

Assessment Against Panel Conditions

RR-2021-89 – Swift Place, South West Rocks



Table 1: Assessment of rezoning review conditions.

BCS March 2023	Proponent response	BCS response (Jan 2024)	PPA team consideration
BCS Comment 1: Reflect the koala habitat compensation measures in accordance with the Kempsey Shire Comprehensive Koala Plan of Management, rather than the Coffs Harbour development Control Plan 2015 (which does not apply to the site).	The proponent updated the planning proposal (Attachment A) to refer to the Comprehensive Koala Plan of Management.	Section 4.3 of the HEV report has demonstrated that an area to the south of the planning area (Shown in Figure 12 of the HEV report) contains suitable ecological attributes for a koala habitat compensation area that would accord with the requirements of the Kempsey Shire Council Comprehensive Koala Plan of Management.	Satisfied
BCS Comment 2: Assess high environmental value (HEV) land as required under the North Coast Regional Plan.	Unresolved - see Table 2 below for further assessment.		
BCS Comment 3: Demonstrate whether the C2 Environmental Conservation zoned land to the south has the necessary ecological attributes for the required koala habitat compensation area.	The proponent provided a revised ecological assessment (Attachment A7) which addresses the condition.	Section 4.3 of the HEV report has demonstrated that an area to the south of the planning area (Shown in Figure 12 of the HEV report) contains suitable ecological attributes for a koala habitat compensation area that would accord with the requirements of the Kempsey Shire Council Comprehensive Koala Plan of Management.	Satisfied

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BCS March 2023	Proponent response	BCS response (Jan 2024)	PPA team consideration
Condition 4: Address the suitability of the C2 Environmental Conservation zoned land to the south with regards to land ownership and management responsibilities.	<p>The proponent provided further information on 27 February 2024 (Attachment F) in response to the issues BCS raised as follows:</p> <p>The proposed koala habitat land is proposed to be established, maintained for 5 years (similar to Stage 1 Seabreeze Estate), then dedicated to Council or National Parks.</p> <p>There are currently no in-perpetuity biodiversity management agreements over the proposed koala habitat land, and the mechanism proposed to secure its in-perpetuity management would be via a Voluntary Planning Agreement.</p>	<p>Further information be provided on the proposed koala habitat compensation area regarding its tenure, any existing in-perpetuity biodiversity management agreements over the land, the proposed future tenure for the land, and the mechanism proposed to secure its in-perpetuity management, if the Northern Regional Planning Panel decides to proceed to gateway determination with the planning proposal.</p>	<p>Unresolved.</p> <p>Condition 4 relates to the suitability of the land to the south of the site that is proposed to be used as koala compensation area. BCS was not satisfied that information provided within the revised planning proposal and ecological study, satisfied the condition.</p> <p>The proponent provided further information to address condition 4 on 27 February 2024 (Attachment F).</p> <p>Noting the required resolution to Panel condition 2 discussed above, consultation with BCS can occur to confirm the proponent's response is adequate.</p>

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Table 2: Assessment of BCS Comment 2 dated March 2023.

BCS Comment - Jan 2024	Proponent Response to BCS	PPA Team consideration
1. The planning proposal be revised to map all parts of the planning area containing land mapped on the NSW Biodiversity Values Map as HEV land and apply the C2 Environmental Conservation zone to this land.	<p>The Swift Parrot does not breed within mainland Australia and would only use the Subject Land as an absolutely minute and insignificant portion of an enormous foraging range.</p> <p>This incremental Species Credit generation is considered appropriate mitigator for the minute and incremental impacts that any proposed development may have on the species. This would not be sufficient to warrant the zoning of the land as C2.</p>	<p>The proponent has questioned the quality of the HEV land on the site and suitability to be mapped at all. As such, the proponent sought a map review, and the Biodiversity Values maps were subsequently revised. This resulted in a 3.67 ha reduction and a 0.0015 ha add of land to the biodiversity values map for Swift Parrot Habitat. However, the site still contains a large area of Swift Parrot habitat that is listed as HEV land.</p> <p>The PPA Team recommends a revised planning proposal should be prepared once an adequate Wollum Froglet Survey is prepared that responds to the site's HEV land with appropriate land use zone(s).</p> <p>The new planning proposal should be informed by pre-Gateway consultation with BCS.</p>
2. Surveys for Wallum froglet be conducted in the planning area in accordance with the NSW Survey Guide for Threatened Frogs (DPIE 2020).	<p>It has been very well documented over many decades, that the Subject Land provides habitat for the Wallum Froglet. This was also confirmed during the field surveys for this assessment and other concurrent BDARs. It is very likely that the species would occur within the planning area. However, this ignores the core definition of "Key Threatened Species Habitat" which is "habitats for threatened species or endangered</p>	<p>BCS consider that previous surveys, while conducted incorrectly, indicate that a large portion of the site contains habitat for the Wallum Froglet, a threatened species.</p> <p>BCS require new surveys to be conducted in accordance with the NSW Survey Guide for</p>

