



Office of
Environment
& Heritage

Our ref: DOC19/70603

Your ref: DA0307/17

Mr Shaun Garland
Team Leader, Development Assessment
Ku-ring-gai Council
Locked Bag 1006
GORDON NSW 2072



Dear Mr Garland

Request for concurrence: DA0307/17 950-950A Pacific Hwy and 2 Bridge St Pymble

I refer to Council's request dated 29 January 2019, for the concurrence of the Office of Environment and Heritage (OEHL) to DA0307/17, for the proposed development of a hardware building supplies development (Bunnings Warehouse) at the above site.

I have considered your request and have decided to grant concurrence, for the reasons given in the attached concurrence report.

If you have any further questions in relation to this matter, please contact Sarah Burke on phone 9995 6848 or sarah.burke@environment.nsw.gov.au

Yours sincerely

M. Sch  20/03/2019

MARTIN SCHWIEBERT
STL, Compliance & Regulation
Greater Sydney Branch

As delegate to the Director-General

Contact officer: SARAH BURKE
(02) 9995 6848

CONCURRENCE REPORT – BUNNINGS WAREHOUSE

EXECUTIVE SUMMARY

On 13 February 2019, the Office of Environment and Heritage (OEH) received a complete concurrence application from Ku-ring-gai Council pursuant to Section 79B(3) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Concurrence was sought for a development application under Part 4 of the EP&A Act.

I have considered the application from Ku-ring-gai Council in accordance with Section 79B(5) of the EP&A Act and I have decided to grant concurrence to this development for the reasons set out in Section 6 of this report.

M. Schwiebert 20/03/2019

MARTIN SCHWIEBERT
STL, Compliance & Regulation
Greater Sydney Branch

As delegate to the Director-General

1 DESCRIPTION OF THE PROPOSAL AND THE ENVIRONMENT

The proposal considered by OEH for the purpose of deciding whether or not to grant concurrence is Ku-ring-gai Council development application reference DA0307/17, as described by the following documents supplied by Ku-ring-gai Council on 29 January 2019 and the applicant on 8 March 2019:

- Correspondence from Council (29 January 2019) requesting concurrence
- Species Impact Statement (SIS) (amended) (Cumberland Ecology December 2018)
- Statement of environmental effects (June 2017)
- Council's assessment report for the Planning Panel (25 September 2018);
- Council's draft conditions (3 October 2018);
- Landscape Plan (drawing 2103- LP-00 Rev P, JLA, 17/04/2018), provided in the SIS
- A copy of the public submissions
- Vegetation Management Plan (Cumberland Ecology 2016)
- Email from applicant with addendum to SIS (Bunnings, 8 March 2019)

Council states the development application was received on 28 July 2017, and an amended application (including an amended SIS) was received on 21 December 2018.

The application will be referred to the Sydney North Planning Panel (SNPP) for determination pursuant to Part 4 (Regional Development) of *State Environmental Planning Policy (SEPP) (State and Regional Development) 2011* and Schedule 4A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). However, the functions under section 79B of the EP&A Act in regard to consultation and concurrence are (specifically) not conferred on the Panel (refer to Part 4, Section 21(2)(a) of the SEPP (*State and Regional Development*) 2011). Therefore, in regard to s79B, Council remains as the consent authority and is responsible for gaining any necessary concurrences.

The proposed development involves the demolition of existing commercial buildings and the construction of a new Bunnings Warehouse and associated infrastructure. The site is Lot B DP 371406 and Lot 1 DP 718718 in Ku-ring-gai LGA.

The Subject land is approximately 1.85 ha in size and is zoned as B7 – Business Park. The subject land is bounded by the Pacific Hwy, Bridge St, Ryde Rd and business uses, as shown in Attachment 1 (Figure 1.2 from the SIS). The SIS states that the subject land contains six *Eucalyptus saligna* trees, four of which occur over mown lawn and planted garden beds and two of which occur within a strip of planted native and non-endemic native plants along the Pacific Hwy. The SIS states that two of the trees, Tree 150 and Tree 135 are large, mature trees likely to be remnant. The other trees are younger, planted individuals. The SIS considers all six trees to fall within the description of the Blue Gum High Forest (BGHF) critically endangered ecological community (CEEC).

The subject land is covered by Ku-ring-gai's Development Control Plan (KDCP) and areas under Tree 135 are mapped within the Council's Greenweb Mapping as Category 5 – Canopy Remnant and are thus subject to Part 18 of the KDCP, which specifies that the principle of no net loss to biodiversity or connectivity must be applied.

The surrounding land use is largely made up of residential areas, along with business, industrial complexes and railways. An aerial photograph overlaid with a layout of the proposal is attached at Appendix 1.

The most significant ecological issue on site is the impacts to BGHF. OEH understands that the Planning Panel is of the view that the proposal is likely to have a significant effect on BGHF. OEH also understands that the Planning Panel is of the view that consent should be granted, and therefore Council has requested the concurrence of the Chief Executive of OEH, in accordance with s79B(3). It is noted that Council's assessment report recommends refusal.

