during which, ground surface visibility was so restricted that no Aboriginal objects were able to be identified on site. Therefore, it has not been able to provide any information about Aboriginal objects that may be located within the project development area, how they will be impacted by the proposed development and provide any appropriate management and mitigation recommendations at this stage, which is a requirement of the DGRs.

Further, this report states that its recommendations have been designed in accordance with the requirements of the *National Parks and Wildlife Act*. Please note, this is inappropriate in this context as this project is being assessed under Part 4 of the *Environmental Planning and Assessment Act*, not the *National Parks and Wildlife Act*.

One of the recommendations of this assessment is that a program of archaeological testing should be undertaken to identify if any Aboriginal archaeological deposits are present within the Bringelly Road Business Hub. The results of the program of testing should inform future management of the Aboriginal archaeological resource at this site. OEH concurs with this, but considers that this should have been undertaken at this stage, in order to address the requirements of the DGRs.

The recommendation further states that this work should be undertaken under an Aboriginal Heritage Impact Permit (AHIP) in accordance with s90 of the *National Parks and Wildlife Act*. Please note, there is no requirement for any AHIP for this project. State Significant Development turns off the need to get an AHIP under s90 of the *National Parks and Wildlife Act*. OEH considers that the methodology for any testing program should be designed specifically for this project and should not employ the methodology specified in accordance with OEH's *Code of Practice for Archaeological Investigation of Aboriginal objects in NSW* (2010), as this code of practice is specific to testing programs under Part 6 of the *National Parks and Wildlife Act* and the *National Parks and Wildlife Regulation 2009*, not the *Environmental Planning and Assessment Act*.

OEH considers that it is important that the nature and extent of any Aboriginal archaeological deposits that may remain in the Bringelly Road Business Hub are identified as soon as possible, in order to allow for avoidance of impacts to these deposits where possible and appropriate management and mitigation options to be proposed where this is not possible. In this respect, OEH concurs with the recommendation in this report that further work should be undertaken here. However, OEH considers

that the assessment report provided here does not address the requirements of the DGRs for Aboriginal heritage.

3. Flood Risk Management

The primary objective of the Government's Flood Prone Land Policy is to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone land and reduce private and public losses resulting from floods. The most appropriate method to assess the development of flood prone land is through the floodplain risk management process which is detailed in the *NSW Floodplain Development Manual* (2005).

OEH has reviewed the relevant sections of the *Development Application Environmental Impact Statement Bringelly Road, Leppington, Bringelly Road Business Hub* prepared by JBA Urban Planning Consultants (December 2014) and the *Bringelly Road Business Hub Civil & Environmental Engineering Report in Support of State Significant Development (SSD 6324) Report Ref: 140089* prepared by Northrop (November 2014).

OEH found no acknowledgement of the relevant policies and guidelines outlined in the DGRs regarding flooding (matter No. 18). In OEH's opinion, there is insufficient information in the EIS to demonstrate full compliance with the DGRs and OEH recommends that the consultant revisit all flood-related aspects of DGR matter No. 18.

Flood modelling is mentioned but no reference is provided to the details of the model or the results. Evidence of the claims made by Northrop should be provided.

The existing topography is uneven and sloping and bulk earthwork is proposed to level the site and make it suitable for development. It needs to be demonstrated in the study that any filling would not have a negative impact on flood levels both upstream and downstream of the proposed development for the full range of floods. This may be relevant for the tributary creek system draining in to the upper Cabramatta Creek and the main creek itself. The adopted *Cabramatta Creek Floodplain Management Study and Plan* (2004) shows the extent of the floodplain in the vicinity of the Business Hub proposal. One dot-point of the DGR reads: undertake "Assessment of the impacts of earthworks and filling of land within the proposed development, with an understanding of cumulative flood impacts." OEH's advice to then DoPI dated 15 January 2014 further recommended the proposal should ensure that any filling is limited to flood fringe areas identified in accordance with the *Floodplain Development Manual* (2005), and that the assessment of impacts was to consider both construction and operational phases. However, the Northrop report does not address the *Floodplain Development Manual* (2005) or potential operational flooding impacts. The Northrop report outlines strategies such as rainwater tanks and onsite detention and individual lot detention strategies. However, the evidence to back up the statement is not evident and although these strategies may offer some mitigation in minor storm events they could be ineffective in major storm events.

Issues regarding flood evacuation are not limited by the 1:100 year ARI plus freeboard. Emergency management issues including evacuation should be addressed for the full range of flooding up to and including the probable maximum flood (PMF). Flooding outside the site could impact on the ability of occupants to exit the site, even in minor events. Consultation with the SES is recommended in preparing an Emergency Response Plan.

(END OF SUBMISSION)