



Office of
Environment
& Heritage

Your reference:
Our reference: DOC14/110701
Contact: Krister Waern (02) 66402503

The General Manager
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2484

Attention: Mr Stuart Russell

Dear Mr Green

Re: Planning Proposal – Lot 1 DP 779817 and Lot 1 DP 408972 Wooyung Road, Wooyung

Thank you for providing the Office of Environment and Heritage (OEH) with a copy of the above planning proposal. I appreciate the opportunity to provide comments.

OEH has reviewed the Planning Proposal dated 17 July 2013 and detailed comments in relation to biodiversity, Aboriginal cultural heritage, Billinudgel Nature Reserve and flooding are provided in Attachment 1. The proposal was difficult to assess in its own right, and comparatively, without the level of detail that would normally support such a proposal.

OEH may support the reduction of environmental impacts on the site from a proposal that would cause less environmental harm than the current approved development. However, the applicant acknowledges that the Planning Proposal and consequent development application are unlikely to be approved if assessed only on environmental impacts and merits, due to the location of proposed dwellings in sensitive environmental areas. This suggests that the Planning Proposal will still incur significant environmental impacts.

The proposal appears to have disregarded the significant environmental values of the site and has relied on comparative merit for its justification. OEH is of the view that the proposal falls short on being innovative or striving for ecologically sustainable development and does little to foster its social licence for development.

OEH is unable to support the proposal in its current form and raises the following key issues for consideration by Council:

- The adequate assessment of impacts on significant biodiversity values of the site;
- The adequate assessment of Aboriginal cultural heritage matters;
- Consideration of management issues with the adjoining Billinudgel Nature Reserve, and;
- The adequate assessment of flooding matters.

Should you require further information or clarification, please contact Mr Krister Waern, Senior Operations Officer, on telephone 02 6640 2503.

Yours sincerely

Dimitri Young 22 July 2014

DIMITRI YOUNG

**Senior Team Leader Planning, North East Region
Regional Operations**

Attachment 1 – Detailed OEH comments - Planning Proposal - Wooyung Road, Wooyung

Biodiversity

An important component of the environmental assessment process undertaken in support of planning proposals is the consideration of biodiversity values. Planning proposals provide opportunities to reduce future impacts to biodiversity by applying appropriate land-use zones to parts of a planning area with important biodiversity values.

OEH's preference is to avoid impacting biodiversity values, including threatened species, populations, ecological communities, or their habitats, as a component of any planning proposal and to ensure appropriate long term protection mechanisms are in place in perpetuity for those values. No detailed flora and fauna assessment was provided in support of the planning proposal. On this basis, the direct and indirect impacts on biodiversity values to be enabled by the Planning Proposal do not appear to have been considered in preparing the proposal.

Accordingly, OEH advises as follows:

- There appear to be a number of Endangered Ecological Communities and threatened species on the subject site which have the potential to be impacted by the proposal. A detailed flora and fauna assessment should be provided in support of the proposal to identify areas of high conservation value. The proposal should then be designed to avoid and minimise direct and indirect impacts on such areas of high conservation value.
- Given the significant environmental values of the subject site the proposal should consider utilising the cleared and degraded areas of the property for future development. This may require that any amendment to Schedule 3 of Tweed LEP 2000 limit the placement of dwellings to existing cleared parts of the property.
- The current layout of the proposal with dwelling envelopes spread across the site has a large edge effect impact. The proposal should be re-designed to reduce edge effects by consolidating the placement of dwelling envelopes and their associated direct and indirect impacts into existing cleared and degraded areas of the site.
- OEH notes that there are several proposed dwelling envelopes that will impact on SEPP 26 littoral rainforest areas and which lie within the 100m buffer to these SEPP26 areas. The proposal should be re-designed to avoid such impacts.
- No offsetting of impacts has been proposed. OEH would suggest that any unavoidable impacts to biodiversity should be appropriately offset in accordance with OEH offset principles. This could include rehabilitation of degraded areas on the subject site to improve the condition of high conservation value areas and the protection of biodiversity values on adjoining lands. OEH would recommend application of the BioBanking Assessment Methodology for determining the appropriate quantum and type of offsets that could be required.
- Further consideration should be given to formalising the protection of areas of the site containing high conservation values, which should not be developed. This could include the application of appropriate environmental protection zones to such areas.
- Managed access to the beach needs to be considered as part of the proposal to reduce impacts on the frontal dune system. The proposal should consider a rehabilitation project for this area to reduce impacts.

Aboriginal Cultural Heritage

The proposal indicates that Aboriginal cultural heritage values have been considered as part of the process. The letter from the Tweed Byron Local Aboriginal Land Council in support of the proponent's ongoing examination of options for an alternative proposed development for Lot 1 DP408977 and Lot 1 DP779817 is noted.