The development of the site appears to have been controversial. Since 2016, Bunnings has appeared in the Land and Environment Court (LEC) six times against Council in relation to the development of the site. It should be noted a former DA was approved by the LEC on 16 May 2017. The footprint of

the former DA would have had a greater biodiversity impact than the current DA, as it proposed a driveway access from Ryde Road which would have led to the removal of an additional 13 native planted trees.

2 THE PUBLIC SUBMISSIONS

Section 79B(5)(c) of the EP&A(A) Act requires that the Director-General consider any submissions or objections received concerning the development application.

Council's letter states that the application was advertised and notified for 28 days, the submission dates were 10 January to 8 February 2019. The previous DA was also advertised in October 2017.

Council advised via email that no submissions were received for the most recent notification period (10 January – 8 February 2019). Council forwarded copies of submissions from the previous notification period. There were only two submissions received by Council from local residents. Neither submission raised any biodiversity issues.

3 CONSIDERATION OF THREATENED SPECIES ISSUES

Section 79B(5) of the EP&A(A) Act requires that the Director-General consider:

- any species impact statement prepared in relation to the activity,
- any assessment report prepared by or on behalf of the applicant,
- any relevant recovery plan or threat abatement plan,
- whether the activity is likely to reduce the long-term viability of the species, population or ecological community in the region, and
- whether the activity is likely to accelerate the extinction of the species, population or ecological community or place it at risk of extinction.

This section of this assessment report addresses these statutory considerations, using information from the SIS, and other documents to assess the likely impact of the proposal at the local and regional levels, and to assess whether the proposal is likely to accelerate the extinction of any of the threatened species and ecological communities affected by the development.

The SIS includes an assessment of significance for BGHF and a number of threatened fauna species. The assessments conclude that the proposal will not have a significant impact on any threatened fauna species. The assessment for BGHF is ambiguous in its conclusion, ie it states that "it could be considered a technically significant impact". Nevertheless, Council's referral letter (29 January 2019) states that concurrence is sought due to the loss of BGHF. It is assumed Council and the Planning Panel consider this loss to be significant.

3.1 Assessment of impacts on BGHF and threatened species

- **Blue Gum High Forest (BGHF)**

The SIS states that the subject site has six *E. saligna* trees, which conform to the description of BGHF. Only two of these trees (Tree 135 and Tree 150) are thought to be remnant. The SIS also states that the size of the remnant of BGHF on site is 0.14 ha. The SIS states the BGHF on site does not conform to the description of BGHF under the EPBC Act, given the size is less than one hectare.

The SIS states that the proposal will lead to the removal of two of the six *E. saligna* trees on site, which equates to half of the extent (measured via canopy cover) of BGHF on site (ie 0.07 ha of total 0.14 ha). The two trees proposed to be removed are Tree 135 and Tree 91. The SIS says Tree 135 is remnant, but Tree 91 is most likely planted. The location of the six trees on site is shown in Attachment 2 (Figure 6.1 from the SIS).

The SIS states that the *E. saligna* trees on site occur in a highly artificial environment with no substantial native understorey. The SIS also states that they have low prospects for natural or assisted natural

regeneration and are unlikely to recover without considerable levels of active management. The SIS states that the vegetation on the subject site is in very poor condition, with extremely low diversity or abundance of native species. The subject land has had a history of disturbance, particularly from urban development.

A Recovery Plan has not been prepared for BGHF. OEH is developing a Saving Our Species Conservation Project for this CEEC. The profile page for this CEEC (www.environment.nsw.gov.au/threatenedSpeciesApp/profile.aspx?id=10094) lists clearing and loss of vegetation for development and bushfire protection as the first threat. This threat is relevant to this assessment.

As stated above, this assessment must consider whether the proposal is likely to reduce the long-term viability of BGHF in the region, and whether it is likely to accelerate the extinction of BGHF.

BGHF is listed as a CEEC under the BC Act and was also listed as a CEEC under the TSC Act. As stated by the Scientific Committee in the listing of BGHF, the geographic distribution of BGHF is highly restricted and is currently estimated to cover an area of less than 200 ha. It occurs only on the Hornsby Plateau in northern and north-western Sydney. The distribution comprises a series of small remnant patches with the largest less than 20 ha. Highly modified relics of the community also persist as small clumps of trees without a native understorey; all remnants are now surrounded by urban development. Consequently, the distribution of BGHF is severely fragmented, such fragmentation contributes to a large reduction in the ecological function of the community.

The only occurrence of BGHF on national parks estate is in Dalrymple-Hay Nature Reserve, and small patches also occur in Berowra Valley Regional Park and Lane Cove National Park. The CEEC is not considered adequately represented in conservation reserves.

There are a number of patches of BGHF in the locality, as Pymble is in the central part of its distribution. According to Sydney Metro Vegetation Mapping (OEH 2016), there are 1232 patches of BGHF within a 5 km radius of the site, totalling 298 ha. However, it is also worth noting that almost all of these patches are very small and fragmented, with 95% of these patches <1 ha.

The proposal includes preparation of a Vegetation Management Plan (VMP) to re-create BGHF in a 0.2 ha area, using a full suite of BGHF species. The area to be managed under the VMP will be protected via a section 88B covenant.

