



Our Ref: DOC21/68832-6
Your Ref: Planning Proposal PP20/0003

General Manager
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2484

Attention: Mr Stuart Russell

Dear Mr Green

RE: Walmsleys Road, Bilambil Heights – Tweed Shire - Planning Proposal

Thank you for your e-mail dated 4 February 2021 about the Gateway Determination for a Planning Proposal (PP) at Walmsleys Road, Bilambil Heights,, seeking pre-exhibition comments from the Biodiversity and Conservation Division (BCD) of the Biodiversity, Conservation and Science Directorate in the Environment, Energy and Science Group of the Department of Planning, Industry and Environment. I appreciate the opportunity to provide input.

The Gateway version of the PP (dated November 2020) indicates the Tweed Shire Council has been approached by Bilambil Holdings Pty Ltd to rezone Lot 1 DP 1032820 Scenic Drive, Bilambil Heights, within the Tweed local government area.

It is understood that the aim of the PP is to increase the area of R1 General Residential zoned land to facilitate a mix of medium density development and mixed use development, while at the same time consolidating and enhancing native vegetation on the site, and rezoning this area to RE2 Private Recreation as an interim measure until the council completes its review of E zones across the shire, at which point a suitable E zone may be applied.

We also understand that part of the site is already zoned R1 General Residential, with the balance of the site zoned as a Deferred Matter (DM). This DM area was formerly zoned 7(l) Environment Protection (Scenic/Escarpment) as per the Tweed Local Environmental Plan 2000.

We have reviewed the PP and its supporting information in the context of the North Coast Regional Plan 2036 and have identified several issues in response to the proposed zoning amendments. These issues are discussed in detail in **Attachment 1** to this letter.

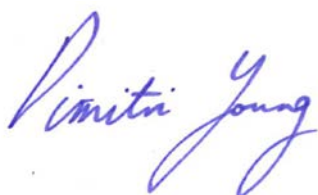
In summary, the BCD recommends:

1. The planning proposal should re-examine the constraints of the planning area, including HEV, and all other relevant constraints to development, in the absence of past, current or proposed zoning boundaries, to determine an appropriate future use of the planning area by:
 - a. including site investigations of the planning area undertaken by a suitably qualified ecological consultant for the presence of HEV land as per the criteria for HEV set out in the NCRP.

- b. giving further consideration to protecting the known threatened plant species on the planning area that are deemed to be potential Serious and Irreversible Impact (SAIL) species under the *Biodiversity Conservation Act 2016*, including *Cassia marksiana*, Fine-leaved Tuckeroo (*Lepiderema pulchella*) and Durroby (*Syzygium moorei*), noting that these would comprise confirmed HEV.
 - c. maximising the avoidance of land use intensification in areas of confirmed HEV, including SAIL species, and instead protecting these areas by applying a suitable environmental zone and a minimum lot size that does not allow future subdivision of these areas.
2. If after addressing recommendation 1 above, the planning area is identified as suitable for accommodating the intensification of land use and some areas of confirmed HEV, including SAIL species, cannot be avoided, then the planning proposal should:
- a. justify impacts on HEV, including SAIL species, and acknowledge the uncertainty created by not avoiding potential SAIL species.
 - b. include a master/concept plan (or similar plan) of the proposed subdivision, which identifies an appropriate location and density of development lots, as well as future building envelopes and infrastructure requirements such as bushfire asset protection zones, access roads or electricity transmission lines within those lots, and demonstrates how some avoidance of HEV areas, including SAIL species, has been achieved.
 - c. determine the biodiversity credits required to offset the future development impacts enabled by the planning proposal by applying Stage 1 of the Biodiversity Assessment Method (BAM) to those areas of confirmed HEV, including SAIL species, proposed for land use intensification, as well as areas subject to indirect impacts. Stage 1 data should then be entered into the BAM-Calculator, along with the assumption that 100% of native vegetation occurring in those areas proposed for zoning to R1 – General Residential would be lost, to determine the quanta and types of biodiversity credits required to offset the loss of HEV, including SAIL species.
 - d. include a Planning Agreement between the landowner and the council that commits the landowner to providing the biodiversity offsets identified in recommendation 2c) above unless the future development application for the land triggers entry into the Biodiversity Offsets Scheme (BOS) under the BC Act and the biodiversity credits required by the BOS are greater than those required by the Planning Agreement.

If you have any questions about this advice, please do not hesitate to contact Ms Nicky Owner, Senior Conservation Planning Officer, at nicky.owner@environment.nsw.gov.au or 6659 8254.

Yours sincerely



9 March 2021

DIMITRI YOUNG
Senior Team Leader Planning, North East Branch
Biodiversity and Conservation

Enclosure: Attachment 1: Detailed BCD Comments – Planning Proposal Walmsleys Road, Bilambil Heights

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The Biodiversity and Conservation Division (BCD) has reviewed the Gateway version of the Planning Proposal (PP) (dated November 2020), which indicates the Tweed Shire Council has been approached by Bilambil Holdings Pty Ltd to rezone Lot 1 DP 1032820 Scenic Drive, Bilambil Heights, within the Tweed local government area.

