

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

I, Anthony Witherdin, Director Key Sites Assessments, of the Department of Planning, Industry and Environment, under section 7.9(2) of the *Biodiversity Conservation Act 2016*, determine that the proposed development is not likely to have any significant impact on biodiversity values and therefore a Biodiversity Development Assessment Report is not required.

Proposed development means the construction of an 80-storey mixed-use development comprising residential, hotel and retail uses as detailed in the BDAR waiver application dated 4 November 2019.

If the proposed development changes so that it is no longer consistent with this description, a further waiver request is required.

If you do not lodge the development application related to this determination for the proposed development within 2 years of the issue date of this determination, you must either prepare a BDAR or lodge a new request to have the BDAR requirement waived.



Director
Key Sites Assessments
Planning and Assessment
Department of Planning, Industry and Environment
(as delegate of the Secretary)

Date: 2 December 2019



Mr Thomas Atkinson
Ethos Urban Pty Ltd
173 Sussex St
SYDNEY NSW 2000

Our ref: SSD 10362

2 December 2019

Dear Mr Atkinson,

**338 Pitt Street Sydney (SSD 10362)
Biodiversity Development Assessment Report Waiver**

I refer to your correspondence received on 4 November 2019 seeking to waive the requirement to submit a Biodiversity Development Assessment Report (BDAR) with the State significant development application for 338 Pitt Street (SSD 10362).

Under section 7.9(2) of the Biodiversity Conservation Act 2016 (BC Act);

“Any such application is to be accompanied by a biodiversity assessment report unless the Planning Agency Head and the Environment Agency Head determine that the proposed development is not likely to have any significant impact on the biodiversity values”.

The authority of the “Planning Agency Head” to determine whether a proposed development is “not likely to have any significant impact on biodiversity values” was delegated to Directors within the Planning Services Division on 2 December 2017.

I have reviewed your request having regard to Sections 1.5 and 7.3 of the BC Act and Clause 1.4 of the Biodiversity Conservation Regulation 2017, and have determined that the proposed development (SSD 10362), as described in your waiver request, is not likely to have any significant impacts on biodiversity values.

The delegated Environment Agency Head in the Office of Environment and Heritage has also determined that the proposed development is not likely to have any significant impacts on biodiversity values in a letter dated 18 November 2019 and a copy of that letter is attached.

Therefore, a waiver under section 7.9(2) of the BC Act is granted for the proposed development and a BDAR is not required to accompany the SSD application.

If there are any amendments to the proposed development, this BDAR waiver determination will not be valid. You will need to either prepare a BDAR or lodge a new request to have the BDAR requirement waived.

Should you have any further enquiries, please contact Lewis Demertzi, Key Sites Assessments, at the Department on (02) 8275 1138.

Yours sincerely

Anthony Witherdin
Director
Key Sites Assessments

BDAR waiver decision report

Project Name: 338 Pitt Street, Sydney

SSI/SSD Application Number: SSD 10362

Proponent: Touchstone Partners Pty Ltd

Date request received: 7 November 2019

Biodiversity value	Meaning	Relevant (✓ or NA)	Potential impacts	
			Applicant comment/justification	EES comment
Vegetation abundance 1.4(b) BC Regulation	Occurrence and abundance of vegetation at a particular site		The majority of the site is composed of buildings, roads and carparks which contained no vegetation. Vegetation within the site is not consistent with any remnant native vegetation communities and did not conform to any listed Plant Community Types (PCTs).	This conclusion is supported. Aerial photos have been provided, which demonstrate that there is unlikely to be any remnant vegetation remaining at the site. DPIE EES vegetation mapping also supports this conclusion.
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		Due to previous and current land management practices, vegetation and soil within the subject site has been highly modified or disturbed and lacks any natural resilience. There is no vegetation present within the site, and therefore no remnant native vegetation community or listed Plant Community Type (PCT) in the BioNet Vegetation Classification are present. No Threatened Ecological Communities will be impacted as a result of the development. The development does not compromise the vegetation integrity of the site as no vegetation is currently present. No vegetation will be removed as part of the proposed development.	This conclusion is supported. There is no vegetation on site.
Habitat suitability 1.5(2)(b) BC Act 6.1(1)(a) BC Regulation	Degree to which the habitat needs of threatened species are present at a particular site		Suitable habitat for threatened species is highly limited within the site. No habitat is available for any threatened flora species. No foraging habitat is available for any threatened fauna species. The site does not contain sufficient foraging resources to sustain any threatened fauna species. No roosting habitat is available within the subject site for hollow-dependent threatened fauna species due to the absence of hollow-bearing trees. The human made structures present within the study area are modern and do not consist of potential roosting habitat for threatened micro bat species	This conclusion is supported. There is limited threatened species habitat on site.

