



Planning

Residential Subdivision Sandon Point

Proposed by: Stockland Pty Ltd

*Modification MP 07_0032 MOD 1
MP 06_0094 MOD 2*

*Modification of Minister's Approval under Section
75W of the Environmental Planning and
Assessment Act 1979*

August 2010

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NSW Department of Planning
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1. EXECUTIVE SUMMARY

On 12 March 2010, Stockland Pty Ltd ('the Proponent') lodged an application to modify the Part 3A Project Approval MP 07_0032 ('Project Approval') pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* ('the Act').

The application seeks approval to modify 5 conditions imposed on the Project Approval relating to Aboriginal and European Heritage.

The application is considered to be acceptable. The subject conditions (as modified) will adequately protect Aboriginal and European heritage on the site. DECCW support the proposed modifications.

The application was placed on the Department's website and Wollongong Council, DECCW and relevant Aboriginal groups were notified of the proposal in writing and invited to comment. Seven public submissions and one submission from DECCW was received.

2. THE SITE

The site is located within the Wollongong LGA and is approximately 14 kilometres north of the Wollongong CBD. Sandon Point is bound by Thomas Gibson Park and private landholdings to the north; McCauley's Beach to the East; the Point Estate (a subdivision development by Stockland) to the South; and the Illawarra railway line to the West. Sandon Point is south of the Thirroul village centre and Thirroul railway station.

The site locality is illustrated in **Figure 1**.

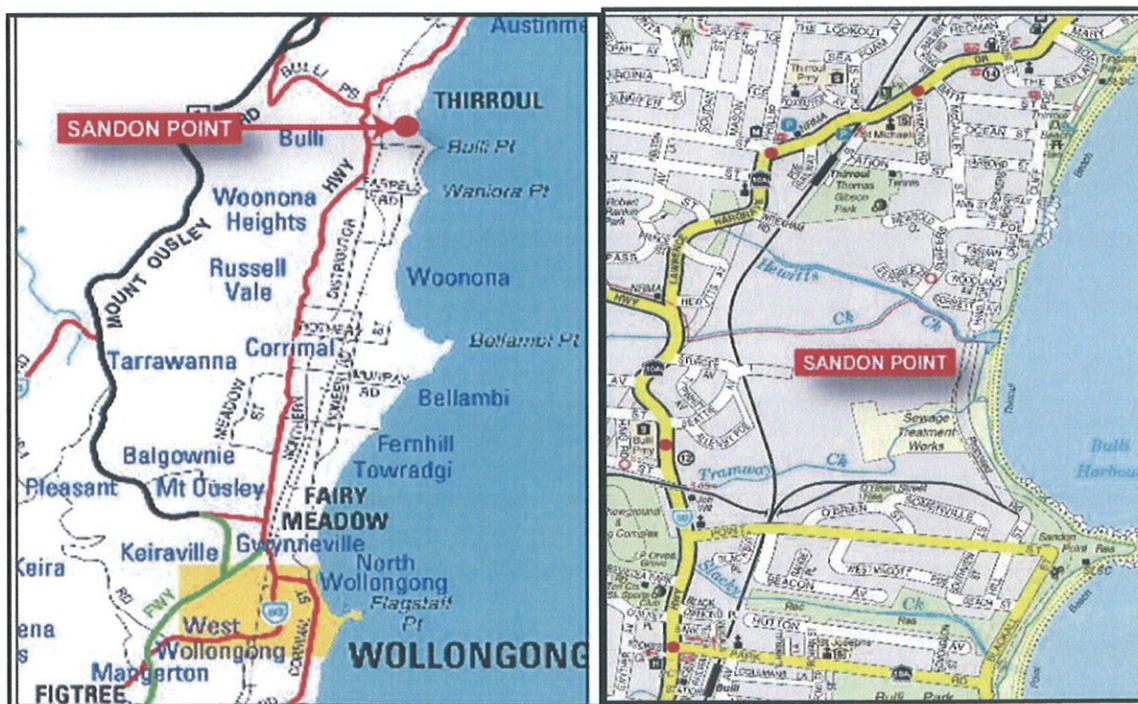


Figure 1. Location maps

The site subject of this modification is illustrated in Figure 2 below and includes the subdivision area and riparian corridors approved under MP 07_0032.

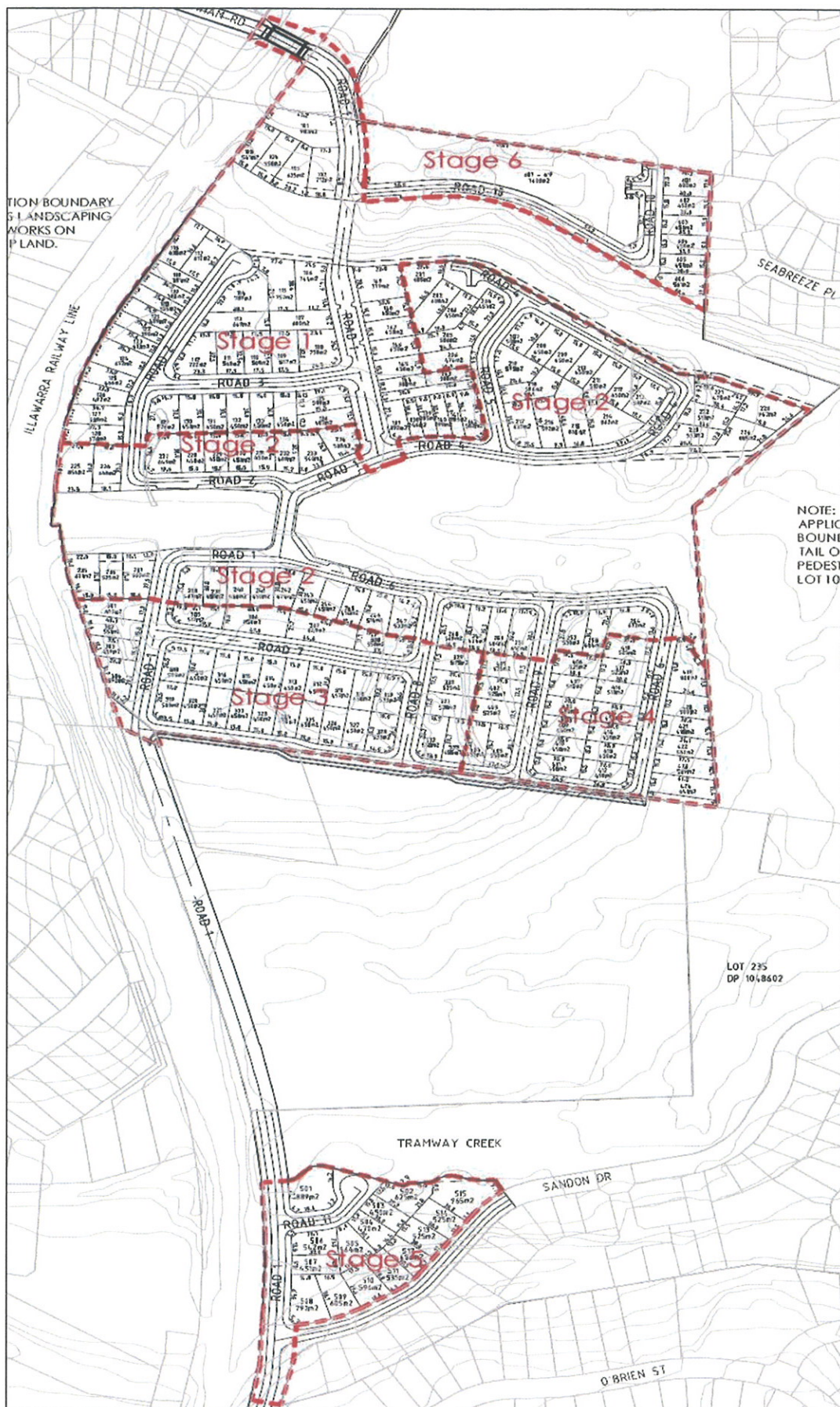


Figure 2: Subdivision Plan – Wrexham Road Rail Bridge.

3. MAJOR PROJECT APPROVAL

Original Major Project Approval MP 07_0032

On 29 November 2009, the then Minister for Planning approved a Project Application comprising:

- Staged subdivision of 181 allotments comprising lots for 167 single dwellings, 14 townhouse/terrace style houses in two distinct 'Precincts' and one super lot for apartments (up to 80 approved in Concept Plan);
- Boundary re-adjustment to correspond with road alignment;
- Display Village – land use approval for 3 dwellings, development approval for a temporary sales office and parking for 14 cars;
- Earthworks over 2 stages, roads, bridges, footpaths, cycleways, acoustic wall, utility services and infrastructure as necessary to support the residential development; and
- Landscaping, creek design and riparian corridor creation.

The Proposed Modification MP07_0032 (MOD1) – Project Approval

This application seeks approval to modify a number of conditions relating to Aboriginal and European Heritage.

The conditions sought to be modified are:

- Condition B50 – Conservation Agreement;
- Condition B51 – Archaeological Investigations;
- Condition E30 – Impact of Below Ground (Sub – Surface) Works – Non Aboriginal Objects;
- Condition E31 – Impact of Below Ground (Sub – Surface) Works – Aboriginal Objects; and
- Condition E32 – Final Excavation report(s) – Archaeological works.

The Proposed Modification MP06_0094 (MOD2) – Concept Plan Approval

This application also seeks approval to delete a Statement of Commitment included on the original Concept Plan Approval relating to the Proponent entering into a Voluntary Conservation Agreement with DECCW.

A detailed assessment of the proposed modification is provided in Section 6 of this report.

4. STATUTORY CONTEXT

Modification of Minister's Approval

The modification application has been lodged with the Director-General pursuant to section 75W of the Act. Section 75W provides for the modification of a Minister's approval including "revoking or varying a condition of the approval or imposing an additional condition of the approval".

Environmental Assessment Requirements (DGR's)

No additional environmental assessment requirements were issued with respect to the proposed modification, as sufficient information has been provided to the Department in order to consider the application and the issues raised remain consistent with the key assessment requirements addressed in the original DGR's.

