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Contact: Calvin Houlison
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Dear Ms Butcher

RE: Sandon Point Residential Development – Proposed Concept Plan Modification (MP 06_0094 MOD 5)

Thank you for consulting us regarding the abovementioned concept plan modification. We understand that the proposal comprises a reduction in the number of independent living units from 250 to 140, an additional 55 residential dwellings and associated amendments to the approved concept plan layout.

Our comments relating to Aboriginal cultural heritage, biodiversity, water quality and flooding are detailed at Attachment A and summarised below:

- The proposed modification will reduce the overall level of harm to Aboriginal objects. However, as impacts to Aboriginal heritage will still occur we recommend developing an Aboriginal Heritage Management Plan to ensure appropriate long term management of Aboriginal heritage in the context of the proposed development.
- We also require the Aboriginal community consultation process to be restarted in order to support an AHIP application that complies with OEH guidelines. We have attached additional comments at Attachment A in relation to the anticipated AHIP application.
- We consider that the SEAR recommending that additional impacts of the proposed modification on biodiversity be considered has been addressed. However, we recommend that the offset scenario derived from on-ground plot data based on current site conditions, rather than the scenario manipulating plot data to exclude a widespread Acacia species, be adopted for future offset requirements.
- We also recommend revisiting the species credit calculations as detailed at Attachment A. Offsets should be provided at an early stage to reduce any further assessment or delays at future development stages.
- It is suggested that further clarity be sought on the following floodplain risk management matters:
 - Flood impacts comparing existing with developed conditions for both existing and future implementation of relevant flood mitigation measures identified in Council's Hewitts Creek FRMP;
 - Climate change considerations;

- Implications for the ecology of the upper reach of Cookson Creek resulting from diversion of flows;
 - Whether increased flows and associated afflux in the rail corridor is acceptable in terms of existing drainage infrastructure and agreeable to the land and asset owner; and
 - Whether reasonable attempts have been made to seek the preferable approach of reconfiguring the layout to accommodate the existing creek.
- We recommend that water quality objectives be established for the development proposal to guide the design of stormwater treatment measures and demonstrate the influence of water quality impacts on coastal wetlands. This includes the additional impact upon water quality of any potential contaminants within the revised concept layout footprint, consistent with the relevant policy and legislative framework for the coastal environment.

Please do not hesitate to contact Calvin Houlison, Senior Conservation Planning Officer on 4224 4179 or via e-mail calvin.houlison@environment.nsw.gov.au should you have any further queries.

Yours sincerely



CHRIS PAGE

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Conservation and Regional Delivery

Attachment A: OEH Detailed Comments on Proposed Sandon Point Concept Plan Modification (MP 06_0094 MOD 5)

OEH DETAILED COMMENTS ON PROPOSED SANDON POINT CONCEPT PLAN MODIFICATION (MP 06_0094 MOD 5)

1. Aboriginal Cultural Heritage

Changes to the impact to Aboriginal cultural heritage under the proposed modification

The proposed modification appears to result in a reduction in the overall level of harm to Aboriginal objects in comparison to the existing approved Concept Plan.

However, the change to the nature of the residential development may increase recreational use of proposed open space areas. This includes the Turpentine Forest and conservation area at AHIMS-listed site 52-2-4239. Detailed assessment of how recreational use can be best managed to avoid harming the Aboriginal cultural values is required. This has not been included in the Aboriginal cultural heritage assessment (MDCA 2018) provided with this referral.

It appears that detailed management of Aboriginal cultural values and harm to Aboriginal objects will be finalised through the AHIP process.

Aboriginal community consultation process

OEH guidelines require applications for an Aboriginal Heritage Impact Permit (AHIP) to demonstrate that there has been a 'continuous consultation process' (Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants, p.11). Breaks in contact of over six months are generally considered not to constitute continuous consultation.

There appears to have been a lengthy break in consultation between the 2015 test excavations and 2018 revised reporting to support this modification. Given this break in consultation, we require the consultation process to be restarted from Stage 1 in order to support the AHIP application.

The AHIP application must include complete copies of all consultation information and correspondence in relation to the consultation process. The Stage 1 notifications and advertisement must include the items set out in Clause 80C of the National Parks and Wildlife Regulation 2009.

The Aboriginal Cultural Heritage Assessment Report (ACHAR) must also clearly set out how comments from the Registered Aboriginal Parties (RAPs) have been addressed.

Archaeological assessment

The archaeological test excavation has been limited to the north east portion of the development area. The AHIP application must demonstrate why test excavation was not extended into the remainder of the area. If appropriate justification cannot be provided, then additional archaeological test excavation may be required before OEH can consider an area based AHIP application as proposed by MDCA (2018, p.69).

The report submitted with the AHIP application must include updated information accurately reflecting the condition of the AHIP area at the time the AHIP application is lodged. Landscape photographs in the ACHAR are from 2005. An updated literature review must also be included. There are also some inconsistencies in the numbers of Aboriginal objects excavated that must be corrected, e.g. a different number of artefacts is reported from test unit BH08 in Table 14 to that in Figure 19 (MDCA 2018, p.55).