Given the number of records of BGHF in the vicinity of the site, and the proposal to protect and enhance a patch of BGHF on site, it is considered that the loss of two *E. saligna* trees (one remnant, one planted) is unlikely to reduce the long-term viability of BGHF or place it at risk of extinction.

- **Council's assessment of BGHF issues:**

Council's assessment report, dated September 2018, recommends refusal of the DA based partly on unacceptable impacts to BGHF. The report states that the SIS needs to be updated as it does not refer to the current DA. It is noted that subsequent to Council's report, an updated SIS has been provided. The report also recommends refusal, given that Tree 135 has been mapped as a Category 5 canopy remnant under Council's DCP, which requires retention of the tree and certain planting requirements under the tree, which the proposal does not achieve.

Council also reviewed the updated SIS (comments at Attachment 3). Council considered that due consideration had not been given to alternative development locations that would have a lesser impact on Tree 135. This is discussed in further detail in the "Consideration of alternative options" section of this report.

- **Other native vegetation communities**

Aside from BGHF, the SIS recognises the following vegetation types on site:

- Reconstructed native (with exotics)

- Planted exotic/native; and
- Exotic grassland

Attachment 2 shows the occurrence and distribution of these communities on site. The proposal will clear 0.6 ha of vegetation, the majority of which is planted exotic/native and exotic grassland. The SIS states that 55 native species were recorded on site, many of which are planted landscaping species.

OEH considers the classification of these areas to be adequate. Given the non-BGHF vegetated areas on site are not remnant ecological communities, no further assessment of these areas is warranted.

- **Threatened fauna**

The SIS states that fauna surveys on site were limited to eight hours of habitat assessment and six hours of bat survey over four nights in February 2013. The fauna survey locations are shown on Attachment 4 (figure 4.1 of the SIS), and the survey times and effort are documented in Table 4.1 of the SIS. The fauna habitat assessment included consideration of important indicators of habitat condition and complexity including the occurrence of microhabitats such as tree hollows, fallen logs, rock and water sources. The survey effort and techniques for threatened fauna are considered adequate for this site.

The SIS states that two threatened fauna species were recorded on site. The Grey-headed Flying-fox was detected foraging on the subject land on four occasions and there was a possible recording of the Eastern Bentwing-bat on one night. Figure 4.4 of the SIS (Attachment 5) shows the location of fauna habitats and threatened fauna sightings.

- **Grey-headed Flying-fox (*Pteropus poliocephalus*)**

The Grey-headed Flying-fox (GHFF) was detected foraging on site during surveys, in mature fig trees (*Ficus microcarpa*). There are ten fig trees on site, seven of which are proposed to be removed.

The GHFF occurs in a variety of habitats, including rainforests, tall sclerophyll forests and woodlands, heaths and swamps as well as urban gardens and cultivated fruit crops. Roosting camps are generally located within 20 km of a regular food source and are commonly found in gullies, close to water, in vegetation with a dense canopy. The SIS states that there is no roosting camp on site but that the site is used as foraging habitat. The SIS also states that the proposal would result in the removal of seven of ten trees which provide approximately 0.41 ha of foraging habitat for this species in the study area.

The GHFF is listed as a vulnerable species and occurs from Bundaberg to Melbourne, generally within 200 km of the coast. The species can travel up to 50 km from camps to forage. The closest camp to the site is at Gordon, which is approximately 1.5 km away.

No recovery plan has been prepared for the GHFF, though a draft National Recovery Plan has been prepared. The aims of this draft Recovery Plan are: to identify, protect and enhance foraging and roosting habitat which is critical to the species survival; to substantially reduce deliberate destruction associated with commercial fruit crops; to reduce negative public attitudes and conflict with humans; and to involve the community in recovery actions. The habitats on site would not be considered critical to the species' survival and there are no actions which are relevant to this proposal.

This assessment must consider whether the proposal is likely to reduce the long-term viability of GHFF in the region, and whether it is likely to accelerate the extinction of the GHFF. There are 1100 records of this species within a 5 km radius of the site. The action will reduce the foraging habitat of the GHFF in the locality by a small degree, which may affect the viability of the population in the local area to some degree. However, given the large foraging range of the species, the lack of breeding habitat on site, and given the number of other records in the locality, it is unlikely that the action will reduce the long-term viability of the GHFF in the region, or accelerate the extinction of the species.

- **Eastern Bentwing-bat** (*Miniopterus schreibersii oceanensis*)

The SIS states that a possible recording of the Eastern Bentwing-bat (EBWB) was made on site in February 2018, in the location shown in Attachment 5.

The species primarily roosts in caves, but also uses derelict mines, stormwater tunnels, buildings and other man-made structures. The SIS states that there is no roosting habitat available on site but that it provides suitable foraging habitat, and that the proposal would lead to the removal of 0.41 ha of foraging habitat for the species. The SIS also states that habitat on the subject land is not important for the species in the locality as it is sub-optimal habitat within a disturbed context. Much larger areas of potential habitat occur throughout the local population's range, including within conservation reserves such as Lane Cove National Park and Ku-ring-gai Chase National Park.

