



Office of
Environment
& Heritage

DOC18/738146-7
PP_2017_CCOAS_003_00

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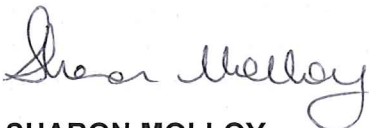
Dear Kathryn

Request for Agency Comments under Section 3.34(2)(d) of the EP&A Act 1979 - Agency Consultation - Planning Proposal – 15 Mulloway Road, Chain Valley Bay

I refer to your email dated 2 October 2018 seeking agency comment on the planning proposal for land at 15 Mulloway Road, Chain Valley Bay.

OEH has reviewed the planning proposal in relation to biodiversity, Aboriginal cultural heritage, and flooding issues. 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 Planning, on 4927 3140.

Yours sincerely

 14/1/2019

SHARON MOLLOY
Director Hunter Central Coast Branch
Conservation and Regional Delivery Division

Contact officer: STEVEN COX
02 4927 3140

Enclosure: Attachments A and B

OEH's recommendations

15 Mulloway Road, Chain Valley Bay, planning proposal

Biodiversity

1. OEH recommends that the planning proposal outlines justification for its inconsistency with Local Planning Direction 2.1 under Section 9.1 of the Environmental Planning and Assessment Act 1979.
2. OEH recommends that further justification is provided on the location of the proposed corridor.
3. OEH recommends that any proposed management actions for the dam, including stormwater management on site, do not impact on the habitat corridor and the habitat value of the dam.
4. OEH recommends that the planning proposal include a calculation of the credits generated by the proposed onsite conservation areas compared to the credit requirements for the development areas.

Aboriginal Cultural Heritage

5. OEH is satisfied with the Aboriginal cultural heritage assessment undertaken and no further assessment is required.

Flooding and Flood Risk

6. The detailed design of the location and size of the constructed wetland, to be undertaken at a later date, should not result in adverse flooding impacts on other properties not owned by the proponent and be consistent with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.
7. It appears there may be a minor inconsistency in the south east corner of the site with the current proposed zoning plan and the extent of the flood planning area presented in the "Karignan Creek Flood Study and Impact Assessment" dated March 2018. This minor inconsistency can be updated when the issues around the location of the wildlife corridor are resolved and proposed zoning plans are updated accordingly.

OEH's detailed comments

15 Mulloway Road, Chain Valley Bay, planning proposal

Biodiversity

1. Further justification is required on the inconsistency of the proposal with Direction 2.1

OEH previously recommended (letter dated 31 August 2017) that further justification is provided on the inconsistency of the planning proposal with Local Planning Direction 2.1 under Section 9.1 of the *Environmental Planning and Assessment (EP&A) Act 1979*. Whilst an updated Biodiversity Assessment Report (Travers bushfire & ecology, September 2018) has been provided, no further justification relating to the inconsistency with Direction 2.1 has been provided.

Recommendation 1

OEH recommends that the planning proposal outlines justification for its inconsistency with Local Planning Direction 2.1 under Section 9.1 of the *Environmental Planning and Assessment Act 1979*.

2. Further justification should be provided on the location of the corridor

The Biodiversity Assessment Report (BAR) (Travers bushfire & ecology, September 2018) outlines inclusion of an L-shaped biodiversity corridor on the western and northern boundaries of the site. Factors considered in locating the corridor included location of hollow-bearing trees and trees with glider sap feeding incisions.

Figure 7 of the BAR indicates that the greatest proportion of hollow-bearing trees, glider sap-feed trees and potentially suitable squirrel glider hollow-bearing trees are located through the vegetated area from the dam diagonally to the north-east of the property, rather than within the proposed corridor following the eastern boundary. Further justification should be provided on the location of the proposed corridor with reference to the quality of habitat to ensure functionality and that the corridor is appropriate for maintaining connectivity for threatened species such as the squirrel glider (*Petaurus norfolcensis*).

Recommendation 2

OEH recommends that further justification is provided on the location of the proposed corridor.

3. Further information is required on proposed management of the existing dam

OEH understands the existing dam is proposed to be retained due to its habitat value, however no information has been provided on management of this dam, including whether it will be utilised for stormwater management.

Recommendation 3

OEH recommends that any proposed management actions for the dam, including stormwater management on site, do not impact on the habitat corridor and the habitat value of the dam.

4. Additional offsets will likely be required for development of the site

OEH previously requested details and results of the biometric assessment undertaken, the quantum of offsets likely to be required, the location of potential offsets and the conservation mechanism to secure offsets. The proposed E2 lands will be retained and will be used as part of the conservation package for the site. The BAR outlines that the quantum of biodiversity offsets

required for the proposal are to be determined using the BAM at the development application stage and that any shortfall in required credits will be purchased through the Biodiversity Trust Fund before development can proceed.

