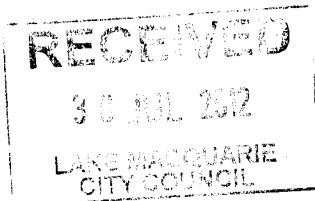




**Office of
Environment
& Heritage**



Our reference: DOC12/28669; FIL12/7028
Contact: Anne Killick, 4908 6802

Mr Brian Bell
General Manager
Lake Macquarie City Council
Box 1906
HUNTER REGION MAIL CENTRE NSW 2310

Attention: Matthew Hill

Dear Mr Bell

RE: INITIAL COMMENTS REGARDING F3 FREEWAY SOUTHBOUND SERVICE CENTRE PLANNING PROPOSAL

I refer to an email on 10 July 2012 seeking initial comments from the Office of Environment and Heritage (OEH) in relation to the abovementioned planning proposal. OEH understands that the Department of Planning and Infrastructure has requested Council to consult with OEH prior to the Planning Proposal being submitted for a Gateway Determination. It is also noted that the planning proposal is to allow an enabling clause to be inserted into the Lake Macquarie Local Environmental Plan 2004, rather than proposing to rezone the site.

Biodiversity

As outlined in *NSW 2021: A plan to make NSW number one*, the overarching goal for conservation in NSW is to protect our natural environment through protecting and conserving land, biodiversity and native vegetation. Within the relevant legislation and policy (*Threatened Species Conservation Act 1995*, *Native Vegetation Act 2003*, *Regional Strategies and Regional Conservation Plans*), this means that biodiversity and other environmental values must be 'improved or maintained', that is, gains in biodiversity and other environmental values must be greater than or equal to any losses resulting from land clearing and / or other forms of environmental degradation.

In this regard, OEH encourages areas of native vegetation, threatened species habitats and wildlife corridors to be avoided where possible as part of the planning process. Where impacts are proposed on areas of biodiversity value, the proponent should clearly demonstrate how they propose to mitigate and offset any loss in biodiversity value to meet the 'improve or maintain' threshold.

Whilst it is recognised that the development is proposed to be located primarily in degraded and cleared areas, opportunities exist to provide for enhanced environmental outcomes by using the strategic planning process to permit a level of development whilst also protecting and re-establishing native vegetation and threatened species habitats. In this regard, following a favourable Gateway Determination, OEH suggests further detailed consideration of offsetting requirements for the impacts proposed on the site can be undertaken. For example, there may be opportunities for offsetting to take place on the remainder of the site to achieve an 'improve or maintain' outcome for biodiversity values.

Aboriginal Cultural Heritage

An important component of the environmental assessment process undertaken in support of the proposed LEP amendment is the consideration of potential impacts to Aboriginal cultural heritage. The importance of protecting Aboriginal cultural heritage is reflected in the provisions of the *National Parks and Wildlife Act 1974* (NPW Act). The NPW Act clearly establishes that Aboriginal objects and places are protected and may not be damaged, defaced or disturbed without appropriate authorisation. Importantly, approvals under the *Environmental Planning and Assessment Act 1979* (EP&A Act) do not absolve the proponent of their obligations under the NPW Act.

OEH acknowledges the significance of the local environment to the local Aboriginal community. As part of any development proposal, it is critical that the potential impacts to Aboriginal cultural heritage are fully assessed and considered. In this regard, future environmental assessments should contain:

1. A description of any Aboriginal objects and declared Aboriginal places located or associated with the area of the proposed development.
2. A description of the cultural heritage values, including the significance of the Aboriginal objects and declared Aboriginal places, that exist across the whole area that will be affected by the proposed development, and the significance of these values for the Aboriginal people who have a cultural association with the land.
3. A description of how the requirements for consultation with Aboriginal people as specified in clause 80C of the National Parks and Wildlife Regulation 2009 have been met.
4. The views of those Aboriginal people regarding the likely impact of the proposed development on their cultural heritage. If any submissions have been received as a part of the consultation requirements, then the report must include a copy of each submission and your response.
5. A description of the actual or likely harm posed to the Aboriginal objects or declared Aboriginal places from the proposed activity, with reference to the Aboriginal cultural heritage values identified.
6. A description of any practical measures that may be taken to protect and conserve those Aboriginal objects or declared Aboriginal places.
7. A description of any practical measures that may be taken to avoid or mitigate any actual or likely harm, alternatives to harm or, if this is not possible, to manage (minimise) harm.

In addressing these requirements, the applicant should refer to the following documents:

- a) *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* (OEH 2010) - www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf These guidelines identify the factors to be considered in Aboriginal cultural heritage assessments for development proposals under parts 4 and 5 of the EP&A Act.
- b) *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (OEH, 2010) - www.environment.nsw.gov.au/licences/consultation.htm. This document further explains the consultation requirements that are set out in clause 80C of the National Parks and Wildlife Regulation 2009. The process set out in this document must be followed and documented in the environmental assessment.
- c) *Code of Practice for the Archaeological Investigation of Aboriginal Objects in New South Wales* (OEH, 2010) - www.environment.nsw.gov.au/licences/archinvestigations.htm. The process described in this Code should be followed and documented where the assessment of Aboriginal cultural heritage requires an archaeological investigation to be undertaken.

Notes:

1. An Aboriginal Site Impact Recording Form must be completed and submitted to the Aboriginal Heritage Information Management System (AHIMS) Registrar, for each AHIMS site that is harmed through archaeological investigations required or permitted following the determination of the development consent (www.environment.nsw.gov.au/licences/DECCAHIMSSiteRecordingForm.htm)
2. Under section 89A of the NPW Act, it is an offence for a person not to notify the OEH of the location of any Aboriginal object the person becomes aware of, not already recorded on the AHIMS. An AHIMS Site Recording Form should be completed and submitted to the AHIMS Registrar (www.environment.nsw.gov.au/contact/AHIMSRegistrar.htm), for each Aboriginal site found during investigations.

If you have any enquiries concerning this advice, please contact Anne Killick, Conservation Planning Officer, on 4908 6802.

Yours sincerely



26 JUL 2012

RICHARD BATH
Head – Hunter Planning Unit
Conservation and Regulation, North East