The EBWB is listed as a vulnerable species and occurs along the east coast from Cape York to Victoria, as well as the north-west coast of Australia, and is one of the more commonly encountered cave-dwelling bats (Hoye and Hall 2008). Populations are centred on a maternity cave that is used annually for the birth and development of young. There are no known maternity colonies in the Sydney metropolitan area, where the site is located. Outside of breeding times, populations disperse within about a 300 km range of maternity caves.

There is no recovery plan for the EBWB. OEH's Saving Our Species program identifies critical actions for the species, but these actions are relevant to sites with maternity caves and riparian areas, and so do not apply to this site.

This assessment must consider whether the proposal is likely to reduce the long-term viability of EBWB in the region, and whether it is likely to accelerate the extinction of the EBWB. There are 47 records of this species within a 5 km radius of the site. The action will reduce the foraging habitat of the EBWB in the locality by a small degree, which may affect the viability of the population in the local area to some degree. However, given the large home range of the species, the fact that there is no breeding habitat on site, and given the number of other records in the locality, it is unlikely that the action will reduce the long-term viability of the EBWB in the region, or accelerate the extinction of the species.

- **Other threatened fauna species**

Table 3.1 of the SIS provides an assessment of the likelihood of occurrence of threatened fauna species in the study area. This table includes all threatened fauna species listed in the DGRs, and all species with recent records in BioNet, within a 5 km radius of the site. The SIS lists nine threatened fauna species, including a number of bird and bat species, which are mostly likely to be affected by the proposal. Section 5.3 of the SIS provides an impact assessment for all nine species, including a discussion of local and regional abundance, other known local populations, assessment of habitat, description of habitat values and utilisation, and its conservation status. It also includes a discussion of the likely effect of the proposal at local and regional scales. Chapter 8 of the SIS provides assessments of significance for all nine species. The conclusion for all nine species is that the proposal is not likely to result in a significant impact on any species.

It is noted Council's assessment report does not discuss any threatened fauna issues. Therefore, it is assumed that Council did not consider impacts to threatened fauna to be of significance.

The impact assessment for threatened fauna is considered adequate.

- **Threatened flora**

Section 4.2 1 of the SIS states that eight hours of flora surveys were undertaken in February 2013, and additional surveys conducted in November 2018 to confirm the vegetation mapping and condition. The SIS states that random meander surveys were undertaken, and all vascular flora species recorded.

Table 3.1 of the SIS provides an assessment of the likelihood of occurrence of 16 threatened flora species in the study area. This table includes all threatened flora species listed in the DGRs, and all species with recent records in BioNet, in a 5 km radius of the site. The results of this assessment were that none of the flora species were considered likely to be present on site, or to be subject species.

The SIS also states that three individuals of the threatened plant *Syzygium paniculatum* were recorded in landscaped areas on the subject land, but as they are planted, they do not conform to the listing for the species under the TSC Act. OEH considers this is incorrect and that the plants are considered as threatened species. However, given they are likely to be planted, OEH does not consider their removal to require further assessment.

The surveys and assessment for threatened flora is considered adequate.

It is noted Council's assessment report does not discuss any threatened flora issues. Therefore, it is assumed that Council did not consider impacts to threatened flora to be of significance.

3.2 Consideration of alternative options

It should be noted that the current proposal would result in a lesser impact than the previous DA, which proposed to remove four of the six *E. saligna* trees.

Section 5.4 of the SIS discusses alternatives, which include the 'do nothing' option as well as alternative development locations, layout and scale.

In regard to the 'do nothing' option, the SIS argues that the remnant vegetation would be unlikely to survive in the long term if no development was to occur, given its poor structural condition and under its current land use it has little regenerative potential. OEH agrees that without active management, the BGHF on site would be unlikely to survive in the long term.

An alternative development layout which avoids both mature Blue Gums is provided in Appendix G of the SIS (Attachment 6). The SIS states that this alternative layout "shows how significantly the proposal would be impacted by the retention of Tree 135 and it is believed by the Proponent that avoidance would render the proposal economically unviable and provide untenable operational constraints upon proposed business". The alternative layout shows the tree surrounded by a building and above a car park. The SIS argues that the long-term viability of the tree in this location is limited, whereas a more favourable outcome would be the proposed revegetation of a 0.2 ha area of BGHF elsewhere on site, as this area would have a better likelihood of long-term viability. The SIS argues that the revegetation of BGHF on site would result in 'no net loss of biodiversity'.

- **Council's view on proposed layout:**

Council's assessment report included detailed suggestions of what the applicant should have considered as an alternative design for the site, including amendments to the floor space, relocation of the café and play area, additional levels to the building, and a reduction in car parking area. However, no amendments were made by the Applicant to the proposal.

Council also reviewed the updated SIS, which included the alternative layout in Appendix G of the SIS. Council's view of the alternative layout is as follows: "The alternative development footprint presented does not contain sufficient detail to demonstrate that an alternative building footprint could not accommodate a Bunnings with the retention of T135 it simply is a plan showing the retention of these trees not an alternative building footprint."