5. CONSULTATION AND EXHIBITION

Under Section 75W of the Act, a request for a modification of an approval does not require public exhibition. However, under Section 75X (2) (f) of the Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister.

In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the application to modify the approval was made publicly available on the Department's website.

In addition, Wollongong City Council, DECCW and relevant Aboriginal groups were notified of the proposal in writing.

Public Authority Submissions

1 submission was received from DECCW, the agency responsible for Aboriginal heritage. DECCW supports the proposed modifications to the conditions.

Public Submissions

7 submissions were received from the public. This included submissions from:

- Northern Illawarra Aboriginal Collective (representing Wadi Wadi, Korewal and Gundungara Aboriginal Groups);
- Wollongong Northern Districts Aboriginal Community;
- North Illawarra Reconciliation and Treaty Group;
- Illawarra Local Aboriginal Land Council;
- The Environmental Defenders Office; and
- Two (2) public submissions.

All 7 submissions objected towards the proposal. A copy of all submissions received for this application are attached at **Appendix A**.

In separate letters dated 3 May 2010 and 10 May 2010, the proponent responded to the issues raised in the submissions. The Proponent's response to the submission is attached at **Appendix B**.

The issues raised in public submissions and the Department's response are discussed in the following table:

Summary of issues raised	Department Comments
Modifications to conditions will remove safeguards	See Section 6 for consideration of proposed modifications to conditions
Extent of sample test excavation area	Previous land uses on the site include farming, extractive industry, brick manufacturing and associated heavy industrial uses. Given the level of disturbance of the site from past land uses, sample test excavation should be limited to the area identified in Figure 6 of the <i>Desktop Assessment of Archaeological Potential</i> (2007), consistent with the report's recommendations.
The VCA should extend its terms to all elements raised under S.69C(1) of the <i>National Parks and Wildlife Act, 1974</i> .	It is noted that S.69C(1) of the National Parks and Wildlife Act, 1974 is not limited to Aboriginal Heritage. However the Condition requiring a VCA relates to Aboriginal heritage only and not other matters raised by S.69C(1).
PAD identification without sample test excavation	It is noted that no sample test excavations have occurred on the Project application site. However, PADs are not identified through sample test excavation. PADs are identified through examination of landscapes, past activities and level of disturbance. The Department has retained a requirement for sample test excavation to occur on the areas identified in Figure 6 of the <i>Desktop Assessment of Archaeological Potential</i> (2007).
Consultation	The application has been made publicly available on the Department's website in accordance with Section 75X (2) (f) of the Act. Wollongong City Council, DECCW and relevant Aboriginal groups were notified of the proposal in writing.
Political Donations	A Political Disclosure Statement for this application has been submitted and is available on the Department's website.
Impact on foreshore/land covered by Aboriginal Place declaration.	The area covered by the Aboriginal Place declaration is zoned <i>E2 Environmental Conservation</i> and ownership of the land is being transferred to Wollongong City Council. The ongoing management of this land and granting access to the land will

Summary of issues raised	Department Comments
	be the responsibility of the land owner.
Public Interest	The proposed modification does not undermine the public interest. The operation of the conditions (as modified) will satisfactorily protect Aboriginal heritage and address issues raised in submissions, such as requiring sample test excavation, consultation with Aboriginal groups, collection and management of artefacts if found. Furthermore an Aboriginal Place has been declared over the most significant part of the site, to protect Aboriginal heritage in the public and Aboriginal cultural heritage interests.

6. CONSIDERATION OF PROPOSED MODIFICATIONS

The proponent seeks approval for the following modifications:

Condition B50 – Conservation Agreement

Condition B50 is proposed to be deleted from the approval. The condition reads:

In accordance with the Statement of Commitments, a draft Voluntary Conservation Agreement under the National Parks and Wildlife Act, 1974 should be prepared regarding the cultural heritage of the site and shall be prepared in consultation with the National Parks and Wildlife Service (NPWS-DECC) and submitted to the CA prior to the issue of a Construction Certificate, excluding a Construction Certificate for that component of the project relating to the replacement Wrexham Road railway bridge.

Should the National Parks and Wildlife Service (NPWS-DECC) not wish to enter into a conservation agreement for the site, then any relics found on the site are to be collected and dealt with as per the conditions relating to heritage in other parts of this determination.

The Statement of Commitment attached to MP 06_0094 is also proposed to be deleted, which reads:

"Stockland will undertake to enter into a Voluntary Conservation Agreement with DEC."

Department Comment:

A Voluntary Conservation Agreement (VCA) under the *National Parks and Wildlife Act, 1974* is an agreement that is registered on title and identifies that part of the land to which the agreement relates. The intent of a VCA is to conserve, amongst other things, areas in which Aboriginal objects or places of special significance are situated.

The proponent argues that the condition should be deleted because it is not practical to attach a VCA to a 181 individual lot subdivision and that it is more practical to apply a VCA to land retained in single ownership. The proponent also states that an Aboriginal Place has been declared over the most significant part of the Sandon Point area along the foreshore to protect Aboriginal heritage. Had studies found Potential Archaeological Deposits (PADs) on the Project Approval site, the declaration would have been extended, but it does not.

The Department considers the modification is acceptable for the following reasons:

- The Department is satisfied that a VCA is not necessary because an Aboriginal Place Declaration (APD) along the Sandon Point foreshore has been set aside to protect and conserve Aboriginal Heritage.
- Other conditions of approval satisfactorily protect Aboriginal heritage and address issues raised in submissions, such as conditions requiring sample test excavation, consultation with Aboriginal groups, collection and management of artefacts if found.

- DECCW, which would be party to any such agreement, supports deleting the requirement for a VCA.
- The area subject to the Project Approval has been substantially modified from its natural state as can be seen in the 1982 aerial photo (**Figure 3**). Past land uses on the site include farming, extractive industry, brick manufacturing and associated heavy industrial uses, all of which have modified and disturbed the natural topsoil reducing the likelihood of finding intact archaeological remains.
- Previous studies have not identified any PADs on Project Application site.

Condition B50 of MP 07_0032 and the Statement of Commitment attached to MP 06_0094 are therefore recommended to be deleted.



Figure 3 1982 Aerial photo showing former industrial uses on site

Condition B51 – Archaeological Investigations

Condition B51 is proposed to be deleted from the approval. The condition reads

Sample test excavation shall be carried out in the areas identified in Figure 6 of the Desktop Assessment of Archaeological Potential, prepared by Susan McIntyre-Tamwoy, Heritage Consultant, April 2007, prior to commencement of works in those areas. In this regard, test excavation does not need to be carried out prior to commencement of works in Stage 5 of this subdivision. All Archaeological Investigations must be done in consultation with the Aboriginal community as outlined in the Statement of Commitments.

Department Comment:

The proponent has requested that Condition B51 be deleted as the intent of the condition is covered by Condition E31 - Impact of Below Ground (Sub-surface) Works – Aboriginal Objects. Both conditions require sample test excavation to be carried out in certain areas.

The Department considers that the intent of Condition B51 is covered by E31. Both conditions require sample test excavation of the site identified in *Figure 6 of the Desktop Assessment of Archaeological Potential, prepared by Susan McIntyre-Tamwoy, April 2007 (Figure 4)* and are therefore a duplication of the same requirement. On this basis it is recommended that the condition be deleted.

Condition E31 is also subject to modification, however the requirement for sample test excavation has been retained. The modification to Condition E31 is discussed further below.

Condition E30 - Impact of Below Ground (Sub-surface) Works – Non-Aboriginal Objects

Condition E30 currently reads:

If any archaeological relics are uncovered during the course of the work in any stage of the project, then all works shall cease immediately in that area and the NSW Heritage Office contacted. Depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the NSW Heritage Act 1977 may be required before further works can continue in that area.

The modified condition is proposed to read:

Archaeological test investigation of the areas identified in blue shading on Figure 6 of the Desktop Assessment of Archaeological Potential, prepared by Susan McIntyre-Tamwoy, Heritage Consultant dated April 2007 shall be undertaken prior to works commencing in that area. Relics that are salvaged during the archaeological test investigation shall be analysed, recorded and documented by an appropriately qualified heritage consultant. Any relics discovered shall be conserved in situ or placed in a depository as determined appropriate by a suitably qualified archaeologist in consultation with the NSW Heritage Branch of the Department of Planning.

Department Comment:

The Desktop Assessment of Archaeological Potential submitted with the EA notes a small area where some potential for non-indigenous heritage may exist.

The modified condition as proposed will require test excavation of the area identified prior to works commencing on site and management of any relics if discovered, in consultation with the Heritage Branch of the Department of Planning.

The Department considers the modified condition is appropriate to ensure European heritage is adequately managed and protected during construction, without the need for other approvals under the *NSW Heritage Act 1977*. Furthermore, a project approved under Part 3A does not require other approvals that might otherwise be required under Part 4, including approval under the *NSW Heritage Act 1977*.

Condition E30 will be deleted and renumbered D19, inserting the condition in the *Prior to the commencement of works* section of the approval.

Condition E31 - Impact of Below Ground (Sub-surface) Works – Aboriginal Objects

Condition E31 currently reads:

In the event that future works during any stage of the project disturb Aboriginal cultural materials, works at or adjacent to the material must stop immediately. Temporary fencing must be erected around the site and the material must be identified by an independent and appropriately qualified archaeological consultant. The Regional Archaeologist of the Cultural Heritage Unit of the Department of Environment and Climate Change, The Northern Illawarra Local Aboriginal Land Council (LALC), the Wadi Wadi Coomaditchie Aboriginal Corporation, the Korewal Eloura Jerrungurah Tribal Elders Corporation, and the Wodi Wodi Elders Corporation must be informed. These groups will advise on the most appropriate course of action to follow. Works must not resume at the location without the prior written consent of the Department of Environment and Climate Change, the Illawarra LALC and the Aboriginal Corporations.

