

BDAR waiver decision report template

Project Name: Moriah College redevelopment

SSI/SSD Application Number: SSD 10352

Proponent: Moriah College. The waiver request was made by John Wynne, Group Director at Urbis planning consultancy and was supported by a BDAR waiver assessment prepared Cumberland Ecology.

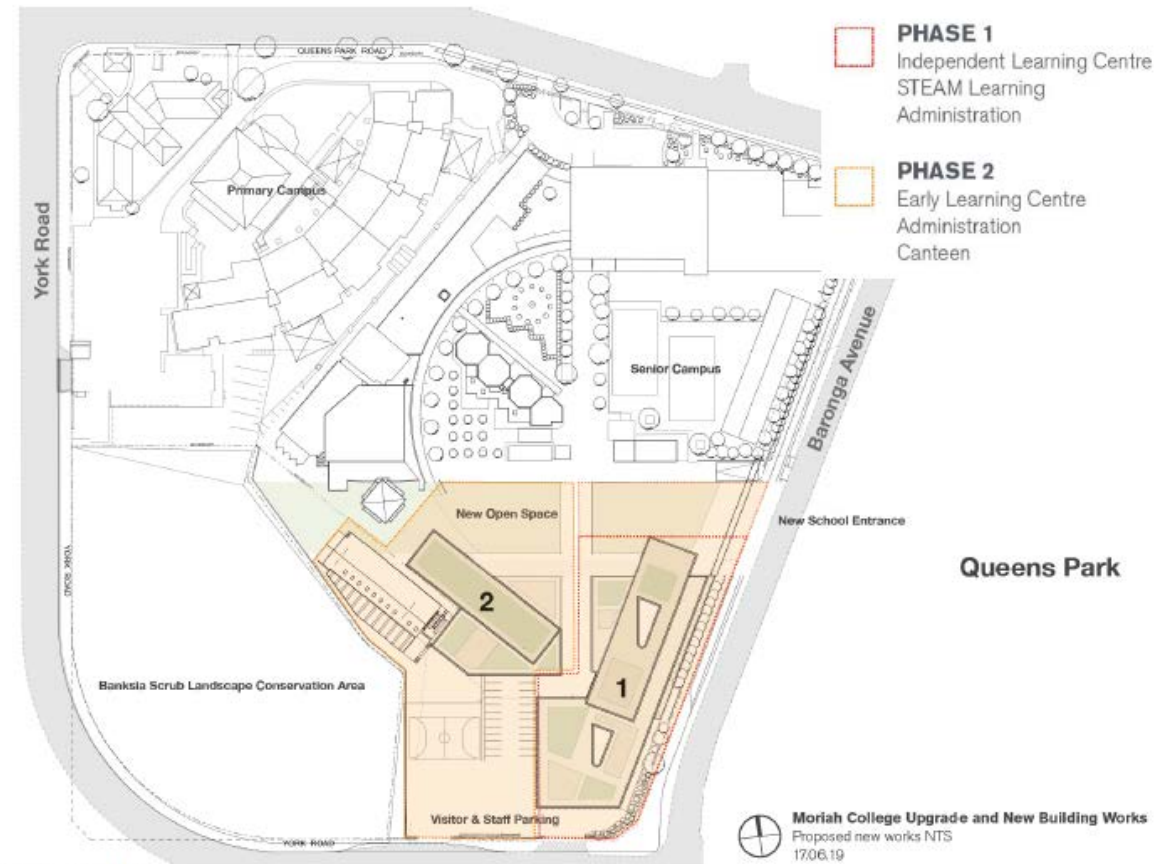
Date request received by C&R Team: 23 Aug 2019. The request was accompanied by “an assessment of the proposal against the relevant provisions of the Biodiversity Conservation Act 2016 and Biodiversity Conservation Regulation 2017” by Cumberland Ecology

Documents consulted: *Request for Secretary's Environmental Assessment Requirements, Moriah College - State Significant Development*, dated 20 June 2019, by Urbis; *SSD_10352 - Moriah College Redevelopment: Waiver Request for Biodiversity Development Assessment Report*, dated 12 August 2019, by Urbis/Cumberland Ecology.

