



## Office of Environment & Heritage

Your reference: PEX2013/0003  
Our reference: DOC15/39042  
Contact: Rachel Lonie 9995 6837

Mr Michael Haynes  
Sustainable Urban Planning Manager  
Warringah Council  
Civic Centre 725 Pittwater Road  
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Attention: Theo Zotos

Dear Mr Haynes

Reference is made to correspondence to the Office of Environment and Heritage (OEH) regarding Gateway consultation prior to public exhibition of a planning proposal for Ralston Ave, Belrose (Lot 1 DP 1139826).

Comments on the planning proposal are provided in Attachment 1. This includes comments on biodiversity and Aboriginal heritage issues associated with the proposal and advice as requested on the biodiversity certification process. This updates and expands on the information that was provided previously to Council at a meeting in October 2013 and addresses a number of issues that were raised in a subsequent meeting with OEH on 12 February 2015.

In summary, OEH considers the current proposal cannot be supported. There are significant biodiversity issues that should be addressed at this planning stage and not deferred to development assessment stage. OEH has a number of concerns about the impacts of the proposal, but most particularly that an E3 Environmental Management zoning for retained bushland will not ensure that the land can be appropriately protected and managed for conservation purposes.

OEH also has identified inadequacies in the ecological surveys and assessment and recommends these be addressed in order for an adequate assessment to be undertaken. In particular, an assessment of the impacts over the entire site, supported by appropriate studies is required before any consideration is given to a zoning outcome that would diminish the biodiversity values of the land. OEH also raises concerns that Aboriginal cultural heritage impacts have not been appropriately assessed.

OEH strongly recommends that the current planning proposal be reconsidered and that Council proceed instead with Biocertification of the land. Biocertification systematically assesses the biodiversity values present across the site upfront to inform the development footprint so that impacts are avoided and/or minimised. It provides secure offsets for any residual impacts through the use of Biobanking agreements. Most importantly, it streamlines the assessment process at the development application stage reducing costs for both developers and Council as the consent authority. As requested this correspondence includes general advice on the biodiversity certification process. OEH suggests further consultation and early engagement with OEH if this approach is pursued.

If you have any queries regarding this advice please contact Rachel Lonie, Senior Operations Officer, on 9995 6837.

Yours sincerely

*S. Harrison 27/02/15*

**SUSAN HARRISON**  
**Senior Team Leader, Planning**  
**Greater Sydney**  
**Regional Operations**

## **ATTACHMENT 1. Office of Environment and Heritage comment on a planning proposal for Ralston Ave, Belrose (Lot 1 DP 1139826).**

### **Background**

A draft planning proposal was exhibited as preliminary (non-statutory) community consultation in May to June 2013. OEH was not invited to comment on the preliminary proposal and it also does not appear that the National Parks and Wildlife Service (NPWS) was consulted as an adjoining landholder. Warringah Council voted not to proceed with the application to Gateway however this decision was challenged by the proponent who is the Metropolitan Local Aboriginal Land Council (MLALC).

The Department of Planning and Environment (DPE) undertook a Pre-Gateway review and recommended the proposal be reviewed by the Sydney East Joint Regional Planning Panel (JRPP). The JRPP, supported by advice from DPE, recommended the proposal proceed to Gateway with conditions that included changing the zoning for the retained bushland to E3 Environmental Management rather than the zoning recommended by Council which was E2 Environmental Conservation. In this decision it was noted that resolution of impacts on threatened species and managing the potential risks of bushfire would be deferred to development assessment stage.

OEH has been invited to comment on this revised planning proposal prior to its public exhibition.

### **1. Biodiversity**

The Office of Environment and Heritage (OEH) has considered the environmental assessment reports that have been prepared to support the planning proposal for Lot 1 DP 1139826 Ralston Avenue, Belrose. This includes:

- Travers bushfire and ecology (Aug 2013) *Ecological Assessment Planning Proposal for Lot 1 DP1139826 Ralston Ave Belrose* which incorporates information from their earlier study
- Travers bushfire and ecology (April 2013) *Ecological Survey and Offset Analysis Planning Proposal Ralston Ave Belrose*
- Eco Logical Australia *Preliminary Biocertification Assessment – Ralston Road Subdivision Belrose* which was provided in a letter to Matthews Civil Pty Ltd on 14 August 2013
- Urbis (April 2013) *Planning Proposal Ralston Avenue Belrose*
- Warringah Council (October 2013) *Planning Proposal Ralston Avenue Amendments to Warringah Local Environmental Plan 2011*

The land subject to this planning proposal is densely vegetated and surrounded on three sides by Garigal National Park. It supports significant biodiversity values and provides an important buffer to the National Park. The planning proposal will rezone 17.59ha of the land to R2 Low Density Residential and 118ha to E3 Environmental Management, which allows for a range of uses with and without consent. An Asset Protection Zone surrounding the residential development will require modification, in the form of partial clearing, of 5.53ha of the E3 land.

