Office of Environment & Heritage

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Ms Jenny Mewing
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Central Coast Council
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Dear Jenny

Planning Proposal 380 Motorway Link, Wallarah (Lots 1 – 3 DP1156997)

I refer to your email of the 5 March 2018 requesting advice in accordance with Section 3.34 and 3.25 of the *Environmental Planning and Assessment Act 1979* (Gateway) for an 87-hectare planning proposal at 380 Motorway Link, Wallarah.

The Office of Environment and Heritage (OEH) has reviewed the planning proposal, Council's assessment of the planning proposal, the Land Use provisions, the mapping, and the ecological studies, which included:

- The EcoLogical Interim Ecological Inventory Report (2012)
- PDA North Wyong Lands Conservation Strategy (2011)

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 Hunter/Central Coast, on 4927 3140.

Yours sincerely

Sharon Molloy 22/5/2018

SHARON MOLLOY
Director Hunter Central Coast Branch
Regional Operations Division

Contact officer: STEVEN COX
02 4927 3140

Enclosure: Attachments A and B

Attachment A

OEH's recommendations

Planning proposal 380 Motorway Link, Wallarah (PP 2016 CCOAS 005 00)

Biodiversity

1. OEH recommends that the planning proposal includes discussion and justification of the extent to which the proposal will impact on regionally mapped corridors.

2. OEH recommends that the planning proposal is delayed until the proposed zonings are supported by the outcomes of the biodiversity certification process.

3. OEH recommends that the planning proposal considers the objective of Direction 2.1 of the Section 9.1 Local Planning Directions and provides justification for the proposed rezoning of RU6 to IN.

4. OEH recommends that the planning proposal provides consideration of the impacts of this development on biodiversity within the context of other proposed developments in the vicinity.

5. OEH recommends that the areas of River-Flat Eucalypt Forest and Freshwater Wetlands endangered ecological communities are removed from the proposed IN zone and are placed in the E2 zone.

6. OEH recommends that the proponent undertake a hollow-bearing tree study to inform the proposed zonings.

7. OEH recommends that research stations and recreation area are removed as permissible uses in the proposed E2 zone on this site.

Aboriginal cultural heritage

8. OEH recommends that the proponent clearly identify all potential areas, objects, places or landscapes of heritage significance to Aboriginal culture and people that may potentially constrain future land-use planning by undertaking an Aboriginal cultural heritage assessment.

Flooding and flood risk

9. Council should seek further flooding information on the planning proposal to determine if the planning proposal is consistent with Local Planning Direction 4.3 Flood Prone Land issued under Section 9.1 of the EP&A Act (1979).

10. The full range of flood events, up to and including the Probable Maximum Flood event (PMF) need to be determined and mapped across the entire planning proposal area. This assessment is to include both minor and major water courses and indicate the flood planning area, consistent with Councils current planning requirements.

11. The planning proposal should include an assessment of potential impacts on downstream waterways and catchments to inform zone boundaries that allow for the management of such impacts to downstream areas.

Attachment B

OEH's detailed comments

Planning proposal 380 Motorway Link, Wallarah (PP 2016 CCOAS 005 00)

Biodiversity

1. The planning proposal will impact on regional corridors

Previous strategic planning documents have included all or part of the site as a biodiversity corridor. These include:

- The North Wyong Shire Structure Plan (2012) (NWSSP) shows the south-eastern part of the site within the 'Indicative Green Corridor' and two local conservation links extending into the site from the north east. The planning proposal area is not included as a 'development precinct'.
- The Central Coast Regional Plan (2016) has two maps which include the site within a biodiversity corridor.
- Payne's (2002) Wyong Conservation Strategy corridor includes this site as part of the main corridor.

Recommendation 1

OEH recommends that the planning proposal includes discussion and justification of the extent to which the proposal will impact on regionally mapped corridors.

2. The planning proposal is incomplete

The planning proposal is written in a manner that suggests the planning proposal is not finalised. For example, the table showing consistency with Section 117 Directions includes sections that are yet to be determined.

Further, the planning proposal was written prior to the introduction of the *Biodiversity Conservation Act 2016* and does not reference the new legislation. The proposal was also written prior to the beginning of the discussions relating to the Central Coast strategic biodiversity certification. The planning proposal refers to biodiversity certification being undertaken across a range of sites, but does not indicate whether this site would be included in the Central Coast biodiversity certification project being undertaken by the Department of Planning and Environment, or whether it would be a separate biodiversity certification application solely for the 4 or 5 sites under the one land ownership.

