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RZ/6/2016;PP\_2017\_CCOAS\_010\_00

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Dear Chris

**Request - Agency Comment - Planning Proposal - 15-35 Warnervale Road & Part of 95-105 & 107-171 Virginia Road (RZ/6/2016; PP\_2017\_CCOAS\_010\_00)**

I refer to your email of 13 July 2018 asking for comment pursuant to Section 3.34(2)(d) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Under the Gateway process, you specifically requested that the proposal is considered having regard for its consistency with any Section 9.1 Ministerial Directions in addition to any specific matters to be addressed by investigative studies. Further, in accordance with the provisions of Section 3.25 of the EP&A Act, 1979, you have asked for consideration of critical habitat or threatened species, populations or ecological communities.

OEH's recommendations are provided in **Attachment A** and detailed comments are provided in **Attachment B**. If you require any further information regarding this matter, please contact Steven Cox, Senior Team Leader, Hunter Central Coast, on 4927 3140.

Yours sincerely

30 August 2018

**SHARON MOLLOY**  
**Director Hunter Central Coast Branch**  
**Regional Operations Division**

Contact officer: STEVEN COX  
02 4927 3140

Enclosure: Attachments A and B

## OEH's recommendations

### Planning Proposal - 15-35 Warnervale Road & Part of 95-105 & 107-171 Virginia Road (RZ/6/2016; PP\_2017\_CCOAS\_010\_00)

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#### Biodiversity

1. OEH recommends that Council addresses the inconsistency with Direction 2.1 of Section 9.1.
2. OEH recommends that the planning proposal avoids impacts to the North Wyong Shire Structure Plan Green Corridor.
3. OEH recommends that the potential impacts of the water quality basins on the vegetation between the basins and the residential zones is assessed and considered as part of the planning proposal.
4. Assessment using the Biodiversity Offset Scheme of the *Biodiversity Conservation Act 2016* will be required at the development application stage.

#### Aboriginal cultural heritage

5. OEH is satisfied with the Aboriginal cultural heritage assessment provided and no further assessment is required for the planning proposal.

#### Flooding and flood risk

6. OEH recommends that mapping be provided which shows the extent of encroachment of the planning proposal into the flood planning area and the land affected by the NSW Coastal Management SEPP. The mapping should clearly indicate the additional area that forms part of this proposal when compared to the currently approved area.
7. OEH recommends that mapping be revised to clearly indicate the extent of the flood planning area and rezoning should be restricted to the area outside of the flood planning area in accordance with the Section 9.1 Directions.
8. OEH recommends that mapping be provided which shows the areas of the floodplain that have been determined to be flood storage and floodway. This mapping will allow OEH to assess whether the works in the floodplain, including filling, are in accordance with the controls listed in the DCP and the NSW Floodplain Development Manual.
9. OEH recommends that the flood impact assessment be updated to accurately reflect the currently approved rezoning and existing levee infrastructure compared to the proposed rezoning.
10. OEH recommends that details regarding the watercycle management of each stage of the proposed development be provided. This should include details regarding the function, sizing and location of proposed infrastructure together with impacts associated with the construction of the required infrastructure.
11. OEH recommends that details regarding the changes to the hydrological regime, and infrastructure required to manage these impacts, as a result of this planning proposal be submitted. These are to consider frequent flood events and natural wetting and drying cycles.
12. OEH recommends that details of the size and position of the water quality basins be provided for assessment.

13. OEH recommends that, in accordance with Coastal Management SEPP 2018, the planning proposal includes an assessment of whether or not the proposed development of areas mapped as "*proximity area for coastal wetlands*" will have a significant impact on:
  - i. the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, and
  - ii. the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

## OEH's detailed comments

### Planning Proposal - 15-35 Warnervale Road & Part of 95-105 & 107-171 Virginia Road (RZ/6/2016; PP\_2017\_CCOAS\_010\_00)

#### Biodiversity

##### 1. Minor inconsistency with Direction 2.1 of Section 9.1 of the EP&A Act

This planning proposal states that it is consistent with direction 2.1 (environment protection zones) of Section 9.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). However, there are small increases in the area for rezoning to residential development on the western side of the residential zone and in part of the area currently zoned RU6, which reduces the amount of land zoned for environmental protection when compared to the previous version of this planning proposal.

