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Ms Jenny Mewing  
Strategic Planner Rezoning, Strategic Planning  
Central Coast Council  
jenny.mewing@centralcoast.nsw.gov.au

Dear Ms Mewing

**Planning Proposal – OEH advice on rezoning of land at Lot 273 DP 755266, 15 Mulloway Road, Chain Valley Bay (PP\_2017\_CCOAS\_003\_00).**

I refer to your email dated 14 July 2017 in which you request consideration and comment under Section 56 (2)(d) of the Environmental Planning and Assessment (EP&A Act 1979), regarding a proposal to rezone land at Chain Valley Bay from E3 to R2 and E2. The Office of Environment and Heritage (OEH) has been asked to comment on the planning proposal's consistency or otherwise with Ministerial Directions 2.1, 2.3 and 4.3 of Section 117 of the EP&A Act 1979, Section 34A as well as specifying any requirements for future investigative studies. The Gateway determination was issued on the 16 June 2017. This review is based on reports provided by Central Coast Council.

OEH recommends that Council seeks additional information from the proponent to allow Council to determine the most appropriate areas of the rezoning application for development and conservation. The additional information should include:

- Flood modelling that includes the impact of floods from all sources
- Appropriately timed seasonal surveys for threatened orchid species
- Further surveys for the squirrel glider to inform the location of the green corridor
- Identification of the areas (in hectares) to be removed for development and preserved for conservation
- 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
- An Aboriginal cultural heritage assessment of the site
- Maps of the location of all asset protection zones showing that none occur in National Parks estate.

## Background

The planning proposal rezones land from an environmental management zone (E3) to low density residential (R2) and Environmental protection (E2). It is acknowledged that this site forms part of the Precinct 19 of the North Wyong Shire Structure Plan (2012) and is thus consistent with the intent of the plan, although the plan stipulates that this precinct was intended for development in the long-term (land

that will not be zoned before 15 years, not the 5 years it has been since the start of the plan). A total of 102 lots are planned to be created across an area of 16.59 hectares.

### **The impact of flooding from all sources has not been included**

Page 16 and 17 of the planning proposal includes discussion of the flood impacts on the site. Figure 11 indicates the approximate 1% Annual Exceedance Probability (AEP) and the Probable Maximum Flood (PMF) flood extents from Lake Macquarie. As stated on Page 16, the impacts of flooding from Karignan Creek have not been identified.

The planning proposal does not include a map that indicates the proposed zoning for the lot. A zoning map for the planning proposal would enable assessment of the proposal against the constraints of the land. A zoning plan would indicate if constraints such as flooding and water management have been taken into account. It is recognised that the finer details may change and zone boundaries may vary slightly from the initial proposal to the final design, however without a proposed zoning map overlaid with the constraints mapping, there is no evidence to suggest the proponent has taken constraints into consideration in their planning proposal. Without such evidence of these constraint considerations, OEHL cannot endorse a planning proposal that includes flood and water management constraints.

The impacts of flooding from all sources have not been included in this planning proposal, and as a result OEHL is unable to assess the potential full flooding impacts of the proposed rezoning.

The planning proposal needs to clearly indicate flood impacts from all sources, including, but not limited to Lake Macquarie, Karignan Creek and any overland sources as well as flooding impacts on the access roads to and from the site. As this planning proposal includes alteration of a zone provision that affects floodprone land, then Local Planning Direction 4.3 Floodprone Land issues under Section 117 (2) of the EP&A Act (1979) applies. In its current form and with the lack of flooding information available, this planning proposal is considered inconsistent with this Direction.

Rezoning of floodprone land to a more intense land use is generally not supported, as per Local Planning Direction 4.3 Flood Prone Land issued under Section 117(2) of the EP&A Act 1979. The PMF is considered as an appropriate mechanism for consideration for this application as both rezoning and subdivision are considered significant developments as per Council's DCP. It is OEHL's position that these discrepancies should be managed at this rezoning stage, rather than the individual development application stage further down the track where there is an expectation for development approval.

### **Council should seek additional information on the biodiversity values of the rezoning area**

This planning proposal reduces the environmental protection of the site and is therefore inconsistent with S117 Direction 2.1 and should be justified. It is evident from the Ecological Constraints Assessment report (Travers Nov. 2016) that the vegetation on the site is of a high quality and predominantly in a natural condition and contains high environmental values, including:

- an Endangered Ecological Community (Swamp Sclerophyll Forest on Coastal Floodplains),
- koala habitat, with at least 15% koala feed trees (i.e. *Eucalyptus robusta* and *Eucalyptus haemastoma*) and therefore triggers consideration under SEPP 44, with koalas recorded in the near vicinity,
- records for threatened species such as squirrel gliders, wallum froglet, several micro-bats,
- potential habitat for threatened species on site including spotted-tailed quoll, large forest owls, glossy black-cockatoo, and
- potential winter flowering resources for threatened species such as regent honeyeaters.