A planning proposal should not pre-empt the outcomes of a biodiversity certification, but ideally be informed by the studies provided for this process. The Office of Environment and Heritage (OEH) recommends that the planning proposal is presented at the same time as the biodiversity certification application, to ensure that the zones are not in conflict with the decisions made through the biodiversity certification process. As the site is proposed to be biodiversity certified under the *Biodiversity Conservation Act 2016*, OEH recommends that the planning proposal is delayed until the biodiversity certification process is well advanced.

Recommendation 2

OEH recommends that the planning proposal is delayed until the proposed zonings are supported by the outcomes of the biodiversity certification process.

3. Rezoning RU6 to E2 is inconsistent with the Section 9.1 Directions

The objective of Local Planning Direction 2.1 is to protect and conserve environmentally sensitive areas. A planning proposal must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). Consistency with

this direction has not been shown, nor has an inconsistency been justified in the planning proposal.

OEH considers a rezoning from RU6 to E2 to be consistent with Section 9.1 (Section 117 Direction 2.1 Environmental Protection Zones) and supports this part of the rezoning. However, a rezoning from RU6 to IN will be a reduction in environmental protection and requires further justification. The planning proposal indicates that consistency with Direction 2.1 is still to be determined.

Recommendation 3

OEH recommends that the planning proposal considers the objective of Direction 2.1 of the Section 9.1 Local Planning Directions and provides justification for the proposed rezoning of RU6 to IN.

4. OEH recommends that the planning proposal is assessed in the context of other nearby planning proposals and developments

This planning proposal was not included in the NWSSP as a proposed development area, but as a strategically located, constrained site subject to further investigation and offset strategies to define conservation requirements and development potential. The site is covered with native vegetation and its potential to contribute to the formation of the Green Corridor is stated in the NWSSP.

Previous ecological studies have provided records of the following threatened species:

- squirrel glider, *Petaurus norfolcensis*
- wallum froglet, *Crinia tinnula*
- white-bellied sea-eagle, *Haliaeetus leucogaster*
- Stephen's banded snake, *Hoplocephalus stephensii*
- eastern pygmy possum, *Cercartetus nanus*
- grey-headed flying-fox, *Pteropus poliocephalus*
- eastern freetail-bat, *Mormopterus norfolkensis*
- little bentwing-bat, *Miniopteris australis*
- eastern bentwing-bat, *Miniopteris schreibersii oceanensis*
- little lorikeet *Glossopsitta pusilla*
- the Charmhaven Apple, *Angophora inopina*
- Bynoe's Wattle, *Acacia bynoeana*
- black-eyed Susan, *Tetratheca juncea*.

Cumulative losses within the broader Warnervale and North Wyong Shire Structure Plan area could have significant and lasting impacts on populations of *Angophora inopina, Acacia bynoeana,* and squirrel gliders.

This planning proposal is one of four proposed rezonings in the NWSSP by this landowner (Munmorah, Bushells Ridge/Wyee, and Wallarah). Comprehensive ecological studies have been undertaken in the past on various land holdings including this one. There are many other nearby development proposals in progress, including the Wallarah 2 coal mine proposal, a clay mine and the CASAR motorsport park, all of which will have impacts on the biodiversity in the region. The cumulative impacts of the developments on biodiversity should be considered so that informed decisions can be made about the most appropriate footprints for development and the best areas to conserve populations of threatened species on the Central Coast.

Recommendation 4

OEH recommends that the planning proposal considers the impacts of this development on biodiversity in the context of other proposed developments in the vicinity.

5. OEH recommends that impacts to endangered ecological communities are avoided

Previous ecological studies (Bell, 2008) have provided vegetation mapping that has indicated that vegetation in the south-west portion of the site (Alluvial Riparian Blackbutt Forest) is consistent with the definition of River-Flat Eucalypt Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions endangered ecological community. Stephen Bell's mapping of 2008 also shows two areas of Narrabeen Impeded Wet Heath, which are attributable to the Freshwater Wetland EEC.

Recommendation 5

OEH recommends that the areas of River-Flat Eucalypt Forest and Freshwater Wetlands endangered ecological communities are zoned E2.

6. OEH recommends that a study of hollow-bearing trees provision across the site is undertaken

A study should be undertaken to determine the density and location across the site of hollow-bearing trees that provide breeding opportunities for many animals, including threatened species (e.g. squirrel gliders, micro-bats). This is particularly important in the area where squirrel gliders have been recorded. The study should be used to inform the appropriateness of the proposed zonings by seeking to place the areas of highest hollow-bearing tree density in the E2 zone.

Recommendation 6

OEH recommends that the proponent undertake a hollow-bearing tree study to inform the proposed zonings.

7. OEH does not support research stations and recreation areas as permissible uses within the E2 zone on this site

The draft Central Coast Consolidated Local Environmental Plan allows research stations and recreation areas as permissible uses within an E2 zone.–OEH does not support the possibility of research stations or recreation areas being permissible uses for the proposed E2 zone for this planning proposal.

