



Office of  
Environment  
& Heritage

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MP10 0136 MOD 1

Ms Amy Robertson  
Planner, Modification Assessments  
Department of Planning and Environment  
amy.robertson@planning.nsw.gov.au

Dear Ms Robertson


**Modification to Riverside Tea Gardens Concept Plan (MP10 0136 MOD 1)**

I refer to your email dated 11 January 2017, seeking comment on a request to modify the Concept Approval for the Major Project MP10 0136, 'Riverside Tea Gardens' residential subdivision located at Tea Gardens within the MidCoast local government area.

The Office of Environment and Heritage (OEH) has reviewed the proposal with respect to biodiversity and Aboriginal cultural heritage. It is noted that the proposal is generally similar to the original proposal's footprint with some minor amendments (e.g. loss of tourist precinct and inclusion of a small area in the south-west). I am satisfied that the modification proposal generally addresses OEH's matters of concern, however, there are a number of matters identified in **Attachment A** that require further assessment. I recommend that these matters are addressed by the proponent prior to approval.

If you require any further information regarding this matter please contact Steve Lewer, Regional Biodiversity Conservation Officer, on 4927 3158.

Yours sincerely



28 FEB 2017

**RICHARD BATH**  
Senior Team Leader Planning, Hunter Central Coast  
Regional Operations

## **ATTACHMENT A: OEH REVIEW – MODIFICATION REQUEST - RIVERSIDE TEA GARDENS CONCEPT PLAN (MP10 0136 MOD 1)**

OEH has reviewed the Riverside at Tea Gardens Modification to the Concept Plan for Concept Approval Number 10-0136 October 2016 (Tattersall Lander Pty Ltd) with respect to biodiversity (including threatened species) and Aboriginal cultural heritage.

### **BIODIVERSITY ASSESSMENT**

OEH has reviewed the *Riverside Subdivision, Tea Gardens Biodiversity Offsets Package* (GHD 2016) (Annexure D). OEH understands that the Modification to the Approved Concept Plan is proposing to modify the site boundary, with the exclusion of 9.99 hectares (ha) of land from the site to the north-east that was previously included in the concept approval as a 'tourist precinct area', and the addition of 5.83 ha of land in the south-west associated with the commercial precinct along Myall Street. OEH notes that the latter inclusion has not been subjected to previous biodiversity assessments, including the current Biodiversity Offsets Package report undertaken by GHD (2016 - Annexure D).

In previous correspondence to the Department (dated 4 March 2013), OEH stated that: *"An offset package needs to be developed and approved by the Department of Planning and Infrastructure (DP&I). This package must be developed in consultation with OEH and in accordance with the methodology outlined in the PPR (and associated documents), which states the 'BioBanking Assessment Methodology' (BBAM) (DECC 2008) as defined under Section 127B of the Threatened Species Conservation Act 1995 and the 'BioBanking Assessment Methodology and Credit Calculator Operational Manual' (DECC 2009) will be utilised"*. OEH further noted that given the proposal was a Major Project, OEH's 2011 policy, *NSW OEH Interim policy on assessing and offsetting biodiversity impacts of Part 3A, State Significant Development (SSD) and State Significant Infrastructure (SSI) projects* can apply. This policy allows for modification to the BBAM under limited circumstances. OEH acknowledges that the proponent has developed a biodiversity offset package in accordance with the above BBAM and policy, albeit utilising a more recent version of the credit calculator and a revised assessment methodology (OEH 2014) for the biobanking agreement component (i.e. Version 2 was used for the development footprint as part of the Concept Plan approval). OEH supports this approach and acknowledges that the proponent's ecological consultants (GHD) have undertaken this in consultation with OEH.

### **Credit Calculator Assessment**

OEH has undertaken a 'desktop analysis' of the proposal based on the Biodiversity Offsets Package report undertaken by GHD (2016), but has not reviewed the credit calculator as it was not submitted by the proponent. OEH requires some modifications to the current credit calculator (see below) and requests that it is re-run and re-submitted. It is envisaged that the Department will require OEH to review this revised version. Please note that the requirement to undertake a final review of the credit calculator does not affect other aspects of OEH's review of the proposal.

OEH notes that an additional 5.83 ha of land in the south-west associated with the commercial precinct along Myall Street (as schematically shown in Figure 1 of Tattersall Lander Pty Ltd report [dated October 2016]) has been added to the Concept Plan. Figure 1 identifies this land as 'Area Now Included'. However, this parcel of additional land has not been included in the BBAM assessments undertaken as part of the Biodiversity Offsets Package report. Figure 2 of the offsets report clearly shows that this parcel is not included within the development site boundary. OEH acknowledges that this area appears to be modified, the vegetation (and condition) looks similar to the development area immediately adjacent to the north (i.e. Smooth-barked Apple – White Stringybark – Red Mahogany – *Melaleuca sieberi* shrubby open forest and Swamp Mahogany swamp forest), and is likely to generate similar biodiversity credits as this area. As such, OEH requests that this area be added to the credit calculator calculations and the tool is re-run to provide a revised biodiversity credit yield.

