



Blue Mountains Conservation Society Inc

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Nature Conservation Saves for Tomorrow

23 October 2014

To whom it may concern,

Submission: Fernhill Estate (DA14/0966 and 14/0967)

The following submission is made regarding DA14/0967 (Western Precinct) and DA14/0966 (Eastern Precinct), Fernhill Estate, Mulgoa. The environmental assessments of DA14/0966 refer to and rely upon some offsets provided by DA14/0967 confirming these two applications as portions of a single staged development. As such we provide the following comments against both lodged applications as a whole.

Proposal

The proposal is for rezoning and subdivision of the Fernhill estate into over 90 new residential lots. Fernhill is a heritage property of approximately 650 hectares over multiple titles. The current mixed Rural and E2 zonings provides for a maximum of 14 dwellings.

Impact on Greater Blue Mountains World Heritage Area and Blue Mountains National Park.

The Western Precinct is located immediately adjoining the Blue Mountains National Park and Greater Blue Mountains World Heritage Area. The site is currently native vegetation in good condition with little to no weed incursion. An unsealed dirt service road follows the National Park boundary.

The proposal comprehensively fails to respond to this context. Key failings include:

- The proposal is not in accordance with the *Guidelines for developments adjoining land and water managed by the Office of Environment and Heritage*
- The proposal does not provide for sewage servicing the Western Precinct. Impacts of on-site treatment on the GBMWHa are likely to be substantial
- The proposal would seal Fairlight Road. This will have severe impacts on the neighbouring bushland.
 - Road sealing permanently and substantially increases roadside weed loads. The ongoing costs for managing these impacts are born by the public and the environment.

- Few if any populations of the Endangered Red-crowned Toadlet survive the sealing of roads above breeding pools. This species is known to occur in this part of the BMNP. The impact on this species is not acceptable.
- Over 3 km of new and newly activated roads will result in additional fauna mortality for endangered species such as Spotted-tailed Quoll. Research demonstrates that standard 'ameliorative' measures to manage roadkill do not substantially reduce mortality. Fauna mortality resulting from the western precinct development can be quantified on the basis of regional studies to be at least 11 additional mammal fatalities and at least 23 additional bird fatalities per year. These rates of loss cannot be supported in the local context.
- The proposal will introduce serious new impacts from recreational animals (pets). The proposal will create a small suburb immediately adjoining the World Heritage Area. This will result in associated increases to illegal dog walking and unsupervised dog and cat predation in the World Heritage Area. Trials in Sydney have shown that pet ownership prohibitions are not successful. Similarly intensive efforts to constrain illegal dog walking (chain mail fences, signage, and surveillance cameras) have failed to significantly reduce illegal dog walking in the nearby Mulgoa Nature Reserve.

Considering that serious impacts of new roads and recreational animals cannot be mitigated the suitability of the site for this development should be reconsidered.

No assessment of the impacts on the GBMWhA have been provided as required under the EPBC Act as a Matter of National Environmental Significance

Lack of documentation

There is concern that the applicant has not been required to submit ecological assessments for the Western Precinct. It is possible that the determining authorities may issue a conditional approval and assess ecological impacts post-approval. This would pre-determine the outcome of these assessments and remove appropriate public and expert scrutiny of the environmental impacts of this development.

The Society shares the public view that such conditional approval would be highly inappropriate.

Implications of Staged Development

The two proposals comprise part of a staged development. The exhibition as separate applications is not appropriate and raises serious dilemmas regarding determination. These include:

- Mutually reliant ecological assessments. The Eastern Precinct ecological assessment relies on vegetation retained in the Western Precinct as the basis of claiming 'acceptable' levels of harm (e.g. to the endangered Cumberland Plain Land Snail page 49). As a result it would be a breach of process to approve the Eastern Precinct unless in conjunction with approval of the Western Precinct
- The applicant has not provided the necessary assessment of the cumulative impacts of the development. By exhibiting each stage separately these impacts are made to appear considerably smaller than the actual impact of the proposed development. This is particularly true of the ecological assessments. A valid assessment of the *total* impacts for each threatened entity is required
- The Mayfair Road precinct of the staged development has not been exhibited at this time. This makes it impossible to quantify the impacts of the development as a whole. The applicant must provide a single application for all parts of the proposed development of the site.

