

Council Reference: D25/429779  
Contact Person: Justin Lamerton

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Industry Assessments  
Department of Planning, Housing, and Infrastructure  
Locked Bag 5022  
Parramatta NSW 2124

Attention: Deana Burn ([deana.burn@planning.nsw.gov.au](mailto:deana.burn@planning.nsw.gov.au))

SSD-3846-Mod-1  
Shoalhaven City Council Response to Request for Comments

I refer to the Department of Planning, Housing, and Infrastructure's request for comment in relation to the West Culburra Mixed Use Subdivision - Modification 1 - Realign development footprint over property at Culburra Rd, Culburra Beach (Lot DP 1305809).

Shoalhaven City Council (SCC) is grateful for the opportunity to provide input into the proposal and provides the attached comments which can be viewed at Attachment 1 to this Letter.

Council provides this response within its regulatory capacity and is in response to the lodged documents.

If you need further information about this matter, please contact me on 4429 3111.

Yours faithfully

Justin Lamerton  
City Development  
Shoalhaven City Council

## Development Planning Comments / Requirements

### Comments

Development Services provides the following comments in relation to the modifications proposed to the concept approval:

- It is noted that the original approved concept layout included a continuous pedestrian pathway connection which connected Park 1 and Park 2 via a cul-de-sac. It is noted that the amended concept layout has revered the cul-de-sac access point. The result of this change means that there is no longer a contiguous pedestrian pathway connection between Park 1 and Park 2.

It is recommended that the pedestrian pathway connection be reinstated.

- The shape and location of the emergency bushfire egress has been amended. The location was approved in a straight line which provided convenient access to the proposed road within the approved industrial precinct.

The new location is no longer in a straight line. It should be confirmed with Rural Fire Service whether the amended layout is able to be utilised in the event of an emergency by the largest vehicles requiring access – such as a 23 tonne fully laden fire truck.

The new location between the water quality pond and biofiltration is also of concern. If the access road was immersed in water at the time of an emergency due to its vicinity to the WSUD features, this could mean that the emergency egress is not accessible during an emergency, which is not supported. It is recommended that the emergency access be provided in a location where it is not susceptible to being immersed as part of the WSUD / stormwater drainage aspects.

- The amended concept plan has resulted in amendments to the area of a number of parks – for example Park 1 has increased in size from 10,000m<sup>2</sup> to 16,928m<sup>2</sup>. However the Landscape Master Plan submitted with the modification package still gives reference to Park 1 as having an area of 10,000m<sup>2</sup> (i.e. the approved area not the proposed area).

It should be ensured that all documents submitted with the modification are updated to ensure consistency and uniformity across lodged documents.

- It has been noted that the proposed modification to the concept approval appears to result in a reduction in the area of the proposed industrial lots as a result of the extension of Park 2 to include additional water quality controls (i.e. Wetland 1 and Bio D).

It does not appear that an economic needs study has been submitted to justify the change to the industrial lot sizes. It should be clarified that the change to the lot area is consistent with the market demands.

- Biofiltration B10 has been shifted so it is no longer directly adjacent to the new Culburra Road roundabout. It should be ensured that suitable vehicular access is available for maintenance vehicles needing to access biofiltration B10.

- The Aboriginal Cultural Heritage Assessment (Map 2.1) depicts a number of Artefacts within the area subject to the relocation and reduction of the overall development footprint. It should be ensured that the outcomes presented in the submitted Report are consistent with changes made to the approved layout.

- Whilst there is no objection in principle to removal of the lot layout of each individual lot, given the layouts are no longer locked in, Council would still like to ensure that the dimensions of each proposed lot along with any access handles to battle axe lots are consistent with / equivalent to the requirements of Chapter G11 of the Shoalhaven Development Control Plan (SDCP) 2014, which provide specific requirements in this regard. It is recommended that this be considered as part of the concept approval (any conditions) to ensure there is no ambiguity in relation to such requirements.

- Proposed modifications to conditions of consent of concept approval:
  - Change to 'Baseline' definition – The term baseline is used as a measure in a number of concept plan conditions, for example as part of water quality requirements, aquatic ecology, etc. Council is concerned that a change to this definition to refer to construction instead of works could mean that any baseline requirements of the consent may still be ongoing as site preparation works take place (give site preparation works such as vegetation removal, construction of service infrastructure, etc don't meet the definition of construction).
  - Replacement of 'Environmental Auditor' with 'Environmental Representative' – Whilst there are no objections in principle, it should be ensured that the amended term still provides that the applicable representative has the suitable qualifications to be able to make the decisions required by the position.
  - Condition A9 modification – No objections in principle. However it should be ensured that the wording of the condition reflects the requirements of Clause 96 of the EP&A Regulation 2021, to reflect the types of work which are taken to constitute physical commencement.
  - Condition A10 – Not proposed for amendment, but a comparison of the approved and proposed concept site plans appears to show a difference in the amount of industrial site area.
  - Condition B28 Deletion – Condition B28 does not appear to be covered in Condition C28 and therefore its deletion is not supported. Alternatively, Condition C28 could be updated to include the text within Condition B28.
  - Condition B33 Modification – No objections in principle, however it should be clarified that this relates to roads proposed to be transferred into Council ownership only and not any private roads.
  - Conditions B41-B47 – Must also be amended to reflect the new proposed area of these parks as shown on the modified concept plan. The comments from the Parks and Open Space Section below should also be taken into consideration before considering any such modification.
  - Condition C27 – Culburra Road is identified within '7000 series' roads on the Schedule of State Controlled roads. Given some of the roads works required relate to this road, Council are not the sole roads authority and therefore this modification is not supported.