Biodiversity value	Meaning	Relevant (✓ or NA)	Potential impacts	
			Applicant comment/justification	CCS comment
General				<p><u>Description and extent of the proposed development</u></p> <p>The SEARs request included a limited description in section 3 and Fig. 4, with “preliminary concept plans” in Appendix A, of the proposal including:</p> <ul style="list-style-type: none">• “the demolition of [existing] buildings A, B, C, D, and Z” (shown in Fig. 3)• construction Phase 1 – of “anticipated to be 4-storey building with basement parking, accessed via the existing gate on York Road”• construction Phase 2 – of “anticipated [to] be a 3-4 storey building with some basement and surface parking”• “Consolidating staff and visitor parking to the southern end of the site, utilising the existing access / egress point at Gate 4A on York Road”. <p>In regard to the last point, it is noted that there is no Gate 4A and Gate 04 is on Queens Park Rd (see ‘Existing Site Plan NTS’, page 2 of Appendix A) so the extent of works is unclear.</p>

Figure 4 from Request for SEARS, section 3.1:

Figure 4 – Moriah College Redevelopment – Indicative Staging Plan



Source: FJMT

The BDAR waiver request had only a similar brief description, stating that “The proposal will involve the redevelopment of various out of date elements and buildings throughout the Campus”, but that “The proposal is still subject to design development and assessment”. It did not include any diagrams detailing the proposed development. It did contain Fig. 6 which showed a hatched area of the “extent of impacts within the subject land” which, however, is inconsistent with, and larger than, the areas shown in section 3.1 of the request for SEARs documentation as the “Phase 1 and Phase 2” areas of redevelopment. Furthermore, the BDAR waiver assessment does not state that existing Building Z is to be demolished, contrary to the SEARS request.

BDAR, Figure 6:



Figure 6. Extent of impacts within the subject land

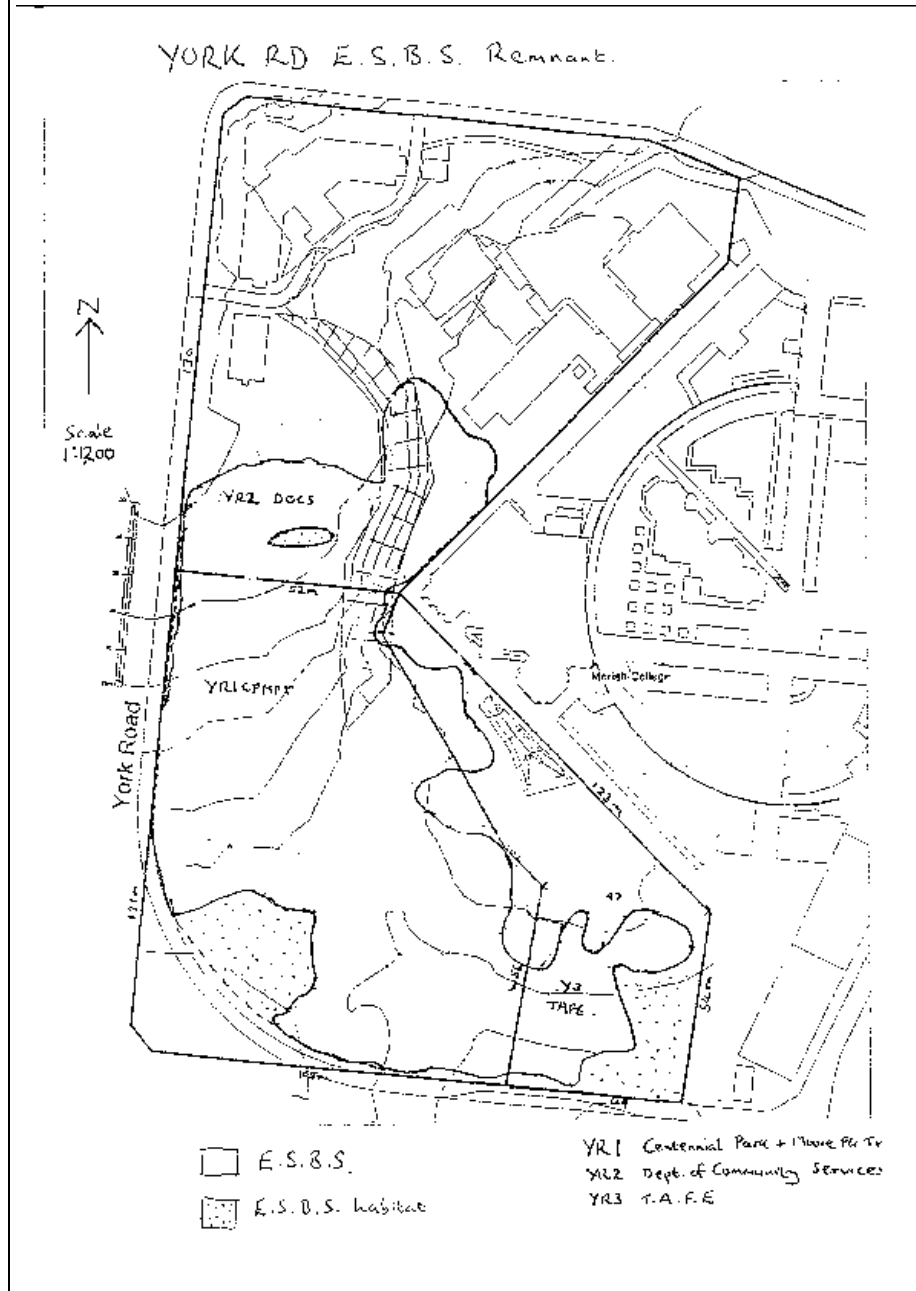
For information, the layout of the relevant lots is as shown in the following figure (source: Digital cadastral spatial database as held by DPIE 2/10/2019):



