



14 June 2019

Secretary, NSW Department of Planning, Industry and Environment  
Level 22, 320 Pitt Street  
Sydney NSW 2000  
Attention: Kelly McNichol

Dear Secretary

SSD 6917: OAKDALE SOUTH INDUSTRIAL ESTATE, **SSD6917 MOD 11** - S.4.55(1A) APPLICATION TO UPDATE VEGETATION MANAGEMENT PLAN, REMOVE THE BIODIVERSITY OFFSET STRATEGY AND UPDATE RELEVANT CONDITIONS OF CONSENT

I refer to Development Consent SSD6917, which was approved on 26 October 2016 for Oakdale South Estate (OSE). This S.4.55(1A) application seeks to modify SSD6917 to:

- + Update the Vegetation Management Plan (VMP)
- + Remove the Biodiversity Offset Strategy (BOS), which is now obsolete, from the approval
- + Update Conditions of Consent B4, E47 and E47A.

This is the eleventh (11) S.4.55(1A) application lodged for SSD6917 (MOD 11). The following documents are relevant to this application:

- + **Appendix A** – Amended Vegetation Management Plan, écologique, June 2019
- + **Appendix B** – Letter from Ecologique to Goodman, dated 25.02.19
- + **Appendix C** – Email from DPE to Goodman responding to Ecologique letter, dated 29.03.19

Relevant Further detail on the proposed modification is provided in Section 2 below.

## 1. Background

SSD6917 Stage 1 Development approval was granted subject to the implementation of the following strategies as relevant to biodiversity and riparian lands:

- 1) A Biodiversity Assessment Report (BAR) (Cumberland Ecology 2015a) was lodged with and approved under SSD6917. This BAR assessed the ecological impacts associated with vegetation clearing as per the requirements of the Framework for Biodiversity Assessment (FBA). The BAR concluded that 160 ecosystem credits were required to offset the lost on-site vegetation, which was conditioned under Consent Condition E46.

### Goodman Group

Goodman Limited | ABN 69 000 123 071  
Goodman Funds Management Limited | ABN 48 067 796 641 | AFSL Number 223621  
as responsible entity of Goodman Industrial Trust | ARSN 091213 839

Level 17, 60 Castlereagh Street, Sydney NSW 2000 | GPO Box 4703, Sydney NSW 2001 Australia  
Tel +61 2 9230 7400 | Fax +61 2 9230 7444

Goodman Logistics (HK) Limited | Company No. 1700359 | ARBN 155 911 149 | a Hong Kong company with limited liability  
Suite 2008, Three Pacific Place, 1 Queen's Road East, Hong Kong | Tel +852 2249 3100 | Fax +852 2525 2070

info-au@goodman.com | www.goodman.com

- 2) A Biodiversity Offset Strategy (BOS) (Cumberland Ecology 2015a) was also included and approved under SSD6917. The BOS specified how Goodman would retire the 160 ecosystem credits, which in summary included:
  - a) Establishing a biodiversity offset area adjacent to the development footprint of the Stage 1 DA, which would generate sufficient ecosystem credits to retire 147 ecosystem credit balance, and
  - b) Purchasing and retiring 13 ecosystem credits, which were considered unable to be generated within the biodiversity offset area<sup>1</sup>.
- 3) A VMP which outlined the revegetation works required to manage the impacts of the Stage 1 DA on the riparian areas of Ropes Creek and its tributary (referred to as Drainage Line 1) was also included and approved under SSD6917. The VMP included areas of the Ropes Creek riparian corridor, which overlapped with areas of the BOA.
- 4) The BAR was subsequently updated in MOD1, which reduced the area of impact to vegetation as a result of the refinement of earlier GIS based mapping (that included areas of shading, which inadvertently included areas of exotic grassland). The updated BAR (Cumberland Ecology 2016a) concluded that a total of 158, rather than 160 ecosystem credits, were required to offset vegetation clearing. This due to a decrease to clearing of native vegetation from 3.58 to 3.55 ha.
- 5) The BOS was also subsequently updated in MOD1, due to changes to lot and estate road layout, which nominally reduced the area of the proposed biodiversity offset area (BOA).
- 6) OEH objected to the use of E2 zoned land for biobanking purposes believing it constituted an existing 'conservation obligation' under the Threatened Species Conservation (Biodiversity Banking) Regulation 2008 (Biobanking Regulation).

As E2 zoning of land provides for environmental conservation to be undertaken without development consent, the Department concluded in its assessment of SSD6917 that the proposed conservation measures on this land does not constitute an existing conservation obligation.

- 7) Subsequent to the Department's determination (as per point 6) OEH objected to the measures proposed under the VMP, believing these would constitute an existing 'conservation obligation' under the Biobanking Regulation. Despite that the proposed VMP:
  - Addressed mitigation measures for the same SSD,
  - Was yet to approved and/or conditioned under SSD6917, and
  - No other prior conversation obligations existing for this land.
- 8) The Department responded by amending Consent Condition E47 to include separating the VMP and proposed BOA areas to ensure no geographic overlap.