We require further information of the 'historical test trench' referred to in MDCA (2018, p.60). This must include the location of the trench and whether Aboriginal objects were recovered during that excavation.

Reporting on the archaeological test excavations must include all required information set out in the Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW. In addition, the ACHAR must be submitted to the AHIMS Registrar as soon as possible.

Protecting Aboriginal heritage values

We support the conservation of part of site 52-2-4239 as proposed. However, the applicant must ensure adequate protections are in place to achieve this conservation.

We also support conserving the Turpentine Forest by retaining the E2 zone. We recommend that the AHMP include a strategy for protecting the Aboriginal cultural values of the Turpentine Forest in the context of the proposed development. This should include protection of intangible cultural values to ensure appropriate management of the E2 zone and must be developed in consultation with the appropriate members of the Aboriginal community.

The AHIP application should include a specific cultural values report to inform the appropriate management of Aboriginal cultural heritage values in the context of the proposed works. This is required given the significant Aboriginal cultural values of the Sandon Point area.

To protect Aboriginal heritage, the AHIP application should include an Aboriginal Heritage Management Plan (AHMP) prepared in consultation with the Aboriginal community. The AHMP must set out how the area will be protected and any ongoing management requirements (e.g. vegetation management, signage, fencing) to ensure long term protection of the site.

AHIP application

The AHIP application must include:

- An AHMP to guide the long term management of Aboriginal cultural heritage within the context of the proposed development.
- A finalised plan for how to manage the excavated objects. This must include evidence of consultation with the RAPs about the long term management options.
- An updated search of the AHIMS. The search reported is based on a 2015 search, and additional site information is likely to have been added to AHIMS and the relevant site cards since 2015.
- The AHIP application must comply with OEH guidelines that are available on our website: <https://www.environment.nsw.gov.au/licences/achregulation.htm>

Please note that if the subsequent DAs are assessed as integrated development for the purposes of the National Parks and Wildlife Act, then OEH will require all information necessary to determine an AHIP application to be provided to us when requesting General Terms of Approval.

2. Biodiversity

Background

The Cookson Pimlico site contains a remnant stand of turpentine forest, which has been recognised in previous planning studies and protected from future development in an environmental zone. It is also adjacent to Swamp Sclerophyll Forest and Coastal Freshwater Wetlands endangered ecological communities (EECs), situated to the east within environmental and public lands. The subject site provides part of a linkage between EECs and the remaining natural areas of the Sandon Point coastal environment to the Illawarra Escarpment via riparian corridors.

Policy & legislative context

The NSW Biodiversity Conservation (BC) Act 2016 commenced in August 2017. The BC Act provides that development applications exceeding certain thresholds must provide biodiversity offsets in accordance with the Biodiversity Assessment Method (BAM). Transitional provisions allowing for use of the former planning provisions apply to any major project or modification where SEARs were issued prior to commencement of the BC Act. The SEARs for this modification were issued in February 2018.

As future development applications assessed by Wollongong City Council will be subject to the BC Act, our recommended SEARs suggested a Biodiversity Development Assessment Report (BDAR) be prepared to assess the extent of the proposed modification impacts in accordance with current legislation. The final SEARs reflected this recommendation.

Impact assessment & consistency with Concept Plan

This assessment has been prepared in accordance with the SEARs, focusing on changes in condition of the site since the previous assessment. The areas of turpentine forest identified for conservation has been included in the E2 zone. The proposed modification is largely consistent with the extent of previously approved development footprint, which also excluded turpentine forest and riparian corridors. The extent of the overall areas earmarked for in-perpetuity conservation are not proposed to be reduced by the proposed modification.

The site is degraded to some extent with limited native vegetation remaining, outside of the remnant turpentine forest. We note that this turpentine forest is not proposed to be impacted directly by the proposal. Movement corridors provided for in the original riparian corridors and E zoned lands should remain unaffected by the proposed modification. Any clearing required for bushfire mitigation should remain outside of riparian and/or environmental zoned lands as provided for in the Concept Plan approval.

BDAR assessment

A BDAR has been prepared to address the impacts of the proposed modification. The BAM assessment recommends an offset of 31 ecosystem credits for the residual impacts of the proposed areas to be conserved. This includes remnant native vegetation comprising habitat for threatened flora and fauna species.

The BDAR has proposed two offset scenarios, one which represents the current site condition, the other with manipulated plot data excluding a widespread Acacia species. We do not agree with the removal of this species from the plot data and offset calculations and therefore would not support the alternative offset outcome. The offset requirement derived from the actual on-ground plot data is the one which should be used.

The BDAR also includes a number of species credit species in the assessment and resulting offset obligation. This assumed presence and inclusion in the offset requirements is very conservative in nature, and we suggest this be revisited. Finally, we suggest that offsets be provided as early as possible to reduce any further assessment or delays at future development stages. We remain available to discuss this or any other matter raised in relation to biodiversity.

