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Mr Rod Mergan

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Dear Mr Mergan

Planning proposal for manufactured home estate at 45 Mulloway Road, Chain Valley Bay (Lot 5 DP 1228880)

Thank you for your email of the 22 September 2020 requesting advice on the planning proposal for 45 Mulloway Road, Chain Valley Bay, which rezones the property from E3 (Environmental Management) to RE2 (Private Recreation) and E2 (Environmental Conservation). Biodiversity Conservation Division (BCD) is providing comment under section 3.34(2) and section 9.1 (2) (Ministerial Directions) of the *Environmental Planning and Assessment Act 1979*. The proposal aims to provide a manufactured home estate and to protect the vegetated land in the south of the property.

BCD reviewed the Gateway Determination, council's planning proposal, the biodiversity constraints assessment report provided by Travers Bushfire and Ecology (September 2019), and the report supplied by John Young relating to the masked owl nesting site on the property.

BCD'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 Karen Thumm, Conservation Planning Officer, on 4927 3153 or via email at rog.hcc@environment.nsw.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Cox'.

15 October 2020

STEVEN COX
Senior Team Leader Planning
Hunter Central Coast Branch
Biodiversity and Conservation Division

Enclosure: Attachments A and B

BCD's recommendations

Planning proposal for manufactured home estate 45 Mulloway Road, Chain Valley Bay

1. Biodiversity Conservation Division (BCD) is satisfied that the inconsistency with Section 9.1 (2.1) Environment Protection Zones is minor and can be justified.
2. BCD recommends that further ecological surveys are conducted to inform the development footprint.
3. BCD recommends that the development footprint is reduced to accommodate the masked owl breeding habitat in accordance with the owl specialist's recommendations.
4. BCD recommends that the proposed E2 (Environmental Conservation) zone is aligned with the E2 zone on adjacent properties.
5. BCD recommends that an assessment under the new SEPP (Koala Habitat Protection) 2019 is now undertaken.
6. BCD recommends that offsetting requirements are identified prior to public exhibition.
7. BCD recommends that the RE2 (Private Recreation) zone boundary is adjusted so that it remains outside of the 1% flood extent identified in the Lake Macquarie Catchments Overland Flood Study.

BCD's detailed comments

Planning proposal for manufactured home estate 45 Mulloway Road, Chain Valley Bay

Biodiversity

1. BCD is satisfied that the inconsistency with Section 9.1 Ministerial Direction (2.1) Environmental Protection Zones is minor

The planning proposal recommends a change from an E3 (Environmental Management) zone to RE2 (Private Recreation) and E2 (Environmental Conservation). For the part of the property which is being changed from an environmental zone to a recreation zone, this is a reduction in the protection afforded to an environmental zone, and the planning proposal is therefore inconsistent with the terms of Section 9.1 Ministerial Direction 2.1 (Environmental Protection Zones).

However, Biodiversity Conservation Division (BCD) is satisfied that this inconsistency with Section 9.1 Ministerial Direction 2.1 is minor as the area where the environmental protection will be reduced is already predominantly cleared. Also, it is expected that the development footprint can be redesigned to reduce the impacts on biodiversity, without affecting the viability of the project.

Recommendation 1

BCD is satisfied that the inconsistency with Section 9.1 (2.1) Environment Protection Zones is minor and can be justified.

2. Further ecological assessment is required to inform the development footprint

The Travers (2019) ecological report states that the level of assessment undertaken in the vegetated areas in the southern part of the property was 'very restricted' and that further survey is required for several threatened species including threatened orchid species, koalas, squirrel gliders, wallum froglets and other threatened fauna in order to inform the development design.

The report lists hollow-bearing trees, winter-flowering Eucalypts, Allocasuarinas, swamp sclerophyll forest (an endangered ecological community), koala feed trees, the riparian zone and other high environmental values as being present on the subject site. Threatened species including four microbats (east-coast freetail-bat, large-footed myotis, little bentwing-bat, and eastern bentwing-bat), and masked owls were recorded on site during the surveys.

Biodiversity Conservation Division (BCD) expects that with further threatened species surveys more high environmental values will be recorded in the southern part of the site.

Recommendation 2

BCD recommends that further ecological surveys are conducted to inform the development footprint.

