



Our Ref: DOC21/53804-4  
Your Ref: KLEP2013\_AM\_25

General Manager  
Kempsey Shire Council  
PO Box 3078  
West Kempsey NSW 2440

Attention: Mr Peter Orr, Senior Strategic Planner

Dear Mr Milburn

**RE: KLEP 2013 Amendment 25 - Neville Morton Drive, Crescent Head**

Thank you for your e-mail dated 28 January 2021 about the proposed KLEP 2013 Amendment 25 for Neville Morton Drive, Crescent Head, seeking comments from the Biodiversity and Conservation Division (BCD) of the Biodiversity, Conservation and Science Directorate in the Environment, Energy and Science Group of the Department of Planning, Industry and Environment. I appreciate the opportunity to provide input.

The BCD was formerly part of the Office of Environment and Heritage, but now forms part of a Group that has responsibilities relating to biodiversity (including threatened species and ecological communities, or their habitats), National Parks and Wildlife Service estate, climate change, sustainability, flooding, coastal and estuary matters.

We have reviewed the documents supplied and advise that while we do not have an issue with the change to the Minimum Lot Size map we have an outstanding issue regarding the rezoning of E2 Environmental Conservation land to R5 Large Lot Residential, as it would place residential development closer to the coastal wetland and remove a buffer area. These issues are discussed in detail in **Attachment 1** to this letter.

We have concluded that the E2/R5 boundary could be revised to align with the 1:100 year flood line to enable the proposed residential development on largely cleared land above this flood planning level. However, the remaining E2 land should be managed to provide a vegetated buffer to the coastal wetland to protect it from the impacts of the adjoining residential development.

The BCD would be willing to agree to a reduction in the area currently zoned E2 Environmental Conservation subject to the following:

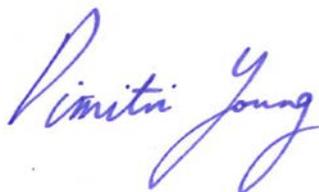
1. The R5/E2 zone boundary being revised to align with the 1:100 year flood line as shown in Figure 2 of Attachment 1 to this letter; and
2. The retained E2 land shown in Figure 2 of Attachment 1 to this letter being protected, revegetated and managed as native vegetation through a Vegetation Management Plan (VMP) to provide a vegetated buffer between the land zoned R5 and the coastal wetland; and

3. A planning agreement being executed between the council and the landholder that:
  - a. commits the landholder to:
    - i. the preparation of the VMP for the E2 land shown in Figure 2 of Attachment 1 to this letter, to the satisfaction of both the council and the BCD; and
    - ii. the implementation of the VMP over the E2 land shown in Figure 2 of Attachment 1 to this letter; and
  - b. requires the VMP to
    - i. include measurable targets, accountabilities, annual reporting requirements and timeframes for implementation; and
    - ii. be prepared within three months of the amended Local Environmental Plan being made; and
4. The planning agreement forming part of the exhibition package for the revised planning proposal.

Further, the BCD recommends the potentially unauthorised works in the E2 zoned land east of the new cul-de-sac be investigated by the council and suitable action taken to restore the area, such as the removal of any fill and revegetation of the land.

If you have any questions about this advice, please do not hesitate to contact Ms Rachel Lonie, Senior Conservation Planning Officer, at [rachel.lonie@environment.nsw.gov.au](mailto:rachel.lonie@environment.nsw.gov.au) or 6650 7130.

Yours sincerely



16 February 2021

**DIMITRI YOUNG**  
**Senior Team Leader Planning, North East Branch**  
**Biodiversity and Conservation**

Enclosure: KLEP 2013 Amendment 25 - Neville Morton Drive, Crescent Head

cc: Mr Craig Diss, Manager Local and Regional Planning, Planning and Assessment, DPIE

## **Attachment 1: Detailed BCD Comments – KLEP 2013 Amendment 25 - Neville Morton Drive, Crescent Head**

The Biodiversity and Conservation Division (BCD) has reviewed the revised planning proposal for land at Neville Morton Drive, Crescent Head, and provides the following advice.

### Background

The BCD has been involved in this planning matter since 2015, initially as Amendment 8, which resulted in most of the land being rezoned R5 Large Lot Residential, and now the current Amendment 25 that concerns a portion of the original planning area. The amendment would rezone some land currently zoned E2 Environmental Conservation to R5 Large Lot Residential and alter the Minimum Lot Size (MLS) Map to 0.8 ha for the R5 land.

Our position has consistently been that we did not support a change to the rezoning of E2 land to R5 in the eastern part of the planning area as this would bring residential development closer to the wetland boundary and within the wetland buffer. Our most recent advice dated 18 March 2019 outlined that while we did not have an issue with the proposed MLS, we supported the retention of the existing zone boundaries.