##### Recommendation 1

OEH recommends that Council addresses the inconsistency with Direction 2.1 of Section 9.1.

##### 2. The planning proposal will impact on biodiversity corridors

Direction 12.2 of the Central Coast Regional Plan requires the strengthening of biodiversity corridors and the current planning proposal is inconsistent with this direction as it will impact on a small part of the North Wyong Shire Structure Plan Green Corridor on the western side of the residential zone and in the area currently zoned RU6.

##### Recommendation 2

OEH recommends that the planning proposal minimises impacts to the North Wyong Shire Structure Plan Green Corridor.

##### 3. The water quality basins for the proposed rezoning are all currently placed within the environmental zone

OEH notes that the E3 zones in the current Central Coast Local Environmental Plan allow both water storage areas and environmental protection works within environmental zones. However, the two eastern water quality basins appear to be located partially in an area of woodland vegetation that has not been assessed in the ecological assessment and may be consistent with Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community (see Figure 3.2 of Draft Ecological Assessment – Precinct 7A, Warnervale NSW (Umwelt 2012)). Additionally, it is unclear how the water quality basins would be constructed or maintained without impacts to vegetation between the basins and the residential zones.

##### Recommendation 3

OEH recommends that the potential impacts of the water quality basins on the vegetation between the basins and the residential zones is assessed and considered as part of the planning proposal.

##### 4. This development will require assessment under the Biodiversity Offset Scheme

Most of the planning proposal is located on the Biodiversity Values Map. The Biodiversity Values Map identifies land with high biodiversity value, as defined by clause 7.3(3) of the *Biodiversity Conservation Regulation 2017*. The Biodiversity Offsets Scheme applies to all clearing of native vegetation and other biodiversity impacts prescribed by clause 6.1 of the Biodiversity Regulation 2017 on land identified on the Biodiversity Values Map.

As there was no offsetting associated with the previous planning proposal and none is proposed as part of this planning proposal, the requirement for assessment under the Biodiversity Offset Scheme of the *Biodiversity Conservation Act 2016* will be triggered by the Biodiversity Values Map threshold for development proposed as part of the planning proposal.

#### Recommendation 4

Assessment using the Biodiversity Offset Scheme of the Biodiversity Conservation Act 2016 will be required at the development application stage.

## Aboriginal Cultural Heritage

### 5. OEH is satisfied with the Aboriginal Cultural Heritage Assessment Report

OEH has reviewed the *Aboriginal Cultural Heritage Assessment Report* (ACHAR) prepared by Extent Heritage Pty Ltd for 15-41 Warnervale Road, Warnervale NSW Central Coast LGA – Rezoning and Redevelopment (April 2018) and is satisfied that the report meets current OEH requirements. OEH is satisfied that consultation has been conducted in accordance with the *Aboriginal cultural heritage consultation requirements for proponents 2010* (DECCW 2010) and that an assessment of indigenous heritage significance, which incorporates an assessment of social value, has been completed as required under Section 117 (Direction 2.3) of the *Environmental Planning & Assessment Act 1979*.

#### Recommendation 5

OEH is satisfied with the Aboriginal cultural heritage assessment provided and no further assessment is required for the planning proposal.

## Flooding and Flood Risk

### 6. Changes to areas to be rezoned are unclear

The figures provided in the planning proposal do not overlay mapping of the flood planning area or the Coastal Management areas, as mapped in the Coastal Management SEPP 2018. The extent of any encroachment of the proposed rezoning into these areas is not stated.

A comparison between the planning proposal and the Porters Creek Flood study indicates that the proposed residential area will encroach further into areas within the 1% AEP (annual exceedance probability) flood than the previous proposal would. The figures also indicate that Water Quality Basins may be constructed within the area mapped as proximity to a Coastal Wetlands and Littoral Rainforests Coastal Management Area in the NSW Coastal Management SEPP 2018.

