



Office of  
Environment  
& Heritage

Your reference: PSC2014-04142  
Our reference: DOC15/23157-11  
Contact: Ziggy Andersons, 4908 6820

Mr Wayne Wallis  
General Manager  
Port Stephens Council  
PO Box 42  
RAYMOND TERRACE NSW 2324

Attention: Matthew Borsato

Dear Mr Wallis

**RE: PLANNING PROPOSAL – LOT 1 DP1019113 98 COACHWOOD DRIVE MEDOWIE – PORT STEPHENS LGA**

I refer to your letter dated 21 January 2015 seeking comment from the Office of Environment and Heritage (OEH) regarding the above mentioned planning proposal. It is noted that this planning proposal has yet to be submitted to the Gateway Panel for determination. OEH understands that the proposal is to amend the zoning from E2 Conservation to a combination of R2 Low Density Residential and E1 National Parks and Nature Reserve for the above lot. OEH has reviewed the planning proposal and has provided comments relating to biodiversity, flooding, and Aboriginal cultural heritage below.

OEH objects to this proposal in its current form. In OEH's opinion the planning proposal does not comply with the majority of the relevant environmental planning instruments including the Lower Hunter Regional Strategy 2006 (LHRS), the Medowie Strategy, the Port Stephens Comprehensive Koala Plan of Management (CKPoM), and Section 117 directions of the *Environmental Planning and Assessment Act 1979*. OEH's key concern is that the northern portion of the proposal produces a reserve/urban interface with bush on the north western side of the proposed rezoning with a much higher fire intensity potential than the southern section of the proposal. This is likely to result in an unacceptable level of bush fire risk management responsibility being imposed on the National Parks and Wildlife Service (NPWS). OEH is also concerned that there are a number of flooding issues that have not been adequately assessed or addressed within the proposal and that there has been no Aboriginal cultural heritage due diligence assessment conducted.

**Biodiversity**

The survey effort to date is generally satisfactory, however, since the survey was conducted a population of *Corybas dowlingii* (200 plus individuals) has been recorded within 400 metres of the proposal in habitat very similar to what occurs on the site. As such, OEH requests that surveys for this species be undertaken to understand the potential impacts of this proposal on this species. OEH is willing to assist the proponent with accessing the known records as a reference to ensure that this local population is in flower at the time of surveying.

The site occurs within the Lower Hunter Regional Strategy 2006 (LHRS) Watagans to Stockton Green Corridor where rezoning for residential development is excluded. In addition the site is not identified for

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urban development in Port Stephens Council's Medowie Strategy. OEH understands Council is in the process of reviewing the Medowie Strategy with the intent of identifying the subject area for urban development. OEH is of the opinion that the site has significant constraints for future urban development. OEH believes that the northern portion of the proposed development would not constitute an 'infill' development or be 'building on the existing community at Medowie' (LHRS, 2006) as it is a relatively narrow projection into existing and proposed areas of the Medowie State Conservation Area (SCA). The northern portion of the development would significantly add to the fragmentation of the reserve and reduce the connectivity to the bushland to the west of the site which forms part of Medowie SCA (incorrectly labelled as State Forest in the infrastructure assessment). As such, OEH requests that the northern portion of this proposal be removed.

In regards to consistency with the S117 Directions, the planning proposal states that it is consistent due to the rezoning of land to E1. However, the proposal also includes rezoning of 27.8 hectares of E2 Conservation to R2 Low Density residential. This is not consistent with the relevant S117 Directions as it will result in an increase in residential density on land that is zoned for environmental conservation purposes that includes an endangered ecological community (EEC) and provides habitat for threatened fauna. In addition, to date there has been no assessment of whether the proposed transfer of land required under E1 Zoning could or would be accepted by the National Parks and Wildlife Service (NPWS).