We acknowledge the former SEPP 14 coastal wetland map has been superseded by the State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP) map. This has resulted in a revised coastal wetland boundary that is further east and beyond the 1:100 year flood line. However, the coastal wetland proximity area is within the current E2 zone and within the area proposed to be rezoned to R5.

Our advice dated 24 August 2018 stated that the new coastal wetland mapping, and its buffer, still created an affectation over the proposed lots and required consideration. At the time the letter was written, it was evident that regeneration of wetland vegetation was occurring between the eastern fence line and the contiguous vegetation zone which we noted was likely to be a threatened ecological community.

### Current planning proposal

We have reviewed the current planning proposal and note that the E2/R5 boundary for proposed lots 12 and 13 generally follows the 1:100 year flood line. This would enable most of the regenerating native vegetation to be retained in the E2 zone, providing a vegetated buffer to the coastal wetland, and the residential development to occur on the cleared land above the 1:100 year flood line.

However, the E2/R5 boundary for proposed lot 13 extends past the 1:100 year flood level and in the southern corner directly abuts the coastal wetland. This does not provide a suitable buffer and could enable future clearing along the lot boundary which would directly impact coastal wetland vegetation.

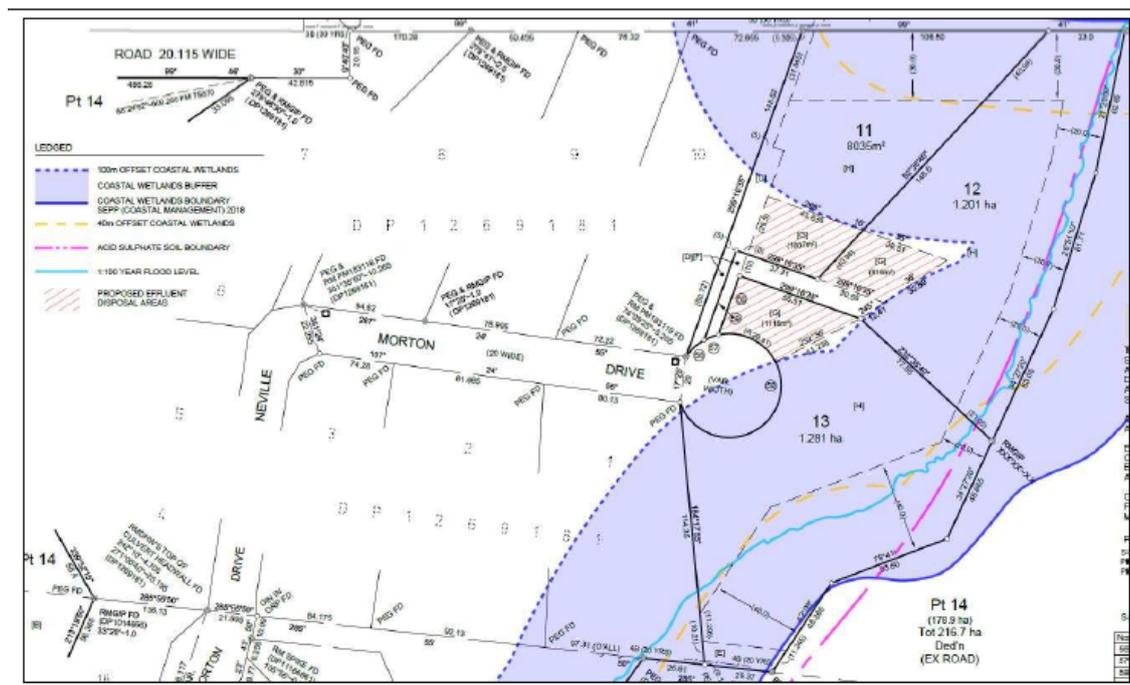
### Future residential development in the coastal wetland proximity area

Clause 11 of the Coastal SEPP requires the consent authority to not grant development consent on land identified as “proximity area for coastal wetlands” unless it is satisfied that the proposed development will not significantly impact on:

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

In justifying the planning proposal's consistency with the Coastal SEPP, the planning proposal report states that future dwellings, infrastructure and Asset Protection Zones (APZs) will be substantially located within the existing R5 zoned land and not within the wetland proximity area (page 18). However, it appears that only the effluent disposal areas can be located outside the wetland proximity area (see Figure 1 below).

Residential building envelopes, APZs and associated infrastructure would still need to be located within the wetland proximity area. While we support the Kempsey Shire Council's position to require effluent disposal outside the wetland proximity area, we note the provisions in Clause 11 of the Coastal SEPP will need to be addressed at development application stage for lots 11, 12 and 13.



**Figure 1. Diagram from planning proposal report to demonstrate consistency with Coastal Management SEPP showing effluent disposal areas.**

Realign the E2/R5 boundary to the 1:100 year flood line

We have considered the history of this planning proposal and the ability to develop some of the E2 land for large lot residential. We consider the E2/R5 boundary could be revised to align with the 1:100 year flood line, given the coastal wetland mapping now provided in the Coastal SEPP. This would enable the proposed residential development on cleared land above flood affected land.