- **OEH's view on alternative layout:**

OEH agrees with Council, that it does not appear that serious consideration has been given to how the proposal could be amended to fit within this alternative footprint. As such, it is unclear how it can be stated with such certainty that the alternative layout would render the proposal economically unviable.

On 18 February 2019, OEH requested further justification from the applicant for the conclusion that the alternative layout would render the proposal “economically unviable and provide untenable operational constraints”. OEH requested that this justification include consideration of the provision of additional floors to the proposed building.

- **Applicant’s response to request for further justification:**

A response from the applicant was received on 8 March 2019. The applicant argues that the alternative layout would reduce the trading area by 21%, and previous experience has shown that multi-level layouts are not as profitable as single-level. The applicant concludes that the alternative layout would not be considered feasible on economic grounds, such that the project would be unviable. OEH considers the applicant has now given serious consideration to the alternative layout and the likely operational impacts, and provided adequate justification that impacts to Tree T135 cannot be avoided.

- **Land and Environment Court’s view:**

In the NSW Land and Environment Court (L&E Court) case *Bunnings Properties Pty Ltd v Ku-ring-gai Council* (2017) (NSWLEC 1238), one of the primary issues discussed was the impacts on Tree 135. The sections of the judgement that discuss Tree T135 are attached (Attachment 7). As stated in the judgement, the Commissioner found that Tree T135 “had high significance, good overall health and condition and has visual amenity”, but also that the location of the tree “has a considerable impact on any redevelopment of the site”. The Commissioner continued to say:

While I accept that every endeavour should be made to retain Tree T135 in any redevelopment of the site, it is not a matter that would warrant the refusal of an application if the tree needed to be removed.

- **Council’s response to LEC judgment:**

Council lodged an appeal in the NSW Court of Appeal against the 2017 L&E Court decision, as Council considered that the Commissioner’s decision to allow the removal of Tree T135 was legally unreasonable. However, in a judgment handed down on 26 February 2019, this appeal was dismissed by the Court of Appeal.

- **Conclusion on consideration of alternative options:**

OEH considers that the consideration of alternative options was adequate, and all reasonable measures have been applied to avoid impacts. The findings of the Court, and the Appeal, that the significance of Tree T135 would not warrant refusal of the application, are also relevant here.

3.3 Consideration of proposed ameliorative measures

There is very little detail in the SIS in relation to proposed ameliorative measures. Section 7.1 of the SIS mentions that “pre-construction measures such as pre-clearance fauna surveys to check for any nesting or roosting fauna and move to adjacent habitat will be undertaken prior to the removal of treed vegetation.” This section also mentions that sediment control and reduction measures should be implemented to reduce sediment runoff into urban stormwater systems.

Despite the lack of detail, Council’s proposed conditions of consent would require adequate level of amelioration, including:

Condition 4: Project ecologist – to ensure all bushland/environmental protection measures are carried out in accordance with the conditions of consent.

Condition 5: Fauna protection – prior to works commencing or any tree removal works, a qualified ecologist shall investigate trees and vegetation for fauna occupation and undertake actions (as specified in the consent condition).

Condition 6: Tree identification – prior to any works commencing the existing trees shall be numbered in accordance with the Tree Management Plan.

OEH considers that these measures are adequate, and all reasonable measures have been applied to ameliorate impacts.

3.4 Consideration of proposed offsetting measures

The SIS states that an offsite offset was sought as part of the proposal, however was unavailable at the time of writing. Also, no BGHF Biodiversity Credits were available for purchase through the Biodiversity Credits register. Therefore, onsite offsets were created as a suitable alternative.

The DA proposes to offset the removal of BGHF trees through the replanting of 0.2 ha of BGHF. This would include revegetation of all BGHF structural layers under a retained remnant Sydney Blue Gum – Tree T150, in areas within the subject land that will not be developed, as shown in Attachment 7 (Figure 4.1 of the Vegetation Management Plan (VMP)). The patch of revegetated BGHF on site is proposed to be actively managed for five years through the VMP.

The current practice in NSW for offsetting requires impacts to be offset via the retirement of Biodiversity credits. On site protection through a s88B covenant and VMP is generally not considered adequate. However, this proposed offsetting measure is considered adequate in this case for the following reasons:

- Although not calculated in the SIS, the Biodiversity credits that would be required from this proposal are likely to be around one credit, which may protect a smaller area of BGHF than the 0.2 ha proposed here.
- Small patches of BGHF can be successfully managed and maintained. Equivalently small patches of BGHF are managed by Council in a number of reserves.
- BGHF credits are rarely available. If the applicant were required to offset via credits, it is likely they would take the option of paying into the Biodiversity Conservation Trust to fulfil their credit obligation. As such, it is likely that the timing of delivery of the offset would be some significant time later than the timing of the impact.

Council's proposed conditions of consent include a number of conditions in relation to the VMP, as follows:

Schedule A: VMP. The applicant shall submit a VMP which is to be prepared by a qualified ecologist or qualified bush regenerator and incorporates

Condition 4: Project ecologist (will be appointed) to ensure all bushland/environmental protection measures are carried out in accordance with the conditions of consent.

