

18 April 2024

Ms Kiersten Fishburn  
Secretary, Department of Planning, Housing and Infrastructure (DPHI)  
Locked Bag 5022  
PARRAMATTA NSW 2124

Attention: Ms Louise McMahon, Director Agile Planning

Dear Ms McMahon

**RE: Further Information Request - Planning Proposal (PP-2021-7404)  
159-167 Darley Street West, Mona Vale**

I am writing in relation to the planning proposal (PP-2021-7404) for land located at 159-167 Darley Street West, Mona Vale and to your request for updated information received on 16 April 2024. Thank you for meeting with us to discuss the request on 17 April 2024.

We note that the former Environment and Heritage Group (EHG); now named the Biodiversity, Conservation and Science Group (BCS) have made further representations to the DPHI by letter dated 3 April 2024. We are surprised at the nature of some of the comments made by BCS in their second submission as in our view the matters have either been addressed previously or are development assessment matters, not Planning Proposal (PP) matters. Nevertheless, we appreciate that DPHI has narrowed the matters for which further information is requested to:

**Flooding**

- 1. Flood mapping be provided for hazard categories H1-H6, both for pre- and post-development conditions, including surrounding buildings. This requirement aligns with section G5.2 of the Floodplain Development Manual 2005. Ensuring consistency with Direction 4.1 necessitates adherence to the manual's guidelines. DPHI notes that matters including stormwater drainage modelling, can be further detailed during the DA stage.*

**Biodiversity**

- 2. Further studies and/or necessary justification prepared to confirm the presence of species and critical habitat on site (outlines in section 3.4.4 of the Preliminary Environmental Assessment), impacts to such and proposed mitigation measures. DPHI notes that other biodiversity matters including the preparation of a vegetation management plan can be detailed during the DA stage.*

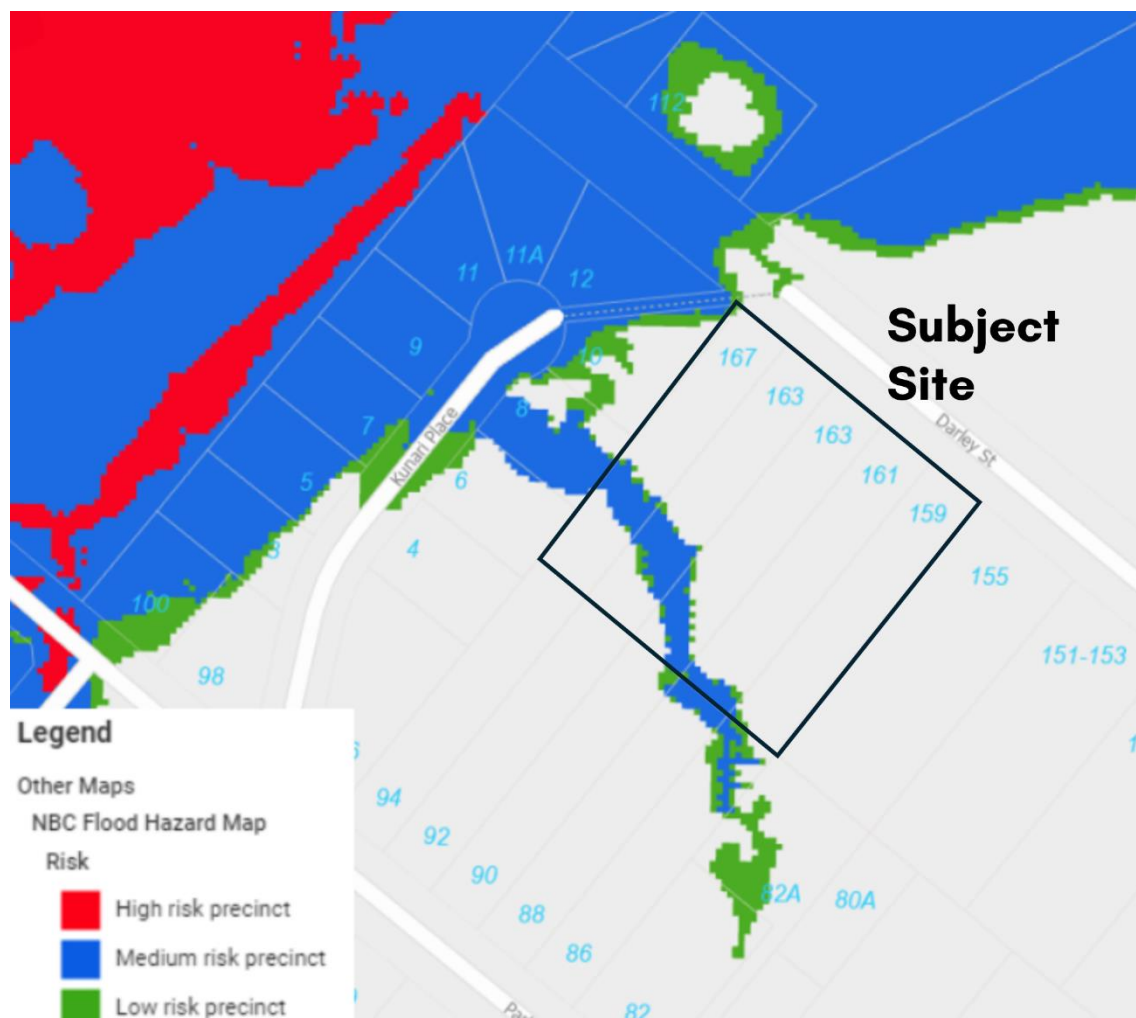
Whilst we hold that the above matters were detailed in earlier submissions, we again provide and reference the requested information in this response for further information. We respectfully suggest that detailed development application analysis is inappropriate at this stage given that the concept plans provided with the PP may be subject to change as detailed design is completed. This includes detailed flood modelling and vegetation management planning consistent with Council's development control plan.

