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By email: sarah.goldsmith@midwestern.nsw.gov.au

Dear Sarah

RE: Reduction of minimum lot size for 277 Black Springs Road, Eurunderee – Lot 3 DP 1223039

Thank you for consulting the Biodiversity, Conservation and Science Group (BCS) of the Department of Climate Change, Energy, the Environment and Water (NSW DCCEEW) regarding the proposed amendment of Mid-Western Regional Local Environmental Plan 2012 to reduce the minimum lot size at 277 Black Springs Road, Eurunderee from 400 hectares (ha) to 12 ha. We have reviewed the planning proposal dated 17 May 2023, and the Gateway Determination Report dated 24 April 2024.

BCS recommendations

In summary:

- We support the previous proposal to rezone the subject lot from C3 Environmental Management to R5 Large Lot Residential being removed,
- We have no objections to the planning proposal, which now only comprises the proposed reduction in minimum lot size from 400 ha to 12 ha.
- Future development of the proposed lot should involve early assessment of biodiversity, to determine if the activity would trigger the NSW Biodiversity Offsets Scheme (BOS). All direct and prescribed impacts to areas within the Biodiversity Values Map and all clearing including provisions for fencing, asset protection zones and all ancillary developments must be included to determine BOS thresholds.
- We recommend that any future development application should include a covenant to protect the native vegetation within the lot. For example, this could be a Vegetation Management Plan secured on the property title at the time the subdivision consent is granted.

We provide the following advice for Council's consideration for any future development of the lot. The majority of the proposed lot is mapped within the Biodiversity Values Map. Additionally, the NSW State Vegetation Type Map indicates that proposed lot 5 is likely to contain vegetation types consistent with threatened ecological communities (TECs).

Further, within the cleared vegetation areas, there is a likelihood of presence of White Box Yellow Box Blakeley's Red Gum Woodland (Box Gum Woodland) TEC, which is a Critically Endangered Ecological Community (CEEC). This meets the definition of high environmental value (HEV) under the Central West and Orana Regional Plan 2041, which comprises TECs including CEECs and potentially Serious and

Irreversible Impact (SAIL) candidate entities. Avoidance of these areas of HEV would be consistent with Objective 5 of the Regional Plan.

Detailed comments are provided in **Attachment A**.

BCS standard advice

We have developed a standard approach for planning proposals to assess biodiversity impacts on HEV land. The approach is set out in the three attachments to this letter:

- **Attachment B** describes our recommended steps for assessing and addressing biodiversity as part of a planning proposal. This aims to ensure that a planning proposal can demonstrate consistency with the strategic planning framework including the relevant Regional Plan, particularly in identifying and protecting HEV lands.
- **Attachment C** describes the HEV criteria and provides our recommended method for investigating lands for the presence of the HEV criteria at the property scale as part of a planning proposal.
- **Attachment D** provides our recommended guidance for avoiding and minimising impacts on HEV land as part of a planning proposal.

We encourage Council to contact us early to clarify any of our feedback or discuss components of planned fieldwork for identification of HEV or preparation of any biodiversity studies associated with the planning proposal. Early engagement can simplify the biodiversity assessment process associated with any potential development assessments related with this planning proposal.

If you require any further information regarding this matter, please contact Prakriti Mukherjee, Graduate Conservation Planning Officer, via prakriti.mukherjee@environment.nsw.gov.au.

Regards



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2 July 2024

Attachment A – BCS Detailed Comments

Attachment B – BCS NW Branch Steps for Assessing Biodiversity in Planning Proposals

Attachment C - BCS NW Branch HEV Criteria and Identification Methods at the Property Scale

Attachment D - BCS NW Branch HEV Guidance for Avoiding and Minimising Impacts on HEV Land

BCS's Detailed Comments and Recommendations

277 Black Springs Road, Eurunderee – Planning Proposal

BAM	Biodiversity Assessment Method
BC Act	<i>Biodiversity Conservation Act 2016</i>
BC Reg	<i>Biodiversity Conservation Regulation 2017</i>
BDAR	Biodiversity development assessment report
BOS	Biodiversity Offset Scheme
Box Gum Woodland CEEC	White Box, Yellow Box, Blakely's Red Gum Critically Endangered Ecological Community
BV Map	Biodiversity values map
DCCEEW	Department of Climate Change, Energy, Environment and Water
HEV	High environmental value
LEP	Local environmental plan
LSPS	Local strategic planning statement
MLS	Minimum lot size
SAII	Serious and irreversible impact

1. Biodiversity

We understand that the planning proposal comprises a change to the minimum lot size at Lot 5 from 400 ha to 12 ha, to facilitate subdivision to yield one additional residential lot at 277 Black Springs Road, Eurunderee. We support the land zoning to remain as C3 Environmental Management, unlike the R5 Large Lot Residential as originally proposed, and have no objection to the minimum lot size being reduced from 400 ha to 12 ha.