Travers bushfire and ecology have undertaken a number of surveys of the land which forms part of the planning proposal, initially in 2008 and then between late 2011 and August 2013, as part of an ecological constraints assessment of the site. Its surveys show that eight threatened

fauna species (Giant Burrowing Frog, Red-crowned Toadlet, Rosenbergs Goanna, Powerful Owl, Little Lorikeet, Grey-headed Flying-fox, Little Bentwing-bat, Eastern Bentwing-bat), two threatened flora species (*Grevillea cayeley*, *Tetratheca glandulosa*) and an endangered ecological community (Coastal Upland Swamp of the Sydney Basin) are present or use habitat at the site. It also considered Spotted-tailed Quoll which, although not recorded, has the potential to use habitat at the site. Warringah Council has subsequently recorded an additional threatened species (Eastern Pygmy Possum) using the proposed residential area and identified another threatened species (Southern Brown Bandicoot) with records in the local area which is likely to use habitat at the site. Council has also noted that the Duffy's Forest Endangered Ecological Community (EEC) may be present within the proposed residential area.

Travers bushfire and ecology concluded that a number of the threatened fauna species (Powerful Owl, Little Lorikeet, Grey-headed Flying-fox, Little Bentwing-bat, Eastern Bentwing-bat, Spotted-tailed Quoll) were unlikely to represent a constraint to the proposal because they are only likely to move through or forage at the site and there is plenty of other suitable habitat elsewhere in the locality. OEH considers that these threatened species are less likely to be impacted directly in the short term, but the cumulative effect of reducing foraging resources, restricting movement through the landscape and increasing exposure to threatening process associated with urban development will take their toll in the longer term.

The subject site is part of a much larger north-south natural area that connects Garigal and Ku-ring-gai Chase National Parks. It has been identified in the *Rapid Fauna Habitat Assessment of the Sydney Metropolitan Catchment Management Area* (OEH 2008) as having a very high fauna habitat ranking. The Garigal Oxford Falls area ranks 15 in 49 habitat areas. The connectivity of this bushland will be enhanced when the planned land bridge over Mona Vale Road as part of the road widening works is established as it will facilitate broader wildlife movement.

Specialist reports were commissioned for Giant Burrowing Frog, Red-crowned Toadlet, Rosenberg's Goanna and Eastern Pygmy Possum to determine the extent of the impacts on these species which use parts of the site for breeding, foraging and/or shelter. These reports found that the planning proposal would not have a significant impact on:

- Rosenberg's Goanna because the local population extends well beyond site and, while individual animals using the site might be affected, the site itself does not appear to be important for breeding purposes nor would the proposal fragment or isolate areas of habitat used by this species;
- Giant Burrowing Frog because their density at the site is low and it is unlikely that habitat in the proposed residential area on the plateau is routinely used for shelter, foraging or breeding. It is also unlikely that development would impact on the connectivity between habitat used for foraging or shelter and breeding, because most of the identified breeding sites were some distance from the plateau; and
- Red-crowned Toadlet because, apart from four breeding sites on the edge of the plateau, most of the breeding locations identified were outside of the proposed residential area along semi-permanent drainage lines and soaks that occur near the escarpment and downslope of the plateau. Movement corridors for this species are also largely within the escarpment and mid-slope areas, so development of the plateau is unlikely to have a major impact on connectivity between the habitats used by this species. However, indirect impacts of the proposed development on the hydrology of the drainage lines and soaks used by this species are likely and would require specific mitigation measures.

The report on the Eastern Pygmy Possum however, concluded that the planning proposal would impact important areas of foraging and breeding habitat for this species. These impacts would be both direct, through the clearing of habitat for residential development, as well as indirect, through the introduction of domestic animals (particularly cats) associated with this development. The report notes that suitable foraging habitat also occurs on the land surrounding the proposed residential area but recommends further surveys of this land be undertaken to determine whether the vegetation provides equivalent breeding habitat to the development area in terms of suitable tree hollows and if dispersal is possible east and west from these lands to the adjoining national parks in order to maintain the local population of this species. Specific recommendations are made in the report regarding further survey requirements for Eastern Pygmy Possum and OEH considers that these recommendations should be implemented to ensure that the impacts on this species are adequately understood.