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BCS Comment - Jan 2024	Proponent Response to BCS	PPA Team consideration
	<p>populations that cannot withstand further loss where the threatened species or endangered population is present”.</p> <p>From the above, it is clear that Wallum Froglets may, from time to time, frequent the Planning Area during periods of extreme rainfall at the outer reaches of their local home range. Notwithstanding this, the lands which have been determined to provide “Key Habitat” for the species have already been studied and secured as C2 zones within previous planning proposals.</p>	<p>Threatened Frogs and that any land containing habitat is to be mapped as HEV land and a conservation zone applied.</p> <p>The proponent considers that if this logic were to be applied, there would be very little developable land within NSW.</p> <p>The PPA Team recommends a new planning proposal should be pursued if justified by an adequate Wollum Froglet Survey demonstrates part of the site is suitable for the intended residential development outcome. This is anticipated to be limited to the eastern boundary of the site.</p> <p>The new planning proposal and Wollum Froglet Survey should be informed by pre-Gateway consultation with BCS.</p>
3. All confirmed Wallum froglet habitat in the planning area be mapped as HEV land and the C2 Environmental Conservation zone applied to that land.	<p>The presence of habitat for a threatened species does not provide sufficient justification for a C2 zoning. That must be determined by the presence of “Key Threatened Species Habitat” which is habitats for threatened species or endangered populations that cannot withstand further loss where the threatened species or endangered population is present”.</p> <p>Under the assumptions of Mr Young, all flowering trees within NSW would hold sufficient enough biodiversity value to be considered for C2 zoning due to them providing potential foraging and young rearing resource for the Grey-headed Flying-fox. Accordingly, C2 zonings are reserved for “Key Threatened Species Habitat” and not broadly any threatened species habitat.</p>	
4. The planning proposal be revised to map all areas of Plant Community Type 4004 as HEV land and apply the C2 Environmental Conservation zone to that land.	<p>Mr Young has based his position purely on the interpretation of guidelines rather than the underlying Statutes, Final Determination and Case Law. The position of this assessor remains the same and until the Final Determinations are formally amended, they will remain the same as a matter of professional objectivity.</p> <p>The use of edaphic criteria can, in no way, be considered a supplementary descriptor, further, vegetation composition is determined by the edaphic conditions and not vice versa.</p>	<p>The proponent disputes BCS's requirement for land containing Plant Community Type 4004 to be listed as HEV land.</p> <p>The PPA Team recommends a new planning proposal should be prepared once an adequate Wollum Froglet Survey is prepared that responds to the site's HEV land with appropriate land use zones.</p>

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BCS Comment - Jan 2024	Proponent Response to BCS	PPA Team consideration
	<p>The importance of edaphic criteria is clearly demonstrated within the name of the TEC Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions as well as very clearly articulated within Part 1 paragraph 1 of the Final Determinations;</p> <p>NSW Scientific Committee - final determination</p> <p>The Scientific Committee has found that:</p> <p>1. <i>Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions is the name given to the ecological community associated with humic clay loams and sandy loams, on waterlogged or periodically inundated alluvial flats and drainage lines associated with coastal floodplains. Floodplains are level landform patterns on which there may be active erosion and aggradation by channelled and overbank stream flow with an average recurrence interval of 100 years or less (adapted from Speight 1990).</i></p> <p>The position of the broader BCS to follow underpinning legislation and caselaw has recently been reinforced within Appendix E of the Updating BioNet Plant Community Types: Eastern NSW PCT Classifications Version 1.1 (2022) Guidelines, which states;</p>	<p>The new planning proposal should be informed by pre-Gateway consultation with BCS.</p>

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BCS Comment - Jan 2024	Proponent Response to BCS	PPA Team consideration
	<p>Appendix E: Guiding principles applied to the process of identifying relationships between PCTs of eastern NSW and TECs</p> <p>A Preamble</p> <ol style="list-style-type: none">1. A Final Determination (FD) made by the NSW Threatened Species Scientific Committee constitutes the legal definition of a threatened ecological community (TEC), and is not superseded by any advice, publication or opinion (other than a revised Determination or a judgement of the courts). Applied interpretations of a TEC do not influence its definition unless confirmed through legal processes.2. A TEC is an assemblage of species in an area. A site cannot be diagnosed as representing an example of a TEC unless it occurs within the geographic boundaries stated in the Final Determination, and some component of the species assemblage listed in the Determination is found to be present.3. The principles outlined in this document are relevant to the interpretation of Final Determinations for the purposes of the Department of Planning and Environment (DPE) operational needs to relate Approved plant community types (PCTs) included in the PCT master list. Other interpretations may exist elsewhere that may result in independent and alternative outcomes. Additional information in the form of published TEC interpretations and mapping may be considered but does not supersede the FD or constrain the interpretations of DPE. <p>This assessor again asks that Mr Young applies professional objectivity on the topic and follows the guidelines of the DPE shown above by using the Final Determinations and relevant Case Law rather than subjective guidelines when determining the presence or absence of TEC's.</p> <p>It is acknowledged that the NSW Scientific Committee intends to revise the coastal floodplain EEC determinations, however, until such time as the Final Determinations are formally changed, the current legal definition of floodplain EECs will remain.</p>	