Section 4.2 of the offset report outlines the process undertaken to determine the biodiversity credit yield for the reduced development footprint, noting that Version 2 was utilised for the development site



(as per GHD 2012) when seeking approval of the Concept Plan. OEH supports this approach and acknowledges that it was undertaken in consultation with OEH. As such, OEH is of the opinion that Tables 4.1 and 4.2 provide an accurate summary of the process.

OEH has assessed the information that was input into the credit calculator for the biobanking agreement (as detailed in the offsets report). OEH acknowledge the following:

- survey effort for biobanking plots and targeted surveys are compliant with BBAM and OEH acknowledges that previous effort as part of the original Concept Plan assessment was adequate
- location and geographical parameters are correct
- native vegetation cover assessment and connectivity / linkages are compliant with BBAM
- credit profiles generated for the biobank agreement appear comparable and suitable for the partial retirement of credits from development site, with the remaining residual credits from the development site being sourced from other established biobank agreement sites.

### **Offset Package / Credit Requirements**

Section 8 of the offsets report outlines how the development site biodiversity credits (both ecosystem and species) will be sourced. It is noted that approximately 924 ecosystem and 749 species credits (i.e. 482 Koala population [Hawkes Nest-Tea Gardens] and 342 Wallum Froglet) will be retired from the onsite biobanking agreement site; with the additional 1,245 ecosystem credits and 267 Wallum Froglet species credits being sourced from offsite established biobank sites. OEH is of the opinion these credits should be retired prior to any development occurring on the site.

Previously OEH requested that the offset package will need to outline the mechanism/s that will be used to secure the biodiversity offsets for conservation in perpetuity. The offsets report (Sections 7 and 8) indicates that a BioBanking agreement under the *Threatened Species Conservation Act 1995* (TSC Act) will be used to secure and manage the offset lands in perpetuity. OEH supports this approach. OEH will review the BioBanking agreement site in greater detail once a formal application for the site is submitted to OEH. OEH recommends that this application and the establishment of the on-site biobanking agreement be undertaken prior to the development commencing.

The residual credits required for the development proposal will be either sourced from an existing established biobank agreement site or via the purchase of a suitable offset property and placing a Conservation Agreement on the title and/or transfer to the national parks estate (as per Section 8.5 of the offsets report). OEH supports these approaches, but recommends that it is unlikely that OEH would support the use of a Conservation Agreement for a development offset site and that the appropriate mechanism would be the Biobank Agreement under the TSC Act. This would also likely be supported by the National Parks and Wildlife Service as there is a guaranteed management funding under this scenario. OEH recommends that any approval conditions relating to the securing of an offset, require that they be from an established BioBanking offset site or if the proponent buys suitable offset land it is secured under a BioBanking agreement.

As per previous discussions between OEH and the proponent, OEH requested that all off-site offsets are provided within the MidCoast local government area (formerly Great Lakes) and specifically within the Hawkes Nest - Tea Gardens area, with respect to the 'Hawks Nest and Tea Gardens endangered koala population'. However, given that the proposal has been reduced and the impact on this population (and its habitat) has also been reduced, there is no longer a need to source species credits for this endangered population off-site. OEH notes that the onsite biobank site will provide all the credits generated by the development site. As such the condition to restrict species credits to the MidCoast local government area no longer applies.

Previously the proponent suggested the use of a 'Community Title' over the on-site offset areas. OEH did not support this approach. However, I now understand that this approach is no longer proposed.

OEH remains of the opinion that a staged approach to the provision of offsets is not appropriate for this development. Given the location of the site and the level of impact likely to occur as a result of this



development, OEH recommends that all offsets (both on-site and off-site) are provided prior to any development occurring to ensure all necessary offsets are available and secured. This advice is consistent with previous OEH correspondence to the Department (dated 4 March 2013).

### **References**

DECC (2008) *BioBanking Assessment Methodology*. Department of Environment and Climate Change NSW.

DECC (2009) *BioBanking Assessment Methodology and Credit Calculator Operational Manual*. Department of Environment and Climate Change NSW, Sydney.

GHD (2012) *BioBanking Assessment – Riverside at Tea Gardens*. Prepared for Creighton Properties Pty Ltd by GHD Port Macquarie, January 2012.

