

21 May 2020

Our Ref: ADK:20/034

Your Ref: MP 06_0094 MOD 5

The Proper Officer
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

By email: Emma.Butcher@planning.nsw.gov.au

Dear Sirs,

RE: High Dune Pty Limited | Modification to Sandon Point Concept Approval MP 06_0094 MOD 5

- 1. I refer to my previous letter dated 8 May 2020 and to recent email correspondence with Emma Butcher of your office.
- 2. I have been referred to the Department's assessment report and recommended instrument for MP 06 0094 MOD, on the Department website.
- 3. My client has considered Section 6.7 of the assessment report and Condition A5(c)(v) of the recommended instrument, as suggested. Although grateful that the Department has taken into account its position, my client considers that greater certainty is necessary in order to ensure that Wilkies Walk is properly located, and Wilkies Street can be reopened to secure necessary access for Lot 101.
- 4. My client agrees with the Department that it may be necessary to relocate Wilkies Walk to its originally intended position (as indicated in both the Minister's Concept Approval Major Project No. 06_0094 and the Project Approval for Major Project No. 07_0032) in order to meet the requirements of Mod 5 approval condition A5(c)(v).



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5. However, my client also contends that this ought to be a mandatory requirement and should occur prior to issue of the first Subdivision Certificate for Precinct 3.

Location of Wilkies Walk

- 6. As set out in my previous letter, the current interim arrangement for Wilkies Walk is inconsistent with the approval conditions and the Statement of Commitments (SOCs) for Stockland Residential Subdivision MP 07_0032 (copy attached).
- 7. Wilkies Walk is captured under the Landscape SOC (on pdf page 10 of attached SOCs) which commits to the hard and soft elements of the EDAW Landscape Report which is referenced in Condition A3 of Sandon Point Major Project No. 07_0032 Project Approval. Wilkies Walk is one of the hard elements detailed in the EDAW report.
- 8. It has not been delivered either in accordance with the location shown on the EDAW report or in accordance with Major Project MP 07_0032 Approval Condition No B39 requiring equitable access. The current location of Wilkies Walk within the road reserve of Wilkes Street East was an interim measure as Anglicare refused at the time to engage with Stockland in making its land available to construct Wilkies Walk in the originally intended position.
- 9. Equitable access aside, the fact that Wilkies Walk presently occupies a public road is also a significant problem in its own right. If the Department does not mandate its relocation to a more suitable position, as originally approved, my client may pursue other remedies under the Roads Act 1993 to have the pedestrian walkway dismantled in order to secure access. This would severe pedestrian to the foreshore
- 10. Now Anglicare is re-engaged with the Project it is submitted that this is the appropriate juncture to ensure key considerations underpinning the Minister's approvals for the Sandon Point Major Project are appropriately delivered. This requires certainty over the delivery of Wilkies Walk in its final form, consistent with its originally intended location and configuration.

Equitable access

- 11. The importance of access for people with disabilities was identified as a key issue at the outset of the concept plan stage.
- 12. Project Application MP07_0032 related to the subdivision of Stockland's land to accommodate 182 dwellings. Even though seniors living development was not contemplated by that application, Key Issue 3.3 in the attached Director-General's Requirements for the project identified the importance of ensuring access for people with disabilities across the development site.



13. If follows that, notwithstanding the fact that Anglicare's Mod 5 changes the originally approved 90 independent living units in Precinct 3 to 30 residential dwellings (as indicated in Figure 11 below which has been extracted from the Department's Assessment report for Sandon Point Modification 5), disability access standards remains a relevant and important consideration, as it was with Stockland's residential subdivision.



Figure 11 | Potential indicative building footprints under proposed concept plan (source: RTS documents) (note: not for approval and subject to future DAs)

- 14. As constructed, Wilkies Walk does not offer compliant disabled access. Had it been located in the position originally approved, the topography would have readily lent itself to delivering a walkway meeting equitable access requirements under Major Project MP 07_0032 Approval Condition B39.
- 15. Given that Mod 5 is now proposing a residential component immediately adjacent to Wilkies Walk it is appropriate that reference to the SOC's from MP 07_0032 is reinforced in the approval instrument.
- 16. It seems to my client that the reason Wilkies Walk has not been constructed in the approved location is due to the delay associated with Anglicare's development. If it had proceeded in tandem with Stockland, as originally envisaged, the temporary solution for Wilkies Walk would have naturally progressed to the approved layout and location.



17. It is appropriate that the Department apply the requirement calling for equitable access for Wilkies Walk consistent with the Minister's original intention.

