



Ms Jane Freeman
Architectus
Level 18, MLC Centre
19 Martin Place
SYDNEY NSW 2000

Our ref: SSD 9694

Dear Ms Freeman,

Subject: Request to waive requirement to prepare a Biodiversity Development Assessment Report

I refer to your correspondence received on 29 January 2019 seeking to waive the requirement to submit a Biodiversity Development Assessment Report (BDAR) with the State significant development application for 301 & 305 Kent Street and 35-39 Erskine Street, Sydney – Hotel Development (SSD 9694).

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 9694), 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 13 February 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 Tim Green, Key Sites Assessment, at the Department on (02) 8275 1065.

Yours sincerely

David McNamara

Director

Key Sites Assessments (as nominee of the Secretary)

To	David McNamara, Director, Key Sites Assessment
From	Tim Green, Planning Officer, Key Sites Assessment
Date	15 February 2019
BDAR Register	Yes

Subject: 301-305 Kent Street and 35-29 Erskine Street Sydney – Hotel development (SSD 9694) – Request for Biodiversity Development Assessment Report waiver

Purpose

To consider a request from Architectus on behalf of Romanous Developments Pty Ltd (the Applicant), dated 29 January 2019, seeking the Secretary's approval to waive the requirement for a biodiversity development assessment report (BDAR) under section 7.9(2) of the *Biodiversity Conservation Act 2016* (BC Act) for the above development.

Background

Section 7.9(2) of the BC Act requires that an application for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for State significant development (SSD) *"is to be accompanied by a biodiversity development 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 biodiversity values"*.

The power to determine whether a SSD proposal is *"not likely to have any significant impact on biodiversity values"* (on behalf of the *Planning Agency Head*) has been delegated to Director level within the Planning Services Division.

Consideration

To determine whether a proposed development is likely to have any significant impact on biodiversity values, the Applicant has carried out an assessment of the proposal against the eight biodiversity values contained within section 1.5 of the BC Act and clause 1.4 of the *Biodiversity Conservation Regulation 2017* (**Attachment A**).

As the proposal relates to the development of a site that has accommodated extensive development since 1890, it is considered that it is not likely to have any significant impact on biodiversity values.

The delegated *Environment Agency Head* in the Office of Environment and Heritage has considered the waiver request and is satisfied that the proposed development is not likely to have any significant impact on biodiversity values. Accordingly, the delegate has granted a waiver in a letter received 13 February 2019 (**Attachment B**).

29 January 2019

Ms Carolyn McNally
Secretary
NSW Department of Planning and Environment
320 Pitt Street
Sydney NSW 2000

RE: SSD Application 9694 Stage 1 concept proposal for a hotel development – Request for Waiver to Prepare a Biodiversity Development Assessment Report Pursuant to Clause 7.9 of the *Biodiversity Conservation Act 2016*

Dear Ms McNally,

On 20 April 2018, Romanous Developments Pty Ltd received the Secretary's Environmental Assessment Requirements (SEARs) for a hotel development on land at 301 & 305 Kent Street and 35–39 Erskine Street, Sydney. The staged State Significant Development (SSD) Application will initially seek concept approval for the proposed land use, gross floor area, building envelope, pedestrian and vehicle access, and the provision of basement car parking. A future Stage 2 SSD Application will be then lodged for demolition and excavation works and the construction of the hotel building.

Item 12 of the SEARs requires that the Environmental Impact Statement (EIS) shall:

"provide an assessment of the proposal's biodiversity impacts in accordance with the requirements of the Biodiversity Conservation Act 2016, including the preparation of a Biodiversity Development Assessment Report where required under the Act."

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

"Any such application [SSD] is to be accompanied by a biodiversity development 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 biodiversity values."

