



Our ref: DOC21/950256-15

Your ref: Letter of the 28 October 2021;PP107/2020

Brian Ronan

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Central Coast Council  
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Dear Mr Ronan

**Planning proposal in respect of Lot 16 DP255220 – 18 Macleay Avenue Woy Woy**

I refer to your letter of the 28 October 2021 asking for comment in accordance with the Gateway process relating to Section 3.34(2)(d) of the *Environmental Planning and Assessment Act 1979*, and for comment on consistency with Section 9.1 Ministerial Directions and any specific matters to be addressed by investigative studies.

BCD has reviewed all the reports provided including the ecological report provided by Conacher (February 2021), Conacher's (April 2020) Threatened Biodiversity Assessment Report, the planning proposal, and the Gateway Determination.

Biodiversity and Conservation Division's (BCD) recommendations are provided in **Attachment A** and detailed comments are provided in **Attachment B**. If you require any further information regarding this matter, please contact Karen Thumm, Senior Conservation Planning Officer, on 4927 3153 or via email at [huntercentralcoast@environment.nsw.gov.au](mailto:huntercentralcoast@environment.nsw.gov.au)

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Crick', with a stylized flourish at the end.

**STEVEN CRICK**  
**Senior Team Leader Planning**  
**Hunter Central Coast Branch**  
**Biodiversity and Conservation Division**  
**6 December 2021**

Enclosure:      Attachments A and B

## **BCD's recommendations**

### **Planning proposal in respect of Lot 16 DP255220 – 18 Macleay Avenue, Woy Woy**

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1. BCD recommends that the development footprint is reduced so that all impacts on EECs and on SAI entities are avoided.
2. BCD recommends that CCC includes the cumulative impacts on Umina Coastal Sandplain Woodland in its consideration of this planning proposal.
3. Development impacts on threatened species habitat and the two EECs mapped on site should be avoided.
4. BCD recommends that the loss of environmental protection of the subject site is given appropriate consideration.
5. Any additional funding for the restoration and conservation of UCSW should consider existing Management Plans.
6. CCC will need to consider any changes to the requirements of the RFS for Asset Protection Zones and whether this will mean that the development has a significant impact on the UCSW, triggering the BOS.
7. BCD recommends that the detailed stormwater design must ensure that any filling of the site does not divert overland flows into neighbouring properties.

## BCD's detailed comments

### Planning proposal in respect of Lot 16 DP255220 – 18 Macleay Avenue Woy Woy

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#### Biodiversity

1. Impacts on Umina Sand Plain Woodland, an endangered ecological community which is listed under the Biodiversity Offset Scheme as a potential Serious and Irreversible Impact, should be avoided

The planning proposal will result in the removal of 1,948 square metres (m<sup>2</sup>) of vegetation which has been mapped as a Plant Community Type (PCT) considered to be Umina Coastal Sandplain Woodland (UCSW), an endangered ecological community (EEC) listed under the *Biodiversity Conservation Act 2016* (BC Act). The vegetation to be removed is on the edge of a remnant which is one of the three largest patches of this EEC. Most UCSW is in isolated and scattered small remnants. It is estimated in Central Coast Council's Biodiversity Strategy (2020) that there is less than 14 hectares remaining of this EEC.

Due to the very limited geographic distribution of this EEC it has been given potential Serious and Irreversible Impact (SAIL) status in accordance with Principle 3 (i.e. it has a very limited geographic distribution) when impacts are assessed under the Biodiversity Offset Scheme (BOS). The BC Act imposes obligations on decision-makers in relation to impacts on biodiversity values that are at risk of a SAIL. These obligations require the decision maker to assess the impacts on the entity using a series of criteria.

Impacts on UCSW are only considered under the Biodiversity Offset Scheme if a) the area is on the Biodiversity Values Map b) the area to be impacted exceeds the threshold stated in the Biodiversity Assessment Method (BAM) – in this case the area would be 2,500 m<sup>2</sup> as the site is under 1 hectare (ha) and c) if under the test of significance, the consent authority considers the proposal is likely to significantly affect threatened species or ecological communities.

The subject land is not on the Biodiversity Values Map, the area impacted (1,948m<sup>2</sup>) does not trigger the size threshold, and the test of significance prepared by Conacher (2021) found that the development is unlikely to significantly affect threatened species or ecological communities or their habitats.

Central Coast Council's (CCC's) planning proposal appears to assume that there will not be significant effects on UCSW because although vegetation will be removed from the western part of the lot, the vegetation is retained in the drainage line on the eastern side of the lot. However, the majority of the vegetation in the drainage line in the east is not UCSW. Most of the impacts on UCWS on the western side of the drainage line are not being avoided.