OEH acknowledges that, as per the CKPoM methodology, the koala habitat mapping has been ground truthed and updated. However, the revised mapping does not include 'Preferred Link over Marginal Habitat' which would cover the majority of the site. As per the CKPoM, only low impact development can occur within habitat linking areas. Low Impact development is defined as development that maximises the retention and minimises degradation of native vegetation, and in particular koala habitat and will also minimise recognised threats to koalas which include dogs, bushfires, traffic, feral animals, and habitat fragmentation (including barriers to koala movement) (CKPoM, 2002). It is not clear from the proposal documents how these criteria will be satisfied.

OEH notes that the proposal does not include any provisions for offsetting the impact to the EEC and threatened species habitat that occurs on the site. If the proposed E1 zoning is envisaged as an offset then it would need to be assessed for its suitability and adequacy. Where impacts to EEC's and threatened species and their habitat will occur, OEH suggests that the proponent uses the BioBanking Assessment Methodology (BBAM) under the NSW Government's Biodiversity Banking and Offsets Scheme, as outlined in the 'BioBanking Assessment Methodology' (OEH, 2014) to quantify the offset requirements for any impacts from the development. This would provide a quantitative assessment of the required ecosystem and threatened species credits that need to be retired to offset the impacts of the development. Further information on the BioBanking Assessment Methodology is available at: [www.environment.nsw.gov.au/biobanking/index.htm](http://www.environment.nsw.gov.au/biobanking/index.htm). If this proposal is able to comply with strategic planning requirements imposed by the LHRS Green Corridor, OEH's expectation is that any proposed offsets will result in a conservation outcome within the Green Corridor which will be conserved in perpetuity.

The planning proposal has identified that the proposed E1 zoned land will be transferred to the adjacent Medowie SCA. If so, a planning agreement would be the recommended enabling mechanism for this transfer. However, the final decision on whether land will be accepted for transfer and reservation under the *National Parks and Wildlife Act 1974* rests with the Minister for the Environment. Due to existing workloads NPWS has only been able to have a brief review of the proposal regarding suitability of the proposed inclusion of lands to Medowie SCA. It should be noted that prior to making a request to the Minister, OEH is required to:

- confirm that the proposed offset is appropriate;
- undertake formal whole-of-government protocols for land reservation proposals including the reserve referral process; and
- undertake a comprehensive assessment, including the manageability of the land itself; current condition and expected condition at the time of planned transfer; financial management and resourcing.



Based on the conclusions of these more comprehensive assessments, the Minister may choose to accept the transfer of land on certain terms and conditions or not accept the transfer. Should the Minister decline to accept land, the proponent of the development may need to investigate alternative offsets and measures to achieve in perpetuity management of the proposed E1 zoned lands. The proponent should note that this process can take up to two years from submission of referral assessment to transfer to NPWS and this may not fit within a Gateway Panel determination timeframe.

The concept master plan provided with the proposal indicates that boardwalks and walking tracks are proposed to be constructed within land proposed for transfer as well as leading into Medowie SCA. This is not supported by OEH due to associated ongoing management liabilities as well as potential impacts to existing as well as proposed addition to the SCA resulting from the improper use of these facilities. The concept master plan also indicates that residential lots will back directly onto Medowie SCA. OEH strongly objects to this form of development as it would impose an unacceptable fire management liability on NPWS. The proposal indicates that bushfire risk management will be achieved through restricting the building of habitable dwellings to the front of the lots. In OEH's opinion this is unsatisfactory as past experience in Medowie, and other locations, has shown that other buildings are often built in these areas in addition to the activities associated with habitation (e.g. landscaping, storage of vehicles vans and trailers, etc.) which increases fire risk and community concerns. In addition, this direct interface often results in unregulated access to the reserve as well as illegal dumping of rubbish and garden waste. As such, OEH recommends that this northern portion of the proposal be removed.

## Flooding

The Planning Proposal does not appear to have been informed by the most up to date flood information available for the site, which is contained in the Medowie Drainage and Flood Study (WMAwater, 2012).

The proposal should include figures showing the flood depths, velocities, hazard class and hydraulic category for at least the 1% AEP and PMF, which are presented in the study. It should also include a plan showing the Flood Planning Area, that is, all land less than 0.5 metres above the 1% AEP flood.