The above conditions allowed Goodman to commence works on the realignment of Drainage Line 1, while resolving the issues associated with the VMP and the BOA at a later date (via a S.96 application). By separating the geographic overlap of the VMP and the BOA, the Department conditioned the implementation of the VMP without prejudicing the creation of the BOA.

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<sup>1</sup> The 13 ecosystem credits have since been purchased and retired by Goodman

- 9) Following SSD 6917 approval on 26.10.16, the VMP was updated in accordance with Condition E47 (to remove the geographic overlap between the VMP area and the BOA) and was submitted to and approved by the Department on 16.12.16.
- 10) Following the updated VMP approval on 16.12.16, OEH expressed their preference to have the main riparian corridor area of the VMP incorporated into the overarching BOS. The Department envisaged that a S.96 application be lodged in the future to update Condition E47 to remove the requirement that no geographic overlap between the VMP and the BOA take place.
- 11) The VMP and BOS were updated and approved in MOD 6 to formalise the BOA and VMP management areas such that
  - The main area of Ropes Creek riparian zone was incorporated into the onsite BOA of OSE (and associated BOS), in order for it to be managed in perpetuity under the relevant Biodiversity Management Action Plan and biobanking agreement;
  - The smaller and disjunct riparian area adjacent to Precinct 6 and the section of the watercourse realignment (included in the BOS 2015) were removed from the BOA;
  - Amended areas of native vegetation to be cleared and number of ecosystem credits required to offset clearing (as detailed in the updated and approved BAR and BOS in MOD 1) were updated in Consent Condition E46 (which was inadvertently not updated in MOD 1 conditions); and
  - All areas are amended to reflect more accurate data collected during surveys of Oakdale South's relevant boundaries (LTS Lockley, 2017).
- 12) During the assessment of SS6917 the Threatened Species Conservation Act 1995 (TSC Act) was repealed and replaced by the Biodiversity Conservation Act 2016 (BC Act) with transitional arrangements provisioned for under the Biodiversity Conservation (Savings and Transitional) Regulation 2017.
- 13) Transitional arrangements for Biodiversity Offsetting Strategies prepared under the repealed TSC Act expired in February 2018. This resulted in the redundancy of the Biodiversity Offsetting Strategy Amended (BOS), and the subject of MOD 6, which was approved by the Department in June 2018.
- 14) DPE provided confirmation by email of 21 March 2019 (Appendix B) confirming that to address Condition E46, Goodman purchase appropriate BAM credits from the market and obtain a statement of reasonable equivalence to convert the existing biobanking based credit obligation into BAM credits. It was suggested that Goodman enter a biodiversity stewardship agreement to generate the relevant credit types, then retire the relevant credits.

## 2. Proposed Modification

Pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act), we seek the following modification to SSD6917 under MOD11:

### 2.1 Update to Vegetation Management Plan (VMP)

The attached Amended VMP (**Appendix A**) seeks to reinstate parts of the Ropes Creek riparian corridor, which were included in the now redundant Biodiversity Offset Strategy.

Reason:

- + NRAR was consulted during the assessment of MOD 6, which removed geographical overlaps between the pre-existing VMP and biodiversity offset area.
- + NRAR confirmed they had no issue with the revised VMP no longer applying to that part of the Ropes Creek corridor as in their view the objects of the WM Act were being met by the application of the BOS (écologique 2018).
- + As MOD 11 seeks to remove the BOS, Goodman proposes to restore/rehabilitate and maintain areas of the Ropes Creek riparian corridor to fulfil the objects of the WM Act. Therefore, the VMP is proposed to be updated to incorporate this area. (Please refer to the VMP, **Appendix A**, for additional explanation on the VMP update.)

## **2.2 Remove Biodiversity Offset Strategy from SSD6917**

Transitional arrangements for Biodiversity Offsetting Strategies prepared under the repealed TSC Act expired in February 2018. This resulted in the redundancy of the Biodiversity Offsetting Strategy for Oakdale South.

Reason:

- + The BOS prepared under the FBA and TSC Act is no longer accepted by the OEH and will not be accepted by the Biodiversity Conservation Trust (BCT) for the creation of biodiversity offsetting areas. As the BOS is therefore obsolete, it is proposed for removal under MOD11.