## Flooding – Response to Further Information Request

Whilst Ministerial Direction 4.1 references *Floodplain Development Manual 2005*, we note that this Manual is now superseded and has been replaced by *Flood Risk Management Manual 2023* and associated guides. In this instance Flood Risk Management Guideline FB03 is relevant. We note that categories H1 to H4 in the 2023 Flood Risk Management Manual are equivalent to low hazard, whilst H5 and H6 are equivalent to high hazard in the 2005 Floodplain Development Manual<sup>1</sup>.

The Lyall & Associates Peer Review and earlier stormwater reports prepared by AECOM (submitted with the original PP) have each addressed the *McCarrs Creek, Mona Vale and Bayview Flood Study Review* (Royal Haskoning DHV, 2017) (RHDHV Report) prepared and adopted by the Northern Beaches Council (Council). The RHDHV Report and mapping is accessible through the SES<sup>2</sup> and Council's interactive online Flood Hazard Mapping<sup>3</sup> and illustrates the following existing flood hazard mapping for the site (Figure 1):

Figure 1 – Council Online Flood Hazard Mapping – Existing



<sup>1</sup> [Flood hazard \(nsw.gov.au\)](https://flooddata.nsw.gov.au/)

<sup>2</sup> <https://flooddata.ses.nsw.gov.au/dataset/mccarrs-creek-mona-vale-and-bayview-flood-study-2017-report>

<sup>3</sup> <https://nb-icongis.azurewebsites.net/>

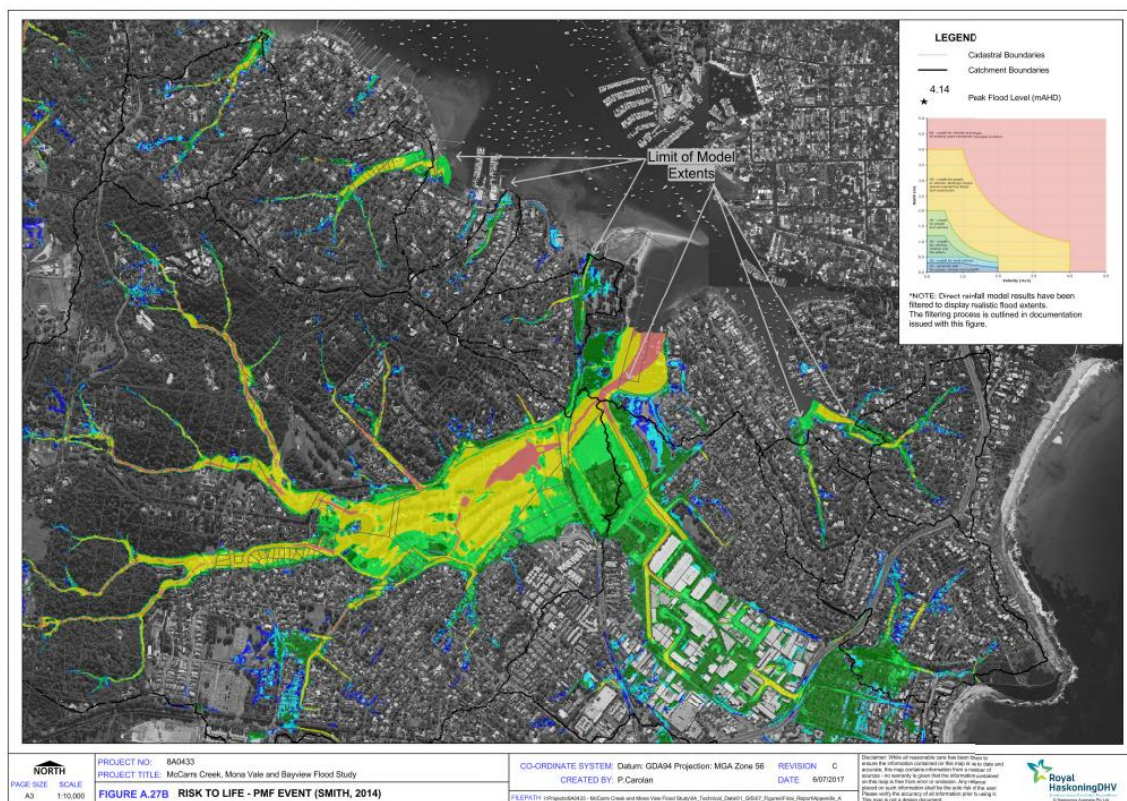
Council's adopted hazard mapping shows that a portion of the site is included within the Medium Flood Risk Precinct and a very small portion in the Low Flood Risk precinct.

