

Memo

To: Steve Peart & Ryan Falkenmire

From: Matt Doherty

cc:

Date: June 10, 2021

Re: Proposed Kings Hill Development (PSC ref: DA 16/2018/772/1)

At the request of Council, an independent ecological review of the assessment documentation informing the Kings Hill Concept Development Application (PSC ref: DA 16/2018/772/1) has been completed. A summary of the documents reviewed, overview and summary of my position in relation to the potential for a significant impact to occur to threatened species, populations and ecological communities assessed as a result of the proposal has been presented herewith.

Reviewed four items as follows:

1. Kings Hill Development: Species Impact Statement. Final Version 6 – 13/3/2020. Prepared by RPS
2. Kings Hill Conservation Area: Biodiversity Management Plan. Final Version 5 – 13/3/2020. Prepared by RPS
3. Kings Hill Development: Vegetation Management Plan – Sage 1 subdivision Works (Initial Site Preparation). Final Version 3 – 13/3/2020. Prepared by RPS
4. Memo: The KHD Concept Development Application and NSW Koala Inquiry Recommendations. PR130430 – 2/7/2020. Prepared by RPS.

A meeting was held with PSC and the KHD team on 7th July 2020 to discuss matters arising from an initial review. On the basis of discussions held during the meeting, KHD have made amendments to the documentation and reissued the following documents:

5. Kings Hill Development: Species Impact Statement. Final Version 7 – 24/7/2020. Prepared by RPS
6. Kings Hill Conservation Area: Biodiversity Management Plan. Final Version 6 – 24/7/2020. Prepared by RPS
7. Kings Hill Development: Vegetation Management Plan – Sage 1 subdivision Works (Initial Site Preparation). Final Version 4 – 24/7/2020. Prepared by RPS

In addition, the following supporting documents have been supplied and partly reviewed to appreciate proposal context:

1. SoEE - Concept Development Application: Kings Hill Urban Release Area. Final Version – 27/7/2020. Prepared by JW Planning.
2. Proposed Kings Hill Concept Plan: Revision A – 27/7/2020. Prepared by Peterson Design Studio/ Landscape Architects.
3. Kings Hill Urban Release Area: Development Application – Masterplan. Preliminary Engineering Design. NL120526 Revision K – 14/7/2020. Prepared by Northrop.

Based on my review, the SIS field survey, reporting of results and consideration of alternatives including avoidance and proposed mitigation measures are supported. Information and assessment presented in the SIS report relating to impacts and assessment of significance is supported. The detailed assessment and measures presented in the SIS and supporting VMP and BMP relating to the Koala are supported.

The VMP and BMP must be implemented on site as proposed. It was my firm opinion that the BMP is to be delivered by the applicant (or person having the benefit of the consent) via a mechanism that achieves fully funded management of the Conservation Area in perpetuity. Any opportunity to include adjacent land in the conservation area management is strongly encouraged.

It was on this basis that I agreed with and supported the conclusions detailed by RPS in their SIS, that the proposed Kings Hill Concept DA will not have a significant impact on threatened species, populations and ecological communities as assessed in the SIS such that a local extinction will occur.

The RPP considered the proposal at a formal meeting on 22 December 2020 and deferred the matter on the basis of ecological considerations and whether concurrence should be sought from the NSW DPIE BCD. The NSW DPIE BCD and Regional Planning Panel (RPP) sought input from an independent ecologist, engaged by the RPP to undertake a review of the SIS and supporting documentation and provide a view as to whether a significant impact may occur to threatened entities assessed under the SIS and therefore if concurrence should be sought from the NSW DPIE.

The successful third party was Umwelt, who were briefed by the RPP and NSW DPIE BCD at a combined meeting 22 March 2021 that Council also attended, however did not contribute too. Umwelt's report was received by Council on 21 May 2021.

The Umwelt review makes the following recommendations:

This review has found that the SIS does not adequately address the assessment of impacts on:

- *Koala – the proposed offset and mitigation strategy are not considered sufficient to ensure that the development will not significantly impact the koala, and therefore the proposed measures are considered inadequate to mitigate risks to the local population.*
- *Lower Hunter Spotted Gum – Ironbark Forest EEC – incorrect comparison of the vegetation in PCT 1590 against the Final Determination and significant underestimation of the area of the EEC to be impacted.*
- *Pterostylis chaetophora – likely inappropriate survey effort and underrepresentation of impacts.*
- *Corybas dowlingii – likely inappropriate and poorly timed survey effort and underrepresentation of impacts.*

Based on the findings of this review, the following recommendations are made:

Recommendation 1: The SIS should be referred to the EES (former OEH) for assessment and concurrence. The EES review should consider the range of technical matters identified in this peer review, including the

overall adequacy of the mitigation measures and offsets. It is recommended that the SIS be referred to EES in its current form to expedite the assessment process with EES to identify any further assessment requirements as part of its review, including consideration of the matters raised in this review.

