

Appendix 4. Correspondence from Government Agencies.

All communications to be addressed to:

Development, Assessment & Planning
NSW Rural Fire Service
Locked Mail Bag 17
Granville NSW 2142

Telephone: (02) 8741 5555

e-mail: development.assessment@rfs.nsw.gov.au

Head Office

NSW Rural Fire Service
15 Carter Street
Lidcombe NSW 2141

Facsimile: (02) 8741 5550



The General Manager
Gosford City Council
PO Box 21
GOSFORD NSW 2250

Your Ref: IR8032902
Our Ref: LEP/0050
HQ10/2703

Attention: Brian McCourt

18 June 2010

Dear Mr McCourt,

Re: Draft Gosford LEP 2009 – Consultation pursuant to Section 62 of the Environmental Planning and Assessment Act 1979, Kings Avenue, Terrigal.

I refer to your letter dated 3 June 2010 seeking our advice in accordance with Section 62 of the *Environmental Planning & Assessment Act 1979* for the above Local Environmental Plan (LEP).

The submitted information indicates that the proposed rezoning proposal has a range of significant issues to resolve before proceeding to the development application stage. The plans submitted with the Bushfire Report are considered satisfactory as a general concept only as a development of this size warrants a detailed site inspection to validate vegetation types, slope measurements and subsequent asset protection zone (APZ) distances.

Upon rezoning of the site and receipt of the Environmental Assessment for the proposal, additional information will be required detailing concise statements with regards to access and APZ compliance. Additionally, information relating to construction details within the Bushfire Report has been superseded by the release of the new Australian Standard 3959-2009 *Construction of buildings in bushfire prone lands*.

For any enquiries regarding this correspondence please contact Mark Hawkins on 8741 5175.

Yours sincerely



Corey Shackleton

A/Team Leader - Development Assessment & Planning

The RFS has made getting additional information easier. For general information on *Planning for Bush Fire Protection* 2006, visit the RFS web page at www.rfs.nsw.gov.au and search under *Planning for Bush Fire Protection* 2006.



Office of Water

Brian McCourt
Senior Landuse Planner Integrated Planning
Gosford City Council
PO Box 21
Gosford NSW 2250

Contact: Jodie Dabovic
Phone: 02 4904 2571
Fax: 02 4904 2501
Email: Jodie.Dabovic@water.nsw.gov.au

25 June 2010

Our ref: ER21074
Your ref: IR 8032902

Attention: Brian McCourt

Dear Brian

**Subject: Section 62 Consultation – Proposed Draft Local Environmental Plan - Various Properties
Kings Avenue, Terrigal**

The NSW Office of Water (NOW) has reviewed the Draft Local Environmental Plan - Various Properties in Kings Avenue, Terrigal and the Notice of Council Resolution (Council Meeting 4 May 2010).

NOW is responsible for water management and policy in its administrative functions under the *Water Management Act 2000* (WMA 2000) and the *Water Act 1912* (WA 1912). The objects of the WMA 2000 provide for the sustainable and integrated management of the water sources in NSW for the benefit of both present and future generations.

Under the statutory requirements of the WMA 2000 and WA 1912, NOW are required to provide comment and recommendations focusing on the use, security and protection of surface water and groundwater and their dependent ecosystems as well as the protection of riparian areas. Due to no surface watercourses and associated groundwater being located in the LEP area of the proposed development in Kings Avenue, Terrigal, NOW are unable to provide comments and recommendations to Gosford City Council regarding this matter.

NOW however would like to provide the following information to Council for NOWs requirements regarding developments in LGAs:

- 1) Land use types that rely on water collection, water extraction and on-site effluent disposal require careful consideration in terms of lot size and potential impacts. Regard needs to be given to potential degradation/pollution and demands placed on water sources and riparian disturbance impacts. Water and sewer reticulation should be used wherever possible with targeted attention to areas of high groundwater vulnerability. On-site effluent disposal /management and inadequate lot size is an ongoing environmental and social concern.
- 2) Appropriate stormwater management is required to minimise localised and downstream impacts. Stormwater disposal and its associated volume, storage, point of entry to watercourses and quality needs to be considered. Interactions with surface and groundwaters need to be examined with particular attention to prevent the creation of open waterbodies with direct connection to aquifers in coastal sand areas and due consideration to acid sulfate soils. Structural works, including works for stormwater capture and treatment are required to be located outside riparian areas.

