

6 February 2017

Commission Secretariat
Planning Assessment Commission
GPO Box 3145
Sydney NSW 2001

By post and email: pac@pac.nsw.gov.au

Dear Secretariat

Access to information application: re Moorebank Intermodal Terminal - SIMTA Intermodal Terminal Facility Stage 1 (SSD 6766)

1. We act for the Blacktown District Environmental Group (**BDEG**), a community group which seeks to protect the environment in the Blacktown area and Greater Western Sydney generally.
2. Our client seeks access to the documents specified below, pursuant to s 41 of the *Government Information (Public Access) Act 2009* (**GIPA Act**).
3. We enclose the application fee by way of a cheque for \$30.

Background to the request

4. We refer to the determination of the Planning Assessment Commission on 12 December 2016 to approve the Moorebank Intermodal Terminal - SIMTA Intermodal Terminal Facility Stage 1 (SSD 6766) (**Project**).
5. Four days after consent was granted to the Project, the NSW Scientific Committee made a determination for provisional listing, on an emergency basis, of the species *Hibbertia fumana* as a critically endangered species under Schedule 1A of the *Threatened Species Conservation Act 1995* (**TSC Act**).
6. The provisional listing, a copy of which is **enclosed**, provides that the species was considered extinct until last year:

Hibbertia fumana was rediscovered in Moorebank, at the Moorebank Intermodal Terminal Precinct (<http://simta.com.au/>), south-western Sydney, during flora surveys in October 2016. This site was re-surveyed in November 2016 when c. 100 individuals were located growing in the transition zone between Castlereagh Ironbark Forest and Castlereagh Scribbly Gum Woodland in the Sydney Basin Bioregion...

Documents requested

7. Our client seeks access to all information held by the Commission in relation to

the *hibbertia fumana* including the following the following documents:

- (a) Any report, survey, map or other document which contains information regarding the discovery of the *hibbertia fumana* on or around the Project site at Moorebank in late 2016.
- (b) Any correspondence (both internal and external), briefing notes or any other document which contains information regarding the presence of *hibbertia fumana* on or near the Project site.

In particular, any correspondence between the Commission and:

- the NSW Office of Environment and Heritage; or
 - Sydney Intermodal Terminal Alliance (**SIMTA**) or a consultant, expert or any other person or organisation contracted to carry out work on behalf of SIMTA; or
 - Moorebank Intermodal Company (**MIC**) or a consultant, expert or any other person or organisation contracted to carry out work on behalf of MIC.
8. Our client also seeks access to all documents, excluding publicly available information, considered by the Commission when determining to approve the Project, including any decision brief.
 9. Our client consents to the exclusion of personal information, such as names and addresses, from the scope of the request.

Request for a waiver/reduction of processing fees – public interest nature of request

10. Our client seeks a reduction or waiver of processing fees as the request for information is made in the public interest. Specifically, the request relates to a high impact State Significant Development project which was approved just days before the NSW Scientific Committee determined to make an emergency provisional listing of the species *hibbertia fumana*. Our client, and members of the community, understands that the species, which was previously thought to be extinct, was re-discovered on the Project site as early as October 2016.
11. Our clients seek documents which will evidence when the Commission was first put on notice about the re-discovery of the species and its location in relation to the Project.
12. The documents are of interest to a number of community groups, including Residents Against Intermodal Development (**RAID**) and the Cumberland Conservation Network, whose members made submissions objecting to the Project and who also seek the information set out in this application.
13. The documents are of high significance to the NSW public more generally, as they relate to the discovery of a species which has not been identified for over one hundred years. The determination of the Scientific Committee to make a provisional emergency listing under the TSC Act notes that:

The only known population of Hibbertia fumana is within the Moorebank Intermodal Terminal Precinct and is potentially threatened by habitat loss and degradation. Habitat at the site is disturbed with the population being traversed by a railway line. Infrastructure work in the area is likely to result in further habitat loss and disturbance facilitate weed invasion. Alterations to fire regimes in this isolated habitat fragment may also adversely affect the species.

14. In the interests of transparency and accountability, it is critical for the public to understand when the discovery of the species occurred and which agencies were informed about the location of individuals on the Project site. Accordingly, the documents may evidence whether the Commission ought to have taken the re-discovery of the species into account when determining to grant consent to the development application for the Project.
15. Release of the information is particularly relevant to the administration of justice in circumstances where objectors have a limited time frame to exercise their right to appeal to the Land and Environment Court on the merits of the application under s98 of the *Environmental Planning and Assessment Act 1979* (NSW).
16. Given the significance of the re-discovery of the flora species in question and the timing of its provisional emergency listing post-approval of the Project, our client does not consider there are any overriding public considerations against disclosure which would rebut the presumption in favour of disclosure under s5 of the GIPA Act.
17. Please do not hesitate to contact the author by email on sarah.roebuck@edonsw.org.au or by phone on (02) 9262 6989.

Yours sincerely,
EDO NSW



Sarah Roebuck
Solicitor

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