

Department of Planning and Environment

Our ref: DOC22/511954

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Subject: Exhibition – Planning Proposal over Brooks Point Road, Appin

Thank you for your email dated 23 February 2023 requesting comment from Environment and Heritage Group (EHG) within the Department of Planning and Environment (DPE) in relation to the draft Planning Proposal over land at Brooks Point Road, Appin.

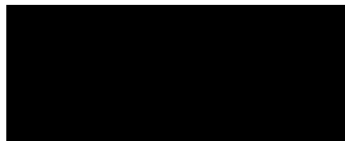
Pre lodgement advice was provided by EHG for the subject proposal on 15 July 2022. The proposal and supporting studies have been amended to address feedback received from Council and government agencies. EHG does note however that several comments raised during the pre-lodgement stage have not been adequately addressed and further refinement of the proposal may be required to adequately address biodiversity and flood impacts arising from the future development of the site.

Detailed comments in relation to the proposal are provided at **Attachment 1**.

Importantly, EHG notes that since the pre-lodgement stage, The Cumberland Plain Conservation Plan (CPCP) has come into effect over the site. The proposal has not demonstrated consistency with the CPCP and its associated suite of planning controls. EHG considers the draft masterplan must be amended to avoid impacts to areas identified under the plan as Avoided Land, Strategic Conservation Area and Protected Koala Habitat and Restoration areas. Further details on how the proposal will address the protection and enhancement of native vegetation in these areas is also required.

Should you have any queries regarding this matter, please contact Shaun Hunt, Senior Conservation Planning Officer via shaun.hunt@environment.nsw.gov.au or 02 8275 1617.

Yours sincerely,



24/03/23

Susan Harrison
Senior Team Leader Planning
Greater Sydney Branch
Biodiversity and Conservation

Attachment 1: EHG comments – Preliminary exhibition of Planning Proposal over Brooks Point Road, Appin

The Proposal

The Proposal seeks to amend the Wollondilly Local Environmental Plan 2011 to rezone land at No. 10, 14, 20, 30, 50 and 70 Brooks Point Road Appin to facilitate residential development. The site is located within the Greater Macarthur Growth Area. The proposed changes include:

- Land use zone map from RU2 Rural Landscape to R2 Low Density Residential and C2 Environmental Conservation.
- Lot Size Map from 40ha to a range between 250m² and 450m² in the proposed R2 Low Density zone and 40ha in the C2 Environmental Conservation Zone.
- Height of Buildings Map to include a maximum building height of 9m to facilitate two storey residential development.
- Additional Permitted Uses Map to include additional permitted uses associated with a reticulated sewer and stormwater system.

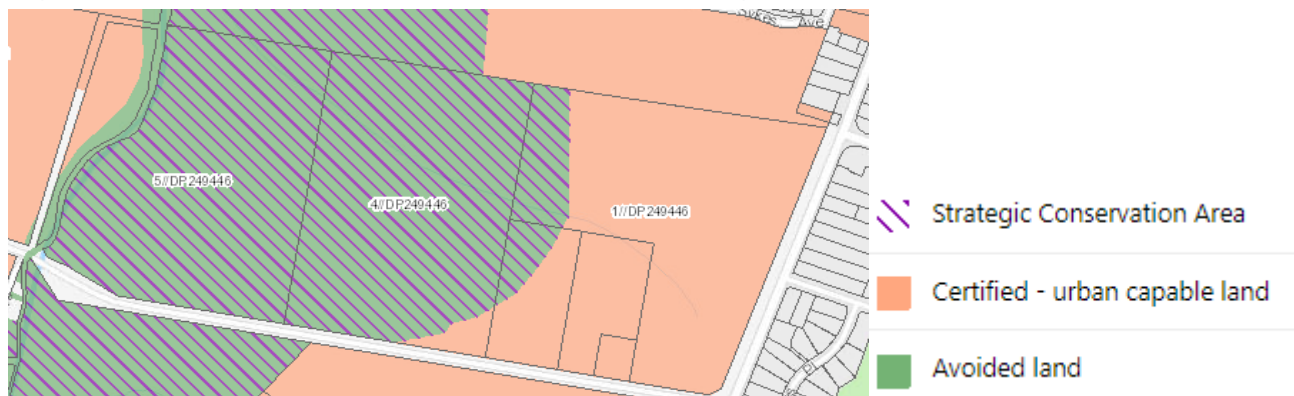
An indicative masterplan (Beveridge Williams, dated 19.10.22) has been provided indicating a lot yield of 244, including, 241 residential lots, 1 Residue Lot Containing the existing house and 2 RU2 Rural Landscape residue lots. EHG notes that the masterplan on exhibition is inconsistent with the description of proposal outlined in the planning proposal report. The masterplan should be amended to accurately reflect the proposal, including any amendments required to address the following comments.