## **2.3 Update to Conditions of Consent**

The following Conditions of Consent are proposed for update to affect the above sought modification to SSD 6917, with ~~strike through~~ indicating wording proposed for removal and **red indicating** new wording:

### **2.3.1) Condition B4**

Update Condition B4 as follows:

*The Applicant shall carry out the Development generally in accordance with the:*

- (a) *EIS and RTS;*
- (b) *the letter titled 'Re: SSD6917 Oakdale South Industrial Estate, TransGrid Easement Flood Extents ', ref 14-193-ATL-TRANSGRID-L2, prepared by At&I, dated 18 May 2016 and all appendices;*
- (c) *the Supplementary Response to Submissions titled 'Re: Oakdale South Estate SSDA\_6917 and all annexures, prepared by Urban Advisory Services, dated 12 July 2016;*
- (d) *the letter report titled 'Oakdale South Estate, Operational Noise Contours, Adverse Weather Conditions', prepared by SLR, dated 13 July 2016;*
- (e) *the letter titled 'Re: Oakdale South Estate - State Significant Development Application Ref. 6917' and all annexures, prepared by Urban Advisory Services, dated 8 September 2016;*

- (f) the section 4.55(2) Modification Application prepared by Urbis, dated 4 November 2016 and all supporting information;
- (g) the section 4.55(1A) Modification Application SSD 6917 MOD 3, prepared by Goodman, dated 5 April 2017 and all supporting documentation, excluding Appendix E;
- (h) the section 4.55(1A) Modification Application SSD 6917 MOD 4, prepared by Urbis, reference: "Oakdale South MOD 4\_Final" and all supporting documentation;
- (i) the section 4.55(1) Modification Application SSD 6917 MOD 5, prepared by Goodman, dated 1 November 2018 and all supporting information;
- (j) the section 4.55(1A) Modification Application SSD 6917 MOD 6, prepared by Goodman, dated 26 March 2018 and all supporting information;
- (k) the section 4.55(1A) Modification Application SSD 6917 MOD 7, prepared by Goodman, dated 19 February 2018 and all supporting information;
- (l) the section 4.55(1A) Modification Application SSD 6917 MOD 8, prepared by Goodman, dated 28 August 2018 and all supporting information;
- (m) the section 4.55(1A) Modification Application SSD 6917 MOD 9, prepared by Goodman, dated 6 December 2018 and all supporting information;
- ~~(n)~~ the development layout plans and drawings listed at Appendix 1; and
- ~~(o)~~ the Management and Mitigation Measures at Appendix 3, *with the exception of references to the Biodiversity Offset Area (BOA) and Biodiversity Offsetting Strategy (BOS).*

Reason:

- + Update the SSD6917 approval to reflect recent MOD applications.
- + Update Condition B4(o) to remove consideration of the BOS in the Mitigation Measures.

### **2.3.2) Condition E47 – Revised VMP**

Condition E47 proposed to be updated as follows:

*E47. Prior to the issues of any Construction Certificate that includes the creek alignment works, the Applicant shall submit a revised Vegetation Management Plan (VMP). The revised VMP shall:*

- a. be submitted to the satisfaction of the Secretary;*
- b. be prepared in consultation with the ~~OE~~ **Natural Resources Access Regulator (NRAR);***
- c. be consistent with the management measures and recommendations of the ~~draft~~ Vegetation Management Plan prepared by Ecohort Pty Ltd, dated 31 August 2015; and*
- d. be implemented for a period of no less than five (5) years)*

Reason:

- + NRAR are the relevant authority that administer VMPs on waterfront land under the Water Management Act 2000 (WM Act).

### **2.3.3) Condition E47A – Management Actions of Biobank Agreement**

Condition E47A proposed to be removed:

~~E47A. The management actions of any Biobanking Agreement applicable to the site are to be implemented.~~

Reason:

- + Biobanking agreements are no longer accepted by the OEH.

### 3. Statutory Provisions

Section 4.55(1A) of the Act stipulates the following provisions:

***A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:***

**(a) it is satisfied that the proposed modification is of minimal environmental impact, and**

The proposed update to the VMP, removal of the BOS, and recommended changes to the Conditions of consent will not result in any additional environmental impact to that approved under SSD6917. The update to the VMP and BOS does not seek to change the approved works to the riparian corridor and BOA under the SSD6917. Substantially the same extent of vegetation is proposed to be disrupted and planted in accordance with that originally approved under SSD6917.

**(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and**

The development remains substantially the same as that approved under SSD6917, with the works in the riparian corridor and BOA remaining unchanged.

**(c) it has notified the application in accordance with:**

**(i) the regulations, if the regulations so require, or**

**(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**

Noted.

**(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.**

Noted.

## 4. Conclusion

Pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act), we hereby seek to amend SSD 6917 to:

- + Update the Vegetation Management Plan (VMP) and remove the Biodiversity Offset Strategy (BOS) approved with SSD6917.
- + Update Conditions B4, E47 and E47A of SSD6917, concerning ecosystem credits and the VMP.

Based on the reasons provided above, we are of the opinion that the proposed change to SSD6917 is justified.

Yours sincerely

A handwritten signature in black ink, appearing to be "Guy Smith", written over a faint, larger signature.

Guy Smith  
Planning Manager