The study shows that the eastern half and parts of the western half of the site are affected by the 1% AEP flood. The Planning Proposal indicates that the entire western half of the site will be zoned R2. This is clearly not achievable as a significant easement would be required in the vicinity of the existing polishing pond to provide for drainage and flood flows from the existing development.

The planning proposal states in Section D, Flooding that *"The R2 Low Density Residential zone and stormwater management devices are limited to natural surface levels equal to or above the 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard."* In contrast, in Table 1 it states that *"All proposed residential development will be above 1:100yr flood zone"* and in Table 3 *"the proposed R2 Low Density Residential Zone limited to contours above the 1:100 yr contour"* that is without the 0.5 metres freeboard. This should be clarified.

OEH does not have elevation data for the site but it would appear likely that most, if not all, of it is below the flood planning level. This will require the land to be filled or houses raised above natural ground level to comply with minimum floor level requirements. The possible impact of this on drainage and upstream flooding would need to be assessed.

The planning proposal should also be supported by an assessment of the risk to life in the PMF.

The Water Cycle Management Plan appears to show (on Figure 7-1) water treatment facilities on land proposed for transfer to National Parks. As maintenance will become the responsibility of Council, this land should be vested in it, not Parks.



## Aboriginal cultural heritage

OEH notes that no Aboriginal cultural heritage assessment was included as part of this proposal. The first step in assessing whether the lands proposed for rezoning may impact upon Aboriginal cultural heritage is to undertake a Due Diligence Archaeological Assessment. Anyone who exercises due diligence in determining that their actions will not harm Aboriginal objects has a defence against prosecution for the strict liability offence if they later harm an object. The [Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW](#) can be used by individuals or organisations who are contemplating undertaking activities which could harm Aboriginal objects.

This code will provide a process whereby a reasonable determination can be made whether or not Aboriginal objects will be harmed by an activity, whether further investigation is warranted and whether the activity requires an AHIP application. OEH also keeps a register of notified Aboriginal objects and declared Aboriginal places in NSW. The register is called the Aboriginal Heritage Information Management System (AHIMS). You can search AHIMS to discover if an Aboriginal object has been recorded or an Aboriginal place declared on a parcel of land. AHIMS web services allow internet-based searches for information about recorded Aboriginal objects, gazetted Aboriginal places and features of significance. Please note that surveys for Aboriginal objects have not been done in many parts of NSW. Aboriginal objects may exist on a parcel of land even though they have not been recorded in AHIMS.

Should the Due Diligence Archaeological Assessment identify that there is a potential impact upon Aboriginal cultural heritage due to the proposed development activity, the proponent must investigate, assess and report on the harm that may be caused by that activity. The investigation and assessment of Aboriginal cultural heritage is undertaken to explore the harm of a proposed activity on Aboriginal objects and declared Aboriginal places and to clearly set out which impacts are avoidable and which are not. Harm to significant Aboriginal objects and declared Aboriginal places should always be avoided wherever possible. Where such harm cannot be avoided, proposals that reduce the extent and severity of this harm should be developed. An Aboriginal cultural heritage assessment report is a written report detailing the results of the assessment and recommendations for actions to be taken before, during and after an activity to manage and protect Aboriginal objects and declared Aboriginal places identified by the investigation and assessment.

The Aboriginal cultural heritage assessment report will support any application made to OEH for an Aboriginal Heritage Impact Permit where harm cannot be avoided. If such an assessment is identified as being necessary, the proponent must refer to the following documents:

1. 'Aboriginal Cultural Heritage Consultation Requirement for Proponents (2010)'
2. 'Code of Practice for the Archaeological Investigations of Aboriginal Objects in New South Wales (2010)'.

Please refer to [www.environment.nsw.gov.au/licences/achregulation.htm](http://www.environment.nsw.gov.au/licences/achregulation.htm) for further information.

If you have any enquiries concerning this advice, please contact Ziggy Andersons, Conservation Planning Officer, on 4908 6820.

Yours sincerely

 24 FEB 2015

**RICHARD BATH**  
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Regional Operations