



Your ref: PP-2021-2262
Our ref: DOC23/35422

Andrew Donald
Barr Property and Planning
92 Young Street
Carrington, NSW 2294

Dear Andrew

505 Minmi Road, Fletcher Planning Proposal (PP-2021-2262)

I refer to the Planning Proposal for 505 Minmi Road, Fletcher submitted on 18 January 2023. The proposal relates to the rezoning of Lot 23 DP 1244350 under the Newcastle Local Environment Plan 2012 (NLEP 2012). The proposal seeks to rezone approximately 26.2 hectares (ha) of E4 Environmental Living to a combination of R2 Low Density Residential and C2 Environmental Conservation.

Biodiversity and Conservation Division (BCD) has reviewed the planning proposal, dated January 2020 and the Biodiversity Inventory Reports (BIR), dated January 2020 and December 2021.

BCD recommendations are provided in **Attachment A** and detailed comments are provided in **Attachment B**. If you have any further questions about this issue, please contact Steven Crick, Senior Team Leader Planning on 0402 279 129 or at huntercentralcoast@environment.nsw.gov.au

Yours sincerely

LUCAS GRENADIER
A/Director
Hunter Central Coast Branch
Biodiversity and Conservation Division

15 February 2023

Enclosure: Attachments A and B

BCD's recommendations

Planning Proposal for 505 Minmi Road, Fletcher

1. The planning proposal should address how the proposed rezoning includes provisions which facilitate the protection and conservation of environmentally sensitive areas pursuant to Ministerial Direction 3.1.
2. The planning proposal should be amended to be consistent with BIR dated December 2021.
3. The planning proposal should display further avoidance of *Biodiversity Conservation Act 2016* (BC Act) listed endangered ecological community (EEC) *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions*.
4. Provide adequate justification in accordance with the determination made by the Threatened Species Committee to exclude BC Act Listed EEC *Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion* from assessment.
5. All threatened species surveys should be conducted in accordance with relevant guidelines and Threatened Biodiversity Data Collection (TBDC). Justification must be provided for excluding species from targeted survey efforts.
6. Additional evidence such as photography or genetic report required to confirm presence of sugar glider (*Petaurus breviceps*) and absence of squirrel glider (*Petaurus norfolcensis*).
7. Further information should be provided regarding habitat features in accordance with section 3 and section 4 of BAM 2020.
8. It is recommended habitat connectivity between vegetation north and south of the proposal site is considered as per section 6.1.3 and section 8.2 of BAM 2020.
9. The proposed C2 zone should be protected and managed through a secondary mechanism such as a Biodiversity Stewardship Agreement.
10. The proponent has not demonstrated that the proposal is consistent with Ministerial Direction No.4.3(5) Flood Prone Land

BCD's detailed comments

Planning Proposal for 505 Minmi Road, Fletcher

Biodiversity

1. The planning proposal is inconsistent with Section 9.1 Ministerial Direction 3.1

Ministerial Direction 3.1 (1) issued under Section 9.1 of the *Environmental Planning and Assessment Act 1979* requires that a planning proposal include provisions that facilitate the protection and conservation of environmentally sensitive areas. This direction applies to all relevant planning authorities when preparing a planning proposal. The ecological assessment is incomplete; however, does identify High Environmental Values (HEV) on site, including:

- *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions* Endangered Ecological Community (EEC)
- 45 Hollow-bearing Trees
- *Myotis macropus* habitat

The planning proposal is inconsistent with Ministerial Direction 3.1 as it reduces the environmental protection standards that apply to the land by seeking to rezone land from C4 Environmental Living to R2 Low Density Residential and C2 Environmental Conservation. Furthermore, land identified as *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions* EEC is proposed to be rezoned as R2.

Recommendation 1

The planning proposal should address how the proposed rezoning includes provisions which facilitate the protection and conservation of environmentally sensitive areas pursuant to Ministerial Direction 3.1.