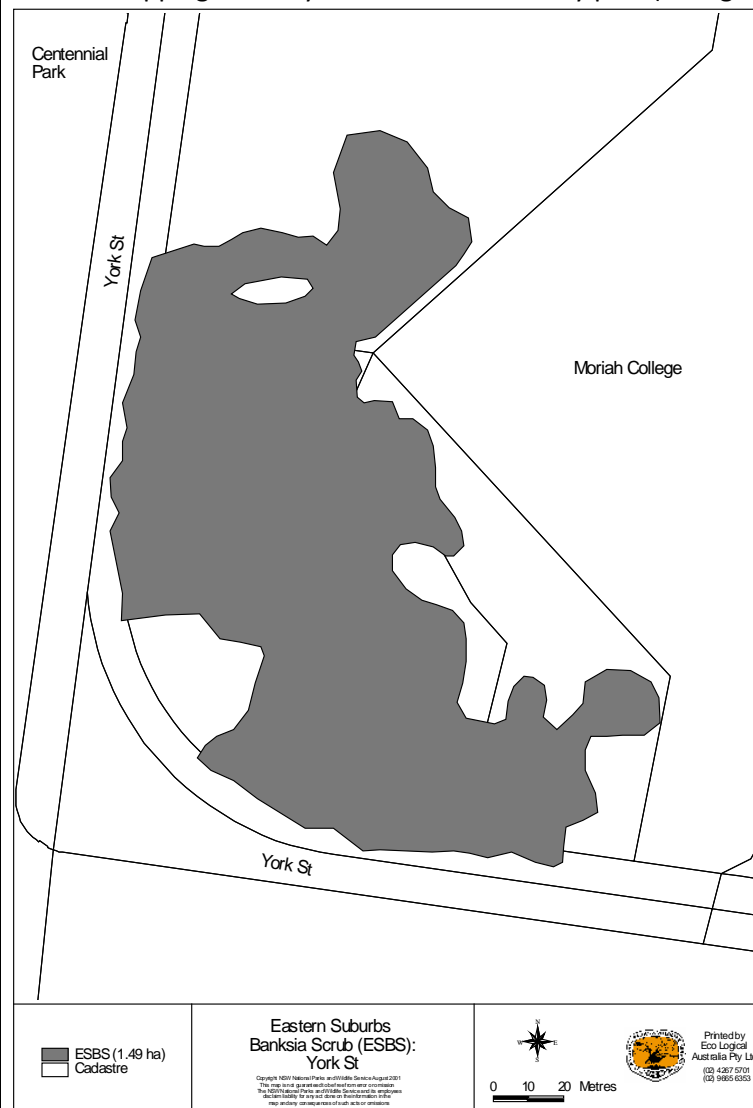
Both Lot 22 and Lot 3, on which the development is proposed, immediately adjoin land containing the Eastern Suburbs Banksia Scrub (ESBS) ecological community. Eastern Suburbs Banksia Scrub in the Sydney Basin Bioregion was determined in 2017 by the NSW Threatened Species Scientific Committee (NSW TSSC) to be a critically endangered ecological community under the Biodiversity Conservation Act 2016. 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. Depending on their nature (bulk, height, location and proximity in relation to the boundary between Lot 22 and Lot 23), the phase 2 construction may have direct impacts on remnant ESBS