The Proposal

The BCD understands that the aim of the PP is to increase the area of R1 General Residential zoned land to facilitate a mix of medium density development and mixed use development, while at the same time consolidating and enhancing native vegetation on the site, and rezoning this area to RE2 Private Recreation as an interim measure until the council completes its review of E zones across the shire, at which time a suitable E zone may be applied.

We also understand that part of the site is already zoned R1 General Residential, with the balance of the site zoned as a Deferred Matter (DM). This DM area was formerly zoned 7(l) Environment Protection (Scenic/Escarpment) as per the Tweed Local Environmental Plan 2000.

Strategic Biodiversity Planning Framework

The Planning Proposal (PP) is required to demonstrate consistency with the strategic planning framework including the North Coast Regional Plan 2036 (NCRP). Action 2.1 under Direction 2 of the NCRP requires development to be focussed to areas of least biodiversity sensitivity in the region and the implementation of the 'avoid, minimise, offset' hierarchy to biodiversity, including areas of high environmental value (HEV).

We have reviewed the PP and its supporting information in the context of the NCRP and offer several comments and recommendations in response to the proposed zoning amendments.

Based on the information presented in the PP, several threatened plants are known to occur on the site that are deemed to be potential Serious and Irreversible Impact (SAIL) species under the *Biodiversity Conservation Act 2016* (BC Act), including *Cassia marksiana*, Fine-leaved Tuckeroo (*Lepiderema pulchella*) and Durroby (*Syzygium moorei*). Given the critically endangered status of these plants, as per Section 7.16(2) of the BC Act, a development application for local development that is determined by the consent authority as being likely to result in a SAIL must be refused. The PP should be designed to ensure future development of the site does not impact these SAIL species. This would best be achieved by including these species in a suitable environmental protection zone.

We are also of the view there is the high potential for the site to contain a regenerating threatened ecological (rainforest) community. This is based on the geographic location of the site combined with the known presence of some rainforest plant species, as presented within the information supporting the PP.

Unfortunately, the supporting information relating to biodiversity appears to focus primarily on the identification of individual trees within the subject lot, along with recommendations for revegetation of the site post-development, rather than the identification of HEV, as required by the NCRP. The criteria for HEV set out in the NCRP are included in Table 1 below.

Based on the location of known threatened plants and regenerating vegetation, we query the ability of the site to accommodate a medium density and mixed-use subdivision, while at the same time avoiding the threatened entities, many of which are likely to comprise HEV, that are known to occur there. As such, we question the ability of the PP, and the proposed development it would subsequently facilitate, to meet the objectives of the NCRP.

Hence, we are of the view that the PP should be revised and supported by a constraints analysis to assist in determining an appropriate use, including development form (lot layout) and minimum lot size considerations, for the site, given the constraints present. This includes a comprehensive assessment of the HEV, bushfire risk and any other relevant development constraint. HEV should be identified in the planning area and the use of land in such areas should not be intensified. Such areas should instead be better protected through an appropriate zone, ideally one that has strong conservation objectives and limited land uses, and an appropriate minimum lot size should be applied so that the land cannot be further subdivided.

If however, areas of HEV are to be zoned for land use intensification, then the PP should justify these future impacts, calculate the biodiversity credits that would be required to offset those impacts and secure the provision of these credits via a planning agreement executed between the landowner and the council. Any such planning agreement though, would not prevent the relevant decision maker from determining, as part of the evaluation of any future development application (DA), that any future development proposal is likely to have a SAIL on threatened entities. Therefore, despite a planning agreement being made, any DA that affects a potential SAIL entity may still be refused.

BCD Recommendations:

1. The planning proposal should re-examine the constraints of the planning area, including HEV, and all other relevant constraints to development, in the absence of past, current or proposed zoning boundaries, to determine an appropriate future use of the planning area by:
 - a. including site investigations of the planning area undertaken by a suitably qualified ecological consultant for the presence of HEV land as per the criteria for HEV set out in the NCRP.
 - b. giving further consideration to protecting the known threatened plant species on site that are deemed to be potential Serious and Irreversible Impact (SAIL) species under the *Biodiversity Conservation Act 2016*, including *Cassia marksiana*, Fine-leaved Tuckeroo (*Lepiderema pulchella*) and Durroby (*Syzygium moorei*), noting that these would comprise confirmed HEV.
 - c. maximising the avoidance of land use intensification in areas of confirmed HEV, including SAIL species, and instead protecting these areas by applying a suitable environmental zone and a minimum lot size that does not allow future subdivision of these areas.
2. If after addressing recommendation 1 above, the planning area is identified as suitable for accommodating the intensification of land use and some areas of confirmed HEV, including SAIL species, cannot be avoided, then the planning proposal should:
 - a. justify impacts on HEV, including SAIL species, and acknowledge the uncertainty created by not avoiding potential SAIL species.
 - b. include a master/concept plan (or similar plan) of the proposed subdivision, which identifies an appropriate location and density of development lots, as well as future building envelopes and infrastructure requirements such as bushfire asset protection zones, access roads or electricity transmission lines within those lots, and demonstrates how some avoidance of HEV areas, including SAIL species, has been achieved.
 - c. determine the biodiversity credits required to offset the future development impacts enabled by the planning proposal by applying Stage 1 of the Biodiversity Assessment Method (BAM) to those areas of confirmed HEV, including SAIL species, proposed for land use intensification, as well as areas subject to indirect impacts. Stage 1 data should then be entered into the BAM-Calculator, along with the assumption that 100% of native vegetation occurring in those areas proposed for zoning to R1 – General Residential would be lost, to determine the quantity and types of biodiversity credits required to offset the loss of HEV, including SAIL species.

