



## Office of Environment & Heritage

Date: 28 June 2019  
Your reference: MP06\_0094 MOD5  
Our reference: DOC19/559683  
Contact: Calvin Houlison  
4224 4179

Emma Butcher  
Planning Officer, Regional Assessments  
Department of Planning & Environment  
GPO Box 39, Sydney NSW 2001

Dear Emma,

**RE: Modification – Sandon Point Residential Development, Retirement Village Modification  
(MP 06\_0094 MOD 5) 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.

### **Aboriginal Cultural Heritage**

We support the proposed Modification, with the recommendation that the applicant be required to prepare an Aboriginal heritage management plan (AHMP) and noting that subsequent development applications are likely to require Aboriginal heritage impact permits (AHIPs). Our previous comments in relation to Aboriginal heritage remain largely relevant, especially in relation to AHIP requirements.

### **Floodplain Risk Management**

The revised Flood Impact Assessment provided by Cardno (2019) as part of the RtS includes a modified layout, which removes the diversion of Cookson's Creek and reduces flood impacts. However, some key concerns previously raised have not been addressed, including the acceptability of remaining flood impacts in the rail corridor and the implications of the proposal on flood mitigation measures planned by council in the catchment.

### **Waterway Health**

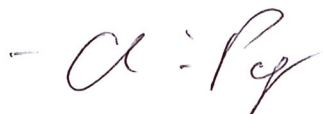
The information provided within the RtS does not address previous comments raised regarding water quality and contamination. No further information has been provided regarding groundwater and soil contamination as previously recommended. Assessing the extent of contamination in the southern precinct of the concept layout footprint is necessary to assess the suitability of the proposed development site and ensure that appropriate environmental management strategies are developed and implemented to protect local groundwater and coastal wetland environments.

### **Biodiversity**

The biodiversity issues raised in our initial response, have largely not been addressed in the RtS. The recommendation of the biodiversity consultant is to address any identified issues as part of future detailed development applications. The Department may want to reconsider the original comments when addressing the RtS documentation or alternatively, allow the details to be addressed at subsequent development application stages.

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](mailto:calvin.houlison@environment.nsw.gov.au) should you have any further queries.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Page'.

**CHRIS PAGE**  
**Senior Team Leader, Planning (Illawarra)**  
**South East Branch**  
**Conservation and Regional Delivery**

Attachment A: OEH Detailed Comments on the Modification – Sandon Point Residential Development, Retirement Village  
Modification (MP 06\_0094 MOD 5)



## **OEH DETAILED COMMENTS ON MODIFICATION TO SANDON POINT RESIDENTIAL DEVELOPMENT, RETIREMENT VILLAGE MODIFICATION (MP\_06\_0094 MOD5)**

### **Floodplain Risk Management Comments**

The revised Flood Impact Assessment provided by Cardno (2019) as part of the Response to Submission (RtS) includes a modified layout, which removes the diversion of Cooksons Creek and reduces flood impacts. However, some key concerns previously raised have not been addressed.

Although reduced, significant flood impacts remain on the adjacent rail corridor as a result of the proposed development. This includes flood level increases of up to 1.5m in the PMF. Flood mapping provided in Appendix C identifies off-site flood impacts in the 1% Annual Exceedance Probability (AEP) event in the rail corridor, which is contrary to the report (section 5.7) which states that no impacts are predicted within the rail corridor for this event. The report should clearly establish all off-site impacts and strategies to manage them, including whether impacted land owners are agreeable to unmitigated flood impacts.

Additional modelling undertaken indicates that benefits of the flood mitigation measures recommended in Hewitts Creek Floodplain Management Plan (FRMP, 2002) are maintained in the proposed development scenario. However, it is unclear which flood event has been modelled, noting that the range of all possible floods including the 1% AEP and PMF events should be assessed. Clarification should be obtained from council with regard to consistency and implications of the proposal to their Floodplain Risk Management Plan.

### **Water Quality Comments**

The RtS does not address comments relating to soil and groundwater contamination for the southern precinct of the site. The environmental site assessment (EIS, 2018) in support of the proposal concluded that further sampling and analysis is necessary to characterise the potential extent of soil and groundwater contamination associated with historical land-use. Assessing contamination in the southern precinct will verify the extent of potential contamination and guide the development of any necessary remediation and monitoring actions required for the proposed development. We recommend that you seek additional contamination information from EPA for this proposal. Resolving the concerns relating to contamination will ensure that appropriate environmental management strategies are developed and implemented with the aim of protecting local groundwater and coastal wetland environments. Characterising contamination will also facilitate an assessment of the suitability of the revised development footprint for its proposed use and satisfy the relevant Secretary's Environmental Assessment Requirements relating to assessing impacts to surface and groundwater.

