



SF17/23552
MP05_0024 MOD 3

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Ms Ingrid Berzins
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Attention: Ms Ingrid Berzins

Dear Ms Berzins

**RE: Notification of Modification
Dolphin Point Residential Subdivision (MP 05_0024 MOD 3)**

Thank you for the opportunity to comment on the application to modify Project Approval MP_05_0024 (MOD 3) at Lot 171 DP 1081818, Highview Drive, Dolphin Point.

We understand that the modification application relates to deleting condition A4 and replacing A4 with a new condition that references an updated Aboriginal Heritage Management Plan (AHMP, Malbec 2016). The updated AHMP is supported by a Supplementary Report, prepared by archaeologist Peter Kuskie (2016). We have made comments below accordingly.

This existing AHMP (Malbec 2007) requires archaeological salvage in four landscape contexts, known as 4A, 4B, 5A and 5B. The existing methodology requires mechanical scrapes at both 4B and 5A, and controlled hand excavation at location 5A. The modification request is to remove the requirement for archaeological salvage in landscape units 4B and 5A from the AHMP.

Request for Modification

The applicant's archaeological reports submitted to support the initial development application identified research aims that could be met through an archaeological salvage program. This methodology relied upon archaeological salvage excavation occurring in landscape contexts 4A, 4B, 5A and 5B. This approach formed the assessment methodology that was translated into the subsequent approval of this development. From a technical perspective, OEH supported this methodology.

There has been no new information supplied that warrants changing this methodology. Landscape contexts 4A, 4B, 5A and 5B will all still be subject to construction impacts. As such, OEH opposes

removing the requirement for archaeological salvage in landscape contexts 4B and 5A (Malbec 2016, p.12).

This advice is based on the following considerations:

- A sample of each of the landscape contexts 4A, 4B, 5A and 5B must be excavated to meet the research aims of the archaeological salvage program that formed part of the initial assessment and subsequent approval of this development.
- Portions of each of these landscape contexts remain within the construction footprint and therefore archaeological excavation in 4B and 5A is achievable.
- A threshold of approximately 20% of the context being developed appears to have been used to determine whether broad area hand excavation occurred in Stages 2-4 (Kuskie 2005, p.149). The proposed development footprint appears to show that more than 20% of 4B and 5A will be impacted under the proposed subdivision layout. This supports retaining salvage excavation at locations 4B and 5A.
- Increasing the conservation areas is noted as providing conservation for any potential Aboriginal heritage sites within the conservation areas (Malbec, 2016, p.16 and Kuskie 2016, p.13). However, this does not remove the requirement for salvage excavation in the construction footprint. No archaeological test excavation has been conducted in the impact area. This means that salvage excavation is now the only opportunity to recover information about Aboriginal cultural heritage items within this development.
- Retaining all four salvage locations will provide greater opportunity to address the research questions listed under s.4.6 of the AHMP (Malbec 2016). This research was proposed as a form of mitigation against the loss of Aboriginal objects through construction, so it is important to retain all of the salvage excavation areas.
- Part of the rationale for hand excavation at 5A is that this landscape context has higher archaeological potential based on the test excavation results from The Dairy (Stages 2-4, Kuskie 2005, p.118). Therefore, both the broad area machine excavation and the proposed hand excavation in landscape context 5A must be retained.

Given the above, the archaeological salvage at 4B and 5A can and should still occur. However, if there is to be any modification, we recommend that DPE as the consent authority relocate both salvage locations so that each location is entirely within the construction footprint while remaining within the respective landscape contexts.

Long-term Management of Aboriginal Objects

In relation to the provisions for long-term management of Aboriginal objects recovered through the archaeological salvage excavations, the tenure of the land is irrelevant (see cover letter to this modification application). A *Transfer of Aboriginal Objects* application is required in order for the Ulladulla Local Aboriginal Land Council to have legal care and control of those Aboriginal objects under section 85A of the *National Parks and Wildlife Act*. OEH recommends that the long term management of the excavated objects should be finalised before or concurrent with a decision being made on this modification application. The application form for the transfer of Aboriginal objects is available on the OEH website at:

<http://www.environment.nsw.gov.au/resources/cultureheritage/20110914TransferObject.pdf>.