Cumberland Plain Conservation Plan

The *Cumberland Plain Conservation Plan 2022* (CPCP) applies to the site. The CPCP has identified the eastern part of the site as 'Urban Capable' and the western portion as 'Avoided Land' and 'Strategic Conservation Area' (SCA). In addition, the western part of the site is also identified by the CPCP as 'Protected Koala Habitat' and 'Protected Koala Habitat and Restoration'.

The proposal must demonstrate consistency with CPCP including the suite of planning controls that support the implementation of the plan. Importantly, residential development must not encroach into areas of avoided land.

Figure 1: Cumberland Plain Conservation Plan mapping over the subject site



Proposed rezoning

EHG raises no objection to proposed R2 low density residential zoning proposed within boundaries of CPCP certified-urban capable land. EHG does note however that the masterplan currently on exhibition appears to have R2 zoned land encroaching into the CPCP avoided land and SCA. The masterplan should be amended to clearly show the boundaries of CPCP certified-urban capable land and avoided land/SCA.

C2 -Environmental Conservation zoning is proposed over land within the western portion of the subject site. As previously noted, these areas are identified by the CPCP as avoided land, SCA and protected koala habitat and restoration areas. The rezoning of these areas to C2 – Environmental Conservation is considered consistent with the CPCP and Ministerial Direction 3.6 3(a).

With the above noted, EHG does raise concern with the proposed land uses within the C2 zone which is discussed in further detail below. However, in summary, it is recommended that masterplan layout be amended so that the proposed drainage reserve, recreation area, sewage pump station and any other infrastructure works associated with the proposed residential development are relocated to be wholly contained within certified - urban capable land.

Ministerial Direction 3.6 - Strategic Conservation Planning

Ministerial direction 3.6 – Strategic Conservation Planning applies to avoided lands and the SCA under the CPCP. The direction aims to protect land with high biodiversity value from the impacts of development. It requires a planning proposal to demonstrate that it protects or enhances biodiversity.

Appendix D of the planning proposal report indicates that the proposed rezoning of the SCA area to C2-Environmental Conservation is sufficient to address the requirements of Ministerial Direction 3.6.

EHG does not agree that the proposed rezoning of these areas to C2–Environmental Conservation is sufficient to demonstrate consistency with Direction 3.6. The proposal must include additional measures (as outline in this submission) to demonstrate consistency with the Direction.

Bushfire Hazard and Asset Protection Zones

In accordance with clause 13.15 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021, future development consent must not be granted to development involving an asset protection zone on certified urban capable land unless the asset protection zone is located wholly on certified urban capable land.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The proposal must consider and demonstrate consistency with the provisions of Chapter 13 of the Biodiversity and Conservation SEPP, particularly those relating to avoided land and the SCA.

CPCP – Excluded land

EHG notes that the Brooks Point and Appin Road corridors are excluded from the CPCP. As such, any future proposals over the subject land that include impacts to threatened species, ecological communities or their habitats within these corridors must assess those impacts against the relevant provisions of the *Biodiversity Conservation Act 2016*.

