

Your reference: DA#16-2012-800-1  
Our reference: DOC13/95651, FIL12/6349-03  
Contact: Nicole Davis, 4908 6825

Mr Peter Gesling  
General Manager  
Port Stephens Council  
PO Box 42  
RAYMOND TERRACE NSW 2324

Attention: Carlos Ferguson, Senior Development Planner



Dear Mr Gesling

**RE: DA # 16-2012-800-1 FISHERMAN'S BAY - 104 LOT SUBDIVISION, LOTS: 4561 AND 4562 DP: 841032, 12 AND 27 FISHERMAN'S BAY ROAD, FISHERMANS BAY**

I refer to your letter dated 17 December 2013, regarding the above Integrated Development, seeking General Terms of Approval (GTA's) with respect to Aboriginal cultural heritage.

The Office of Environment and Heritage (OEH) understands that Port Stephens Council has amended plans and documentation in response to OEH's initial concerns regarding Aboriginal cultural heritage issues associated with the above development. OEH has accordingly reviewed the documents: *'Proposed Residential Development at 21-27 Fisherman's Bay Road, Fisherman's Bay, New South Wales, Aboriginal Archaeological Assessment, Appendix to Purposed Residential Development at 21-27 Fisherman's Bay Road, Fisherman's Bay, New South Wales, Aboriginal Cultural Heritage Assessment, Benjamin Street, November 2013, Prepared for Landcom NSW'* and *'Proposed Residential Development at 21-27 Fisherman's Bay Road, Fisherman's Bay, New South Wales, Research Design and Test Excavation Methodology, Benjamin Street, September 2013, Prepared for Landcom NSW'*. OEH concurs with and supports the proposed Aboriginal cultural heritage research design and test excavation methodology for the project area provided by Council.

OEH has also considered all other available Aboriginal cultural heritage information to assess the potential impacts of the proposed development on Aboriginal cultural heritage in accordance with OEH's Aboriginal cultural heritage assessment guidelines and the requirements of the *National Parks and Wildlife Act 1974* (NPW Act). The following advice is provided to Council and the applicant following this review. Please note that the importance of protecting Aboriginal cultural heritage is reflected in the provisions of the NPW Act. The NPW Act clearly establishes that Aboriginal objects and places are protected and may not be harmed, disturbed or desecrated without appropriate authorisation. Importantly, approvals under Parts 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) do not absolve the applicant of their obligations under the NPW Act.

#### **Aboriginal cultural heritage values**

OEH acknowledges the significance of the local environment to the local Aboriginal community including the existence of two (2) Aboriginal sites registered with the Aboriginal Heritage Management Information System (AHIMS) and places of significance in the immediate locality, including the Birubi



Point Aboriginal Place. OEH also acknowledges that the project area contains landforms which have yielded a significant volume of evidence of Aboriginal occupation in the immediate local area, including artefact scatters, camp sites, ceremonial and dreaming sites, middens, potential artefact deposits and isolated finds. This is important as additional, currently undetected, cultural material may be contained within the project area.

Pleistocene age sand deposits are present at varying depths around the project area. Prior to any developments works occurring in the project area, OEH requires that a systematic subsurface archaeological testing and investigation be undertaken to determine if these Pleistocene sand deposits contain evidence of Aboriginal occupation.

### **General legislative advice**

OEH notes that the provisions of the NPW Act have been amended and to assist the applicant with understanding the new requirements during the development and any subsequent assessment processes, information regarding Aboriginal cultural heritage can be found on OEH's web-site at: [www.environment.nsw.gov.au/cultureandheritage.htm](http://www.environment.nsw.gov.au/cultureandheritage.htm).

OEH also reminds the proponent that, in the event that any inadvertent damage does occur to any Aboriginal cultural heritage as a result of any proposed works, there is potential for an offence under Part 6 of the NPW Act, irrespective of any development determination granted under the EP&A Act.

### **General terms of approval**

1. Archaeological testing of the Pleistocene aged sand deposits within the project area is to occur prior to commencement of any development works. All archaeological testing is to be carried out in accordance with both the '*Proposed Residential Development at 21-27 Fisherman's Bay Road, Fisherman's Bay, New South Wales, Research Design and Test Excavation Methodology, Benjamin Street, September 2013, Prepared for Landcom NSW*', and in line with '*The Code of Conduct for the Investigation of Archaeological Objects in NSW (DECCW 2010)*';
2. OEH requires that the archaeological test excavations, followed by salvage excavation (if necessary) under an Aboriginal Heritage Impact Permit (AHIP), be included as a condition of development consent by Port Stephens Council; and
3. That an AHIP is required for the two registered Aboriginal sites recorded within the project area, *AHIMS # 38-5-0153* (Isolated Find Fisherman's Bay 1) and *AHIMS # 38-5-0309* (Landcom FB1) irrespective of the archaeological testing program. Depending upon the results of the archaeological test excavations (and possible salvage excavations) the AHIP may need to be expanded to include any additional Aboriginal objects recovered from the archaeological testing and possible salvage program.

Should you wish to further discuss any of the above matters, please contact Nicole Davis, Archaeologist Hunter Central Coast Region, on 4908 6825.

Yours sincerely

 28 JAN 2014

**RICHARD BATH**  
**Senior Team Leader Planning, Hunter Central Coast Region**  
**Regional Operations**