



Our ref: DOC21/583607

Senders ref: SSI 10049

Fadi Shakir  
Planning and Assessment Group  
Department of Planning, Industry and  
Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

Dear Mr Shakir

**Subject: Exhibition – Environmental Impact Statement for the Kamay Ferry Wharf Project (SSI-10049) and bilateral assessment**

Thank you for your email received 12 July 2021 requesting comments on the above proposal. I also refer to your email of 13 January 2021 notifying Environment, Energy and Science Group (EES) that a delegate for the Commonwealth Minister for the Environment and Energy determined that the Kamay Ferry Wharf Project (2020/8825) is a “controlled action” under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The controlling provisions are:

- Sections 15B and 15C (National Heritage)
- Sections 18 and 18A (Listed threatened species and communities).

EES has reviewed the relevant documents and provides comments regarding biodiversity and Kamay Botany National Park in Attachment 1. As detailed in Attachment 1, EES has identified several inconsistencies regarding the Biodiversity Development Assessment Report that should be addressed. EES also seeks clarification and further information on a few matters.

EES’s assessment of EPBC Act listed threatened species and communities using the NSW Framework for Biodiversity Assessment is provided in Attachment 2.

If you have any queries please contact Marnie Stewart, Senior Project Officer Planning via [Marnie.stewart@environment.nsw.gov.au](mailto:Marnie.stewart@environment.nsw.gov.au) or 02 9995 6868.

Yours sincerely

16/08/21

Susan Harrison

**Senior Team Leader Planning  
Greater Sydney Branch  
Biodiversity and Conservation**

## Attachment – EES comments on the Environmental Impact Statement for the Kamay Ferry Wharf Project (SSI-10049)

### Biodiversity

EES has reviewed Appendix I – *Biodiversity Development Assessment Report* of the Environmental Impact Statement (EIS) dated 24 June 2021 and provides the following comments:

- EES's review was limited by the fact that the BAM Calculator case was not submitted in BOAMS; consequently, it was not available for review by EES to check consistency of BAM Calculator data with BDAR or spatial data.
- Additionally, neither plot field data sheets nor Excel spreadsheet of data were supplied, contrary to minimum requirements detailed in BAM Appendix 10, nor a summary by vegetation zone of composition, structure and function attribute scores. While floristics data was provided in Appendix B this contained only species occurrence for the subject site as a whole – occurrence of species by plot, cover or abundance were not provided.
- The amount of vegetation stated to be cleared in the assessment for EPBC Act matters of national environmental significance (MNES) – 0.29ha, e.g. in section 5.2.3 and on page 3 of the executive summary – is inconsistent with the amount stated in the BAM assessment – 0.06ha, e.g. in Table 6-2 and page 3 of the executive summary. Similar contradictions pertain to the stated amounts of clearing of habitat of certain species credit species – Large-eared Pied Bat and Grey-headed Flying-fox. Values stated in Chapter 11 of the EIS are consistent with the BAM assessment.
- In comparing Table 6-2 to the not finalised BAM Credit Summary Report in Appendix D the following inconsistencies are noted:
  - for 661\_VZ3\_Low – current vegetation integrity scores do not match (16.1 vs. 15.3)
  - for 661\_VZ10\_Low – current vegetation integrity scores do not match (15.7 vs. 13.8).

### **Species credit species assessment**

#### Sooty Oystercatcher *Haematopus fuliginosus* and Pied Oystercatcher *Haematopus longirostris*

Sooty Oystercatcher was recorded foraging at La Perouse and Pied Oystercatcher was recorded foraging at Kurnell during surveys for this assessment (section 4.4.2), though locations of these observations are not mapped in the BDAR. However, Table 4-5 discounts the need for species polygons for these species on the basis that there is “no suitable breeding habitat identified within or adjacent to the development footprint.” However, this is not consistent with the requirements for these species in the Threatened Species Data Collection (TSDC) which states, for both species, that “This species was allocated to a full species credit because it can not be predicted to occur on a site based on habitat/vegetation/landscape associations. Two survey seasons are required, the first to detect if the site provides breeding habitat and the second to detect winter roosting habitat.”