Recommendation 2: The SIS exhibition process should be subject to further review and should it be confirmed that the exhibition process for the SIS was inadequate, this should be addressed prior to determination of the DA.

Recommendation 3: The project should be referred to the Commonwealth for its consideration of whether or not it constitutes a Controlled Action.

Recommendation 4: The Panel should ensure that the VPA is exhibited in accordance with statutory process once finalised and give consideration to the adequacy of funding to ensure that the conservation obligations of the SIS are met by PSC in perpetuity. The Panel should also ensure that the VPA contains provisions that govern spending of money allocated for management of the conservation area to ensure it is spent for that purpose.

A review of the Umwelt report has been completed by MJD Environmental as Council's independent ecologist advising on the KHD proposal. The following observations are raised, however it should be noted that the KHD consultant, RPS, may provide a detailed technical response to the Umwelt report. This response would require further review by Councils ecologist.

- The report reviews some material that is the same as the material reviewed by Councils ecologist, however additional documents have been reviewed by Umwelt that have not been reviewed by the ecologist.
- The report has formed a view or more specifically errs that there 'could' be considered significant impacts to the matters outlined in their recommendations above, however does not make definitive statements to this effect. This is important in the legislative process regarding whether a proposal must seek concurrence from NSW DPIE.
- While matters of technical response are to be addressed by RPS some brief but not intended to be comprehensive observations are provided below:

Koala:

- The report focuses on foliar enrichment and not the overall impact assessment for the Koala. It was our interpretation of the report that the ameliorative measures do not strictly underpin a determination by RPS that a significant impact would not occur.
- Statistics regarding conservation area being 115% of the impact area relates to the whole 212.14ha and not the 152ha of Koala habitat to be impacted. There is no statement relating to Koala habitat impacted to conserved by area or percentage. The 115% numeric is misleading.

Brush-tailed Phascogale:

- A brief statement is made around this species and that a local population has not been defined. On this basis a weak statement is made around the significance, '... it is possible...'
- The species is not mentioned in the final report recommendations.

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- Statements around couch grass rely strictly on definitions outlined in the BC Act legislative and policy framework and not the TSC Act. The statements also fail to mention or consider the cosmopolitan nature of the species and appropriate ecological context.
- Appropriateness of timing / validity of floristic plots (≤ 5 years) references timeframes set out in current BC Act process and does not strictly reflect the process under TSC Act (note this is not a BBAM assessment).

- Statements relating to offsets under the BAM and former FBA are misplaced and do not reflect context appropriate to the SIS.
- RPS should be provided the opportunity to provide a technical response to the assumption of PCT 1590 being present on site. Pending a technical response it may be that matters pertaining to the potential EEC area of occupation on site are as stated in the SIS and the conclusion of a potential significant impact would need to be revisited by Umwelt.

P. chaetophora & C. doweringii

- RPS to provide clarification of survey effort, location and intensity to support the survey coverage displayed on figures contained within the SIS. Notably the number of ecologists walking transects with a single GPS unit warrants mention, and time spent on ground having due regard to the OEH 2016 guidelines for coverage (hours/hectare).
- Comments relating to document readability are acknowledged and shared. It is a large document with unique structure. The CERs were specific regarding content and appear to have underpinned the SIS format.
- Umwelt conclusions outlined in Section 2.7 of their report state that the RPP is the consent authority for the purpose of seeking concurrence from the former OEH now DPIE. Councils ecologist is not certain this is an accurate statement, however as a qualified ecologist and not a lawyer will not press a view.

The final statement in Section 2.7 relating to other species and TECs not examined in detail by their review is in direct conflict to the final statement made in Section 2.0 as it related to their review of the SIS adequacy. This is noteworthy as a considered technical response if provided by RPS may resolve all matters raised in the Umwelt review. Therefore, effectively responding to the RPP query around adequacy of the SIS and need for referral for concurrence. Any residual ambiguity in the Umwelt review may in effect undermine the process set forth by the RPP.

- Council agrees with the need for a referral under the EPBC Act. As this assessment is not being considered under a bi-lateral pathway, the referral is independent to the NSW assessment.
- No comment is provided on the adequacy of advertisement or consideration of the VPA. I do agree that Council and the applicant should employ a robust and objective method to calculate funding for the conservation land. The former BBAM process and current BAM process provides a method to determine in perpetuity funding.
- At the time of review KHD and their consultant RPS, have not provided a detailed technical response and/or been afforded time to work through matters raised by Umwelt. In the absence of a response and if required clarifications to the Umwelt report, it would be reasonable to state that a significant impact has not in fact been determined by Umwelt and that a need to seek concurrence from NSW DPIE is contingent on this process taking place.

Finally, Council understands on the basis the RPP have sought an independent third party ecological review, the observations provided herewith provide context only.