



Our ref: DOC19/1062364

Senders ref: MP 09_0131 Mod 1

Michelle Niles
Senior Planner, Regional Assessments
Planning & Assessment
E-mail: michelle.niles@planning.nsw.gov.au

Dear Ms Niles

Subject: Tallawarra Concept Plan MP 09_0131 Modification 1 – Addendum Response To Submissions

Thank you for your e-mail dated 22 November 2019 requesting comments on the addendum Response To Submissions letter and appendices prepared by Cardno (12 November 2019). In response, we offer the following comments and further detailed advice at Attachment A:

Aboriginal Cultural Heritage

The key issues for the Aboriginal cultural heritage assessment are:

- The timing of the archaeological test excavations – we recommend this is pre-approval so that the decision maker can consider the test excavation results.
- Timing of the Aboriginal cultural heritage management plan (CHMP) – we note this is proposed to be prepared in two stages, prior to first DAs in the central/northern and southern precincts respectively.
- Appropriate heritage management of site 52-5-0615 (TLPD AFT 9) a fig tree with Aboriginal cultural values.

The additional information that has been provided indicates that archaeological test excavations have not yet occurred, but an Aboriginal Heritage Impact Permit (AHIP) application to allow those excavations was submitted to us on 25 November 2019. We are currently assessing this application. An Aboriginal cultural heritage management plan has also not yet been provided, however, the submission indicates that this is being prepared in consultation with the Registered Aboriginal Parties.

The applicant is seeking approval of the superlot subdivision based on their commitment to protect Aboriginal heritage through the future CHMP and AHIP processes. We note that the CHMP is to be provided in two parts. The first part is proposed to be submitted at the time of the superlot subdivision for the Central and Northern Precincts and the second part prior to lodgement of the first DA in the Southern Precinct following superlot subdivision. We support this timing provided that there is flexibility to adjust the final design to avoid harm to Aboriginal heritage as required and based on the test excavation results. This may require changes to the design to:

- Avoid harm to site 52-5-0615 (the fig tree).
- Avoid harm to sites as required based on the results of the test excavations.

We recommend the CHMP is provided to the Department at an early stage to allow for consultation with Biodiversity & Conservation staff, and provide the best opportunity to integrate heritage protection requirements with the approvals process.



Biodiversity & Offsets

It does not appear that the matters raised in our initial response of July 2018 (see Attachment A), and subsequently re-referred to our June 2019 RTS submission, have been addressed. As such it is not clear why the matter remains unaddressed in RTS documents. We request the proponent attend to the issues in order to appropriately determine this aspect of the proposal.

Floodplain Risk Management

As detailed in previous advice, isolation and accessibility to the site in the event of a large flood and the associated implications to public safety of an increased population has not been addressed. The public safety risk sits with the whole future community including proposed floodplain development and areas above the probable maximum flood that are isolated. We note that the proponent has suggested this matter be addressed at a later stage through the DCP however there has been no assessment of what measures could be incorporated into the masterplan, noting the current access is inundated in floods less than the 1% AEP design event.

We therefore maintain that DPIE's Planning and Assessment group liaise further with council and the SES on this matter to determine whether the proposal is consistent with council's flood access strategy and local emergency response arrangements to satisfy itself that risks to public safety in the event of a major flood has been considered in its determination. This will also ensure that flood liability is addressed at the planning stage, rather than flood mitigation measures being required retrospectively by government.

Water Quality

Our previous advice on this proposal raised concerns that the water quality assessment was not prepared in accordance with the risk-based decision-making framework (RBF) for Lake Illawarra as detailed in the Illawarra Shoalhaven Regional Plan 2015. The additional information provides a summary of the RBF and highlights that the development site is mapped within the water quality "improve" zone under the Lake Illawarra RBF benefit map.

It also highlights that the implementation of the WSUD strategy will result in an improvement to water quality and is consistent with the RBF "improve" zone as per the benefit map. We note that the MUSIC modelling completed in support of the WSUD strategy is limited to modelling pollutant reductions only. Whilst the water quality assessment has not been prepared strictly in accordance with the RBF, it is demonstrated through the proposed WSUD strategy that the Wollongong DCP 2009 water quality targets are able to be met.

If you have any questions about this advice, please do not hesitate to contact Mr Calvin Houlison, Senior Conservation Planning Officer, via calvin.houlison@environment.nsw.gov.au or 4224 4179.