BCS has four areas of interest relating to strategic land use planning proposals:

1. The impacts of development intensification on biodiversity;
2. Adequate investigation of the environmental constraints of affected land;
3. Avoiding intensification of land use and settlement in areas of high environmental value (HEV); and
4. Ensuring that development within a floodplain is consistent with the NSW Government's Flood Prone Land Policy, the principles set out in the Floodplain Development Manual, and applicable urban and rural floodplain risk management plans.

We generally support strategic planning proposals which:

- Avoid settlement intensification in areas of HEV and environmental hazards;
- Aligns with state, regional and local strategic planning frameworks and includes objectives, such as 'no net loss of native vegetation';
- Update planning controls to reflect the environmental values and constraints present; and
- Minimise flood risk to human life, property and the local environment while maintaining floodplain connectivity for environmental benefit.

We have reviewed the planning proposal for 277 Black Springs Road, Eurunderee. Detailed comments and recommendations are provided below to:

- help Council meet the stated aims and intent of the strategy,
- facilitate consistency with the Objective 5 Central West and Orana Regional Plan 2041,

- inform the proposed planning proposal and master planning/development control planning,
- simplify future development assessment.

BOS Triggers:

The *Biodiversity Conservation Act 2016* (BC Act) and *Biodiversity Conservation Regulation 2017* (BC Reg) section 7.1 apply to subdivisions. When assessing subdivisions, the consent authority must consider the clearing of native vegetation required, or likely to be required, for the purpose for which the land is to be subdivided.

Native vegetation includes trees, understorey plants, groundcover and plants occurring in a wetland that are native to New South Wales (including planted native vegetation), not just trees.

If the subdivision will impact native vegetation and the clearing exceeds the biodiversity offsets scheme (BOS) thresholds (Part 7, BC Reg), the biodiversity assessment method (BAM) must be applied and a biodiversity development assessment report (BDAR) prepared to assess and calculate the biodiversity offset credit requirement.

Biodiversity offsets are calculated and secured in accordance with the *Biodiversity Conservation Act 2016* for the subdivision. Once this is done, no further offsets are required for subsequent development of the land that is within the approved subdivision.

The BAM requires proponents to demonstrate that biodiversity impacts have been avoided and minimised as far as possible, with residual impacts offset. Both the complexity of assessments, and the costs to the proponent associated with complying with the BOS, are lower where impacts on biodiversity are avoided and/or concentrated in areas of lower vegetation integrity.

Additionally, vegetation on the proposed lot is mapped within the Biodiversity Values Map (BV Map). The BV Map identifies land with high biodiversity values that is particularly sensitive to impacts from development and clearing. The BOS threshold is exceeded if clearing of native vegetation is proposed on land mapped on the BV Map. Additionally, if a future development involves prescribed impacts to directly impact vegetation on the BV Map, then entry into the BOS is triggered and BAM must be applied.

For the proposed lot at 277 Black Springs Road, Eurunderee, the proposed MLS for the subject land is 12 ha, therefore the area clearing threshold for this site is 0.5 ha. Based on the information provided it is likely that the impacts of the future subdivision of the subject site will trigger entry into the BOS.

Potential for Serious and Irreversible Impact entities to occur:

High-level threatened ecological community mapping on SEED datasets indicates the potential presence of Box Gum Woodland CEEC on the proposed lot, likely derived native grassland. This entity is considered at risk of serious and irreversible impacts (SAIL) within the meaning of clause 6.7 of the BC Reg. Entities at risk of SAIL have additional assessment requirements under the BAM. We recommend this be ground truthed at or prior to development application stage to accurately determine the biodiversity values present on site.

Under section 7.16 of the BC Act, the consent authority must refuse to grant consent if the approval of a proposed development is likely to have a serious and irreversible impact on SAIL entities. Further advice regarding determination of serious and irreversible impacts is available via the *Guidance to assist a decision-maker to determine a serious and irreversible impact* (DPIE, 2019). This guidance is available on the Department's website at <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/local-government-and-other-decision-makers/serious-and-irreversible-impacts-of-development>.