## Parks & Open Space Section Comments / Requirements

### Comments

#### *Local Park: location 5*

Plans illustrate provision of public open space with recreational values at **location '5'** (10,000m<sup>2</sup> – considered to be a 'local recreation park'). Supported and considered to be generally in accordance with:

- section 5.6 of the *Shoalhaven Development Control Plan 2014* – Chapter 11: Subdivision – particularly with reference to P67.1; P67.3; P68
- Shoalhaven City Council's *Community Infrastructure Strategic Plan 2017 - 2036*: Appendix E – Open space typologies, design elements and costings (Local recreation park).

#### *Local Park: location 8*

Plans illustrate provision of public open space with recreational values at **location '8'** (8,500m<sup>2</sup> – considered to be a 'local recreation park'). The proposed activity node is not considered to align with P67.1 of section 5.6 of the Shoalhaven Development Control Plan 2014 – Chapter 11: Subdivision – particularly with respect to 'safety', 'security', and natural 'surveillance'. Provide revised plans generally in accordance with P67.1.

### *Local Park: location 10*

Plans illustrate proposed public park at **location '10'** (adjacent to proposed sports fields at location '12' – considered to be 'linear passive' open space).

It is not clear from documentation provided that acceptable recreational values are able to be attained at this location. Consider reclassification to 'natural area' OR provide revised documentation clearly illustrating open space embellishments in accordance with section 5.6 of the *Shoalhaven Development Control Plan 2014* – Chapter 11: Subdivision – particularly with reference to P67.1; P67.3; P68 AND Shoalhaven City Council's *Community Infrastructure Strategic Plan 2017 - 2036*: Appendix E – Open space typologies, design elements and costings (Linear passive).

### *Sports Fields: location 12*

Plans illustrate provision of sports fields and supporting infrastructure at **location '12'** (considered to be 'district sports park').

Plans are generally considered to align with relevant design considerations and embellishments requirements as documented in:

- section 5.6 of the *Shoalhaven Development Control Plan 2014* – Chapter 11: Subdivision – particularly with reference to P67.1; P67.3; P68
- Shoalhaven City Council's *Community Infrastructure Strategic Plan 2017 - 2036*: Appendix E – Open space typologies, design elements and costings (District sports park).

Conditions re. landscape outcomes in public open spaces to be applied by Development Engineering, as required.

### Additional Information Required:

- Plans illustrate provision of public open space with recreational values at **location '8'** (8,500m<sup>2</sup> – considered to be a 'local recreation park'). The proposed activity node is not considered to align with P67.1 of section 5.6 of the Shoalhaven Development Control Plan 2014 – Chapter 11: Subdivision – particularly with respect to 'safety', 'security', and natural 'surveillance'. Provide revised plans generally in accordance with P67.1.
- It is not clear from documentation provided that acceptable recreational values are able to be attained at this location. Consider reclassification to 'natural area' OR provide revised documentation clearly illustrating open space embellishments in accordance with section 5.6 of the *Shoalhaven Development Control Plan 2014* – Chapter 11: Subdivision – particularly with reference to P67.1; P67.3; P68 AND Shoalhaven City Council's *Community Infrastructure Strategic Plan 2017 - 2036*: Appendix E – Open space typologies, design elements and costings (Linear passive).

## **Biodiversity Section Comments / Requirements**

### Comments

Documents reviewed:

- West Culburra Concept Development Consent - Sealark Pty Limited 78149.19 Dixon SC Annexure A (all attachments and approved plans) SSD 3846 LEC 2019/78149
- EPBC Approval – EPBC2023/09524
- Appendix+T+-+BDAR+Whole+site\_
- Appendix+T+-+BDAR+Additional+Footprint\_

The following documents were also reviewed following submission to Council in accordance with the *Applicants Management and Mitigation Measures* as outlined in Appendix 2 (advice in relation to these documents are also being provided directly to the applicant following their submission to Council):

- Vegetation Management Plan - Culburra Rd Culburra Beach - Lot 1 DP 1305809
- Construction Environmental Management Plan & Operational Environmental Management Plan - Lot 1 DP 1305809

### *Vegetation Management Plan*

Table 1 notes the VMP is to be implanted for the life of the approval or until ownership is transferred to SCC. Transfer to SCC would need to be through a VPA and will require VMP targets are met before the potential transfer.

Section 2.4 Aboriginal heritage – conditions look to be met by the VMP for those AHIM sites located within the VMP are, however please note, no expertise on AHIMS and how they are best managed.