The Condition is proposed to read:

(a) Prior to the commencement of sub-surface works:

- i. archaeological sample test excavation is to be carried out in the areas identified in Figure 6 of the Desktop Assessment of Archaeological Potential, prepared by Susan McIntyre-Tamwoy, Heritage Consultant dated April 2007;**
- ii. the Aboriginal community is to be provided with the opportunity to walkover the development area to allow for community collection of Aboriginal cultural materials should any be discovered;**
- iii. To satisfy (ii) above the Northern Illawarra Local Aboriginal Land Council (LALC), the Wadi Wadi Coomaditchie Aboriginal Corporation, the Korewal Eloura Jerrungurah Tribal Elders Corporation, the Wodi Wodi Elders Corporation and Sandon Point Aboriginal Tent Embassy, shall be given 7 days notice of the time and arrangements for the walkover.**
- iv. any community collection of Aboriginal cultural material should be carried out under the supervision of a qualified archaeologist;**
- v. the location of each item of cultural material must be recorded using GPS coordinates and analysis of artefacts must occur in a comparable manner as that of any Aboriginal cultural material retrieved from the programme of archaeological test excavation; and**
- vi. any objects recovered from community collection must be deposited with the Australian Museum or such other place as determined by DECCW once analysis has taken place.**

(b) If human remains are disturbed in, on, or under the land during the course of sub-surface works, the proponent must:

- i. not further disturb or remove those remains;**
- ii. immediately cease all work at the particular location;**
- iii. notify DECCW's Environmental Line on 131 555 and the local police as soon as practicable and provide any available details of the remains and their location; and**
- iv. not recommence work at the particular location unless authorised in writing by the relevant authority.**

Department Comment:

The current condition requires works to cease should any Aboriginal cultural materials be found, and further work unable to resume at the location without the prior written consent of DECCW, the Illawarra LALC and Aboriginal Corporations. The proponent argues that the condition in effect stop works indefinitely if any relics are found and hands over control of timing for the redevelopment to third parties.

The modified condition seeks to remove the requirement for written consent from third parties to enable a more practical solution to be adopted to manage and protect Aboriginal heritage if relics are found.

Although the proposed condition (as modified) removes the requirement for approval to be granted from third parties, it is considered that the modified condition is satisfactory for the following reasons:

- The modified condition still requires consultation with Aboriginal groups and direct Aboriginal community involvement by way of a walkover of the site giving local Aboriginal groups an opportunity to collect Aboriginal artefacts if discovered; and
- The modified condition also requires appropriate management and protection of Aboriginal archaeology if discovered and sign off from DECCW, the agency responsible for Aboriginal heritage, prior to work recommencing on a particular location.

It should also be noted that DECCW, the agency responsible for Aboriginal heritage, supports the modified condition. The condition as modified is therefore considered to be reasonable.

The proponent also requests the Department consider removing the requirement for sample test excavation on areas identified by Figure 6 of the Desktop Assessment of Archaeological

Potential, prepared by Susan McIntyre-Tamwoy - April 2007 given no PADs have been found on site.

However the Department considers that sample test excavation should be carried out on the site within the areas identified (Figure 4), which contain some potential for Aboriginal archaeology, consistent with the recommendations in the McIntyre-Tamwoy report. DECCW have also indicated (verbally) that the requirement for sample test excavation be retained.

Condition E31 will be deleted and renumbered D20 inserting the condition in the relevant *Prior to the commencement of works* section of the approval.

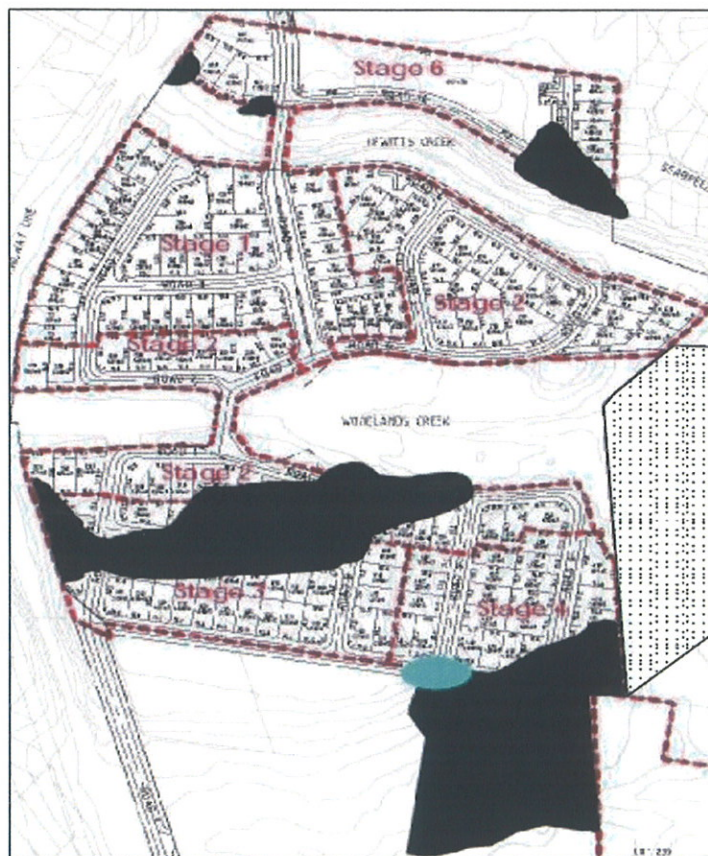


Figure 4 - Indicative areas (black) to be covered by sample test excavation. Blue indicates potential European Heritage.

Condition E32 - Final Excavation Report(s) – Archaeological works

Condition E32 currently reads:

After archaeological works are undertaken, a copy of the final excavation report(s) shall be prepared and lodged with the Heritage Council of NSW, the Local Studies Library and Local Historical Society in the Wollongong local government area. The Proponent shall also be required to nominate a repository for the relics salvaged from any historical archaeological investigations.

The Condition is proposed to read:

After archaeological works are undertaken, a copy of the final excavation reports shall be prepared and lodged with the following organisations:

- (a) For reports on Non-Aboriginal Objects (Condition D19) with the NSW Heritage Branch of the Department of Planning, Local Studies Library and Local Historical Society in the Wollongong local government area; and**

(b) For report(s) on Aboriginal Objects (Condition D20) with the AHIMS of DECCW and with the Illawarra Local Aboriginal Land Council, the Korewal Eloura Jerrungurah Tribal Elders Corporation, The Wadi Wadi Coomaditchie Aboriginal Corporation, the Wodi Wodi Elders Council, Sandon Point Aboriginal Tent Embassy and the Local Studies Library and Local Historical Society in the Wollongong local government area.

Department Comment:

The Department supports the modified condition above, which requires excavation reports to be submitted to Aboriginal groups.

It is noted that the modified condition removes the requirement to nominate a repository for relics salvaged from any historical archaeological investigations, however this requirement is dealt with by modified Condition E31 which requires any objects recovered from the community collection to be deposited with the Australian Museum or such other place as determined by DECC.

8. CONCLUSION

The Department has assessed the application on its merits and the proposed modification is considered to be reasonable and will not result in any significant changes to the development as approved.

The proposed modification does not change the original assessment as to the site's suitability for this development. The proposed modification seeks to amend conditions relating to Aboriginal and European Heritage. The modified conditions will still protect and manage Aboriginal heritage if discovered on site. It is also important to note that DECCW (the agency responsible for Aboriginal heritage) support the proposed modifications to the conditions.

The proposed development remains consistent with the terms of MP 07_0032 and MP06_0094 as modified and is considered to be acceptable. It is therefore recommended that the modification be approved subject to the modified conditions.

9. RECOMMENDATION

Under the instrument of delegation dated 25 January 2010, the Minister has delegated his functions under section 75W of the Act relating to modifying Part 3A approvals to the Deputy Director-General Development Assessment and Systems Performance.

It is recommended that the Deputy Director-General Development Assessment and Systems Performance, in accordance with the Instrument of Delegation issued by the Minister for Planning, on 25 January 2010, pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979*:

- (a) **Consider** the findings and recommendations of this report; and
- (b) **Approve** the modification, subject to conditions, under Section 75W of the *Environmental Planning and Assessment Act, 1979*;
- (c) **Sign** the attached Instrument of Modification for MP 07_0032 MOD 1 (Tag 'A'); and.
- (d) **Sign** the attached Instrument of Modification for MP 06_0094 MOD 1 (Tag 'B')

Endorsed by:

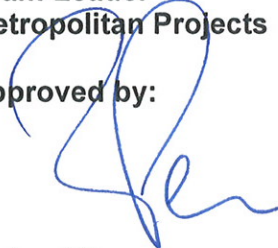


Anthony Witherdin
Team Leader
Metropolitan Projects



Andrew Smith
A/Director
Metropolitan Projects

Approved by:



9/8/10

Richard Pearson
Deputy Director-General
Development Assessment and System Performance

APPENDIX A. SUBMISSIONS

✓
22nd January 2010
2A Surfers Parade
Thirroul NSW 2515

The Hon. Tony Kelly
The Minister for Planning
Governor Macquarie Tower
Level 34, 1 Farrer Place,
SYDNEY NSW 2000



Dear Tony,

I have just seen the NSW Government Planning Notice of Project Approvals: MP 07 0032 and MP 06 0094 (MOD 1) for Stockland Development Pty Ltd project at Sandon Point, Bulli.

While this project has been steeped in controversy for some years I will try not to cloud the issue of this approval.

As you are no doubt aware there was a commission of enquiry into this proposal that recommended that it not proceed in the current form due to a great many issues, I appreciate that a commission of enquiry has no binding effect it is still a reflection of the wishes of the people who contributed.

It is therefore apparent that the expressed views of the people who objected to the proposal have been ignored – yet again, my understanding of government is that it is there for the people – not one giant corporation.

Please avail yourself of the area to be developed and talk to the many concerned residents of the district and then maybe reconsider the above approvals.

I'll guarantee that if you see what going to happen to our beautiful coastline at Sandon Point you will put the wishes of the residents before those of Stocklands.

Yours sincerely

A handwritten signature in black ink, appearing to read "Peter Rafferty".

