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Our ref: DOC22/49112  
Your ref: PP-2021-4617  
File: SF22/7151

27 January 2022

Dear Shoilee

### Planning Proposal – 9R Belgravia Road (PP-2021-4617)

Thank you for your invitation dated 8 December 2021 to the Biodiversity, Conservation and Science Directorate (BCS) of the Department of Planning and Environment to comment on the proposed rezoning of land from RU1 Primary Production to R5 Large Lot Residential at 9R Belgravia Road.

BCS understands the proposal also seeks to reduce the existing minimum lot size (MLS) of the subject land from 800ha to 8 hectares, making it possible to subdivide Lot 5 DP817149 (approximately 40.68ha) into the proposed four lots (one with an existing dwelling).

BCS has the following primary areas of interest relating to strategic land use planning proposals:

1. The impacts of development and settlement intensification on biodiversity
2. Adequate investigation of the environmental constraints of affected land
3. Avoiding intensification of land use and settlement in environmentally sensitive areas (ESAs)
4. Ensuring that development within a floodplain is consistent with the NSW Government's Flood Prone Land Policy, the principles set out in the Floodplain Development Manual, and applicable urban and rural floodplain risk management plans.

We also understand that planning proposals must comply with current statutory matters such as the Local Planning Directions issued under s.9.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

We generally support strategic planning proposals which:

- Avoid rural settlement intensification in areas of biodiversity value and other environmentally sensitive areas;
- Include objectives, such as 'no net loss of native vegetation'; and
- Minimise flood risk to human life, property and the local environment while maintaining floodplain connectivity for environmental benefit.

Some specific comments on the proposed rezoning and MLS changes are provided in **Attachment A**. The BCS generic recommendations for planning proposals are provided in **Attachment B**.

If you require any further information regarding this matter, please contact Erica Baigent, Conservation Planning Officer, via [erica.baigent@environment.nsw.gov.au](mailto:erica.baigent@environment.nsw.gov.au) or (02) 6883 5311.

Yours sincerely

A handwritten signature in black ink, reading "Samantha Wynn". The signature is written in a cursive, flowing style.

**Samantha Wynn**  
**Senior Team Leader Planning North West**  
**Biodiversity, Conservation and Science Directorate**

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## Planning Proposal – 9R Belgravia Road (PP-2021-4617)

### BCS Advice

#### 1. Conclusions that the subject land does not contain areas of high environmental value are not adequately justified.

The planning proposal does not identify the plant community type(s) within the subject site. However both the terrestrial biodiversity overlay in the Dubbo LEP and the regional scale Central West Orana HEV map flags potential HEV areas on the site, including potential presence of the Fuzzy Box Woodland Endangered Ecological Community (EEC) and White Box-Yellow Box-Blakely's Red Gum Woodland Critically Endangered Ecological Community (CEEC).

Contrary to the HEV mapping, the planning proposal states that there are no HEV assets on the property. However, no supporting evidence is provided to indicate on-ground assessment of the native vegetation on the site by a suitably qualified person to exclude the presence of these threatened ecological communities.

Similarly, the planning proposal has not adequately justified suggestions that threatened species are unlikely to occur on the site.

In section 2.8, the planning proposal considers a Statement of Environmental Effects (SoEE) prepared by Barnson in 2001 (not currently available to BCS) to provide '*a reasonable consideration of the likelihood of most threatened species in the area*'.

The Barnson report applied to a specific 360m<sup>2</sup> area associated with the current dwelling, the nature of which at the time of the 2001 assessment is unknown to BCS. Barnson concluded that no species were found to be likely to occur within that portion of the subject site. The planning proposal provides minimal description of the habitat resources assessed by Barnson compared with those across the remainder of the site and does not adequately justify the extrapolation of the Barnson conclusions.

The table of potential fauna and flora species presented on page 10 of the planning proposal is also drawn from the 20-year old SoEE and does not consider whether the site currently contains potential habitat for additional threatened species listed and/or recorded locally since 2001. The Planning Proposal states that the nearest fauna sightings to the site are of two non-threatened bird species.

To illustrate the deficiency in the planning proposal conclusions regarding threatened species, a quick search of threatened flora and fauna species records indicates that the species listed below have been recorded within approximately 5km of the subject site in the last 12 years. Eleven of these species (\*) were not previously considered in the 2001 Barnson SoEE. Additional threatened flora and fauna species may also be predicted to occur within the plant community type(s) on the site. BCS advocates targeted assessment of biodiversity values to support the planning proposal (See section 3, Attachment B).