OEH (2014) *BioBanking Assessment Methodology*. Office of Environment and Heritage, detailed at: [www.environment.nsw.gov.au/biobanking/bbreview.htm](http://www.environment.nsw.gov.au/biobanking/bbreview.htm).

### **ABORIGINAL CULTURAL HERITAGE ASSESSMENT**

OEH has reviewed the *Riverside Tea Gardens Cultural Heritage Management Plan* (ERM 2014) (Annexure F). OEH understands that the Modification to the Approved Concept Plan is proposing to modify the site boundary, with the exclusion of 9.99 ha of land from the site to the north-east that was previously included in the concept approval, and the addition of 5.83 ha of land to the site around the commercial precinct along Myall Street. I note that the Approved Concept Plan area contains two previously recorded Aboriginal sites ('Dredge Island Midden' and 'Riverside\_01 midden'), and it is understood that the modification will not result in any impacts to these identified sites, which are both located within conservation areas in locations that will not be affected by the proposed modification. However, OEH notes that there has been no demonstrated assessment of potential Aboriginal cultural heritage impacts within the additional 5.83 ha of land that is proposed to be added to the site under the proposed modification. OEH notes that this additional portion of land was not assessed as part of the original Aboriginal Heritage Assessment for the Concept Plan (ERM 2011), and is not included within the site boundary covered by the Aboriginal Cultural Heritage Management Plan (ACHMP). As such, the potential Aboriginal cultural heritage values of this portion of land are not known, and it is not possible to assess whether the proposed modification will result in impacts to Aboriginal cultural heritage values in this area. Until such time as an Aboriginal cultural heritage assessment has been completed for the additional 5.83 ha portion of land (in accordance with OEH's assessment requirements, including Aboriginal community consultation), OEH does not recommend approval of the proposed modification.

With regard to the existing cultural heritage condition (C12), the proposed modification states with respect to the ACHMP: *"given that this plan has addressed the whole of the site it is requested that the condition be rewritten to acknowledge that all CHMP issues have been addressed and all site works are to comply with this Plan"* (Tattersall Lander Pty Ltd 2016). OEH notes that the ACHMP does not include the additional 5.83 ha of land that is proposed to be added under the modification. As such, OEH is not satisfied that the ACHMP appropriately addresses the 'whole of site' (as proposed under this modification).

With respect to the ACHMP more generally, OEH notes that the ACHMP is a management tool that will help to guide the ongoing management and protection of Aboriginal cultural heritage within the project area, and it is a requirement of the current development consent. OEH advises that the ACHMP should be reviewed and updated regularly (in consultation with the registered Aboriginal parties and OEH) to ensure it remains relevant over time and continues to meet current standards. OEH suggests that as part of the ACHMP review, the following matters should be addressed:

- In relation to the Riverside\_01 midden, the ACHMP should be updated to include detailed mapping of the assessed site boundary and boundary coordinates. The ACHMP states that the site is considered to cover the entire area of the raised sand dune landform, however, an Aboriginal Site Recording Form is not supplied for this site in the ACHMP, and the mapped extent of the site in Figures 1.1 and 1.2 differs from the extent of the raised sand dune landform mapped in Figure 4.1. It is therefore not possible to accurately confirm the defined extent of the Riverside\_01 midden. The ACHMP includes a range of provisions for the management of the

Riverside\_01 midden (including the specification of a 10m buffer zone surrounding the site boundary), however, without accurate site details, effectively implementing these measures would be difficult.

- In relation to the ongoing management of the two middens, the ACHMP states that further means of protecting the middens (such as control of access and fencing) will be considered if indirect impacts increase or if uncontrolled visitor use is found to be causing erosion or damage to archaeological features. However, the ACHMP does not outline a process for monitoring the condition of the middens and determining whether damage is occurring over time. OEH suggests that the ACHMP be updated to include commitments to undertake ongoing, regular monitoring of the two identified middens to determine if damage is occurring. This monitoring program should be conducted in consultation with Karuah Local Aboriginal Land Council at regularly prescribed intervals, and should inform the ongoing management strategies for both sites.
- OEH suggests that the 'Protocol for Discovery of Unknown Sites' should be updated to better articulate the requirements for management and salvage of any such unexpected finds prior to construction works continuing. Figure 7.1 of the ACHMP shows that an appropriate salvage methodology for unexpected finds must be developed (in consultation with OEH), approved and implemented prior to construction works resuming, however, aside from this figure, the process for managing unknown sites during construction is not otherwise detailed within the ACHMP. OEH suggests that the table of key tasks and responsibilities in Section 8 is updated so that the requirement to consult with OEH regarding the management of previously unrecorded Aboriginal sites and obtain approval for any management measures is expressly stated. It should be clear that any approved salvage or mitigation measures must be completed prior to any construction works recommencing in that location.