The Medium Flood Risk Precinct is equivalent to the Flood Planning Area and covers all flood prone land which is affected by the 1% Annual Exceedance Probability (AEP) flood (equivalent to the 1 in 100-year flood) with a freeboard added while the Low Flood Risk Precinct covers flood prone land affected by the Probable Maximum Flood (PMF), but which is outside the Medium Flood Risk Precinct. The PMF is equivalent to the largest ever conceivable flood.

Whilst there are no high flood risk areas identified on the subject site, high flood risk areas within the RHDHV Report are otherwise located within Medium Flood Risk Precinct and cover flood prone land which is subject to a high hydraulic hazard.

Figure A.27B from the RHDHV Report 2017 (also reproduced in the Lyall & Associates Peer Review) shows the H1-H6 categories for the subject site. Figure 2 below illustrates this mapping with a detailed extract (Figure 3) also produced at page A5 of the Lyall & Associates Peer Review and again provided below:

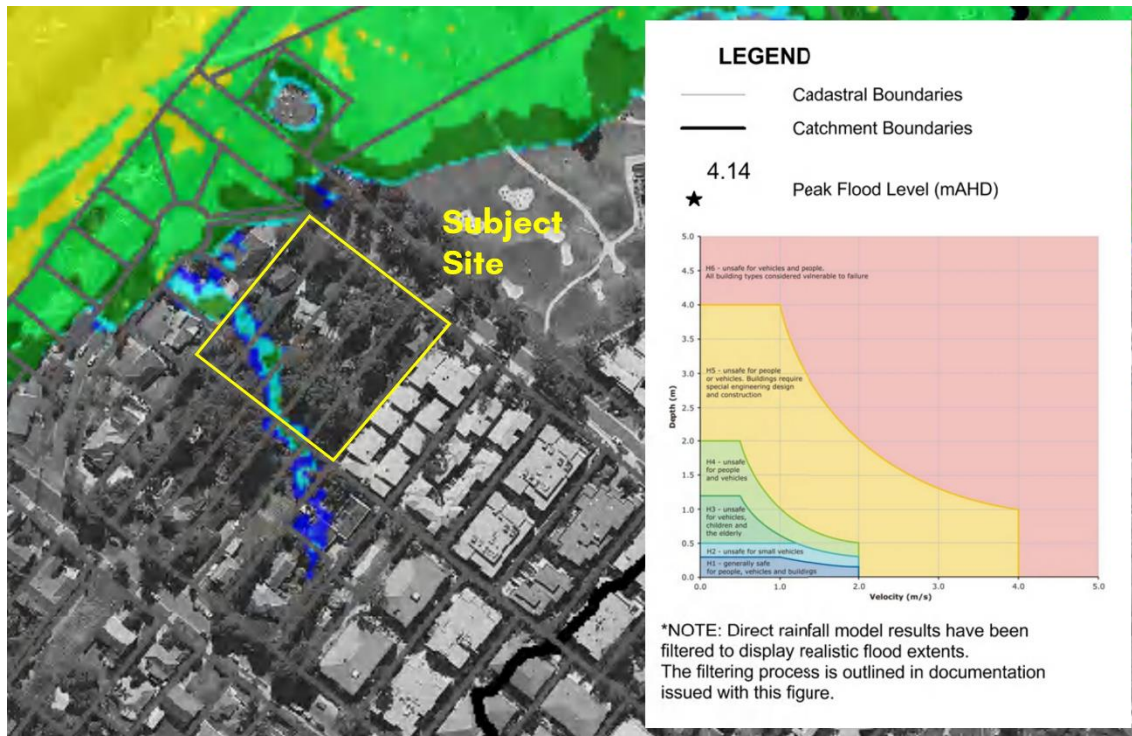
Figure 2 – RHDHV Hazard Mapping – McCarrs Creek, Mona Vale and Bayview Flood Study



