

29 November 2021

Mark Purdy
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Crescent Newcastle Development - Assessment of Triggers for Entry into the Biodiversity Offset Scheme

Dear Mark,

The purpose of this letter is to provide supplementary information to support an Amended Development Application (DA) in relation to 11-17 Mosbri Crescent, The Hill.

Supplementary information is required in order to respond to a Council Request for Information (RFI) (emails dated 22 October 2021 and 24 November 2021) on the DA requesting that the Flora and Fauna Assessment (ref. 20158RP4) prepared to support the DA requires consideration of the entry requirements into the Biodiversity Offsets Scheme (BOS) and the need to prepare a Biodiversity Development Assessment Report, if entry into the BOS is triggered. Additionally, a minor correction to the minimum lot size (being 0.04 ha, rather than 0.4 ha as stated in the FFA) is required.

Our BOS Entry assessment is provided in **Appendix A**.

If you wish to discuss this matter further, please do not hesitate to contact me, or Dr David Robertson, on 98681933.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Vanessa Orsborn'.

Vanessa Orsborn
Senior Project Manager/Ecologist
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APPENDIX A :

BOS Entry Assessment

A.1. Introduction

Cumberland Ecology Pty Ltd (Cumberland Ecology) has been commissioned by Stronach Property to prepare a Biodiversity Offset Scheme (BOS) Entry Assessment report to support an Amended Development Application (DA) in relation to 11-17 Mosbri Crescent, The Hill, known as Lot 1 DP 204077 (referred to as the 'subject land', as shown in **Figure 1**).

The Amended DA seeks approval for subdivision, development of three residential flat buildings, and includes ancillary works and clearing of all existing vegetation. The Amended DA was lodged with Newcastle Council (Council) under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and was accompanied by a Flora and Fauna Assessment (FFA) (ref. 20158RP4) prepared by Cumberland Ecology. Council have provided a Request for Information (RFI) in relation to a number of minor items, including the following with relation to biodiversity:

Further information is required in respect to proposed land clearing. Proposed tree removal and retention is to be clearly demonstrated on the architectural plans to ensure that clearing is less than the minimum threshold of 0.25ha which would otherwise trigger a Biodiversity Assessment Report.

The following is noted within Cumberland Ecology's Flora and Fauna Assessment:

"The native vegetation clearing thresholds for each minimum lot size are defined in Part 7.2 of the Biodiversity Conservation Regulation 2017. The minimum lot size for the property is 0.4 ha, allowing native vegetation clearance of less than 0.25 ha without triggering the BOS. The native vegetation proposed to be cleared from within the subject land does not exceed 0.25 ha and therefore the BOS will not be triggered by this mechanism." (Section 1.3.3).

Further clarification is sought confirming the extent of clearing is less than the minimum 0.25ha. It must be properly demonstrated the clearing is less than the minimum threshold of 0.25ha. It is also noted that the minimum lot size is actually 0.04ha, not 0.4ha as identified in the Biodiversity Assessment Report.

This BOS Entry Assessment is addressed in the following sections.

A.2. Relevant Legislation

A.2.1. Biodiversity Offsets Scheme

Under the NSW Land Management and Biodiversity Conservation (LMBC) reform, the NSW Parliament passed the following two Acts in November 2016:

- The *Biodiversity Conservation Act 2016* (BC Act), which replaced the *Threatened Species Conservation Act 1995*, the *Nature Conservation Trust Act 2001* and parts of the *National Parks and Wildlife Act 1974*; and
- The *Local Land Services Amendment Act 2016* (LLSA Act), which replaced the *Native Vegetation Act 2003* and the *Native Vegetation Regulation 2005*.

These reforms commenced on 25 August 2017 and are now in force.

A key part of the reforms is the introduction of the BOS. The BOS is intended to simplify biodiversity assessment and improve biodiversity outcomes by creating consistent assessment requirements to measure the likely biodiversity loss of development proposals and gains in biodiversity value achieved at offset sites through active management.