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				<p>on Lot 22 and indirect impacts on ESBS remnant on both Lot 23 and Lot 1. For example, Building Z is to be demolished and replaced by an “anticipated ... 3-4 storey building with some basement and surface parking” and is located as close as 5 metres to the Lot 23 (ESBS) boundary. No consideration has been made of potential impacts 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; inadvertent disturbances during construction.</p> <p>Additionally, since demolition of several existing buildings is part of both phases of the proposed development, there are possible impacts on roosting habitat for microchiropteran bat species. However, there is no description of the nature (structure, age, etc.) of the buildings to be demolished and nor of the potential of these structures as such habitat.</p> <p>Given the inconsistencies and the insufficiency of detail about the location/extent and nature of the proposed development, EES has formed the view that it cannot be concluded that the proposed development is not likely to have any significant impact on biodiversity values.</p> <p><u>Background – prior developments and requirements to protect ESBS</u></p> <p>In 2001, ESBS at York Road was mapped as extending across Lot 23, north into Lot 1 and east into Lot 22, as per these maps (Sep 2001):</p>

Sourced from file SZ2000/0001, original source unknown:



Source: Mapping for early draft of ESBS recovery plan (c. Aug 2001)



Source: Fig. 6 in Moriah College's [referral of development LD 282/00 approved by Waverley Council to Commonwealth government as possible controlled action under EPBC Act \(Feb 2002\)](#):

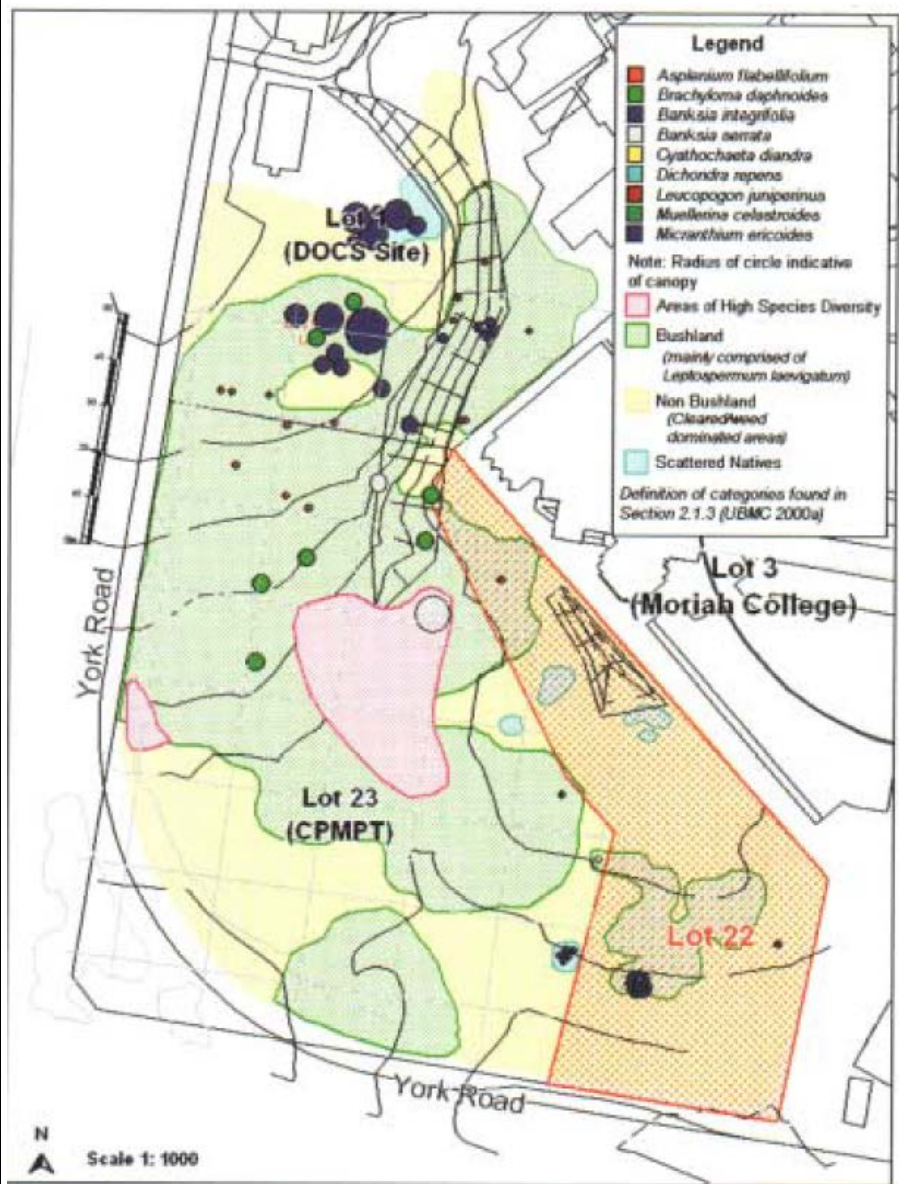


Figure 5
Approximate Location of Selected Native Species,
York Road Bushland


URBAN BUSHLAND
MANAGEMENT CONSULTANTS PTY LTD



Conditions of approvals granted for previous developments by Moriah College under the NSW EP&A Act – local DA LD 282/00, Waverley Council (re Lot 22) and major project DA 446-10-2003

