



**Office of
Environment
& Heritage**

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Our reference: DOC19/473763
Contact: Calvin Houlison
4224 4179

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Dear Michelle,

RE: Modification to Concept Plan (Tallawarra Lands) (MP 09_0131 MOD 1a)

Response to Submissions

Thank you for referring the abovementioned Response to Submissions (RtS) to us for comment. Our comments are summarised below and detailed at Attachment A.

The Technical Memorandum provided by Cardno (2019) as part of the Response to Submissions (RtS) does not address comments relating to isolation and accessibility for emergency services to the community during floods, or the potential impacts of increased magnitude, frequency and volume of flows associated with the proposed modification on flood behaviour.

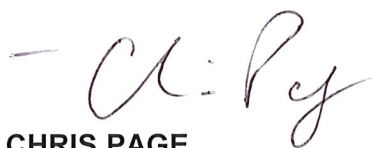
The additional water quality analysis supporting the RtS does not address how the proposal would impact the receiving waters of Lake Illawarra and estuary health. It also has not been completed in accordance with the Risk-based Framework for Considering Waterway Health Outcomes in Strategic Land-use Planning decisions (the Framework) as established in the Illawarra Shoalhaven Regional Plan. Assessing the impacts of water quality through the Framework will assist in identifying relevant water quality objectives and the necessary water quality management infrastructure required to offset impacts to achieve sustainable estuary health outcomes for Lake Illawarra.

Updated Aboriginal cultural heritage assessment reports (ACHAR) have been provided, along with Archaeological Technical Reports. The ACHARs document the results of consultation with the Registered Aboriginal Parties, with responses supporting the report recommendations. However, the archaeological test excavations previously recommended by OEH have not been completed. Without the test excavation results the full impact of the proposal on Aboriginal heritage is not known. Early assessment provides the best opportunity to achieve heritage conservation and provides certainty to all parties about the Aboriginal heritage management requirements.

The biodiversity issues raised in our initial response, including future environmental lands management, offsetting requirements and potential for establishment of a Biodiversity Stewardship site have not been discussed in the RtS. The Department may want to reconsider the original comments when addressing the RtS documentation.

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

A handwritten signature in black ink, appearing to read 'Chris Page', with a horizontal line to the left of the first name.

CHRIS PAGE

Senior Team Leader, Planning (Illawarra)

South East Branch

Conservation and Regional Delivery Division

Attachment A: OEH Detailed Comments on Concept Plan (Tallawarra Lands) Modification 1a (MP 09_0131 MOD 1a)

OEH DETAILED COMMENTS ON CONCEPT PLAN (TALLAWARRA LANDS) MODIFICATION (MP 09_0131 MOD 1A)

Floodplain Risk Management Comments

The Technical Memorandum provided by Cardno (2019) as part of the Response to Submissions (RtS) does not address comments relating to isolation and accessibility for emergency services during floods. As noted in the *Tallawarra Lands Flood Risk Assessment* (Bewsher, 2010), the access road into the northern precinct is expected to be inundated during a 1% Annual Exceedance Probability (AEP) flood. Accessibility during floods greater than this and up to the Probable Maximum Flood (PMF) does not appear to have been assessed, nor have the implications to the safety of an increased population as proposed in the modification. We suggest that the DPE liaise with council to determine whether the modification is appropriate in the context of council's current and future flood access strategy and associated emergency response arrangements to manage risks to public safety in the event of a flood.

In terms of comments raised with respect to the potential impacts of increased magnitude, frequency and volume of flows associated with the proposed modification, the RtS proposes that this be assessed in future design stages. This may have implications to the current approval and as such DPE should consider whether this is an appropriate approach in the absence of an assessment supporting a mitigation strategy.

Water Quality Comments

Whilst we acknowledge that additional water quality modelling has been undertaken that reflects the intensification of the proposed modification, the additional information does not identify how the proposal will impact estuary health. The water quality assessment has not been prepared in accordance with the NSW Government's Risk-based Framework for Considering Waterway Health Outcomes in Strategic Land-use Planning decisions (the Framework). The assessment also does not identify how the residual stormwater pollutant loads discharging to Lake Illawarra as a result of the proposal, will impact the receiving waters of Lake Illawarra. In this regard, the impacts of the proposed modification on estuary health including water quality, coastal wetlands and aquatic ecosystems have not been assessed or modified mitigation strategies determined.