Peter Rafferty

✓
RECEIVED

28 APR 2010

OK.
NORTH ILLAWARRA RECONCILIATION & TREATY GROUP

NIRTG
PO Box 313
THIRROUL NSW 2515

23rd April 2010

Director General
NSW Department of Planning
GPO Box 39
SYDNEY NSW 2001

Chris Wilson
For attention pls
Hi
28/4.

Dear Mr Haddad,

**RE: STOCKLAND APPLICATION TO MODIFY CONSENT CONDITIONS FOR
MAJOR PROJECT MP07-0032.**

The North Illawarra Reconciliation & Treaty Group (NIRTG) formed in 2001 and is a Local Reconciliation Group registered with the NSW Reconciliation Council. We have around 60 members, including several Aboriginal people who claim a traditional cultural link to the northern Illawarra and to Sandon Point.

NIRTG's mission statement (in part) is to work in a cultural partnership with the Sandon Point Aboriginal Tent Embassy (SPATE) and broader Illawarra Aboriginal community to help bring about greater public awareness and appreciation of the Aboriginal Cultural Heritage values of the Sandon Point area. NIRTG has written a number of submissions and letters to Government on the need to protect the State-Significant Aboriginal Cultural Heritage and Environmental values of the Sandon Point site.

NIRTG is aware Stockland recently applied for modifications to the Consent Conditions of the Minister's Approval of Project Plan MP07-0032 at Sandon Point.

In a letter from Don Fox Planning on 12 March 2010, Stockland proposes modifications to five Consent Conditions, as well as amendments to the Statement of Commitments they had provided for the above Project Application. The conditions relate to Aboriginal Heritage, in particular, Archaeology and a Conservation Agreement.

Stockland proposes to Delete Condition B50- Conservation Agreement and Condition B51- Archaeological Investigations, actions that Stockland is required to take *Prior to the Issue of a Construction Certificate*.

NIRTG objects to the proposed changes for the following reasons:

Aboriginal Archaeology

Stockland asserts that condition B50 is not needed because any remaining Aboriginal artifacts or material culture within their land will be detected by sample test excavation in areas identified in Figure 6 of the *Desktop Assessment of Archaeological Potential* (2007) prepared by Susan MacIntyre-Tamwoy for Stockland.

Stockland suggests these Archaeological Test Excavations will be carried out as part of Condition E31 – Impact of Below Ground (Sub-surface) Works – Aboriginal Objects, *During Construction*. However, their proposed amendment to Condition E31 would make these test excavations an optional component which can be deleted if the Department of Planning considers test excavation is not warranted.

The Illawarra Aboriginal community has reiterated many times that further Aboriginal archaeological surveys are warranted because the multiple Aboriginal uses of the area over thousands of years (camping, hunting, gathering, fishing, tool-making, trade, teaching, ceremony, initiation, burial of the dead) means the site is likely to yield a great deal of information relevant to Science and to the unique Aboriginal history of the site.

The *Sandon Point Aboriginal Heritage Assessment*, a Report to Wollongong City Council prepared by Therin Archaeological Consultants (2003) identified areas of undisturbed soil that has survived previous land uses. Figure 14: *Disturbance map of the study area showing areas requiring further archaeological testing* (page 67) includes parts of Stockland land which are not included in MacIntyre-Tamwoy's shaded areas.

Therin identified Tramways, Woodlands and Hewitts Creek corridors, the south-west corner of Stocklands lands (AIR site), extending along the southern boundary with ARV land (known as Wilkies Walk to locals), along Stockland's eastern and northern boundaries, along the original course of Woodlands Creek and its junction with Cooksons Creek were all suitable for more testing.

"Further archaeological test excavation over the study area should cover all areas except those defined as being subtractive and/or the foundation of a previous structure." (Therin, p. 68)

The Aboriginal community also requested (in 2001) further test excavations in the area of the Wrexham Road Bridge, a segment of former Community Land attached to Thomas Gibson Park which Stockland acquired from Wollongong Council to create a north-west access point to their lands. No archaeological excavation has been done there yet.

Rather than remove the requirement for test excavations Prior to Issue of Construction Certificate, the areas of archaeological test excavation proposed by MacIntyre-Tamwoy should be extended to include all undisturbed areas, creek lines and boundaries of Stockland lands.

A program of archaeological test excavations must also be done *Prior to Issue of a Construction Certificate* on the adjoining ARV land, which was identified as largely undisturbed by Therin, and includes the Heritage-listed remnant Turpentine Forest.

Conservation Agreement

Stockland's Statement of Commitments attached to the Concept Plan (MP06-0094) read "*Stockland will undertake to enter into a Voluntary Conservation Agreement with DEC*".

The current Statement of Commitments attached to Project Plan (MP07-0032) reads: "*A Voluntary Conservation Agreement would be provided with the implementation of the Project Plan approval, if required.*"

Now Stockland have an Approval they argue that a Voluntary Conservation Agreement is not required at all!

The Don Fox letter cites Section 69C(1)(d) of the NPW Act for an interpretation of the intent of a VCA in relation to Aboriginal heritage, which is "*to conserve areas in which Aboriginal objects, or Aboriginal places of special significance are situated*".

Stockland then argues that because previous archaeological reports have not identified any Potential Archaeological Deposits (PADs) on their land, a VCA is not required. This is illogical. The few archaeological excavation surveys that have been done at Sandon Point have focussed on the Macauleys Beach foreshore area (Fullagar et al, 1990; Fullagar and Donlon 1998; Navin Officer 1992 and 1993). Navin Officer's most recent test excavation studies were on Stockland Stages 1 and Stages 2-6 (2001) and a salvage program in Lot 235 (2003). These areas are all to the south of Tramway Creek. No other archaeological excavations have occurred on Stockland's lands affected by the MP07-0094 project, nor on the ARV lands, so of course no PADs have been officially identified in those places. The Mary Dallas and MacIntyre-Tamwoy reports are desktop archaeological assessments only.

Stockland's request fails to recognise that the purpose of a VCA at Sandon Point is not only about conserving Aboriginal objects and archaeological remains, important though those elements are.

Division 7, Section 69C(1) of the NPW Act says:

- (1) *A conservation agreement may be entered into:*
 - (a) *in relation to areas containing scenery, natural environments or natural phenomena worthy of preservation*
 - (b) *in relation to areas of special scientific interest*
 - (d) *in relation to areas in which relics, or Aboriginal places, of special significance are located*
 - (e2) *for the purpose of the conservation of critical habitat or the conservation of threatened species, populations or ecological communities, or their habitats, or*

(f) for any purpose connected with an area or purpose referred to in paragraph (a), (b), (c), (d), (e), (e1) or (e2)

This broader definition of a Conservation Agreement under the NPW Act makes it clear that a VCA could also include other elements which make up the cultural landscape of the declared Aboriginal Place at Sandon Point, including the significant Flora and Fauna species inhabiting this sensitive coastal floodplain location.

In 2009 the Illawarra Local Aboriginal Land Council (ILALC) commissioned Robert Miller of Cumberland Flora and Fauna Interpretive Services to prepare a Vegetation Management Plan for the whole Sandon Point site. The Kuradji VMP (2010) includes new mapping and surveys and collates the results of all previous flora studies, to create a Schedule of Plants and Plant Communities existing currently.

The VMP identifies that within Stockland's lands (Sites 6, 7 & 9 of VMP) there are 5 Endangered Ecological Communities and 2 Threatened Species, as defined by the TSC and EPBC Acts. A number of Regionally Significant Species, Species of Local Significance and Site Significant Species are also present (page 30-41 VMP).

The Kuradji VMP was funded by SR CMA and Wollongong City Council and is being used to inform the bush regeneration and weeding activities of the Sandon Point Community Coastcare (SPCC) project. SPCC is an initiative of the Illawarra Local Aboriginal Land Council partnering with local community groups (including NIRTG) which has received funding from DEWHA (2009-2010) to undertake urgent coastal protection works as the start of a long-term Caring for Country program at Sandon Point.

Ongoing preservation and rehabilitation works, such as bush regeneration is required to retain the range of natural habitats and biological diversity that is present within the site, and to help prepare the land for the threatening processes of the Stockland development. A Conservation Agreement could provide a framework to address Stockland's ongoing responsibilities and future role in efforts to help the local environment adapt to or recover from the impacts of their development.

NIRTG feels very strongly that the proposed modifications to Consent Conditions and associated amendments to Stockland's Statement of Commitments should be denied. The Statement of Commitments is binding. Stockland's other important commitments include entering into a Management Plan and providing a Keeping Place.

Any backdating of amendments to remove them from the Concept Plan should be resisted because MP06-0094 included the ARV development proposal and any changes made for Stockland could also shield ARV from their due obligations. It would also amount to re-writing the history of the contested development of this site.

Sincerely,

Karen Gough and Peter Button.



References:

Therin, M. and Bennett, M., *Sandon Point Aboriginal Heritage Assessment*, Report to Wollongong City Council, by Therin Archaeological Consulting, 2003.

DEC, *Submission to the Sandon Point State Significant Site Study and Concept Plan Environmental Assessment Reports*, August 2006.

Miller, R., *Sandon Point Aboriginal Place and Kuradji Lands Vegetation Management Plan*, prepared for Illawarra Local Aboriginal Land Council, Wollongong City Council and Southern Rivers Catchment Management Authority, by Cumberland Flora & Fauna Interpretive Services, 2010. (Appendix 6, 7 & 9).



Illawarra Local Aboriginal Land Council

3 Ellen Street WOLLONGONG NSW 2500

Ph: 42263338 Fax: 42263360

21 April 2010



PCU004947

NSW Department of Planning
The Director
Metropolitan Projects
GPO Box 39
SYDNEY NSW 2001



Dear Michael

Concept plan MP-0094 MOD and project Application MP07-0032 MOD 1-Residential Development, Sandon Point, Bulli

As the CEO of the Illawarra Local Aboriginal Land Council I write to object to the proposed modifications of the above plan.

Since the beginning of this development at Sandon Point many of the ILALC Aboriginal Site Officers have been involved in this project. It has clearly been identified through all the studies and the Commission of enquiry that this site is a Traditional Site, a burial site, a meeting place, significant to Aboriginal people and is an important part of this country's history.