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				<p>modifications, the former DIPNR (re Lot 1) and related approvals under the Commonwealth EPBC Act placed restrictions on the development on Lot 22 and Lot 1 and implementation of other requirements in order to conserve and protect the remnants of the ESBS ecological community on, Lot 22 and Lot 1 (as well as on Lot 23 ownership of which was handed to Centennial Parklands in 1998). At those times this ecological community was listed as endangered; as noted above it has since been declared critically endangered.</p> <p>• Moriah College Lot 22 expansion</p> <p>1999–2001 – Moriah College development application LD 282/00 for Lots 3 and 22 and a rezoning application for Lot 1 to expand the school from Lot 3 and to allow for future growth of the school over the next 10-15 years. Consent granted 6/06/2001 by Waverley Council required compliance with a number of ‘deferred commencement’ conditions, relating to protection or rehabilitation of ESBS on Lot 22 and Lot 23 (Lot 23 had given to the ownership of Centennial Park and Moore Park Trust (CPMPT)).</p> <p>Among them, condition 4(a) required that Moriah College “<i>enter into an Memorandum of Understanding (MOU) with the Centennial Park and Moore Park Trust (CPMPT) which will include:</i></p> <p>(a) <i>a condition to ensure that the ESBS on Lots 1, 22 and 23 is fully rehabilitated and, if removed as a result of the College activating this development consent, fully restored and regenerated to the satisfaction of the proposed management group;</i></p> <p>(b) ...</p> <p>(c) <i>a condition to ensure that when the development is complete, the newly rehabilitated and restored ESBS is protected from adverse impacts associated with the operation of the College (such as litter, stormwater run-off and the like). ...</i></p> <p>(d)”</p> <p>By letter dated 12 November 2001 (DOC19/872151), NPWS indicated to Council the manner in which the intent of these conditions would be deemed by NPWS to have been satisfactorily met:</p> <p>“ <i>* that Waverley Council proceeds with the current draft LEP for the York Road site and re-zones the remaining ESBS as shown in sections A & B of Attachment 3, to protect its conservation value,</i></p>

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				<p><i>* that Moriah College does not lease the area of Lot 1 containing ESBS (Section A of Attachment 3) from the Department of Community Services' (DOCS),</i></p> <p><i>* that the NPWS, Waverley Council and Moriah College continue to negotiate with the Centennial Park and Moore Park Trust (CPMPT) and DOCS regarding the eventual transfer of the areas containing ESBS on Lot 1, (Section A in Attachment 3), to the ownership of CPMPT and that this requirement be included in the MOU between Moriah College and CPMPT,</i></p> <p><i>* that Moriah College, in addition to funds required under condition 4(b), contribute additional resources to the CPMPT for the management of ESBS remnants within Centennial Park (Attachment 4) and Section A of Lot 1 (Attachment 3). This condition is to offset the loss of ESBS vegetation on Lot 22 and Lot 1."</i></p> <p>NPWS also expressed its preference that any ESBS on Lot 22 that was not removed for construction of the development (access roadway) be retained and restored.</p> <p>The content and wording of this letter had been negotiated with and agreed to by the College (see DOC19/872151). However, none of the conditions required by the consent were subsequently included in the MOU entered in to between Moriah College and CPMPT, and none of the other actions requested by NPWS were implemented.</p> <p>EPBC 2002/575: The development was also referred to the Australian government for consideration as a 'controlled action' under the EPBC Act: referral 18/02/2002, with subsequent decision as controlled action 19/03/2002; approval subject to conditions including map, 25/10/2002; and variation of conditions, 1/08/2003. Conditions required rehabilitation of ESBS (either on Lot 23 or an "area of equivalent size and condition"), governed by an approved VMP; provision in Lot 22 along the boundary with Lot 23 of a vegetated buffer zone as shown on the map and of no lesser width than 3 metres; measures to prevent grass from landscaped other parts of Lot 22 entering the buffer zone; a fence 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 <i>Leptospermum laevigatum</i>) on Lot 23; no structures to be erected on Lot 22 that will cast shadow onto Lot 23. These EPBC Act requirements were subject to an audit in Oct 2006 by the Australian Dept of Environment and Heritage, assisted by NSW DEC – outcomes report on DEC file.</p> <p>According to a file memo dated Jan 2004 all remnant ESBS on Lot 22 was subsequently cleared "to create a landscaped buffer zone containing non-ESBS species".</p>

