

Attachment B - Applicant Response to Submission

15 December 2015

The General Manager
Lake Macquarie City Council
Box 1906
Hunter Region Mail Centre 2310

Attention: Elizabeth Lambert

DA/1774/2013, MIXED USE AND RESIDENTIAL DEVELOPMENT, KOPA STREET AND DUDLEY ROAD, WHITEBRIDGE

I am writing regards the recent Whitebridge Community Alliance (WCA) submission and to respond to some proposed conditions of consent regarding the abovementioned development.

WCA Submission

The undated submission by Lynden Jacobi, as Secretary of the WCA, claims that the ecological impacts of the development have not been appropriately considered in accordance with the provision of the *EPA Act 1979* and that a Species Impact Statement (SIS) is required. This appears based on a belief that conditions of consent are required and proposed that impose ameliorative measures so as to avoid having a significant impact on the Squirrel Glider – a threatened species. We believe the submission is misguided and have obtained legal advice confirming appropriate assessment has occurred. Our reasoning, as confirmed in our legal advice, is that appropriate ameliorative measures are embedded in the proposal such that the development will not have a significant impact on the Squirrel Glider. Further discussion of our reasoning follows.

Section 78A of the EPA Act provides that where a development application is likely to significantly affect threatened species it must be accompanied by a Species impact Statement. Section 5A provides matters for consideration in determining whether there is likely to be a significant effect. These criteria, including the Lake Macquarie Squirrel Glider Planning and Management Guidelines (“LMSGPMG”) were the basis for ecological assessments completed as part of the development assessment by RPS, LMCC, Clulow and Murray. As highlighted in the WCA submission these assessments, as a matter of principle, should consider only those ameliorative measures proposed as part of the development. In this case those measures contained in the development application include:

- landscaping works intended to restore the function and ecological value of the environmental corridor along the eastern site boundary;
- staging to initiate landscaping at commencement of the project and delay works in the north-eastern corner fronting Kopa St until the final stage of the development; and
- dedication of the conservation land into public ownership to provide long term security of tenure and allow integration into a broader regional corridor network, in accordance with conservation outcomes identified in the LMSGPMG (p.35).

Details of the landscape works are contained in the landscape documentation (Mansfield Urban), including a clear statement regarding the intended ecological outcome. This intent is reinforced in the application documents, including the Statement of Environmental Effects (SNL Building) and the ecological advice (RPS). The SEE states that:

Planting in the conservation land will promote its role as a native vegetation corridor

The RPS documentation confirms this in stating that:

The proposed landscape Master Plan will improve ecological function of the faunal movement corridor identified under the LMCC Native Vegetation and Corridors Mapping

The intent is further reinforced by the project amendments that were made from the initial design to reduce edge effects by limiting dwellings fronting directly onto the conservation land and re-design of the stormwater and other infrastructure to improve tree retention and replanting throughout the site.

Revegetation of the environmental corridor, both to provide landscape amenity and to restore its ecological function, has been a clearly defined outcome of the development since the initial design. This outcome has been maintained throughout the application and assessment process and these ameliorative measures are therefore matters to be considered when determining the impacts of the development.

An SIS is required where a development is likely to significantly affect the threatened species, in this case the Squirrel Glider. In their assessments of this matter, LMCC, Clulow and Murray all acknowledge the corridor through the site and the adjacent land is tenuous. Further, they indicate the significant barrier caused by the Dudley Rd corridor, which is described by Murray as:

unsuitable for gliding by the Squirrel Glider

and that

the probability of gliders crossing Dudley Road within the Fernleigh Track corridor, is considered very low (pp.14-15).

It must be noted the Dudley Rd restriction exists now, is outside the boundaries of the subject site, and is not affected, influenced or exacerbated by the proposed development. Therefore, regardless of any improvement to be delivered to the corridor within the subject site and adjacent Kopa St reserve, a substantial barrier to glider movements between the Glenrock and the Awabakal – Jewells – Belmont populations remains. Thankfully, the proposed development will improve long term connectivity to that point and provide security of tenure, while an alternate and viable corridor also exists through the Dudley Bluff Corridor (Murray, p.13). The LMSGPMG identifies that while regular movement is required for feeding and breeding within a home range, only infrequent and occasional movement is required to facilitate the flow of genetic material between populations. Given the improvement in corridor function and the alternates available, the proposed development is not considered to have a significant impact on the viability of the local Squirrel Glider populations.