Based on Council's RHDHV 2017 Flood Study, the site is identified as generally being subject to H1 and H2 flood vulnerability hazard conditions, with a small patch of H3 shown to be present during the PMF flood event. This is consistent with the site being included in the Low and Medium Flood Risk precincts of Council's online flood hazard mapping.

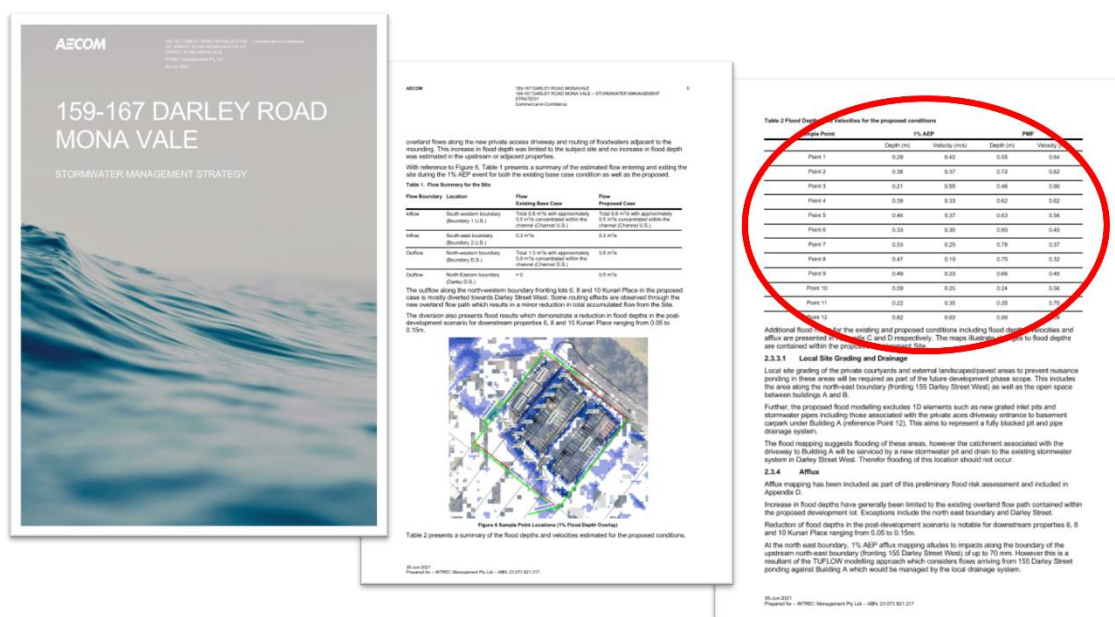


Figure 3 – RHDHV Hazard Mapping – McCarrs Creek, Mona Vale and Bayview Flood Study – Extract



In addition to Council's pre-development flood hazard conditions for the site, Attachment D of the PP (AECOM Stormwater Management Strategy) dated 30 June 2021 provides a detailed assessment of the hazard categories (depth x velocity) for 2 flooding events (1% AEP and PMF) based on the concept plan. It must be noted that this is a concept plan only and further modelling will be completed as part of the detailed design associated with the DA. Figure 4 below highlights the relevant sections from the 2021 AECOM report which addresses this issue.

Figure 4 – AECOM Report – Concept Plan Hazard Considerations



This modelling identified 12 locations across the site for post development hazard conditions assessment (see page 7). This modelling has been benchmarked against the 2023 Flood Risk Management Guideline FB03 and shows that all locations within the primary overland flow path and stormwater drainage areas are within the H1-H3 hazard categories. Table 1 below details the implied hazard derived from the 2021 AECOM Stormwater Management Strategy.

