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Attention: Keith Tull

Our ref: DOC20/354469-2  
Your ref: Planning Proposal 5 May 2020

Dear Mr Tull

**Subject: Planning Proposal for land at Lots 33 & 34 DP 243029 Tura Beach – Bunnings – Revised Planning Proposal**

I refer to the above revised Planning Proposal dated 5 May 2020. Please note that the Biodiversity Conservation Division was not consulted on this proposal prior to the Gateway being issued.

We have reviewed the information and we maintain our objection to the Planning Proposal as it does not adequately address the ministerial directions issued by the Minister for Planning under section 9.1(2) of the *Environmental Planning and Assessment Act 1979*. Specifically, the following directions;

1. Ministerial Direction 2.1 – Environment Protection Zones, and
2. Ministerial Direction 5.1 – Implementation of Regional Strategies.

We also object on the basis that the lot 34 is highly constrained due to the presence of an important population of the Endangered Merimbula Star Hair. This species has been identified as an entity at risk of serious and irreversible impacts in accordance with the principles prescribed in section 6.7 of the *Biodiversity Conservation Regulation 2017*.

The significance of this is that any future development proposal that is likely to have a significant and irreversible impact on this or any other species on the lots must be refused. See:

<https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/guidance-decision-makers-determine-serious-irreversible-impact-190511.pdf>

The reasons for our continued objection to the Planning Proposal are further detailed in Attachment 1.

We would like to discuss this matter further with you to reach a resolution on the issues detailed in the letter. Our contact officer is Lyndal Walters (02) 6229 7157.

Yours sincerely,

30/6/2020

**MICHAEL SAXON**  
**Director South East**  
**Biodiversity and Conservation**

Cc Graham Judge – Planning and Assessment

## **Attachment 1 – Detailed response to the Bunnings Tura Beach Planning Proposal**

### **Impacts to Merimbula Star Hair.**

The Merimbula Star hair is listed as Endangered under NSW legislation. It has a listed Serious and Irreversible Impact (SAIL) species. This listing has significant issues at the development application stage. BCD have outlined this to council in previous correspondence. If it is determined during the development application process that the development will result in a serious and irreversible impact council are required to refuse the development application. If it is not deemed a SAIL, then offsets will be required. The development in its current form will require 371 credits for the Merimbula star hair. Purchase of these credits may be expensive.

BCD were provided with a SAIL report in December 2019. The report did not adequately address the SAIL criteria, in particular, loss of connectivity and fragmentation of the population. This report also needs to be updated due to the impacts of the 2019-2020 bushfires which is estimated to have impacted on 25% of the known population of this species.

### **Connectivity**

Lot 34 has a significant density of Merimbula Star Hair, which occupies an important corridor between the patches of native vegetation to the north and south of the site. The removal of these plants indicated in the proposal would cause a disruption to the north/south corridor (at least 175m), as the areas to the east and west are currently cleared. This will in turn fragment the current population. The SAIL document indicates there is a level of doubt regarding the pollination of the species. Without having complete understanding of the pollinators behaviours, in particular if they are able to fly long distances, the precautionary principle should be applied.

In addition, secondary impacts to the Merimbula Star Hair population and nearby habitat include damage due to run-off (from nursery operation or during construction) and weed incursion. This has also not been addressed when considering impacts of the development.

### **Post fire studies and SAIL principles**

Whilst we support the commitment to undertake further studies in relation to recent fires within populations within the Wallagaraugh (Yambulla/Timbillica), it is already known that these populations have been severely affected by the fires. The impact from the 2020 wildfires to the other known population on the Wallagaraugh River is still unknown. The fire was extremely severe and nearly all plants at this population were completely incinerated. Although some evidence of fire recovery has been previously documented following hazard reduction burns, this fire was much more severe, and it may be many years until we know the full extent of impact. The outcome of this information may render the species more threatened than pre-2020 wildfire.