Yours sincerely

Chris Page

**Senior Team Leader, Planning (Illawarra)
Biodiversity & Conservation Division
Environment, Energy and Science**

5-December-2019

ATTACHMENT A: DPIE BIODIVERSITY & CONSERVATION DIVISION DETAILED COMMENTS

1. Aboriginal Cultural Heritage

Meeting with the applicant to discuss the Aboriginal cultural heritage assessment

DPIE Aboriginal cultural heritage regulation staff met with the applicant on 14 August 2019. Key outcomes from that meeting were:

- We are open to options for an Aboriginal Cultural Heritage Management Plan (CHMP) that includes principles and commitments for managing the Aboriginal cultural heritage assessment process, and for sequencing works in relation to the Northern, Central and Southern Precincts.
- We could provide comments on a draft CHMP.
- The DPIE Planning and Assessment team has the approval role and will need to be satisfied of the adequacy of the Aboriginal cultural heritage management assessment in relation to the Concept Plan approval.
- The formal Aboriginal community consultation process should start as soon as possible as an Aboriginal heritage impact permit (AHIP) is required to conduct archaeological test excavations.

The test excavations have not yet been conducted but the process is underway

Without the test excavation results the full impact of the proposal on Aboriginal heritage is not known. On 25 November 2019 we received an application for an AHIP to allow the test excavations to proceed. We are currently assessing this application.

AHIP requirements

It is likely a sequence of AHIPs will be required:

1. Test excavation AHIP for the combined Northern precinct and transmission line (application received).
2. AHIP to construct the transmission line (we suggest this also considers any ancillary areas, stockpile, access routes etc that are needed).
3. Subsequent AHIP(s) to construct the subdivision to be submitted at the DA stage. This is likely to require the transmission line AHIP to be surrendered to avoid overlapping permits.

This sequencing considers our understanding of the applicant's requirements for timing of the transmission line and subdivision construction.

Preparation of an Aboriginal Cultural Heritage Management Plan (CHMP)

We support preparing the AHMP at an early stage of the project development, ideally before project approval. The CHMP must be prepared in consultation with the Registered Aboriginal Parties. We understand from the applicant's submission that a draft CHMP is being prepared and will be provided to our office.

We do not object to the proposed wording of Condition 8 around staging the Cultural Heritage Management Plan, with Stage 1 being the Northern and Central Precinct and Stage 2 applying to the Southern Precinct.

Staging of the Concept Plan modification and subsequent development plan approvals

We note that the CHMP is to be provided in two parts. We support the proposed timing provided that there is flexibility to adjust the final design to avoid harm to Aboriginal heritage as required and based on the test excavation results. This may require changes to the design to avoid harm to site 52-5-0615 (the fig tree), and to avoid harm to sites as required based on the results of the test excavations.

Proposed relocation of the fig tree at site 52-5-0615

The proposed relocation of the fig tree at site 52-5-0615 must be discussed with the Registered Aboriginal Parties. We suggest that relocating this tree may harm the cultural values. We understand from the applicant's submission that Aboriginal community consultation on this matter is underway.

We do not support an approval that allows site 52-5-0615 to be relocated without having first consulted with the Aboriginal community and considered the outcomes of that consultation.

We support the applicant's statement that if the Aboriginal community consultation does not support relocating the fig tree then strategies to retain the tree will be proposed.

Transmission Line in Northern Precinct

The applicant has submitted a due diligence assessment (Biosis 2019) covering the land where works to the transmission line are required in the Northern Precinct. Due diligence is a legal defence only and we have no role in approving or certifying compliance with the due diligence process.

However, the first recommendation of the due diligence report is that an AHIP application be submitted to allow archaeological test excavations. This has occurred and the process is underway as outlined above.

Avoiding harm to site 52-5-0523, Central Precinct

We support efforts to avoid harm to a potential archaeological deposit (PAD) recorded as site 52-5-0523 on the eastern side of the Central Precinct. However, we note that the boundaries of this PAD have not been determined through archaeological test excavation, and limited detail is provided on how the site boundaries have been established to inform the boundary change.

Road construction

We note that the roads linking the Northern and Central Precincts, and any other ancillary areas, must also be subject to appropriate Aboriginal heritage assessment.

