

15 December 2023

218196

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Department of Planning and Environment
Via email: louise.mcmahon@dpie.nsw.gov.au

CC: Kate Bartlett, Director, The Planning Studio: kate@theplanningstudio.com.au

Dear Louise,

Cooks Cove Planning Proposal (PP-2022-1748)
Re: Biodiversity and ecology response to additional submissions

The purpose of this memo is to address additional matters pertaining to biodiversity, which have been provided by DPE Environment & Heritage Group (EHG) and Bayside Council in additional submissions. The below table presents key matters for consideration and a proposed response which has been jointly prepared by Ethos Urban and Cumberland Ecology.

Item/Comment	Response
DPE EHG	
EHG believes Cumberland Ecology's (CE) mapping underrepresents the occurrence of Green and Golden Bell Frog (GGBF) threatened fauna locations.	Figure 9 of the Flora and Fauna Assessment (FFA) provides the results of the field surveys completed by CE and is not intended to provide locations for all previous threatened species records within the subject site, which is present in other mapping sources. The FFA has been further updated in a revised FFA to clearly state this in Section 3.3 of the report. It should also be noted that the purpose of Figure 9 is to show all threatened species recorded during CE field surveys, and not only the GGBF. Therefore, it would be incorrect to update this figure with all previous historical records of the GGBF, whilst only showing the CE records for other species. Furthermore, previous records (including recent records) of the GGBF in the subject site by from other sources are discussed several times in-text in the FFA. All previous records of the GGBF in the subject site are also publicly available online in the NSW Government's BioNet Atlas.
CE's revised FFA states the GGBF population is <i>"currently increasing in numbers based on recent monitoring surveys"</i> . Which is at odds with the GGBF Arncliffe Annual Report 2021-22 (AMBS for TfNSW). EHG requests that the FFA be amended to address this inconsistency.	It is acknowledged that this comment is an oversight and is addressed in a revised FFA as provided by CE. All other key sections in the FFA in relation to the GGBF status have been updated in line with the AMBS Annual report for 2021-2022.

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<p>EHG does not support CE's statement <i>"the proposed avoidance, mitigation and compensatory measures are likely to sufficiently ameliorate the impacts of the project as they will ensure no EECs or threatened species are likely to be significantly impacted by the project"</i> as EHG believes impacts to GGBF are likely to be significant.</p>	<p>Although some areas of GGBF foraging and dispersal habitat will be impacted by the revised zoning sought, existing breeding ponds and the majority of the habitat in the south-western portion of the site will be retained in a future development scenario. A GGBF Management Plan will be prepared prior to development in the SP4 zone and will apply to the broader site, including Pemulwuy Park and existing GGBF breeding ponds. This will involve various stakeholders including DPE EHG and accordingly, we believe these measures will contribute to appropriately mitigating any impacts on GGBF.</p>
<p>EHG believe the proposed area to be zoned C2 would largely be cut off by the proposed SP4 Enterprise zoning and future development would likely require the removal of many existing golf course water bodies.</p>	<p>The C2 Environmental Conservation zone was implemented in response to matters raised by DPE EHG during the public exhibition phase. The implementation of this zone allows for the introduction of an east-west habitat movement corridor between indicative development blocks 3b and 3c. Some golf course water bodies will be removed for future development, but this will be compensated by a significant embellishment contribution to Pemulwuy Park as committed to by CCI. The intent is to create high quality open space with more of an ecological focus, compared to the previous golf course use of these lands. The design process will be led by Bayside Council as landowner following the rezoning process.</p>
<p>It is EHG's view that there will be limited opportunities to create GGBF habitat in the foreshore area proposed to be zoned C2 Environmental Conservation and these areas will not appropriately link to areas with complementary GGBF habitat.</p>	<p>The area proposed to be zoned C2 Environmental Conservation within the riparian zone is some 18,000sqm in totality along a circa 450m length of the foreshore. This large area provides opportunities for consolidated GGBF habitat. This area is also integrated with two east-west habitat corridors for connectivity and GGBF have been known in past instances to move between areas of habitat within Cooks Cove, and this future scenario will be no different. Notwithstanding, this is a matter subject to detailed design, and which will be the outcome of the GGBF PoM process with EHG as a stakeholder. This matter is also dependant on the requirements of the BC Act (as necessary) at future stages of the project. Further habitat creation and embellishment is capable of being implemented by way of the Local VPA letter of offer, applicable to Pemulwuy Park and surrounding lands.</p>
<p>The proposed RE1 Public Recreation zone proposes uses that are incompatible with the long-term survival of GGBF.</p>	<p>The conversion of a large part of the outgoing golf course, transitioning to passive publicly accessible open space, will continue to offer extensive dispersal/movement habitat for GGBF and other fauna species. The areas of the site sought to be zoned RE1 are large enough to be able to successfully balance recreational and ecologically focused areas subject to</p>