The Turpentine Forest that sits on the proposed Sandon Point Retirement Village site is identified by ILALC Aboriginal Site Officers and people from the local Aboriginal Community as a Traditional Site. A place our spiritual Ancestors visited, many have talked of a women's site, others about the Turpentine trees, a vital resource used by our people.

It is not just the 'declared Aboriginal Place' area that is of significance to the Local Aboriginal community, but the 'whole Sandon point Area' is significant. In accordance with the Statement of commitment, a Voluntary Conservation Agreement should be prepared.

A conservation Management plan will provide management recommendations for the protection and preservation of cultural heritage. It is imperative that these management instruments be in place before any construction certificate is issued.

I thank you for your time and consideration in this matter, I await your reply.

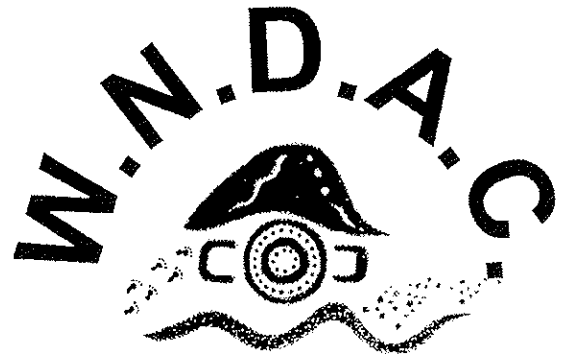
Yours in Unity

Sharralyn Robinson
CEO
PH: 42 26 3338
FAX: 42 26 3360
M: 0410 125 463

RECEIVED

23 APR 2010

Director-General



**Wollongong Northern Districts
Aboriginal Community**

21 April 2010.

To: The Director-General
Department of Planning
GPO Box 39
SYDNEY NSW 2001

RE: SANDON POINT- MODIFICATIONS TO CONSENT CONDITIONS FOR
SANDON POINT RESIDENTIAL SUBDIVISION, CONCEPT PLAN MP06-0094
AND PROJECT APPLICATION MP07-0032.

I am writing on behalf of WNDAC, an Aboriginal community group based in the northern Illawarra. Our membership includes a number of Aboriginal people who have cultural ties and traditional associations with this area. As such, we are registered with DECCW as one of the local Aboriginal groups who wish to be consulted on Aboriginal cultural heritage matters in this area.

WNDAC has made several submissions regarding proposed development at Sandon Point. We are very concerned that we were not promptly notified by the Department of Planning that Stockland has recently applied for Modifications to the conditions of the Project Approval MP07-0032. Most of our members do not have access to computers and do not regularly check the planning website to see what Stockland and ARV are up to. We only found out through friends that such an application was even being considered by the Department of Planning. We strongly object to it.

The Director General's Requirements for the Environmental Assessment of Stockland and Anglican Retirement Village's residential development proposals (Concept Plan MP06-0094 and Project Application MP07-0032) includes the Key Issue of Aboriginal Cultural Heritage.

Stockland provided the document "*Response to public and agency submissions*" as part of the MP 07-0032 Project Plan Application's public exhibition period in 2008. Stockland's responses to Aboriginal community submissions and the related commitments they proposed to make are the main information relating to Aboriginal concerns provided for public view.

The 'Statement of Commitments' attached to MP07-0032 constitutes the whole of what Stockland view as their remaining obligations towards Aboriginal heritage matters affecting the Sandon Point site. Most of these commitments, including the Voluntary Conservation Agreement, were the un-met promises carried forward from 2006 Concept Plan Application MP06-0094.

The commitments evolved partly from Conditions of Consent that were originally imposed by the NSW Land and Environment Court in relation to Section 90 Consents to Destroy (issued by NPWS in 2002) for the early stages of Stockland's developments at Sandon Point (known then as Stockland Stages 1 and 2 to 6; now called the Sandon Point Estate).

On 30 January 2002, NPWS issued two S90 Consents to Destroy under the NPW Act 1974, for Sandon Point Stage 1 #1288, and for Sandon Point Stage 2 #1289. Both consents had 'Schedule B Special Terms and Conditions' including (summarised):

A Voluntary Conservation Agreement is to be established for the long term conservation and management of cultural heritage values in the area. This will involve:

- a) The transfer of Stockland owned land to public ownership (ie Wollongong City Council)*
- b) The establishment of a **Plan of Management** to look at:*
 - i) The overall protection, conservation and management of the evidence of sites and landscape including the middens, beach, remnant sand dune, burial, estuary and creek lines.*
 - ii) Introducing mitigation measures to protect the area, such as boardwalks for access to the beach and controlled access in certain areas such as where the burial is present.*
 - iii) The establishment of a **Keeping Place** for the artefacts collected before and during development.*
 - iv) Continuing consultation with the Aboriginal community.*

Now, eight years later, Stockland have completed Stages 1 and Stages 2 to 6 of their development but there is still no Voluntary Conservation Agreement, no Plan of Management and no Keeping Place at Sandon Point.

In 2003 the **Sandon Point Commission of Inquiry** (2003) made a number of important recommendations regarding Stockland's obligations towards the Aboriginal community and Aboriginal cultural heritage matters at the site, including the establishment of an Aboriginal Keeping Place or Cultural Centre on the site, and a reduced scale of development.

However, the Col report was dismissed by the Planning Department as “unworkable” and instead, a review by Charles Hill (2004) was adopted as the main guide for decision making. Hill did not take Aboriginal Cultural Heritage into consideration at all and instead relied on the results of future Aboriginal archaeological and cultural heritage studies to resolve the outstanding heritage protection issues.

Studies (post-Hill) include Stuart Huys/AASC (2006) ‘Aboriginal Cultural Heritage Assessment’ and DECC’s ‘Further Investigations into an Aboriginal Place Declaration’ (2006 and 2007) as well as consultant Susan MacIntyre-Tamwoy’s desktop review of archaeological potential prepared for Stockland (2007). We note that this latter report is the only one provided by Stockland as part of documentation for MP07-0032 Project Application.

Stockland has repeatedly relied on their Statement of Commitments to justify how they have covered all the bases, statutory and ethical, in relation to outstanding Aboriginal heritage matters that affect their next round of developments (MP07-0032) at Sandon Point North.

Stockland’s application for Modifications shows Stockland has no intention of fulfilling their Statement of Commitments and Conditions of Consent relating to Aboriginal cultural heritage protections at Sandon Point.

In stating in their reasons for seeking modifications, Stockland is wrong that the 2007 Aboriginal Place Declaration on 14ha of foreshore land at Sandon Point ensures protection for Aboriginal culture in the Sandon Point locality.

What it provides is “recognition” only. The APD has not, for example, prevented Stockland from recently applying for a Section 90 AHIP to do contamination testing on the most sensitive part of the Aboriginal Place (burial ground) ahead of selling the land to Wollongong City Council.

The Aboriginal cultural heritage values of the Sandon Point area includes, but is not limited to, the archaeological sites and Aboriginal objects existing within the land. As the Department is well aware, the Aboriginal view of the site is that it extends through the Stockland and ARV- owned lands to encompass all the land, waters, flora and fauna in the Bulli-Thirroul coastal flood plain between the Tasman Sea and the Illawarra Escarpment.


Residential development of the Stockland and ARV lands will have enormous impacts on the integrity of the declared Aboriginal Place lands. Quicker erosion of dunes and damage to middens and burial sites will be caused by the extra foot traffic coming from the proposed new residential areas through to the beach. This public access problem is just one of the issues that should be properly addressed through a Voluntary Conservation Agreement and Plan of Management. There are many other issues besides.

WNDAC thinks it would be wrong for the Department of Planning to allow Stockland the proposed modifications to the Conditions of Consent. Particularly Condition B50 (relating to the Conservation Agreement) and Condition B51 (Aboriginal archaeological investigations) because these conditions are the only safeguards remaining for all of the Aboriginal concerns.

These proposed Modifications to the Conditions of Consent and Stockland's Statement of Commitments are substantial and must not be allowed without full and proper consultation with all of the Aboriginal stakeholders and other interested parties.

Yours truly,

Karen Gough (Secretary WNDAC)
c/- 38 Lachlan Street
Thirroul NSW 2515
T: (02) 4268 6283

A handwritten signature in black ink, appearing to read 'K. Gough', with a stylized, sweeping flourish at the end.

And
Richard Archibald (President WNDAC)
M: 0403205034

N.I.A.C. ABN 80475697297

Northern Illawarra Aboriginal Collective Inc.
representing Wulungulu, Gundungara, Wadi-Wadi and Korewal traditional owner groups

PO BOX 595, MOSS Vale NSW 2577. Phone (02) 48836639

27 April 2010

Michael Woodland
Director
Metropolitan Projects NSW Planning
Via 9228 6570 and 9228 6488

Copy to Jill Walker

Your reference: MP 06_0094 MOD 2 / MP 07_0032 MOD 1

Subject:

**Concept Plan MP06_0094 MOD 2 and Project Application MP07_0032 MOD 1 –
Residential Development, Sandon Point, Bulli**

After meeting and discussing the proposed modifications it was unanimously agreed to oppose and object to all of the proposed modifications. These proposed modifications are not in the public interest, nor in the interest of Aboriginal Cultural Heritage. On behalf of three separate Aboriginal groups, Wadi Wadi, Korewal, and Gundungara, we strenuously object.

Neither Stocklands nor DECC have ever bothered to properly consult in good faith Traditional Bloodline knowledge holders of this Country. Traditional Bloodline Owners have never been given any proper control of matters in relation the Sandon Point and Bulli.

