



Office of Environment & Heritage

Our Ref: DOC18/553652

Your Ref: Email dated 6 August 2018

Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Attention: Ms Emma Butcher, Planning Officer

Dear Mr Witherdin

Re: Response to Submissions, Altitude Aspire Residential Subdivision (MP 09_0166 MOD 3), Terranora Tweed LGA

Thank you for your email dated 6 August 2018 about the Response to Submissions (RtS) for the Altitude Aspire Residential Subdivision MP 09_0166 seeking comments from the Office of Environment and Heritage (OEH). I appreciate the opportunity to provide input.

We have reviewed the RtS and associated documents supplied. In our submission we advised that an environmental study should be prepared in accordance with the Framework for Biodiversity Assessment (FBA). The proponent instead has provided an ecological assessment that is stated to be in accordance with the *Biodiversity Conservation Act 2016 (BC Act)*. However, this has not been prepared by an accredited assessor nor does it comply with the prescribed methodology which is the Biodiversity Assessment Method (BAM).

As this assessment concerns a modification to a Part 3A project, the Department of Planning and Environment (DPE) can determine the appropriate assessment methodology. The OEH suggests that, in this case, the BAM be applied and a Biodiversity Development Assessment Report (BDAR) be prepared to assess the impacts on the adjoining Lot 1 DP 175234. This is recommended as the impacts from the proposed residential subdivision on the adjoining site will also have to be assessed and offset in accordance with the BAM.

The OEH has also reviewed the Aboriginal Cultural Heritage Report (ACHAR) and generally agrees with the findings presented. However, there is a need to ensure that all local cultural sources of knowledge are canvassed for information regarding intangible cultural values that may be present within the subject lands, and that staff carrying out the ground disturbing works are fully informed about likely ACH values and Aboriginal objects and any unexpected finds will be managed appropriately.


These issues are discussed in detail in **Attachment 1** to this letter.

In summary, the OEH recommends:

1. The ecological assessment of the impacts arising from the proposed cut and fill works and any other development in Lot 1 DP 175234 should be assessed in accordance with the Biodiversity Assessment Method by an accredited assessor and a Biodiversity Development Assessment Report prepared.
2. Further consultation with other members of the local Aboriginal community not represented by the Tweed Byron Local Aboriginal Land Council should be undertaken.
3. The Aboriginal Cultural Heritage Report should be amended as follows:
 - a) Recommendation 2 should require site inductions for all staff, particularly those actively engaged in any ground disturbing works.
 - a. Recommendation 5 should be expanded to include the requirement to notify the OEH North East Branch of any such finds.

If you have any further questions about this issue, Ms Rachel Lonie, Senior Conservation Planning Officer, Conservation and Regional Delivery, OEH, can be contacted on 6650 7130 or at rachel.lonie@environment.nsw.gov.au.

Yours sincerely

 24 August 2018

DIMITRI YOUNG
Senior Team Leader Planning, North East Branch
Conservation and Regional Delivery

Enclosure: Attachment 1: Detailed OEH Comments – Response to Submissions (RtS) for the Altitude Aspire Residential Subdivision MP 09_0166

Attachment 1: Detailed OEH Comments – Response to Submissions (RtS) for the Altitude Aspire Residential Subdivision MP 09_0166

1. Extension of bulk earthworks

The OEH previously raised the issue of whether the proposal could be considered given the works are on the adjoining Lot 1 DP 175234 that was not part of the 'subject site' for the Part 3A project. The Department of Planning and Environment (DPE) has advised that it considers the works on the adjoining property can be considered within the scope of a Part 3A Modification.

2. Ecological assessment

In our submission, the OEH recommended the impacts on the adjoining land should be assessed in accordance with the Framework for Biodiversity Assessment (FBA). Applications for major projects can be considered under the previous legislation if:

- substantial environmental assessment was undertaken before 25 August 2017 (as determined in writing by the Secretary of DPE) and the application is made within 18 months of the Secretary's determination, or
- environmental assessment requirements were issued before 25 August 2017 and the application is made before 25 February 2019. If the environmental assessment requirements are reissued, the application must instead be made within 18 months of the reissue, but no later than 24 August 2020.

The applicant instead has provided a revised ecological assessment (EA) by Burchills dated July 2018 for the adjoining site that states it has been prepared in accordance with the *Biodiversity Conservation Act 2016 (BC Act)* and the Biodiversity Offset Scheme (BOS).