CCC also appears to be relying on the future DA process for detail about the amount of UCSW which will be removed. The maps supplied indicate that most of the UCSW on the western side of the drainage line will be turned into car parks and the peripheral road which will act as an Asset Protection Zone.

Central Coast Council will have to determine at the DA stage whether the impacts of the development will have a significant effect on the UCSW and are a potential SAIL. If CCC decides that the proposal will have a significant effect on the UCSW, the BOS will be triggered and an SAIL assessment will be required. If the result of the SAIL assessment is that the impacts will be a SAIL, then CCC cannot grant consent approval under Part 4 of the *Environmental*

*Planning and Assessment Act 1979*. Recent Land and Environment Court cases have indicated that a consent authority will not have to prove via evidence that an impact meets the criteria for an SAI in Section 6.7(2) of the BC Regulation as the Final Determinations for these EECs provide this evidence.

#### Recommendation 1

BCD recommends that the development footprint is reduced so that all impacts on EECs and on SAI entities are avoided.

### 2. Cumulative impacts on Umina Coastal Sandplain Woodland should be considered

As outlined above, USCW is listed under the BOS as a SAI entity on the basis of Principle 3, which refers to a 'species or area of ecological community with very limited geographic distribution'. BCD recommends that Council consider the cumulative impacts on UCSW by recent and proposed developments on Woy Woy peninsula.

#### Recommendation 2

BCD recommends that CCC includes the cumulative impacts on Umina Coastal Sandplain Woodland in its consideration of this planning proposal.

### 3. Impacts on all threatened species and the Swamp Oak Floodplain Forest EEC should be avoided

Two threatened micro-bats (little bentwing-bat, *Miniopterus australis*, and greater broad-nosed bat, *Scoteanax rueppellii*) were detected on site as well as grey-headed flying-foxes, *Pteropus poliocephalus*. In addition, the vegetation is considered suitable habitat for the bush stone-curlew, *Burhinus grallarius*, and glossy black-cockatoos, *Calyptorhynchus lathami*. A small portion of the vegetation to be removed is considered to be Swamp Oak Floodplain Forest EEC. Impacts of the development on threatened biodiversity should be avoided wherever possible.

#### Recommendation 3

Development impacts on threatened species habitat and the two EECs mapped on site should be avoided.

### 4. Environmental protection of bushland areas should be considered

The site land is currently zoned RE1 (Public Recreation). The adjacent 'Hillview' bushland reserve is also zoned RE1. The change from a partly vegetated site in a RE1 zone to a residential zone reduces the environmental protection standards that apply to the land. However; as the site is not zoned for environmental protection, the planning is consistent with Ministerial Direction 2.1 under section 9.1(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Nevertheless, the loss of environmental protection of the subject site should be given appropriate consideration.

#### Recommendation 4

BCD recommends that the loss of environmental protection of the subject site is given appropriate consideration.

### 5. BCD notes that a fully funded Vegetation Management Plan is proposed and an existing one covers part of the site

BCD notes that a fully funded and Council approved Vegetation Management Plan is proposed for the part of the site being dedicated to Council (i.e. the drainage line). Currently there is also

a funded management plan being prepared for this EEC by CCC and DPIE's Saving our Species team. Management plans for the rehabilitation and restoration of the three largest patches of UCSW are being funded by another development.

This current proposal is located on private property on the edge of one of these three patches of UCSW ("Hillview Road"). If the proposal goes ahead as planned with the removal of the UCSW on this site, CCC should consider how this would affect the work being done under the management plan discussed above.

#### Recommendation 5

Any additional funding for the restoration and conservation of UCSW should consider existing Management Plans.

### 6. BCD notes that the RFS may require a larger Asset Protection Zone

In a discussion with CCC it was mentioned that further advice from the Rural Fire Service (RFS) will be sought at the development application stage. If more vegetation must be removed to satisfy the requirements of the RFS, CCC may need to reconsider whether the development will have a significant impact on the UCSW and whether the BOS will be triggered.

#### Recommendation 6

CCC will need to consider any changes to the requirements of the RFS for Asset Protection Zones and whether this will mean that the development has a significant impact on the UCSW, triggering the BOS.

## Flooding

### 7. Filling of the proposed site has the potential to divert overland flows into neighbouring properties

The site is subject to overland flooding as it is located at the low point of the catchment. Filling or elevated floor levels will likely be required to protect future residents from overland flooding. BCD has inspected the site and note that neighbouring properties have minimal elevation above ground level. Consequently, neighbouring properties are likely to be vulnerable to any changes to overland flow paths.

#### Recommendation 7

BCD recommends that the detailed stormwater design must ensure that any filling of the site does not divert overland flows into neighbouring properties.