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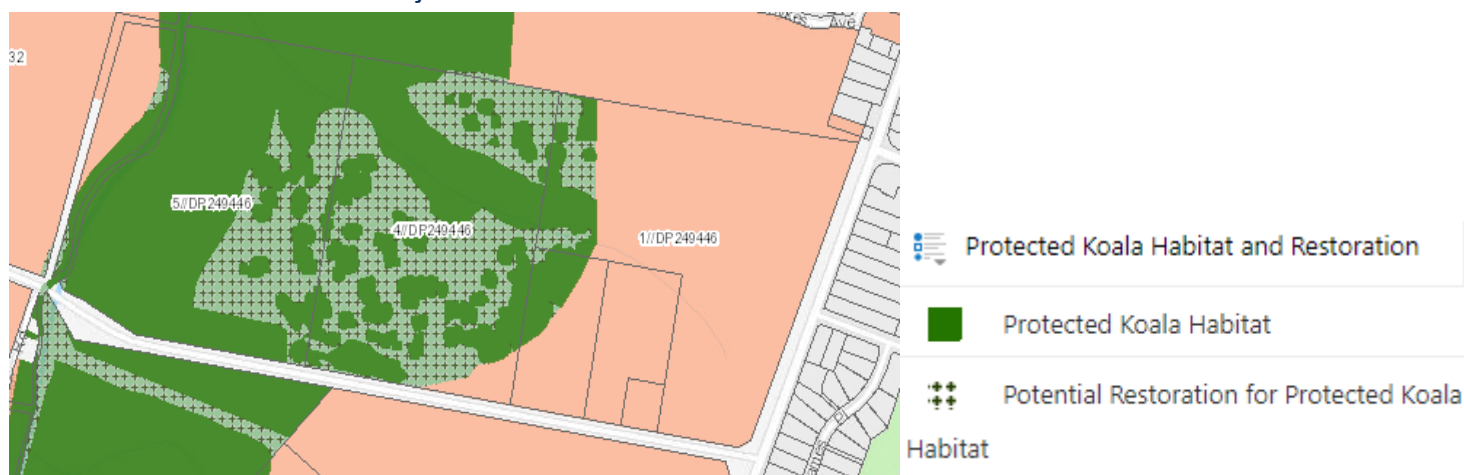
Koalas

As previously noted, the avoided land and strategic conservation areas within the subject site are also mapped as protected koala habitat and restoration areas. Refer to figure 2 below.

The CPCP commits to a range of measures to be implemented over the life of the plan (CPCP, Appendix C and E). Of particular relevance, Commitment 7 of the CPCP seeks to;

Mitigate indirect and prescribed impacts from urban, industrial, infrastructure development on the Southern Sydney koala population to best-practice standards and in line with advice from the Office of the NSW Chief Scientist & Engineer, and in accordance with Appendix E of the CPCP.

Figure 2: Cumberland Plain Conservation Plan mapping showing protected koala habitat and restoration areas over the subject site



The proposal has not adequately considered and addressed the impacts to koala habitat. Appendix E of the CPCP identifies several mitigation measures to address impacts to Koalas. The measures are applicable to a range of different stages throughout the life a development ranging from strategic planning considerations to construction and operational measures.

EHG considers that the following measures identified in Appendix E must be addressed as part of the subject planning proposal. Measures relating to the protection of koalas during future construction activities are not included below. Those measures will need to be addressed as part of any future subdivision or development application over the site.

Table 1: Extract of Koala specific mitigation measures identified in appendix E of the CPCP that must be considered for the subject proposal

| Mitigation Measure | Rationale for Measure |
|---|--|
| Design subdivision layout including perimeter roads and asset protection zones should reduce impacts on and protect areas of koala habitat. | Minimises the potential impacts of precinct operation to koala habitat |

| Mitigation Measure | Rationale for Measure |
|---|--|
| Do not plant koala feed trees, as listed in <i>Koala SEPP Schedule 2 Koala use tree species</i> in open space and recreation areas. | Koala feed trees and/or endangered ecological communities are contained to open space and recreational areas in precinct design in certified urban-capable land |
| Dog-proof fenced areas are to be designated within open space and public recreation areas | Provides protection to fauna, including koala, up-front in precinct design for public spaces |
| Dog-proof fencing is a design requirement for each residential lot in accordance with Council requirements | Provides protection to fauna, including, koala up-front in precinct design for residential areas |
| Where planned linear infrastructure such as gas and electricity transmission crosses existing koala-exclusion fencing, consider appropriate access treatments such as gates to ensure integrity of koala-exclusion fencing. | Minimises indirect impacts to koala populations due to urban development. This action is consistent with a critical action for this species under Chief Scientist & Engineer's Koala Report (2020) |
| Signpost areas adjoining koala habitat with signage indicating koalas are in the area, the permitted/prohibited activities, and associated penalties that apply for non-compliance. | Promotes permitted activities and educates public in areas adjoining koala habitat |

Future management of avoided land, SCA, Koala habitat and Protected Koala Restoration Areas

Given the significant biodiversity values present on the western part of the site, it is necessary that the land use planning process resolves the future ownership and management of this land. EHG recommends that there be ownership and management arrangements established for the SCA prior to any development commencing on the site. The arrangements should address in perpetuity:

- who will own and manage the land
- protection and restoration of biodiversity values, including restoration of koala habitat
- formal mechanisms for ensuring the management of the land for conservation.