### **Aboriginal cultural heritage comments**

#### **Aboriginal community consultation**

In relation to point 1B of the RtS, MDCA (2019) respond that consultation has been continuous. If so, evidence of continuous consultation with all Registered Aboriginal Parties (RAPs) must be provided with subsequent AHIP applications or requests for General Terms of Approval (GTA). Consultation with the Illawarra LALC is reported by MDCA (2019). We support this consultation, however, it does not address the requirements of clause 80C of the National Parks and Wildlife Regulation 2009.

There appears to have been a break in contact with the RAPs between 2015 and 2018. OEH guidelines suggest that breaks in contact of over 6 months may not constitute continuous consultation. If there has been a substantial break in contact then the applicant is required to restart the consultation process. Each AHIP application or request for GTAs must be able to demonstrate continuous consultation.

#### **AHIP requirements**

We note that AHIP applications will be linked to future development applications. No ground disturbance, including for geological testing, vegetation management or services installation may occur that is likely to



harm Aboriginal objects unless an applicable AHIP has been issued. The applicant must allow appropriate time and resources to prepare AHIP applications.

As per our previous comments, where a development application is being assessed as integrated development for the purposes of s90 of the NPW Act, we will require all the information necessary to support an AHIP application to be provided with the request for GTAs.

### **Proposed site protection measures**

We reiterate our previous recommendation that an Aboriginal Heritage Management Plan (AHMP) is prepared, which we note is supported by the RtS and MDCA (2019). The AHMP must be prepared in consultation with the RAPs and OEH. The RtS does not address our comment regarding indirect Aboriginal heritage impacts through increased recreational use of the conservation and open space areas. However, this also can be managed through the recommended AHMP.

We support the proposed fencing measures recommended by MDCA (2019) to protect the part of site 52-2-4239 intended to be conserved. The fencing should ideally be outside the extent of the archaeological site. Where the fencing is likely to harm subsurface Aboriginal objects it will need to be covered by an AHIP.

The MDCA (2019) response does not include measures to protect the Turpentine Forest. However, we consider this can be adequately addressed through the AHMP (as per point 8 of the RtS). The AHMP should be used to support an AHIP application for management works of the open spaces.

We support the suggestion that houses adjacent to the Aboriginal Archaeological Site are set back from the lot. However, the RtS (Ethos Urban 2019, p.9) does not provide a process or mechanism to ensure this will happen. There are also other residential factors such as installing swimming pools and landscaping that may have an equal or greater impact on archaeological deposits than house construction. The value and enforceability of this site protection measure needs additional consideration.

### **Vegetation management plan**

The Vegetation Management Plan prepared by Cumberland Ecology (CE 2019) must be integrated with the Aboriginal cultural heritage assessment and AHMP in relation to protecting the Aboriginal heritage values of the Turpentine Forest and other open space areas. For example, construction of the path referred at the Turpentine Forest (CE 2019, p.4.3) and manual weeding (CE 2019, p.5.3) must consider Aboriginal heritage impacts, must involve Aboriginal community consultation and are likely to require an AHIP. We suggest the assessment of Aboriginal heritage is considered with reference to the VMP schedule of timing and responsibilities (CE 2019, pp.8.1-8.3).

### **Adequacy of the archaeological test excavations**

MDCA (2019) has not addressed our comments regarding the extent of the archaeological test excavations. We reiterate that the AHIP application must demonstrate that the test excavation program has been adequate, or additional archaeological test excavation will be required. If not resolved at the Modification stage, there is a risk that the applicant may apply to OEH for an AHIP and then be required to complete additional archaeological excavations before that application can be properly considered.

We also suggest MDCA consider whether the proposed works will also harm any Aboriginal objects outside site 52-2-4239. For example, the site boundary currently on AHIMS for site 52-2-2143 is close to the southern boundary of the Anglicare land and appears to be an arbitrary boundary rather than reflecting the actual extent of Aboriginal objects. We suggest the applicant obtain a copy of the AHIMS site card for site 52-2-2143 to inform the assessment moving forward.

Our request for additional information on the 'historical test trench' and our recommendations for updates to the ACAHR have also not been addressed.