



Our ref: DOC22/14445-16

Your ref: MP 06_0183 MOD 2

Emma Butcher

Senior Planning Officer
Industry Key Sites
Department of Planning, Industry and Environment
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Dear Emma

Mixed Use Residential / Tourist Development – 147 Soldiers Point Road, Soldiers Point (MP 06_0183 MOD 2) – Review of Environmental Assessment

I refer to your email dated 3 December 2021 in which Planning and Assessments Group (P&A) of the Department of Planning, Industry and Environment (the Department) invited Biodiversity and Conservation Division (BCD) of the Department for advice in relation to the proposed Mixed Use (Residential / Tourist) Development (MP 06_0183 MOD 2) located at 147 Soldiers Point Road, Soldiers Point; in the Port Stephens local government area.

BCD has reviewed the '*Section 75W Modification Application to Modify Concept Plan MP06_0183 for a Mixed-Use Residential/Tourist Development (MOD 2), 147 Soldiers Point Road, Soldiers Point (Lot 31 DP 529002) – Environmental Assessment*' (prepared by Milestone (AUST) Pty Limited and dated 19 November 2021), including relevant appendices, annexures and attachments in relation to impacts on biodiversity and flooding.

BCD's recommendations on biodiversity and flooding are provided in **Attachment A** and detailed comments are provided in **Attachment B**.

If you require any further information regarding this matter please contact Steve Lewer, Senior Regional Biodiversity Conservation Officer, on 4927 3158.

Yours sincerely

STEVEN CRICK
Senior Team Leader Planning
Hunter Central Coast Branch
Biodiversity and Conservation Division
17 January 2022

Enclosure: Attachments A and B

BCD's recommendations

Mixed Use Residential/Tourist Development – 147 Soldiers Point Road, Soldiers Point (MP 06_0183 MOD 2)

Biodiversity

1. BCD requires the proponent to either submit: (i) a Biodiversity Assessment Development Report (BDAR) done in accordance with the Biodiversity Assessment Methodology 2020; OR (ii) a BDAR waiver under section 7.9 of the *Biodiversity Conservation Act 2016*; which are to be appended to the Environmental Assessment report.

Flooding and flood risk

2. No further flooding or coastal risk / processes assessment is required.

BCD's detailed comments

Mixed Use Residential/Tourist Development – 147 Soldiers Point Road, Soldiers Point (MP 06_0183 MOD 2)

Biodiversity

1. Proponent needs to assess the proposal in accordance with the Biodiversity Assessment Methodology 2020 OR provide a BDAR Waiver

Biodiversity impacts related to the proposed development (SSD-29702120) should be assessed in accordance with either:

- The Biodiversity Assessment Method 2020 and documented in a Biodiversity Development Assessment Report (BDAR). The BDAR must include information in the form detailed in the *Biodiversity Conservation Act 2016* (s6.12), Biodiversity Conservation Regulation 2017 (s6.8) and Biodiversity Assessment Method 2020;

OR

- A BDAR waiver under section 7.9 of the *Biodiversity Conservation Act 2016*. Under this scenario a proposed development is not likely to have any significant impact on biodiversity values.

To apply for a BDAR waiver for a concept development application, the proposal must be sufficiently defined to enable impacts on biodiversity values to be identified. The proponent will need to address the likely impact of the concept proposals on biodiversity values, including any clearing of native vegetation that is required or likely to be required for the concept proposals. As a minimum, the proponent must identify a development footprint and address the information requirements in Tables 1 and 2 of the assessment process, located:

<https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/landholders-and-developers/biodiversity-development-assessment-report-waiver>

Both the Environmental Assessment (EA) and Flora and Flora Statement (Appendix G) acknowledge the requirement of a BAM 2020 Assessment or the provision of a BDAR waiver, however, the EA implies that this will be provided latter in the application process. BCD does not support this approach. Impacts to biodiversity should be assessed prior to exhibition of the EA for the modification and should be considered when determining the proposal.

BCD will not assess the biodiversity impacts of the proposal until one of the approaches outlined above is undertaken.

Recommendation 1

BCD requires the proponent to either submit: (i) a Biodiversity Assessment Development Report (BDAR) done in accordance with the Biodiversity Assessment Methodology 2020; OR (ii) a BDAR waiver under section 7.9 of the *Biodiversity Conservation Act 2016*; which are to be appended to the Environmental Assessment report.

Flooding, flood risk and coastal processes

2. BCD is satisfied with the flooding, flood risk assessment

BCD is satisfied with the flooding and coastal risk assessment in the EA, in that the development modification does not affect or is not affected by coastal processes, nor does the proposed modification impact flood behaviour or increase flood risk. No further assessment is required.

Recommendation 2

No further flooding or coastal risk / processes assessment is required.