BCS NW Branch Steps for Assessing Biodiversity in Planning Proposals

Introduction

Planning proposals should demonstrate consistency with the State, regional and local strategic planning framework including the relevant Regional Plan and section 9.1 Ministerial Directions. To be consistent with the relevant Regional Plan for areas with High Environmental Value (HEV) (see **Attachment B** for identifying HEV), planning proposals should identify areas of HEV at the property scale and avoid intensification of development and land uses in those areas.

The s.9.1 Direction 2.1 Conservation Zones, require that Councils in preparing or amending an LEP must include provisions that facilitate the protection and conservation of Environmentally Sensitive Areas (ESAs) zoned or otherwise identified for conservation. As a minimum, these provisions must aim to maintain the existing level of protection for ESAs within the local government area (LGA), as afforded by the current LEP

Avoiding and minimising land use intensification in HEV areas may also facilitate future development by avoiding triggering the Biodiversity Offset Scheme (BOS) at the development application stage; or simplifying the application of the Biodiversity Assessment Method (BAM) and reducing future biodiversity credit liability.

Biodiversity assessment for all planning proposals which affect HEV

Biodiversity assessment for planning proposals should implement the following steps:

Step 1: Identify HEV

The planning proposal should identify and map areas of HEV with desktop analysis and site investigations when required, as set out in **Attachment B**.

Step 2: Avoid and minimise impacts on HEV

The planning proposal should take into consideration any impacts throughout the life of the proposal and all possible future land uses. Once all impacts are identified, the proposal can be located and designed to maximise avoidance of land use intensification in HEV areas and adhere with the guidance in

Attachment C. Step 3: Protect HEV

The planning proposal should maintain or improve existing planning provisions to protect HEV, while permitting land use intensification on certain parts of the land suitable for development. Updates to planning controls should reflect the environmental values and constraints present on the land, rather than permitting development intensification uniformly across an entire site. Areas of HEV should instead be better protected by updating LEP provisions, such as through:

- an appropriate zone which has strong conservation objectives and limited land uses
- an appropriate minimum lot size (MLS) so the land cannot be subdivided
- updating terrestrial biodiversity mapping
- creating local provisions which:
 - contain site specific constraints such as buffers, objectives and considerations for future development consents and limits certain development or land uses
 - identifies land with "high biodiversity significance"¹ to preclude exempt or complying development from occurring on any ESAs
 - require future management actions through a Development Control Plan (DCP) or Biodiversity and Vegetation Management Plan (BVMP).

Optional step for large or complex planning proposals which affect HEV

Step 4: Identify biodiversity values and entities at risk of Serious and Irreversible Impacts (SII)

¹ State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 – cl.1.5(g) and Standard Instrument – Principal Local Environmental Plan (2006 EPI 155a) cl.3.3(g) "environmentally sensitive area" includes land identified in an environmental planning instrument as being of high biodiversity significance.

The planning proposal could apply Stage 1 of the Biodiversity Assessment Method (BAM) to identify Plant Community Types, threatened species and ecological communities, as well as SAll entities likely to be present. Application of Stage 1 of the BAM can be beneficial at the planning proposal stage as, if in the opinion of Council any:

- clearing associated with future subdivision or development of the land is likely to impact native vegetation and exceed the thresholds in Part 7 of the *Biodiversity Conservation Regulation 2017*, then a biodiversity development assessment report will be required at the development application stage.
- future development is likely to have a serious and irreversible impact on a SAll entity, then under section 7.16 of the *Biodiversity Conservation Act 2016* a consent authority must refuse to grant consent to the development. Further advice regarding determination of serious and irreversible impacts is available via the [Guidance to assist a decision-maker to determine a serious and irreversible impact \(2019\)](#).

By applying Stage 1 of the BAM as part of the planning proposal, the proponent can further identify and avoid areas of biodiversity value that will generate a biodiversity credit liability or contain SAll entities in the development application planning phase. When biodiversity is considered strategically at planning stage, future development assessment can be simplified and credit obligations reduced.