The subject site (identified in **Figure 1** overleaf) is located in a highly urbanised context in the Sydney Central Business District (CBD) and has been historically cleared of any vegetation. The site is occupied entirely by existing buildings. An inspection of the site has confirmed that there is no existing biodiversity present on the site which could potentially be impacted by the proposal. Further, the Office of Environment and Heritage (OEH) Biodiversity Values Map does not identify the land as having high biodiversity value. It is therefore concluded that a Biodiversity Development Assessment Report (BDAR) should not be required under the circumstances. Accordingly, it is requested that this requirement be waived.

A request for a waiver of the requirement for a BDAR should contain sufficient evidence to determine whether the proposed development is likely to have a significant impact on biodiversity values, including a specific assessment against the relevant Biodiversity Values contained at Section 1.5 of the BC Act and Clause 1.4 of the *Biodiversity Conservation (BC) Regulation 2017*.

A specific assessment of the proposal against the relevant biodiversity values has been provided in **Table 1** overleaf.

Clause	Comment
Biodiversity Conservation Regulation 2017 – Clause 1.4	
<i>(a) threatened species abundance – being the occurrence and abundance of threatened species or threatened ecological communities, or their habitat at a particular site</i>	The site is located in the Sydney CBD and does not contain any vegetation.
<i>(b) vegetation abundance – being the occurrence and abundance of vegetation at a particular site</i>	The site is located in the Sydney CBD and does not contain any vegetation.
<i>(c) habitat connectivity – being the degree to which a particular site connects different areas of habitat of threatened species to facilitate the movement of those species across their range</i>	The site has previously been cleared and is located within a dense urban environment which does not connect areas of habitat.
<i>(d) threatened species movement – being the degree to which a particular site contributes to the movement of threatened species to maintain their lifecycle</i>	The site has previously been cleared and is located within a dense urban environment which does not facilitate the movement of threatened species.
<i>(e) flight path integrity – being the degree to which the flight paths of protected animals over a particular site are free from interference</i>	There is no indication that the flight paths of any protected species will be interfered with by the proposal.
<i>(f) water sustainability – being the degree to which water quality, water bodies and hydrological processes sustain threatened species and threatened ecological communities at a particular site</i>	The proposed development will not result in any adverse impacts on water bodies surrounding the site.

For the reasons provided in the above assessment, it is considered that the proposed development will not result in any significant impact on the biodiversity values of the site, and that a waiver to the provision of a BDAR can therefore be provided. We trust that the information contained within this letter is sufficient to allow the Department to waive this requirement under the circumstances. Should you require any further information, please do not hesitate to contact Taylar Vernon, Senior Urban Planner, on (02) 8252 8400 or taylar.vernon@architectus.com.au.

Yours sincerely,



Jane Freeman
Principal Urban Planner
Architectus



Office of
Environment
& Heritage

DOC19/107291
SSD 9694

Timothy Green
Planning Officer – Key Sites Assessments
NSW Planning and Environment
GPO Box 39
SYDNEY NSW 2001

**301-305 Kent Street and 35-39 Erskine Street, Sydney – 26 Storey Hotel Development -
Request for Biodiversity Development Assessment Report waiver - (SSD 9694)**

Dear Mr Green,

The Office of Environment and Heritage (OEH) has reviewed the request from Architectus dated 29 January 2019 to waive the requirement for a Biodiversity Development Assessment Report (BDAR) to be submitted with the State significant development application.

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

“Any such application [SSD] is to be accompanied by a biodiversity development 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 biodiversity values.”

The power to determine whether an SSD is “not likely to have any significant impact on biodiversity values” has been delegated to the OEH Senior Executive on 4 December 2017.

I have reviewed the assessment of the biodiversity values of the site as described in the letter dated 29 January 2019. I have determined that the proposed development is not likely to have any significant impact on biodiversity values and that there is no need for the SSD application to include a BDAR.

Please contact Svetlana Kotevska, Senior Conservation Planning Officer, on 8837 6040 or at Svetlana.kotevska@environment.nsw.gov.au should you have any further queries regarding this matter.

Yours sincerely

ALEX GRAHAM
Director Greater Sydney
Communities and Greater Sydney Division