

Our Ref: DOC16/238405

Your Ref: SSD7198

Ms Kate MacDonald
Team Leader Industry Assessments
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Attention: Ms Jane Flanagan

Dear Ms MacDonald

Re: Response to Submissions - SSD 7198 - Moonee Parklands

Thank you for your email dated 12 May 2016 regarding the above development application requesting comments from the Office of Environment and Heritage (OEH) on the Response to Submissions prepared by the applicant. I appreciate the opportunity to provide input and apologise for the delay in responding.

The OEH has reviewed the documents supplied and advise that, although we have no concerns about NPWS estate or flood management, a number of issues are apparent with respect to the assessments for biodiversity and Aboriginal cultural heritage. These issues are discussed in detail in **Attachment 1** to this letter.

We previously provided comments on this proposal in our letter dated 12 December 2014. It appears that most of the issues we raised have not been adequately addressed in the Response to Submissions prepared by the applicant.

In summary, the OEH recommends that:

1. Consideration should be given to reducing the impacts on threatened species and their habitats by reducing the development footprint.
2. After recommendation 1 above has been addressed, all remaining biodiversity impacts should be offset to the satisfaction of the OEH.
3. Once, recommendation 3 has been addressed, an Aboriginal Cultural Heritage Management Plan should be prepared for the proposal to the satisfaction of the OEH. Aboriginal cultural heritage Stop Work Protocols and an Aboriginal cultural heritage Induction Program should be included in the Plan.

4. Any reference within Statement of Commitment 17 to '*significant cultural material*' should be amended to refer to '*Aboriginal cultural material*'.

If you have any further questions about this issue, Mr Krister Waern, Senior Operations Officer, Regional Operations, OEH, can be contacted on 6640 2503 or at krister.waern@environment.nsw.gov.au.

Yours sincerely

 16 June 2016

DIMITRI YOUNG
Senior Team Leader Planning, North East Region
Regional Operations

Contact officer: KRISTER WAERN
6640 2503

Enclosure: Attachment 1 – Detailed OEH Comments – Response to Submissions - SSD 7198 - Moonee Parklands

Attachment 1: Detailed OEH Comments – Response to Submissions - SSD 7198 - Moonee Parklands

Biodiversity matters

The Office of Environment and Heritage (OEH) has reviewed the Response to Submissions report prepared by JW Planning Pty Ltd dated 28 April 2016. The following points discuss the applicant's response on the matters raised by the OEH in our previous letter of 12 December 2014.

- *Determination of offset requirements for loss of native vegetation.*

The OEH identified the need for offsets in the Director General's Requirements issued in 2010, i.e. actions to compensate for unavoidable impacts to biodiversity. Regardless of whether the NSW Biodiversity Offsets Policy for Major Projects is applicable to this site or not, an offset for impacts on biodiversity should be required.

- *Targeted surveys for Spider Orchid*

Adequate surveys have been undertaken.

- *Reduction of development footprint to reduce the impact of the proposed subdivision on Squirrel Gliders, and identification of mitigation measures and potential offset requirements for loss of Squirrel Glider habitat.*

The development footprint has not been reduced and mitigation and offset measures are not adequate.

- *Identification of the need for nest boxes and other compensatory measures relating to impacts on flora and fauna habitat.*

Although a nest box plan has been put forward, further detail is required about how the nest box plan directly relates to the impacts of the proposal. Compensatory measures in the form of offsets have not been addressed.

- *Requirement for offsets and replacement of plantings for the loss of Glossy Black Cockatoo feed trees.*

Replacement plantings have been addressed, but offset requirements for this species have not been adequately addressed.

- *Expansion of the conservation reserve in the south eastern part of the project area for the purpose of Koala habitat protection and reduction of edge effects.*

Although Lot 6 is not part of the proposal, further consideration should be given to reducing edge effects.

- *Detailed description of conservation reserve fencing plans.*

The detailed fencing plan can be developed prior to construction commencing.

From the above points it appears that there has been very little change to the proposal to address our previous comments.

Recommendations

1. Consideration should be given to reducing the impacts on threatened species and their habitats by reducing the development footprint.
2. After recommendation 1 above has been addressed, all remaining biodiversity impacts should be offset to the satisfaction of the OEH.

Aboriginal cultural heritage matters

The OEH has reviewed the Response to Submissions from the perspective of Aboriginal cultural heritage (ACH) and with particular reference to our letter to the Department of Planning and Environment (DPE) dated 12 December 2014. The OEH provides the following comments for consideration.