Table 1 – Concept Plan – Implied Hazard – 2023 Flood Risk Management Guideline FB03

Sample Point	1% AEP			PMF		
	Depth (m)	Velocity (m/s)	Implied Hazard <sup>4</sup>	Depth (m)	Velocity (m/s)	Implied Hazard <sup>5</sup>
Point 1	0.29	0.40	H1	0.55	0.64	H3
Point 2	0.38	0.37	H2	0.72	0.62	H3
Point 3	0.21	0.55	H1	0.46	0.90	H2
Point 4	0.39	0.33	H2	0.62	0.62	H3
Point 5	0.46	0.37	H2	0.63	0.56	H3
Point 6	0.33	0.30	H2	0.60	0.40	H3
Point 7	0.53	0.25	H3	0.78	0.37	H3
Point 8	0.47	0.19	H2	0.70	0.32	H3
Point 9	0.49	0.23	H2	0.66	0.40	H3
Point 10	0.09	0.25	H1	0.24	0.56	H1
Point 11	0.22	0.35	H1	0.35	0.70	H2
Point 12	0.82	0.03	H3	0.90	0.09	H3

These findings are consistent with the Ministerial Direction 4.1. In addition, and as previously advised, the proponent agrees with the recommendations made by the Lyall & Associates Peer Review and will be integrating these recommendations into the stormwater drainage planning to be submitted to Council as part of the future development application.

We note that this is consistent with the advice and expectations of Council who previously advised DPHI (see Figure 5 below) that Council considers the proposal generally consistent with the Ministerial Direction and that a more detailed assessment will be completed by Council's development engineers following lodgement of the development application. We fully agree with this position.

<sup>4</sup> [Flood hazard \(nsw.gov.au\)](https://www.nsw.gov.au/flood-hazard-thresholds) – Derived from Flood Hazard Thresholds – section 3

<sup>5</sup> [Flood hazard \(nsw.gov.au\)](https://www.nsw.gov.au/flood-hazard-thresholds) – Derived from Flood Hazard Thresholds – section 3

Figure 5 – Council advice to DPHI on Flood Assessment

From Council report

*"The subject site is affected by Low Risk and Medium Risk flood hazards in accordance with Council's Flood Hazard Map adopted in 2019. Council notes the Planning Proposal generally meets the flood controls in the LEP and DCP, however has not addressed the most recent Ministerial direction 4.3 (flood prone land - released on 14 July 2021). Council however considers it generally consistent with Direction 4.3, however a full assessment cannot be undertaken until a more detailed development application is lodged and would be subject to approval by the development engineers."*

**Toby Philp**  
Principal Planner

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Note Council references to Ministerial direction 4.3 are in error. Ministerial Direction 4.1 relates.

### **Biodiversity – Response to Further Information Request**

As outlined previously, and again in our meeting yesterday, we are uncertain what further justification could be provided in addition to the detailed Preliminary Environmental Assessment and additional information provided by our consultants (and accredited BAM Assessors) – Cumberland Ecology. Notwithstanding, Cumberland Ecology have prepared a detailed response to DPHI's Request for Further Information, and their response is attached to this letter for your consideration. We believe that Cumberland Ecology's response wholistically responds to the matters raised by BCS and DPHI.

We look forward to receiving confirmation that your discussions with BCS have closed out the remaining comments and that the PP can be progressed to the Panel for consideration. Please don't hesitate to contact me on 0467 719 198 or [brendan.nelson@solveproperty.com.au](mailto:brendan.nelson@solveproperty.com.au) if you require any further information of further clarity.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Brendan Nelson".

**Brendan Nelson**  
Partner, Advisory

18 April 2024

Andrew Thurlow  
INTREC Management  
73 Reserve Rd  
Artarmon NSW 2064

**Cumberland Ecology response to the Agile Planning Teams comments on the Preliminary Ecological Assessment and associated response letter for the 159-167 Darley Street, Mona Vale Planning Proposal**

Dear Andrew,

Cumberland Ecology previously prepared a response letter (Ref: 21032 Letter 2) addressing the Environment and Heritage Group's (EHG) comments (dated 14 December 2023) for the Preliminary Ecological Assessment (PEA). The PEA was prepared in support of a planning proposal seeking to amend zoning for 159-167 Darley Street, Mona Vale (the 'subject site') from R2 – Low Density Residential to R3 – Medium Density Residential under the Pittwater Local Environmental Plan 2014.

An additional request for information was issued by the Agile Planning team alongside additional comments from the Biodiversity, Conservation and Science Group in April 2024. Items relevant to biodiversity from the Agile Planning Team's request for information have been reproduced in *italics* with Cumberland Ecology responses under each item, noting that our responses largely cover off on the additional BCS comments.