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EHG recommends the following mechanisms be investigated for the management of the SCA:

- Biodiversity Stewardship Agreement (BSA)
- conservation agreement
- public ownership managed for biodiversity conservation
- funded vegetation management plan under a voluntary planning agreement.

EHG notes that the CPCP envisages that SCA land could be protected via a BSA with the Biodiversity Conservation Trust (BCT). The Department of Planning and Environment also offers a targeted land purchase program (subject to criteria and funding availability) and landholders may lodge an expression of interest in selling all or part of their property at cpcp@planning.nsw.gov.au.

Land use within the C2 – Environmental Conservation Zone

The planning proposal seeks to include additional permitted uses within the C2 Zone. The report notes,

As advised by the Department of Planning, where the C2 Environmental Conservation zoned is outside a koala habitat corridor, in addition to the above permitted uses, the following additional permitted uses are considered acceptable:

Building Identification Signs; Business Identification Signs; Eco-tourist Facilities; Information and Education facilities; Roads: Kiosks; Recreation Area; Water Supply System.

In addition to these additional permitted uses, we also seek inclusion of sewage reticulation systems (pumping station) and a drainage detention basin structure.

The proposed C2 Environmental Conservation areas have been identified as containing a range of high biodiversity values including core koala habitat, areas of critically endangered ecological communities (CEEC), threatened species habitat and riparian corridors. Any proposed use within the C2 zone (avoided land and SCA) must be consistent with the objectives of the C2 Zone.

EHG does not consider drainage reserves/basins and recreation areas/local parks to be consistent with objectives of the C2 Zone, the CPCP or Ministerial Direction 3.6.

With consideration of the above, EHG does not support the proposed additional permitted uses within the proposed C2 zoned land.

Flooding

EHG's pre-lodgement advice for the subject proposal stated that the proponent must consult with Council to prepare a flood impact and risk assessment (FIRA) to inform and support this planning proposal.

The FIRA should:

- outline existing flood behaviour that is compatible with Council's Shire wide flood study for Wollondilly Shire for the full range of flooding.
- Identify developed flood behaviour. The developed scenario should include the proposed development with key details of the final proposal, including development type and density changing runoff characteristics, infrastructure and proposed modification to waterways or floodplain landform or vegetation.

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- Identify the impacts of the proposed development on the flood behaviour and on flood risk to the existing community
- Identify the impacts and risks of flooding on the development and its users
- Identify how these impacts can be managed to minimise the growth in risk to the community due to the development. This includes details of any management measures to be implemented to minimise the impacts and risks posed to the existing and future community due to development
- provide an assessment of the residual impacts of the project (that management measures cannot manage) on and off the site.

The Water Cycle Management Plan prepared for this planning proposal has not considered EHG's previous advice. Rather it undertook a hydrology exercise for events up to the 1% AEP which does not provide information on flood behaviour, flood constraints and flood risk.

Summary of EHG recommendations:

- Address and demonstrate consistency with the CPCP and associate planning controls.
- Amend the proposal to avoid impacts to areas mapped as avoided land, SCA and Koala habitat and restoration areas.
- Relocate all infrastructure and open space areas associated with proposed residential development to areas within CPCP certified – urban capable land.
- Address the protection, enhancement and management of native vegetation and biodiversity values within avoided land, SCA and Koala habitat and restoration areas (the proposed C2 zone).
- Address the implementation of Koala mitigation measures identified by the CPCP. In particular
 - Demonstrate the avoidance of impacts to Koala habitat and Restoration areas
 - Identify the proposed location and extent of Koala exclusion fencing along the boundary of certified - urban capable land and Koala habitat and Restoration areas.
- Prepare a Flood Impact and Risk Assessment.

End of Submission