Although the BOS applies to development consents under Part 4 and Part 5.1 of the Environmental Planning and Assessment Act there appears to be nothing that could preclude the requirement to address the BOS and prepare a Biodiversity Development Assessment Report (BDAR) for this modification proposal. The following comments are provided on the basis that this is the legislation that will be applied.

The ecological assessment has not complied with the BC Act and has not been prepared in accordance with the BAM. There is no BDAR prepared by an accredited assessor as required under the BC Act. The EA does not map vegetation communities to Plant Community Types (PCTs), nor provide survey results and assess integrity scores. It does not assess threatened species habitat, demonstrate the required surveys have been undertaken or identify threatened species polygons such as for *Macadamia tetraphylla* in accordance with the BAM.

The EA states that the proposed development does not trigger the clearing threshold for the Biodiversity Offset Scheme (BOS). This conclusion appears to be founded on an assumption that vegetation mapped as Vegetation Association A is not vegetation for the purposes of the BAM and BOS. It maps the vegetation on Lot 1 DP 175234 in the area to be impacted by the bulk earthworks as Type A Tall Closed Forest (*Cinnamomum camphora*). The previous OEH advice referred to the species list in Table 5.4 for the Type A Tall Closed Forest (*Cinnamomum camphora*) which indicated some species were consistent with the *Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions* endangered ecological community (EEC).

The OEH does not agree with the conclusion that the development does not trigger the clearing threshold. The assessment of the proposed cut and fill in Lot 1 DP 175234 should be undertaken in accordance with the BAM.

Further, the Altitude Central development planned for Lot 1 DP 175234 will be required to be assessed under the *Biodiversity Conservation Act 2016* and a Biodiversity Development Assessment Report (BDAR) will need to be prepared by an accredited assessor for that development.

As the OEH previously advised, *Macadamia tetraphylla* and the EEC should also be considered under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and may require a separate approval, noting the *Lowland Rainforest of Subtropical Australia* is a critically endangered ecological community under the EPBC Act.

OEH Recommendation

1. The ecological assessment of the impacts arising from the proposed cut and fill works and any other development in Lot 1 DP 175234 should be assessed in accordance with the Biodiversity Assessment Method by an accredited assessor and a Biodiversity Development Assessment Report prepared.

3. Aboriginal cultural heritage

The OEH has reviewed the Altitude Aspire Western Earthworks: Aboriginal Cultural Heritage Report (ACHAR) (Everick July 2018) provided in support of the proposal. Although the OEH has found some minor inconsistencies and deficiencies, we generally agree with the findings presented.

The OEH notes that consultation with the local Aboriginal community for this project was limited to the Tweed Byron Local Aboriginal Land Council (TBLALC). We recommend that, although not required by legislation, further consultation with other members of the local Aboriginal community not represented by the TBLALC is undertaken. This will ensure that all local cultural sources of knowledge are canvassed for information regarding intangible cultural values that may be present within the subject lands.

We also suggest changes to two of the recommendations within the ACHAR as follows:

Recommendation 2 regarding cultural heritage inductions states that supervisors and senior operational staff should undergo Cultural Heritage Inductions. The OEH strongly recommends that any site inductions include *all* staff, particularly those actively engaged in any ground disturbing works. This will ensure that those staff carrying out the ground disturbing works have an idea of the likely ACH values and Aboriginal objects that may be present and will be able to notice any unexpected finds and deal with them in a culturally and scientifically appropriate manner.

Recommendation 5 is to notify the OEH AHIMS unit of any Aboriginal objects located during the works. OEH supports this recommendation, as failure to do so would constitute a breach of S89A of the *National Parks & Wildlife Act 1974*. The OEH recommends that Recommendation 5 is expanded to include the requirement to notify OEH Northeast Planning Unit of any such finds in order to ensure that they are managed appropriately.

OEH Recommendations

2. Further consultation with other members of the local Aboriginal community not represented by the Tweed Byron Local Aboriginal Land Council be undertaken.
3. The Aboriginal Cultural Heritage Report be amended as follows:
 - a. Recommendation 2 to require site inductions for all staff, particularly those actively engaged in any ground disturbing works.
 - b. Recommendation 5 be expanded to include the requirement to notify OEH North East Planning Unit of any such finds.