Clearance of 6.34 ha of predominantly Narrabeen Doyalson Coastal Woodland native vegetation is required for the proposed development. The proposed E2 lands to be utilised as offsets as part of the conservation package are Swamp Sclerophyll Forest. OEH notes that for native vegetation that is not a threatened ecological community, offsets must be vegetation that is the same vegetation class and in the same or higher offset trading group. Further offsets are therefore likely to be required for the clearance of the Narrabeen Doyalson Coastal Woodland vegetation as part of the future development of the site.

Recommendation 4

OEH recommends that the planning proposal include a calculation of the credits generated by the proposed onsite conservation areas compared to the credit requirements for the development areas.

Aboriginal Cultural Heritage

5. Aboriginal cultural heritage values have been appropriately assessed

OEH previously provided advice in relation to this planning proposal on 31 August 2017 (DOC17/373458-10). At this time, OEH noted that potential Aboriginal cultural heritage values that may potentially constrain future land-use planning should be identified. OEH recommended that an Aboriginal cultural heritage assessment should be undertaken, in consultation with Aboriginal people, to support the planning proposal. In response to this recommendation, the applicant has recently supplied an *Aboriginal Cultural Heritage Assessment Report (ACHAR)* (Mary Dallas Consulting Archaeologists (MDCA) 2018) to support the planning proposal.

OEH has reviewed the ACHAR and notes that in preparing this assessment, MDCA undertook a process of Aboriginal community consultation in accordance with the *Aboriginal cultural heritage consultation requirements for proponents 2010* (DECCW 2010). The assessment included a field survey, undertaken in conjunction with registered Aboriginal party (RAP) representatives, which did not identify any Aboriginal objects or areas of potential sensitivity within the project area. OEH also understands that consultation with RAPs did not identify any significant Aboriginal cultural heritage values associated with the project area that could trigger conservation planning.

Recommendation 5

OEH is satisfied with the Aboriginal cultural heritage assessment undertaken and no further assessment is required.

Flooding and Flood Risk

6. Design of constructed wetland for water management purposes

The planning proposal includes a proposed constructed wetland at the most downstream extent of the development, adjacent to Karignan Creek, to treat the stormwater runoff from the site. Council email correspondence dated 12 November 2018 includes an email trail between Council and the proponent regarding aspects of the proposal. This includes a comment indicating this wetland basin has been sized on the preliminary calculations based on the extent of impervious area draining to the wetland. This correspondence indicates that a more detailed design approach will be taken at a later stage once all the planning constraints and issues have been resolved between the proponent, council and OEH. This approach to the sizing of the constructed wetland is considered reasonable for the purposes of defining the extent of proposed zone boundaries for this rezoning only.

Council should ensure that the detailed design of the constructed wetland does not result in adverse flooding impacts on other properties not owned by the proponent. Detail design of the

wetland will also need to ensure consistency with the State Environmental Planning Policy (Coastal Management) 2018 as part of the site is located within the mapped Coastal Environment Area.

Recommendation 6

The detailed design of the location and size of the constructed wetland, to be undertaken at a later date, should not result in adverse flooding impacts on other properties not owned by the proponent and be consistent with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

7. Flood planning area and inconsistency with Local Planning Direction 4.3 Flood Prone Land

The updated information includes "Karignan Creek Flood Study and Impact Assessment" dated March 2018, which includes assessment of the overland flows from the development site reaching Karignan Creek. The study maps the flood planning area, based on the design 1% AEP flood level and 500mm freeboard along Karignan Creek. The information presented in this study is considered reasonable and should be used by this planning proposal to define the flood planning area for the southern extent of the site.

The proposed zone boundaries will need to be revised so they are consistent with the information presented on Figure 5A of the Flood Study and Impact Assessment. It appears there is currently a minor inconsistency in the south east corner of the site with the current proposed zoning plan. Filling below the flood planning area to facilitate development is inconsistent with the Local Planning Direction 4.3 Flood Prone Land issued under Section 9.1 of the EP&A Act (1979).

Council needs to be satisfied that the planning proposal will not result in an intensification of land use within the floodprone area, to ensure consistency with the Local Planning Direction 4.3 Flood Prone Land issued under Section 9.1 of the EP&A Act (1979). The current minor inconsistency in the south east corner of the site can be updated when the issues around the location of the wildlife corridor are resolved and proposed zoning plans are updated accordingly.

Recommendation 7

It appears there may be a minor inconsistency in the south east corner of the site with the current proposed zoning plan and the extent of the flood planning area presented in the "Karignan Creek Flood Study and Impact Assessment" dated March 2018. This minor inconsistency can be updated when the issues around the location of the wildlife corridor are resolved and proposed zoning plans are updated accordingly.