BCS NW Branch HEV Criteria and Identification Methods at the Property Scale

High Environmental Value (HEV) Criteria and Components		Property Scale HEV Identification Method
Criterion 1. Sensitive Biodiversity Mapped on the Biodiversity Values Map		
1.1 Biodiversity Values Map		a. Identify the parts of the land on the Biodiversity Values map which can be viewed at https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/about-the-biodiversity-offsets-scheme/when-does-bos-apply/biodiversity-values-map . b. Include any BV map areas as HEV.
Criterion 2. Native vegetation of high conservation value		
2.1 Vegetation in over-cleared landscapes (Mitchell landscapes)		a. Identify over-cleared Mitchell landscapes by viewing map data from the SEED portal https://www.seed.nsw.gov.au/ – selecting NSW (Mitchell Landscapes) – latest version, selecting 'Show on Seed Map' and viewing the 'View Over Cleared Land Status'. b. Map all native vegetation on the land as HEV if it is in an over-cleared Mitchell landscape.
2.2 Over-cleared vegetation types		a. Identify Plant Community Types (PCTs) on the land through field work. b. Register and visit the Vegetation Information System (VIS) database at vis@environment.nsw.gov.au . c. Use the VIS to determine whether the % cleared status of the PCTs identified through field work on the land is above 70%. d. Map all PCTs on the land with the % cleared above 70% as HEV.
2.3 Threatened Ecological Communities - any vulnerable, endangered, or critically endangered ecological community listed under the BC Act, the FM Act 1994 or the EPBC Act and not mapped on the BV map		a. Identify Plant Community Types (PCTs) on the land through field work. b. Register and visit the VIS database at vis@environment.nsw.gov.au . c. Use the VIS to determine whether the PCTs on the land have Threatened Ecological Community (TEC) Status. d. If not identified as a TEC from steps a – c above, then refer to the NSW Threatened Species Scientific Committee determinations to consider whether the any of the PCTs accords with the determinations. e. Map all PCTs on the land that are TECs as HEV.
Criterion 3. Threatened species		
3.1 Key habitat for threatened species (vulnerable, endangered, or critically endangered species listed under BC Act)	Key breeding habitats with known breeding occurrence	a. Search BioNet for threatened species records on and within 10km of the land b. Undertake field work to identify potential breeding habitats on the land for threatened species. c. Either assume breeding occurrence and map identified breeding habitats on the land as HEV or undertake targeted surveys during the applicable breeding season(s) and map these habitats as HEV if breeding occurs there.
	Core Koala Habitat	a. Check council records for approved comprehensive or individual property Koala Plans of Management (KPoM). b. Identify areas of core koala habitat on the land mapped in any approved KPoM and map these areas as HEV. c. If there are no approved KPoMs, then undertake field work in accordance with the relevant State Environmental Planning Policy (SEPP) for koalas, e.g. SEPP (Biodiversity and Conservation) 2022, to determine whether Core Koala Habitat is present on the land. d. Map any core koala habitat identified on the land through field work as HEV.
	Habitat for known populations of flora and fauna species-	a. Search BioNet for threatened species records on and within 10km of the land. b. Undertake field work to identify populations of threatened

High Environmental Value (HEV) Criteria and Components		Property Scale HEV Identification Method
	credit-species and SAI entities (species-credit species and SAI entities are identified in the Threatened Biodiversity Data Collection)	<p>species credit species on the land and their habitats.</p> <p>c. Map all habitats of known populations of species credit species on the land as HEV.</p> <p>The Biodiversity Assessment Method and the Department's survey assessment guidelines should be referred to for suitable habitat assessment methodologies and can be found here.</p> <p>If a recent Biodiversity Development Assessment Report has been prepared for the land, then this could be referred to in support of demonstrating how this criterion has been considered.</p>
	Key habitats for migratory species	<p>a. Search BioNet for threatened migratory species records on and within 10km of the land.</p> <p>b. Undertake field work to identify habitats of threatened migratory species on the land.</p> <p>c. Map all habitats of threatened migratory species on the land as HEV.</p>
Criterion 4. Wetlands, rivers, estuaries & coastal features of high environmental value		
4.1 Nationally important wetlands	<p>Note: Rivers and their riparian areas comprising HEV are already included in the Biodiversity Values Map under HEV Criterion 1 as protected riparian land</p>	<p>a. Search the Directory of Important Wetlands in Australia for those occurring in NSW available at http://www.environment.gov.au/cgi-bin/wetlands/search.pl?smode=DOIW.</p> <p>b. Identify any nationally important wetlands listed in the directory that occur on the land and map these areas as HEV.</p>
Criterion 5. Areas of geological significance		
5.1 Karst landscapes		<p>a. Identify whether limestone outcrops or caves occur on the land.</p> <p>b. Consider any additional Karst landscapes that occur in the vicinity of the land, with reference to the NSW Government's <i>Guide to New South Wales Karst and Caves</i> available at https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Land-and-soil/nsw-karst-cave-guide-110455.pdf and any other available karst mapping, such as karst maps associated with local environmental plans.</p> <p>c. Map any limestone outcrops or caves on the land and any other karst landscapes that occur in the vicinity of the land as HEV.</p>
5.2 Sites of geological significance included in the State Heritage Register or Heritage Inventory		<p>a. Map any sites of geological significance that occur on, or in the vicinity of, the land as HEV. Refer to the State Heritage Inventory and map at https://www.environment.nsw.gov.au/topics/heritage/search-heritage-databases/state-heritage-inventory</p>