Section 3.2.1 Pre-clearance and clearance works – VMP notes ‘the ecologist must inspect the foraging habitat in the action area for Protected Matters including the Gang-gang Cockatoo, Grey-headed Flying-fox and Yellow-bellied Glider, and if found, use non-invasive techniques to encourage these species to move on from trees, prior to those trees being cleared’. No mention of action required if any native species is found breeding within the action area, the BDAR has recorded various suitable hollows within the action area, the VMP should include protocol for ecologist to follow if any native species is found breeding within the action area. Currently the VMP provides the project ecologist with the authority to order a temporary halt on clearing, however, without a protocol in place the halt period may be subjective to the ecologist opinion. It’s recommended that for threatened species, particularly those hollow dependant species, clearing should stop until the end of the breeding period, this will have to be monitored, additionally, it’s recommended that VMP state that clearing should be conducted outside the breeding season for Gang-gang Cockatoo and Yellow-bellied Glider as a minimum.

Section 3.2.2 Reuse of cleared material on site – as a precaution, VMP to mention that removed vegetation that is to be mulched, should not be spread within the VMP area, unless in consultation with the bush regenerator – this will avoid impacts to the native grasses and shrubs remaining within the VMP area.

Section 7.4 Risk Assessment and corrective actions – section and table 15 to be updated to include assessment of potential risks and remedial actions in relation to the VMP area meeting benchmark conditions for the PCTs present. If council are to take this land and manage the actions in perpetuity maintain the benchmark conditions for the PCTs could be costly to council if not successfully achieved by the VMP before handing over.

### *Construction Environmental Management Plan & Operational Management Plan*

Section 1.5.1 Environmental induction – induction to include details about potential threatened flora and fauna present on site and the fauna habitat available within the impact area, such as hollow bearing trees and nest.

Section 2.2.2.2 – Hollow bearing tree and habitat removal – this section should include protocol for ecologist to follow if any native species is found breeding within hollows the action area. It’s recommended that for threatened species, particularly those hollow dependant species, clearing should stop until the end of the breeding period, this will have to be monitored.

Section 2.2.2.4 removal of other refuse habitat – this sections states ‘These features will be marked during pre-clearing surveys or checks. These features will be cleared and natural materials re-installed in conservation areas to be retained under the supervision of a suitably qualified ecologist’ CEMP to be updated to request that featured to be relocated prior to clearing commencing in the area. This will avoid damage to hollow logs, habitat rocks etc, from machinery during clearing.

Table 8 Environmental management measures – objective Biodiversity values: ‘If a threatened species is found to be occupying the hollow, then the hollow section is to be reattached to a recipient tree within the nearby conservation areas as selected and directed by the fauna ecologist. The welfare and temporary holding of the residing animal(s) is at the discretion of the fauna ecologist. The hollow section should be well secured in the recipient tree in a manner that will not compromise the current or future health of that tree’, - this should be updated, if threatened species are found occupying the hollow and signs of breeding/nest are observed/validated, then clearing of hollow bearing tree must stop until young have fledge. Clearing can move to other sections of the impact area, providing a suitable buffer between the hollow bearing tree with nesting/breeding fauna can be achieved, ecologist to advise on buffer and appropriate protocol. If the threatened species is found but not breeding/nesting behaviour evident, then protocol can continue as per the current recommendation in the CEMP/OMP.

Section 4.8 Feral cat management – section focuses on feral cat management but does not provide controls for domestic cats impacting the VMP areas and/or the surrounding vegetation. The impacts of domestic cats on local fauna are high if they are not controlled and allowed to roam free. Typical SCC consent conditions such as Bio\*32 and Bio\*18 (from the master list) ensure that cats are always kept inside the properties or even prohibit the cats from been kept. CEMP/OMP should provide guidance on how domestic cats will be control. Given consent has been given via SSD and EPBC for this application, we are limited on control conditions so requesting the CEMP/OMP address domestic cat issues will be important.

Appendix A - Direct impacts from domestic animals entering VMP areas – OMP focuses on managing impacts from domestic dogs, OMP needs to consider impacts and controls for domestic cats in addition to feral cats.

Appendix B – to be updated to include mitigation for domestic cat impacts.

## Floodplain Management Section Comments / Requirements

Comments and the need for any additional information or conditions were not received at the time of writing of this response. Any response in relation to this matter would be provided in the form of an updated submission under separate cover.

## Strategic Planning Comments / Requirements

Comments and the need for any additional information or conditions were not received at the time of writing of this response. Any response in relation to this matter would be provided in the form of an updated submission under separate cover.

## **Shoalhaven Water Comments / Requirements**

Comments and the need for any additional information or conditions were not received at the time of writing of this response. Any response in relation to this matter would be provided in the form of an updated submission under separate cover.

## **Development Engineering Comments / Requirements**

Comments and the need for any additional information or conditions were not received at the time of writing of this response. Any response in relation to this matter would be provided in the form of an updated submission under separate cover.