2. Previous Unaddressed Issues from July 2018 Submission

OEH DETAILED COMMENTS ON TALLAWARRA MIXED USE CONCEPT PLAN PROPOSED MODIFICATION (MP09_0131 MOD 1)

1. Amended Zoning & Environmental Land Management

Legislative Context & Background

The Tallawarra Lands Concept Plan approval was issued in May 2013 for a mixed use development comprising residential, commercial, retail industrial, open space and environmental uses within the lands formerly associated with the Tallawarra power station and surrounds (see Figure 1 below). Much of the vegetated areas on site, located within the E2 zoned areas, are identified as High Environmental Value (HEV) or biodiversity corridor lands under the Illawarra Shoalhaven Regional Plan (ISRP)(2015).



Figure 1: Approved Tallawarra Lands Concept Plan layout (Cardno 2018)

Future assessment requirements under Schedule 3 of the Concept Plan approval include details of future land ownership to be specified where land transfer is proposed at DA stage, and a revised Vegetation Management Plan (VMP) to manage the 353 ha of land proposed for public ownership, at a cost of \$3.8 million, prior to the first DA.

The proposed modification comprises increased density of development within the North Shore and Central Precincts, from 1010 to 1480 dwellings in total, and associated changes to zoning boundaries in these precincts (see Figure 2 below). The SEARs included an assessment of biodiversity impacts in accordance with the “avoid, minimise offset” hierarchy, updated details on the future management of environmental and

public lands, and updated assessments of proposed hydrological impacts, flooding and Aboriginal cultural heritage assessment.



Figure 2: Proposed Concept Plan Modification (Cardno 2018)

Proposed Land Use and Zoning

Planning Direction 2.3 under s9.1 of the Environmental Planning & Assessment Act (EP&A) Act 1979, requires that proposals affecting land zoned for environmental “*must not reduce the environmental protection standards*” of that land. The Direction must be addressed at such time as the zoning is updated under a Planning Proposal to reflect any Concept Plan amendments.

The E2 lands at Mt Brown in particular contain significant environmental values and are a priority for conservation and environmental management. We note that the E2 lands all appear intact as per the approved Concept Plan layout under the proposed modification. We also acknowledge that direct clearing implications of the proposal are limited and will be addressed to some extent by biodiversity offsets required at DA stage.

Notwithstanding, the proposal would result in a net reduction in the overall quantum of E3 lands proposed for future public ownership and a reduction in environmental lands set aside by the approved Concept Plan. The rationale for this further cumulative impact is therefore questioned, particularly in light of Direction 2.3 which must be addressed at Planning Proposal stage. This amendment would result in a loss of potential future revegetation areas and remnant areas of native vegetation.

Our office also raised concerns with the original Concept Plan regarding the extent of loss of Illawarra Lowlands Grassy Woodland (ILGW) threatened ecological community, which would be exacerbated by additional clearing proposed by this modification (see Section 3 below).

Future Environmental Lands Management

As discussed above, the E2 land at Mt Brown contains significant environmental values. We are aware that the Mt Brown Reserve is being actively managed in the ownership of Wollongong City Council, and that other opportunities for biobanking and/or biodiversity stewardship in the area are currently being investigated. The Concept Plan approval intended that the E2, E3 and RE1 zoned lands would be transferred into public ownership, primarily to Wollongong City Council and the now-defunct Lake Illawarra Foreshore Authority.

Future management arrangements for public open space and environmental lands must be specified at development application stage under Future Assessment Requirement 9, Schedule 3 of the Concept Plan approval. As the modification proposes to reduce the overall quantum of public open space and environmental lands envisaged under the Concept Plan approval, future management of the remaining public lands is considered to be of increased importance.

The proposed modification is largely silent on this matter (despite the initial approval issued in May 2013) other than stating that the proposed management framework will remain as per the approved Concept Plan. The SEARs for the proposed modification also required that updated details for future management of public open space and environmental lands should be provided. This matter should therefore be considered further as part of the proposed modification.

Given significant changes to regulatory and legislative frameworks since 2013, a status update on future environmental lands and open space management would be beneficial at this stage. We recommend that progress made to date on future tenure and management of environmental and open space lands be outlined prior to any modification approval, rather than being deferred wholly to the first development application.

Vegetation Management & Biodiversity Stewardship

The Concept Plan approval also required a revised Vegetation Management Plan (VMP) to be submitted prior to the first future development application to Council. The over-arching vegetation management plan framework for the Concept Plan area will need to be revisited in light of recent legislative changes under the Biodiversity Conservation (BC) Act 2016.

Furthermore, the potential for environmental lands not already secured to be managed as a Biodiversity Stewardship Agreement (BSA) site should also be considered at this stage. Given that the VMP in the Concept Plan committed \$3.8 million over a five-year period, a BSA would likely deliver an in-perpetuity conservation outcome under active management for a comparable outlay. Any future BSA application would require significant lead time and we therefore recommend that such options be canvassed prior to any modification approval, as it may lead to improved environmental outcomes across the Concept Plan area.