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				<p>However, current (1 Sept 2019) Nearmap aerial imagery indicates that this 'buffer' no longer exists in Lot 22 with constructed hard surfaces and buildings encroaching within the 6-metres minimum along much of the length of the common boundary with Lot 23, in places with as little as less than 2 metres, and the space between occupied only lawn grass – see following image (source/copyright Nearmap Pty Ltd). However, Waverley Council has advised that numerous later development applications and/or consents applied to Lot 22 DP 879582. These may account for such changes, however DPIE-EES does not appear to have any records related to these developments.</p>  <p>• Moriah College Lot 1 expansion</p>

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				<p>2003–2004 – Moriah College made application for development via major project development application 446-10-2003 for construction on Lot 1 of primary school classrooms, an assembly hall, on site parking for 85 vehicles, an internal access road (or “shareway”) with capacity for 60 queuing vehicles, landscaping, fencing, a stormwater absorption area, a gatehouse and security video equipment.</p> <p>The proposed development was determined by the former DIPNR as likely to have a significant effect on the endangered ecological community ESBS. The proponent thus entered into discussions with the former Department of Environment and Conservation (DEC) to modify the proposal to minimise impacts, culminating in a number of conditions, specified by the former DEC by letter to the former DIPNR dated 20 May 2004, being accepted by the proponent and subsequently incorporated by the former DIPNR into the approval granted by the Minister for Planning on 21 October 2004 (planning report, determination and approved plans not available on Major Projects website (hard copy of determination and conditions on file 03/06536).</p> <p>The conditions included requirements for set aside, protection and ongoing active management, subject to an approved vegetation management plan, of two areas of ESBS within Lot 1; fencing of those areas; restrictions and requirements regarding landscaping and stormwater management in relation to these areas.</p> <p>EPBC 2004/1676: The development was also referred to the Australian government for consideration as a ‘controlled action’ under the EPBC Act (referral/map), with subsequent decision as ‘not a controlled action’, subject to it meeting conditions specified by NPWS in its letter of 20 May 2014. These EPBC Act requirements were subject to an audit in Oct 2006 by the Australian Dept of Environment and Heritage, assisted by NSW DEC – outcomes report on DEC file.</p>
Vegetation abundance 1.4(b) BC Regulation	Occurrence and abundance of vegetation at a particular site		<p>The subject land is predominantly cleared and contains scattered plantings consisting of exotic and native species.</p> <p>The project is expected to result in the clearing of garden bed plantings and rows of planted trees</p>	<p>The applicant’s comments with respect to these two biodiversity values are inadequate. There is no consideration of the ESBS vegetation on the immediately adjoining Lots 23 and 1 or of the potential of the development for off-site impacts on the biodiversity values of that critically endangered ecological community, 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; inadvertent disturbances during construction.</p>

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			comprised of eight exotic trees and three native trees.	There is also no consideration of the requirements of the previous development approvals (DA LD 282/00 and EPBC 2002/575) in relation to ESBS vegetation to be retained and/or buffered on Lot 22.
Vegetation integrity 1.5(2)(b) BC Act	Degree to which the composition, structure and function of vegetation at a particular site and the surrounding landscape has been altered from a near natural state		Based upon analysis of historic aerial photography, it is evident that the vegetation within the subject land has been planted or is regrowth since 1943. Based upon the results of floristic surveys, it has been concluded that the existing vegetation of the subject land is largely comprised of planted Urban Native/Exotic Vegetation within garden beds and in rows. The composition, structure and function of vegetation within the subject land and the surrounding landscape are considered to have been altered significantly from a natural state and do not resemble any naturally occurring PCTs known from the locality.	
Habitat suitability 1.5(2)(b) BC Act	Degree to which the habitat needs of threatened species are		As discussed above, Moriah College has little potential to provide habitat for threatened species other than highly mobile, aerial species. Threatened species	The applicant's comments with respect to these biodiversity values are inadequate. There is no consideration of the ESBS critically endangered ecological community on the immediately adjoining Lots 23 and 1 or of the potential of the development for off-site impacts on the biodiversity values of that critically endangered ecological community, 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