Biodiversity value	Meaning	Relevant (✓ or NA)	Potential impacts	
			Applicant comment/justification	EES comment
			such as open roof crevices, culverts, bridges, railway tunnels or stormwater tunnels. The development will not compromise habitat suitability for threatened species. The proposed development will not impact upon any habitat specified under Clause 6.1 (1) (a) of the Biodiversity Conservation 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 ecological communities are present within the site. No vegetation is present within the site or requires removal as part of the proposed development. No habitat was available for threatened flora species due to the high level of modification of vegetation and soils within the site. No foraging habitat is available to any fauna species. The site does not contain sufficient foraging resources to sustain any threatened fauna species. No roosting habitat is available within the subject site for hollow-dependent threatened fauna species due to the absence of hollow-bearing trees. The development will not affect threatened species.	This conclusion is supported, the site is unlikely to provide habitats to support any threatened species.
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 facilitate the movement of those species across their range		Movement of threatened species across the site would be limited by the existing multistorey buildings and complete lack of vegetation. The site does not provide any significant level of connectivity to facilitate movement of threatened species across their range.	This conclusion is supported. The site does not provide connectivity to other areas.
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		Movement for less mobile threatened fauna such as mammals across the site is highly unlikely due to existing development within the site. Opportunities for movement across the site for mobile threatened fauna including birds and bats are available, however limited to multi-storey buildings. The site is not considered to be significant for the movement of any threatened species to maintain their lifecycle.	This conclusion is supported. Movement of threatened fauna across the site is likely to be rare, and not affected by the proposal.
Flight path integrity 1.4(e) BC Act	Degree to which the flight paths of protected animals over a particular site are free from interference		The landscape within and surrounding the site is highly urbanised, with several multi-storey buildings present near the site. The flight paths of protected animals over the site are currently restricted due to existing buildings and unlikely to be further impacted by the proposed project. The	This conclusion is supported, there should be no or negligible impacts on flight path integrity of any species.

Biodiversity value	Meaning	Relevant (✓ or NA)	Potential impacts	
			Applicant comment/justification	EES comment
6.1(1)(e) BC Regulation			proposed development will not significantly affect flight paths of protected animals.	
Water sustainability 1.4(f) and 6.1(1)(d) BC Regulation	Degree to which water quality, water bodies and hydrological processes sustain threatened species and threatened ecological communities at a particular site.		No natural water courses are present within the site. In its current state, the site is highly developed and does not contain water bodies or contribute to hydrological processes that sustain threatened species or ecological communities within or adjacent to the site. The proposed development will not impact on water quality, water bodies or hydrological processes.	This conclusion is supported, there are unlikely to be any impacts on water sustainability as a result of the proposal.

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.



12/11/19

Sarah Burke
**A/Senior Team Leader, Compliance & Regulation, Greater Sydney Branch
Environment, Energy & Science Group**

Date

Decision

I, Alex Graham, Director Greater Sydney, of the Department of Planning, Infrastructure 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 as described in DOC19/976926 and Schedule1 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 as described in DOC19/976926 is not likely to have any significant impact on biodiversity values and therefore a BDAR is required.~~



18/11/2019

Alex Graham
**Director Greater Sydney
Environment, Energy & Science Group**

Date

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

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

Proposed development means the development as described in DOC19/976926 and Schedule 1. If the proposed development changes so that it is no longer consistent with this description, a further waiver request is required.



18/11/2019

Alex Graham
Director Greater Sydney
Environment, Energy & Science Group

Date

SCHEDULE 1 – Description of the proposed development

The proposal is for a mixed-use development which will consist of residential, a hotel and food and beverage opportunities. The proposed development site is located within Sydney's Central Business District and is bounded by Pitt, Castlereagh and Liverpool Streets. No vegetation is present within the site or requires removal as part of the proposed development. No habitat is available for any threatened flora species. The site does not contain sufficient foraging resources to sustain any threatened fauna species, and no roosting habitat is available. The human made structures present within the study area are modern and do not consist of potential roosting habitat for threatened microbat species.



Figure 1: Satellite imagery of the site, located within the Sydney CBD