- 3) Any proposed extraction of water from groundwater or surface water is required to be licensed and is the responsibility of the developer to apply for licences under the WMA 2000 and WA 1912 prior to commencement of any development.

If you require further information please contact Jodie Dabovic on 4904 2571 at the Newcastle office.

Yours sincerely



Mark Mignanelli
Manager
Major Projects and Assessment
NSW Office of Water
Newcastle

I84RZ5;l
10/1029



25 June 2010

The General Manager
Gosford City Council
PO Box 21
GOSFORD

Attention: Brian McCourt

Dear Brian

**SECTION 62 CONSULTATION – PROPOSED DRAFT LOCAL ENVIRONMENTAL
PLAN
VARIOUS PROPERTIES – KINGS AVENUE, TERRIGAL**

The RTA is in receipt of Council's correspondence dated 3 June 2010 regarding the Draft Local environmental Plan for various properties in Kings Avenue, Terrigal.

The RTA has no current proposals that require any part of these properties.

The RTA's primary interests are in the road network, traffic and broader transport issues, particularly in relation to the efficiency and safety of the classified road system, the security of property assets and the integration of land use and transport.

In accordance with the *Roads Act 1993*, the RTA has powers in relation to road works, traffic control facilities, connections to roads and other works on the classified road network. RTA concurrence is required for works, structures, and disturbances to, in, on, under or over classified roads, under section 138 of the Act, with Council consent. Council is the roads authority for all roads in the area.

The RTA is satisfied that the Draft LEP adequately addresses all issues that may have an impact on the surrounding state road network. The RTA, therefore, raises no objections to the Draft LEP.

Upon Council's determination of this matter, it would be appreciated if you could forward a copy of the determination to the RTA for record purposes.

For clarification of any matter, I can be contacted on 4379 7025.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Rob Day', written over a horizontal line.

Rob Day
A/Traffic and Safety Manager
Central Coast

Roads and Traffic Authority

Mr Brian McCourt
Senior Landuse Planner
Gosford City Council
PO Box 21
GOSFORD NSW 2250

Our Ref: ERCS039
Your Ref: 3689112
Brian McCourt

Dear Mr McCourt

Re: Rezoning Application No. 2005.205 Kings Avenue, Terrigal

With reference to your letter of the 3rd June 2010, seeking comment under S62 of the EPA Act for the Local Environmental Study for the above site, the CMA has reviewed the documents provided and provides the following comments.

The CMA previously commented on this rezoning application (No 2005.205) in October 2007, please see a copy of this correspondence attached. The issues raised in our correspondence have not been addressed by the new information provided and therefore the issues are still current.

The CMA has the following specific comments regarding the proposal. Some of these matters were raised in earlier CMA correspondence to GCC (dated 9 October 2007):

- The clearing of native vegetation on this site may be sufficiently offset by improved protection and management of the vegetation that is proposed for retention (in the dedicated Coastal Open Space System), but whether this meets the 'improve or maintain' principle would need to be assessed. As such, the CMA would like to see a full assessment of the conservation value of the vegetation communities existing on the site and an assessment of how any clearing following a rezoning would satisfy the EOAM to 'improve or maintain environmental outcomes'.

The EOAM suggests that in some instances offset ratios of up to 50:1 may be required (primarily for threatened species), although in the CMA's experience this is typically closer to offset ratios of 10:1. It would be expected that offsets would be delivered through some form of offset agreement, for example a property vegetation plan (PVP) under the NV Act. This would provide a higher level of protection and requires active management to ensure the IoM principle is achieved and maintained.

The ENV Report states that the rezoning 'will result in the net loss of 10.4 hectares or 29% of high biodiversity value vegetation' with an offset of 18 ha, an offset ratio of approximately 1.7:1 would be achieved. Although Council have used a different methodology to determine if biodiversity values have been improved or maintained the CMA support Councils conclusion that the proposal fails to meet this principle.