Travers bushfire and ecology notes that the survey effort for Southern Brown Bandicoot did not meet national guidelines in terms of survey seasonality and the recommended level of survey effort undertaken using baited infrared cameras and hair tubes. Surveys for this species were only undertaken within the proposed development area and Travers bushfire and ecology acknowledges that failure to detect Southern Brown Bandicoot should not be considered as indicative of their absence. This species occurs at very low densities in this part of its range and OEH considers that a more intensive use of baited infrared cameras over a longer time period (up to 1 month) during autumn would be required to detect them.

Travers bushfire and ecology reports that 149 *Tetradlea glandulosa* plants will be directly impacted by the proposed residential development. These plants are likely to be part of a larger population that extends on to the surrounding land, but no adequate targeted surveys have been undertaken to determine the size and extent of this population. OEH considers that additional targeted searches for this species are required on the surrounding lands during its peak flowering period to determine whether the loss of 149 plants is likely to be significant and if the proposed development footprint will need to be amended to reduce this loss.

According to Travers bushfire and ecology only one *Grevillea caleyi* plant will be directly impacted by the residential development. There are an additional seven juvenile plants within and adjoining the Wyatt Avenue road corridor which have the potential to be impacted by the future extension of this road. The Travers bushfire and ecology report notes that the road extension has been altered to avoid any direct impacts on these plants, but it is not clear whether indirect impacts have been adequately addressed. No targeted surveys were undertaken for *Grevillea caleyi* on the land surrounding the proposed development area. The Travers bushfire and ecology report states that there is suitable habitat for the species in the open forest communities on this land, but OEH considers that this needs to be confirmed through further targeted survey work. The adjoining Belrose substation lands support 38 *Grevillea caleyi* plants following a recent hazard reduction fire and it is likely that the soil seed bank in other areas of suitable habitat for this species within planning proposal retains similar regenerative potential with appropriate management.

The vegetation mapping undertaken for the site by Travers bushfire and ecology recognises seven vegetation structures which are then grouped into five communities on the basis of their floristics and occurrence in the landscape. There has been some attempt to compare these communities with those previously identified by Smith and Smith (2000) in their vegetation mapping for Warringah, but not all communities correspond. Eco Logical Australia have converted these communities into best fit biometric vegetation types for its preliminary Biocertification Assessment and mapped four biometric vegetation types as being present at the site.

As a result of their vegetation mapping, Travers bushfire and ecology identifies 1.94 ha of the Coastal Upland Swamp EEC as being present within the planning proposal of which 0.13ha (6.7%) will be directly impacted by development. Eco Logical Australia notes that the biometric vegetation type Needlebush–Banksia wet heath of sandstone plateaux corresponds to the Coastal Upland Swamp EEC and estimates that 5.07ha in total is present within the planning proposal of which 0.59ha (11.6%) will be impacted by development. Neither Travers bushfire and ecology nor Eco Logical Australia map the Duffy's Forest Endangered Ecological Community as being present within the planning proposal, although Travers bushfire and ecology note that the open forest vegetation could include Duffy's Forest, but that further assessment of its quadrat data had ruled this out. However, in its response to the planning proposal, Council reports that studies have mapped an area of Duffy's Forest within the proposed development area directly west of the Belrose substation.

OEH considers that the discrepancies between the various vegetation maps and studies need to be resolved. The best way to achieve this would be through the application of the Biocertification methodology which would require the type and condition of the vegetation across the site to be consistently assessed via biometric plots.

All of the environmental assessment reports for this planning proposal rely on offsetting the biodiversity impacts arising from the residential development on to the surrounding lands. However, these lands are now proposed to be zoned E3 Environmental Management, rather than E2 Environmental Conservation as discussed below. An E3 zoning cannot provide the level of active management and security required to adequately offset the biodiversity losses that will result either directly or indirectly from development of this sensitive site (see discussion below). Without secure offsets, the impacts of development are likely to be significant for those threatened species and endangered ecological communities with habitat on the land proposed to be rezoned.

