

Dear landowner

Changes to Biodiversity Assessment Process - Jerberra Estate, Tomerong

As you may know, sweeping changes were made to biodiversity laws by the NSW Government in 2016. Central to this is the Biodiversity Conservation Act 2016, which includes a new Biodiversity Assessment Methodology (BAM) for assessing the impact of development on biodiversity and a biodiversity impact offset scheme.

You may also be aware that the biodiversity values in Jerberra Estate were comprehensively assessed as part of the rezoning investigation process that culminated in commencement of the Shoalhaven Local Environmental Plan (Jerberra Estate) 2014 (the 'Jerberra Estate LEP') and a supporting site-specific chapter (Chapter N20) in Shoalhaven Development Control Plan (DCP) 2014. These planning controls aim to protect and enhance the Estate's biodiversity values in conjunction with allowing limited residential development, while at the same time managing bushfire risk and protecting water quality.

On 15 March 2018, Council wrote to the NSW Office of Environment and Heritage (OEH) requesting that the planning controls for Jerberra Estate be certified as 'relevant planning arrangement' under Clause 34A(3) of the Biodiversity Conservation (Savings & Transitional) Regulation 2017. This clause allows development applications in areas where a 'relevant planning arrangement' was in place prior to commencement of the BC Act to be assessed under the previous legislation (i.e. it is a 'savings clause'). The following eligibility criteria apply:

1. the biodiversity impacts of the proposed development were assessed before the commencement of the BC Act; and
2. conservation measures have been secured into the future to offset the residual impact of the proposed development on biodiversity values.

I am pleased to advise that the Jerberra Estate planning controls were certified as a 'relevant planning arrangement' by OEH on 12 April 2019. A copy of the certification order is available at: <https://shoalhaven.nsw.gov.au/Planning-amp-Building/Strategic-planning/Paper-subdivisions/Jerberra-Estate>

What does this mean for development applications in Jerberra Estate?

Development applications which meet the biodiversity provisions in the Jerberra Estate planning controls will be assessed under the legislation that was in place prior to the BC Act. This will require an 'assessment of significance' (also known as a '7-part test') to be undertaken. You may recall that Council previously commissioned an overall 7-part test to minimise the need for individual landowners to commission their own assessment.

The Clause 34A certification enables this approach to be used again. The following information will be required with development applications to enable assessment:

- All applications must be accompanied by a Tree and Vegetation Plan demonstrating all trees and vegetation located on the property. The plan shall clearly identify what is proposed to be removed and retained. Important habitat trees, including those with hollows are to be identified on the plan.
- In some circumstances, applicants may be required to submit supplementary information prepared by a qualified flora and fauna consultant, e.g. if the removal of any additional hollow-bearing trees is proposed, or if additional threatened species records are found within the development area.
- If the Bushland Management Area (BMA) and/or the Bushland Conservation Area (BCA) and/or orchid management area (OMA) are disturbed or are planted with non-indigenous species, a vegetation management/rehabilitation plan, prepared by a suitably qualified ecologist, shall be required.

In circumstances where an application does not comply with the Jerberra Estate planning controls, applicants will be required to submit a Biodiversity Development Assessment Report (BDAR), prepared by an accredited assessor. Any resulting credit requirements must be retired before a construction certificate can be issued.

The assessment process for existing undetermined applications can now resume provided the above information has been provided and there are no other outstanding matters. The 34A certification was issued by OEH on the basis that Council will require the BMA/BCA/OMA land to be identified on property titles as part of the development approval process. To ensure consistency with clause 34A of the BC (Savings and Transitional) Regulation, development consent conditions have been prepared and will be legally reviewed. This will be given a high priority to minimise any delay to existing applications.

If you are preparing a development application and you have any questions about the information needed in respect of the biodiversity assessment requirements, please contact Council's Environmental Assessment Unit on (02) 4429 3209. For general development assessment enquiries, please contact Council's Development Assessment Unit on (02) 4429 3493.

In the longer term, we intend to amend the Jerberra Estate Chapter of the DCP (Chapter N20) to clarify these matters, and will consult with landowners as part of that process. If you need further information about this matter, please contact me on (02) 4429 3320. Please quote Council's reference 2653E (D19/133943).

Yours faithfully



Eric Hollinger
Coordinator - Special Projects Team
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