



2/10/2023

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Dear Mr Devine

Central Coast Council submission - St Philip's Christian College, Charmhaven (SSD-14082938)

Council objects to the SSD proposal for a new non-government school at Charmhaven because impacts on biodiversity are considered unacceptable. Proposals for extensive development in the Arizona Road area have been existing for over 20 years, however due to the high biodiversity constraints of properties in this area, intensive development and rezoning proposals have not been supported by the former Wyong Shire Council or Central Coast Council.

The area is a known biodiversity hotspot, and the submitted Biodiversity Development Assessment Report documents a very high diversity of plant and animal species including at least 12 threatened species. The removal of over 21 hectares of native vegetation as a result of this proposal is inconsistent with Council's strategic planning for the area which to date have supported managing the area for its biodiversity values.

Ecology comments on Biodiversity Development Assessment Report (BDAR)

Threatened species and vegetation integrity has not been adequately assessed

- *Diuris praecox* is noted as excluded from further assessment due to geographic limitations. Targeted surveys should be completed for the species as a population occurs 10km north east of the subject site within a Plant Community Type that occurs on the subject land.
- Surveys for *Cryptostylis hunteriana* are occurred over only one season in 2020 which is inadequate, particularly considering the species has been previously recorded on the site. Surveys should be completed over multiple years as tubers can remain dormant for a number of years.
- There is insufficient information to consider likely impacts of the proposal on Large Forest Owls. The BDAR notes a 'resident' sub-adult male Powerful Owl was identified within the subject land. Searches for potential nest trees needs to be undertaken within areas 100m of the subject land. If the Powerful Owl identified on the site was observed to have an infinity to potential nest trees(s)/ or a certain area or, consideration is to be given to avoid that area and generate a species polygon.



- The Vegetation Integrity Score for zone 7 (PCT 1636 - burnt) is underestimated as surveys were undertaken following fire which does not represent average vegetation condition. It is suggested that this vegetation zone is merged with PCT 1636 – high for calculation of ecosystem credits.

Unacceptable impacts on the Squirrel Glider

- Council notes that the Squirrel Glider was recorded during surveys of the site is assumed to be present across the disturbance footprint of the proposal.
- In the early 2000s the Central Coast local government area was identified as containing one of the most important populations of Squirrel Gliders in New South Wales.
- Since 2020 Council has undertaken resurveys of sites where Squirrel Gliders were known in 2000-2002 and found that an apparent major decline has occurred, with Squirrel Gliders either absent or at a greatly reduced density compared to 20 years previously.
- Based on the 2020-2022 surveys, a site can no longer be assumed to contain Squirrel Gliders, with most sites containing either the non-threatened Sugar Glider or neither Sugar or Squirrel Gliders.
- The findings of the BDAR of multiple detections of Squirrel Glider suggest that the site is of high conservation value for the Squirrel Glider and the removal of over 21 hectares of habitat may place the species at risk of local extinction in the Charmhaven area.

Proposal triggers Serious and Irreversible Impacts (SAIL)

- Clause 6.7(2) of the *Biodiversity Conservation Regulation 2017* provide four principles in which an impact can be categorised as 'serious and irreversible'. Clause 6.7(2) is repeated below:

An impact is to be regarded as serious and irreversible if it is likely to contribute significantly to the risk of a threatened species or ecological community becoming extinct because—

- (a) it will cause a further decline of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to be in a rapid rate of decline, or*
- (b) it will further reduce the population size of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very small population size, or*
- (c) it is an impact on the habitat of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very limited geographic distribution, or*
- (d) the impacted species or ecological community is unlikely to respond to measures to improve its habitat and vegetation integrity and therefore its members are not replaceable.*

- While guidance material may be available from the Department of Planning and Environment on how SAIL should be identified, the guidance material cannot be inconsistent with Clause 6.7(2) as it is subordinate to a Regulation and has no jurisdictional power. Thus, where there is inconsistency between guidance material, including but not limited to the Biodiversity Assessment Method calculator and government published guidance, Clause 6.7(2) must take precedence. This approach is consistent with the landmark judgment of *Planners North v Ballina Shire Council* [2021] NSWLEC 120 where Preston CJ considered that Clause 6.7(2) was the principal tool to be used in determining if a threatened species or community was a SAIL candidate, rather than DPE guidance material.
- The BDAR includes minimal information on the potential for SAIL impacts, with the sole SAIL assessment being for the Swift Parrot, which is largely inadequate, with the deficiencies being discussed elsewhere.
- Given that the habitat for threatened species currently known or previously recorded on the site will be affected by the development, the precautionary principle applies in that the

consent authority cannot be certain that a SAI will not occur as the assessment has not been completed (see paragraph 54 of *746 Greendale Road Greendale Pty Ltd v Liverpool City Council* [2023] NSWLEC 1372).

