
SYDNEY OLYMPIC PARK AUTHORITY

Planning Development Application Assessment Report

Application No:	DA 01-01-2019
Application Site:	Lot 3020 in DP 879226 Sydney Olympic Park
Proposed development:	Vegetation clearing and replacement planting associated with the construction of water main upgrades.
Applicant:	Sydney Water
Determining Agency:	Sydney Olympic Park Authority

1 Purpose

The purpose of this report is to provide an assessment of the subject development application (DA) under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

2 Recommendation

It is recommended that the Chief Executive Officer:

- A) Consider all relevant matters prescribed under Section 4.15 of the EP&A Act, as contained in the findings and recommendations of this report;
- B) Determine that the development application be **approved subject to conditions** pursuant to Section 4.16 of the EP&A Act, having considered the relevant matters in accordance with (A) above;
- C) Sign that attached Instrument of Approval; and
- D) Authorise Sydney Olympic Park Authority (SOPA) to carry out post-determination notification pursuant to Section 4.18 of the EP&A Act.

3 Background / Development History

Sydney Water has identified the need for a new water main along Hill Road to support development in Wentworth Point and Sydney Olympic Park. The proposed location of the water main has been sited to avoid conflicting with the future Parramatta Light Rail corridor.

Under the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP), Sydney Water can carry out the majority of works required for the construction of new water main without development consent.

Under the State Environmental Planning Policy (State Significant Precincts) 2005 (SEPP SSP), the site is located within a Conservation Area. Consequently, vegetation clearing required to facilitate the new water main cannot be undertaken without development consent.

4 Subject Site

The subject site runs along the western side of Hill Road, between the Woo-La-Ra car park to the south and electricity substation to the north.

The site is located in the E3 Environmental Management zone, and also within an Environmental Conservation Area.

5 The Proposed Development

The proposed development involves clearing of up to 2,500m² of native vegetation from the site to facilitate construction of a critical water main.

Clearing will be limited to the 'impact area' in Figures 1, 2 and 3 below, indicated through diagonal hatching.



Figure 1: Proposed clearing and replanting areas – south-west



Figure 2: Proposed clearing and replanting areas – centre



Figure 3: Proposed clearing and replanting areas – north-east

6 Assessment

The application has been assessed pursuant to Section 4.15 of the EP&A Act, including consideration of the following matters:

6.1 Environmental Planning Instruments

6.1.1 State Environmental Planning Policy (State Significant Precincts) 2005

The Minister for Planning is the consent authority pursuant to Schedule 6, Part 1, Clause 3 of the SEPP SSP. The relevant provisions are addressed in Table 1 below.

Table 1 SEPP (State Significant Precincts) 2005 – Planning Provisions

Clause	Response	Compliance */✓/N/A
(14) Zone E3 Environmental Management	<p>The subject site is located in the E3 Environmental Management zone. Vegetation clearing is not a permissible use under Clause 14(2) and (3). Legal advice from Maddocks legal services, provided by the applicant, confirms that the proposal is in fact permissible due to the following:</p> <ul style="list-style-type: none"> • Clause 8(2)(a) of the ISEPP states that where there is an inconsistency between the provisions of the ISEPP and the SEPP SSP, the provisions of the SEPP SSP will prevail to the extent of any inconsistency. • However, clause 17 in Part 23, Schedule 3 of the SEPP SSP states that <i>"this Part does not restrict or prohibit ... the carrying out of any development that is permitted to be carried out with or without consent ... under State Environmental Planning Policy (Infrastructure) 2007"</i> • Consequently, Sydney Water may carry out development for water reticulation systems in Sydney Olympic Park without development consent, as permitted under Clause 125(1) of the ISEPP. • However, clause 29 in Part 23, Schedule 3 of the SEPP SSP states that <i>"despite any other provision of this Part, the following development may only be carried out with development consent on land within an environmental conservation area are:</i> <ul style="list-style-type: none"> (a) <i>filling, clearing, draining or dredging the land,</i> (b) <i>constructing a levee on the land,</i> (c) <i>removing or destroying any vegetation on the land</i> • As the subject site is located in an environmental conservation area and the construction works for the proposed water main require removing established vegetation, the clearing works require development consent. • The wording of clause 29 is substantively the same as the language used in the <i>Environmental Planning and Assessment Act 1979</i> to describe development that may proceed with development consent. • Accordingly, clearing of vegetation is permissible with development consent on land in the environmental conservation area. <p>A copy of the legal advice in its entirety is included at Tag B.</p>	✓
(23) Public infrastructure	The proposal will facilitate critical public infrastructure.	✓
(24) Major event capability	The proposed development will not impact on the major event capability of Sydney Olympic Park.	✓
(25) Transport	The proposal will have negligible impact on transport infrastructure. The proposed area of clearing is located outside the Hill Road reserve and future Parramatta Light Rail corridor.	✓