The AHMP suggests that either transfer or reburial of Aboriginal objects will occur (Malbec 2016, p.13). If the alternative option of reburial of excavated Aboriginal objects is preferred, the applicant should supply a map showing the reburial location, evidence of landowner support for reburial of

Aboriginal objects at this location, and information about who will be responsible for updating the AHIMS database with the reburial location.

Realignment of Road One

The applicant must address archaeological implications of realigning Road One and increasing impacts to landscape context 9A. Additional archaeological salvage may be required in context 9A given the increased impacts proposed to this landscape context.

Updated OEH Guidelines

Section 4.6 of the AHMP (Malbec 2016, p.13) should update references to OEH guidelines, by replacing the reference to the *Aboriginal Heritage Standards and Guidelines Kit* (DEC 1997) with the *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW* (OEH 2011).

Conservation Reserve Management Plan

The Conservation Reserve Management Plan referred to in the AHMP (Malbec 2016, p.14) has not been referred to OEH with this modification application. However, we note that some land management activities (e.g. fencing, weed removal, tree planting) have potential to impact some types of Aboriginal objects. The long term conservation of Aboriginal objects should be considered when determining the appropriate management activities within the conservation reserve. We recommend management practices that minimise ground disturbance and promote passive weed management methods where possible.

Summary of OEH Recommendations

- Section 4.6 of the existing AHMP (Malbec 2007, p.12) must be retained so that archaeological salvage occurs in landscape contexts 4B and 5A. The requested changes to section 4.6 are not supported.
- Figure 1 of the revised AHMP (Malbec, 2016, p.17) should be revised to show new locations for archaeological salvage within landscape contexts 4B and 5A. These new locations must be entirely within the construction footprint and consistent in size with the salvage area shown in the existing AHMP (Malbec 2007).
- Section 4.6 of the AHMP (Malbec 2016, p.13) should determine the long-term management of Aboriginal objects as either through reburial or through a formal *Transfer of Aboriginal Objects* application.
- Section 4.6 of the AHMP (Malbec 2016, p.13) should include the requirement for any Aboriginal objects found to be listed on the OEH AHIMS database, in accordance with section 89A of the *National Parks and Wildlife Act 1974*. Archaeological salvage reports must also be lodged with the AHIMS Registrar within 4 months of completion of the archaeological excavations.
- The applicant must address archaeological implications of realigning Road One and increasing impacts to landscape context 9A.

- The Conservation Reserve Management Plan should be designed to minimise impacts to Aboriginal objects and areas of potential Aboriginal objects.
- OEH supports the administrative corrections to replace 'DECCW' with 'OEH'.

OEH requests that we are informed of the outcome of the Department's position on this modification application prior to finalising a determination.

Yours sincerely



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References:

Kuskie, P.J. (South East Archaeology), 2016, An Aboriginal Heritage Impact Assessment of the Proposed Residential Subdivision of Lot 171 DP 1081810, Highview Drive, Dolphin Point, South Coast of New South Wales - Supplementary Report for Reassessment in Relation to Revised Development Plans. Report prepared for Malbec Properties Pty Ltd, dated March 2016.

Kuskie, P.J. (South East Archaeology), 2005, Subsurface Archaeological Investigation of Stages 2 – 4 of "The Dairy", a Proposed Residential Development at Dolphin Point, Near Burrill Lake, on the South Coast of New South Wales, Vol. A. Report prepared for Elderslie Property Investments Pty Ltd, dated June 2005.

Malbec Properties Pty Ltd, 2016, Lot 171 DP 1081810, Highview Drive, Dolphin Point: Aboriginal Heritage Management Plan, Revision 2.

Malbec Properties Pty Ltd, 2007, Lot 171 DP 1081810, Highview Drive, Dolphin Point: Aboriginal Heritage Management Plan.