*BCS, in their original submission raised concerns about the impact of the proposed development on Pittwater and Wagstaffe Spotted Gum Forest (PWSGF). Key issues included prioritizing PWSGF protection, justifying the Assessment of Significance conclusions, and assessing biodiversity impacts through stages 1 and 2 of the Biodiversity Assessment Method (BAM).*

*It is noted that the response to submissions has assessed the proposal against the current Local Environmental Plan Making Guideline (August 2023). Notwithstanding, BCS have now stated that further justification is required. The Agile Planning team requests that further studies and/or necessary justification prepared to confirm the presence of species and critical habitat on site (outlined in Section 3.4.4 of the PEA), impacts to such, and proposed mitigation measures.*

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Cumberland Ecology believes that all of EHG's previous comments have been adequately addressed by the PEA when read in conjunction with the response letter. EHG has provided two rounds of comments claiming the Cumberland Ecology's work is inadequately justified. However, no details as to the nature of the inadequacies have been provided to date. Subsequently, Cumberland Ecology has prepared a suite of responses and additional commentary which is provided below.

### **Relevance of the BAM to the Project**

Cumberland Ecology would like to refer to EHG's has previous request for a Biodiversity Assessment Report undertaken in accordance with Stage 1 and Stage 2 of the BAM. Cumberland Ecology does not agree with EHG's previously stated position in recommending the preparation of a BAM assessment prior to the DA stage as the potential impacts of the project have been adequately assessed in the PEA and the response letter.

However, Cumberland Ecology has undertaken preliminary credit calculations for the project to determine a list of threatened species that would potentially require surveys if a Biodiversity Development Assessment Report (BDAR) were to be prepared for the project. This has been performed to guide any potential "further studies and/or necessary justifications to confirm the presence of species" as mentioned in the current request for information. In accordance with Appendix C of the BAM, the small area assessment streamlined module would be utilised as the minimum lot size of the extant lots are < 1 ha, and the area of potential clearing is <1 ha. Subsequently, candidate species credit species that are not at risk of an SAI and are not incidentally recorded on the subject land would not require assessment.

Species credit species that would need to be considered if a BDAR was prepared for the project are listed below with commentary regarding the requirement for further assessment (including surveys) for any future BAM assessment associated with the project:

- Regent Honeyeater;
  - The subject site is not located within the important habitat map for the species and no further assessment would be required.
- Swift Parrot;
  - The subject site is not located within the important habitat map for the species and no further assessment would be required.
- Large-eared Pied Bat;
  - The subject site is located within 2km of cliffs which is listed as a relevant habitat constraint for the species and further assessment would be required.
- Little Bent-winged Bat;
  - The subject site does not contain caves, tunnels, mines, culverts or other structures known or suspected to be used for breeding, as listed as a relevant habitat constraint for the species. No further assessment would be required.



- Large Bent-winged Bat;
  - The subject site does not contain caves, tunnels, mines, culverts or other structures known or suspected to be used for breeding, as listed as a relevant habitat constraint for the species. No further assessment would be required.
- Eastern Cave Bat;
  - The subject site is likely located within 2km of rocky areas containing caves, overhangs, escarpments, outcrops, crevices or boulder piles which are listed as a relevant habitat constraint for the species. Further assessment would be required.
- Eastern Australian Underground Orchid;
  - No habitat constraints are listed for the species. However it may be argued that the subject site is too degraded to have supported the species throughout the decades of disturbance and maintenance as urban properties following the clearing of the subject site prior to 1951 as shown on Figure 4 of the PEA. Further assessment not likely required.
- Scrub Turpentine;
  - No habitat constraints are listed for the species and it was not observed during flora surveys. No further assessment would be required.
- Native Guava;
  - No habitat constraints are listed for the species and it was not observed during flora surveys. No further assessment would be required.

The only species likely requiring further assessment at the DA stage if a BDAR was to be prepared are the Large-eared Pied Bat and the Eastern Cave Bat. Subsequently, it is considered that the PEA and the response letter in combination provide a broader and more detailed assessment of threatened species when compared to a hypothetical BDAR as they have considered more species in detail. Subsequently, any future survey requirements can be guided by the outcomes of this preliminary assessment and are likely to be limited in scope. Additional relevant information that may come out of a BAM assessment would include the preparation of a SAIL assessment for PWSEF, however the impact of a 0.09 ha area of the TEC is unlikely to result in SAIL for this entity. Calculation of any credit liability is considered irrelevant outside of the context of a DA due to the likelihood for a different result following preparation of detailed plans.

### **Presence of Threatened Species**

Cumberland Ecology has prepared a list of flora and fauna species detected during original surveys in Table 7 and Table 4 of the PEA respectively. BioNet Atlas records of threatened flora and fauna species from within 5km of the subject site are provided in Appendix B of the PEA and Section 3.3.2 and Section 3.4.3-3.4.4 discusses the potential for threatened flora and fauna occurrence within the subject site based on this analysis.

No threatened flora or fauna species were detected within the subject site during surveys, other than *Macadamia integrifolia* and *Macadamia tetraphylla* which are commonly cultivated species endemic to northern NSW.