Condition 85: the canopy replenishment trees to be planted shall be maintained in a healthy and vigorous condition until they attain a height of 5 m whereby they will be protected by councils TPO.

Condition 86: VMP monitoring. Monitoring and maintenance works are to be undertaken for a minimum period of 5 years with 6 monthly reports.

Condition 87: Prior to the release of the OC, a positive covenant and restriction on the use of land are to be created under section 88B of the Conveyancing Act 1919, burdening the lot with the requirement to maintain the management zones 1,2 & 3 within BGHF community offset areas as identified in the approved VMP and in perpetuity in accordance with the approved VMP.

It is noted that Council's conditions of consent require implementation of the VMP in perpetuity, whereas the VMP states that its duration is only five years. However, OEH assumes that the BGHF will be protected and actively managed in perpetuity. Permanent protection and management of BGHF is required to adequately offset the permanent loss of BGHF on site.

3.5 Conclusion of impact assessment

It is possible that the current proposal will have a significant effect on BGHF. However, as argued above, it is not considered that the proposal will reduce the viability of this ecological community across its range, or lead to its extinction. It is also considered that the proposal will not reduce the viability, or accelerate the extinction of any other threatened species, populations or ecological communities. The proposal meets OEH's offsetting principles, as all reasonable measures have been applied to avoid and ameliorate impacts, and commitment has been given that any unavoidable impacts are to be offset through recreation of BGHF on site, which will be in a better ecological condition and have better viability compared to the CEEC currently present on site.

4 ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Section 79B(5)(g) of the EP&A(A) Act requires that the Director-General consider the principles of ecologically sustainable development as defined in the objects of the *Protection of the Environment Administration Act 1991*. The principles of ecologically sustainable development, and how these principles have been applied in the assessment of this proposal, are as follows:

- a) *The precautionary principle - namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

There is no scientific uncertainty about the impacts of this proposal.

- b) *Inter-generational equity - namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.*

The protection and active management of the CEEC, through implementation of the VMP, should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

- c) *Conservation of biological diversity and ecological integrity.*

Similarly, the recreation of BGHF in the area of the site with best regenerative potential, should ensure conservation of biological diversity and should enhance ecological integrity.

- d) *Improved valuation and pricing on environmental resources*

The principle of improved valuation and pricing of resources seeks to overcome the inefficient allocation of environmental resources that occurs due to market failure by ensuring that the appropriate value of these resources is recognised and considered in decision making. In this respect, it should be recognised that environmental resources have economic values and that there is a trade-off between the economic benefits associated with the development and the economic benefits provided by the natural environment that will be foregone. The economic benefits associated with the natural environment include use values, together with non-use values such as option values, bequest values and existence values.

The conditions of consent and concurrence represent an explicit recognition of the values of the environmental resource impacted by the proposal, whether these values are considered in biological or economic terms.

5 SOCIAL AND ECONOMIC CONSEQUENCES

Section 79B(5)(h) of the EP&A(A) Act requires the Director-General to consider the likely social and economic consequences of granting or not granting concurrence. Granting concurrence can include granting concurrence with or without conditions. To facilitate this assessment, it is necessary to clearly identify the distinction between the social and economic impacts of particular activities, policies and programs.

Economic

Economic consequences refers to the net effect of the development proposal on the local or regional economy. The proposal is for construction and use of a retail outlet, being a hardware and building supplies store. The proposed use is consistent with the LEP 2015 (permissible with consent). The Statement of Environmental Effects (SEE) states that the proposal "has the potential to be the single largest capital improvement in the Pymble Business Park in at least 10 years and will result in significant capital infrastructure improvements and social and economic benefits in the locality". The proposal is unlikely to result in the displacement of employment or create any adverse economic trade impacts upon the locality. The economic consequences of not granting concurrence to the proposal would impact the applicant but may also impact the local economy.

Social

Social consequences refers to the net effect of the development proposal on community well-being. As stated above, the SEE states that the proposal will result in social benefits in the locality, and accordingly that the proposal is considered to be in the public interest.