OEH strongly recommends that the current planning proposal be reconsidered and that Council proceed instead with Biocertification of the land. Biocertification systematically assesses the biodiversity values present across the site upfront to inform the development footprint so that impacts are avoided and/or minimised. It provides secure offsets for any residual impacts through the use of Biobanking agreements. Most importantly, it streamlines the assessment process at the development application stage reducing costs for both developers and Council as the consent authority.

## **2. Zoning outcomes**

The planning proposal report states that more than 85% of the 135 hectare site will remain undeveloped as natural bushland and the environmental zoning will provide for the "*conservation and management of the significant ecological features of the site*". The E2 Environmental Conservation zone initially proposed for this land would have been the best zone to achieve this aim as under the Warringah Local Environmental Plan (LEP) 2011 it has clear conservation objectives and permits, with consent, environmental protection works and roads only.

In advice to the JRPP, DPE recommended an Environmental Management E3 zoning for the majority of the site reasoning that the studies that supported the planning proposal did not provide enough evidence to substantiate the E2 zone and the permitted uses of an E2 zone were too restrictive and might trigger the need for nominating a relevant acquiring authority.

Now under the proposal approximately 118 hectares of bushland would be zoned E3 including 4.7ha of APZ. The E3 zone permits a wide range of land uses including dwelling houses, extensive agriculture, horticulture, recreation areas, community facilities, aquaculture and home businesses and industries. Although this is a reduction of the current 'Category Three' activities under the Warringah LEP 2000, OEH does not consider the E3 zone will provide an adequate level of protection for the significant areas of bushland on the site.

The planning report by Urbis states "*The management of the E3 zone will remain the responsibility of MLALC, and the E3 zone will be accessible to the public through a series of existing bush tracks*". The planning proposal report states it is MLALC's preference that the potential management of this land be by the National Parks and Wildlife Services (NPWS) as an Aboriginal National Park area. It appears that discussions with State Government have stalled on this proposal and it is not known what the current position is in regard to land tenure and management.

Should the land be retained in private ownership and be zoned E3, OEH considers the only outcome that would guarantee that the land is retained, conserved and appropriately managed for its biodiversity values would be for the land to be biobanked and maintained in accordance with a biobanking agreement.

### **3. Asset Protection Zones and Bushfire Protection**

NSW RFS has confirmed that the proposal does not comply with the *NSW Planning for Bushfire Protection 2006*. Resolution of the bushfire protection measures is required before further consideration can be given to biodiversity impacts.

The potential asset protection zones (APZs) will range from a minimum of 15m up to 61m affecting a total of 4.73ha. The Planning Report suggests the APZs can be utilised as public roads, fire trails, playing fields, parking areas, generally cleared drainage zones, generally cleared electricity easements, playgrounds or similar types of managed facilities. The Bushfire Report recommends that peripheral lands to the development should be designated as a bushfire strategic management zone for a width of approximately 100 metres and be edged with a fire trail. It is likely that the APZs will need to be revised in order to ensure that the proposal complies with the bushfire planning guidelines.

The Recreational Study suggests the APZ will include a multi-use path around the perimeter of the proposed development site and form part of a Priority 4 bike path proposed in the *Warringah Bike Plan* (Warringah Council, 2010a) which links the site to the surrounding bike network. It states that the multi-use bike path should also link to the Urban Linkage proposed by Council and the existing Heath Trail. The Recreation Study references the *Garigal National Park Plan of Management*, NSW National Parks and Wildlife Service (NPWS) 1998 which is out of date. Consequently, it incorrectly states that mountain bike riding is a suitable activity on the Heath Trail. As discussed further below mountain bike riding is not permitted on the Heath Trail.

#### 4. Adjoining park issues

The Urbis report states that the site provides immediate access to the Garigal National Park (NP) which offers a range of active and passive recreation opportunities. It notes informal recreation is carried out within the site, notably mountain bike riding and horse riding, along with informal access to walking tracks.

The Heath Track is a walking track that provides access from Ralston Avenue into the NP to the north of the site and it appears that part of the track is located on the MLALC land. Horse riding is allowed on this trail and the proposal appears to retain this access route via the proposed road network. However, the Master Plan (Figure 04 – Landscape Concept) indicates a number of proposed additional new walking trails leading into the NP.