Section 3.4.3 of the PEA provides commentary regarding threatened fauna habitation of the subject site whilst Section 3.4.4 details the significance of the habitat. The PEA and response letter states that the degraded habitat of the subject site would be utilised for foraging resources by highly mobile, aerial threatened fauna species on a seasonal, occasional or opportunistic basis as part of a broader foraging range. The habitat of the subject site would not be solely relied on by any threatened fauna species known to the locality.

Section 3.4.4 of the PEA elaborates as to why the subject site only comprises foraging habitat for likely to occur threatened fauna species due to a lack of significant habitat features such as large tree hollows located >4 m above the ground for large forest owls and maternity caves for cave breeding microchiropteran bats. The small hollows within the subject site may provide refuge/roosting opportunities for microchiropteran bats that utilise tree-hollows.

As stated in Section 3.4.3 of the PEA, the species with the highest likelihood of occurrence includes:

- Large Forest Owls including:
  - Barking Owl (*Ninox connivens*);
  - Powerful Owl (*Ninox strenua*);
- Microchiropteran bats including:
  - Eastern Coastal Free-tailed Bat (*Micronomus norfolkensis*);
  - Eastern False Pipistrelle (*Falsistrellus tasmaniensis*);
  - Large Bent-winged Bat (*Miniopterus orianae oceanensis*);
  - Large-eared Pied Bat (*Chalinolobus dwyeri*);
  - Little Bent-winged Bat (*Miniopterus australis*); and
- Grey-headed Flying-fox (*Pteropus poliocephalus*);

These species are all aerial, highly mobile, forage over very large habitat ranges and are previously known to the locality. The Grey-headed Flying Fox would be expected to forage within the habitat seasonally, coinciding with flowering and fruiting events of the canopy within their large foraging range. Large Forest Owls would be expected to hunt for prey year-round within their vast territories, within which the subject site likely falls. Microchiropteran bats would be expected to seasonally forage for insects in the canopy during the warmer months as part of a large foraging range.

As the subject site lacks any specific habitat features that would indicate that the habitat is being utilised as foraging habitat, further studies to determine presence within the subject site are not considered warranted.

The PEA and response letter assumes that the identified species will utilise the habitat of the subject site on a seasonal, occasional or opportunistic basis.

The impacts to these entities have been assessed in line with these conclusions within the PEA and the response letter as detailed below.

### **Presence of Threatened Ecological Communities**

One threatened ecological community (TEC) has been confirmed within the subject site as previously described in the PEA and the response letter. A 0.19 ha area of PWSGF occurs within the subject site in a highly degraded state. This TEC occurs as trees over an exotic dominated understorey as detailed in Section 3.2.1 of the PEA. The distribution of this entity is shown on Figure 5 of the PEA and Figure 1 of the response letter. The impacts to this entity have been assessed in the PEA and the response letter as detailed below.

### **Presence of Areas of Outstanding Biodiversity Value (formerly Critical Habitat)**

Areas of declared critical habitat were recognised under the former NSW *Threatened Species Conservation Act 1995* (TSC Act) which was repealed and replaced with the BC Act. The BC Act has introduced declared Areas of Outstanding Biodiversity Value (AOBV) and TSC Act declared critical habitat have become the only currently declared AOBV.

Section 4.3.2.1 of the PEA assesses the Biodiversity Offsets Scheme Entry thresholds for the concept plan if a Development Application (DA) were to be prepared in the future. This assessment was prepared primarily to determine an indicative biodiversity assessment pathway for a future DA if the planning proposal were to be approved. This assessment has also confirmed that the subject site will not impact AOBV. However, as there still appears to be doubt surrounding the potential for the project to impact AOBV in as detailed in the current request for information, a summary of declared AOBV has been provided below.

Declared AOBV under the BC Act includes the following:

- Gould's Petrel - critical habitat declaration;
  - Defined as breeding habitat for the species on Cabbage Tree Island, located 1.4km off the coast of Port Stephens, NSW;
- Little penguin population in Sydney's North Harbour – critical habitat declaration;
  - Defined as breeding and foraging habitat (including land within 50 m of rocky breeding habitat) within the locality of Manly, NSW;
- Mitchell's Rainforest Snail in Stotts Island Nature Reserve - critical habitat declaration; and
  - Defined as the large area of known habitat for the species within Stotts Island Nature Reserve, in the Tweed River near Murwillumbah, NSW.
- Wollemi Pine critical habitat - critical habitat declaration.

- Defined as all known extant areas of occurrence of the Wollemi Pine and the surrounding area comprising 5000 ha of habitat within the Wollemi National Park of the Greater Blue Mountains World Heritage Area.

