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BirdLife Shoalhaven is a branch of BirdLife Australia Limited ABN 75 149 124 774

Shoalhaven City Council
36 Bridge Road
Nowra NSW 2541

31 March 2022

Dear Sir/Madam,

RE: Submission to 4 Murdoch St, Huskisson Modification Application (DS22/1032)

Birdlife Australia (BLA) is Australia's largest bird conservation organisation with over 200,000 members and supporters. For over a century its members have protected birds and their habitats through practical conservation and advocacy based on the best available science. BirdLife Shoalhaven (BLS) is a branch of BLA, which itself has 1,000 members and supporters. Our charter is to help our members and the wider community enjoy and learn more about birds and to advocate for the conservation of birdlife across the Shoalhaven.

This submission acknowledges that the Modification Application involves the country of the Jerringa people.

BLS has considered the matters arising from DS22/1032 in relation to bird species and their conservation.

1. RECOMMENDATIONS

BLS recommends that the development be referred to the Commonwealth Department of Agriculture, Water and Environment to determine whether the development will require formal assessment and approval under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) for potential impacts on the Gang-gang Cockatoo, recently classified as 'Endangered'.

BLS recommends that no further works should proceed until Shoalhaven City Council (SCC) is satisfied that new procedures are in place to ensure the developer complies with consent conditions, particularly those relating to habitat tree retention.

BLS recommends that an updated Ecological Assessment be undertaken for this Modification that assesses whether the results of the original Flora and Fauna Assessment are still valid, given the significant time lapse since the original assessment.

2. REFERRAL OF DEVELOPMENT FOR ASSESSMENT UNDER EPBC ACT

2.1. The Gang-gang Cockatoo (*Callocephalon fimbriatum*) was listed as 'endangered' under the EPBC Act on 2 March 2022.¹ As a result of this listing and known presence of Gang-gang Cockatoos on the site, BLS recommends that the developer refer their action, i.e. the development application and modification proposal, to the Department of Agriculture, Water and Environment so a determination can be made as to whether or not this development will need formal assessment and approval under the EPBC Act.

2.2. BLS considers that this legislative step should be undertaken immediately and before any further works on the site have commenced. In the event that the developer does not undertake this step, BLS recommends SCC either refer the action themselves to the Department of Agriculture, Water and Environment or at the very least arrange a pre-referral meeting with representatives from the Department of Agriculture, Water and Environment to seek clarity on any referral requirements for this development.

3. CLEAR BREACHES OF CONSENT CONDITIONS IMPACTING THREATENED SPECIES

3.1. Bird surveys of the site conducted by BLS members and members of the community revealed that habitat trees required for retention under the Vegetation Management Plan were incorrectly identified and cleared by the developer. It is understood that a pair of endangered Gang-gang Cockatoos displaying nesting behaviour were disturbed by the clearing and did not return to the site.

3.2. BLS understands that SCC carried out an investigation that found the developer had clearly breached conditions of consent in the Vegetation Management Plan namely regarding habitat tree retention, species protection and proper use of clearing machinery.

3.3. BLS understands that SCC ordered no clearing to occur until January 2022 or until there is no further evidence of Gang-gang Cockatoo breeding. While this action is appreciated by BLS, we are highly concerned that these early and blatant breaches of consent conditions put in place to protect bird species shows a careless and bad faith approach from the developer. This should concern SCC and trigger enhanced compliance activity. With this in mind, BLS recommends that further works and approvals cease until the developer has provided SCC assurances, through new policies and procedures, that all consent conditions will be satisfied, in particular conditions around tree identification and retention and threatened species protection.

4. ADEQUACY OF THREATENED SPECIES ASSESSMENT FOR THIS MODIFICATION

4.1. The Ecological Assessment by EcoPlanning states that:

"The Bulum Group asked EcoPlanning to review the original Flora and Fauna Assessment (Abel Ecology 2010) and determine if the methods, results, impact assessment mitigation measures remain valid for the proposed modification, or whether further ecological assessment is required."

4.2. BLS is concerned that the Ecological Assessment undertaken by EcoPlanning focussed on the methods used by Abel Ecology in 2010, with seemingly no regard to the currency and validity of the results.

4.3. Furthermore, in the 12 years since the Abel Ecology survey was undertaken, there has been significant changes to the site, the surrounding environment and the movement of species. The 2019/20 Black Summer Bushfires removed significant habitat for bird species in the Shoalhaven and

¹ http://www.environment.gov.au/cgi-bin/sprat/public/publicspecies.pl?taxon_id=768

pushed birds to move to remaining unburnt land. In the Shoalhaven bird species were pushed into Jarvis Bay and Booderee national parks as well as remaining habitat near urban areas. For example, the Glossy Black Cockatoo ('Endangered' under the EPBC Act) has been seen in greater numbers in the Jarvis Bay region but is known to be decreasing in overall numbers.

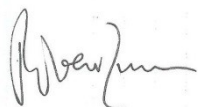
4.4. Since the original threatened species assessment and survey there are several newly listed bird species whose threatened species status has changed under the EPBC Act, including but not limited to:

- Eastern Bristlebird (*Dasyornis brachypterus*): listed as Endangered in 2020 and "known to occur" within the area
- Gang-gang Cockatoo (*Callocephalon fimbriatum*): listed as Endangered in 2022 and "likely to occur" within the area.²

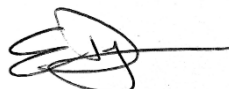
4.5. For these reasons, BLS is of the view that the Ecological Assessment for this proposed Modification by Ecolplanning is insufficient and we recommend that a new threatened species assessment be undertaken.

We are happy to be contacted to discuss the submission. Thank you for the opportunity to contribute.

Yours sincerely



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² <https://www.awe.gov.au/environment/epbc/protected-matters-search-tool>