Objectives of the NV Act should guide the assessment of this proposal and the CMA strongly encourages Council to require the proponent to develop a PVP or other covenanting instrument to ensure that the IoM principle is achieved. The CMA could undertake a preliminary desktop assessment to determine if the current proposal of clearing and offset meets the IoM principle.

- The vegetation at the site includes an EEC and is generally in good condition and is part of a broader vegetation corridor.
- As patch size is large in relation to the perimeter of the vegetation, the site is currently more viable as a biodiversity conservation site. The proposed rezoning with subsequent clearing that will ultimately occur will remove buffer vegetation and increase perimeter to area ratio. This subjects that patch to various impacts such as increase weed invasion; changes to hydrology; human impacts and other edge effects.
- The CMA does not support the clearing of EEC or trees with hollows due to their high conservation significance. Under the EOAM, clearing of EEC and trees with hollows may be prohibited or, at the least, will significantly increase the area required for offset when assessed under the EOAM. Trees with hollows should as far as possible be retained and protected using vegetated buffers so that impacts are minimised from future building envelopes (ie so that they are not removed as “unsafe trees” or that they do not end up in an APZ. Council’s report shows that the vegetation here exhibits “old growth” characteristics and that the proposal will result in ‘A net loss of 33 or 36% of hollow bearing trees’ (page 8 ENV Report). The CMA supports the Councils position that replacing hollow bearing trees with nest boxes does not provide maintenance of biodiversity values.
- Slopes greater than 20% are a significant natural resource constrain and development of land with these steep slopes will be contradictory to CMA’s Landuse Planning guiding principles outlined in the CAP as well as Council’s own policies.
- DECCW should be consulted for information and recommendation regarding threatened species that are using or potentially using the site.

The CMA supports Councils position as detailed in the ENV Report (page 6):

‘The rezoning application is not supported by Council's Senior Environmental Officer for the following reasons;

- Is contrary to the principles of ESD;
- Is contrary to SEPP 19 - Bushland in Urban Areas;
- Is contrary to Central Coast Regional Strategy 2006-31;
- Is contrary to the Gosford City Biodiversity Strategy 2008;
- Fails to maintain or improve existing biodiversity values;
- Is contrary to Objective 2 of the approved Recovery Plan for the Yellow-bellied Glider;
- Is likely to lead to a significant impact on the Yellow-bellied Glider;
- Is contrary to Objective 4 of the approved Recovery Plan for Large Forest Owls;
- Is contrary to Objective 5 of the approved Recovery Plan for Large Forest Owls;
- Will result in the net loss of foraging habitat for threatened microchiroptera bat species;
- Is contrary to Gosford City Council Rainforest Policy D6.49;
- Has not considered greenhouse gas emissions and climate change’.

and as such the CMA objects to the rezoning proposal in its current form. If you require any further information please do not hesitate to contact me, on 4337 1214.

Yours faithfully

David Green
A / Program Manager
for Fiona Marshall
General Manager
12 July 2010



Your reference: IR 8032902
Our reference: DOC10/24981; FIL06/917-10
Contact: Karen Thumm, 4908 6829

Mr Peter Wilson
General Manager
Gosford City Council
PO Box 21
GOSFORD NSW 2250

Attention: Mr Brian McCourt

Dear Mr Wilson

**RE: REZONING OF VARIOUS PROPERTIES IN KINGS AVENUE, TERRIGAL - SECTION 62
ADVICE ON PROPOSED DRAFT LOCAL ENVIRONMENTAL PLAN**

I refer to your letter of 3 June 2010 relating to the proposed rezoning of six lots in Kings Avenue, Terrigal. The Department of Environment Climate Change and Water (DECCW) has reviewed the information sent from Gosford City Council, including the Local Environmental Study, the report to Council and the resolution of Council. DECCW officers visited the site on the 20 July 2010. I also refer to our previous Section 34 comments on this site (letter dated 12 April 2006).