NPWS does not encourage informal access trails into the NP. Linkages with existing walking trails may be advantageous provided they formed part of an overall network that would mesh with an access strategy developed with NPWS as a key stakeholder. Creation of a new system of ad hoc walking trails is not considered desirable due to the cost, environmental damage by removal of vegetative cover and habitat and new opportunities for weed invasion by foot traffic, possible infection by *Phytophthora cinnamomi* and provision of access for feral predators such as the fox.

Bike riding is permitted on authorised management trails within the park but not on walking tracks. Mountain bike tracks are currently being trialled at Bantry Bay and the outcomes of this initiative will inform other proposals within the reserve system. Any such program requires extensive stakeholder consultation, allocation of adequate resources external to the recurrent budget for environmental assessment, construction, on-going maintenance, development of feedback systems to alert users of the track condition following storm events (i.e. open or closed), and development and implementation of an appropriate monitoring program to detect unsatisfactory environmental damage and possible decommissioning.

Bike riding is also taking place along tracks that have been used or created by riders without authorisation. As described in the Garigal NP *Plan of Management* sections of the tracks in the Bantry Bay area are routed through sensitive vegetation communities (such as areas of Coastal Upland Swamp) and across sites of Aboriginal cultural heritage that have strong contemporary connection for Aboriginal communities. Despite management efforts to close tracks and dissuade riders from using these track sections through education and enforcement, impacts are ongoing. OEH would be concerned to ensure that new unauthorised mountain bike tracks were not created either within bushland to be protected on the site or into the NP as a result of the planning proposal and future residential development as proposed.

The planning proposal should be revised to consider adjoining park impacts and the relevant Plan of Management.

#### 5. Aboriginal Cultural Heritage

OEH has considered the information relative to the Aboriginal cultural heritage values for the proposed residential rezoning of land at Ralston Avenue and provides the following advice to Council.

OEH notes that the document *Aboriginal Archaeological Due Diligence Assessment* prepared by Dominic Steele Consulting Archaeology (December 2012) provided to consider the Aboriginal Cultural heritage values and impacts of the proposed subdivision is a due diligence



assessment. OEH does not review due diligence assessments as these documents are solely intended as a legal defence from 'harming' Aboriginal objects under the *National Parks and Wildlife Act 1974*. This form of report is not considered adequate to assess the Aboriginal cultural and archaeological potential of a piece of land, nor can it provide an appropriate assessment of the archaeological potential or the impact that approval of the proposed rezoning activities may have on the Aboriginal cultural heritage (ACH) values of this land.

Consequently the due diligence assessment has not included any Aboriginal community consultation to determine whether there are any ACH values to the Aboriginal community. This is particularly relevant given that the subject land is immediately adjacent to land owned by the Metropolitan Local Aboriginal Land Council (MLALC). OEH further notes that a number of Aboriginal cultural heritage sites are identified in land adjacent to the study area.

OEH recommends that Council require an Aboriginal cultural heritage assessment be prepared in order to appropriately assess the Aboriginal cultural heritage values of the subject. This assessment should be prepared in accordance with OEH Guideline *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW* (2010) in addition to the *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (2010). This would ensure that the proposed subdivision clearly considers the implications of future residential development consequent to the subdivision proposal and how this may affect any Aboriginal cultural heritage values present within this land.

## 6.0 The Biodiversity Certification Process

OEH considers a biodiversity certification approach to be the most effective approach for addressing impacts on threatened species, populations and ecological communities at the strategic planning stage. Biodiversity certification may be granted by the Minister administering the *Threatened Species Conservation Act 1995*, in accordance with Part 7AA if it improves or maintains biodiversity values.

Conferring biodiversity certification on the subject site will mean that a consent authority is not required to consider the likely impact of the development under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) on biodiversity values when determining a development application. It is noted however that referral may be required to the Commonwealth Government as a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Only planning authorities may apply to the Minister to have biodiversity certification conferred on specified land (s.126J(1) of the TSC Act). An application can also be made jointly by two or more planning authorities (s.126J(2) of the TSC Act). Applying for biodiversity certification is voluntary. Biodiversity certification may last for an indefinite period or for a period otherwise determined by the Minister (s.126ZA of the TSC Act). The certification will be subject to periodic reviews by the Minister, generally at 15 year intervals (s.126ZC of the TSC Act).

The biodiversity certification process encourages planning authorities to assess the biodiversity values of land as part of the strategic planning process. In this way, the planning authority may identify:

- areas of high biodiversity value to be protected from development; and
- other areas of lower biodiversity value, including cleared land, suitable for development.