BCS NW Branch HEV Guidance for Avoiding and Minimising Impacts on HEV Land

Decisions about the location of land use intensification in planning proposals should be informed by knowledge of biodiversity values including High Environmental Values (HEV) recognising that this is an iterative process that should consider the guidance provided below.

Locating land use intensification to avoid and minimise impacts on validated HEV

1. Planning proposal design, including the potential location of future temporary and permanent ancillary construction and maintenance facilities, should minimise direct impacts to clearing of native vegetation, habitat of threatened species and ecological communities, and validated HEV.

Impacts can be avoided and minimised by locating land use intensification in areas:

- (a) where there are no biodiversity values e.g. locating future development away from native vegetation, geological features of significance or waterbodies
 - (b) that avoid habitat for species and native vegetation communities in high threat status categories (i.e. endangered or critically endangered species or communities)
 - (c) where the native vegetation or threatened species habitat is in the poorest condition (e.g. areas that have already been disturbed)
 - (d) such that connectivity enabling movement of species and genetic material between areas of adjacent or nearby habitat is maintained e.g. further fragmenting or isolating habitat patches, and migratory flight paths to important habitat.
2. In selecting locations for land use intensification, the following alternatives should be addressed:
 - (a) optimising the locations of land use intensification to minimise future interactions with threatened species and ecological communities, e.g. allowing for buffers around features that attract and support aerial species, such as forest edges, riparian corridors and wetlands, ridgetops and gullies, and National Park estate²
 - (b) alternative locations that would avoid or minimise impacts on biodiversity values and justification for selecting the proposed location
 - (c) alternative sites within a property on which land use intensification is proposed that would avoid or minimise impacts on biodiversity values and justification for selecting the proposed site.
 3. Justifications for decisions on the location of land use intensification should identify any other site constraints that the proponent has considered in determining the location and design of these areas, e.g. bushfire protection requirements including clearing for asset protection zones, flood planning levels, servicing constraints.
 4. Actions taken to avoid and minimise impacts through locating areas for land use intensification must be documented and justified in the planning proposal.

² For more information, see the Developments adjacent to NPWS lands: Guidelines for consent and planning authorities (Environment, Energy and Science, 2020), accessible at <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Parks-reserves-and-protected-areas/Development-guidelines/developments-adjacent-npws-lands-200362.pdf>

Other Impacts on validated HEV

Some future development to be enabled by a planning proposal may have other impacts on validated HEV in addition to, or instead of, impacts from clearing vegetation and/or loss of habitat. For many of these impacts, validated HEV may be difficult to quantify, replace or offset, making avoiding and minimising impacts critical.

Other impacts on validated HEV can include:

- (a) impacts of future development on the habitat of threatened species or ecological communities associated with:
 - i. karst, caves, crevices, cliffs and other geological features of significance, or
 - ii. rocks, or
 - iii. human made structures, or
 - iv. non-native vegetation
- (b) impacts of future development on the connectivity of different areas of habitat of threatened species that facilitates the movement of those species across their range
- (c) impacts of future development on movement of threatened species that maintains their life cycle
- (d) impacts of future development on water quality, water bodies and hydrological processes that sustain threatened species and threatened ecological communities (including from subsidence or upsidence resulting from underground mining)
- (e) impacts of wind turbine strikes on protected animals
- (f) impacts of vehicle strikes on threatened species or on animals that are part of a Threatened Ecological Community.

Within the BC Act, these types of impacts are called 'prescribed impacts'. Where the Biodiversity Offset Scheme is triggered by a future development, the decision maker may increase the number of biodiversity credits to be retired (or other conservation measures to be undertaken) to compensate for residual prescribed impacts. Avoiding these types of impacts to HEV at the planning proposal stage can simplify future development assessment at the site.