Murray states that both the northern Glenrock patch, and the southern Awabakal – Jewells – Belmont patch of Squirrel Gliders are of sufficient size to support sub-populations in the short to medium term (40-60 years) based on the existing corridor linkages (p.15). It should be noted that the LMSGPMG indicates that the north-east population is viable and has a 95% probability of persisting for over 100 years (Table 8, p.42). Murray further states that:

if no habitat enhancement measures are incorporated into the Consent Conditions for the proposed development, then the action would likely have an adverse effect (p.iii).

Habitat enhancement, as already detailed, is proposed as part of the development. This was part of the initial proposal assessed by RPS and has been maintained in all project documentation during the design iterations. Murray indicates that the proposed tree plantings would require 15-20 years to reach sufficient height to establish effectively for gliders. While this calculation appears to discount existing, retained trees that will also continue to mature, it indicates nonetheless that the proposed works will provide a minimum 20 year buffer for his projected 40-60 years sustainability of the existing population, based on existing conditions.

It is quite evident, as concluded by RPS, Council and Murray's assessments, and having regard to the LMSGPMG's, that the proposal is not likely to have a significant impact on the long term viability of the local population (north-east population) of Squirrel Gliders and therefore no SIS is required to accompany the development application.

Council has recommended draft conditions of consent to enforce additional measures to help improve the function of the corridor. These additional measures are, as Council concluded, provided because the development, while not having a significant impact, will have an impact nonetheless. They are additional measures to improve the functioning of the corridor, particularly in the short term, but are not critical to the life cycle of the Squirrel Glider population.

Draft Consent – Condition 14

The imposition of glider poles within the site and adjacent Kopa St reserve should be reviewed. The various ecological assessments conclude that the corridor in this area will be a single tree width in the short term while landscaping works establish. While tenuous, this corridor will still function to provide connectivity for gliders through and along the site boundary. Table 9 of the LMSGPMG indicates that glider poles are applicable primarily across major barriers such as roads or other barriers where the gap exceeds 50m. This is not the case on this site a single line of trees at less than 50m intervals being maintained.

Ameliorative landscaping and environmental measures proposed for Dudley Rd and Station St are not considered to fairly and reasonably relate to the development. They relate to measures to ameliorate existing conditions that will not be impacted by the proposed development. A review of these requirements should be undertaken and they should be removed where they are not considered legally enforceable conditions of consent.

Measures relating to the keeping of pets appear unnecessary, and possibly unlawful, in that they seem to replicate matters contained in the *Companion Animals Act 1998*. While we agree in principle with the intent of these measures, we believe they are provided for in the *Companion Animals Act 1998*. These conditions should be reviewed and where appropriate removed from the consent. The impacts they seek to mitigate should be given effect through Council enforcement under the relevant legislative framework.

Draft Consent – Condition 91

As raised in previous correspondence, we believe the imposition of a condition to extend Kopa St, at its present width, to the driveway of proposed Lot 23 is unnecessary. The current design facilitates tree retention and replanting in Kopa St. This will improve the visual impact, the amenity of public spaces and adjoining dwellings, and deliver stronger ecological outcomes. The current design also avoids impacting the recently constructed public access path to the Fernleigh Track. This will need to be reconfigured if the road is extended at current width.

If a public road is required to provide frontage to proposed Lot 23, it is suggested that only half road construction is warranted. This will achieve some or all of the above-mentioned advantages of avoiding full road construction.

Should you wish to further discuss the revised documentation or require additional information please contact me directly on (02) 4954 8866.

Kind regards,



Wade Morris
Approvals Coordinator
SNL Building Constructions Pty Ltd
E: wade@snlbuilding.com.au