Proposed amendment to recommended instrument

18. Proposed condition A5(c)(v) of the recommended instrument provides:

Road layouts or alignment, hardstand areas and pedestrian pathways are approved in principle, but the final design and layout is to be amended as necessary to enable:

...

- (v) appropriate access to adjoining sites.
- 19. In my client's opinion, the proposed condition should go further to give certainty as to access and the continuity of the pedestrian walkways moving forward. As such, my client proposes that subclause (v) be amended to read as follows:
 - (v) the construction of Wilkies Walk to the standard and in the location originally approved under the Concept Approval for MP 06_0094 and as reiterated under Conditions A3 and B39 of Sandon Point Major Project No. 07_0032 Project Approval, rather than occupying Wilkies Street, and in a manner that ensures appropriate access to adjoining sites, prior to the issue of a subdivision certificate for Precinct 3.
- 20. It is more important than ever that the Department take an active role in delivering comprehensive and integrated planning outcomes. Following the change to the Minister's delegation that came into effect on 13 March 2020, future applications for development consent may come before the Department, rather than the Independent Planning Commission.
- 21. Thank you again for your consideration of my client's concerns. I trust this is of some assistance.

Yours sincerely,

Alex Kelly

Director and Principal

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28 May 2020

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Your Ref: MP 06 0094 MOD 5

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By email: Emma.Butcher@planning.nsw.gov.au

Dear Sir/Madam,

RE: High Dune Pty Limited | Modification to Sandon Point Concept Approval MP 06_0094 MOD 5

- 1. I refer to my previous letter in relation to the above matter.
- 2. My client would like to make a further submission regarding the recommendation at Section 6.7 of the Department's Mod 5 Assessment Report stating that the 'Proponent reconsider the alignment of the subject roadway at the north-east corner of the site (closest to the Aboriginal archaeological site) to resolve issues in relation to lot depths, streetscape impacts and Aboriginal heritage, and therefore a different outcome may be required to that previously agreed by the two parties'.
- 3. It has come to my attention that in making this recommendation, the Department may have been misled by the positioning of the Aboriginal archaeological site on Figure 20 of the Assessment report, which was extracted from a plan prepared by Anglicare's architect JSA Studio. Figure 20 is incorrect in this regard.
- 4. The aboriginal cultural heritage area in the vicinity of the reconstructed pathway is known as Sturdee Avenue OC1 (AHIMS 52-2-4239). Its location and extent are documented in the MDCA Nov 2018 ACHAR prepared for the Anglicare site, an extract of which is shown in Figure 1 below.



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Figure 1 – Documented Extent of 'Sturdee Ave OC1' (sourced from Fig 19 of MDCA ACHAR dated Nov 2018)

5. The most significant portion of Sturdee Ave OC1 is the eastern part, as shown in **Figure 2** below.

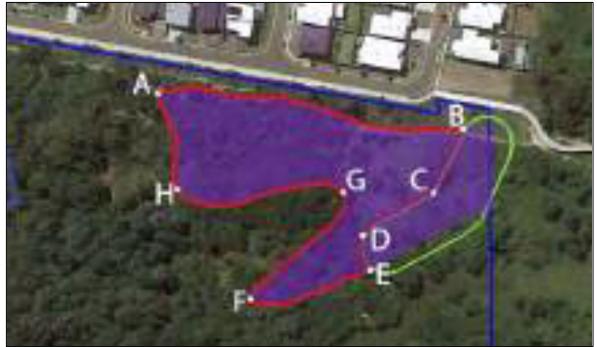


Figure 2 – Location of 'Sturdee Ave OC1' (sourced from Fig 21 of MDCA ACHAR dated Nov 2018)
Footnote to MDCA Fig 21 states, 'Purple shading is the extent of Sturdee Ave OC1. The green outline depicts the densest and most significant portion of Sturdee Ave OC1, which is to be preserved'



6. Ironically, previous impacts to the area immediately north of the most sensitive part of Sturdee Ave OC1 derive from previous planning decisions made by Wollongong City Council. The Major Project No. 07_0032 Approval restricted bulk earthworks in the immediate vicinity of Sturdee Ave OC1 as shown in **Figure 3** below, which is extracted from Cardno drawing number SK09 'Preliminary Bulk Earthworks Plan' which is referred to in the Major Project No. 07_0032 Approval Condition A3.

