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Elizabeth Kimbell
Place Manager, The Hills and Hawkesbury
Place, Design and Public Spaces
Department of Planning, Industry and Environment
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150
Department

Dear Ms Kimbell,

Subject: Planning Proposal to amend *Hawkesbury Local Environmental Plan 2012* to permit subdivision of 2 Inverary Drive, Kurmond

Thank you for your letter received 12 April 2021, requesting input from Environment, Energy and Science Group (EES) in the Department of Planning, Industry and Environment on the amended gateway determination for the planning proposal which seeks to amend the Lot Size of *Hawkesbury Local Environmental Plan* (HLEP) 2012 to permit the subdivision of 2 Inverary Drive, Kurmond into 31 lots having minimum lot sizes of 2,000m^2 and 2ha.

EES has reviewed the amended gateway determination and supporting documentation and provides the following comments regarding biodiversity. Please note that this letter supersedes the EES response provided on 28 April 2021 which included an error.

Ecological Assessment Report

EES has reviewed the Ecological Assessment Report (EAR) prepared by AWC dated 2020. EES notes that while some of the matters raised with the previous ecological assessment (EES Reference DOC20/412723) have now been addressed, the following issues remain of concern:

- The EAR states that the condition of vegetation on the site is variable. It would have assisted the planning process to provide a map showing the location of areas of low, moderate and good condition native vegetation on site.
- EES notes that Table 5.4 of the report states that further surveys for Green and Golden Bell Frog will be conducted as the timing of the surveys was unsuitable. Table 5.4 also recommends that more surveys should be undertaken for the Cumberland Land Snail.
- Table 5.4 argues that for several threatened bat species, the vegetation along the riparian zone is to be retained so the impacts will be negligible. However, the north-south riparian corridor will not be retained by the proposed lot layout, and the west/east corridor is very narrow and is to be severed by roads. As such, EES considers the impacts on these species have been underestimated.
- Table 5.4 argues that koalas are unlikely to be resident on site but given the number of records in the local area, EES considers they may still move through site.

- Table 5.4 argues that for several species, only foraging habitat is to be lost and therefore it concludes there will be no impact on these species. However, this loss of foraging habitat should be recognised as an impact.
- Section 6.1.2 states that 4.3 ha of Shale/Sandstone Transition Forest to be removed, based on the assumption that 100% of vegetation with roads, bridges etc will be lost but only 75% of vegetation within each lot will be removed. EES considers that the estimate of vegetation to be lost within each lot is likely to be an underestimate. The size of the proposed lots will make it very difficult to retain any vegetation on the lots in the long term. Therefore, the extent of impact to vegetation is not clear from the report but is likely to be more than 4.3 ha. The report does not include a figure for Shale/Sandstone Transition Forest currently on site.

Proposed development layout and minimum lot size

Despite the above, it is clear from the applicant's EAR that the site contains high biodiversity values including:

- a remnant patch of the critically endangered ecological community, Shale/Sandstone Transition Forest
- habitat for several threatened species. Five threatened fauna species were recorded on site during the snapshot survey. The site may provide habitat for other species that weren't observed during surveys
- the condition of vegetation is variable, but is classed as mostly in moderate condition, with some areas in good condition.

Regarding biodiversity and land use planning, the Biodiversity Conservation Act 2016 establishes a framework to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity.

EES is of the view that the proposed subdivision layout in the planning proposal has not been designed to avoid biodiversity values within the site. In areas of biodiversity value, including the remnant patch of Shale/Sandstone Transition Forest and threatened species habitat, it is proposed to permit subdivision into smaller 2,000m^2 lots, with the riparian area subject to 2ha minimum lot size. Outside of the riparian zone, there is no difference in minimum lot size between the cleared land and land containing SSTF and threatened species habitat.

As proposed, the 2000m^2 minimum lot size will likely result in adverse impacts to biodiversity as there is a high incidence of clearing associated with rural-residential type subdivision and development, usually caused by the establishment of a dwelling site and associated buildings, roads, driveways, electricity lines, dams, fencing, ornamental plantings and asset protection zones. It is also likely that the fragmented ownership will make management of the vegetation difficult and lead to degradation.

EES notes that the applicant's EAR states that in terms of impacts an "accurate assessment of impact cannot be conducted in the absence of a detailed footprint". However, the EAR predicts the direct impact and loss of approximately 4.3ha of native vegetation. The EAR area calculation has been based off the assumption that 75% of vegetation within each lot being lost and 100% vegetation with roads, bridges etc, being lost. However, as outlined above, EES considers that the estimate of vegetation to be lost within each lot is likely to be an underestimate. The size of the proposed lots will make it very difficult to retain any vegetation on the lots in the long term. Therefore, the extent of impact to vegetation is not clear from the report but is likely to be more than 4.3 ha. The report does not include a figure for the extent of Shale/Sandstone Transition Forest currently on site

Furthermore, the EAR states there are two creeks on site, a first order stream which runs north/south and a second order stream which runs west/east, and that these meet on site forming a third order stream. Section 8.2.5 advocates that the recommended riparian corridor widths as outlined in the Water Management Act should be maintained on site. However, EES considers these widths will not

be maintained given the proposed lot layout and road design. The Guidelines for riparian corridors on waterfront land state that services and infrastructure should be located outside the riparian zones.

Given the impacts to biodiversity within the site, it considered that the subdivision layout and minimum lot size has not been designed and located to avoid and minimise impacts to native vegetation and habitat. Much greater consideration needs to be given to the biodiversity values within the site and locating the proposed development to avoid and minimise direct and indirect impacts to these areas. The design of the areas to be retained and conserved should take into consideration the location of vegetation that has been conserved on neighbouring sites for example No. 396 Bells Line of Road.

Furthermore, the proposal will not facilitate retention or afford protection to the biodiversity values in the site. The EAR states that "planning instrument (likely 88b) is intended to be used to protected vegetation in perpetuity" within the back of numerous lots. EES does not recommend or support the use of 88b instruments as they can be overridden, removed or modified. It is also unclear how Council would monitor and enforce. As stated above, lots under numerous ownerships will also make management of the vegetation difficult and will lead fragmentation and degradation of the vegetation and habitat. It is also important to note an 88b instrument is not a recognised conservation measure under the Biodiversity Offsets Scheme and Biodiversity Conservation Act 2016.

In order to afford the highest of protection under a planning instruments, the conservation areas should be zoned E2 Environmental Conservation with the permitted uses limited to those that are consistent with the conservation objectives of the zone.

In terms of ownership, the biodiversity areas to be retained and conserved should be in single ownership. It is considered that the proposed community title arrangement provides an opportunity to conserve areas of biodiversity value with a community lot. Regarding long term management and funding arrangements, it may be possible to establish a biodiversity stewardship agreement which is an in-perpetuity agreement that provides an income stream for the management of the land.

Should you have any queries regarding this matter, please contact Bronwyn Smith, Senior Conservation Planning Officer on 9873 8604 or Bronwyn.smith@environment.nsw.gov.au

Yours sincerely

S. Harrison

28/04/21

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