



Australian Government

Department of the Environment and Water Resources

Mr Ernie Royston
Director Strategic Planning
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Shoalhaven City Council

Received

SR

23 MAR 2007

File No: 2653-03

Referred to: M Chapman

Dear Mr Royston

PROPOSED JERBERRA ESTATE PUBLIC AND CIVIL WORKS, NSW

Thank you for the opportunity to meet with you on 24 January 2007, and your letter of 16 February 2007, concerning the above proposal and potential application of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). We also have your letter concerning the Heritage Estate and will respond separately given the additional complexities of that proposal.

As you are aware, the EPBC Act applies to actions that are likely to have a significant impact on matters of national environmental significance (NES). For practical purposes, an 'action' is normally defined as an activity with a physical impact on the environment.

Whilst the 'action' of preparing a plan or undertaking a rezoning will not itself have any physical impact on the environment, we note that Council intends to undertake certain physical works to facilitate the orderly development of the Jerberra Estate. The EPBC Act potentially applies to these works by Council and any subsequent impacts facilitated by the works. We therefore confirm our advice, given at the meeting of 24 January 2007, that the proposed works (and the consequent development options) should be formally referred to this Department by Council under the EPBC Act.

The Department has examined the flora and fauna assessment report and believes that reasonable environmental investigations have been undertaken to characterise the site. We do not believe that further flora and fauna works are needed to satisfy the requirements of the EPBC Act.

The key issues, from an EPBC Act perspective, are maintenance of key populations of the listed vulnerable Biconvex Paperbark, protection of key remnant habitat for the listed endangered Eastern Bristle Bird, and retention of the maximum possible number of hollow bearing trees that could provide habitat for other listed species, and as illustrated at Figure 5 of the flora and fauna report.

We note the outcome recommended in the flora and fauna assessment report as shown in Figures 7 or 8 of the report. We also note Council's preferred option which is to allow a dwelling to be constructed on each lot (Attachment C to your letter). The two alternative development options have a bearing on a number of presently undeveloped lots that support populations of listed species (Lots 64 - 67, 97 - 100, 149 - 150 and 154 - 156).

As you are aware, the Department is keen to ensure that strategic planning and zonings provide for adequate wildlife corridors to facilitate passage for species such as the Eastern Bristle Bird between Jervis Bay National Park and Booderee National. Retention of a 50m buffer to the Large-fruited Red Mahogany Swamp Forest in the NE part of the site, as recommended in the flora and fauna assessment report, may help ensure the viability of habitat and the wildlife corridor to the immediate north and east of the estate and across Lots 97 – 100. We note that this would preclude development on Lot 100 and possibly Lot 99.

In conclusion, the Department confirms that the development works should be referred under the EPBC Act using the referral form available on the Department's web site (www.environment.gov.au/epbc). We advise that the referral should include both the development alternatives presented in your correspondence.

While our preference would be to apply a 50m buffer for Lots 97 – 100, we recognise that, from Council's perspective, this raises legitimate issues in terms of the current owners. If Council's preferred alternative proceeds, we would like to see additional measures applied to these lots to minimise indirect risks to the buffer vegetation (eg dog proof fence to minimise dog access and additional landscape plantings etc). Any such proposed measures should be addressed in the referral.

We believe that sufficient information is available to allow decision-making under the EPBC Act. Based on the information available to date (and assuming both alternatives are included in the referral), a possible outcome is that formal assessment and approval under the EPBC Act will not be required provided Council can demonstrate that the proposed conservation and buffer areas will be offered effective legislative protection.

In the event that the proposal is determined a controlled action, the Department will endeavour to advise you of the necessary assessment process at the same time as the decision on the referral. Possible assessment approaches are described in the attached information sheet and might include assessment and approval based on the submitted referral or assessment on preliminary documentation. These processes can be completed relatively quickly.

Please do not hesitate to contact Steve Mercer (02 6274 1861) or myself (02 6274 1444) if you wish to discuss the referral process. We are happy to look at a draft of the referral if this will assist.

Yours sincerely



Ms Alex Rankin
Assistant Secretary
Environment Assessment Branch

15 March 2007