

Our ref: DOC21/995579

Your ref: 16-2018-772-1

Ryan Falkenmire

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Dear Ryan

Re: Concurrence request for Development Application for Kings Hill Residential Subdivision

I refer to your letter of 9 November 2021 (received on 10 November 2021) in which you have referred a request for concurrence under former section 79B of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for the 'Concept development application for residential subdivision Stage 1 subdivision works for site preparation and clearing' (DA16-2018-2018-772-1) (DA). The DA applies to LOT 41, DP1037411, LOT 421, DP852073 at Kings Hill in the Port Stephens local government area.

Former section 79B(3) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides that the consent authority cannot grant development consent for development that is likely to significantly affect a threatened species, population, or ecological community or its habitat (biodiversity matters), without the concurrence of the Chief Executive of Office of Environment and Heritage (OEH) (now Secretary of Environment, Energy and Science (EES) within the Department of Planning, Industry and Environment) (the Secretary).

I, as delegate of the Secretary have considered the DA and Species Impact Statement (SIS) against the Chief Executive's Requirements issued by the former OEH on 9 September 2018, and relevant requirements in the former *Threatened Species Conservation Act 1995* (TSC Act) and *EP&A Act* and have determined to refuse to grant concurrence to the DA.

This letter is the notice I am required to give you under clause 63 of the *Environmental Planning and Assessment Regulation 2000*.

This decision has been made on the basis that the development is likely to have an unacceptable and significant effect on biodiversity matters and because the DA and SIS do not satisfactorily show how the biodiversity impacts of the proposed development have been adequately assessed or avoided, mitigated or offset.

The specific reasons for the decision to refuse to grant the concurrence are set out below:

1. Inadequate assessment of impacts to the Koala

The proposed development involves the removal of 152 ha of Koala habitat which would cause direct and indirect impacts to a local population known as the Kings Hill Koala Hub. The Kings Hill Koala Hub is estimated to have a population of over 50 koalas and an available habitat area of over 900 ha. The SIS does not quantify the likely direct, indirect and cumulative impacts to the Kings Hill Koala Hub from the development other than recognising that the area of habitat will be removed. Impacts to the Koala from other development within the Kings Hill Urban Release Area (KHURA) and associated infrastructure and services are also unclear. It is also not clear how the development would impact this broader population with respect to maintaining a viable population.

2. Assessment of significance of likely effects on threatened species, populations and endangered communities is not supported

Based on the information contained in the SIS, the Secretary (by delegate) does not support the conclusion that the development is unlikely to have a significant effect on threatened and endangered biodiversity. Specifically, BCD considers that the development is likely to cause significant and unacceptable impacts to local populations of the Grey-crowned Babbler and Koala.

3. Proposed conservation and mitigation measures are not supported

A key aspect of the SIS is the establishment of a 225 ha conservation area that includes areas of 'like for like' native vegetation and areas that will be 'restored and improved' to become habitat for impacted species such as the Koala. Koalas are territorial and primarily solitary animals that occupy specific home ranges. The DA and SIS proposes to unacceptably decrease the overall availability of Koala habitat and increase the density of remaining habitat.

The SIS has not provided science-based evidence that this approach has been used successfully for koalas in a similar situation. BCD considers the approach to be experimental. The SIS refers to 'tree canopy nutrient enrichment for the Koala' as being a key measure to compensate Koala habitat loss and also describes this approach as a research project that will seek federal government funding.

It is noted that the proposed conservation area has a large interface with proposed urban areas and that due to impacts from light, noise, edge effects, dog attack, recreational use and provision of narrow corridors around drainage lines, the benefits of the conservation area may be overstated – particularly for transient animals such as the Koala and Squirrel Glider.

4. In-perpetuity security of the conservation area and remaining habitat areas is unclear and inadequate

The SIS outlines that approximately 1,225 ha of Koala habitat would be available following completion of the development. BCD notes that some of this area is included in the KHURA and is intended to be developed in the future. It appears that approximately 85 percent of the 1,225ha remaining habitat is located in areas outside of the proponent's control and on land that cannot be secured into the future.

The SIS states the *Biodiversity Conservation Act 2016* and the Port Stephens Council Comprehensive Koala Plan of Management will control future land clearing and habitat loss such that clearing across the broader area would be limited. This does not account for impacts associated with permissible rural land uses, which relates to the majority of this area.

The SIS outlines that the conservation area will be secured in-perpetuity through a VPA, however; the draft VPA provided with the DA does not specify that the agreed monetary contribution from the proponent is to fund '*in-perpetuity maintenance of the Conservation Area*'. Further, the Biodiversity Management Plan provided in the SIS only covers the construction period. Nor does it state that the VPA will be registered on title and binding upon successors in title on the land. Therefore, it is not clear if and unlikely that the proposed conservation area will be secured in-perpetuity.

5. Inadequate assessment of impacts to threatened species

The Chief Executives Requirements (CERs) identified 27 threatened flora and 65 threatened fauna species that required consideration in the SIS. Four threatened flora species have been excluded from consideration in the SIS and that the justification provided for this is inadequate.

In addition, the CERs outline relevant guidelines that must be followed for site surveys and assessment. These guidelines have not been followed for at least an additional two threatened flora species and the assessment of these species is inadequate.

The SIS also does not meet a number of requirements in the TSC Act with regards to how threatened species' local and regional abundance, conservation status and available habitat has been described and assessed.

6. Cumulative impacts associated with the KHURA and associated infrastructure are unclear

As outlined above for the Koala, the SIS does not provide an assessment of the cumulative, direct and indirect impacts to threatened species and communities associated with other development within the KHURA and associated infrastructure such as the proposed highway interchange, the stormwater channel and water and sewer services.

Assessment of cumulative impacts is required under Section 110(2) of the TSC Act and the CERs.

7. Potential social and economic impacts are not properly assessed

An economic benefit assessment was provided with the SIS, but it is limited to the cumulative social and economic benefits of developing the entire KHURA (800 ha and 3,500 new dwellings). The assessment concludes that development of the KHURA would play a key role in supporting the economic growth of Port Stephens and the Lower Hunter Region.

The specific social and economic benefits and impacts of the development are not examined in the SIS, although the SIS provides commentary on a range of benefits of the development. A discussion of the likely social and economic consequences of granting or not granting concurrence is required under the CERs and this is limited to a statement that the 'do nothing' option would result in considerable socio-economic loss.

Please contact Steven Crick, Senior Team Leader, Planning, Hunter Central Coast Branch (BCD) on 02 4927 3248 or via email at rog.hcc@environment.nsw.gov.au should you wish to discuss this decision and these reasons further.

Yours sincerely



Joe Thompson
Director, Hunter Central Coast
Biodiversity, Conservation and Science

Date: 8/12/21