Assessment of 10/50 clearing entitlement

The Eastern Precinct assessment relies on retention of 43 trees within new residential lots. The very small size of these lots requires these trees to be removed if any sensible development of those lots were to proceed. This outcome is facilitated by the new 10/50 provisions. The removal of these trees is a considerable impact resultant from the proposed development however it has neither been assessed nor acknowledged.

The same shortcomings apply to the Western Precinct where even greater clearing entitlements would be created by 10/50 provisions. Again this vegetation has erroneously been presented as 'retained'.

Federal and local assessment requirements

It is understood that the applicant will use BioBanking as the tool to deliver the ameliorative ('offset') areas presented.

BioBanking is a NSW government program whose jurisdiction relates only to the application of the NSW Threatened Species Conservation Act 1995. It does not extinguish or influence in any way assessment obligations under other Acts, most notably the Commonwealth Environmental Protection & Biodiversity Conservation Act 1999. It similarly does not extinguish or influence in any way obligations under Council DCPs, LEPs or other local government instruments relating to biodiversity protection.

These assessments have not been lodged. The suggestion that BioBanking negates the requirement to do so is in error.

If the proponent lodges assessments meeting the EPBC and local requirements these assessments will rely on the details of the BioBanking offsets provided (size, location etc.). This necessitates a BioBanking offset proposal to be lodged *up-front*. It is a breach of process to assess a development on the basis that the proponent proposes to satisfy significant requirements at a future date unless there is evidence substantiating that this can actually be achieved. As the necessary BioBanking Agreements have not been lodged for the current applications these potential offsets cannot be assessed.

BioBanking - are all credits to be retired by the development?

Draft BioBanking Agreement(s) do not in themselves constitute an offset proposal which can be assessed against Federal or Local requirements. This is because a development may only retire some of the BioBank site credits, leaving the remainder available to offset other developments. This can make the 'offset' area appear considerably greater than what is actually delivered by the development.

The present application clearly and repeatedly presents the entire BioBank sites as the offset for the development. This must be enforced by requiring all BioBanking credits to be retired by the developer as condition of development consent. This is necessary to ensure that the proposal as implemented matches that presented and assessed.

Impact on Shale Sandstone Transition Forest

Shale Sandstone Transition Forest is presently under Federal assessment as a Critically Endangered Ecological Community, with a decision expected in coming weeks. If this community is up-listed it will require a re-assessment of the application.

Most remaining Shale Sandstone Transition Forest occurs in patches smaller than 10 hectares. The Fernhill proposal would remove an astounding 44 hectares of intact Shale Sandstone Transition Forest. The retention ('offsetting') of other areas of this community does not detract from the extremely high net loss which the proposal entails for this community. Such high losses from a single proposal cannot be justified.

It is critical to note that most of the vegetation to be retained as 'offsets' is currently zoned E2. This vegetation is mostly intact, weed free and diverse. The impact proposed cannot be justified in this context.

Summary

The proposal does not respond to the subject site. In particular it is incompatible with the location immediately adjoining the Blue Mountains World Heritage Area. It additionally presents an unacceptable level of damage to the endangered Shale Sandstone Transition Forest community and other endangered biodiversity located on the property.

The applicant has additionally failed to provide the necessary assessment documentation to meet local and Federal planning requirements.

The Society recommends that the proposal be rejected on these grounds.

A handwritten signature in black ink, reading "T. Cameron". The signature is written in a cursive, flowing style.

Tara Cameron

Vice President