- d. include a Planning Agreement between the landowner and the council that commits the landowner to providing the biodiversity offsets identified in recommendation 2c) above unless the future development application for the land triggers entry into the Biodiversity Offsets Scheme (BOS) under the BC Act and the biodiversity credits required by the BOS are greater than those required by the Planning Agreement.

Table 1. HEV Criteria and Verification Methods – North Coast Regional Plan

Verification Approach	High Environmental Value Criterion	Verification Method
A. Desktop Analysis	1. Littoral Rainforest, Coastal Wetlands and proximity areas for these mapped by SEPP Coastal Management.	Check the maps of coastal wetlands, littoral rainforests and their proximity areas on the NSW Planning Portal to identify whether any of these attributes occur on the site.
	2. Areas of Outstanding Biodiversity Value declared by the <i>Biodiversity Conservation Act 2016</i>	Check the list of declared Areas of Outstanding Biodiversity Value on DPIEs Environment, Energy and Science website to identify whether any occur on the site. As at March 2021 the only declared areas of AOBV are for the Mitchell's Rainforest Snail in the Stotts Island Nature Reserve.
	3. Nationally Important Wetlands listed in the Directory of Important Wetlands, including a 50m wide buffer.	Check the map of Nationally Important Wetlands on the SEED portal to identify whether any occur on the site and/or whether a 50m wide buffer to those wetlands intersects the site.
	4. Riparian zones of third order streams and above including a buffer consistent with Appendix E of the Biodiversity Assessment Method 2020.	Refer to Appendix E of the Biodiversity Assessment Method 2020 available on DPIEs Environment, Energy and Science website.
	5. Native vegetation in over-cleared (Mitchell) landscapes (ie more than 70% cleared)	a. Identify the Mitchell Landscape in which the site occurs from the SEED portal. b. Register and visit the NSW Vegetation Information System (VIS) database to determine whether the % cleared status of the Mitchell Landscape in which the site occurs is above 70%.
B. Fieldwork and Analysis	1. Over-cleared vegetation types identified using the VIS as more than 70% cleared.	a. Identify Plant Community Types (PCTs) on the site through fieldwork, supported by the vegetation classification system contained in the VIS. b. Using the VIS, determine whether the % cleared status of the PCTs identified through fieldwork on the site is above 70%.
	2. Threatened Ecological Communities (TECs) identified in the VIS and by comparison with the NSW Threatened Species Scientific Committee's Final Determinations.	a. Identify PCTs on the site through fieldwork. b. Use the VIS to determine whether the PCTs constitute a TEC. c. Verify that the PCT is/is not a TEC by comparison with the relevant Final Determination.
	3. Key habitats for threatened species including:	
	a. Breeding habitat of both species credit species and ecosystem credit species with known breeding occurrence.	Refer to BioNet, any relevant surveys less than five years old, and undertake fieldwork.
	b. Core Koala Habitat	a. Check existing Core Koala Habitat mapping in DPE approved Koala Plans of Management (KPoM) and, where necessary, follow any processes set out in these plans for identifying Core Koala Habitat. b. If the site is not in the area covered by a DPE approved KPoM, then undertake fieldwork in accordance with SEPP Koala Habitat Protection 2020 to determine if Core Koala Habitat is present on site.
	c. Important habitat of migratory and vagrant species mapped for the Biodiversity Offsets Scheme.	Check Important Area Mapping (IAM) on the SEED portal to identify whether any of these mapped areas occur on the site.
	d. Breeding, foraging and/or congregation habitats for migratory shorebird species with known occurrence – from existing BioNET records and/or field work.	Refer to BioNet, any relevant surveys less than five years old, and undertake fieldwork.
	e. Known habitat for populations of species-credit species (as identified in the TBDC)	Refer to BioNet, any relevant surveys less than five years old, and undertake fieldwork.
	4. Old Growth Forest defined in accordance with a code of practice under Part 5 of the (repealed) Native Vegetation Regulation 2013.	View Old Growth Mapping in the SEED portal.