Clause	Response	Compliance x/✓/N/A
(26) Master Plan	The subject site is outside the area that is subject to Master Plan 2030 (2018 Review). The proposal will support the long-term delivery of the Master Plan objectives.	✓
(29) Development in conservation area	<p>The subject site is located in a conservation area, as identified in Figure 1 above.</p> <p>As outlined above, legal advice provided by the applicant confirms that the proposed vegetation clearing is permissible with development consent in the conservation area.</p> <p>SOPA's Ecology team has reviewed the proposed development and has advised that, subject to the environmental safeguards outlined in the Statement of Environmental Effects, the proposal will not significantly reduce the ecological value of the environmental conservation area.</p>	✓
(30) Design excellence	The proposed works are limited to vegetation clearing and do not require consideration of design excellence.	N/A
(31) Heritage Conservation	The subject site is not identified as a heritage item and the proposed works will not adversely impact on a heritage item or heritage conservation area.	N/A

6.2 Key Issues

6.2.1 Ecological Impacts

Flora and Fauna

The biodiversity assessment carried out by Biosis Pty Ltd determined that there was a low likelihood of threatened flora species within the subject site and that the suitability of the environment for threatened fauna was low. The main recommendation in this regard was for all clearing to occur after February 2019 in order to minimise any potential impacts to the red-browed finch during nesting season.

The biodiversity assessment also identified a moderate likelihood of occurrence for Green and Golden Bell Frog within the subject site. However, the proposed clearing is unlikely to have a significant impact on the frog population due to the low quality of habitat and extent of the proposed clearing relative to the extent of habitat retained.

The SEE stated that all clearing works would be carried out in accordance with SOPA's standard procedures for clearing within frog habitat areas. All contractors would also be required to undergo an environmental induction from a Sydney Water environmental scientist regarding procedures for frog identification and specific safeguards for frog clearance.

Vegetation communities

The proposed development will involve removal of up to 2,500m² of revegetated Cumberland Swap Oak riparian forest. Due to the highly modified state of the vegetation community, including a mix of native and introduced species with negligible understorey, it is not considered to conform to the Endangered Species listing under the *Environmental Protection and Biodiversity Conservation Act 1999* (Commonwealth) or *Biodiversity Conservation Act 2016*.

The proposed development involves revegetation of the affected area. A condition is recommended that requires SOPA's Director – Environment and Planning, to approve the proposed replacement planting plan prior to the commencement of works to ensure that the location, species and maturity of replacement planting is appropriate for the subject site.

Weed Species

The ecological assessment undertaken by Biosis Pty Ltd identified the presence of Alligator Weed, a priority weed in the Greater Sydney Local Land Services region. The assessment proposed the following environmental safeguards to prevent spreading of the weed:

- chemical treatment prior to removal;
- deep hand digging to removal all physical weed material, including roots; and
- Secure storage and disposal of all weed material.

