



Office of
Environment
& Heritage

Our reference: DOC13/59981; FIL12/7028-03
Contact: Anne Killick, 4908 6802

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

Attention: Matthew Hill

Dear Mr Bell

RE: LMLEP 2004 DRAFT AMENDMENT NO. 59 – TRANSFIELD AVENUE, EDGEWORTH

I refer to an email from Matthew Hill to Richard Bath dated 16 September 2013 requesting advice from the Office of Environment and Heritage (OEH) in relation to the abovementioned draft LEP Amendment. OEH has provided previous written advice in relation to this proposal, including letter dated 1 October 2009 (document reference: DOC09/45822), and has attended numerous meetings in relation to this proposal with the proponent, Council and the Department of Planning and Infrastructure (DP&I).

In general, OEH's preference is to deal with all environmental matters at the rezoning stage to simplify and streamline future development application processes. This generally includes reaching agreement on in-perpetuity conservation outcomes in order to achieve an 'improve or maintain' outcome for biodiversity values as part of the rezoning process. However, OEH understands the strategic significance of this site and therefore understands that the preference of DP&I and Council is to progress the rezoning of this site without resolving these matters.

It is important for Council to note that as the proposal progresses the proponent will need to address impacts on endangered ecological communities, threatened species and their habitat. The proponent and Council should use the hierarchy of 'avoid, minimise, offset' in relation to addressing these concerns. The first priority in a development proposal is always to avoid any unnecessary impact to biodiversity. Where impacts cannot be avoided, a reasonable attempt should be made to minimise the impact as much as possible. After all feasible measures have been taken to avoid or minimise impacts to biodiversity, offsets should be used to compensate for any remaining impacts. OEH highlights to DP&I, Council and the proponent, the importance of a thorough assessment and delivery process for achieving an 'improve or maintain' outcome for the proposal.

OEH reminds Council that in the absence of a formal Biodiversity Certification or BioBanking Agreement under Parts 7A and 7AA of the TSC Act, threatened species assessments under the *Environmental Planning and Assessment Act 1979* (EP&A Act) are required at the development application stage. In this regard, if the proposed development application is for land that is critical habitat or is likely to significantly affect threatened species, populations or ecological communities or their habitats, a Species Impact Statement will be required and OEH will have a concurrence role for the development application.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Bath', with a stylized flourish at the end.

15 OCT 2013

RICHARD BATH
Senior Team Leader - Planning
Regional Operations