



**Environment,
Climate Change
& Water**

Your reference: MP10_0076
Our reference: DOC10/58203
Contact: Rachel Lonie, 9995 6837

Mr Michael Woodland
Director, Metropolitan Projects
Department of Planning
GPO Box 39
Sydney NSW 2001

Attention: Scott Schimanksi

Dear Mr Woodland

Re: Exhibition of Environmental Assessment for Kirrawee Brick Pit Site MP10_0076

I refer to your correspondence received on 15 December 2010 inviting the Department of Environment, Climate Change and Water (DECCW) to provide comments on the above development.

DECCW comments are provided in Attachment 1. If you have any queries regarding this matter please contact Rachel Lonie on 9995 6837.

Yours sincerely

15/2/11

STEVE HARTLEY
A/Director
Metropolitan Branch
Environment Protection and Regulation

ATTACHMENT 1

DECCW Comments on Public Exhibition of Environmental Assessment for Kirawee Brick Pit Site MP10_0076

1. Retention of Waterbody and Threatened Bat Species

The site has been found to provide habitat for two threatened species, the Grey Headed Flying Fox (*Pteropus poliocephalus*) and the Eastern Bentwing Bat (*Miniopterus schreibersii oceanensis*); and the endangered ecological community Sydney Turpentine Ironbark Forest (STIF).

In considering a previous Development Application for the subject site, the Land and Environment Court (*Restifa Pty Ltd v Sutherland Shire Council & ors* [2009] NSWLEC 1267) heard expert evidence on threatened species matters. The court findings included the statement that *"The bat species currently take advantage of the significant water body extant on the subject site for drinking during their nocturnal migration movements"*. It was agreed by the expert witnesses that the *"provision and perpetual availability of a suitable drinking water source (800 sq metres) and a 40 metre landing area to enable bats to swoop was to be provided"*. It is presumed that this reference to "bats" includes both macro-bats (i.e. the Grey Headed Flying Fox) and micro-bat species.

An outstanding issue from the court case was the matter of how water would be treated in the retained waterbody. The expert advice was that water quality be maintained according to ANZECC Water Quality Guidelines for Freshwater Lakes and Reservoirs. Appendix 16 (Northrop 2010) states that water quality in the ornamental lake / compensatory pond is to be *"continuously maintained to a standard suitable for wildlife known to drink from the existing water body and to a standard compatible with public safety and amenity...The water bodies are not intended to encourage human contact with the stored water"* (p6).

DECCW recommends that should the Concept Plan be approved, that the approval be conditioned to include a requirement to provide as a minimum a waterbody with an area not less than 800 sq metres including a 40 metre 'landing area'. This should also include the requirement that the water quality be maintained according to ANZECC Water Quality Guidelines for Freshwater Lakes and Reservoirs.

2. Loss of Sydney Turpentine Ironbark Forest and proposed offsets

The Environmental Assessment (EA) documents the loss of 0.20 hectares of vegetation of which 0.16 hectares is Sydney Turpentine Ironbark Forest (STIF). There is insufficient information provided on potential offsets for this loss. For example, although there is a list of potential sites for offsets there are no details on what can be conducted at these sites, no revegetation programs proposed and no budget or source of funding identified. It is also not clear whether Sutherland Shire Council (SSC) will agree to hosting any offsets, on- or off-site, given Council's apparent opposition to the proposal.

The size of the off-site offset proposed is twice that to be lost from the development site (i.e. a 2:1 ratio is proposed in Section 3.5.5 of Biodiversity Management report). DECCW recommends that the offset proposal be developed further to show:

- how it addresses the *Principles for the Use of Biodiversity Offsets in NSW* (see <http://www.environment.nsw.gov.au/biocertification/offsets.htm>);

- how it compares to what would be required by using Biobanking Assessment Methodology. DECCW recommends the use of the Biobanking Assessment Methodology for the purposes of quantifying an appropriate offset; (see <http://www.environment.nsw.gov.au/biobanking/assessmethodology.htm>);
- the legal mechanism to be used for securing the offset; and
- a schedule of works for the implementation of the offset for at least the first 5 years.

DECCW recommends that the offset should be secured prior to the commencement of construction.

The Flora and Fauna Assessment states that the retained STIF on site will be managed as an offset. This is acceptable as part of an offset strategy but, as for the off-site offset, the details of future management and security are required.