Yours faithfully

Daniela Reverberi

Daniela Reverberi (NIAC technical officer)

Allan R Carriage

Allan Carriage (Wadi Wadi Elder)
Wadi Wadi Coomaditchie Aboriginal Corporation)
C/- same address and phone as above

Our Ref: FM 12397
Your Ref: MP 07_0032 - Mod 1
MP 06_0094 - Mod 2

RECEIVED

13 APR 2010

Director-General

1/89 York Street
Sydney NSW 2000
Tel: (61 2) 9262 6989
Fax: (61 2) 9262 6998
email: edonsw@edo.org.au

12 April 2010

Sam Haddad
Director-General
Department of Planning
GPO Box 39
Sydney NSW 2001

Office 1 Level 1
71 Molesworth Street
PO Box 868
Lismore NSW 2480
Tel: 1300 369 791
Fax: (61 2) 6621 3355
email: edonr@edo.org.au
web: www.nsw.edo.org.au

By facsimile: 9228 6455

Richard Pearson
For urgent attention
& response pls.
SH
13/4

Dear Mr Haddad

Application to modify conditions of consent for Major Project MP07_0032

We act for Jill Walker, a local resident of Sandon Point, in relation to the above application for modification of project approval MP 07_0032, being application MP 07_0032 - Mod 1 ("the modification application") made under section 75W of the *Environmental Planning and Assessment Act 1979* ("EPA Act").

As you would be aware, under section 75W of the EPA Act, there is no requirement to exhibit an application for a modification of a project or concept plan approval prior to its assessment by the Department of Planning and its approval.

This particular modification application involves the deletion of several conditions designed to protect the heritage values of the site. Given the nature of the proposed amendments, and the fact that the site is recognised as being significant for the Aboriginal community, we consider that it would be an appropriate exercise of your discretion to require exhibition of the modification applications prior to their determination, so that affected members of the community can comment.

In the event that, in spite of the matters raised above, you proceed to determine the modification applications without receiving public comment on the matter, we request that you take the relevant matters, as set out below, into account, in relation to the following conditions:

Condition B51

The proponent submits that the requirement to undertake sample test excavation is covered by condition E31. This is plainly inaccurate, as condition E31 does not require any sample test excavation to be done prior to the commencement of works.

Condition B51 was inserted into the project approval in accordance with a recommendation of the proponent's consultant archaeologist. It should not be further amended without the



Department of Planning receiving further input from the Aboriginal community and further expert advice from an archaeologist.

In addition, the proponent submits that the condition was not intended to apply prior to the issue of a construction certificate, but prior to the commencement of works. The proponent suggests deletion of the condition is the best way to rectify their consent.

We are of the view the proponent's concerns could be adequately addressed by moving the condition to 'Part D: Prior to the commencement of works' of the project approval. If the condition is moved to this part of the consent, results of the sample test excavation should be sent to the Director General of the Department of Planning before works are commenced.

Condition E30

We are firmly of the view that the statement by David Kettle of Don Fox Planning Consultants to the effect that condition E30 "conflicts with" and "is inconsistent with" the EPA Act is an incorrect interpretation of the EPA Act.

Section 75U of the EPA Act states relevantly:

- "(1) The following authorisations **are not required** for an approved project (and accordingly the provisions of any Act that prohibit an activity without such an authority do not apply):
- (c) an approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*; (emphasis added)

In saying the approvals listed in section 75U are not required, the section does not preclude the Minister requiring a proponent to obtain a relevant approval as a condition of consent in individual project approvals. The power of the Minister to make an approval subject to conditions is governed by section 75J(4) of the EPA Act and is not restricted by section 75U. There is no direct conflict between the EPA Act and the conditions of project approval.

You may be making an error of law if you rely on the interpretation of the EPA Act by Don Fox Planning Consultants, referred to above, when determining the modification application.

Condition E31

Condition E31 provides important protection for Aboriginal Objects on the site and ensures that all affected groups have the opportunity to participate in decisions made about Aboriginal Objects.

The amendment to the condition as proposed by the proponent involves a significant erosion of the level of protection to Aboriginal Objects as well as opportunities for participation and consultation with local Aboriginal groups. It would be a denial of procedural fairness for the project approval to be amended in the manner proposed without at least exhibiting the amendments beforehand, so that affected groups can provide comment on how the amendments will impact on them.



Please inform the writer within fourteen (14) days of the date of this letter as to whether you will make the modification applications available for public comment. We require this information in order that we can inform our client and the community of the process that will be followed in the determination of the modification applications.

Thank you for your consideration of the matters raised above. Please do not hesitate to contact the writer if you have any questions in relation to this letter.

Yours sincerely

Environmental Defender's Office (NSW) Ltd



Felicity Millner
Senior Solicitor



An independent public interest legal centre specialising in environmental law

131 McIntosh St, Sydney NSW 2000. Tel: 02 9550 1234. Fax: 02 9550 1235. Email: info@edo.org.au

SANDON POINT

MP06 0094 and MP07 0032 MODIFICATIONS ON PUBLIC EXHIBITION

Minister for Planning

I object to Stockland's application to modify the approval; as I also object to your concept and project plan approvals. No modifications should be allowed to further corrupt a dictatorial approval using a tyrannical Part 3 amendment to the EP&A Act.

Also I object to the DoP's notification method of posting items on a website in the hope the public will not find them. I have previously complained about the difficulty of finding anything on your website and that continues. It is simply unfair that DoP exchanges information with proponents but ignores the public except to post random website notices; this does not constitute informed consultation.

And I object to Stockland's tardy declaration regarding donations. They should have been required when the gazettal was made in December 2008, as Stockland is known to have made donations to the State ALP government from at least **1998 to mid-2008**. During that time multiple processes were inflicted on the Sandon Point community including a DCP/LEP process (1993 - 1997) Facilitation-Process chaired by Rick Farley for the Minister of Planning 2002; a Commission of Inquiry called by the Minister of Planning 2003, a two-year wait while the COI was disembowelled via Charles Hill Review commissioned by the Minister of Planning 2005, and the sacking of Wollongong City Council by the Premier for ALP Councillor corruption of Planning process in 2007.

During those processes Stockland's donations continued to mid-2008, through multiple court challenges in the LEC (2000 - 2007) Supreme (2008) and High (2009) courts and including Concept and Project plans SSS major projects part 3A by the department of Planning.

From Planning website documents, modifications requested to the project approval under S75W on 12 March 2010 are:

Part B Prior to issue of Construction Certificate

- Condition B50 Conservation Agreement
- Condition B51 Archaeological investigations

Part E – During Construction

- Condition E30 – Impact of Below Ground (Sub-surface) Works – Non-Aboriginal objects
- Condition E31 - Impact of Below Ground (Sub-surface) Works – Aboriginal Objects

cultural heritage and contesting court actions taken to remedy that failure. Dr Hiscock stated

"Several conclusions can be drawn about the existing archaeological investigations at Sandon point:

Archaeological investigations have revealed that the development area contained an enormous archaeological site, containing several million artefact fragments. Such sites are extremely rare along the Australian coast and even if the context of these artefacts was heavily disturbed this represents an assemblage of unusual and valuable qualities. The statements by Navin Officer do not give adequate acknowledgment to the size and potential of such an assemblage...

*The preliminary judgment of the archaeological material contained within Stages 1-6 underestimates the likely potential of such an immense and complex assemblage. It remains possible, even likely, that this site should be considered of national importance for questions of ancient technology and economy."*¹

Stockland now pretends that all Aboriginal cultural heritage is contained within the Aboriginal Place - for which they also seek a S90 consent to destroy for remediation purposes. Yet the Aboriginal Place area has been previously surveyed for remediation by the Dames & Moore Report (1996) before Stockland bought the land from Sydney Water².

Stockland still owns the Aboriginal Place area, having bought it from Sydney Water (Chairwoman Gabrielle Kibble) 1998-99; during which time the Kuradji burial was discovered. Letters from the Illawarra Local Aboriginal Land Council requesting protection of the surrounding area and for Sydney Water not to sell the land were ignored by the State government and Mayor of Wollongong David Campbell. A registered Native Title Claim on the Sandon Point Crown land and estuaries was not declared by Sydney Water.

Part of the Sydney Water land was rezoned for subdivision and used for profit by Stockland; with remaining open space containing the Aboriginal Place. Wollongong City Council now intends to buy the Aboriginal Place back from Stockland for \$2.8 million - which is more than Stockland paid for the entire land parcel (\$2.2m). The buyback follows intervention with Council by Planning Minister Frank Sartor (2006) at Stockland's request. This resulted in a second and different valuation of Thomas Gibson Park

¹ "Appraisal of archaeological studies at Sandon Point, New South Wales" Dr Peter Hiscock, School of Archaeology and Anthropology, Australian National University, Canberra, A.C.T. 0200
A report prepared for Allan Carriage and the Sandon Point Aboriginal Tent Embassy. August 2002

² Dames & Moore "Environmental Site Assessment Sandon Point, Bulli for Sydney Water" 1996

The Commissioners recommendations for Aboriginal Heritage included:

- Aboriginal cultural and archaeological values of the CoI area are significant to the Aboriginal community and the community generally.
- The Kuradji burial site, foredune midden, tool-making site, and the artefact site on the Hannah land are significant sites in the eastern portion of the CoI area and should be protected.
- Further Aboriginal archaeological investigations and Aboriginal cultural significance assessment are necessary on the CoI area as detailed in the report.
- **Funding should be made available to the Aboriginal community so that it can obtain independent advice in relation to the Aboriginal heritage significance of the CoI area.**
- Aboriginal archaeological investigations should include an appropriate level of early investigation of disturbed western portions of the CoI area...
- Aboriginal archaeological investigations and Aboriginal cultural study and assessment must include meaningful and continuing involvement of interested members of the Aboriginal community. This involvement should commence from the initial preparation of a brief for the scope of further investigation, study and assessment.
- The conservation and rehabilitation of the portions of the CoI area recommended by the Commission, including the eastern portions of the AIR and Cookson Plibrico sites as well as the core riparian corridors, would begin to re-establish an important traditional Aboriginal dreaming track [Wilkie's Walk] and trade route between the coast and the escarpment.
- Preparation and implementation of conservation management plans and voluntary conservation agreements in consultation with the Aboriginal community are available mechanisms to protect Aboriginal heritage.⁵

Also, Future Management options were:

- To ensure the values of the land zoned 6(a) and 7(a) are protected a plan of management prepared by Council is required to include, but not be limited to:
- **An Aboriginal heritage protection plan**
- A flora and fauna conservation plan
- An environmental corridor development plan
- A riparian corridor vegetation management plan
- A foreshore management plan

⁵ COI P211

Condition E30 - "Non Aboriginal" heritage

Previously Stockland excavated and destroyed the Old Bulli Mine to Sandon Point tramway route; and 54 Coke Ovens without development consent and using only spot remediation SEPP 55. Also the AIR site Brick Refractory Buildings, again using SEPP 55 spot remediation on highly toxic sites. Artefacts of great historical value to the community were smashed or taken away, never to be seen again. Objects placed in the care of BHP at Port Kembla were 'lost' as admitted by McIntyre-Tamwoy, yet Stockland again claims they will protect any future finds of European heritage. Their 'Commitments' cannot be trusted.