2. The planning proposal is not consistent with the most current Biodiversity Inventory Report

On February 2022, Department of Planning and Environment (DPE) received the BIR dated December 2021, which includes Biodiversity Assessment Method 2020 (BAM 2020) amendments and additional survey effort conducted in 2021. Appendix E of the Planning Proposal includes the BIR dated January 2020 and does not include BAM 2020 amendments or additional survey effort conducted in 2021.

Recommendation 2

The planning proposal should be amended to be consistent with the BIR dated December 2021.

3. Avoidance of BC Act listed endangered ecological community (EEC) *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions*

The planning proposal would result in the removal of up to 11.77 ha of *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions* EEC. Pursuant to section 6.4(1) of the BC Act, the applicant must firstly demonstrate appropriate and sufficient steps have been taken to avoid or minimise impacts to areas with vegetation mapped with

biodiversity values, and only then if satisfied, the relevant biodiversity conservation measures should be considered to offset or compensate any impacts such as from clearing.

The planning proposal fails to take all appropriate avoidance and minimisation measures for the EEC site. In order to adhere to the BC Act, further consideration should be given to ensure this EEC is sufficiently avoided or impacts minimised.

Recommendation 3

The planning proposal should display further avoidance of BC Act listed EEC *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions*.

4. Additional information is required to exclude BC Act Listed EEC *Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion* from assessment

The BIR identifies PCT 1589: *Spotted Gum – Broad-leaved Mahogany – Grey Gum grass – shrub open forest on Coastal Lowlands of the Central Coast* within the proposal site. BioNet Vegetation Classification indicates PCT 1589 is commensurate with *Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion* EEC. However, section 4.2 of the BIR states the PCT is not a threatened ecological community (TEC).

An assessor must consider information in the final determination made by the NSW Threatened Species Scientific Committee, and either list or exclude the TEC from the site. The determination for this ecological community states:

The ecological community has been recorded from the local government areas of Pittwater and Gosford, within the Sydney Basin Bioregion, and may occur elsewhere in the Bioregion.

Recommendation 4

The BIR should provide adequate justification in accordance with the determination made by the Threatened Species Committee for the exclusion of the BC Act Listed EEC *Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion* from assessment.

5. Additional information is required to demonstrate compliance with threatened species target survey requirements

Section 1.3 of the BIR prepared by MJD dated December 2021 states the BIR is updated to address the BCD letter dated 10 September 2019 which recommends that an assessment under Stage 1 and Stage 2 of the BAM should be undertaken for planning proposals that are likely to result in biodiversity impacts. This requires all threatened species assumed moderate or likely to occur within the proposal site to be surveyed as per relevant guidelines and the Threatened Biodiversity Data Collection (TBDC). Sufficient evidence should be provided within the assessment to demonstrate compliance with relevant guideline and the TBDC, including dates, timing and weather conditions. It is recommended additional information is provided or additional surveys are conducted for the following species:

- brush-tailed phascogale (*Phascogale tapoatafa*)
- common planigale (*Planigale maculata*)
- koala (*Phascolarctos cinereus*)
- powerful owl (*Ninox strenua*) (breeding)
- masked owl (*Tyto novaehollandiae*) (breeding)

- gang-gang cockatoo (*Callocephalon fimbriatum*) (breeding)
- glossy black-cockatoo (*Calyptorhynchus lathamii*) (breeding)
- pale-headed snake (*Hoplocephalus bitorquatus*)
- green and golden bell frog (*Litoria aurea*)

Evidence-based justification as per section 5.2.3 (2) of BAM 2020 is required to exclude species from targeted survey. Additional information to support exclusion of the following species is required:

- leafless tongue orchid (*Cryptostylis hunteriana*)
- rough doubletail (*Diuris praecox*)
- pokolbin mallee (*Eucalyptus pumila*)
- grove's paperbark (*Melaleuca groveana*)
- singleton mint bush (*Prostanthera cineolifera*)
- wallum froglet (*Crinia tinnula*)
- green-thigh frog (*Litoria brevipalmata*)
- mahony's toadlet (*Uperoleia mahonyi*)

Recommendation 5

The BIR should be consistent with the requirements of the BAM Threatened species surveys should be conducted in accordance with relevant guidelines and TBDC. Justification must be provided for excluding species from targeted survey efforts.