- An assessment for the potential for SAI against the Swift Parrot has occurred in Appendix D of the BDAR. The BDAR dismisses the likelihood of a SAI occurring against the Swift Parrot as the removal of 24.31 ha of mapped important habitat accounts for 0.01% of the area of important habitat mapped for the species in New South Wales.
- The assumption that the removal of 24.31 ha of mapped important habitat does not trigger a SAI is based on two assumptions, which Council considers are incorrect:
 - Assumes that a SAI occurs only at a statewide level, which is inconsistent with the judgments of *Planners North*, *White v Ballina Shire Council* [2021] NSWLEC 1468 and *Statewide Planning Pty Ltd v Blacktown City Council* [2022] NSWLEC 1024.
 - Habitat suitability is uniform across all 190,000 ha of mapped Swift Parrot important habitat, when it is known that certain areas are more important than others.
 - Ignores that the mapped area is part of a large patch of important habitat, rather than a small remnant, which has greater value due to greater feed resources and the absence or lower abundance of the hyper aggressive Noisy Miner that often occurs in small patches.
 - The importance of the Northern Central Coast region for the Swift Parrot, where the species is regularly recorded by bird enthusiasts.

Inadequate avoidance and minimisation of biodiversity impacts

- Section 10.1 of the BDAR discusses avoidance and minimisation.
- The Biodiversity Assessment Method (BAM) Stage 2 Operational Manual section 3.3 outlines that avoidance must be demonstrated and the BAM Manual 2020 includes the types of scenarios that should be considered. None of this occurs in the BDAR.
- The BDAR states that avoidance of C2-Primary Conservation land occurs, although this zoning does not allow schools to be built and has a very limited amount of potential landuses, thus this argument is weak. The *Water Management Act 2000* also allows for limited landuse within riparian zones, thus even without the C2 zoning, development of the riparian land would have been limited. Based on this assumption, the proposal demonstrates very little avoidance.
- The Bushfire Asset Protection Zone (APZ) extends onto land zoned C2. The Bushfire APZ is not permitted under the Central Coast LEP 2022 within the C2 zone.
- No alternate layouts that retain additional native vegetation or individual trees have been proposed or included in the BDAR.
- No Vegetation Management Plan has been prepared for the avoided lands, nor is proposed to be developed. This means that edge effects on these areas as a result of clearing may increase and without vegetation restoration and management may degrade over time. This is a jurisdictional issue where biodiversity credits for the uncertain impacts have not been proposed for retirement however if vegetation integrity in these areas decline as a result of the development, credits would be required.
- The MUSIC model is consistent only with Council's DCP requirements, thus will result in increased nutrient and sediment loading to the riparian land. This has the potential to increase weed growth, however in the absence of a VMP for these areas, the proposal cannot be shown to effectively minimise biodiversity impacts. The BDAR also fails to discuss the likely impacts of increased sediment and nutrient loads on riparian vegetation, as required by the BAM. A

reduction in stormwater flow in the riparian areas is also possible as predicted by the stormwater report, which is inconsistent with the commentary contained in the BDAR.

- The Landscape Plan shows a walking track/footpath through the Charmhaven Apple avoidance area which has not been considered in the BDAR.
- Based on the above analysis, Council considers that the proposal fails to adequately avoid and minimise biodiversity impacts and is inconsistent with the objectives of the *Biodiversity Conservation Act 2016*.

Impacts on Commonwealth listed species

- The BDAR notes and EIS confirms a referral under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* was completed for *Angophora inopina*. A referral should also be submitted for the Swift Parrot, given removal of a significant area of habitat (21.6 ha).
- Note, there are references to the Hunter Estuary Wetland Ramsar site which is not relevant to the application.

Please note Council may have further comment to make in relation to the proposal and this will be forwarded under separate cover. If you have any further enquiries contact Emily Goodworth on 0439 603 850 or at Emily.goodworth@centralcoast.nsw.gov.au

Yours faithfully,



Emily Goodworth
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DEVELOPMENT ASSESSMENT

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