6 REASONS FOR THE DIRECTOR-GENERAL'S DECISION

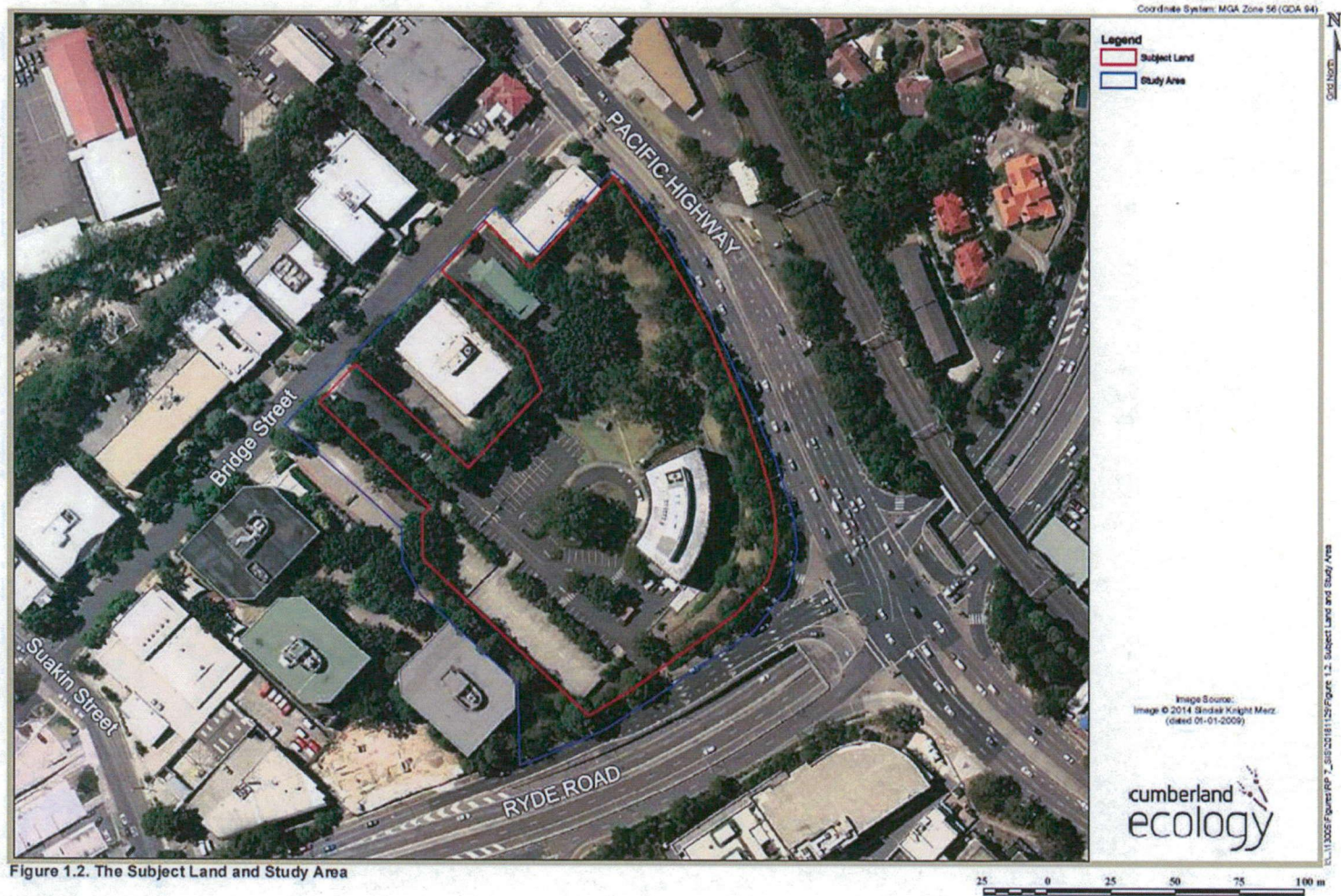
Following consideration of the species impact statement and the other matters provided for under Section 112D(1) of the EP&A Act, I have decided to grant concurrence subject to the conditions in Section 7 of this report, for the following reasons:

- while the proposal will lead to an impact on BGHF, the reduction equates to a very small proportion of BGHF in the locality. The proposal will lead to the loss of two Blue Gum trees, only one of which is remnant. This equates to a loss of 0.07 ha of BGHF, which represents 0.02% of all BGHF in a 5 km radius;
- reasonable attempts have been made to avoid and ameliorate impacts, through alterations to the layout, and reasonable consideration of options that avoid impacts;
- the proposal is a permissible land use for this zone. When the impacts to BGHF are weighed against the social and economic benefits that will arise from revitalisation of the site, the proposal is considered to be in the broader public interest;
- the loss of 0.07 ha of BGHF is to be offset through the protection and management of 0.2 ha of BGHF on site, which is to be actively managed in perpetuity.

7 CONDITIONS OF CONCURRENCE

No conditions of concurrence are considered necessary.

ATTACHMENT 1 – THE SUBJECT LAND AND STUDY AREA



ATTACHMENT 2 – LOCATION OF TREES AND VEGETATION COMMUNITIES



ATTACHMENT 3 – COUNCIL COMMENTS ON UPDATED SIS

From: Janice Buteux-Wheeler
To: Sarah Burke
Cc: John Whyte
Subject: Questions in relation to Department of Environment & Heritage - Referral for DA0307/17 - 950-950a Pacific Highway & 2 Bridge Street Pymble
Date: Tuesday, 5 February 2019 2:08:30 PM
Attachments: [image007.png](#)
[image008.gif](#)
[image009.jpg](#)
[image010.jpg](#)
[image011.jpg](#)
[image012.jpg](#)
[image013.jpg](#)
[image014.png](#)

Dear Sarah,

In response to the questions raised below, I provide the following:

1. In this instance Council is seeking OEH consideration and concurrence to the proposed development. Concurrence (or otherwise) should be issued to the Council.
2. There is no further documentation from the panel indicating their intentions other than that provided to OEH.
3. Council's ecological assessment officer John Whyte has reviewed the revised SIS. He provides the following comment:

"I have reviewed the amended Species Impact statement (SIS) prepared by Cumberland Ecology which is supported in principle however the CER 5.6 "Description of Feasible Alternatives" does not contain sufficient information to demonstrate that an alternative development location, layout and scale (Appendix G) would not result in the retention of Tree 135.