An application for biodiversity certification is made to the Minister for the Environment. It must be accompanied by a biodiversity certification strategy. Both documents are required to be submitted to OEH in draft form. The biodiversity strategy will be supported by a biodiversity assessment report that documents how the proposal has been assessed through the use of the Biodiversity Certification Assessment Methodology (BCAM).

OEH requires that the draft biodiversity strategy, the BCAM assessment and the data that underpins it, be provided to OEH for review and result testing. OEH requires a minimum four week period for this review. The draft biodiversity strategy must clearly identify and quantify the conservation measures and the various areas that will be subject to biodiversity certification.

If the applicant plans to rely on zoning changes to achieve the biodiversity certification outcomes, the biodiversity strategy should be publicly exhibited at the same time as the planning proposal. If the applicant does not intend to rely on zoning changes to achieve the biodiversity certification outcomes the biodiversity strategy can be separately exhibited.

The application form and draft biodiversity certification strategy must be lodged with OEH. Once OEH determines that the application will be supported OEH will provide the applicant with a confirmation of receipt of the application form and strategy. The confirmation of receipt will advise the applicant on requirements for public exhibition. The applicant must notify the public of the biodiversity certification application in accordance with section 126N of the *Environmental Planning and Assessment Act 1979*.

Exhibition must be for a period of not less than 30 days and copies of the application and draft biodiversity strategy must be available at the planning authority's main office and on its website for the duration of the submission period.

### **6.1 Advice on red flag variations**

If the biodiversity certification proposal involves red flag variations, a red flag variation request needs to be provided to OEH in accordance with the BCAM. Figure 2 in the Council Report (December 2013) indicates that *Tetratheca glandulosa*, *Grevillea caleyi*, Duffys Forest and Coastal Upland Swamp EECs will be likely red flag issues. In order to provide advice on red flag variations, OEH will need to have access to the relevant data (i.e. polygons of remnant vegetation with assigned ecological community types and condition and threatened species polygons).

OEH will consider a request for a red flag variation(s) in accordance with Section 2.4 and Section 10 of the methodology. It is noted that the Chief Executive (formerly Director General) must be satisfied that the feasibility of options to avoid impacts on red flag areas has been considered, including that all reasonable measures have been taken to avoid adverse impacts. OEH can provide a preliminary indication of whether a red flag variation request is based on adequate data and provides enough detailed information and whether it is likely to be supported. However, the final decision on a red flag variation can only be made by the Minister (or delegate) based on the merits of a formal application.

OEH recommends that a draft justification report, supported by adequate survey data, be provided to OEH for its consideration before the biodiversity certification package is finalised prior to exhibition in order that an early indication can be given as to whether a red flag variation request may be supported by OEH.

## 6.2 Conservation measures

As the BCAM states land subject to **permanently managed and funded conservation measures** can be used to create ecosystem credits and species credits to offset the impacts of the conferral of biodiversity certification on the land. These conservation measures are:

- Reservation of land under the *National Parks and Wildlife Act 1974* (NPW Act)
- Entering into a Biodiversity Banking Agreement with respect to the land under Part 7A of the TSC Act.
- Acquisition and retirement of biodiversity credits from the biodiversity register where the land is within the biodiversity assessment area.
- Dedication of land as a flora reserve under section 25A of the *Forests Act 1916*.

Should the proponent (i.e. MLALC) consider dedication of land to OEH it is recommended that formal consultation with OEH (and in particular with the relevant Parks and Wildlife Group (PWG) Branch Director) be undertaken at the earliest possible stage. No commitment can be made to accept an offset that includes the transfer of lands to OEH for reservation without the written agreement of PWG OEH.

If land to be zoned for conservation was proposed to have a Biodiversity Banking Agreement over it this would be a permanently managed and funded conservation measure offering both secure in-perpetuity protection plus funding for ongoing management. Asset protection zones (APZs) can be included in land subject to a biobanking statement however the biobanking credits would be significantly discounted for this part of the biobanked area.

Under the BCAM **planning instrument conservation measures** can also be proposed (Section 8.1.3). The methodology requires that the zones are newly proposed and may be zoned E2 or E3 provided that the “*uses permitted on the site are unlikely to compromise the biodiversity values of the land*”. As outlined elsewhere in this correspondence the proposed E3 zone would not meet the criteria.