The draft Lake Illawarra Coastal Management Program, 2018 (CMP) identifies that the most significant threat to the estuary health is catchment development and associated impacts to water quality. To address the threats and pressures on Lake Illawarra and to facilitate an improvement to long term estuary health, several key objectives and management strategies are detailed within the draft CMP. The information detailed within the RtS does not consider the objectives of the draft CMP. Similarly, the Illawarra Shoalhaven Regional Plan (ISRP) identifies priority strategic goals and actions to promote and foster sustainable growth and the protection of the region's natural resources. Goal 5 – A Region that Protects and Enhances the Natural Environment under the ISRP is relevant to the proposal which has also not been considered. These strategic documents identify current priority threats and pressures to Lake Illawarra and objectives for managing estuary health, which provide a basis for assessing the impacts of the proposed modification and to integrate mitigation strategies.

Application of the Framework and consideration of the CMP and IRSP is appropriate for assessing water quality and the impacts from the proposal to the sensitive receiving waters and estuary health of Lake Illawarra. This approach will assist in identifying relevant water quality objectives, suitable stormwater water quality improvement infrastructure and other mitigation measures.

Should DPE require any further advice on flood risk management or water quality matters, it should not hesitate to contact our office.

Aboriginal cultural heritage comments

We provided comments on 26 July 2018 in relation to the proposed Major Project modification. These comments remain relevant. Archaeological technical reports have been provided with the Response to

Submissions (RtS), however, these reports do not include the recommended archaeological test excavation.

Updated Aboriginal cultural heritage assessment reports (Biosis 2017a and b) have been provided with the outcomes of the Aboriginal community consultation process. Biosis (2017a, p.27 and 2017b, 0.26) report that the Registered Aboriginal Parties (RAPs) support the draft reports. Comments were received recommending reburial of excavated Aboriginal objects and regarding the cultural context of the land.

The Aboriginal cultural heritage assessment must also consider any changed impacts as a result of changes to the impact footprint (including any ancillary works) through this Modification since the Aboriginal heritage assessment was completed.

Key issues

The key issues for the Aboriginal cultural heritage assessment are:

- Aboriginal cultural heritage conservation and open space conservation should be further considered.
- The timing of the additional archaeological investigation – we recommend this is pre-approval.
- Timing of preparing the Aboriginal heritage management plan (AHMP) – we recommend this is prepared pre-approval.

No Aboriginal cultural heritage conservation outcomes are proposed

No Aboriginal heritage conservation outcomes are proposed. The RtS states that the applicant cannot commit to the conservation of the fig tree recorded as Aboriginal cultural heritage site 52-5-0615. The argument presented (Cardno p.64) is that earthworks may be required 'in the vicinity of this tree to achieve the approved Concept Plan'. The applicant suggests further detailed studies at the development application stage.

Appropriate evidence has not been presented about why this heritage item cannot be conserved. This modification application is an opportunity to amend the proposed earthworks near the tree and build a conservation outcome into the Concept Plan.

Additional Aboriginal cultural heritage assessment is required

The RtS (section 5.12, pp.63-64) indicates that the recommended archaeological test excavation have not yet been conducted. Without the test excavation results the full impact of the proposal on Aboriginal heritage is not known. Early assessment provides the best opportunity to achieve heritage conservation and provides certainty to all parties about the Aboriginal heritage management requirements.

We also support preparing the AHMP at an early stage of the project development, ideally before project approval. The AHMP must be prepared in consultation with the RAPs.

Completing the test excavation and AHMP before project approval may reduce the complexity of the Aboriginal heritage approvals process at the DA stage.

Response to submissions regarding Aboriginal cultural heritage impacts

The RtS does not respond to concerns raised in submissions from the general public and the Lake Illawarra Estuary Management Committee about the loss of open space and associated educational opportunities for the Aboriginal community. These matters should be addressed.

We encourage the applicant to engage those Aboriginal community members who have provided comments, and who have cultural knowledge relevant to the project area, in the consultation process required by OEH. We reiterate our previous comment that the proponent should ensure consultation about this project is continuous. In general, breaks of more than 6 months may not constitute continuous consultation.

Summary of Aboriginal heritage comments

- Conservation of the fig tree at site 52-5-0615 should be further considered; the applicant has not demonstrated that they have attempted to achieve a conservation outcome for this site.
- The applicant should respond to comments received regarding the open space conservation and associated Aboriginal heritage values.
- We recommend archaeological test excavation occur at an early stage of the project, preferably before project approval.
- We recommend the Aboriginal heritage management plan is developed at an early stage of the project, preferably before project approval.
- Our previous comments (2018) remain relevant.