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	detailed design. The concept for Pemulwuy Park highlights this ability and will be the responsibility of Bayside Council through the VPA offer made by CCI.
The two areas proposed to be zoned C2 Environmental Conservation are separated by RE1 Public Recreation and SP4 Enterprise zones, thereby compromising connectivity between proposed GGBF habitat areas.	Connected dispersal habitat will continue to exist within the RE1 zone (Pemulwuy Park) which links the two C2 zones. This habitat is likely to be used by the species in the same way that the lawns of the existing golf course are currently used.
EHG supports the introduction of a C2 zone however, the proposed zone objective are not compatible with the protection and enhancement of GGBF habitat, including 'recreational' activities and others.	The reality of the site is that shared uses will be required – in addition to ecology, the site needs to also perform a continued role as a publicly accessible recreational space and to function acceptably in terms of regional overland flow. CCI is open to resolving further objectives of the C2 zone together with DPE and Bayside Council in the finalisation of the LEP provision to appropriately balance these shared use outcomes.
EHG remains of the view that the specific objectives and provisions for biodiversity and GGBF conservation under SEPP (Precincts - Eastern Harbour City) 2021 remain in force and be replicated in the Planning Proposal.	<p>It is noted that the biodiversity provisions in SEPP EHC were devised prior to the provisions of the BC Act coming into force, and accordingly, the general practice of drafting comparable standard template instruments has not included such provisions. The Planning Proposal follows this drafting practice. The former SREP 33 provisions now in SEPP EHC covered the entire Cooks Cove precinct of some 100ha. Particular provisions are aligned with areas outside of the Planning Proposal, such as wetlands which provide habitat for migratory birds. There is no need for these provisions to be replicated.</p> <p>Notwithstanding, CCI raise no specific objection to EHG's intent for planning provisions within the site to enhance the ecological outcomes of the lands. CCI as one stakeholder within the Planning Proposal boundary remains committed to providing input into resolving suitable planning provisions which are compatible with the logistics-focused intent of the development zone in conjunction with other provisions to enhance the foreshore, biodiversity and recreational focused values of other components within the Planning Proposal.</p>
EHG requests various amendments to the site specific DCP including mapping and wording regarding the applicability of the BC Act, including local development which may not trigger the Biodiversity Offset Scheme.	Specific refinements to address mapping layers and applicability of the BC Act in the DCP are welcomed through further discussions with Council. The DCP is a matter for Council who will ultimately progress assessment for adoption by elected Council. This is capable of being further progressed following consideration of the Planning Proposal by the SECPP.
Proposed LEP and DCP a must include all breeding, foraging and movement habitats for GGBF and location of coastal saltmarsh.	The mapping prepared for the Planning Proposal is indicative in nature only and detailed maps will be considered and prepared by DPE for finalisation of the proposed planning amendments.

