Department of Climate Change, Energy, the Environment and Water

Your ref: PP-2024-1044/ REF 3000
Our ref: DOC24/622140

Stef Presland
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Dear Stef

RE: Planning Proposal PP-2024-1044 – 361 Oxley Highway, Gilgandra

Thank you for your e-mail dated 17 July 2024 to the Biodiversity, Conservation and Science Group (BCS) of the Department of Climate Change, Energy, the Environment and Water (NSW DCCEEW) inviting comments on the proposed amendments to Gilgandra Local Environmental Plan 2011. BCS has reviewed the planning proposal dated May 2024 regarding rezoning of Lot 1 and Part Lot 2 DP 1070081 from RU1 Primary Production to E4 General Industrial, and minimum lot size change from 500 ha to 5000 m^2.

We have no objection to the planning proposal. We support the proposal to retain remnant vegetation strips along the site boundaries.

Our detailed comments are provided in **Attachment A** for Council's consideration for the future development of the subject site. We note that the Biodiversity Offsets Scheme (BOS) entry thresholds were incorrectly applied in the biodiversity assessment report.

The vegetation along the eastern boundary of the subject site is captured as high environmental value (HEV) in NSW DCCEEW's mapping database. BCS recommends future development should avoid and minimise impacts to HEV land. This approach is consistent with Objective 5 of the Central West and Orana Regional Plan 2041. We encourage Council to consider mechanisms to protect avoided areas at the development application stage.

We have developed a standard approach to assess biodiversity impacts on HEV land. The approach is set out in the following three attachments for your perusal:

- **Attachment B** describes our recommended steps for assessing and addressing biodiversity as part of a planning proposal. This aims to ensure that a planning proposal can demonstrate consistency with the strategic planning framework in identifying and protecting HEV lands.
- **Attachment C** describes the HEV criteria and provides our recommended method for investigating lands for the presence of the HEV criteria at the property scale as part of a planning proposal.

- **Attachment D** provides our recommended guidance for avoiding and minimising impacts on HEV land as part of a planning proposal.

We encourage Council to contact us early to clarify any of our feedback or discuss the assessment, avoidance and protection of HEV. Early engagement can simplify the biodiversity assessment process associated with any potential development assessments related with this planning proposal.

Please do not hesitate to contact Prakriti Mukherjee, Conservation Planning Officer, via prakriti.mukherjee@environment.nsw.gov.au, for any further information regarding this matter.

Regards

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

2 August 2024

Attachment A – BCS Detailed Comments
Attachment B – BCS NW Branch Steps for Assessing Biodiversity in Planning Proposals
Attachment C – BCS NW Branch HEV Criteria and Identification Methods at the Property Scale
Attachment D – BCS NW Branch HEV Guidance for Avoiding and Minimising Impacts on HEV Land

BCS's Detailed Comments and Recommendations

361 Oxley Highway, Gilgandra – Planning Proposal

BAM	Biodiversity Assessment Method
BC Act	*Biodiversity Conservation Act 2016*
BC Reg	*Biodiversity Conservation Regulation 2017*
BDAR	Biodiversity development assessment report
BOS	Biodiversity Offsets Scheme
BV Map	Biodiversity values map
DCCEEW	NSW Department of Climate Change, Energy, Environment and Water
HEV	High environmental value
LEP	Local environmental plan
MLS	Minimum lot size
E4	General Industrial
RU1	Primary production zone
SAII	Serious and irreversible impact

1. Biodiversity

We understand that the proposal comprises of rezoning of Lot 1 and Part Lot 2 DP 1070081 from RU1 Primary Production to E4 General Industrial, and minimum lot size change from 500 ha to 5000 m^2.

We have reviewed the planning proposal dated May 2023 and note the following:

- *Section B, S9.1 Direction Biodiversity and Conservation* of the planning proposal states that the subject land does not contain high environmental value vegetation. However, aerial imagery of the subject land shows woody vegetation surrounding the site's eastern boundary. NSW DCCEEW's HEV mapping captures these vegetated areas. Thus, future development should avoid and minimise impacts (direct, indirect and prescribed) to surrounding vegetation.

We have also reviewed the biodiversity assessment report dated January 2024 attached to the planning proposal, and have the following comments:

- The BOS entry thresholds were used incorrectly in the biodiversity assessment report (section 6.2.2). The minimum lot size (MLS) used to calculate area clearing threshold in relation to any future development should align with the proposed MLS (5000 m^2), rather than the current MLS (500 ha) of the subject site. Therefore, the correct threshold for clearing with a MLS of 5000 m^2 is >0.25ha.
- The report infers that the site would be developed under Part 5 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and therefore entry into the BOS would be voluntary. However, if development of the site is to occur under Part 4 of the EP&A Act, entry into the BOS is not voluntary. The Part 4 development application will need to be assessed against the BOS entry thresholds. All clearing including provisions for fencing, asset protection zones, road accesses and ancillary developments must be included to determine BOS thresholds.