Recommendations:

1. Mechanisms for future management and ownership of public open space and environmental lands under the Concept Plan approval should be considered further as part of the proposed modification. The rationale for reducing the quantum of E3 zoned lands should also be revisited.
2. In light of recent legislative changes under the Biodiversity Conservation (BC) Act 2016, the potential for environmental lands not already secured to be managed as a Biodiversity Stewardship Agreement (BSA) site should be considered at this stage.

2. Biodiversity & Offsetting

Site Context and Proposal

Some smaller areas of vegetation in the Central and North Shore Precincts subject of the proposed modification are identified as High Environmental Value (HEV) or biodiversity corridor lands under the ISRP 2015. It is noted that the majority of HEV and corridor lands under the ISRP are not directly impacted by vegetation clearing proposed under this modification. Two threatened ecological communities on-site, Swamp Oak Floodplain Forest and Illawarra Lowlands Grassy Woodland, are listed under both NSW and Commonwealth legislation.

A total of 4.24ha of native vegetation clearing is proposed in the modification. This includes vegetation within the Illawarra Lowlands Grassy Woodland (1.36ha) and Swamp Oak Floodplain Forest (0.33ha) threatened ecological communities, and Sydney Blue Gum Bangalay moist forest (2.55ha), which represents 15% of the 28.3ha of native vegetation within the modification area.

Remnant native vegetation within the Concept Plan area is also known habitat for threatened flora species such as *Solanum celatum* and *Chorizema parviflorum*. The subject site also provides habitat for a number of threatened fauna species including Eastern False Pipistrelle, Square-tailed Kite and Greater Broad-nosed Bat, amongst others.

Proposed Modification Impacts

A description and assessment of the total quantum of clearing within the subject site has been prepared. However, a comparison of the additional clearing proposed with clearing approved under the existing Concept Plan (2013) layout has not been presented. The extent of additional clearing proposed by the modification should be quantified to determine the full extent of additional impact proposed above and beyond the approved Concept Plan layout.

The ISRP Direction 2.4 supports understanding the general degree of biodiversity loss upfront to assist proponents to work out practical offsetting solutions to avoid or minimise impacts.

Occurrences of *Chorizema parviflorum*, raised in previous OEH comments on the Concept Plan, appear limited to the Lakeside Precinct which remains unaffected by the proposed modification. Surveys for this species for the proposed modification indicate that it is not present within the study area. Similarly, *Solanum celatum*, whilst noted as occurring within the study area, was not recorded in the surveys areas impacted by the proposed modification.

Future Development Applications and BC Act Requirements

A biodiversity offset strategy (BOS) has been prepared for the proposed Concept Plan areas proposed to be modified in accordance with the NSW Framework for Biodiversity Assessment (FBA). The FBA which was in place for major projects prior to commencement of the NSW Biodiversity Conservation (BC) Act 2016. The assessment by Ecoplaning Pty Ltd determines that a total of 153 ecosystem credits are required under the FBA to offset the proposed clearing.

Credit calculations for individual DAs triggering the biodiversity offsets scheme will have to be converted to the Biodiversity Assessment Method (BAM) under the BC Act 2016. This additional assessment will need to be carried out to support future applications at such time as the DA is lodged. Although not essential, an indication of the likely staging and therefore the estimated offsets required for each stage would also be beneficial as part of the current modification. It is noted that the requirements of the BC Act will have to be addressed in full for each individual DA stage.

The proponent may also wish to consider the benefits of a new biodiversity certification solution under the BC Act rather than taking a DA by DA approach. Again, this aligns with Direction 2.4 of the ISRP.

Environment Protection & Biodiversity Conservation Act 1999

We also reiterate that the Commonwealth Government should be consulted regarding impacts upon Illawarra Lowlands Grassy Woodland and Swamp Oak Floodplain Forest threatened ecological communities, which were recently listed as critically endangered and endangered respectively under the Environment Protection and Biodiversity Conservation (EPBC) Act 1999.

Recommendation:

3. The extent of additional clearing proposed by the modification, particularly in areas affecting threatened ecological communities, should be quantified to determine the full extent of additional impacts proposed above and beyond the approved Concept Plan layout. An indication of the likely staging and therefore the estimated offsets required for each development application stage would also be beneficial at this stage