3. Flooding & Water Quality

Floodplain Risk Management

As the proposed development area is potentially affected by flooding and/or has the potential to affect flood behaviour, it will need to be considered by the consent authority in accordance with the NSW Government's Flood Prone Land Policy as set out in the NSW Floodplain Development Manual (FDM, 2005). The primary objective of the policy is to reduce the impact of flooding and flood liability on individual owners and occupiers, and to reduce the private and public losses resulting from flooding, utilising environmentally positive methods wherever possible.

Consideration should be given to:

- The impact of flooding on the safety of people/users of the development for the full range of floods including issues linked with isolation and accessibility for emergency services;
- The impact of flooding on the proposed development;

- The impact of the proposed development on flood behaviour; and
- The implications of climate change (particularly increased rainfall intensity and sea level rise), sensitivity of modelling parameters and cumulative impacts on estimated flood planning levels.

From the information available, it is unclear as to whether adequate consideration has been given to these issues in their entirety.

Council's Hewitts Creek Floodplain Management Plan (FRMP, 2002) recommends a number of flood mitigation measures which have the potential to affect flooding at the site. For example, flood mitigation scheme TB1 includes upgrade of the Tramway Creek rail culvert and formalisation of the overland flow path upstream of the culvert. The implications of future implementation of these measures are understood to have been incorporated into the overall planning of the Sandon Point area, however such measures have not been considered for this proposal. It is also unclear as to whether climate change has been considered in flood modelling, including estimated increases in rainfall intensities and sea level rise.

In the existing scenario, flows from upstream of the Illawarra Railway are conveyed through the rail culverts, then through culverts under Geraghty Street before discharging into Cookson Creek which traverses the site. It is understood that the proposal includes diverting discharge from the rail culverts with a flood barrier, and decommissioning of the Geraghty Street culverts. The diverted flows would be picked up by a new culvert and discharge at a point further downstream in Cookson Creek.

The diversion increases flows within the rail corridor, with a corresponding reduction in Cookson Creek (i.e. the upper reach of Cookson Creek would be bypassed). While the report notes that the resulting afflux of up to 1m in the rail corridor does not impact the rail formation level, it is unclear as to whether existing rail drainage infrastructure is suitable to convey the increased magnitude and frequency of flows, or whether the land owner and consent authority is agreeable to such impacts.

The report notes that the diversion is required due to conflict with the proposed layout, which includes fill over the creek to accommodate lots. It is unclear from the report as to whether attempts have been made to instead modify the layout to accommodate the existing creek.

With consideration of the above, it is suggested the approval authority seek further clarity on the following:

- Flood impacts comparing existing with developed conditions for both existing and future implementation of relevant flood mitigation measures identified in council's Hewitts Creek FRMP;
- Climate change considerations;
- Implications for the ecology of the upper reach of Cookson Creek resulting from diversion of flows;
- Whether increased flows and associated afflux in the rail corridor is acceptable in terms of existing drainage infrastructure and agreeable to the land and asset owner; and
- Whether reasonable attempts have been made to seek the preferable approach of reconfiguring the layout to accommodate the existing creek.

Water Quality

The concept plan approval boundary incorporates areas mapped as coastal wetlands under the State Environmental Planning Policy (Coastal Management) 2018, though the transitional arrangements under the SEPP are relevant to the proposed modification. However, the technical information prepared in support of the proposed modifications to the concept plan approval generally characterises the environmental impacts associated with the proposed amendments regarding coastal wetlands.

The proposal also outlines avoidance and mitigation strategies to minimise impacts to the coastal wetland environment including riparian corridors. This includes the proposed development boundary being largely consistent with the development footprint under the approved concept plan.

Whilst the Flood Impact Assessment (Cardno, 2018) that accompanies the modification includes an overview of the proposed stormwater drainage concept which includes water sensitive urban design elements, no reference to water quality objectives being established for the development or how the proposed stormwater drainage concept would achieve any such objectives has been provided.

It is necessary that appropriate water quality objectives be established for the development proposal to guide the design of stormwater treatment measures. Such objectives would also demonstrate that the influence of water quality impacts on coastal wetlands including the receiving environments of Tramway, Cookson and Woodlands Creeks are addressed.

To address these issues, the proponent is encouraged to consult with Council to establish how water quality objectives and targets are consistent with the NSW Government's Risk-based Framework for Considering Waterway Health Outcomes in Strategic Land-use Planning Decisions. This would provide an opportunity to strategically identify and manage the land-use impacts associated with the development on water quality.

The environmental site assessment (EIS, 2018) in support of the modification proposal concludes that further sampling and analysis is necessary to characterise the potential extent of soil and groundwater contamination associated with historical land-use, within the southern precinct of the site. The proposal should verify the extent of any potential contamination and possible remediation at this point in time to demonstrate that the site is suitable for the proposed development.

We are supportive of the educational signage as proposed under the Vegetation Management Plan with an aim to raise community awareness regarding the environmental values and cultural significance associated with the proposed development area. We would encourage consultation with Council and the Illawarra Local Aboriginal Land Council to discuss opportunities for environmental and cultural heritage awareness raising that aligns with any initiatives being considered for the adjoining Sandon Point coastal environment.