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It is EHG's view that the area proposed to be zoned RE1 Public Recreation zone should also include the creation of new GGBF habitat.	The development zone (under the revised indicative zoning maps) no longer include areas of RE1 Public Recreation to be controlled by CCI. However, the VPA letter of offer committed to by CCI includes significant monetary contributions which, should Council determine appropriate, be applied to ecological improvements within the RE1 zone of Pemulwuy Park, which may include GGBF breeding habitat. The transition of former golf course habitat (which is intended to be retained and re-purposed where possible) will continue to function as contributory foraging and movement corridor habitat which will assist in the long term success of GGBF populations.
EHG is unclear of the <i>"relevant Green and Golden Bell Frog Management Plan"</i> referred to in the FFA.	A detailed GGBF PoM will be prepared in consultation with all stakeholders at the DA stage. Draft DCP provisions will be amended in discussion with Council, to resolve the preparation of this PoM.
DCP controls should include the retention of existing ponds and the creation of a range of new GGBF habitat types.	The indicative reference development accompanying the Planning Proposal does not envision retention of all existing golf course water bodies. This must be considered in context of the existing zoning and masterplan intent under the SEPP EHC 2021 which permits a larger extent of zoned land for trade and technology purposes. As above, the site specific DCP encourages GGBF habitat creation in the newly proposed C2 Environmental Conservation zones and there is potential for this to be expanded in adjoining RE1 Public Recreational lands, subject to detailed design and in consultation with Council.
EHG notes the GGBF Management Plan will be prepared for future development at the DA stage, however, it is noted this requirement has not been included in the draft DCP. The management plan will needs to consider both design and operational aspects.	CCI agree that the requirement for a GGBF PoM will need to be in place prior to any works and that content would need to be endorsed by Council. We invite EHG to be a part of the refinement of provisions once Council is able to progress drafting of the DCP, post consideration of the Planning Proposal by the SECP.
The Cooks River is a 4th order stream that requires a 40m riparian buffer (on each side of the waterway) under the BAM.	The response to submissions report shows the width of the amended riparian zone ranges from 20-100m. This is appropriate in the circumstances and will contribute to an improved ecological outcome compared to the current golf course use. The BAM only requires the impacts within this 40m buffer to be considered at the time of the preparation of a BDAR, at the DA stage. There is no requirement under the BAM to avoid impacts within the mapped 40m buffer or in other words exclude development from this area. CCI believe sufficient detail has been provided at the rezoning stage to support the buffer zones as per the indicative refence scheme – which are comparable in nature of the existing SEPP EHC outcome. The detailed design of the riparian zone at the DA stage

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	will provide the full suite of measures to ensure an acceptable outcome under BAM. A complete assessment in accordance with the minimum requirements of the BAM, including a consideration of the mapped 40m buffer of Cooks River, will be provided at the DA stage.
Bayside Council	
Riparian Zone – Council maintain that the riparian buffer zone should be consistent with DPE's 'Guideline for riparian corridors on waterfront land' along the entire length of the foreshore. A setback of 40m must be provided unless otherwise justified with evidence that a reduction will not pose a negative impact upon the watercourse.	As above and as detailed in the Response to Submissions report and FFA. The amended riparian zone ranges from 20-100m with a large section of 40m width which is proposed to be zoned C2 Environmental Conservation. This results in a viable development outcome which in turn funds the suitable riparian ecological improvements envisioned. Other justifications for this arrangement in terms of its acceptability are provided throughout this response.
Biodiversity – The proposal should consider site-specific LEP provisions that aim to protect the Green and Golden Bell Frogs (GGBF) and their habitats. The Eastern Harbour SEPP currently has a suite of controls that mandate the preparation of a Wetlands Environmental Management Plans and a GGBF Management Plans. These requirements should be maintained in any translation of controls.	As above. CCI raise no specific objection to Council's intent for planning provisions within the site to enhance the ecological outcomes. CCI as one stakeholder within the Planning Proposal boundary remains committed to providing input into resolving suitable planning provisions in terms of acceptable biodiversity outcomes in the process to finalise the amended planning controls for the site.

Conclusion

The above table provides a suitable response to key biodiversity matters raised by DPE EHG and Bayside Council. These responses are supplemented by amendments to the FFA, where necessary, by Cumberland Ecology to appropriately address all concerns raised. Accordingly, we believe the Planning Proposal is capable of being supported on the grounds of ecology and biodiversity.

We trust that this information is sufficient to enable a prompt assessment and reporting to the SECPP to finalise the amended planning controls for Cooks Cove.

Yours sincerely,

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