



Office of
Environment
& Heritage

Your reference: PP 5/2018:CP
Our reference: DOC19/367924
Contact: Marcus Wright
Ph 02 6983 4917
Date: 26 June 2019

Carel Potgieter
Planning and Environment Manager
Griffith City Council
1 Benerembah Street
GRIFFITH NSW 2680

Dear Mr Potgieter

RE: Planning Proposal No. 5/2018 proposed adjustment to the zoning boundary on

Lot 6 DP 1133395-47 Mountain View Road MYALL PARK

I refer to your correspondence to the Western Office of the Department of Planning and Environment (DPE) dated 5 June 2019, and copied to the Office of Environment and Heritage (OEH).

OEH do not agree that the unlawful clearing that has taken place on Lot 6 DP 1133395-47 is a separate or discrete issue to your request to rezone the parcel. The clearing constitutes unlawful development and is an impediment to the rezoning request. We have previously advised that if Council were to remedy the unlawful development (clearing) that would remove the impediment to the rezoning application.

In our response to Council dated 31 May 2019 (via Steve Parisotto) we provided an alternative solution. We noted that the applicant's intended activity was already permissible approximately 25 metres to the east in the RU2 Rural Landscape zone. According to the ecological report provided by Council the condition of that patch is homogenous with the patch already cleared. Building a dwelling house there is permissible and is not likely to impact the habitat of threatened species. This would not only provide a legal pathway for the applicant immediately, it would also negate the need to rezone.

Please note that we did not suggest building 25 metres to the south. This would be within the E2 Environmental Conservation zone. Building is a prohibited activity in E2 and likely to harm threatened species or their habitat, as you have stated in your most recent letter to DPE.

OEH understands that Council has considered another option to resolve this issue, namely to amend the rezoning application to maintain or increase the spatial extent of the E2 zone. This option has been the subject of consultation between Council and DPE since March 2019. OEH considers this to be a satisfactory remedy to the unlawful clearing because (a) it reflects the natural ecotone that exists between the Plant Community Types at the site, consistent with the ecological assessment, and (b) it serves to offset any harm that may have been caused by the unlawful clearing. We also consider this approach to protect the good quality habitat you have identified to the south of the current building site. For these reasons, OEH considers this approach to be a remedy to the unlawful clearing. The applicant should be made aware that dwelling houses will remain prohibited in any existing or new E2 zoned land, including all clearing associated with or ancillary to that activity.

OEH notes that the applicant in this matter was apparently unaware of their obligation to gain consent before they started work. It is important to remind the applicant of the land uses that are permitted in each zone, and that there will still be a requirement for development consent after rezoning.

OEH anticipate that a Development Application (DA) for the construction of a dwelling house would be received by Council following the rezoning. As Council is aware, cl7.2 of the *Biodiversity Conservation Act 2016* requires that any DA involving the clearing of native vegetation, regardless of area, must be accompanied by a Test of Significance and a Biodiversity Offset Scheme Entry Threshold test report (BOSET). In this circumstance, those tests should include **all clearing** that has already taken place, in addition to any ancillary clearing including access points, utilities, services, associated buildings, Asset Protection Zones and amenity.

Should the Biodiversity Offset Scheme (BOS) be triggered, Council will need to ensure that any credit obligation identified in the ensuing Biodiversity Development Assessment Report (BDAR) is retired by the applicant before granting consent to the DA or any work commencing.

To summarise, OEH suggests the following approach:

1. Amend the current gateway application to maintain or increase the spatial extent of the E2 zone in line with the proposal put to Council by DPE in March 2019. On that basis OEH will consider that the unlawful development (clearing) is resolved in lieu of action not taken by Council, removing that impediment to the rezoning application.
2. Once the gateway determination is granted, Council will receive a DA for a dwelling house in the newly zoned RU2 where the clearing has already occurred. According to cl7.2 of the *Biodiversity Conservation Act 2016*, Council must consider clearing of native vegetation in its assessment of that DA, and consider the evidence described above.

Should Council choose another option, or do nothing, as a concurrence authority to gateway applications OEH will have an opportunity to consider the rezoning application again until we are satisfied that there has been a remedy to the unlawful development (clearing).

If you have any questions regarding this matter, please contact Marcus Wright on 6983 4917 or via rog.southwest@environment.nsw.gov.au.

Yours sincerely



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