## 6.3 Council's role

A local council is a designated planning authority and may be the applicant for biodiversity certification for the nominated lands. As the applicant, Council will have responsibility for the following aspects of the biodiversity certification process:

- Engaging an accredited assessor to carry out a biodiversity certification assessment in accordance with the Methodology and the Manual.
- Identifying lands proposed for development and lands proposed for conservation.
- Developing a Biodiversity Certification Strategy to outline lands proposed for development and conservation measures proposed to improve or maintain biodiversity values.
- Engaging with the community.
- Public exhibition of the biodiversity certification application, Biodiversity Certification Strategy and accompanying planning proposals (where relevant).

Council may agree that a third party prepare the documentation in support of the Biodiversity Certification package. However, it will be Council's responsibility to agree to the proposal and to support the application being made to the Minister.

If biodiversity certification is conferred on the specified land, Council will have responsibility for the following:

- Considering the effects of the biodiversity certification in relation to development applications proposed to be carried out on the biodiversity certified land.
- Implement conservation measures where Council is a party to a measure.
- Ensure that parties committed to the delivery of conservation measures comply with any biodiversity certification conditions or Biodiversity Certification Agreement.

#### **6.4 Process for applying for Biodiversity Certification**

The steps involved in submitting an application for Biodiversity Certification as follows:

##### Liaison with OEH prior to exhibition

It is recommended that discussion and liaison with OEH occur during the development of the draft Biodiversity Certification Strategy. If the application is made in conjunction with a planning proposal, the Department of Planning and Environment (DPE) should also be involved to ensure that the provisions in the planning proposal are likely to be supported by DPE. Where the planning instrument is not finalised prior to certification, the application will also need to be accompanied by written advice from the Minister for Planning supporting the changes.

Through this liaison, the final pre-exhibition draft of the Biodiversity Certification Strategy is prepared. Guidance on the content of the strategy will be provided in a Biodiversity Certification Manual that OEH is currently finalising and that is expected to be publicly available soon. OEH can provide advice on content requirements if the manual has not been finalised.

##### Application form

Information from the Biodiversity Certification Strategy is used to complete the application form, which is available on the OEH website. The form must be filled in and signed by the legal representative(s) of the planning authority. The accredited assessor responsible for the biodiversity assessments must also sign the declaration on the form.

Two maps must be attached to the application form – one showing the boundary of the proposed biodiversity certification area and the other showing the boundaries of the proposed on-land conservation measures. The Biodiversity Certification Strategy will accompany the application form, and the Biodiversity Assessment Report will be appended to the Biodiversity Certification Strategy.

##### Public notification and exhibition

Once the above issues have been addressed, the application form and the Biodiversity Certification Assessment and Biocertification Strategy can then be submitted to the Minister for the Environment (attention: Susan Harrison, Senior Team Leader Planning, Greater Sydney) by Council. OEH will provide Council with a confirmation of receipt of the documents.

Council must then publish notice of the application in a newspaper circulating generally throughout the State and on the planning authority's website. Copies of the application and

supporting documents must be publically available for at least 30 days. It is important that Council ensure that public notification and exhibition of the documents is in accordance with s126N of the *Threatened Species Conservation Act 1995*. It is preferable that the exhibition of the application and strategy is concurrent with any planning proposal exhibition.

When the exhibition period ends, the planning authority must provide a report to the Minister that indicates the applicant's response to any submissions received (submissions report). On the basis of any submission received or for any other reason, the planning authority may vary its application, including its Biodiversity Certification Strategy. Any amendments to the strategy should be detailed in the submissions report.

#### OEH review and recommendations

The completed application form, the final Biodiversity Certification Strategy and its supporting documentation, and the submissions report is re-submitted to the Minister for the Environment. The Minister will acknowledge receipt of the application and then forward it to the relevant OEH office for review and advice. The OEH will make recommendations to the Minister, and the Chief Executive of OEH where the methodology provides a decision making role, on the basis of the OEH review.

#### Minister's decision

After considering the advice from OEH, the Minister will either confer biodiversity certification on the specified land or refuse it. If biodiversity certification is conferred then this will occur through an Order published in the Government Gazette. Biodiversity certification may be conferred for a set time period or indefinitely.

In conclusion, OEH recommends early and on-going engagement with OEH should Council and the proponent decide on a biodiversity certification approach. An early site inspection with OEH officers is recommended to confirm the biometric vegetation types and identify any additional issues that may not be identified as part of a desk top analysis.

*End of Submission*