Wrexham Road Bridge and access road through Thomas Gibson Park:

Conditions B11, B12, B42, B43, B50.

You are reminded that **Thomas Gibson Park is a potential Aboriginal site (Huys) and is a community park owned by Wollongong City Council.** The community objected strongly to reclassification of the access road area and demands an archaeological study of that area. I also question the minister's power to approve works in Council land and believe it should be a Council application under Part 4 of the EP&A Act, being public land, following an Aboriginal heritage study.

I have not forgiven Stockland's secret demolition of the 100+ year old heritage bridge at Wrexham Road near Thirroul station, nor corrupt Wollongong Council for enabling it without a heritage study or public exhibition. Stockland should not complain about the need for speedy 'timing' since they insisted on knocking down a valuable community property 3 years ago, instead of widening it as envisaged by the COI.

Stockland's 'hurry up' attitude is no way to work with the Aboriginal and wider community and will continue to get them nowhere. If the Planning Minister cannot uphold the EP&A Act and the DECC Minister cannot uphold the NPW Act they are useless at their jobs. The Acts are weak enough without further perverting them to accommodate the wishes of Stockland.

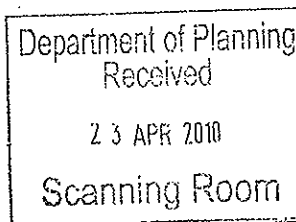
I ask you to dismiss Stockland's application for modifications.

Sincerely,
Jill Walker
1/54 Point St,
Bulli 2516

Our reference: DOC10/16127
Contact: Lou Ewins (02) 9995 6802



Michael Woodland
Director, Metropolitan Projects
NSW Department of Planning
GPO Box 39,
SYDNEY NSW 2001



Dear Mr Woodland,

Re: Concept Plan MP06_0094 MOD 2 and Major Project Approval MP07_0032 MOD 1 – Residential Development, Sandon Point, Bulli

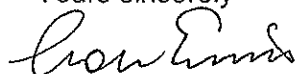
Thank you for providing the Department of Environment Climate Change and Water (DECCW) the opportunity to comment on the proposed modifications to the above Concept Plan and Major Project Approval. DECCW is in agreement with the proposed modifications relating to:

- Condition B50 – Conservation Agreement;
- Condition B51 – Archaeological Investigations;
- Condition E31 – Impact of Below Ground (sub-surface) Works – Aboriginal Objects; and
- Condition E32 – Final Excavation Report(s) – Archaeological Works.

The Heritage Council under the NSW Heritage Branch is the statutory body responsible for Non-Aboriginal heritage in NSW under the *NSW Heritage Act 1977*, therefore DECCW has not provided comments on the proposed modifications to Condition E30 – Impact of Below Ground (sub-surface) Works – Non-Aboriginal Objects.

If you wish to discuss any of the above matters further please contact Lou Ewins, Manager, Planning and Aboriginal Heritage, Metropolitan Branch, on (02) 9995 6802.

Yours sincerely

 21/4/10

Lou Ewins
Manager
Planning and Aboriginal Heritage
Metropolitan Branch
Environmental Protection & Regulation

The Department of Environment and Climate Change is now known as the Department of Environment, Climate Change and Water

PO Box 668 Parramatta NSW 2124
Level 7, 79 George Street Parramatta NSW
Tel: (02) 9995 5000 Fax: (02) 9995 6900
ABN 30 841 387 271
www.environment.nsw.gov.au

Department of **Environment and Climate Change** NSW



APPENDIX B. PROPONENT'S RESPONSE



3 May 2010
Our Ref: 5565H.46DK

The Director-General
Department of Planning
GPO Box 39
SYDNEY 2001

By email: Anthony.Witherdin@planning.nsw.gov.au

Dear Anthony,

**Section 75W Modification
Concept Plan Application No 06_0094; and
Project Application No 07_0032
Sandon Point Residential Subdivision**

We refer to a Section 75W modification lodged on 12 March 2010 in respect of five conditions of the above Project Approval and associated modifications to the Concept Plan approval and statements of commitment all relating to matters of Aboriginal Heritage.

The Department of Planning (DoP) has provided us with a copy of two submissions to the above application and has asked Don Fox Planning (DFP) to respond to the issues raised.

The submission from Jill Walker contains a number of comments relating to a separate s.75W modification (now approved) to which we prepared a response in a letter dated 14 April 2010. Therefore, this letter only responds to the issues relevant to the s.75W application in relation to the aboriginal heritage matters.

On behalf of the applicant, Stockland, we make the following responses to the submissions:

1.0 Jill Walker letter dated 11 April 2010

1.1 Political Donations

The submission criticises past processes and planning decisions and makes comments regarding political donations. We advise that political disclosure statements have been made for both Section 75W applications as required by the Environmental Planning and Assessment Act, 1979.

1.2 Conservation Agreement

The submission notes earlier requirements or recommendations for a voluntary conservation agreement (VCA) for other sites in Bulli and is critical of the process to date and that a VCA has not been established. The s.75W application prepared by DFP outlines the difficulties associated with the application of a VCA on the subject site. We note that a conservation agreement is a voluntary process, however, the modification to Condition B50 – Conservation Agreement and associated Statement of Commitment does not undermine public interest. In addition, the operation of other conditions of the Project approval (including Conditions E30, E31 and E32) put in place appropriate safeguards in relation to Aboriginal heritage.



We understand that DoP will consult with DECCW in relation to the proposed modification and seek their input into the assessment of the proposed modifications.

1.3 Condition B51 Archaeological investigations

Aboriginal archaeological investigations have been carried out, and the project including earthworks and reinstatement and rehabilitation of creek lines and associated WSUD measures have been approved and Stockland is not seeking a modification to those approved components of the project.

We can make no comment regarding events in 2002, or the suggestion that Stockland will not fulfil the statement of commitments which is speculative.

1.4 Condition E30 - Non Aboriginal heritage

Our letter dated 12 March 2010 sets out the reasons for the proposed modifications. The assessment of the modification to Condition E30 should not be based on past events such as the apparent loss of objects placed in the care of BHP at Port Kembla.

2.0 N.I.A.C Letter dated 27 April 2010

2.1 Public Interest

The modification to Condition B50 – Conservation Agreement and associated Statement of Commitment does not undermine public interest as it is a voluntary process in any event. Further, as outlined in the s.75W application it is not a practical mechanism in this instance and an Aboriginal Place has been declared over the most significant part of the wider Sandon Point and Bulli area which is clearly in the public and Aboriginal cultural heritage interests.

The proposed deletion of Condition B51 – Archaeological Investigations is adequately covered in the proposed modification to Condition E31. The proposed modification to Conditions E30 and E31 still operate to protect the public and Aboriginal cultural heritage interests, by focussing on those areas identified as having archaeological potential.

Finally, the modification to Condition E32 – Final Excavation Report(s) maintains the requirement to prepare and lodge reports with appropriate organisations and local library and the local historical society in the Wollongong local government area. The long term public and Aboriginal cultural heritage interests are therefore retained in the form of documented records.

We are therefore of the opinion that the proposed modifications are not contrary to the public interest or the interest of Aboriginal cultural heritage.

2.2 Consultation

Consultation with the Aboriginal groups has been undertaken since the commencement of the Local Environmental Study process in 1992, Commission of Inquiry in 2003, Concept Plan application and Project application (including Section 75W applications) from June 2006 to present.

Further, the then Department of Infrastructure Planning and Natural Resources (DIPNR) commissioned Australian Archaeological Survey Consultants (AASC) to undertake an Aboriginal Cultural Heritage Assessment. This process included significant consultation with numerous Aboriginal Groups and stakeholders.



The Aboriginal community has been consulted on numerous occasions on many aspects of the wider Sandon Point and Bulli area. In addition, further opportunity to walkover the development area is provided in the proposed modification to Condition E31 in accordance with standard practice.

Should you have any further questions, please do not hesitate to contact David Kettle.

Yours faithfully

DON FOX PLANNING PTY LIMITED

A handwritten signature in black ink, appearing to read 'D. Kettle', written over a horizontal line.

DAVID KETTLE
SENIOR TOWN PLANNER

Reviewed:

A handwritten signature in black ink, appearing to read 'Michael Braithwaite', written over a horizontal line.

cc: Michael Braithwaite, Stockland
Michael Woodland, Department of Planning.



planning consultants



town planning
economic & retail assessment

10 May 2010
Our Ref: 5565H.47DK

The Director-General
Department of Planning
GPO Box 39
SYDNEY 2001

By email: Anthony.Witherdin@planning.nsw.gov.au

Dear Anthony,

**Section 75W Modification
Concept Plan Application No 06_0094; and
Project Application No 07_0032
Sandon Point Residential Subdivision**

We refer to a Section 75W modification lodged on 12 March 2010 in respect of five conditions of the above Project Approval and associated modifications to the Concept Plan approval and statements of commitment all relating to matters of Aboriginal heritage.

We also refer to our letter dated 3 May 2010 which is a response to two submissions to the above application.

Subsequent to our letter of 3 May 2010, the Department of Planning (DoP) has forwarded to us four further submissions to the above application and has asked Don Fox Planning (DFP) to respond to the issues raised. The additional submissions have been received from:

1. Environmental Defender's Office Ltd (EDO), dated 12 April 2010;
2. Wollongong Northern Districts Aboriginal Community (WNDAC), dated 21 April 2010;
3. Illawarra Local Aboriginal Land Council (Illawarra LALC), dated 21 April 2010; and
4. Northern Illawarra Reconciliation and Treaty Group (NIRTG), dated 23 April 2010.