Cumberland Ecology reiterates that the subject site does not encroach upon any of the declared AOBV as previously confirmed in Section 4.3.2.1 of the PEA.

### **Impacts upon Threatened Species and Ecological Communities**

The vegetation of the subject site has been mapped and presented in Figure 5 of the PEA and Figure 1 of the response letter. The vegetation mapping of the subject site has been used as the basis for quantifying and assessing impacts to PWSGF and associated limited habitat values in relation to the concept plan.

A clear analysis of the extent of direct and indirect impacts to TECs has been provided in Section 4.1 of the PEA and Section A.1.1 of the response letter. A total area of 0.09 ha of the PWSGF TEC has been assessed as being impacted under the concept plan and indirect impacts are discussed in Section 4.1.2 of the PEA. Further to this, tests of significance have been prepared in accordance with Section 7.3 of the BC Act as provided in Appendix C of the PEA and Appendix B of the response letter. The outcome of this test of significance is that no significant impact is expected for PWSGF with the removal of 0.09 ha of highly degraded vegetation. Subsequently, adverse impacts are not expected to occur to this entity.

A clear analysis of the extent of direct and indirect impacts to threatened fauna species is provided in Section 4.1 of the PEA and Section A.1.1 of the response letter. A 0.24 ha area of marginal threatened fauna foraging habitat is proposed to be impacted in accordance with the concept plan. This 0.24 ha area comprises a combination of native vegetation (including the PWSGF TEC) and exotic vegetation. As this area of habitat is proposed to be impacted under the tests of significance have been prepared in accordance with Section 7.3 of the BC Act as provided in Appendix C of the PEA and Appendix B of the response letter. The outcome of these tests of significance is that no significant impact is expected for threatened fauna species likely to occur with the removal of a 0.24 ha area of highly marginal habitat. This will not materially reduce the foraging resources for the assessed species. Subsequently, adverse impacts are not expected to occur to the assessed entities.

Cumberland Ecology would like to reiterate that the various Local Environmental Plan Making Guidelines, including those released in 2021 (and 2023) were made available after the PEA was prepared and submitted. Subsequently, any requirements of these documents including formal consultation with agencies was not possible until Cumberland Ecology was invited to respond to EHG's and Agile planning's comments during 2024. Cumberland Ecology maintains that the PEA adequately addresses the requirements of the various Local Environmental Plan Making Guidelines despite being submitted prior to the release of such guidelines. Justifications relating to threatened species and TEC occurrence and the impacts of the project have been reiterated and bolstered with the submission of the response letter and Cumberland Ecology's responses in this document.

If Cumberland Ecology were to assess the impacts of the concept plan in a DA setting, the conclusions made in our tests of significance would remain the same as stated in the response letter. The Biodiversity Offsets Scheme thresholds would not be triggered by any mechanism and a Flora and Fauna Assessment would be



recommended to be prepared for submission rather than an assessment undertaken in accordance with the BAM.

## Mitigation Measures

The mitigation measures relevant to the project will be refined at the DA stage. Nevertheless, the PEA and the response letter detail a suite of relevant mitigation measures that will ameliorate the impacts of the project upon the immediate surroundings.

The following mitigation measures have previously been proposed in Section 4.2 of the PEA and Section A.1.2 of the response letter and are summarised below:

- PWSGF retention and regeneration under a Vegetation Management Plan (VMP);
  - Retention and regeneration of a 0.12 ha area of PWSGF within the southern portion of the subject site to ensure the persistence of the TEC into the future. This will be administered with the preparation of a VMP at the DA stage or as a condition of consent;
- Site inductions for workers and visitors regarding biodiversity of the subject site and restricted access areas;
- Access restrictions to areas of retained vegetation;
- Erosion, sedimentation and pollution control;
- Pre-clearing surveys;
  - Undertaken by a suitably qualified and experienced ecologist to identify additional habitat features;
  - Findings to be reported to the consent authority;
- Two-stage clearing protocols for trees with habitat features;
  - To be supervised by a suitably qualified and experienced ecologist.
- Weed control measures; and
  - In accordance with the relevant Regional Strategic Weed Management Plan.
- Nest-box installation.
  - An equal or greater number of nest boxes to be installed to offset the loss of hollow-bearing trees to be determined at the DA stage or following pre-clearing surveys.

Cumberland Ecology maintains that the previously proposed mitigation measures detailed in the PEA and response letter are appropriate and adequate given the small scale of impacts to the biodiversity values of the subject site.

*The Agile Planning Team considers that other biodiversity matters, including the preparation of a vegetation management plan, can be further detailed during the DA stage.*

Cumberland Ecology agrees with this statement.

Yours sincerely,



Michael Davis  
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