We note that no mention of ACH is made in the main body of the Response to Submissions under review. ACH is only mentioned twice within tables included in the document.

The OEH notes that there appears to be some confusion demarcating ACH issues from biodiversity as all OEH submissions regarding ACH are included in "Section 20: Biodiversity" of Table 1. We further note that this section of Table 1 refers to Statement of Commitment (SoC) No. 16. However SoC No. 16. does not have relevance to ACH issues. The OEH understands that this reference should be to SoC No.17.

The OEH notes reference to 'subsurface exploratory test pitting' contained within SoC 17. We consider that all such test excavation should be completed prior to determination of any project. Hence, we are unable to support the proposal until such time as all test excavation is completed and a final report provided to the OEH for review prior to determination of the application.

Test excavation and subsurface exploratory test pitting should always be completed as part of any Aboriginal Cultural Heritage Assessment process which is carried out to inform the decision making process and never when a final footprint has been determined and approval granted. In any location where such test excavation is considered warranted then it is clear that insufficient information exists regarding the likelihood of tangible Aboriginal cultural heritage values being present and as such no final decision regarding any such proposal should be made until such time as further information is provided to the extent that a fair determination can be made based on adequate assessment of the various values that may be affected by the proposal.

In our letter to the DPE dated 12 December 2014 we identified a number of issues which were listed as points in Attachment 1 to that letter. These are listed again below along with comments about their status in the document currently under review;

- 17. Ongoing commitment to consult with the registered Aboriginal representatives for the project.
 - Comment: This is addressed and confirmed in SOC 17.
- 18. Requirement for the preparation of an Aboriginal Cultural Heritage Management Plan (ACHMP)
 - Comment: This requirement was first raised as a recommended condition of approval by the OEH in a letter to the (then) Department of Planning & Infrastructure dated 1 August 2013. It was included in that letter as a recommended condition of approval. The OEH notes that our understanding, as of 12 December 2014, was that the proponent had expressed a willingness to accept the requirement for an ACHMP to form a condition of consent. The OEH notes that no mention of any ACHMP is made in the current Response to Submissions under review. The OEH considers that the requirement for an ACHMP to ensure appropriate management of ACH values

within the proposal area be included as a SoC or Condition of Approval in the event that project approval is granted.

- 19. Stop Work Protocol in the event of identification of Aboriginal objects during construction works.
 - Comment: The OEH notes that dot point two of SoC 17 in the Response to Submissions document under review commits to “*halt works if significant cultural material is found*”. The OEH further notes that dot point four of SoC 17 commits to “*In the event that any Aboriginal cultural materials are discovered or exposed during any stage of the proposed development works, all works shall immediately cease in the vicinity of the find.*” The OEH notes that these commitments are internally inconsistent and that the former of the two commitments is inconsistent with previous OEH recommendations. The OEH recommends that any reference within SoC 17 to ‘*significant cultural material*’ is amended to refer to ‘*Aboriginal cultural material.*’
- 20. Protocol in the event of discovery of human remains during construction works.
 - Comment: SoC 17 commits to halting works and seeking further management guidance in the event of the discovery of possible or identified Aboriginal remains. The OEH supports this section of SoC 17. The OEH considers that further clarification of the protocols for the discovery of possible or confirmed human remains should be included in the ACHMP being recommended for the project.
- 21. Requirement for an Aboriginal Cultural Heritage Induction Program.
 - Comment: The OEH notes the absence of any reference to an Aboriginal Cultural Heritage Induction Program within SoC 17. The OEH recommends that such a program be prepared in consultation with the registered Aboriginal parties for the project and incorporated into an Aboriginal Cultural Heritage Management Plan.

In summary we do not consider that the ACH management measures outlined in SoC 17 of the current proposal adequately address issues raised by the OEH in previous correspondence regarding this matter. Furthermore, based on information contained within the Response to Submissions document under review, the OEH has grave concerns that the Aboriginal cultural heritage assessment process to date has not adequately identified all the likely ACH values which need to be considered prior to a final determination being made for this project.

Recommendations

3. Further Aboriginal cultural heritage assessment should be undertaken to the satisfaction of the OEH.
4. Once, recommendation 3 has been addressed, an Aboriginal Cultural Heritage Management Plan should be prepared for the proposal to the satisfaction of the OEH. Aboriginal cultural heritage Stop Work Protocols and an Aboriginal cultural heritage Induction Program should be included in the Plan.
5. Any reference within Statement of Commitment 17 to ‘*significant cultural material*’ should be amended to refer to ‘*Aboriginal cultural material.*’