Species	Note
Spotted harrier* ( <i>Circus assimilus</i> )	Species records from 2020 are within 1km of the subject site.
Superb parrot ( <i>Polytelis swainsonii</i> )	
Grey-crowned babbler* ( <i>Pomatostomus temporalis</i> )	

Speckled warbler* ( <i>Pyrrholaemus sagittatus</i> )	Species record from 2018 is within 1km of the subject site.
Glossy black cockatoo ( <i>Calyptorhynchus lathami</i> )	Species record from 2010 is within 1km of the subject site.
Black falcon* ( <i>Falco subniger</i> )	Species record from 2013 is within 4km of the subject site.
Square-tailed kite ( <i>Lophoictinia isura</i> )	Species record from 2014 is within 5km of the subject site.
Varied sitella* ( <i>Daphoenositta chrysoptera</i> )	Species records from 2010 are within 2km of the subject site.
Hooded robin* ( <i>Melanodryas cucullata</i> )	
Little eagle* ( <i>Hieraaetus morphnoides</i> )	Species record from 2014 is within 5km of the subject site.
Brown treecreeper* ( <i>Climacteric picumnus victoriae</i> )	Species records from 2010 is within 5km of the subject site.
Dusky woodswallow* ( <i>Artamus cyanopterus</i> )	Species record from 2010 is within 5km of the subject site.
Squirrel glider ( <i>Petaurus norfolcensis</i> )	Species records from 2018 within 3 km of the subject site.
Yellow-bellied sheath-tail-bat ( <i>Saccolaimus flaviventris</i> )	
Eastern false pipistrelle* ( <i>Falsistrellus tasmaniensis</i> )	
Pine Donkey Orchid* ( <i>Diuris tricolor</i> )	Species record from 2013 approximately 5km from the subject site.

## Recommendations

- 1.1 Planning proposals should be based on the most up to date available data.
- 1.2 Conclusions regarding the absence of areas of high environmental value on the subject site should be adequately justified. Otherwise, Council should recognise the areas of potential EEC and CEEC flagged for the site and assume that future subdivision and development of the site may impact EEC and CEEC.
- 1.3 Suggestions that threatened species are unlikely to occur should be adequately justified. Otherwise Council should acknowledge that the likelihood of threatened species being present on the site has not been adequately assessed and assume that future subdivision and development of the site has the potential to impact on threatened species habitat.

## 2. The proposed MLS and final subdivision plan could be revised to improve consistency with regional and local strategies

Local planning direction 1.5 'Rural Lands' requires the planning proposal to:

- identify and protect environmental values, including but not limited to maintaining biodiversity and the protection of native vegetation
- be consistent with any applicable strategic plan, including regional and district plans endorsed by the Secretary of the Department of Planning and Environment, and any applicable local strategic planning statement

unless the planning authority satisfies the Department that the inconsistencies with the Direction are justified by an appropriate strategy approved by the Department or are of minor significance.

The Central West and Orana Regional Plan 2036 includes the following:

- Action 13.1 - protect high environmental value (HEV) assets through local environmental plans.
- Action 13.2 - minimise potential impacts arising from development in areas of HEV and consider offsets or other mitigation mechanisms for unavoidable impacts.

The draft Central West and Orana Regional Plan 2041 advocates:

- the validation of regional scale HEV mapping via site specific investigations during strategic and local planning, and development proposals.
- Avoidance of areas with identified HEV and focusing development on areas with lower biodiversity values.

Protecting areas of HEV and significance is also identified as a planning priority in the current Dubbo Local Strategic Planning Strategy:

- Action 15.3 indicates Council will seek to consider biodiversity assets and protect sensitive environments in updates to the Local Environmental Plan (LEP) and Development Control Plan (DCP).
- Action 16.4 - Council will ensure that development is minimised in areas containing high biodiversity values.

As noted under Issue 1 above, the planning proposal has not adequately justified the conclusion that no assets of HEV are present on the subject land.

Whilst the rezoning, reduced MLS and future subdivision/development of the subject site would place additional pressures on the native vegetation and any habitat resources present, there does appear to be scope to accommodate dwelling envelopes such that direct impacts to woody habitat from dwelling construction and asset protection zones could be minimised.

BCS notes that the subdivision concept plan showing indicative lots and dwelling envelopes (provided by Dubbo Regional Council via email on 15 December 2021) is not being considered by Council as part of the planning proposal as it is potentially subject to change.

The Council report to the Development and Environment Committee (dated 25 June 2021) flags the requirement for the Belmont Road frontage to be sealed if the future subdivision includes two lots on Belmont Road. The report states that if only three lots are proposed (with only one lot fronting Belmont Road) then road sealing may not be required. BCS notes that development of only three lots would also lessen future impacts on the site associated with the establishment of dwellings, particularly in the case of the section of the site along Belmont Road where the vegetation is mapped as HEV.