Zone Changes

DECCW notes that at present the area is zoned for Conservation and Scenic protection 7(c2) and includes a minimum lot size of 2000m². The proposal requests that the majority of the 24.3 ha of land zoned 7(c2) will be rezoned to 2(a) residential, with the remaining small area to be retained in 7(c2) with an enabling clause to reduce the lot size. Approximately 18 ha (15.8 ha plus disturbed easement) of 7(a) land will be dedicated to Gosford Council's Coastal Open Space System (COSS).

Council's recent Draft Standard Instrument Local Environmental Plan (SI LEP) proposes an E2 zone for the area presently zoned 7(a) and an E3 zone for the area presently zoned 7(c2). The decision to zone the 7(c2) land E3 in the new SI LEP is a clear indication of its conservation significance, in contrast to the proposed R2, which would indicate that the land is suitable for residential use. The intensification of use will significantly increase the number of potential houses that could be accommodated on the site from approximately 24 to up to 145.

One of the objectives of land zoned 7(c2) is to buffer impacts to high quality conservation land. The present proposal removes this buffer from some areas, allowing conservation land to directly abut residential land.

Threatened Species

The proposed intensification of land use will lead to the loss of a significant number of very large, mature trees which contain hollows, and therefore to the loss of important habitat for many threatened and non-threatened fauna species. Although it is acknowledged that there has been a removal of understorey vegetation over many years due to grazing practices, there are clearly very

high conservation values remaining on the site. Twelve threatened fauna species (Powerful Owl, Sooty Owl, Yellow-bellied Glider, Grey-headed Flying-fox, Little Eagle, Little Lorikeet, Eastern Bentwing-bat, Eastern False Pippistrelle, Greater Broad-nosed Bat, Little Bentwing-bat, Yellow-bellied Sheath-tail-bat, Eastern Freetail-bat) have been recorded on site. Many of these species are reliant on the hollows in the old trees for shelter or breeding. These large trees would also supply nectar for birds and arboreal mammals. It must be assumed that under this current proposal, approximately 33 hollow bearing trees will be removed, as these trees would be considered unsafe in an urban environment due to their large size and maturity.

In addition, there is the potential for a number of threatened flora species to be located on site and there are other regionally significant plants on the site which are likely to be impacted. Any direct impact on threatened species and other significant species needs to be appropriately offset.

It can be assumed that this high number of threatened species present on site is due to the fact that there are different habitats on site, including the Narrabeen Coastal Blackbutt Forest with its old growth values and the Lowland Rainforest in the riparian zone.

Endangered Ecological Community and Riparian Zone

The Lowland Rainforest in the riparian zone is an endangered ecological community (EEC). According to the proponent's report there will be no direct impact on the ECC. It is proposed that the rainforest gully and the riparian zones on site are enhanced and rehabilitated as part of the proposal. DECCW supports this recommendation for rehabilitation, as there are significant weed infestations in the creekline.

DECCW is concerned about potential direct and indirect impacts arising from an intensification of land use in such close proximity to the rainforest gully. It must be assumed that the intensification of land use adjacent to the riparian zone/rainforest, and the obligations of land owners in relation to asset protection zones is likely to lead to the degradation of the rainforest edge and changes in the hydrology of the rainforest area. The recreational needs of approximately 145 houses are also likely to impact on the creekline/rainforest.

The documents supplied imply that it will be possible to buffer the rainforest and also accommodate the asset protection zones (APZs) and dwellings. Considering the narrow parcels of land adjacent to the creekline it is difficult to imagine how it will be possible to integrate a core riparian zone, a riparian buffer zone (each 10 m), plantings within the buffer zone and APZs. Clearly this is not possible along many sections of the creek where the road abuts the rainforest edge, or directly abuts the riparian zone. This aspect of the proposal does not comply with Council's rainforest policy which asks for a 50 metre buffer to rainforest.

From the report it appears as if re-plantings are proposed within the APZs. Council will need to ensure that its requirements for APZs and the need to protect the rainforest and riparian areas are both met. It is possible that development will have to be reduced or removed from the western side of the site on both sides of the creek.