SOPA's Ecology team has reviewed the ecological impact assessment, biodiversity impact assessment and proposed replanting plan and have advised that the proposed environmental safeguards are adequate. All proposed works are also subject to a Parklands Approval Permit, which will provide an additional opportunity for SOPA's Ecology team to review and approve the proposed clearing methodology and environmental safeguards.

6.2.2 Potential Impact on Remediated Land

The adjacent land at Woo-La-Ra is subject to a Contaminated Lands Management Act Notice (No. 28040). This notice includes the adjoining land as well as any associated infrastructure, such as the piezometers, groundwater wells, leachate drains and the clay cutoff walls.

SOPA's Senior Manager – Contaminated Lands initially advised that the SEE submitted by the applicant did not adequately address potential impacts of the works adjacent to the remediated land, including:

- a. Ensuring adequate protection of all remediated land infrastructure, including setbacks to piezometers, leachate drains and the leachate membrane;
- b. Considering the potential of the works to create migration pathways for contaminants within the remediated lands site; and
- c. Establishing unexpected finds protocols to contain and manage any suspected leachate or landfill gas encountered during the proposed clearing works.

The applicant provided an amended SEE incorporating environmental safeguards to address these issues. SOPA's Senior Manager – Contaminated Lands advised that the revised SEE adequately addressed these issues but that SOPA should approve the CEMP for the proposed works to ensure adherence to the environmental safeguards.

6.3 Sydney Olympic Park Local Infrastructure Contributions Framework (ICF)

The proposed development is for development on land outside the Town Centre. Accordingly, the ICF does not apply to the proposed development.

6.4 The public interest

The proposed development is considered to be in the wider public interest as it:

- will facilitate critical infrastructure upgrades for Sydney Olympic Park and Wentworth Point;
- is consistent with the applicable provisions and controls of the principal environmental planning instrument applying to the land contained in SEPP SSP; and
- is not expected to result in any adverse environmental affects, subject to the recommended conditions.

7 Sydney Olympic Park Authority Act 2001

7.1 Clause 22(2) – Consistency with Environmental Guidelines

The proposal is consistent with the objectives of the *Environmental Guidelines*. Subject to the recommended conditions of consent, the proposal will be consistent with the requirements of the *Environmental Guidelines* regarding biodiversity, waste management and pollution control.

8 Consultation

8.1 Public notification

The proposed development did not require public advertising or notification.

8.2 Internal referrals

The application was referred for review and comment on 2 May 2018. Responses were received as follows:

INTERNAL DEPARTMENT	RESPONSE
Ecology	Satisfactory, subject to compliance with the environmental safeguards proposed in the SEE
Contaminated Land	<p>Satisfactory, subject to SOPA reviewing and approving the Construction Environmental Management Plan for the works.</p> <p>A condition has been recommended requiring SOPA's Director, Environment and Planning to approved the CEMP prior to the commencement of the works.</p>

9 Delegations

The Minister is the consent authority pursuant to Schedule 6, Part 1, Clause 3 of the SEPP SSP and Clause 22 of the *Sydney Olympic Park Authority Act 2001*.

On 10 November 2014, the Minister delegated his powers and functions under Section 80 (now section 4.16) of the EP&A Act for all development at Sydney Olympic Park which have a Capital Investment Value of less than \$10 Million. These delegations have been provided to the Chief Executive Officer of SOPA. The proposed development is consistent with these delegations as:

- the proposed development has a CIV less than \$10 million;
- SOPA is not the applicant; and
- SOPA will not derive a commercial benefit in excess of \$250,000 per year from the development.

It is therefore appropriate for SOPA to exercise its delegations in determining this development application.

10 Conclusion

The application has been considered with regard to the matters raised in section 4.15 of the EP&A Act. The proposed development is considered to be acceptable, in the public interest and is recommended for approval subject to the recommended conditions of consent.

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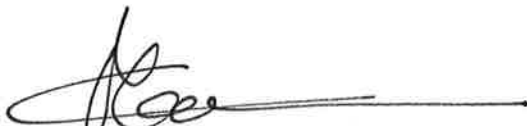


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22/10/2019