Further explanation regarding the BOS is provided below.

BOS entry thresholds

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 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 5000 m^2 (less than 1 ha), therefore the area clearing threshold for this site is 0.25 ha. Based on the information provided it is likely that the impacts of the future subdivision of the subject site may trigger entry into the BOS if assessed under Part 4 of the EP&A Act.

Attachment B

BCS NW Branch Steps for Assessing Biodiversity in Planning Proposals

Introduction

Planning proposals should demonstrate consistency with the State, regional and local strategic planning framework including the relevant Regional Plan and section 9.1 Ministerial Directions. To be consistent with the relevant Regional Plan for areas with High Environmental Value (HEV), planning proposals should identify areas of HEV at the property scale and avoid intensification of development and land uses in those areas.

The s.9.1 Direction 2.1 Conservation Zones, require that Councils in preparing or amending an LEP must include provisions that facilitate the protection and conservation of Environmentally Sensitive Areas (ESAs) zoned or otherwise identified for conservation. 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.

Avoiding and minimising land use intensification in HEV areas may also facilitate future development by avoiding triggering the Biodiversity Offsets Scheme (BOS) at the development application stage; or simplifying the application of the Biodiversity Assessment Method (BAM) and reducing future biodiversity credit liability.

Biodiversity assessment for all planning proposals which affect HEV

Biodiversity assessment for planning proposals should implement the following steps:

Step 1: Identify HEV

The planning proposal should identify and map areas of HEV with desktop analysis and site investigations when required, as set out in **Attachment B**.

Step 2: Avoid and minimise impacts on HEV

The planning proposal should take into consideration any impacts throughout the life of the proposal and all possible future land uses. Once all impacts are identified, the proposal can be located and designed to maximise avoidance of land use intensification in HEV areas and adhere with the guidance in **Attachment C**. ***Step 3: Protect HEV***

The planning proposal should maintain or improve existing planning provisions to protect HEV, while permitting land use intensification on certain parts of the land suitable for development. Updates to planning controls should reflect the environmental values and constraints present on the land, rather than permitting development intensification uniformly across an entire site. Areas of HEV should instead be better protected by updating LEP provisions, such as through:

- an appropriate zone which has strong conservation objectives and limited land uses
- an appropriate minimum lot size (MLS) so the land cannot be subdivided
- updating terrestrial biodiversity mapping
- creating local provisions which:
    - contain site specific constraints such as buffers, objectives and considerations for future development consents and limits certain development or land uses

- identifies land with "high biodiversity significance[i1]" to preclude exempt or complying development from occurring on any ESAs
- require future management actions through a Development Control Plan (DCP) or Biodiversity and Vegetation Management Plan (BVMP).

Optional step for large or complex planning proposals which affect HEV

Step 4: Identify biodiversity values and entities at risk of Serious and Irreversible Impacts (SAII)

The planning proposal could apply Stage 1 of the Biodiversity Assessment Method (BAM) to identify Plant Community Types, threatened species and ecological communities, as well as SAII entities likely to be present. Application of Stage 1 of the BAM can be beneficial at the planning proposal stage as, if in the opinion of Council any:

- clearing associated with future subdivision or development of the land is likely to impact native vegetation and exceed the thresholds in Part 7 of the *Biodiversity Conservation Regulation 2017,* then a biodiversity development assessment report will be required at the development application stage.
- future development is likely to have a serious and irreversible impact on a SAII entity, then under section 7.16 of the *Biodiversity Conservation Act 2016* a consent authority must refuse to grant consent to the development. Further advice regarding determination of serious and irreversible impacts is available via the *Guidance to assist a decision-maker to determine a serious and irreversible impact (2019)*.

By applying Stage 1 of the BAM as part of the planning proposal, the proponent can further identify and avoid areas of biodiversity value that will generate a biodiversity credit liability or contain SAII entities in the development application planning phase. When biodiversity is considered strategically at planning stage, future development assessment can be simplified and credit obligations reduced.

[1] *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* – cl.1.5(g) and *Standard Instrument – Principal Local Environmental Plan (2006 EPI 155a)* cl.3.3(g) “environmentally sensitive area” includes land identified in an environmental planning instrument as being of high biodiversity significance.

