



**Office of
Environment
& Heritage**

Your reference: DA.172-7-2005
Our reference: DOC14/46259-1
Contact: Suzie Lamb: 62297117

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Department of Premier & Cabinet
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Sydney NSW 2001

Dear Ms Flanagan

Re: Section 75W application for modifications to Bay Ridge Estate - DA 172-7-2005

Thank you for your email dated 7 April 2014 referring the section 75W application for Bay Ridge Estate, DA 172-7-2005, modifications to the Office of Environment and Heritage (OEH) for comment.

OEH reviewed the original environmental assessment for this project prior to approval, based on the predicted impacts of the original proposal in November 2004. OEH had strong concerns regarding the large amount of clearing of native vegetation including the loss of hollow bearing trees and Glossy Black Cockatoo feed trees.

OEH has reviewed the information currently provided on the Planning and Infrastructure website relating to the proposed modifications within Stage 2B and has conversed with the NSW Rural Fire Service (RFS) to obtain further clarification. OEH comments relating to both Biodiversity and Aboriginal Cultural Heritage matters are as follows:

Biodiversity

Based on the information provided in the 'CIC Planning Report', dated 25 February 2014, it appears the development footprint will not be increased as a result of adding 10 lots into Stage 2B. The report however, does not specify whether any additional vegetation will be cleared within the development footprint over and above that which has already been previously authorised. OEH seeks clarification from CIC Australia as to whether any additional native vegetation will be cleared within the modified development footprint. If there is likely to be additional clearing, please describe the type and extent of the vegetation to be cleared.

OEH also has concerns that these modifications may result in future pressures to clear vegetation to increase Asset Protection Zones (APZ) in each lot as a result of the requirement to build up to a bushfire attack level (BAL) of 40 under AS3959-2009. Based on NSW Rural Fire Service advice, OEH's understanding of this matter is that each dwelling in Stage 2B must be built to a BAL40 rating with the current APZs accounted for in the proposal. Alternatively the APZ can be increased around each individual dwelling, which can allow the dwelling to be built to meet a lower, BAL29, rating. Whilst the option for this lower rating has not been approved OEH contends that, if this is a likely occurrence, CIC Australia should

consider undertaking a strategic environmental assessment to enable a proper calculation of the environmental impacts, rather than each landholder applying separately to increase their APZ.

Aboriginal Cultural Heritage

A number of Aboriginal objects (sites) have previously been recorded on the development site including five Aboriginal artefact sites and seven areas of potential archaeological deposit (PAD). As a result; a Section 90 Consent to Destroy with Salvage (# 2099) was issued by the then Department of Environment and Conservation (now known as OEH) for a number of the Aboriginal sites which were proposed to be impacted as a result of the construction of the residential subdivision and associated infrastructure. The Consent specifically excluded the site KPH5 (AHIMS # 58-4-1010) which was to be protected within a vegetative buffer zone. This Consent was issued with a date of 12 January 2004 (although this should read 2005) for a period of five (5) years and subsequently expired on 12 January 2010.

OEH notes that under Condition 1.13 of the development consent for DA No. 172-7-2005, approved by the then Department of Planning on 7 December 2006, the development must comply with all of the conditions of the *Consent to Destroy with Salvage* Consent #2099 issued in relation to known Aboriginal sites and potential archaeological deposits. Additional conditions related to Cultural Heritage matters are also included under 4.11, 4.12 and 4.13 of this development consent.

As such, OEH advises that a condition of Consent #2099 was that all actions, and their results, conducted under the terms of the Consent were to be documented in a report to OEH. Currently, OEH has no record that the actions required under this Consent were undertaken or that the conditions of the Consent were complied with. As Consent #2099 has now expired; OEH seek confirmation as to whether salvage and impacts activities have occurred to the Aboriginal sites located within the development area. If salvage and impacts have not occurred to the Aboriginal sites; OEH advises that, given Consent #2099 has expired, a new approval to impact Aboriginal objects will be required to be issued by OEH before construction activities can occur in any stages of the development area.

In addition, as Consent #2099 was issued for specific site complexes and was not a development area based Consent; if any new Aboriginal objects are uncovered during construction works, construction work must cease and OEH notified. The proponent must obtain an Aboriginal Heritage Impact Permit from OEH in order to continue any activities that may subsequently impact any newly uncovered Aboriginal objects. This is also a requirement under Condition 4.11 of the development consent for DA No. 172-7-2005 whereby; if any Aboriginal objects are exposed during construction works, construction work shall cease and the applicant must obtain any necessary approval to continue work.

Should you require any additional assistance or wish to discuss these matters further, please contact Suzie Lamb on (02) 6229 7117 for Biodiversity matters or Jackie Taylor on (02) 6229 7089 for Aboriginal Cultural Heritage matters.

Yours sincerely



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