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6.1(1)(a) BC Regulation	present at a particular site		with the highest likelihood to utilise the subject land include the Grey Headed Flying Fox, the Powerful Owl and Microchiropteran bats. These highly mobile species may occasionally and opportunistically utilise the limited foraging resources of the subject land as part of a larger foraging range.	used on landscaped areas); dust; litter; hybridisation with native species not of local provenance or weed invasion by species used in landscaping; inadvertent disturbances during construction. There is also no consideration of the requirements of the previous development approvals (DA LD 282/00 and EPBC 2002/575) in relation to the ESBS critically endangered ecological community to be retained and/or buffered on Lot 22. Demolition of several existing buildings is part of both phases of the proposed development, however there is no description of the nature (structure, age, etc.) of the buildings to be demolished and it has not been addressed as to whether these could afford suitable habitat for certain microchiropteran bat species that are capable of roosting in a variety of natural and constructed sites. The former DPE fact sheet states that the applicant is required to consider not only habitats of threatened species and ecological communities related to native vegetation, but also those related to human made structures (as one of the 'prescribed impacts' identified in clause 6.1 of the BC Regulation).
Threatened species abundance 1.4(a) and 6.1(1)(f) BC Regulation	Occurrence and abundance of threatened species or threatened ecological communities, or their habitat, at a particular site		No threatened species were observed during the site inspection. Only highly mobile, aerial threatened species would be expected to utilise the foraging resources of the subject land occasionally and opportunistically.	Comments as made above apply
Habitat connectivity 1.4(a) and 6.1(1)(f) BC Regulations	Degree to which a particular site connects different areas of habitat of threatened species to		Moriah College may marginally contribute to habitat connectivity throughout the largely cleared and artificial landscape that dominates the locality. Trees within the subject land and its	The site is located within an urbanised area and within a highly disturbed landscape where the majority of habitats have been cleared. The habitats that do remain are highly fragmented, however the planted urban vegetation does provide a role in facilitating the movement of threatened species across the landscape. While there is no obvious habitat connectivity route of which the development site is a part of, the site is immediately adjoins the large and highly-treed expanses of Centennial and Queens Parks. Flying animals such as birds and bats – including threatened species Grey-headed Flying-fox and Eastern Bentwing-bat – forage in and move between such habitats. Planted vegetation on and adjacent to the site is likely to be used for

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	facilitate the movement of those species across their range		immediate surroundings may function as stepping stone habitat for highly mobile fauna, providing a degree of habitat connectivity between the small parks and reserves of such as Centennial Park, Queens Park, Cooper Park and Waverley Park.	foraging or resting, or even roosting in the case of microchiropteran bats. There is an established camp of the Grey-headed Flying-fox in Centennial Park. ESBS on Lot 23 and Lot 1 will not afford habitat for such species as only shrubs and small tree species occur in vegetation communities constituting ESBS. So while some impacts to habitat connectivity are anticipated, even if all the trees on the site are removed, DPIE-ESS considers that impact on these biodiversity value is unlikely to be significant.
Threatened species movement 1.4(d) BC Act 6.1(1)(c) BC Regulation	Degree to which a particular site contributes to the movement of threatened species to maintain their lifecycle		As above, the subject land does not contribute to the movement of threatened species other than highly mobile, aerial species. Impacts associated with the project would not be expected to have any impact on the lifecycle of such species,	
Flight path integrity 1.4(e) BC Act 6.1(1)(e) BC Regulation	Degree to which the flight paths of protected animals over a particular site are free from interference		Moriah College will be changed externally with two infill developments and associated landscaping. The infill developments are not anticipated to exceed the height of existing structures throughout the subject land. Subsequently the project is not expected to impact upon free-flying animals (threatened or otherwise) by interfering with flight paths.	While insufficient and inconsistent, information has been provided about the nature, including location and height, of the proposed development, DPIE EES considers that there is unlikely to be anything other than negligible impacts on flight path integrity of birds or flying-foxes.