### **SAIL Mitigation Strategies**

We note that no further information has been provided on the mitigation strategies mentioned in the SAIL report. These include;

- collecting seed from mature Merimbula star hair plants, and
- translocating plants

Our threatened species expert has provided advice that these strategies are unsuitable to use to mitigate / offset the loss of the plants on site:

- It is unadvisable to use salvage translocation as a mitigation strategy, as the likelihood of success is very low (ANPC Translocation Guidelines).
- A propagation program is not advisable as the genetic implications for this species are unknown – but it is highly likely that the populations are genetically distinct so distributing material for the public to plant in gardens is not an ideal conservation strategy for this species.

We also remind the proponent that a biodiversity conservation licence under the *Biodiversity Conservation Act 2016* is required to undertake these actions. Given the concerns raised it is unclear whether a licence would be granted for these strategies.

There is mention in the report of *“There are no known measures currently being conducted to contribute towards recovery of the species.”* Please note this species is actively managed under the NSW Saving our Species program.

### **Inappropriate zone**

The land in question is currently a deferred matter. It was previously zone 1(c) Rural Small holdings under the Bega Valley LEP 2002. The proposal is to rezone the site to R5 Large Lot Residential under Bega Valley LEP 2013, with hardware and building supplies and garden centres identified as an additional permitted use on this site in Schedule 1 of the LEP.

We do not believe that this site is the best location for development, particularly Lot 34, due to the high biodiversity constraints identified on the site, we believe that at a minimum Lot 34 should be rezoned Environmental Protection E2. Ministerial Direction 5.1 and the Regional Plan support the use of this zoning to protect the high biodiversity values of the lot.

### **Insufficient information when other sites considered**

The Planning proposal does not provide sufficient investigation into other sites which may be better suited to this development. In previous correspondence from May 2019 the proponent indicated other sites were considered but did not provide detail as to why they were not chosen.

This site is highly constrained due to the presence of a known and important population of a endangered plant the Merimbula Star Hair. The layout should be redesigned to avoid this population or an alternative site chosen.

### **Ministerial Direction 2.1 – Environment Protection Zones and LEP requirements**

The Planning Proposal submitted in February 2019 specifically states that there are no Directions or Actions of the Regional Plan that is specifically relevant to the site or the Planning Proposal.

Direction 14 of the Regional Plan.

*The ‘avoid, minimise and offset’ hierarchy will be applied to areas identified for new or more intensive development. The hierarchy requires that development avoid areas of validated high environmental value and considers appropriate offsets or other mitigation measures for unavoidable impacts.*

*Where it is not possible to avoid impacts, councils will be required to consider how impacts can be managed or offset through planning controls or other environmental management mechanisms.*

The Guide to developing Planning Proposals provides detailed advice and sets out specific requirements that the Planning Secretary has issued in accordance with section 3.33(3) of the Act concerning the matters that must be addressed when preparing planning proposals. Section C requires Environmental, social and economic impact be addressed. Specifically Questions 7 and 8 below:

*Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

*A planning proposal that is submitted for a Gateway determination should identify if the land subject to the proposal has the potential to contain critical habitat or threatened species, populations or ecological communities, or their habitats.*

Adequate investigation of the site to determine if there are environmental constraint should be undertaken prior to the gateway process. Had BCD been consulted and a survey undertaken the Merimbula star hair would have been identified at this point.

Ministerial Direction 2.1 requires that a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. The current layout does not facilitate the protection of the endangered plant and therefore does not meet this direction.