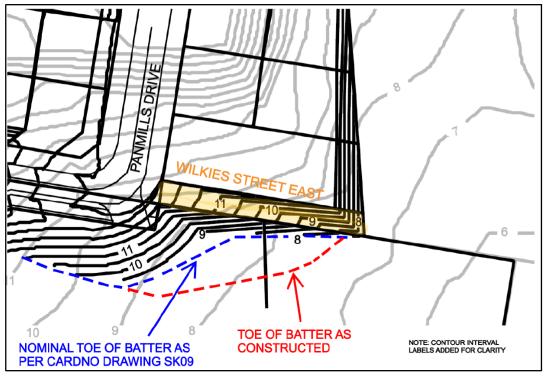


Figure 3 – Extract from Cardno Drawing SK09 as referred to in MP07_002 Approval Condition A3 (with as-constructed information superimposed)

- 7. **Figure 3** shows the toe of batter of the Wilkies Street East road embankment as originally intended under the Major Project approval in blue and as subsequently approved by Council in red. It is not known whether the more extensive embankment footprint resulted in damage to aboriginal artefacts on the northern periphery of Sturdee Ave OC1. The MDCA Nov 2018 ACHAR prepared for the Anglicare site (section 6.1) however states in discussion of Sturdee Ave OC1 that, 'The site is highly unlikely to extend further north over the current alignment of the unsealed pedestrian track known as Wilkies Walk. The area to the north of the track has been heavily disturbed by bulk earthworks associated with the construction of Wilkies Street'.
- 8. This view is corroborated in the Due Diligence report prepared for my client's site by Biosis in October 2019 which states (at section 4.6), 'The north-western portion of the study area displays heavy disturbances from the construction of Wilkies Road and residential dwellings. The study area also contains a pedestrian walkway that will have resulted in disturbances to soil profiles along its path and where the supporting pylons have been sunk into the ground'.



- 9. It is highly unlikely therefore that that Aboriginal cultural heritage area near Wilkies Walk extends under the existing Wilkies Street road embankment given the pre-existing topsoil and subsoil layers underneath the embankment (which would have contained any artefacts present) were removed by heavy earthmoving equipment during construction of the embankment. We also note at the time the road embankment was constructed in 2014, Wollongong City Council heritage officer confirmed such a view. Reference is made to an email from Council's heritage officer to Susan Mcintyre-Tamwoy of AHMS (now Extent Heritage) dated 26 November 2014 stating, 'As there are no "Relics" in the location of the works, there is no trigger for any requirements for an excavation permit under the NSW Heritage Act 1977 and it would therefore not be possible to obtain such a permit from the NSW Heritage Office (Branch).'
- 10. It is observed that relocating the public walkway further down the Anglicare embankment would not impact Sturdee Ave OC1, for the same reasoning discussed above.
- 11. The JSA Studio drawing used for Figure 20 in the Department's Mod 5 Assessment report incorrectly indicates the 'Aboriginal Archaeological Zone' to extend under the existing Wilkies Street road embankment. This looks to derive from a misinterpretation of MDCA Figure 21 titled 'The detail of the area proposed to be covered by an AHIP' (see Figure 1 above). This figure shows the extent of Sturdee Ave OC1, this time by purple shading, and covers the same area delineated with orange/brown shading on MDCA Figure 19 (Figure 2 above).
- 12. The caption of MDCA Figure 21 explains that 'the green outline depicts the densest and most significant portion of Sturdee Ave OC1, which is to be preserved'. The green outline however is shown in a diagrammatic sense, being drawn using a boomerang shape, and as a result notionally covers additional areas that are not part of Sturdee Ave OC1. It is clear however that the green 'boomerang' outline does not mean that the extents of Sturdee Ave OC1 as shown in orange/brown on Figure 19 and in purple on Figure 21 are incorrect. Its purpose is just to highlight that portion of Sturdee Ave OC1 that is the most significant, and is not to intended to modify/extend Sturdee Ave OC1 (which would also serve to make Figure 19 invalid and contradict the statement in section 6.1 as quoted above, which is clearly not the intent).
- 13. The above discussion provides further support to the amendment of proposed condition A5(c)(v) of the recommended instrument as requested at Clause 19 of my letter dated 21 May 2020 and is offered for the Department's further consideration.

In summary

14. The area of cultural significance is mapped by MDCA and marked with an orange/brown overlay. It is this area that has been the subject of significant testing and documentation of artifacts.



- 15. The Department's assessment report appears to suggest that the green overlay on MDCA's Figure 21 (reproduced above at Figure 2), redefines the boundaries of the culturally significant area, so as to extend it in an easterly direction.
- 16. To the contrary, the green overlay is designed to highlight an area in which a higher density of artefacts was discovered, rather than redefine the boundaries of the mapping for the documented extent of artefacts.
- 17. I apologise for the successive submissions on this matter. However, it is considered that with the benefit of this final commentary, the Department has all the necessary information to properly determine Mod 5 and apply appropriate conditions.

Yours sincerely,

Alex Kelly

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