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Water sustainability	Degree to which water quality, water bodies and hydrological processes sustain threatened species and threatened ecological communities at a particular site.		Moriah College is located approximately 100 m north of an unnamed ephemeral watercourse associated with Musgrave pond south of the subject land. This highly modified watercourse flows into a pipe under Queens Park. A system of ornamental constructed ponds also occurs west of the subject land within Centennial Park. The project is unlikely to result in impacts to water bodies or hydrological processes assuming that adequate sediment control measures are followed.	In sufficient information about the location and nature of the proposed development has been provided to support the applicant's comment that "The project is unlikely to result in impacts to water bodies or hydrological processes" in relation to the adjoining areas of ESBS. Furthermore, the comment is also based on an assumption "that adequate sediment control measures are followed".

Recommendation

It is recommended that the delegated officer:

- Considers the matters set out in this report; and
 - ~~determines that the proposed development is not likely to have any significant impact on biodiversity values and therefore a BDAR is not required~~
 - determines that, based on the information provided, it cannot be concluded that the proposed development is not likely to have any significant impact on biodiversity values and therefore a BDAR is required.



23/10/19

Sarah Burke
Acting Senior Team Leader, Compliance & Regulation, Greater Sydney
Climate Change and Sustainability, Department of Planning Industry & Environment

Date

Decision

I, Alex Graham, Director Greater Sydney, Climate Change and Sustainability, Department of Planning, Industry and Environment, having reviewed this report and the documents attached to it:

- A. **determine** under clause 7.9(2) of the *Biodiversity Conservation Act 2016* that the proposed development is not likely to have any significant impact on biodiversity values and therefore a BDAR is not required
- B. **determine** that, based on the information provided, it cannot be concluded that the proposed development is not likely to have any significant impact on biodiversity values and therefore a BDAR is required.



6/11/2019

Alex Graham
Greater Sydney Branch
Office of Environment and Heritage

Date

Determination under clause 7.9(2) of the Biodiversity Conservation Act 2016

I, Alex Graham, Director Greater Sydney, Climate Change and Sustainability, Department of Planning, Industry and Environment, under clause 7.9(2) of the *Biodiversity Conservation Act 2016*, determine that it cannot be concluded that the proposed development is not likely to have any significant impact on biodiversity values. Therefore a Biodiversity Development Assessment Report is required.

Proposed development means the development as described in section 3.0 of the Request for SEARs prepared by Urbis (dated 20 June 2019).



6/11/2019

Alex Graham
Director Greater Sydney
Climate Change and Sustainability, Department of Planning, Industry and Environment

Date

SCHEDULE 1 – Description of the proposed development

Project description

SSD10352 seeks approval for the redevelopment of the Moriah College Queens Park Campus at Queens Park Road, legally described as Lot 22 DP 879582; Lot 1 DP 701512; Lot 3 DP 701512) (the site) – see Figure 1 below for location of the subject land.

The proposal involves the redevelopment of various out of date elements and buildings throughout the Campus. The proposal is still subject to design development. The development works will be limited to the lots: 3 Queens Park Road (Lot 3 DP 701512) and 101 York Road (Lot 22 DP 879582). There are no proposed works within 1 Queens Park Road (Lot 1 DP 701512).

The proposed works include:

- The demolition of selected buildings on the existing school site to facilitate the construction of a new 4 storey with basement Science Technology Engineering Arts and Maths Building and a new 3 storey Early Learning Centre and College teaching rooms.
- The application will seek an increase of up to 20% or 340 students over the next 10-15 years, in order to meet the future needs of a growing population. Staff numbers will also need to increase proportionally over time.
- Consolidating staff and visitor parking to the southern end of the site, utilising the existing access / egress point at Gate 4 on York Road.
- Creating a new 'front door' on Baronga Avenue where students, staff, parents and visitors will access the campus.

A conservation area exists adjacent to the subject site. This area contains an intact stand of Eastern Suburbs Banksia Scrub which is listed as a Critically Endangered Ecological Community under the BC Act and as Endangered under the EPBC Act (see Figures 1 and 2 below).

The vegetation within the subject land is likely to have been planted after 1943 as determined from review of historical imagery. Generally, the composition, structure and function of vegetation within the subject land and the surrounding landscape have been altered significantly and do not resemble any naturally occurring PCTs. The subject land is predominantly an artificial landscape with planted garden beds and isolated trees situated throughout the campus. The woody vegetation within the subject land predominately forms a single mapping unit of 'Urban Native/Exotic vegetation'. A small area of Eastern Suburbs Banksia Scrub also extends on the subject land from the adjacent conservation area (see Figure 3 below).

Figure 1 – Location of site



Figure 2 - Proposed development



Figure 3 – Vegetation communities on the subject land



Source: Urbis (12 Aug 2019) and Cumberland Ecology (9 August 2019)