### **Southern region Joint Regional Planning Panel (JRPP) lot layout option**

The Planning Proposal indicates the current lot layout is the result of the Southern Region JRPP decision which indicated the panel were concerned that the previous layout would impact the neighbouring nursing home, see extract below from letter 5 May 2020:

*“the JRPP observed that the proposed site layout would detrimentally impact upon the amenity of residents of the adjoining seniors housing development and recommended that the development be setback from the common boundary in order to provide an appropriate buffer area. This layout was not supported by the JRPP.*

*In their consideration of the Planning Proposal, the JRPP also made the following observations:*

- The development would result in increased employment and training opportunities.*
- It would meet an unmet demand for hardware facilities in the region and minimise travel distances for residents to access these facilities.*
- The site lends itself to this style of development, given its location on the edge of commercial centre.*
- With appropriate site planning, a Bunnings Warehouse is considered to be a suitable development for the site.*

The planning proposal goes on to state *“The current proposal is considered to be a reasonable compromise in terms of balancing the site opportunities and constraints, the relevant design parameters for this type of facility and the context of the site, in particular, its relationship with adjoining land use”.*

However, as an adequate investigation of the site had not been undertaken the JRPP were unaware of the significance of the site when making this recommendation. The JRPP did not have any information on the biodiversity values of the site. The JRPP report states that *“The site is vacant with no built improvements. Vegetation across both allotments comprises groups of trees and ground covers, mainly bracken fern.”*

The lot layout now proposed represents the highest impact to biodiversity values on the site. The lot layout should be redesigned to avoid the areas of highest biodiversity values.

### **Asset Protection Zones**

The Planning Proposal (vFeb 2019) does not include a Bushfire Assessment and we note that the land is bushfire prone land.

The RFS have not been provided with the planning proposal in accordance with the requirements of the Gateway determination of 2018. Further clearing may be required to meet Planning for Bushfire requirements which may result in the area that is currently proposed as a reserve requiring clearing.

### **Proposed Reserve Area conservation mechanism**

The Planning Proposal has not provided any detail on the mechanism that will be used to protect the proposed reserved land.

If an alternate layout is provided that avoids the high constraint areas, Council and the proponent could consider using a Voluntary Planning Agreement (VPA) to protect the area proposed as reserve land within the development footprint. This should include an offset strategy and ongoing costed management actions.

A voluntary planning agreement (VPA) is a valuable tool available under the *Environmental Planning and Assessment Act 1997* to allow planning authorities and developers to work together to provide conservation of the natural environment.

### **Potential implications of the Development application process.**

The Preliminary Biodiversity Assessment 19-292 Final V.1.2 by NGH Environmental describes the biodiversity constraints of the site. This report states that the areas of highest constraint will be the most difficult to develop. Lot 34 contains the high and medium constraint values;

High constraint – 1.23 ha

This includes vegetation with features of high conservation value including threatened flora (*Astrotricha wallagaraugh*) habitat and biodiversity values mapping. Consideration to avoiding impacts in these areas should be given. These areas will generate the highest offset requirements and be costly or difficult to offset.

- Medium constraint – 1.44 ha

This is native vegetation that is not of high conservation value and with few or lower quality fauna habitat features. This includes feed trees for Yellow Bellied Gliders. Consideration to minimising impacts in these areas should be given. These areas will generate an offset requirement.

The current layout impacts on both the high and medium constrained land, it appears no changes have been made to layout, even though the area has been identified as high conservation value. It

is difficult to justify how this layout therefore adequately addresses avoiding impacts. Demonstration of avoiding impacts is a key objective of the *Biodiversity Conservation Act 2016* and the Regional Plan, it is also one of the considerations for addressing the SAIL criteria.

**Ministerial Direction 2.3 Heritage Conservation - Aboriginal cultural heritage**

We remind Council that Aboriginal objects are known to occur on the proposed development site and an Aboriginal Heritage Impact Permit (AHIP) will be required for the development before any impacts can occur.

We can advise Council that formal consultation with the Aboriginal community was commenced under the Aboriginal Cultural Heritage Consultation Requirements in September 2019.

Test excavations were also proposed to be undertaken on the site in December 2019. The results of the Aboriginal consultation and the test excavations should be considered as part of any determination of impacts to Aboriginal cultural heritage values.

We also recommend any future development application be lodged as an integrated development application (IDA).