#### Recommendation 6

OEH recommends that mapping be provided which shows the extent of encroachment of the planning proposal into the flood planning area and the land affected by the NSW Coastal Management SEPP. The mapping should clearly indicate the additional area that forms part of this proposal when compared to the currently approved area.

### 7. Works proposed in flood planning area are in contradiction to Section 9.1 Directions

The limited figures provided within the planning proposal indicate that filling, rezoning for residential purposes, and the construction of water quality basins will extend into an area affected by mainstream flooding from Porters Creek, as indicated on the Porters Creek Flood Study 2012.

The Section 9.1 Direction under the Environmental Planning and Assessment Act 1979 4.3 (Flood Prone Land) clearly states that flood planning areas must not be rezoned to a Residential, Business, Industrial, Special Use or Special Purpose Zone from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones.

The flood planning area extends to land 500 millimetres higher than the 1% Annual Exceedance Probability (AEP) flood extent in accordance with the recommendations in the NSW Floodplain Development Manual. The extent of encroachment into the flood planning area is not shown on the figures provided. Flood planning areas include a freeboard, partially as a recognition of uncertainty in the process of the derivation of the flood extent. It is important that the flood planning area be the area to be considered, not the 1% AEP flood extent line. The flood planning area has not been mapped on the figures provided and so the extent of encroachment in to the floodplain and flood planning area cannot be assessed.

#### Recommendation 7

OEH recommends that mapping be revised to clearly indicate the extent of the flood planning area and rezoning should be restricted to the area outside of the flood planning area in accordance with the Section 9.1 Directions.

### 8. Filling in the floodplain

Mapping provided does not indicate if the proposed additional area to be rezoned encroaches on land identified as flood storage or floodway. These areas are important to the functioning of the floodplain and if filled may cause adverse off-site impacts. The planning proposal includes filling of the floodplain to facilitate the rezoning and future development. The NSW Floodplain Development Manual and Central Coast Council's current Development Control Plan do not support filling in flood storage or floodway areas of the floodplain.

#### Recommendation 8

OEH recommends that mapping be provided which shows the areas of the floodplain that have been determined to be flood storage and floodway. This mapping will allow OEH to assess whether the works in the floodplain, including filling, are in accordance with the controls listed in the DCP and the NSW Floodplain Development Manual.

### 9. Flood impact assessment and existing infrastructure in the floodplain

OEH considers that the flood impact study submitted in support of this planning proposal has incorrectly treated levees and therefore is not satisfactory for assessing the impact of the proposal. The assessment that was provided included two scenarios:

- Scenario 1: levees constructed around the industrial area in Lucca road including Pavitt Close and around 20 Lucca road.
- Scenario 2: all levees removed from the model.

OEH considers that these scenarios that have been modelled are incorrect. The levee around 20 Lucca Road was constructed for previous developments and cannot be removed from the model. The levee around Pavitt Close is a proposed levee and may not have yet been constructed. No explanation was provided with the afflux (change in flood level) mapping and it is not clear what was modelled as the existing or base case scenario for comparison purposes. The scenarios recommended to be modelled for flood impact assessment to be carried out are as follows:

- i. The flood extent/levels with existing approved rezoning and the already constructed levee/s.
- ii. The proposed additional rezoning together with any fill or other works encroaching into the floodplain as require for the proposal with the existing levees in place.
- iii. As for item ii above and with the proposed levee in the vicinity of Pavitt Close constructed. This levee was proposed in previous submissions and may or may not be required or constructed.

### Recommendation 9

OEH recommends that the flood impact assessment be updated to accurately reflect the currently approved rezoning and existing levee infrastructure compared to the proposed rezoning.

