



Your ref: IRF22/2754  
Our ref: ED22/140

Mr Dan Simpkins  
Director Central Coast and Hunter Region  
Planning and Land Use Strategy  
DPE Planning and Assessment Group

By email: [daniel.simpkins@planning.nsw.gov.au](mailto:daniel.simpkins@planning.nsw.gov.au)

Dear Mr Simpkins

I refer to your letter to the Acting Coordinator-General Environment and Heritage Group, Atticus Fleming, regarding the proposed State Environmental Planning Policy (Great Lakes) 2022 (SEPP) and North Tuncurry Urban Release Area (NTURA). Your letter was referred to me to reply.

The Environment and Heritage Group (EHG) has not been provided with a copy of the proposed SEPP and therefore cannot provide specific feedback on it. This response focuses on EHG's views of the key issues that relate to the proposed NTURA.

As you would be aware, EHG has provided advice on NTURA to the Planning and Assessment Group (PAG) and Landcom for a number of years. Some matters that EHG has raised during this time remain unresolved. A summary of these issues is provided in Attachment A.

Biodiversity matters can be addressed separately through the biodiversity certification application process, which is independent of the proposed SEPP.

EHG understands that PAG intends to address outstanding flooding issues following implementation of the proposed SEPP and intends for a concurrence role to be implemented at the development assessment stage. EHG does not support this approach as it considers that outstanding flooding issues should be addressed prior to rezoning of the NTURA site. In addition EHG does not play a concurrence role for flooding matters in the development assessment process, rather it provides advice to planning authorities at appropriate points during the planning and approval stages. EHG will continue to work with PAG to provide guidance on flood risk management.

If you would like to discuss this matter further, [REDACTED]  
[REDACTED] or at  
[huntercentralcoast@environment.nsw.gov.au](mailto:huntercentralcoast@environment.nsw.gov.au).

Yours sincerely

[REDACTED]  
[REDACTED]  
**Biodiversity and Conservation**  
**DPE Environment and Heritage Group**

25/1/23

Enclosure

## Attachment A – Summary of outstanding matters

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### 1. Survey effort for threatened species

#### *Tuncurry Midge Orchid*

The Critically Endangered Tuncurry Midge Orchid (*Genoplesium littorale*) was surveyed via random meander techniques in 2010, 2011 & 2012 and a 2-day rapid reassessment was undertaken in March 2021.

EHG considers that due to the critically endangered status of the Tuncurry Midge Orchid, its protection at State and Commonwealth level, fire events at the site and length of time since its original detailed site assessment, further site surveys should be undertaken. These surveys should follow current guidelines which represent best practices for environmental impact assessment.

The random meander method used for the original surveys has not been considered a suitable technique to determine absence or presence of a species since 2016. Current survey guidelines preference the parallel transverse method as it systematically covers an area of suitable habitat.

Under current survey guidelines a threatened flora assessment should not be based on surveys that were conducted more than five years ago. Older assessments can be used for information but cannot replace a complete targeted species survey. The 2-day rapid reassessment undertaken in 2021 is not considered to adequate in this regard.

#### *Eastern Pygmy Possum and Brush-tailed Phascogale*

The Eastern Pygmy Possum (*Cercartetus nanus*) and Brush-Tailed Phascogale (*Phascogale tapoatafa*) were originally surveyed for via Elliot trapping and spotlighting in reports prepared in 2005, 2010 and 2012. Additional surveys were undertaken in June and July 2020.

The Threatened Biodiversity Database Collection (TBDC) outlines that surveys for the Eastern Pygmy Possum should occur between October and March and that some survey techniques used are not considered suitable for either species. These include spotlighting, Elliot trapping and hair tubes.

Further, camera trapping (a supported method) did not cover the entire assessment area and did not use species appropriate bait. Camera trap surveys were not completed entirely within the appropriate period of December to June for the bush-tailed phascogale.

#### Recommendation 1.

A survey for Tuncurry Midge Orchid (*Genoplesium littorale*) should be undertaken across the proposed development site, and on- and off-site offset areas, in accordance with the guideline: Surveying threatened plants and their habitats: NSW survey guide for the Biodiversity Assessment Method.