However, the area to the east of the 1:100 year flood line should remain zoned E2 as shown in Figure 2 below. This area provides a buffer to the wetland and requires appropriate management to protect the wetland from the impacts of the adjoining residential development.

Vegetation Management Plan

A Vegetation Management Plan (VMP) should be required to be prepared and implemented that commits the landholder of the E2 zoned land to appropriately manage the area. A planning agreement should be executed between the council and the landholder that commits the landholder to the preparation and implementation of the VMP.

The VMP should be prepared to the satisfaction of the council and the BCD within three months of the amended local environmental plan being made and should include measurable targets, accountabilities, annual reporting requirements and timeframes for implementation. The planning agreement should form part of the exhibition package for the revised planning proposal.

The VMP should include measures to retain and protect existing native vegetation, and allow for assisted natural regeneration and weed control to create a fully vegetated buffer to the coastal wetland that would achieve the objectives of the *Coastal Management Act 2016*, taking into account bushfire risk for the adjoining lots to the west.

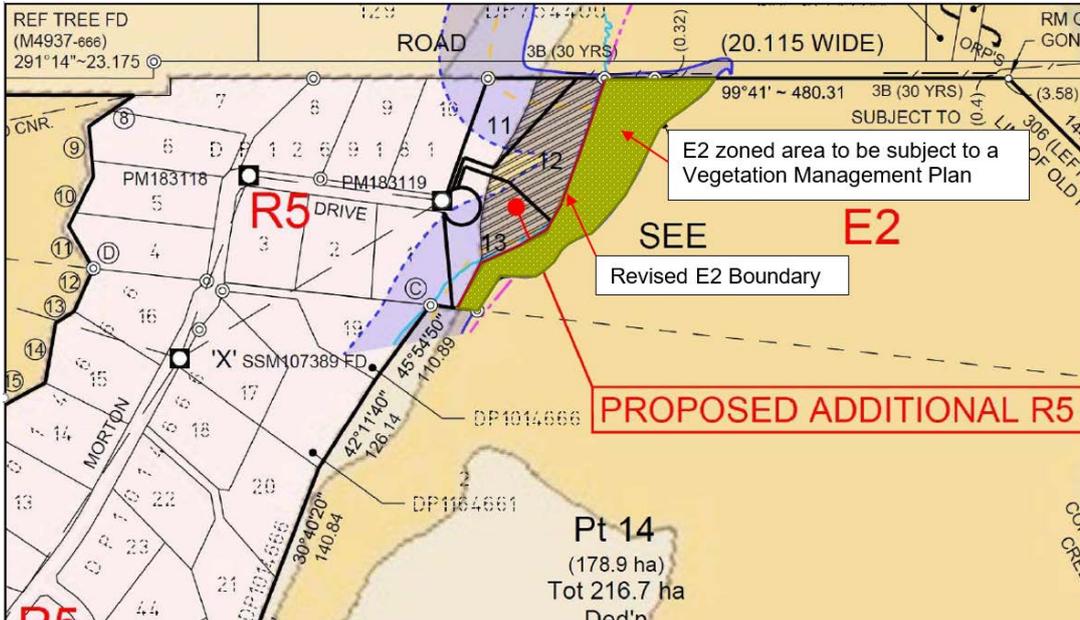


Figure 2. Amended plan describing the recommended change to the E2 boundary and area that should be subject to a Vegetation Management Plan.

Possible unauthorised works in E2 land

Recent aerial imagery indicates that works have been undertaken in the E2 land (see Figure 3 below). These potentially unauthorised works should be investigated by the council and suitable action taken. This may require removal of any fill and revegetation.



Figure 3. Recent aerial imagery showing works within the wetland proximity area in the E2 zoned land.

**BCD Recommendations**

In conclusion, the BCD would be willing to agree to a reduction in the area currently zoned E2 Environmental Conservation subject to the following:

1. The R5/E2 zone boundary being revised to align with the 1:100 year flood line as shown in Figure 2 above; and
2. The retained E2 land shown in Figure 2 above being protected, regenerated and managed as native vegetation through a Vegetation Management Plan (VMP) to provide a vegetated buffer between the land zoned R5 and the coastal wetland; and
3. A planning agreement being executed between the council and the landholder that:
  - a. commits the landholder to:
    - i. the preparation of the VMP for the E2 land shown in Figure 2 of Attachment 1 to this letter, to the satisfaction of both the council and the BCD; and
    - ii. the implementation of the VMP over the E2 land shown in Figure 2 of Attachment 1 to this letter; and
  - b. requires the VMP to:
    - i. include measurable targets, accountabilities, annual reporting requirements and timeframes for implementation; and
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4. The planning agreement forming part of the exhibition package for the revised planning proposal.