Local bird observers note that Pied Oystercatcher certainly and Sooty Oystercatcher potentially would use the immediate Kurnell shoreline. Additionally, Grey-tailed Tattler *Tringa brevipes* have in the past used the rock groins to the west near Bonna Point for roosting and could forage, more likely at night, along that shore between Bonna Point and Kamay Botany Bay Nation Park. EES seeks the response of the accredited assessor regarding these points.

#### Large-eared Pied Bat *Chalinolobus dwyeri*

Table 4-5 states that a species polygon for this species includes potential foraging habitat afforded by PCTs with which this species is associated and that occur within the field survey extent situated within 2km of potential breeding habitat. It is noted that the development will result in the loss through clearing of 0.05ha of this potential foraging habitat, which is to be offset by 1 species credit.

## Other minor issues with the BDAR

- Location maps and site maps provided in Fig. 2-1 and Fig. 2-2 and explanation of native vegetation cover should indicate source and date of aerial imagery used.
- Section 2.1.2 states that the study area occurs across three NSW landscape regions (Mitchell 2002) in the following proportions by area:
  - Port Jackson Basin (Poj) - 197.25ha (12%), including all the La Perouse site
  - Sydney – Newcastle Barriers and Beaches (Snb) - 627.94ha (38%)
  - Woronora Plateau (Wpp) - 138.93ha (8%).
- These are proportions of the ‘study area’ (which in this BDAR is equivalent to the BAM ‘assessment area’ formed by a 1500m buffer on the ‘development site’), however about 40% of the ‘study area’ is marine to which no NSW landscape applies.

However, there is no explanation as to which landscape was selected for the assessment and why. The BAM Operational Manual Stage 1 states that if the subject land is located within more than one NSW (Mitchell) landscape, the assessor should select the NSW (Mitchell) landscape in which the largest proportion of impact or improvement will occur. The mention in the executive summary of only the Sydney – Newcastle Barriers and Beaches (Snb) landscape, referred to as “dominating” implies this landscape was chosen. If this is the case, EES concurs with this choice. The BDAR should be amended to clarify this, and if necessary, the BAM Calculator, as this will influence the number of biodiversity credits required to offset unavoided impacts.

- BDAR Section 3.1 describes vegetation survey, typing and condition assessment within the 21.88ha ‘field survey extent’ which includes land both within and adjacent to the development site, within which 9.71ha of native vegetation was determined to comprise **seven** PCTs (661, 1778, 1832, 1204, 772, 1232, 1823), however, the Executive Summary states that six PCTs were identified.

## Submissions of amended versions of the BDAR

To comply with section 6.15 of the *Biodiversity Conservation Act 2016* the BAM calculations and BDAR must be current and certified as such, for instance by signing, at any stage when submitted (or re-submitted) to the decision-maker. When submitting a BDAR the assessor must finalise the BAM Calculator and submit the case in BOAMS and should include in the BDAR the relevant credit reports. To evidence currency the date of submission of the BDAR must be within 14 days of the date shown on the relevant finalised credit report. EES notes that these requirements appear to not to have been met in relation to this BDAR dated 24 June 2021.

This requirement also applies to BDARs, such as this, where the applicant is relying on the transition period allowing continuing use of the BAM 2017. EES reminds the proponent and assessor that the last date for submission of a BDAR prepared in accordance with this version of the BAM for state significant infrastructure and development is 22 October 2021. Where amendments involve changes to assessment data used in the BAM Calculator (e.g. additional threatened species, changes to size or location of impact areas, changes to status of a threatened entity), the BAM calculations and BDAR should be current, and certified as such, when it is re-submitted to the decision-maker. Otherwise, the application and BDAR may need to be amended to align with the new Biodiversity Assessment Method 2020 (‘BAM 2020’) and remove references to BAM 2017.

## Impact on the Towra Point Nature Reserve Ramsar Site (TPNRRS)

The BDAR states that the Towra Point Nature Reserve Ramsar site is located approximately 1km to the southwest of the site (executive summary). Towra Point Nature Reserve and part of the adjoining Towra Point Aquatic Reserve are protected under the [Ramsar Convention](#) as a wetland of international and national significance called the Towra Point Nature Reserve Ramsar Site (TPNRRS, [www.environment.gov.au/cgi-bin/wetlands/ramsardetails.pl?refcode=23](http://www.environment.gov.au/cgi-bin/wetlands/ramsardetails.pl?refcode=23)). As such it is a MNES under the EPBC Act. The site and adjacent areas support significant areas of coastal saltmarsh, an endangered ecological community, smaller areas of other threatened ecological communities, as well as mangroves

and seagrass, making it a highly important fish habitat. The TPNRRS contains around 60 percent of saltmarsh and 40 percent of mangrove communities in the entire Greater Sydney region.