Attachment C

BCS NW Branch HEV Criteria and Identification Methods at the Property Scale

High Environmental Value (HEV) Criteria and Components		Property Scale HEV Identification Method
Criterion 1. Sensitive Biodiversity Mapped on the Biodiversity Values Map		
1.1 Biodiversity Values Map		a. Identify the parts of the land on the Biodiversity Values map which can be viewed at https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/about-the-biodiversity-offsets-scheme/when-does-bos-apply/biodiversity-values-map. b. Include any BV map areas as HEV.
Criterion 2. Native vegetation of high conservation value		
2.1 Vegetation in over-cleared landscapes (Mitchell landscapes)		a. Identify over-cleared Mitchell landscapes by viewing map data from the SEED portal https://www.seed.nsw.gov.au/ – selecting NSW (Mitchell Landscapes) – latest version, selecting 'Show on Seed Map' and viewing the 'View Over Cleared Land Status'. b. Map all native vegetation on the land as HEV if it is in an over-cleared Mitchell landscape.
2.2 Over-cleared vegetation types		a. Identify Plant Community Types (PCTs) on the land through field work. b. Register and visit the Vegetation Information System (VIS) database at vis@environment.nsw.gov.au. c. Use the VIS to determine whether the % cleared status of the PCTs identified through field work on the land is above 70%. d. Map all PCTs on the land with the % cleared above 70% as HEV.
2.3 Threatened Ecological Communities - any vulnerable, endangered, or critically endangered ecological community listed under the BC Act, the FM Act 1994 or the EPBC Act and not mapped on the BV map		a. Identify Plant Community Types (PCTs) on the land through field work. b. Register and visit the VIS database at vis@environment.nsw.gov.au. c. Use the VIS to determine whether the PCTs on the land have Threatened Ecological Community (TEC) Status. d. If not identified as a TEC from steps a – c above, then refer to the NSW Threatened Species Scientific Committee determinations to consider whether the any of the PCTs accords with the determinations. e. Map all PCTs on the land that are TECs as HEV.
Criterion 3. Threatened species		
3.1 Key habitat for threatened species (vulnerable, endangered, or critically endangered species listed under BC Act)	Key breeding habitats with known breeding occurrence	a. Search BioNet for threatened species records on and within 10km of the land b. Undertake field work to identify potential breeding habitats on the land for threatened species. c. Either assume breeding occurrence and map identified breeding habitats on the land as HEV or undertake targeted surveys during the applicable breeding season(s) and map theses habitats as HEV if breeding occurs there.
	Core Koala Habitat	a. Check council records for approved comprehensive or individual property Koala Plans of Management (KPoM). b. Identify areas of core koala habitat on the land mapped in any approved KPoM and map these areas as HEV. c. If there are no approved KPoMs, then undertake field work in accordance with the relevant State Environmental Planning Policy (SEPP) for koalas, e.g. SEPP (Biodiversity and Conservation) 2022, to determine whether Core Koala Habitat is present on the land. d. Map any core koala habitat identified on the land through field work as HEV.

High Environmental Value (HEV) Criteria and Components		Property Scale HEV Identification Method
	Habitat for known populations of flora and fauna species-credit-species and SAII entities (species-credit species and SAII entities are identified in the Threatened Biodiversity Data Collection)	a. Search BioNet for threatened species records on and within 10km of the land. b. Undertake field work to identify populations of threatened species credit species on the land and their habitats. c. Map all habitats of known populations of species credit species on the land as HEV. The Biodiversity Assessment Method and the Department's survey assessment guidelines should be referred to for suitable habitat assessment methodologies and can be found here. If a recent Biodiversity Development Assessment Report has been prepared for the land, then this could be referred to in support of demonstrating how this criterion has been considered.
	Key habitats for migratory species	a. Search BioNet for threatened migratory species records on and within 10km of the land. b. Undertake field work to identify habitats of threatened migratory species on the land. c. Map all habitats of threatened migratory species on the land as HEV.
Criterion 4. Wetlands, rivers, estuaries & coastal features of high environmental value		
4.1 Nationally important wetlands **Note:** Rivers and their riparian areas comprising HEV are already included in the Biodiversity Values Map under HEV Criterion 1 as protected riparian land		a. Search the Directory of Important Wetlands in Australia for those occurring in NSW available at http://www.environment.gov.au/cgi-bin/wetlands/search.pl?smode=DOIW. b. Identify any nationally important wetlands listed in the directory that occur on the land and map these areas as HEV.
Criterion 5. Areas of geological significance		
5.1 Karst landscapes		a. Identify whether limestone outcrops or caves occur on the land. b. Consider any additional Karst landscapes that occur in the vicinity of the land, with reference to the NSW Government's *Guide to New South Wales Karst and Caves* available at https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Land-and-soil/nsw-karst-cave-guide-110455.pdf and any other available karst mapping, such as karst maps associated with local environmental plans. c. Map any limestone outcrops or caves on the land and any other karst landscapes that occur in the vicinity of the land as HEV.
5.2 Sites of geological significance included in the State Heritage Register or Heritage Inventory		a. Map any sites of geological significance that occur on, or in the vicinity of, the land as HEV. Refer to the State Heritage Inventory and map at https://www.environment.nsw.gov.au/topics/heritage/search-heritage-databases/state-heritage-inventory