The EA states (page 30) that, in relation to the public park, "*conservation principles involving the retention and protection of the original STIF community and provision of a water body for threatened fauna species*" remain in draft form. The EA also states that discussions are ongoing with SSC however the Council has indicated it has significant concerns in regard to the open space proposal including waterbody design and management. The Land and Environment Court also noted the potential conflict for the park in having both a recreational and conservation role and considered that this matter had not be adequately resolved and subsequently for this and other reasons, the application must fail.

It appears at this stage that these matters remain unresolved in this Concept Plan proposal. As such DECCW considers that the design, ownership, management and zoning of the park and waterbody all require greater resolution before the Concept Plan can be approved as they are critical components for protection of threatened species and the endangered ecological community.

Specific issues regarding the offset proposal that require resolution are:

- A suitable method of securing the offset (either on or off site). With no perpetual security available, the offset proposal is not in keeping with the Principles for the Use of Biodiversity Offsets in NSW.
- Details on the design, ownership, management and zoning of any offset area is required as part of the Concept Plan proposal in order to ascertain that they will be adequate.

DECCW supports the zoning of retained STIF as E2 Environmental Conservation, but also considers that areas to be regenerated as STIF, and the waterbody should also be zoned E2 due to conservation being their primary purpose.

The BMP states that the maintenance of the Western Zone or compensatory off-site planting will be in accordance with the standard Department of Water and Energy General Terms of Agreement. It is questioned whether these are best practice guidelines and why these are applicable. A two year rehabilitation plan is, in the experience of DECCW, too short a time to ensure elimination of weeds and confirmed regeneration of native vegetation. A period of five years initial management is recommended. DECCW also recommends that the rehabilitation plan be required to include measurable objectives, timeframes, key accountabilities and a monitoring component.

3. Biodiversity Management Plan (BMP) and Flora and Fauna Assessment (FFA)

DECCW considers that the BMP needs to be more prescriptive and detailed including on aspects of the temporary and compensatory water body to ensure that habitat will be retained and appropriately maintained in order to meet the requirements for the threatened bat species. For example, the temporary waterbody should be fully constructed and operational prior to the dewatering of the existing waterbody.

The adequacy of the size of the temporary pond is also questioned. The BMP (Section 5.10(i)) states that requirements for the temporary pond "*are to serve only as a drinking source for the GHFF and EBWB. As such, a relatively small area (500m²) will be sufficient for this purpose.*" There is no justification for why a smaller pond is considered adequate as a temporary measure given that the expert advice to date has been that a minimum size of 800 square metres is required.

Other details such as the water quality standards and whether on site water treatment will be required and whether any proposed fencing or in pond structures (such as the proposed pontoon) would inhibit the use of the waterbody by bat species is also missing.

Greater investigation and consideration of what other native species use the existing pond is also recommended. The BMP states that over 30 species of birds, seven mammal species, six reptile species, three frogs and two fish were recorded during the field surveys and that many of the species recorded are associated with the freshwater body created by the former brick pit. The BMP also states that the extent of use of the pond by native species "is unknown" and that a detailed sub-plan for translocation of native species will be prepared at a later date. This investigation should be undertaken as part of the Concept Plan proposal in order that potential environmental impacts are adequately assessed and addressed.

There are also some inconsistencies that DECCW considers should be addressed. For example, the FFA refers to the BMP being provided as Appendix C (which is in fact a Commonwealth Impact Assessment). Section 3.5 of the BMP discusses "the resilience of the vegetation within each protection zone" but Section 3.5.3 says the Southern Zone will "be cleared as part of the proposed development". Also, the "Northern Zone – Replanted STIF" (3.5.4 of BMP) is not mapped. Nor is it referred to in the FFA, only the BMP. Section 5.7 says it is now not intended to be replanted. Page numbering in the FFA and BMP is also confusing – for example page numbering for sections 3, 4 and 5 does not relate to either consecutive pages or the sections of the report.

The EA states that a "Vegetation Management Plan and Habitat Management Plan" have been prepared by Cumberland Ecology and submitted in support of the EA (Appendix 9 and 10). This is not correct as Appendix 9 is a *Flora and Fauna Assessment* and Appendix 10 is a *Biodiversity Management Plan*. It is the BMP that provides both vegetation and habitat management recommendations.

DECCW considers that the BMP and sections of the FFA are currently inadequate for the reasons stated above and recommends that these documents be revised to include greater consideration of these issues and to provide more prescriptive environmental protection measures.