### Recommendation

- 2.1 In the absence of adequate information demonstrating that areas of HEV are not present on the site, Council should consider a larger MLS for the portion of the subject land flagged as potential HEV in the Central West Orana Regional Plan 2036 (i.e. to retain that portion of the subject site within a single lot).

### **3. Biodiversity Offset Scheme is likely to apply to future subdivision of the site**

The *Biodiversity Conservation Act 2016* (BC Act) and *Biodiversity Conservation Regulation 2017* (BC Reg) section 7.1 apply to subdivisions. When assessing subdivisions, the consent authority must consider the clearing of native vegetation required, or likely to be required, for the purpose for which the land is to be subdivided.

Native vegetation includes trees, understorey plants, groundcover and plants occurring in a wetland that are native to New South Wales (including planted native vegetation), not just trees.

If the subdivision will impact native vegetation and the clearing exceeds the biodiversity offsets scheme (BOS) thresholds (Part 7, BC Reg), the biodiversity assessment method (BAM) must be applied and a biodiversity development assessment report (BDAR) prepared to assess and calculate the biodiversity offset credit requirement.

Biodiversity offsets are calculated and secured in accordance with the *Biodiversity Conservation Act 2016* for the subdivision. Once this is done, no further offsets are required for subsequent development of the land that is within the approved subdivision.

The BAM requires proponents to demonstrate that biodiversity impacts have been avoided and minimised as far as possible, with residual impacts offset. Both the complexity of assessments, and the costs to the proponent associated with complying with the BOS, are lower where impacts on biodiversity are avoided and/or concentrated in areas of lower vegetation integrity.

The proposed MLS for the subject land is 8ha, therefore the area clearing threshold for this site is 0.5ha. Based on the information provided it is likely that the impacts of the future subdivision of the subject site will trigger entry into the BOS.

As noted above, regional scale mapping indicates the potential presence of Fuzzy Box Woodland EEC and White Box-Yellow Box-Blakely's Red Gum Woodland CEEC on the subject site. Both of these communities are considered are at risk of serious and irreversible impacts (SAII) within the meaning of clause 6.7 of the *Biodiversity Conservation Regulation 2017*. Entities at risk of SAI have additional assessment requirements under the BAM.

### Recommendation

- 3.1 That Council take into account the above information when considering the MLS to be applied to the subject site.

## Biodiversity, Conservation and Science Directorate (North West Branch) generic advice for planning proposals

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Rural settlement intensification can have significant impacts on biodiversity. Development will have short and long-term negative impacts on biodiversity due to:

- the clearing of house and building sites;
- the disturbance caused by infrastructure (such as new roads, fence lines, dams, access to utilities and changed hydrology); and
- the construction of asset protection zones for statutory fire protection
- ancillary buildings, landscaping, property maintenance activities and domestic animals.

The cumulative effect of multiple subdivisions may magnify impacts on biodiversity.

Climate change also intensifies threats to biodiversity. Reducing threats including habitat loss, pest and weeds will help species adapt to climate change.

Council has the responsibility to control the location and, to a degree, development standards of settlement and other land use intensification. Local Environmental Plans (LEPs) can be used to avoid settlement and development in Environmentally Sensitive Areas (ESAs) including areas of remnant native vegetation.

The s.9.1 Directions in the *Environmental Planning and Assessment Act 1979* (EP&A Act) require that Councils in preparing or amending an LEP must include provisions that facilitate the protection and conservation of ESAs. As a minimum, these provisions must aim to maintain the existing level of protection for ESAs within the local government area (LGA), as afforded by the current LEP.

As a matter of priority BCS recommends six actions be taken by Councils when considering planning proposals. These will address the s.9.1 Directions, and protect biodiversity from the impacts of development:

1. Avoid development in remnant native vegetation;
2. Establish large minimum lot sizes;
3. Conduct comprehensive environmental studies if land use intensification in environmentally sensitive areas cannot be avoided; and
4. Define biodiversity protection and management measures in Development Control Plans (DCPs).

### 1. Avoid development in remnant native vegetation

*Council, through land use strategies and LEP's, can protect biodiversity by avoiding land use intensification in areas of remnant native vegetation.*

*Development should be directed to areas that have already been cleared, unless such areas have been identified as having environmental importance.*

Excluding remnant native vegetation from development pressure on private land could be largely achieved by retaining such areas on relatively large holdings, within RU1 and RU2 zones for example.

Similarly, higher density settlement in 'fire prone' locations should be avoided in the first instance. Where residential areas abut native vegetation there is pressure for the required Asset Protection Zones and other hazard management measures to encroach on that vegetation.



Avoiding settlement in remnant native vegetation is also likely to avoid bushfire prone lands.

