



Office of
Environment
& Heritage

Our Ref: DOC18/332280
Your Ref: MP10_0167 MOD 2

Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Attention: Ms Emma Butcher

Dear Ms Butcher

Re: Section 75W Modification of consent (MOD 2) – Belle O'Connor Street, South West Rocks

Thank you for your email dated 24 May 2018 about the proposed modification 2 for the residential subdivision at Belle O'Connor Street, South West Rocks, seeking additional comments from the Office of Environment and Heritage (OEH). I appreciate the opportunity to provide further input.

We understand that a project approval (MP08_0167) was granted by the Planning Assessment Commission (PAC) on 3 June 2011. This approval was for a residential subdivision in 11 stages.

The OEH made previous comments on the original Mod 2 proposal on 9 November 2016 and again on 7 April 2017. These comments reaffirmed the OEH's original position that biodiversity impacts and conservation outcomes were acceptable and appropriate subject to the protection and rehabilitation of an approved 14.9 ha conservation area over the adjoining Environmental Conservation zone on Lot 35 DP 1214499.

Mod 2 initially sought to enable stages 10 and 11 to proceed separately and independently of stages 1 to 9. The OEH responded to this with a recommended approach that required a proportionate component of the 14.9 ha conservation area to be secured and rehabilitated concurrent with any approval for stages 10 and 11. We further indicated that a mechanism enabling the staged dedication, rehabilitation and management of the smaller (3.7 ha) conservation component agreed to, should be provided and that a corresponding Vegetation Management Plan (VMP) should be developed prior to approval.

To be consistent with the NSW Rural Fire Service (RFS) guidelines *Planning for Bushfire Protection* (RFS, 2006) and the Kempsey DCP 2013, the OEH also sought to ensure that any required bushfire Asset Protection Zone (APZ) were to be included within the development area of Lot 36 DP 1214499 rather than within the adjoining Lot 35.

The proponent's most recent Mod 2 development layout appears to have dealt with this issue and has included the required APZs within the adjacent higher risk lots that now have an indicated building envelope design that restricts dwelling location.

However, we now further understand that the RFS may require a boundary fire trail of six metres width and a proposed APZ of unknown extent for the fire trail itself.

The OEH is uncertain whether the proposed fire trail has been approved by the Department of Planning and Environment (DPE) as a defined condition within its original determination. If it has been made as part of another Modification then this has not been made clear when we previously commented. If so, then this development infrastructure impact has not been assessed and included when the original offset area was negotiated.

Certainly, any additional fire trail and/or APZ requirement within the Conservation Zone would not only be inconsistent with the DPE's original Assessment Report (p. 17) but would also be an additional development infrastructure impact and require further assessment and an additional offset to be provided.

Depending on the legal status of the proposed fire trail, its location and a clarification regarding RFS requiring an APZ over the fire trail, by implication within the E2 Zone, then the proposal may not be consistent with the DCP in the following areas.

- 4.1 Master Plan (e) Any buffer areas nominated in a Master Plan are to be located wholly outside of land zoned E2 – Environmental Conservation.
- 6.8 Environment, Safety, Health (b) The E2 – Environmental Conservation zoned lands should only be impacted upon in a manner consistent with the objectives of the zone. In this regard, opportunities to develop this land will be restricted to retention and rehabilitation of the land to preserve the natural buffer that exists between land available for residential development and valuable estuarine habitat.
- 6.15 Buffer Zones (c) No building works are to occur within a 50m buffer to land zoned E2 – Environmental Conservation; and d) APZ's and fire trails for bushfire protection are to be located wholly outside of land zoned E2 – Environmental Conservation.
- 6.20 Bushfire a) All Asset Protection Zones and fire trails are to be contained within land zoned R1 – General Residential and not in land zoned E2 – Environmental Conservation.

The OEH recommends that:

1. the requirement for, and the legal location of, a boundary fire trail and Asset Protection Zone should be reconsidered and clarified;
2. depending on the outcome of recommendation 1 above, a further assessment and discussion of additional biodiversity impacts, possibly within the proposed Conservation Zone, should be provided and assessed as necessary;
3. depending on the outcomes of recommendations 1 and 2 above, an additional biodiversity offset should be provided if required, and any such additional offset should be proportionally established in accordance with the proposed Mod 2 staging; and
4. a suitable mechanism should be proposed for the dedication and rehabilitation of the 3.7 ha (or possibly larger) proportional conservation offset area specifically linked to the Stage 10 and 11 approvals.

The OEH would be happy to liaise further on this matter following clarification of the above matters. If you have any further questions about this issue, Mr Ross Wellington, Senior Conservation Planning Officer, Regional Operations, OEH, can be contacted on 6640 2514 or at ross.wellington@environment.nsw.gov.au.

Yours sincerely

 5 June 2018

DIMITRI YOUNG
Senior Team Leader Planning, North East Branch
Regional Operations