OEH supports consultation with the local Aboriginal community and encourages this process to be ongoing and regularly evaluated as there appears to be some inconsistency in the documentation as to whether the limited number of dwellings proposed is 24 or 25.

An important component of the environmental assessment process undertaken in support of planning proposals is the consideration of Aboriginal cultural heritage values. The importance of protecting Aboriginal cultural heritage is reflected in the provisions of the *National Parks and Wildlife Act 1974* (NPW Act). The NPW Act clearly establishes that Aboriginal objects and places are protected and may not be damaged, defaced or disturbed without appropriate authorisation. Importantly, approvals under Part 3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) do not absolve the proponent of their obligations under the NPW Act.

As part of any planning proposal, it is critical that tangible and intangible Aboriginal cultural heritage is fully assessed and considered. Planning proposals provide opportunities to reduce future impacts to Aboriginal cultural heritage by applying appropriate land-use zones to parts of a planning area with important Aboriginal cultural heritage values.

OEH's preference is to avoid impacting Aboriginal cultural heritage values as a component of any planning proposal and to ensure appropriate long term protection mechanisms are in place in perpetuity.

Accordingly, OEH recommends that an Aboriginal cultural heritage assessment report should be prepared in support of the planning proposal and should contain:

- A description of any Aboriginal objects and declared Aboriginal places located in or associated with the planning area and the significance of these objects and or places to Aboriginal people who have a cultural association with the land.
- A description of the Aboriginal cultural heritage values of the planning area and the immediate locality, including the significance of any Aboriginal objects and declared Aboriginal places that exist in the planning area and the significance of these values to Aboriginal people who have a cultural association with the land.
- A description of any consultation with Aboriginal people regarding the planning proposal and the significance of any Aboriginal cultural heritage values identified. OEH advises that the proponent may utilise OEH's 'Aboriginal Cultural Heritage Consultation Requirements for Proponents' (2010) as best practice guidelines for such consultation.
- Analysis of the Aboriginal cultural heritage values of the planning area to justify the application of appropriate zonings and/or areas where Schedule 3 of Tweed LEP 2000 could be amended for the placement of dwelling houses. OEH would recommend that areas of high Aboriginal cultural heritage significance be zoned Environmental Protection to protect such values.

In addressing these requirements, the applicant is encouraged to refer to the following documents:

- a) *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* (OEH, 2010) - <http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf>. These guidelines identify the factors to be considered in Aboriginal cultural heritage assessments for proposals.

- b) *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (OEH, 2010) - <http://www.environment.nsw.gov.au/licences/consultation.htm>. This document further explains the consultation requirements that are set out in clause 80C of the *National Parks and Wildlife Regulation 2009*. The process set out in this document must be followed and documented in the EIS.
- c) *Code of Practice for the Archaeological Investigation of Aboriginal Objects in New South Wales* (OEH, 2010) - <http://www.environment.nsw.gov.au/licences/archinvestigations.htm>. The process described in this Code should be followed and documented where the assessment of Aboriginal cultural heritage requires an archaeological investigation to be undertaken.

Billinudgel Nature Reserve

There is a concern from National Parks and Wildlife Service that the proposal does not address the impact to Billinudgel Nature Reserve (BNR). The proposal has the potential to change management priorities for BNR. The following points are put forward for further consideration:

- Figure 4 (page 14) identifies four proposed residential sites (sites 9, 10, 24 and 25) which are close to the northern boundary of BNR. The proposal has not detailed the fire management strategies for these allotments. It is unclear from the proposal if sufficient room exists within the proposed dwelling envelopes to construct adequate asset protection zones on the proposed land parcel. In the case of site 25 it is clear that no such room exists as the boundary of site 25 overlaps the boundary of BNR.
- The proposal has not detailed where access to the site and the proposed dwelling envelopes will be located and what impacts this may have. The lack of detail makes it difficult to determine the impacts of fire protection trails along the common boundary with BNR. The development would need to include access trails as an essential part of fire management.
- Given the location of the four proposed allotments mentioned above it appears that clearing will be required which will introduce edge effects to the northern boundary of BNR. This impact will affect the management of BNR.

Flooding

The current layout proposes to enable the land to be used for residential development with 25 house sites to be located on elevated parts of the land. OEH understands that there is an expectation that sea level rise will have impact on the subject land and that the area suffers from flood isolation in significant flood events.

Accordingly, OEH advises that:

- Consideration should be given to sea level rise impacts for the year 2050 and 2100 for the development to be enabled by the Planning Proposal.
- The impact of floods, up to the probable maximum flood, on the development to be enabled by the Planning Proposal should be considered, including evacuation planning.
- The impact of the development to be enabled by the Planning Proposal on flooding to existing properties in the surrounding should include cane lands in Wooyung and the North Ocean Shores in Byron Shire.