The alternative development footprint presented does not contain sufficient detail to demonstrate that an alternative building footprint could not accommodate a Bunnings with the retention of T135 it simply is a plan showing the retention of these trees not an alternative building footprint."

I refer to Council's assessment report to the Sydney North Planning Panel, in particular reason for refusal number 5 that details alternative designs that could retain Tree 135. This is an option that has not been explored within Section 5.4.2 of the SIS.

I trust the above assists.

Please don't hesitate to contact either John Whyte or myself should you have any further queries.

Kind regards,

Janice Buteux-Wheeler | Executive Assessment Planner | Ku-ring-gai Council

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Ku-ring-gai: Sydney's green heart



ATTACHMENT 4 – FAUNA SURVEY LOCATIONS

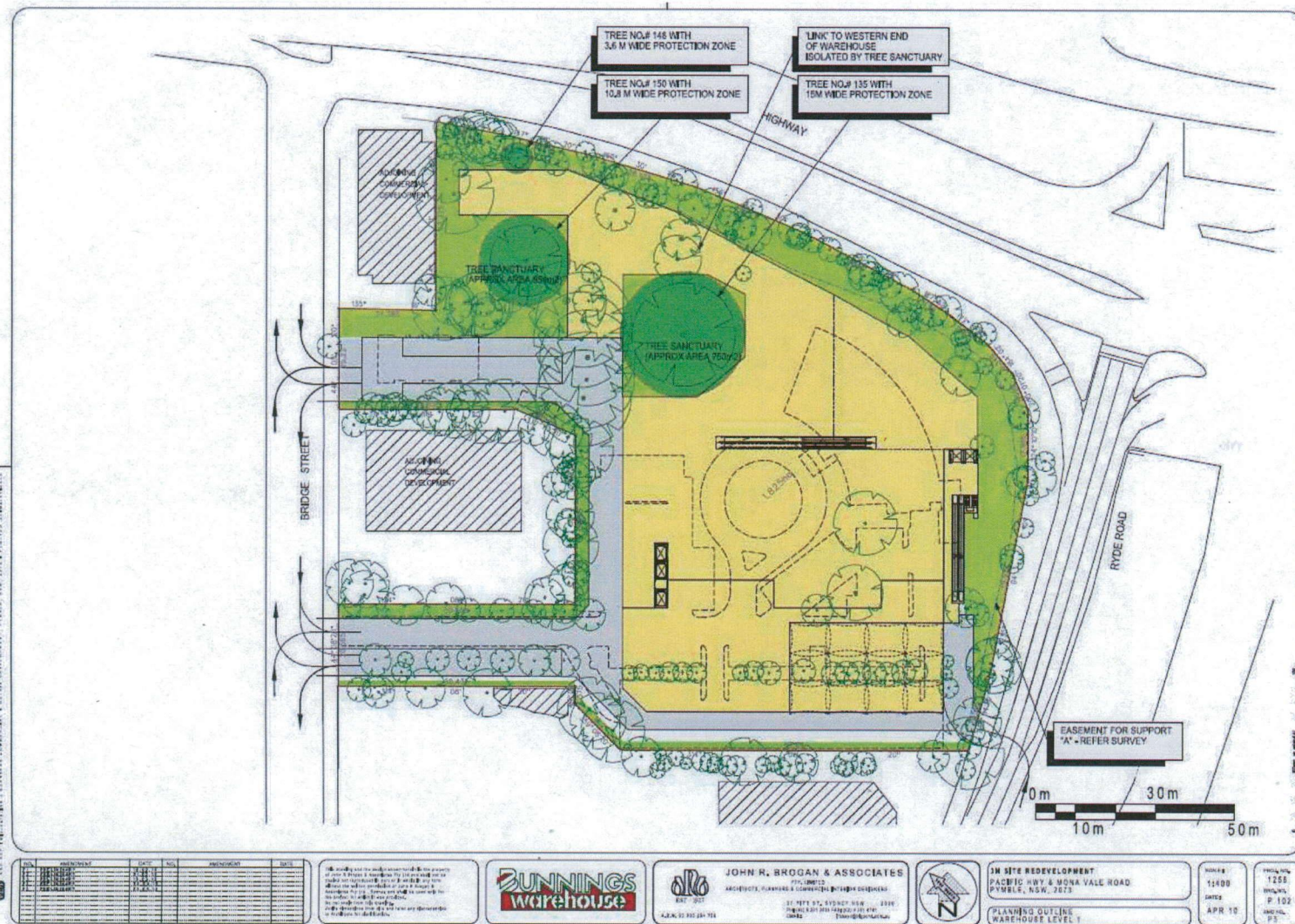


ATTACHMENT 5 – THREATENED FAUNA LOCATIONS



Figure 4.4. Fauna Habitat and Threatened Fauna Locations

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ATTACHMENT 7 – PROPOSED MANAGEMENT AREAS – VEGETATION MANAGEMENT PLAN