Other environmental considerations which should be taken into account by Council are:

- that part of the site has been included in the North Wyong Shire Structure Plan Green Corridor and habitat networks, and is indicated in the Central Coast Regional Plan,
- the vegetation communities are also likely to support additional threatened flora species such as orchids and *Tetratheca juncea*. Surveys were not carried out in the most suitable times of the year according to the Ecological Constraints Assessment report and some species may occur but not have been detected,

- the site includes waterfront land and works may require 40 m buffers from development under the *Water Management Act 2000*,
- the riparian zone associated with Karignan Creek in the south which forms a wildlife link to the Lake Macquarie State Conservation Area should be retained.

The Ecological Constraints Assessment states that surveys have been brief and not necessarily at the time of year required to have confidence in the presence/absence of some species (in particular orchids). It also recommends further surveys for squirrel gliders, so that the wildlife corridors which are to be provided on the site are in a suitable position. Central Coast Council recommends in its report for its Ordinary Council Meeting that the environmental zone is extended to the north of its present position to incorporate all of the endangered ecological community vegetation.

It is not clear, how much vegetation will be removed or retained as part of the proposed rezoning and subsequent development as no area calculations have been supplied. Additionally, while it is stated that a biometric assessment has been carried out, no information has been provided on the type of biometric assessment undertaken or the results of the biometric assessment. The quantum of offsets required for the impacts on biodiversity has not been identified, nor has it been stated whether offsets would be provided on site or offsite. Further, the proponent has not identified a conservation mechanism to secure offsets for the project. OEH recommends that Council requires offsets for the rezoning to be secured via a Biodiversity Stewardship Agreement.

The proponent proposes to retain a green corridor through the site but does not identify the location of the corridor. OEH recommends that the location of the green corridor is finalised during the assessment of the rezoning application.

The proponent has not mapped the distribution of trees across the site that contain small tree hollows and has rather, focused on medium to large hollows as indicators of potential habitat for owls and the squirrel glider. As the proponent has not identified the size class of 'small' hollows, Council should consider that 'small' hollows may be suitable for the squirrel glider. Additionally, 'small' hollows provide potential habitat for a number of hollow roosting threatened and non-threatened bat species. Council should consider all trees with hollows potential habitat for threatened species across the rezoning area.

OEH recommends Council seeks the above information from the proponent to assist Council to assess the most appropriate areas of the rezoning for development and conservation.

### **Aboriginal Cultural Heritage**

In accordance with the Department of Planning and Environment (DPE) Gateway Determination (DPE Ref: PP\_2017\_CCOAS\_003\_00), the Office of Environment and Heritage (OEH) provides the following Aboriginal cultural heritage management advice for the Planning Proposal to rezone land at 15 Mulloway Road, Chain Valley Bay NSW. The Aboriginal cultural heritage advice detailed in **Attachment A** has been developed to inform Council on how best to demonstrate consistency with Section 117 (Direction 2.3- Heritage Conservation) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

### **Areas of development must not impact on National Parks estate**

The required Asset Protection Zone must be fully contained on private property and must not be identified or constructed on national park estate under any circumstance. Any existing cleared area that may be situated on national park estate must not be considered to be or incorporated into an Asset Protection Zone as part of this development application, any amendments or future development applications. Please find the guidelines for development adjacent to National Parks at the following link.

<http://www.environment.nsw.gov.au/resources/protectedareas/development-land-adjoining-130122.pdf>

If you require any further information regarding this matter please contact Karen Thumm, Conservation Planning Officer, on 4927 3153 or karen.thumm@environment.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'S. Cox', with a long horizontal stroke extending to the right.

**STEVEN COX**  
**Senior Team Leader Planning,**  
**Hunter Central Coast Branch**  
**Regional Operations Division**

**31 August 2017**

**Attachment A – Aboriginal cultural heritage assessment advice**

## **ATTACHMENT A: ASSESSING ABORIGINAL CULTURAL HERITAGE IN PLANNING PROPOSALS**

To adequately capture the Aboriginal cultural heritage significance of lands subject to a planning proposal, OEH recommends that planning authorities clearly identify all potential Aboriginal cultural heritage values that may potentially constrain future land-use planning.

We note that Section 117 Direction 2.3(4)(b) of the 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*. Section 117 Direction 2.3(4)(c) of the EP&A Act conversely requires the investigation of Indigenous heritage significance, which in-turn requires a broader focus that must incorporate an assessment of social value. OEH therefore advises that undertaking due diligence in accordance with the requirements of the DECCW 2010 *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* will not necessarily demonstrate consistency with the requirements of Section 117 (Direction 2.3 - Heritage Conservation) of the EP&A Act. OEH recommends that the following two types of Aboriginal cultural heritage assessments be undertaken to adequately capture the information required to support a planning proposal:

1. A cultural heritage assessment – involving consultation with Aboriginal people (groups and individuals) and can include historical and oral history assessment and broader values assessment (e.g. landscape and spiritual values); and
2. An archaeological assessment – involving the identification and assessment of Aboriginal objects (often referred to as ‘sites’) and their management based on archaeological criteria.

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](http://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](http://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](http://www.environment.nsw.gov.au/licences/archinvestigations.htm).

OEH notes that the conservation of significant Aboriginal cultural heritage values is consistent with the requirements of Section 117 (Direction 2.3 - Heritage Conservation) of the EP&A Act. OEH would consider 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.