Surveys for the Eastern Pygmy-Possum (*Cercartetus nanus*) and Brush-tailed Phascogale (*Phascogale tapoatafa*) should be conducted in accordance with the Threatened Biodiversity Database Collection (TBDC) and in consultation with EHG's accountable officer for each species.

### 2. Currency of vegetation surveys for the proposed Biodiversity Stewardship Site

The transitional arrangements for the biodiversity offsetting process established under the *Threatened Species Conservation Act 1995* have now expired, biodiversity offsets for the proposed NTURA must be established under the BC Act. To determine the biodiversity values of an offset site and establish the site under the BC Act, an assessment needs to be undertaken to meet current requirements. Vegetation surveys undertaken for the proposed NTURA do not meet the requirements of the BC Act.

#### Recommendation 2.

Vegetation surveys for NTURA's proposed offset sites should meet the requirements of the *Biodiversity Conservation Act 2016*.

### **3. Assumed presence of species in the proposed Biodiversity Stewardship Site**

The biodiversity certification application notes that the Eastern Pygmy-Possum (*Cercartetus nanus*) and Brush-tailed Phascogale (*Phascogale tapoatafa*) will be assumed to be present in the proposed offset sites. Both species are listed credit species under the biodiversity offset scheme established by the BC Act.

A credit species cannot assume to be present in a biodiversity stewardship site established under the BC Act. The presence of species credit entities can only be determined through survey effort or an assessment by a species expert.

#### Recommendation 3.

Surveys for species credit entities should be undertaken across the proposed offset areas.

### **4. Proposed conservation measures are not secured**

The biodiversity certification application does not provide sufficient certainty of conservation outcomes as it outlines that offsets for stages 13-22 of NTURA are yet to be determined. Under the repealed *Threatened Species Conservation Act 1995*, biodiversity certification can only be conferred only if it is demonstrated that 'biodiversity values are improved or maintained'.

Biodiversity offsets for NTURA will need to be established under the BC Act and to demonstrate that offsets for the proposal are appropriately secured for biodiversity certification, EHG requires:

- In-principle support from the Biodiversity Conservation Trust or Credit Supply Taskforce that proposed offset sites are suitable as biodiversity stewardship sites.
- In-principle support from MidCoast Council or whoever will manage the biodiversity stewardship sites in perpetuity.
- Assessments of proposed offset sites to meet the requirements of the BC Act.

#### Recommendation 4.

Biodiversity assessments of proposed offset areas should meet the requirements of the *Biodiversity Conservation Act 2016* and in-principle support should be sought for the establishment and ongoing maintenance of the sites from the Biodiversity Conservation Trust, Credit Supply Taskforce and MidCoast Council.

### **5. Flood risk has not been adequately assessed**

EHG has raised numerous issues with the proponent's flooding and drainage assessment previously. The key outstanding issue relating to changing land use zoning at the NTURA site is development of an appropriate flood planning level for residential development.

EHG is of the view that the information provided to date does not adequately detail behaviour of the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) scenarios. Appropriate assessment of the impacts of these scenarios are critical to decisions around changing land uses that result in increased human occupation of a site. This is reflected by the local planning direction made by the Minister for Planning under Section 9.1(2) of the *Environmental Planning and Assessment Act 1979* (Clause 4.1), which outlines that a planning proposal must not rezone land within the flood planning area to residential purposes or permit residential development in high hazard areas. The 1% AEP flood level also forms the basis of the flood planning level that is used to determine appropriate footprints for residential zoning in flood affected areas and is therefore key to any rezoning process.

If the NTURA site is rezoned prior to determination of a flood planning level, zone boundaries may need to be reassessed in the future. This may result in the down zoning of residential lots, which could result in landholders seeking compensation.

EHG understands that PAG intends for EHG to take on a concurrence role for flood assessment at development application stage as part of addressing outstanding flooding issues, following rezoning of the site. EHG will not accept this approach as it is EHG's role is to provide technical advice to planning authorities who determine development applications. It is EHG's view that outstanding flooding issues for NTURA should be addressed prior to rezoning of the site.

Recommendation 5.

Prior to rezoning, an adequate flood impact assessment should be prepared for the proposed NTURA under a methodology agreed to by EHG any other relevant party (such as DPE Water). This should be used to inform the appropriate placement of residential areas and access routes.