



Office of
Environment
& Heritage

Our reference: DOC12/33695; 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

RECEIVED

20 SEP 2012

**LAKE MACQUARIE
CITY COUNCIL**

Dear Mr Bell

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

I refer to an email from Matthew Hill to Anne Killick, on 14 August 2012 seeking initial comments from the Office of Environment and Heritage (OEH) in relation to the abovementioned planning proposal. OEH attended a site visit on 5 September 2012 with Council officers, Conacher Environmental Group and representatives for the proponent. It is understood that the Department of Planning and Infrastructure has requested Council consult with OEH prior to the Planning Proposal being submitted for a Gateway Determination.

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.

The site contains two endangered ecological communities (EEC), being Swamp Sclerophyll Forest EEC and River-flat Eucalypt Forest EEC; numerous records of threatened flora species including *Grevillea parviflora* subsp. *parviflora*, *Tetradlea juncea*, *Angophora inopina* and *Melaleuca biconvexa*; a number of threatened fauna species including Squirrel Glider, Little Eagle, Greater Broad-nosed Bat, Eastern Freetail-bat, Eastern False Pipistrelle; and numerous hollow-bearing trees.

OEH encourages the proponent to achieve an 'improve or maintain' outcome for biodiversity values over the site. The main principles of 'improve or maintain' are to avoid impacts to biodiversity wherever possible first, then to mitigate and offset impacts where they are unavoidable. In this regard, OEH encourages the

proponent to demonstrate they have avoided impacts to the EECs, threatened flora and fauna records, and hollow-bearing trees as much as practicable through site design. Where these impacts are unavoidable, the proponent should then demonstrate how they can achieve an 'improve or maintain' outcome over the site. Given the remainder of the site contains a variety of native flora and fauna, including EECs and threatened species, OEH suggests that improving the condition of these areas through active rehabilitation (e.g. weed and pest control, revegetation with local endemic species, fencing to reduce human access, erosion control, etc.) and then protecting these areas through an enduring conservation mechanism, could achieve an 'improve or maintain' outcome over the site. A list of conservation measures which may be suitable for the site can be found under section 126L of the *Threatened Species Conservation Act 1995*.

OEH notes that the planning proposal is currently to allow an enabling clause to be inserted into the Lake Macquarie Local Environmental Plan 2004, rather than proposing to rezone the site. It is suggested that a rezoning may be a more appropriate planning outcome for the site if the remainder of the site is to be managed for conservation. This would allow the conservation areas to be rezoned to 7(1) Conservation (Primary) zone to highlight the primary function of those areas for achieving conservation outcomes.

Aboriginal Cultural Heritage

An important component of the environmental assessment process undertaken in support of the proposed Local Environmental Plan 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/DECCAHISSiteRecordingForm.htm).
- 2. Under section 89A of the NPW Act, it is an offence for a person not to notify 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



17 SEP 2012

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