The proposed development places much of the creekline within private lots. Some of the creek transverses a lot which is not part of this application, and other parts of the creek are within a proposed 'Community Lot'. It appears as if the proposed Community Association is responsible for riparian and buffer zone management for a period of two years; however, there are specific management requirements for the private community lots, such as responsibility for asset protection. It appears that after two years there is an option of using licensed bush-regenerators or owners under the supervision to do follow up work. This fragmentation of management, both in relation to the different sections of the creek, and in relation to the body responsible for the works, makes a positive outcome unlikely. All rehabilitation work covering the entire creekline should be maintained in perpetuity, and not just for two years.

Wildlife Corridor

The proposed development is located within the DECCW regional corridor called Picketts Valley (Scotts, 2003) and within an area marked in Gosford Council's corridor maps, which is largely consistent with DECCW's corridor. The Picketts Valley regional corridor has the Yellow-bellied Glider as one of the focal species. This species is recorded on site. Development on this site would reduce the width of the corridor on the eastern side and reduce the patch size of the area connected to and on the periphery of the Kincumba Mountain Reserve.

Bushfire Trails

DECCW has concerns about additional impacts on vegetation due to the proposed bushfire trails. It is assumed that these bushfire trails will need to comply with Rural Fire Service standards, and that this is likely to result in the loss of more vegetation and the habitat of threatened species. Impacts from bushfire trails should be identified up front as part of the rezoning so that the full extent of clearing can be identified.

Improve or Maintain Biodiversity Benchmark

DECCW is of the opinion that the proposal does not achieve an 'improve or maintain' outcome for biodiversity. The proposal does not appear to adhere to the principle of avoiding impacts before resorting to mitigation or offsetting, as it includes development within areas of very high conservation values. Please refer to DECCW's "Principles for the use of biodiversity offsets in NSW" (www.environment.nsw.gov.au/biocertification/offsets.htm).

DECCW recommends that private ownership is pulled back away from the creekline and confined to the eastern side of the site, leaving the vegetation management of the western side the responsibility of the Community Association. Also, all vegetation management on site, including the riparian and rainforest areas must be carried out in perpetuity in order to be included in the 'improve or maintain' biodiversity assessment.

DECCW acknowledges that the large trees which will be removed are from a vegetation community which has been very degraded by grazing practices. The retention of younger trees in a regrowth area in the east of the site does not mitigate for removal of very mature trees with hollows, nor does the supply of nesting boxes mitigate sufficiently for hollows. Any nest boxes will need to be monitored and maintained in perpetuity, and not only for the five years proposed.

The area offered to be dedicated to the COSS as an offset for the development has variously been described as a 1.7:1 or a 2.7:1 or a 2.2:1 offset. Possibly the addition of 7(a) land may be one reason for the variation in this ratio, as may be the exclusion of the easement land within the COSS section of the property. This is clearly insufficient for the high conservation values being removed as a result of development.

Summary

DECCW is of the opinion that the proposal does not achieve an 'improve or maintain' existing biodiversity values benchmark. The proposal does not appear to adhere to the principle of avoiding impacts prior to mitigating or offsetting, as it includes development within areas of very high conservation values.

DECCW recommends that the entirety of Lot 1 DP 381971 be dedicated to conservation (COSS) and that development is removed from the north-west and is moved to at least 50 metres from the riparian zones. This would reduce the number of hollow trees being removed by approximately half, which would considerably reduce the impact on threatened species and reduce the potential for conflict between bushfire protection and the sensitive riparian environment. It would also retain connectivity between the rainforest gully and the Narrabeen Coastal Blackbutt Forest, which is likely to help retain wildlife movement, including threatened species, between these two vegetation communities.

Council should assess whether a reduction of the development footprint will result in a proposal which may approach, or be more consistent with, an 'improve or maintain' biodiversity benchmark. The reduction in development is also likely to ensure more consistent management of common areas.

If you have any enquiries concerning this advice, please contact Conservation Planning Officer, Karen Thumm on 4908 6829.

Yours sincerely

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2.8.10

RICHARD BATH
Acting Head Planning Unit - Hunter
Environment Protection and Regulation