Recommendation 7

OEH recommends that research stations and recreation area are removed as permissible uses in the proposed E2 zone on this site.

Aboriginal Cultural Heritage

8. An Aboriginal cultural heritage assessment is needed to inform the planning proposal

To adequately capture the Aboriginal cultural heritage significance of lands subject to a planning proposal, OEH recommend that proponents clearly identify all potential areas, objects, places or landscapes of heritage significance to Aboriginal culture and people that may potentially constrain future land-use planning.

OEH notes that Section 9.1 Direction 2.3(4)(b) of the Environmental Planning & Assessment Act 1979 (EP&A Act) refers specifically to the conservation and protection of Aboriginal objects and declared Aboriginal Places in accordance with the provisions of the National Parks and Wildlife Act 1974.

OEH advises that undertaking due diligence in accordance with the requirements of the Department of Environment, Climate Change and Water (DECCW) 2010 Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales does not demonstrate consistency with the requirements of Section 9.1 (Direction 2.3 - Heritage Conservation) of the EP&A Act. OEH therefore recommend that an Aboriginal cultural heritage assessment be undertaken, in consultation with relevant Aboriginal parties, to adequately capture the information required to support a planning proposal.

Identifying Aboriginal cultural heritage values and consultation with Aboriginal people should be guided by the following OEH documents.

- Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (DECCW, 2011) available at www.environment.nsw.gov.au/licences/investassessreport.htm
- Aboriginal cultural heritage consultation requirements for proponents 2010 (DECCW, 2010) available at www.environment.nsw.gov.au/licences/consultation.htm
- Code of Practice for the Archaeological Investigation of Aboriginal Objects in New South Wales (OEH, 2010) www.environment.nsw.gov.au/licences/archinvestigations.htm

OEH note that the conservation of significant Aboriginal cultural heritage values is consistent with the requirements of Section 9.1 (Direction 2.3 - Heritage Conservation) of the EP&A Act. OEH considers the application of appropriate land-use zoning (such as E2 conservation) as a suitable mechanism to promote the conservation of significant Aboriginal cultural heritage values.

Recommendation 8

OEH recommends that the proponent clearly identify all potential areas, objects, places or landscapes of heritage significance to Aboriginal culture and people that may potentially constrain future land-use planning by undertaking an Aboriginal cultural heritage assessment.

Flooding and Flood Risk

9. An assessment of the full range of potential flooding impacts has not been undertaken

OEH is unable to determine if the planning proposal is consistent with Ministerial Direction 9.1 (Local Planning Direction 4.3 – Flood prone Land) as the full range of flood information is not available. The proposal has not provided any flood information in support of the rezoning, except to state it is flood free during the 1% Annual Exceedance Probability (AEP) Flood. Council needs to satisfy itself that the planning proposal will not result in an intensification of land use within the flood prone 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).

Recommendation 9

Council should seek further flooding information on the planning proposal to determine if the planning proposal is consistent with Local Planning Direction 4.3 Flood Prone Land issued under Section 9.1 of the EP&A Act (1979).

10. Flooding assessment and flood mapping needs to be provided for the full range of flood events up to and including the Probable Maximum Flood (PMF)

The proposal has not provided any flood information in support of the rezoning, except to state it is flood free during the 1% Annual Exceedance Probability (AEP) Flood. Flood mapping presented to support this comment was not overlaid with the proposed zone boundaries. The subject site is partially located within the area covered by the Wallarah Creek Flood Study, which was completed by Wyong Shire Council in 2016.Detailed study of the minor watercourses that may impact this site were not included in the Wallarah Creek Flood Study 2016.

Recommendation 10

The full range of flood events, up to and including the Probable Maximum Flood event (PMF) need to be determined and mapped across the entire planning proposal area. This assessment is to include both minor and major water courses and indicate the flood planning area, consistent with Councils current planning requirements.

11. Impacts associated with increased impervious areas on downstream catchments need to be included in assessment

The planning proposal has the potential to significantly increase impervious areas within the planning proposal area. The impact of these changes on downstream waterways and catchments should be identified within the planning proposal. There is a potential for increase in volume, frequency and rate of discharge to the downstream environment as well as the potential to redistribute flows between catchments. The resultant land-use boundaries should cater for these constraints, together with assessment of the sensitivity of downstream receiving environments. Zone boundaries should appropriately reflect the area required to manage these impacts outside of any environmental areas.

Recommendation 11

The planning proposal should include an assessment of potential impacts on downstream waterways and catchments to inform zone boundaries that allow for the management of such impacts to downstream areas.