



10 November, 2017
Our Ref: 24163 KW
Your Ref: MP05_0024

NSW Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Attention: Ingrid Berzins

Dear Ingrid,

RESPONSE TO OEH COMMENTS - REQUEST TO MODIFY A DEVELOPMENT APPROVAL UNDER SECTION 75W OF THE EP&A ACT – MAJOR PROJECT 05_0024 FOR A STAGED 102 LOT RESIDENTIAL SUBDIVISION – (FORMER LOT 171 DP 1081810) NOW LOTS 117/118 DP 1226471 HIGHVIEW DRIVE DOLPHIN POINT FOR MALBEC DOLPHIN POINT PTY LTD

This letter is provided in response to OEH's comments on the s.75W as proposed, in particular, I refer to the Department's email dated 11 September, 2017 as follows:

The Department have received comments from OEH in relation to MP 05_0024 MOD 3 – Dolphin Point.

For the proposed removal of scrape sites 5A and 4B, OEH recommend the following alternate solutions:

To clarify our advice in relation to scrapes at 5A and 4B:

5A

Archaeological hand excavation should be conducted in the small part of landform unit 5A that appears to be within Stage 3/4 construction footprint (and therefore, we assume, has not been impacted). We suggest that the excavated area should be 4 – 25m sq. We also suggest some archaeological test pits are hand excavated within the conservation zone of the proposed 5A square as shown in Figure 1 of the revised AHMP dated March 2016. This should allow some of the research questions to be addressed, although a smaller area would be excavated than was stipulated in the AHMP.

It may be useful to request advice from the consultant archaeologist and Ulladulla LALC on this proposed mitigation measure.

4B

We suggest relocating the proposed scrape at 4B to further south so that it is still within the 4B landform, but also within the construction footprint (looks like this will be in Stage 5). The 4B excavation methodology set out in the AHMP should then be able to be implemented.

Please review and provide comments to the Department as soon as possible.

Following this advice and further communication via phone and email with both the Department and OEH, a site inspection was undertaken on 17 October, 2017, attended by officers of the Department, Rose O'Sullivan - OEH, Peter Kuskie (Consultant Archaeologist) and Allen Price and Scarratts Pty Ltd (Applicant).

The following was discussed at the site meeting in order to provide background, respond to OEH's previous advice, and in order to progress this matter:

- Caroline Griffiths (APS) explained that the original application sought a larger residential area which was reduced with an increase in the conservation reserve to cover the areas containing the Leafless Tongue Orchid and White-footed Dunnart. The original development approval did not require the submission of an amended Aboriginal Heritage Management Plan (AHMP), despite the excavation sites identified in the AHMP extending into the approved expanded conservation reserve.
- It was generally agreed that the Scrape Site for the 4B area can be relocated fully into Stage 5 as a part of an amended AHMP.
- It was generally agreed that the AHMP be updated to include any administrative/reference updates as specified by OEH.
- The 5A area was located within the area of highest potential archaeological research significance. OEH considers that there is a need to offset the impact of the loss of this area from the overall scheme. It was suggested that test pits for hand excavation could occur just inside the boundary of the conservation reserve. It was pointed out that the road and associated drainage works have already significantly disturbed the area between the road and the conservation reserve. Issues with the test pits include potential conflicts with the vegetation management plan (VMP) as the reserve now covers the area where the orchids were identified. The reserve was also extended to cover the area inhabited by the White-footed Dunnart.

APS will provide GPS locations for the orchids. OEH and DPE to consider potential conflicts between flora/fauna and archaeological test pits. **[Note: this was provided to OEH and NSW DPE on 17 October, 2017 by email]**

The proponent, if required to undertake test pits within the reserve, would request that the modified approval make it clear that this requirement prevails over any condition/requirement within the approved Vegetation Management Plan (VMP).

An ecologist would need to be present for any test pit excavation in case orchids are discovered (unfortunately due to limited flowering season, and irregular flowering, the orchids are not easily identified prior to excavation; GPS points may not be accurate enough for avoidance).

- The possibility of other test sites for hand excavation has been considered by the proponent and Peter Kuskie, however, between the construction, the issues with the conservation reserve and the location of the other sites (in areas of lesser potential research value) no clear alternative has been identified. Within Stage 6 there are potential shell middens which have yet to be studied. It is noted that section 4.4 of the AHMP allows for the management of any such sites if identified. It was generally agreed that these sites should be investigated as early as possible so as not to cause problems with construction scheduling down the track.
- APS is expecting the construction certificate for Stage 3 to be issued imminently **[Construction Certificate for Stage 3 is now issued]**. APS requests agreement from DPE/OEH to allow for archaeological hand excavation etc to commence. Please advise ASAP that Peter Kuskie has authority to proceed in this site?
- The area of 4A was inspected and found to have stockpiles of soil and timber on the western boundary of the identified scape area. The area is substantially vegetated.

It was noted in the summary email sent by APS to NSW DPE on 17 October, 2017 that

“Following the meeting this morning we have had further discussion concerning the potential for test pits in the road reserve up to 1m from the fence/boundary to the conservation reserve. This 1m section should be relatively intact, and if smaller pits (as opposed to trenches) used, this may be an alternative. Pits would need to be away from posts (so as not to destabilise) and electricity lines identified before starting. This road reserve area has yet to be dedicated as public land so there is a narrow time frame to

do this work ASAP if acceptable? We could start as soon as endorsement given if acceptable which would be endorsed in s75W?"

I had assumed after our meeting and follow up email that OEH was going to revise the previous comments to NSW DPE about Area 5A and its preferred handling of this in the revised AHMP?

As stated in the email dated 17 October from APS to the Department, we have agreed that the AHMP is to be updated to include any administrative/reference updates as specified by OEH.

It was also agreed that the Scrape Site for the 4B area can be relocated fully into Stage 5 as a part of an amended AHMP.

We have also provided a suggestion for the 5A area being potential "test pits in the road reserve up to 1m from the fence/boundary to the conservation reserve. This 1m section should be relatively intact, and if smaller pits (as opposed to trenches) used, this may be an alternative. Pits would need to be away from posts (so as not to destabilise) and electricity lines identified before starting. This road reserve area has yet to be dedicated as public land so there is a narrow time frame to do this work ASAP if acceptable? We could start as soon as endorsement given if acceptable which would be endorsed in s75W?"

We are very keen to get this matter resolved as soon as possible as it has been dragging on for a while. Obviously, we can make the agreed amendments to the AHMP but cannot finalise these without OEH's direction on the area 5A matter.

Accordingly, we formally request OEH's amended comments as soon as possible.

Should you have any queries or wish to discuss the matter further, please do not hesitate to contact me on 4421 6544.

Yours faithfully,



Kate Wooll
Town Planner
ALLEN PRICE & SCARRATTS PTY LTD