The BOS applies to local development (assessed under Part 4 of the *Environmental Planning and Assessment Act 1979*) that is likely to significantly affect threatened species or communities or that triggers threshold levels for when assessment via the BOS is required. If the BOS is triggered a DA must be accompanied by a Biodiversity Development Assessment Report (BDAR) prepared in accordance with the Biodiversity Assessment Methodology (BAM). The threshold consists of the following:

- Whether the amount of native vegetation being cleared exceeds a threshold area;
- Whether the area being cleared is mapped on the Biodiversity Values map published by the Minister for the Environment;
- Whether the impact on threatened species or ecological communities is deemed significant; and
- Whether the proposal will impact on an Area of Outstanding Biodiversity Value (AOBV)

An assessment of whether the project triggers these threshold levels is provided below.

A.2.2. Biodiversity Offsets Scheme Triggers

The native vegetation clearing thresholds are defined in Part 7.2 of the *Biodiversity Conservation Regulation 2017*. The clearing thresholds are based on the minimum lot size for the zone as identified in the Local Environment Plan (LEP) for the Local Government Area and apply to the DA as a whole based on the smallest minimum lot size included therein. The clearing thresholds are presented below in **Table 1**. Clearing areas are cumulative throughout the project and the occurrence of separate lots within the one DA does not result in an additional clearing allowance.

Table 1 Native vegetation clearing thresholds

Minimum lot size of the land	Area of clearing
Less than 1 hectare	0.25 hectare or more
Less than 40 hectares but not less than 1 hectare	0.5 hectare or more
Less than 1,000 hectares but not less than 40 hectares	1 hectare or more
1,000 hectares or more	2 hectares or more

The subject land is currently zoned R3 Medium Density Residential under the Newcastle LEP and has a minimum lot size of 400m² (0.04 hectares (ha)). According to the entry requirements for the BOS, for land that has a minimum lot size of less than 1 ha (i.e. the subject land), the minimum amount of native vegetation clearing that triggers entry to the BOS is 0.25 ha. The area of native vegetation with the subject land was identified in the vegetation mapping for the FFA as 0.235226 ha and clearing of this vegetation would not

trigger entry into the BOS or the requirement for a BDAR. Vegetation communities have been mapped across the subject land (**Figure 2**), as summarised in **Table 2**.

Table 2 Vegetation Communities Present on the Subject Land

Vegetation Community	Area (ha)
Planted Native Vegetation	0.235226
Exotic Vegetation	0.251475
Cleared Land	0.733767
Subject Land (total area)	1.220468

It is further noted that the native vegetation present is planted, and does not conform to a native Plant Community Type (PCT), as described in the FFA.

The subject land is not mapped on the Biodiversity Values Map, as shown in **Figure 3**. As the proposed development does not impact on areas mapped by the Biodiversity Values Map, entry to the BOS is not triggered via this threshold.

The third element of the threshold levels for entry into the BOS relates to potential impacts to threatened species and threatened ecological communities. The FFA did not identify significant impacts to threatened species or ecological communities, and as such this threshold does not trigger the BOS.

Lastly, the BC Act currently lists the following AOBVs:

- Gould's Petrel habitat;
- Little Penguin population in Sydney's North Harbour habitat;
- Mitchell's Rainforest Snail in Stotts Island Nature Reserve; and
- Wollemi Pine habitat.

The project is not located within any of the above AOBVs and therefore the BOS would not be triggered by this mechanism.

A.3. Conclusion

The Amended DA for a residential development located at 11-17 Mosbri Crescent, The Hill, has been adequately assessed under the BC Act and the proposed development does not exceed any of the BOS entry thresholds. Therefore, the Amended DA does not require the preparation of a BDAR.

FIGURES



Legend

Subject Land

Image Source:
Image © Nearmap (2020)
Dated: 30/06/2020



Coordinate System: MGA Zone 56 (GDA 94)

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0 20 40 60 80 m

Figure 1. Location of the subject land



Legend

- Subject Land
- Biodiversity Values Map

Image Source:
Image © Nearmap (2020)
Dated: 30/06/2020



Coordinate System: MGA Zone 56 (GDA 94)

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0 50 100 150 200 m

Figure 2. Biodiversity Values Mapping in relation to the subject land



Figure 3. Vegetation of the subject land