On behalf of the applicant, Stockland, we make the following responses to the submissions:

1.0 EDO letter dated 12 April 2010

1.1 Exhibition of the application

As noted in the EDO submission, there is no requirement under section 75W for the application to be exhibited. We understand that the DoP has undertaken a targeted notification of the application to key stakeholders (e.g. Aboriginal groups, Wollongong City Council and the Department of Environment Climate Change and Water) who could have an interest in the subject matter of the Section 75W modification.

Six submissions have been received from various Aboriginal groups, a local resident and the EDO itself representing the same local resident.



The application was also placed on the DoP's web site for other interested parties to make comment if desired.

1.2 Condition B50

The submission contains the heading of "Condition B50" however much of the commentary relates to condition E31 (as they are related).

We do not understand the comment that the requirement for sample test excavation is not covered by the proposed amendment to condition E31.

Proposed condition E31 clearly states as follows:

E31 - Impact of Below Ground (Sub-surface) Works – Aboriginal Objects

(a) Prior to the commencement of sub-surface works:

(i) archaeological sample test excavation is to be carried out in the areas identified in Figure 6 of the Desktop Assessment of Archaeological Potential, prepared by Susan McIntyre-Tamwoy, Heritage Consultant dated April 2007 (optional);

As emphasised by underlined text, the condition requires sample test excavation prior to the commencement of sub-surface works (i.e. the most appropriate stage of site works before test excavation would be warranted). This condition is noted as optional, and if the DoP considers that this component of the proposed condition E31 is necessary, then it can remain.

The submission suggests that the condition could be moved to 'Part D: Prior to commencement of works'. It is not clear if this suggestion applies to condition B50 or E31. The transfer of conditions B50 or E31 would not assist in overcoming the concerns identified in our 12 March 2010 letter for either condition:

- Transferring condition B50 to Part D would not address the four reasons provided in our 12 March 2010 letter which have been identified as warranting a review of condition B50 as currently worded.
- Similarly, moving condition E31 to Part D does not overcome the practical problems of implementing the condition as outlined in our 12 March 2010 letter.

1.3 Condition E30

It is our understanding that section 75U of the Environmental Planning and Assessment Act, 1979 does not require any further authorisations listed in that section and that this approach is consistent with Part 3A of the Act. If DoP has an alternative view then we would appreciate an opportunity to consider the implications of that alternative opinion.

1.4 Condition E31

As noted in our submission of 12 March 2010, the condition is proposed to be modified due to the manner in which the condition operates to the effect that it requires works to stop indefinitely for any relic and hands over control of the timing of redevelopment of the site to third parties. We have noted that this is an unreasonable requirement and one that carries a large degree of uncertainty, can potentially stop works indefinitely and imposes unknown delays and costs in carrying out the project.

The proposed modification to condition E31 has taken a more practical and reasonable approach taking into account the studies that have taken place on the site whilst still keeping local Aboriginal groups informed and involved. We consider that this is a reasonable and balanced approach to resolve the impracticalities of the condition as currently worded.



We note that the EDO makes further comments in relation to the exhibition of the application to which we have responded in paragraph 1.1 above.

2.0 WNDAC dated 21 April 2010

2.1 VCA

The submission notes earlier requirements or recommendations for a voluntary conservation agreement (VCA) for other sites in Bulli and is critical of the process to date and that a VCA, plan of management and keeping place has not been established. Stockland has over many years attempted to establish a keeping place, however agreement has not been possible between the stakeholders (Aboriginal groups, DECCW and WCC) which has been central to Stockland's difficulties in fulfilling this requirement.

The s.75W application prepared by DFP outlines the difficulties associated with the application of a VCA on the subject site. We note that a conservation agreement is a voluntary process, however, the modification to Condition B50 – Conservation Agreement and associated Statement of Commitment does not undermine public interest because the operation of other conditions of the Project Approval (including Conditions E30, E31 and E32) put in place appropriate safeguards in relation to Aboriginal heritage. We understand that the DoP will consult with DECCW in relation to the proposed modification and seek their input into the assessment of the proposed modifications and their opinion about the necessity for a VCA (to which they would be a party).

2.2 Section 90 Permit and Aboriginal Place Declaration

In our opinion the Aboriginal Place Declaration provides more than just "*recognition*" as the National Parks and Wildlife Act, 1974 and National Parks and Wildlife Regulation 2009 contain provisions relating to the protection and management of such places.

The submission contends that the approved development will have impacts on the Aboriginal Place, such as erosion of dunes caused by extra foot traffic from the new residential areas to access the beach. The land covered by the Aboriginal Place Declaration is either owned by Wollongong City Council or will be transferred to Wollongong City Council in accordance with contracts that have been exchanged between Stockland and Council. Section 69B(1) of the NPW Act, 1974 provides that "*the Minister may enter into a conservation agreement relating to land with the owner of the land.*" If Stockland is not the owner of the land, then a VCA cannot be entered into by Stockland over the land. The management of land covered by the Aboriginal Place Declaration will be the responsibility of Wollongong City Council. In this regard we note that Council will be required to prepare a Plan of Management for community land under the Local Government Act, 1993. It would be more appropriate for a future plan of management to address such issues for the Aboriginal Place, not a VCA with a party that will not own the land.

2.3 Condition B50 and B51

As noted in our letter of 12 March 2010, the proposed modifications do not remove the safeguards for Aboriginal heritage, but re-organises the conditions so that the safeguards are contained in conditions that are practical to implement having regard to the legislation and findings of previous studies and the limited potential for Aboriginal heritage.

3.0 Illawarra LALC dated 21 April 2010

As noted in our letter of 12 March 2010, the Aboriginal Place declaration focused on the area of Sandon Point that studies have shown to be rich in artefacts and significance. The proposed development area had been subject to numerous archaeological assessments which



specifically addressed the issue of archaeological potential. There was a high degree of agreement between the reports prepared for the Commission of Inquiry (COI) and for Stockland and no Potential Archaeological Deposits (PADs) were identified. Had the studies found the Project application site area to be rich in Aboriginal artefacts and significance the declaration would have presumably extended to the Project application site, but it does not.

4.0 NIRTG dated 23 April 2010

4.1 Aboriginal Archaeology

The submission suggests that the condition regarding test excavation (presumably a reference to condition B51) should be retained and extended to include all undisturbed areas, creek lines and boundaries of Stockland lands. This approach is unwarranted as the land has been studied by several consultants in the past and there was a high degree of agreement between reports and that no PADs have been identified.

The Desktop Assessment of Archaeological Potential prepared by Susan McIntyre-Tamwoy Heritage Consultant, July 2007 (Appendix O to the Environmental Assessment) has considered the findings and recommendations of previous reports as well as taking a conservative approach in the methodology underlying the Desktop Assessment.

In particular, the Desktop Assessment took a more conservative approach than is commonly used when identifying PADs because of the community concerns. The Desktop Assessment of Archaeological Potential notes that the common approach (complex in itself) is to consider known site distribution across similar landscapes as well as consideration of natural and human disturbance factors that might affect the potential for archaeology. The approach taken for the subject site was to examine geotechnical testing to identify where original top soil could remain. Figure 3 in the Desktop Assessment of Archaeological Potential illustrates the areas of the site tested for top soil and approximate thickness of the top soil. The areas nominated for test excavation have therefore been established on a conservative methodology and in our opinion, the requirement for test excavations to cover all *undisturbed areas, creek lines and boundaries of the Stockland lands* is not warranted.

The suggestion of a test excavation program on the adjoining ARV land is a separate matter unrelated to the Project application for Stockland's land. The proposed modification also includes a modification to a statement of commitment of the Concept Plan application (which does include ARV land) however, the commitment to be modified relates only to Stockland land. Therefore the conditions should not be amended to include the ARV site.

4.2 Conservation Agreement

The submission cites previous studies undertaken at Sandon Point, and that no archaeological excavations have taken place on the site to which the Project application relates, which is correct and will occur as provided for in the proposed modification to condition E31. The submission infers that PADs have not been identified because archaeological excavations have not been undertaken. However, as noted above (and explained in Desktop Assessment of Archaeological Potential prepared by Susan McIntyre-Tamwoy Heritage Consultant, July 2007), PADs are not identified through test excavation as by their very nature are areas of 'potential' archaeology and are not areas of known archaeology. PADs are identified through examination of the landscape, past activities on the land and the level of disturbance. It is through this process combined with an added level of information obtained through geotechnical testing to identify where original top soil could remain that the conclusion has been drawn that there are no PADs. This is in accordance with aboriginal archaeology standard practice.



The submission also cites section 69C(1) of the National Parks and Wildlife Act, 1974 in terms of the elements that can be incorporated into a VCA. We do not disagree with the statement, however, the original purpose of the VCA relates to Aboriginal heritage and not other matters such as threatened species or communities. This is being managed through the Vegetation Management Plans approved as part of earlier consent and the Project Approval. We are therefore of the view that the VCA (if the proposed modification to Conditions B50 is not supported) should not be modified to extend its terms as suggested in the submission.

The submission notes that the Illawarra LALC has prepared a Vegetation Management Plan (VMP) for *"the whole Sandon Point site."* We note that the Project Approval has also approved a VMP for the subject site which addresses the rehabilitation, management and maintenance of the riparian corridors on Stockland's land and does not need to form part of a VCA.

We assume that the notification period has now closed and that this letter addresses the remaining submissions and issues to enable the DoP to assess and determine the s.75W modification.

Should you have any further questions, please do not hesitate to contact David Kettle.

Yours faithfully

DON FOX PLANNING PTY LIMITED

A handwritten signature in black ink, appearing to read 'D. Kettle', written over a horizontal line.

DAVID KETTLE
SENIOR TOWN PLANNER

Reviewed: _____

A handwritten signature in black ink, appearing to read 'R. Hayer', written over a horizontal line.

cc: Michael Braithwaite, Stockland
Michael Woodland, Department of Planning.