The nature reserve is recognised as one of the four most important migratory bird sites in NSW and is an important breeding area for the endangered little tern. It provides critical roosting and feeding habitat for migratory shorebird species protected under international agreements and supports threatened species.

Most recent information about the TPNRRS can be found in Towra Point Nature Reserve Ramsar Site: Article 3.2 Response Strategy, June 2019 prepared by Umwelt (Australia) Pty Ltd on behalf of NSW National Parks and Wildlife Service.

The BDAR has not acknowledged or assessed potential impacts on this MNES. EES considers potential impacts on the biodiversity values of the TPNRRS should be assessed.

### **Kamay Botany Bay National Park**

It is requested that consideration be given to identification of alternative locations for the installation of the Kurnell services cabinet to reduce impacts to the heritage landscape. Its height of 1200mm in such a prominent location could be detrimental to the sight lines and broader heritage landscape.

National Parks and Wildlife Service (NPWS) also seeks to ensure that appropriate impact protections and mitigation measures are in place, particularly regarding:

- Aboriginal heritage including midden area proximal to the construction zone at Kurnell
- historic heritage, including impact to the heritage landscape and impacts to heritage features
- protection of fauna and flora in the national park, including protection against introduction of species to a national park setting and
- pedestrian safety given construction is in two high visitation sites.

It is noted that the EIS indicates that NPWS will be ascribed a consultation role for several sub-plans under the Construction Environmental Management Plan. This consultation role is agreed to as NPWS will need to ensure that details of operational matters are appropriate and acceptable.

## Attachment 2 – EES assessment of EPBC Act listed threatened species and communities using the NSW Framework for Biodiversity Assessment

### 1. Identifying MNES

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(a) **Confirm** whether all the EPBC Act-listed threatened species and communities that occur on the project site, or in the vicinity are identified in the EIS. Note which species and/or communities have not been identified. *The Commonwealth has provided NSW with referral documentation which includes a possible list of MNES recorded on and within the vicinity of the project site generated from the Environmental Reporting Tool (ERT Report). If you do not have the referral documentation contact the DP&E assessment officer.*

The following entities are listed in the Commonwealth referral document but are not listed in the BDAR: River-flat Eucalypt Forest on coastal floodplains of southern NSW and eastern Victoria, *Falco hypoleucos*, *Rhizanthella slateri*.

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(b) **Comment** on whether the Biodiversity Assessment Method (BAM) has been applied to all EPBC Act-listed threatened species and communities that occur on the project site or in the vicinity.

The BAM has been applied to all EPBC Act-listed threatened species and communities. Sections 3 and 4 of the BDAR list EPBC Act-listed threatened entities that occur on or in the vicinity of the site, and section 5 of the BDAR provides an assessment of likely significant impacts to MNES.

EES notes that there are inconsistencies in the description of the amount of vegetation to be cleared in the EPBC Act MNES assessment compared to figures in the BAM. Section 5.2.3 states that 0.29ha is to be cleared, but Table 6-2 states 0.06ha is to be cleared. There are also inconsistencies in the stated amounts of clearing of habitat for the Grey-headed Flying-fox.

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(c) In the circumstance where there are EPBC Act-listed species that are not addressed by the BAM (i.e. migratory species) **comment** on whether these species have been assessed in accordance with the SEARs and provide references to where the assessment information is detailed in the EIS.

It is noted that all the EPBC Act-listed entities that have not been considered in the BDAR are also BC Act-listed entities. Adequate surveys have been undertaken, as described in sections 3 and 4 of the BDAR, for all BC Act listed entities. All BC Act listed species have been assessed in accordance with the SEARs. Therefore, the three EPBC Act-listed entities that have not been addressed by the BDAR, have also been assessed in accordance with the SEARs.

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(d) **Verify** that the proponent has expressed a statement about the potential impact i.e. likely significant, low risk of impact, not occurring, for each listed threatened species and community protected by the EPBC Act referred to in 1(a). Note which species and/or communities have not been addressed in this manner.