## 10. Stormwater quality and quantity (water cycle) management

The proposed zoning boundaries do not indicate whether sufficient area has been set aside within the proposed zone boundary to cater for watercycle management infrastructure. Figure 4 of the Supporting Documentation of the planning proposal includes figures that indicate water quality basins may be located outside the area proposed to be rezoned. These basins are also shown on the Warnervale Masterplan Report completed by Oculus and submitted in support of the planning proposal. There is no discussion in any of the documentation regarding the function, sizing, location or impacts associated with the construction of these basins. If watercycle management infrastructure is to be provided beyond the zone boundaries, OEH considers that the extent of land affected by the provision of this infrastructure should be considered as part of the rezoning proposal and not deferred to subdivision stage.

Watercycle management infrastructure will need to be provided to mitigate the impacts of development on the downstream Porters Creek Wetland and to manage the changes in runoff water from the site as the development proceeds. The planning proposal does not include details on the likely staging of the development, or when or where this watercycle management infrastructure will be provided.

The proposal is an amendment to a previously approved rezoning. However, the plans provided with the proposal indicate that water management infrastructure is likely to extend beyond the rezoned area into the mapped and protected coastal management areas and floodplain. No details have been provided about these basins and the extent to which they will mitigate the impact of development. OEH considers that the extent of infrastructure required to manage impacts on Porters Creek Wetland should be in the planning proposal to ensure that the full extent of encroachment outside of the previously approved rezoning can be assessed.

### Recommendation 10

OEH recommends that details regarding the watercycle management of each stage of the proposed development be provided. This should include details regarding the function, sizing and location of proposed infrastructure together with impacts associated with the construction of the required infrastructure.

## COASTAL RISK

### 11. Adverse impacts on Porters Creek Wetland

The planning proposal has the potential to adversely affect Porters Creek Wetland. It is noted that both an increase in the area to be rezoned and a decrease in minimum lot size is proposed as part of this application. Both of these factors will result in an increase in impervious area which can affect runoff quality and quantity if not adequately managed and mitigated.

The proposed development is located in an area identified as a proximity area to a coastal wetland under the Coastal Management SEPP 2018. Porters Creek Wetland has been shown to be sensitive to changes in the hydrological regime, especially changes in the volume, frequency and rate of runoff which may occur as a result of development. Changes to the natural wetting and drying cycles in this wetland have been shown to influence regeneration and replacement of vegetation over time. Poor water quality may also adversely impact weed ingress and growth within the wetland. The planning proposal does not provide any details of how adverse hydrological changes will be managed by the development. Analysis should include

consideration of the impact of the more frequent 1-2 year ARI (average recurrence interval) and the hydrological changes that will result. This includes consideration of the runoff volume, runoff rate, runoff frequency and runoff water quality impacts as a result of the planning proposal.

### Recommendation 11

OEH recommends that details regarding the changes to the hydrological regime, and infrastructure required to manage these impacts, as a result of this planning proposal be submitted. These are to consider frequent flood events and natural wetting and drying cycles.

## 12. Water Quality Basins proposed to be constructed within the wetland

Figures provided within the proposal also indicate that Water Quality Basins may be constructed within the area mapped as Coastal Wetlands and Littoral Rainforests Coastal Management Area in the NSW Coastal Management SEPP 2018.

It is noted that SEPP provisions state that any earth works in this area are to be considered as *development for which consent is required*. Under s10(2) of the Coastal Management SEPP this development would be declared to be designated development for the purposes of the *Environmental Planning and Assessment Act 1979*.

### Recommendation 12

OEH recommends that details of the size and position of the water quality basins be provided for assessment.

## 13. The provisions of the Coastal Management SEPP 2018 will apply

The planning proposal will impact on an area mapped as “proximity area for coastal wetlands” in the Coastal Management SEPP (Porters Creek Wetland). The Coastal SEPP requires any development in areas of “proximity area for coastal wetlands” to demonstrate that the development will not significantly impact on:

- the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
- the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

No such assessment has been provided in the planning proposal.

### Recommendation 13

OEH recommends that, in accordance with Coastal Management SEPP 2018, the planning proposal includes an assessment of whether or not the proposed development of areas mapped as “*proximity area for coastal wetlands*” will have a significant impact on:

- i. the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, and
- ii. the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.