6. Additional evidence required to differentiate sugar glider (*Petaurus breviceps*) and squirrel glider (*Petaurus norfolcensis*)

The BIR identifies the sugar glider on site. Sugar gliders (*Petaurus breviceps*) and squirrel gliders (*Petaurus norfolcensis*) are similar in appearance and can be difficult to distinguish between. Due to numerous records of squirrel glider (*Petaurus norfolcensis*) within and adjacent to the proposal site, further information is required to confidentially establish absence of squirrel glider (*Petaurus norfolcensis*) on site. Data such as photographs displaying scale or genetics should be included as an appendix. If evidence cannot be provided, it is recommended squirrel glider (*Petaurus norfolcensis*) presence is assumed and the BIR adjusted accordingly.

Recommendation 6

Additional evidence such as photography or genetic report should be provided to confirm presence of sugar glider (*Petaurus breviceps*) and absence of squirrel glider (*Petaurus norfolcensis*).

7. Provide further information should be provided for habitat features

Section 3.1.3 of the BAM 2020 requires the assessor to identify and map the following:

- rivers, streams, estuaries and wetlands

- karst, caves, crevices, cliffs, rocks and other geological features of significance
- connectivity of different areas of habitat

The BIR mentions rocky outcrops, however, does not provide mapped locations or photographs of the outcrops. The BIR should be amended to be consistent with *BAM 2020* requirements.

Section 4.3.4 (9) of *BAM 2020* requires the assessor to provide specifics such as dimensions and height above ground during a hollow-bearing tree assessment. It is recommended hollow-bearing tree data and labelled figure displaying location of hollow-bearing trees are included as an appendix.

Recommendation 7

Further information should be provided in the BIR regarding habitat features in accordance with section 3 and section 4 of *BAM 2020*.

8. Impacts to habitat connectivity should be considered

Large intact bushland exists to the north and south of the proposal site. Vegetation within the east and west of the proposal site form part of a corridor.

Section 1.4 of the Biodiversity Conservation Regulation 2017 (BC Regulation) notes habitat connectivity as a prescribed additional biodiversity impact. For all proposals, prescribed impacts must be assessed as per clause 1.6 of the *BC Regulation*.

It is recommended that the assessment considers impacts to connectivity as per section 6.1.3 and section 8.2 of *BAM 2020*.

Recommendation 8

It is recommended habitat connectivity between vegetation north and south of the proposal site is considered as per section 6.1.3 and section 8.2 of *BAM 2020*.

9. Additional security should be provided to proposed C2 Environmental Conservation Zone

The BIR states proposed C2 land will be conserved as a corridor, however, the planning proposal marks this zone as a conservation/open space which will include:

Innovative ways can be incorporated into the use of the land, to be retained within the site as open space, by the owners of individual residential lots for maintenance and embellishment of this area of land and also for permissible recreation and associated purposes for the future residents of the site.

A conservation corridor cannot serve as recreational space for landowners. The planning proposal does not provide for protection of the corridor or another mechanism which would ensure it is appropriately protected or managed. A second mechanism such as a Biodiversity Stewardship Agreement will be required to ensure the proposed C2 zone is managed in perpetuity for conservation.

Recommendation 9

The proposed C2 zone should be protected and managed through a secondary mechanism such as a Biodiversity Stewardship Agreement.