Settlement should also be avoided in locations that are likely to be targeted for biodiversity investment. Landholders in such areas may receive incentive funding for protection and enhancement of native vegetation or revegetation of cleared areas.

BCS can direct Councils to the best available mapping of remnant native vegetation for their LGA to help Council identify areas where further settlement intensification should be avoided.

For the Dubbo LGA:

- The Dubbo LEP incorporates a terrestrial biodiversity layer based on regional scale mapping of ESA's supplied by the Department during preparation of the 2011 LEP.
- The Central West Orana Regional Plan 2036 incorporates mapping of potential areas of high environmental value (HEV). This dataset can be accessed via the NSW Government SEED Portal: <https://datasets.seed.nsw.gov.au/dataset/high-environmental-value-for-central-west-orana-regional-growth-planning-area-detailed7053e>

At the broad strategic level, these maps can be used to identify areas that are most likely to be free from significant biodiversity constraints, therefore more suited to development.

## 2. Establish large minimum lot size limits

*Minimum lot size limits should be large in RU1 and RU2 zones as well as environmentally sensitive areas. This will reduce development pressure on biodiversity in rural lands.*

Minimum lot size limits can be used to reduce the pressures of development and settlement on biodiversity. The LEP should define realistically large minimum lot size limits with associated dwelling provisions to control the intensity of development and settlement.

In particular, Council needs to ensure that minimum lot sizes in environmentally sensitive areas are of an appropriately large size to control the cumulative impact of any development and settlement intensification permitted in those areas by the LEP.

The selected lot sizes should be designed to meet expectations of rural living while minimising the adverse environmental impacts of any settlement that may occur with the subdivision.

If Council is strongly of the opinion that lot sizes need to be reduced then this should not be applied uniformly. Environmentally sensitive areas should be excluded from lot size reductions.

## 3. Conduct targeted environmental studies

*Where development in areas of native vegetation or environmentally sensitive areas cannot be avoided, a targeted environmental study should be conducted. This should focus on how a "maintain or improve" outcome could be achieved for biodiversity.*

Where Council is unable to avoid applying zonings or minimum lot sizes which permit essential development intensification in remnant native vegetation, a targeted study should be conducted to investigate the biodiversity values of the area. Any study should determine and demonstrate how potential biodiversity impacts can be avoided and mitigated on the subject land. Under the *Biodiversity Conservation Act 2016* biodiversity offsets may be required for future subdivisions.

This study and any resulting objectives, zonings and lot sizes should aim to ensure a 'maintain or improve' outcome. This is a vital step in the strategic planning process and in effectively addressing the s.9.1 Directions.



## 4. Define biodiversity protection and management measures in Development Control Plans

*Biodiversity protection and management measures should be defined in DCPs for all areas zoned for rural small holdings, residential and other development intensifications.*

BCS view DCPs as a secondary mechanism to provide biodiversity protection and management measures. It is vital that biodiversity values are first considered strategically in zoning decisions and development assessment provisions. We do not consider it acceptable to completely defer consideration of these matters to the DCP stage.

It is also important to consider the threats to remnant native vegetation posed by adjoining land uses.

For example, threats to biodiversity associated with nearby growth and intensification of residential land use include (but are not limited to):

- clearing;
- domestic animals;
- invasive plants;
- effluent and waste dispersion;
- changes in hydrology and hydraulics;
- increasing access due to fire trails and other tracks; and
- firewood collection.

Particular attention should be paid to relevant Key Threatening Processes identified and listed under the *Biodiversity Conservation Act 2016*. Mechanisms to abate threats to ESAs (such as implementing codes of practice, best management practice, alternative designs and operations, control technology and buffers between remnant vegetation and small holdings) should be considered.

Council should recognise that buffers may be necessary between environmentally sensitive areas and other land uses. The size of the buffer will vary depending on the nature or activity being undertaken and the level of management control required to prevent or minimise adverse impacts. Provisions should be made to rigorously assess any developments within environmentally sensitive areas and adjoining buffers to prohibit land uses and activities that threaten the ecological integrity, values and function of the area.

Some forms of development adjacent to national parks and reserves can impact on their values and should be avoided or restricted. Council should consider how these areas could be buffered from incompatible development and activities so that potential conflicts can be minimised.

The Departments Guidelines for Developments adjacent to NPWS Estate<sup>i</sup> have been designed to assist Councils when they are assessing development on lands adjoining NPWS estate. However, the issues identified in these guidelines are also relevant when considering buffers for protection of environmentally sensitive areas.

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<sup>i</sup> Guidelines for consent and planning authorities for Developments adjacent to National Parks and Wildlife Service Land (NPWS, 2020):  
<http://www.environment.nsw.gov.au/protectedareas/developmntadjoiningdecc.htm>