Sections 5.1, 5.2 and 5.3 of the BDAR assess the likelihood of EPBC Act-listed entities being impacted by the proposal. The only entities that have not been addressed are the ones referred to in 1(a).

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(e) **Identify** where further information from the proponent is critical to the assessment of MNES particularly in relation to mapping Table 1 (A), analysis of impacts Table 1 (F) and Table 2 (F), avoidance, mitigation and offsetting, and 6.

No further information is critical to the assessment of MNES.

## 2. Assessment of the relevant impacts

All EPBC Act-listed species and/or communities that the Commonwealth consider would be significantly impacted (as noted in the referral documentation) should be assessed and offset. These are referred to as relevant impacts. *If you do not have the Commonwealth's referral brief contact the DP&E assessment officer.*

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(a) **Verify** [by ticking the following boxes]:

- ✓ the nature and extent of all the relevant impacts has been described
- ✓ measures to avoid and mitigate have been described
- ✓ an appropriate offset for any residual adverse significant impact has been determined. *Note an offset is appropriate if calculated by the BAM and provides an offset specifically for the entity impacted.*

The Commonwealth's project assessment notes list a number of species for which the Department considers there is likely to be a significant impact. It is noted that none of these are species relevant to EES, as they are not terrestrial species. It is assumed that DPI Fisheries are providing a bilateral assessment of these species.

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(b) **Note** if information in relation to any of these boxes has not been provided for any relevant EPBC Act-listed species and communities.

All relevant information has been provided.

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(c) There may be listed threatened species and communities for which the proponent will claim that the impact will be **not** significant in accordance with the *EPBC Act Significant Impact Guidelines*. Please **provide** advice for cases where OEH disagrees with this finding. *Note that generally the Commonwealth will not accept that a species determined to be significantly impacted at the referral decision stage is not likely to be significantly impacted unless strong evidence can be provided.*

Not applicable – there are no terrestrial species for which there are relevant impacts.

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(d) Provide references to where specific lists or tables are detailed in the EIS i.e. *List of EPBC Act-listed EECs Appendix J Table 4 pg 65*

The PMST search results are included as Appendix C of the BDAR.

**Table 1 Impact Summary Relevant EPBC Act –listed Ecological Communities (refer to section 3)**

A	B	C	D	E		F	G
EPBC Act -listed EEC	Y/N	PCTs	Y/N/comment	Ha	Credits	Comment	Relevant page numbers in the EIS
N/A – no relevant terrestrial EPBC Act listed EECs will be significantly impacted							

(A) **List** the relevant EPBC Act listed ecological communities that will be significantly impacted in accordance with the referral documentation.

(B) **Verify** that there is evidence in the EIS that listed EEC and species habitat has been mapped in accordance with relevant listing guidelines (Yes/No).

*Proponents are required by the SEARs to ensure that EPBC-listed communities are mapped in accordance with EPBC Act listing criteria. It is important that any derived native grassland components of an EPBC listed EEC are included in the mapping of native vegetation extent.*

(C) **List** the Plant Community Types (PCTs) associated with the ecological communities in accordance with the BAM.

(D) **Confirm** that the identification of PCTs has been correct (Yes/No) and comment if not correct.

(E) **Record** the area of impact (ha) and credits required.



(F) **Comment** on the analysis of the impacts in relation to the nature and extent of the impact and whether or not the EIS includes an analysis of the direct and indirect impacts to the EEC. Note whether further information might be required.

(G) **Cite** relevant page numbers for details provided the EIS and Appendices for each EEC.

**Table 2 Impact Summary Relevant EPBC Act –listed Species (refer to section 4)**

A	B	C	D	E		F	G
Threatened species (listed under the EPBC Act)	Credit Type (SC/EC)	Record PCTs associated with ecosystem credits	Y/N/Comment	Ha (total species habitat)	Credits (total species habitat)	Comment	Relevant page numbers in the EIS and Appendices
N/A – no relevant terrestrial EPBC Act listed species will be significantly impacted							

(A) **List** the relevant threatened species that will be significantly impacted in accordance with the referral documentation.

(B) **Record** whether the relevant threatened species is classified as “species credit species” of ecosystem credit species for the purposes of the BAM.