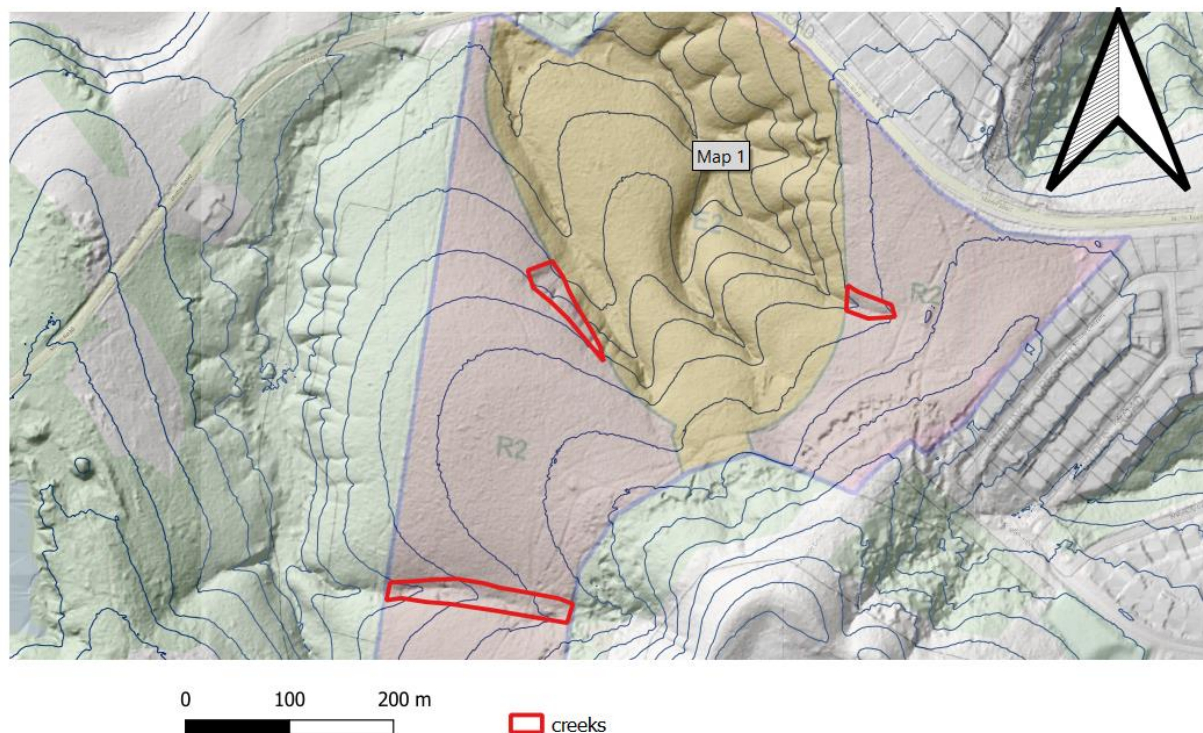
Flooding and flood risk

10. The proponent has not demonstrated that the proposal is consistent with Ministerial Direction No.4.3(5) Flood Prone Land

The rezoning proposal has not satisfactorily demonstrated consistency with the 9.1 Ministerial Directions on flooding.

Ministerial Direction No. 4.3(5) Flood Prone Land, issued in July 2021 under section 9.1(2), of the *Environmental Planning and Assessment Act 1979* states that land must not be rezoned from Recreation, Rural, Special Purpose or Environmental Protection Zones to Residential uses if it is within the flood planning area.

Creeks within the Proposed Residential Rezoning Extents



Local catchment flooding has not been assessed by the proponent. The site's topography shows several creek lines within the proposed R2 Residential rezoning extents. However, the flood planning area (which is typically 500mm above the 1% AEP flood level) for these creek lines has not been assessed.

Recommendation 10

BCD recommends that the proponent assesses local catchment flooding to determine the extents of the current flood planning area. And the proposed C2 Environmental Conservation zoning is extended to include all area below the flood planning level.