BCS NW Branch HEV Guidance for Avoiding and Minimising Impacts on HEV Land

Decisions about the location of land use intensification in planning proposals should be informed by knowledge of biodiversity values including High Environmental Values (HEV) recognising that this is an iterative process that should consider the guidance provided below.

Locating land use intensification to avoid and minimise impacts on validated HEV

1. Planning proposal design, including the potential location of future temporary and permanent ancillary construction and maintenance facilities, should minimise direct impacts to clearing of native vegetation, habitat of threatened species and ecological communities, and validated HEV.

   Impacts can be avoided and minimised by locating land use intensification in areas:

   (a) where there are no biodiversity values e.g. locating future development away from native vegetation, geological features of significance or waterbodies

   (b) that avoid habitat for species and native vegetation communities in high threat status categories (i.e. endangered or critically endangered species or communities)

   (c) where the native vegetation or threatened species habitat is in the poorest condition (e.g. areas that have already been disturbed)

   (d) such that connectivity enabling movement of species and genetic material between areas of adjacent or nearby habitat is maintained e.g. further fragmenting or isolating habitat patches, and migratory flight paths to important habitat.

2. In selecting locations for land use intensification, the following alternatives should be addressed:

   (a) optimising the locations of land use intensification to minimise future interactions with threatened species and ecological communities, e.g. allowing for buffers around features that attract and support aerial species, such as forest edges, riparian corridors and wetlands, ridgetops and gullies, and National Park estate[2]

   (b) alternative locations that would avoid or minimise impacts on biodiversity values and justification for selecting the proposed location

   (c) alternative sites within a property on which land use intensification is proposed that would avoid or minimise impacts on biodiversity values and justification for selecting the proposed site.

3. Justifications for decisions on the location of land use intensification should identify any other site constraints that the proponent has considered in determining the location and design of these areas, e.g. bushfire protection requirements including clearing for asset protection zones, flood planning levels, servicing constraints.

4. Actions taken to avoid and minimise impacts through locating areas for land use intensification must be documented and justified in the planning proposal.

Other Impacts on validated HEV

Some future development to be enabled by a planning proposal may have other impacts on validated HEV in addition to, or instead of, impacts from clearing vegetation and/or loss of

[2] For more information, see the Developments adjacent to NPWS lands: Guidelines for consent and planning authorities (Environment, Energy and Science, 2020), accessible at https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Parks-reserves-and-protected-areas/Development-guidelines/developments-adjacent-npws-lands-200362.pdf

habitat. For many of these impacts, validated HEV may be difficult to quantify, replace or offset, making avoiding and minimising impacts critical.

Other impacts on validated HEV can include:

(a) impacts of future development on the habitat of threatened species or ecological communities associated with:

  i. karst, caves, crevices, cliffs and other geological features of significance, or
  ii. rocks, or
  iii. human made structures, or
  iv. non-native vegetation

(b) impacts of future development on the connectivity of different areas of habitat of threatened species that facilitates the movement of those species across their range

(c) impacts of future development on movement of threatened species that maintains their life cycle

(d) impacts of future development on water quality, water bodies and hydrological processes that sustain threatened species and threatened ecological communities (including from subsidence or upsidence resulting from underground mining)

(e) impacts of wind turbine strikes on protected animals

(f) impacts of vehicle strikes on threatened species or on animals that are part of a Threatened Ecological Community.

Within the BC Act, these types of impacts are called ‘prescribed impacts’. Where the Biodiversity Offsets Scheme is triggered by a future development, the decision maker may increase the number of biodiversity credits to be retired (or other conservation measures to be undertaken) to compensate for residual prescribed impacts. Avoiding these types of impacts to HEV at the planning proposal stage can simplify future development assessment at the site.