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Senders ref: 20/35610

Ms Susan Appleyard
Director of Development and Environment
Federation Shire Council
PO Box 77
COROWA NSW 2646

Via Concurrence & Referral Portal CNR-12160

15 October 2020

Dear Ms Appleyard

Subject: DA 2020/162 – 335 lot subdivision; Lots 1 and 2, DP 199174; Lot 66, DP 1167493; 169-199 Redland Road and Barber Street, Corowa (CNR-12160)

Thank you for your letter dated 8 September 2020 regarding the abovementioned planning proposal and seeking comments from the Biodiversity and Conservation Division of the Department of Planning, Industry and Environment (the Department).

The Biodiversity and Conservation Division of the Department has statutory responsibilities relating to biodiversity (including threatened species, populations, ecological communities, or their habitats), and flooding.

While BCD may provide advice regarding the evidence relating to the clearing, Council remains the consent authority and must be satisfied that no harm will be caused to threatened species by the works proposed. We have reviewed the documents supplied and provide the following comments at **Attachment A**.

The development application form indicates that no native vegetation will be removed, but that is not the case. Despite this, the applicant has provided evidence consistent with Part 7 of the *Biodiversity Conservation Act 2016*. Based on that evidence, we concur that the proposal is not likely to cause significant harm to threatened species. We consider the proposal to have potential to create new habitat for the Sloane's Froglet (*Crinia sloanei*). BCD can assist in the design and implementation of the storm water disposal system to maximise that opportunity.

BCD remind Council of its duty to assess all roadside vegetation that may be impacted when providing access and services to the subject land as it has not been assessed by the applicant. Remnant vegetation, including large hollow-bearing trees, remains along Cemetery Road and Redland Road roadsides. Vegetation on these roadsides may be part of NSW and Commonwealth-listed threatened ecological communities.

The subject land is located outside the current Flood Planning Area (FPA) for Corowa, so we have no concerns about riverine flooding.

If you have any questions about this advice, please contact Marcus Wright, Senior Conservation Planning Officer via rog.southwest@environment.nsw.gov.au or 02 6983 4917.

Yours sincerely



Andrew Fisher
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South West Branch
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Attachment A Detailed comments – DA 2020/162 – 335 lot subdivision; Lots 1 and 2, DP 199174; Lot 66, DP 1167493; 169-199 Redland Road and Barber Street, Corowa (CNR-12160)

Attachment A Detailed Comments –DA 2020/3561068 – 335 lot subdivision; Lots 1 and 2, DP 199174; Lot 66, DP 1167493; 169-199 Redland Road and Barber Street, Corowa (CNR-12160)

Biodiversity

As the consent authority, Council must not only consider the clearing that is ancillary to establishing the 335 lots, but all clearing that can be anticipated by developing the lots in the future. For efficiency, we encourage Council to assess the total cumulative effect of all anticipated clearing once, at the subdivision state, rather than for each subsequent development application. We commend Council for taking that approach with this proposal.

We note that the development application form states that the proposal does not involve any clearing. Despite this, some limited clearing is involved.

The Statement of Environmental Effects (SEE) provides a Test of Significance at Attachment B. ss.7.3 of the *Biodiversity Conservation Act 2016* (BC Act) establishes the test for determining whether proposals are likely to cause harm to threatened species or their habitats. ss.7.3(2) establishes powers for the Minister for Planning to issue Guidelines for how that test is conducted.

The Test of Significance report at Attachment B of the SEE has not been prepared according to the Ministers Guidelines established at ss.7.3(2) of the BC Act. However, it does provide Council with appropriate evidence that the proposed subdivision is not likely to cause harm to threatened species or their habitats.

We agree that the disclosed clearing is below the Biodiversity Offset Scheme (BOS) entry thresholds established at ss.7.4 of the BC Act consistent with the BOSET report provided. However, the remnant vegetation along Cemetery Road and Redland Road has not been assessed by the applicant. BCD anticipate that the proposal will involve clearing at least some of that vegetation to provide improved access, services or storm water disposal. As the applicant has not considered that clearing, it is likely that Council will undertake the activity under Part 5 of the *Environmental Planning and Assessment Act 1979*, including an assessment of impacts on biodiversity values. Council must exercise its responsibilities under the BC Act when assessing such developments.

Roadsides with native vegetation in the Federation LGA may conform to threatened ecological communities listed on the BC Act, including:

- *Inland Grey Box Woodland (in the Riverina, NSW South Western Slopes, Cobar Peneplain, Nandewar and Brigalow Belt South Bioregions)* endangered ecological community (Grey Box Woodland EEC)
- *White Box - Yellow Box - Blakely's Red Gum Grassy Woodland and Derived Native Grassland (in the NSW North Coast, New England Tableland, Nandewar, Brigalow Belt South, Sydney Basin, South Eastern Highlands, NSW South Western Slopes, South East Corner and Riverina Bioregions)* critically endangered ecological community (Box – Gum CEEC).

Both vegetation types can occur as native grassland, without trees. The vegetation may also conform to the *White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland* CEEC listed on the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* if it exists with specific condition characteristics.

Council remains the regulator of all clearing on land subject to the *State Environmental Planning Policy (Vegetation on non-rural land) 2017* (the Vegetation SEPP). That land includes the remnants of native vegetation on roadsides adjacent to the subject land and the lots should they become vegetated. However, Council's power to regulate clearing is currently limited by the Corowa Development Control Plan (DCP).

While the proposal is not likely to have any impact on the Sloane's Froglet (*Crinia sloanei*), we consider the associated storm water disposal system to have considerable potential as habitat for that species. BCD can assist in the design and implementation of the storm water disposal system to maximise that opportunity.

Amphibians are particularly susceptible to particulates in water. We suggest the design includes a separate sedimentation basin to ensure management of sediment within the frog-friendly basin. This is particularly relevant as site construction will be staged, so sedimentation in site runoff will be ongoing until after construction has ceased.

Recommended actions:

- All services and ancillary infrastructure required for this subdivision should be identified and assessed as part of the current development application.
- Council is encouraged to amend the Corowa DCP to establish and retain native vegetation to protect and promote threatened species on all land regulated by the Vegetation SEPP, including the subject land and the adjacent roadsides.
- Include specific conditions of consent (if approval is granted) to establish threatened species habitat at the subject site, including Tree Preservation Orders, Sloane's froglet habitat according to the *Sloane's Froglet Stormwater Wetland Design Guidelines* (ACC & OEH 2017), cat curfews and revegetation guides.

Flooding

BCD have no concerns about riverine flooding.

The Corowa Flood Plan Area (FPA) was established from Murray River flood data during development of the Corowa, Howlong and Mulwala Floodplain Risk Management Study and Plan (FRMS&P) in 2009. The FRMS&P is now quite dated and BCD understands that Council intend to develop a new flood study that covers Howlong, Corowa and Mulwala, however changes to the riverine FPA extent will not extend to these sites.

References

ACC & OEH (2017). *Sloane's Froglet Stormwater Wetland Design Guidelines*, prepared by Albury City Council and Office of Environment and Heritage, Albury.