- (C) **List** the PCTs associated with the ecosystem credit species.
- (D) **Verify** that the habitat polygons for MNES have been mapped appropriately representing the foraging and/or breeding habitat for the species that will be impacted by the development.
- (E) **Record** the area of impact (ha) and credits required. For impacts associated with ecosystem credit species identify the total credit requirements associated with the cleared PCTs identified as habitat for the species.
- (F) **Comment** on the adequacy of the analysis of the impacts in relation to the nature and extent of the impact and whether or not the EIS includes an analysis of the direct and indirect impacts to the species. Note if further information is required.
- (G) **Cite** relevant page numbers for details provided in the EIS and Appendices for each threatened species.

### 3. Avoid, mitigate and offset

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**Comment** on whether or not the EIS identifies measures to avoid and minimise impacts on the relevant EPBC Act-listed threatened species and communities. The BAM requires that proponents detail these efforts and commitments in the EIS. Identify gaps in the discussion on measures to avoid and minimise impacts on Commonwealth matters. Provide references to sections and page numbers in the EIS.

N/A – no relevant terrestrial EPBC Act listed entities will be significantly impacted. However, it is noted that the BDAR proposes adequate measures to avoid and minimise impacts, which are described in section 6 of the BDAR.

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**Comment** on the adequacy and feasibility of measures to avoid and minimise impacts. Identify inadequacies where further efforts could be made to avoid and minimise impacts on Commonwealth matters. Provide references to sections and page numbers in the EIS that discuss avoidance and mitigation measures relevant to EPBC Act-listed species and communities.

N/A – no relevant terrestrial EPBC Act listed entities will be significantly impacted. However, it is noted that reasonable efforts have been made to avoid impacts, and the proposed mitigation measures are adequate.

### 4. Offsetting

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(a) **Verify** [by ticking the following boxes] that the offsets proposed to address impacts to EPBC-listed threatened species and communities are in accordance with the requirements under the EPBC Act.

- ✓ An appropriate offset for any residual adverse significant impact has been determined.
- ✓ Proposed offsets for EECs provide a like for like outcome i.e. proponents have identified PCTs attributed to the specific threatened ecological community being impacted
- ✓ Proposed offsets have been determined using the BAM

If offsets have not been determined in accordance with the BAM, Planning is required to discuss the proposed approach with the Commonwealth as soon as possible.

N/A – no relevant terrestrial EPBC Act listed entities will be significantly impacted. However, it is noted that offsets have been adequately determined for all entities to be impacted. Biodiversity credits have been calculated and are to be retired in accordance with the BAM.

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**5. Comment** on whether the information and data relied upon for the assessment have been appropriately referenced in the EIS. Comment on the validity of the sources of information and robustness of the evidence.

There are no significant sources of information and data which have not been used.

**Table 3 Summary of Offset Requirements**

A	B	C	D	E	F
Threatened species or EEC (listed under the EPBC Act)	Credits required as calculated by the BAM	Credits generated from offsets in remnant vegetation	Credits generated from offsets proposed by other means	Comment on the proposed offsets.	Relevant page numbers in the EIS and Appendices
N/A – no relevant terrestrial EPBC Act listed entities will be significantly impacted					

- (A) **List** the relevant threatened species or ecological community included in the proposed offset package (these are the listed species and communities that will be significantly impacted in accordance with the *EPBC Act Significant Impact Guidelines 1.1.*). Identify any relevant species or ecological communities which have not been included in the proposed offset package.
- (B) **List** the total credit requirement identified by the BAM for impacted listed threatened species and ecological community. For EECs and ecosystem credit species this is the sum of the credits generated by PCTs associated.
- (C) **Identify** the total number of required credits which are proposed to be retired through conserving and managing remnant / mature vegetation.
- (D) **Identify** the number of credits proposed to be met through other methods allowable under the BAM, such as rehabilitation of impacted areas or regrowth vegetation.
- (E) **Comment** on the adequacy of the proposed offset in meeting requirements of the BAM and the EPBC Act. In particular is there a reasonable argument for a shortfall in credits required for MNES and/or non-compliance with like-for like? Are the offsets proposed by means other than protection of remnant vegetation adequate?
- (F) **Reference** the relevant page numbers from the EIS and Appendices for each threatened species and community.