3. BCD recommends further consideration of the masked owl nest and roost trees

There is a masked owl nest tree and roost trees within the southern portion of the subject site. This area is generally within the proposed E2 zone and is also part of the Green corridor and habitat network provided in the North Wyong Shire Structure Plan and Central Coast Regional

Plan. However, the specialist report provided (Young 2019) recommends buffer areas from these nest and roost trees and reconsideration of the positioning of roads to protect the masked owl's breeding habitat. The recommended buffer areas will encroach slightly on the area earmarked for an RE2 zone, i.e. for development.

Recommendation 3

BCD recommends that the development footprint is reduced to accommodate the masked owl breeding habitat in accordance with the owl specialist's recommendations.

4. BCD recommends widening the proposed E2 corridor to align with the E2 zones on the adjoining properties

Planning and Assessment have stated in the Gateway Determination that the planning proposal is to be updated to "confirm the width of the proposed E2 Environmental Conservation zone to align with the position of environmental zones on adjoining land, which together must form an appropriate biodiversity corridor for the area". Further, council's assessment of the planning proposal states that the corridor in the south of the site provides interregional landscape connectivity.

Biodiversity Conservation Division (BCD) has also mapped the vegetation in the southern part of the subject site as the northern boundary of a regionally significant corridor and therefore recommends that the proposed E2 area on this property is aligned with the E2 zone from the adjoining properties to the east and west. This would incorporate the high environmental values associated with the soaks of the Tacoma Swamp soil landscape and the Wyong alluvial soils into the corridor to provide connectivity across the landscape. Some rehabilitation may be required to enhance the corridor. An increased corridor width would also provide additional protection for the masked owl.

Recommendation 4

BCD recommends that the proposed E2 zone is aligned with the E2 zone on adjacent properties.

5. The assessment of koala habitat will need to be updated in accordance with the new SEPP (Koala Habitat Protection) 2019

The ecological assessment included an assessment of koala habitat under State Environmental Planning Policy 44 (SEPP 44). The report indicated that the trees on the site are the koala feed trees *Eucalyptus haemastoma* (Scribbly Gum) and *Eucalyptus robusta* (Swamp Mahogany) and comprise more than 15% of the trees on site. An assessment under the new SEPP (Koala Habitat Protection) 2019 will be required for the development application stage.

Planning and Assessment have stated in the Gateway Determination that the planning proposal is to be updated in accordance with the new SEPP (Koala Habitat Protection) 2019. Biodiversity Conservation Division (BCD) also recommends that the koala assessment is updated.

Recommendation 5

BCD recommends that an assessment under the new SEPP (Koala Habitat Protection) 2019 is now undertaken.

6. Offsetting will be required at the DA stage

Planning and Assessment have stated in the Gateway Determination that the planning proposal is to be updated to identify offsetting requirements prior to public exhibition. The site

is affected by the Biodiversity Values Map prepared by the NSW Department of Planning Industry and Environment under Part 7 of the *Biodiversity Conservation Act 2016*, and the proposed impacts on 0.32 hectares of Swamp Sclerophyll Forest Endangered Ecological Community and 0.92 hectares of Narrabeen Doyalson Coastal Woodland will exceed the clearing threshold which triggers the Biodiversity Offset Scheme. While there is no formal requirement to provide offsets at the planning proposal stage the proponent will need to meet their offset obligations through the retirement of credits in accordance with the Biodiversity Assessment Method at the development application stage. Biodiversity Conservation Division (BCD) also recommends that offsetting requirements are identified prior to public exhibition.

Recommendation 6

BCD recommends that offsetting requirements are identified prior to public exhibition.

Water Floodplains and Coasts

7. The proposal is not consistent with the North Wyong Shire Structure Plan

The proposal will place new manufactured homes within the 1% Annual Exceedance Probability (AEP) flood extent. The proposal seeks to rezone a portion of Lot 5 DP 1228880 from E3 to RE2 (Private Recreation) to support a future manufactured home estate. The site's location is included in the Lake Macquarie Catchments Overland Flood Study which is currently being prepared by BMT for Central Coast Council. This study shows that there is an overland flow path along the western boundary during a 1% AEP local catchment flood event. This overland flow path extends into the proposed RE2 zone area.

The North Wyong Shire Structure Plan (NWSSP) states that 'A key principle applied to the Structure Plan has been to not intensify land use in areas that could be at risk from increased flooding'. Creating small lots for occupation in the area identified as floodway will intensify development in a floodplain – leading to increased flood risk and potential flood damages to residents.

Recommendation 7

BCD recommends that the RE2 zone boundary is adjusted so that it remains outside of the 1% flood extent identified in the Lake Macquarie Catchments Overland Flood Study.